

## Can Sovereigns Be Brought to Justice? The Crime of Genocide's Evolution and the Meaning of the Milosevic Trial

Michael J. Kelly

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## ARTICLES

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MICHAEL J. KELLY†

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Hatred may be dormant, but never static. It unavoidably turns into a cancerous cell that invades a limb, then another, then the entire body, then the environment. Its aim is to conquer in order to destroy. Its principle target is human dignity and freedom.

An ancient, if not eternal, plague routed in somber and fathomless ground, hate ignores frontiers and walls, ethnic and social differences, racial origins and religious beliefs.

A human disease, it cannot be stopped even by God himself. Man alone can prevent it for man alone can produce it. Man alone can limit its progression. Hence, no group may consider itself immune against its poison. No community is shielded from its arrows.

Blind and blinding, hatred is a dark sun which, under heavens laden with ashes, fights and maims and humiliates anyone who forgets that all human beings, irrespective of their origin, color or faith, are sovereign, and thus are bearers of promise and worthy of respect.

....

. . . [T]o learn what evil hatred can do, listen to what evil hatred has already done not so long ago. Just close your eyes and try to imagine endless nocturnal processions converging to a place over there in Poland, where, as a result of government-planned hatred, heaven and the human heart were on fire.

Close your eyes and listen, listen to the frightened victims of manhunts in the ghettos, the silent screams of terrified mothers, listen to the tears of starving children and their desperate parents, friends, teachers in agony, as they walk to where dark flames are so gigantic that the planet itself seemed in danger.

....

Think of them today. . . , remember them tomorrow. Think of their legacy. Just as the hatred must disappear, the legacy of its victims must remain.<sup>1</sup>

—Elie Wiesel, Nobel Peace Laureate,  
Survivor of Auschwitz and Buchenwald

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<sup>1</sup> The Legacies of the Holocaust: Hearing Before the Senate Committee on Foreign Relations, 106th Cong. 4–6 (2000) (statement of Elie Wiesel, Professor, Boston University).

## INTRODUCTION

This is a story of crime and punishment. Specifically, it concerns the development of a crime, its definition and codification, and the slow movement toward punishing it. While genocide has only recently exposed sovereigns to criminal sanctions on the international scene, many believe it to be the crime of crimes.<sup>2</sup> If this is true, then the world has long been negligent in pursuing its perpetrators, many of whom reasonably thought they could hide behind the age-old shield of sovereign immunity. Now that calculus is changing.

The conviction of Rwanda's Prime Minister and the arrest and prosecution of Yugoslavia's President on charges of genocide represent a watershed moment in the development of international law. The political will has finally been summoned to pursue those in power who monstrously direct forces under them to commit genocidal atrocities. Now it can be legally asserted that blood on the hands of lieutenants travels back up the chain of command to their masters and stains them most assuredly as if the masters had committed the physical acts themselves.

## I. HISTORICAL CONTEXT

For most, mere utterance of the word "genocide" chills the conscience. Naturally, the question follows: Whence does this terrible concept spring? While the term itself is only a half-century old, its origins are as ancient as its results are horrifying.<sup>3</sup> Planned mass human annihilation has been with us from the beginning, or at least the beginning, according to the commonly accepted Judeo-Christian-Islamic tradition. The first book of the Old Testament recounts the first genocide—that of God against His people, or the entire "race" of man.<sup>4</sup> In many

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<sup>2</sup> See WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* 385 (2000).

<sup>3</sup> See LEO KUPER, *GENOCIDE: IT'S POLITICAL USE IN THE TWENTIETH CENTURY* 11 (1981).

<sup>4</sup> See *Genesis* 6:5–7 (King James) ("God saw that the wickedness of man *was* great in the earth and *that* every imagination of the thoughts of his heart *was* only evil continually . . . . And the Lord said, I will destroy man whom I have created from the face of the earth."); *Genesis* 6:17 (King James) ("[B]ehold I, even I, do bring flood of waters upon earth, to destroy all flesh, wherein *is* the breath of life, from under heaven; and every thing that *is* in the earth shall die."); *Genesis* 7:10–12 (King James) ("And it came to pass after seven days, that the waters of the flood were upon the earth . . . . [T]he windows of heaven were opened . . . . And the rain

ways Genesis is regarded as the book of creation and, therefore, a book of beginnings. Yet, it is also a book of endings, for God, disappointed in His creation, wiped the earth clean of every land-dwelling organism except Noah, his family, and the animals that were directed onto the Ark.<sup>5</sup> Thereafter, the Bible recounts further genocides committed by man against his fellow man under God's direction.<sup>6</sup>

God's justice by its divine nature is philosophically and theologically considered just and, consequently, not open to challenge by humanity. Thus, genocidal acts, whether visited upon humanity by God or pursuant to divine direction, are beyond human comprehension, judgment, reproach, and to a large extent, questioning. Genocide perpetrated by man against man, however, under god-like delusions but without any divine

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was upon the earth for forty days and nights." The Old Testament then recounts the effect of the flood:

[T]he waters prevailed and were increased greatly upon the earth . . . and all the high hills, that were under the whole heaven, were covered . . . [A]nd the mountains were covered. [A]ll flesh died that moved upon the earth, both of fowl, and of cattle, and of beast, and of every creeping thing that creepeth upon the earth, and every man: all in whose nostrils was the breath of life, of all that was in the dry land, died . . . [E]very living substance was destroyed which was upon the face of the ground . . . [T]he waters prevailed upon the earth a hundred and fifty days.

*Genesis* 7:18–24 (King James).

<sup>5</sup> See *Genesis* 6:5–22 (King James).

<sup>6</sup> See *Joshua* 10:40 (King James) ("So Joshua smote all the country of the hills, of the south, and of the vale, and of the springs, and all their kings: he left none remaining but utterly destroyed all that breathed, as the Lord God of Israel commanded."). Under God's direction, the Israelites invaded the land of Canaan and exterminated seven nations: the Frigashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, laying waste to various cities. See *Joshua* 6:21 (King James) (describing the destruction of Jericho); *Joshua* 8:24 (King James) (describing the destruction of Ai); *Joshua* 10:28–39 (King James) (describing the destruction of Makkedah, Libnah, Lachish, Gezer, Elgon, Hebron, and Debir); see also *Deuteronomy* 2:34 (King James) ("[W]e took all his cities at that time, and utterly destroyed the men, the women, and the little ones, of every city, we left none to remain . . ."); PETER DU PREZ, GENOCIDE: THE PSYCHOLOGY OF MASS MURDER 4 (1994) ("We read in the Old Testament: 'Now go and smite Amalek, and utterly destroy all that they have, and spare them not, but slay both man and woman, infant and suckling, ox and sheep, camel and ass.' " (quoting *Samuel* 15:3 (King James))); Leonard B. Glick, *Religion and Genocide*, in 3 THE WIDENING CIRCLE OF GENOCIDE 46 (Israel W. Charny ed., 1994) ("The Book of Joshua provides us with one of the earliest texts in which a diety quite plainly promotes a destruction of the people."); Dan Gifford, *The Conceptual Foundations of Anglo-American Jurisprudence in Religion and Reason*, 62 TENN. L. REV. 759, 806 (1995) ("Hebrews later slaughtered many of the existing residents of Palestine. At Jericho, the Hebrews were ordered to commit genocide . . .").

direction, such as Hitler's Final Solution,<sup>7</sup> clearly falls within the realm of human questioning, reproach, and judgment.

Human history is replete with examples of people perpetrating genocide against one another.<sup>8</sup> The psychology underlying ancient genocides, however, differed dramatically from genocides committed in the later half of the twentieth century. Historically, in fact, there was something approaching a "nothing personal" attitude when one society visited this atrocity on another.<sup>9</sup> For example, the long drawn-out Roman conflict with Carthage was not premised on ethnic disdain so much as it was based on power, politics, and economics. As its power increased, Rome fought a series of Punic Wars over a one hundred and eighteen-year period against its chief rival in the Western Mediterranean. Ultimately, the Punic Wars resulted in the final obliteration of the city of Carthage and its culture.<sup>10</sup>

While the First Punic War (264–241 B.C.) was about power, prestige, and political control over Sicily, the Second Punic War (218–202 B.C.) diminished Carthage's military and territorial threat by defeating Hannibal, Carthage's military leader.<sup>11</sup> The Third Punic War (149–146 B.C.) was undertaken to annihilate Carthage's resilient economic expansion.<sup>12</sup> Despite Carthage's entreaties for peace, Rome implemented a plan for Carthage's destruction<sup>13</sup>—a decision, it should be noted, that was made by the Senate of democratic Rome, one hundred and fifty years prior to the rise of imperial Rome under the dictator-like Caesars.<sup>14</sup> In the summer of 149 B.C., an order for the final assault on Carthage was given.<sup>15</sup>

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<sup>7</sup> See WOLFGANG BENZ, *THE HOLOCAUST: A GERMAN HISTORIAN EXAMINES THE GENOCIDE* 61–66 (Jane Sydenham-Kwiet trans., 1999) (describing the Nazi plan to exterminate Jews through the Holocaust).

<sup>8</sup> See Roger W. Smith, *State Power and Genocidal Intent: On the Uses of Genocide in the Twentieth Century*, in *PROBLEMS OF GENOCIDE* 225 (1997).

<sup>9</sup> See V.A. Nadien-Rayevsky, *The Problem of Historical Responsibility*, in *PROBLEMS OF GENOCIDE* 201 (1997).

<sup>10</sup> See KUPER, *supra* note 3, at 11.

<sup>11</sup> See SIR GAVIN DEBEER, *HANNIBAL, CHALLENGING ROME'S SUPREMACY* 82, 120–24 (1969).

<sup>12</sup> See Richard Hooker, *Rome: The Punic Wars*, *Washington State University, World Civilizations: An Internet Classroom and Anthology* (1996), available at <http://www.wsu.edu/~dee/ROME/PUNICWAR.HTM>.

<sup>13</sup> *Id.*

<sup>14</sup> F.E. Adcock, *Caesar's Dictatorship*, in *9 THE CAMBRIDGE ANCIENT HISTORY, THE ROMAN REPUBLIC 133–144 B.C.* at 740 (1932).

<sup>15</sup> *Id.*

The Roman legions “stormed the town and the army went from house to house slaughtering the inhabitants in what is perhaps the greatest systematic execution of non-combatants before World War II. Carthaginians who weren’t killed were sold into slavery. The harbor and the city [were] demolished, and all the surrounding countryside was sown with salt in order to render it uninhabitable.”<sup>16</sup> Scipio’s siege and final assault on the city was truly one of the most brutal accounts of genocide in ancient recorded history,<sup>17</sup> perhaps even more brutal than the Greek destruction of Troy.<sup>18</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> ALAN LLOYD, *DESTROY CARTHAGE! THE DEATH THROES OF AN ANCIENT CULTURE* (1977).

The total population of Carthage at the start of the siege . . . has been estimated at 200,000 . . . . Some had perished in the fighting over three years; more by starvation. [T]he Roman general remained in personal command, without sleep through the entire attack . . . . Carthaginian fury was matched by Roman savagery. In the buildings, the attackers slaughtered everyone they came across, tossing many of the disarmed to troops below, who impaled them on raised pikes. Dead and dying citizens were used to fill ditches across which advanced Scipio’s transport.

On the sixth day, Scipio, pausing wearily on an ‘elevated place,’ surveyed the results of the most protracted and ferocious street battle recalled in ancient history. Behind him, the docks were in ashes. Once-rich temples and monuments had been torn apart in the scramble for loot. Smoking rubble replaced scores of former dwellings. Everywhere, bodies festooned the tortured city: young and old, male and female—protruding amid crumbled masonry and charred beams. [Of the city’s survivors] [50,000] tragic people emerged . . . [and] were sold as slaves.

What remained of Carthage was burned, and the empty ruins flattened. Demolition complete, the ceremony of sowing salt in a furrow was enacted to symbolize eternal desolation. Scipio solemnly cursed the site . . . . Thus, at a stroke as final in effect as a nuclear missile strike, an entire city, the centre of imperial government—indeed, of a civilization—was blotted from the earth’s face.

So extraordinary, even in antiquity, did it seem that Carthaginian civilization should have vanished virtually without trace that legend cast her, like Atlantis, as a lost realm, the repository of untold riches lying undisclosed . . . . In fact, Carthage’s treasures had departed with Scipio. Of racial posterity, there was none . . . . For a state once unrivaled as the mercantile hub of the western world, doomsday had arrived 2,091 years before the atom-bomb.

*Id.* at 178–83.

<sup>18</sup> See Russ VerSteeg, *A Contract Analysis of the Trojan War*, 40 ARIZ. L. REV. 173, 176 n.15 (1998) (“[A]round 1250–1240 B.C. . . . the city was sacked and burned to the ground.” (quoting ANDRE MICHALOPOULOS, *HOMER* 29 (1966))); MICHAEL WOOD, *IN SEARCH OF THE TROJAN WAR* 114–18, 164–66, 243 (1985). See generally CARL W. BLEGEN, *TROY AND THE TROJANS* 117 (1963) (“[Troy] was besieged and captured by enemies and destroyed by fire, no doubt after being thoroughly



The Romans exterminated the race, culture, religion, and customs of the Carthaginians.<sup>19</sup> Even though great orators such as Cato hated Carthage and persuaded the Roman Senate to crush it, the Senate did not act out of hate.<sup>20</sup> Rather, Rome decided to destroy Carthage as a preemptive strike against an economically resurgent Mediterranean city that could soon become a potential military enemy.<sup>21</sup>

Conversely, today genocide is generally directed out of hatred. The victims are dehumanized to rationalize the act.<sup>22</sup> The Armenian genocide of 1915, the Ukrainian famine of 1933, the Holocaust, the 1994 Rwandan genocide, and the ethnic cleansings of Bosnia in 1992–1994 and Kosovo in 1998 underscore this conclusion. While the international legal response to the perpetration of this atrocity has been slow, it has also been steady in its increasing sensitivity and condemnation. Eventually, it is hoped that this legal response will take on an even greater, more predictable judicial quality by way of more formalized investigation, prosecution, and punishment for the crime of genocide.

## II. CONCEPTUAL EVOLUTION OF GENOCIDE AS INTERNATIONALLY RECOGNIZED CRIME

Philosopher Jean-Paul Sarte noted “the fact of genocide is as old as humanity.”<sup>23</sup> Yet, the legal prohibitions against it arose only in Medieval times.<sup>24</sup> During the Middle Ages, custom, rather than formal treaties, first regulated genocide based upon the combatants involved.<sup>25</sup>

Historically, Christian rulers selectively sanctioned mass killing of certain civilian populations. For instance, the rulers sanctioned killing during *Bellum Romanum*, wars against pagans, while they spared civilians subject to *Bellum Hostile*,

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pillaged . . .”); R.M. FRAZER, JR. *THE TROJAN WAR: THE CHRONICLES OF DICTYUS OF CRETE AND DARES THE PHRYGIAN* (1966).

<sup>19</sup> See LLOYD, *supra* note 17, at 183.

<sup>20</sup> See H.H. SHULLARD, *ROMAN POLITICS (200–150 B.C.)* 240–45 (1951) (“[Cato] convinced himself that Roman security required the elimination of Carthage.”).

<sup>21</sup> See T.A. DOREY, *ROME AGAINST CARTHAGE* 156–59 (1971).

<sup>22</sup> See KUPER, *supra* note 3, at 85.

<sup>23</sup> See WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* 1 (2000).

<sup>24</sup> KUPER, *supra* note 3, at 12 (noting that “the war practices of ‘civilized’ peoples in the Middle Ages were often marked by genocidal massacres”).

<sup>25</sup> See *id.*

wars between only Christians.<sup>26</sup> Inconsistent application of this rule yielded mixed results.

At the urging of Pope Urban II, hordes of Christian knights employed this norm during the First Crusade to liberate the Holy Land and capture Jerusalem.<sup>27</sup> But it was later disregarded during the Albigensian Crusade against the Cathars, a purist Christian sect in the Languedoc region of Southern France that Pope Innocent III considered heretical.<sup>28</sup> Indeed, when confronted with the question of how to discern non-believers from the devout, the papal legate, the Abbot of Citeaux, famously replied, "Strike [all] down; God will recognize his own."<sup>29</sup>

Rules of war designed to protect non-combatants first found their way into documentary form through President Lincoln's promulgation of General Order No. 100 during the American Civil War.<sup>30</sup> These rules, however, did little to dissuade General Sherman from burning Atlanta in 1864 and then conducting a scorched-earth march to the sea that left behind a devastating trail of rubble and carnage.<sup>31</sup> Irrespective of the Sherman exception, the principles articulated in General Order No. 100 provided the basis for its codification in treaties between states that were negotiated at both of the Hague Conferences convened in 1899 by Czar Nicholas II and again in 1907 by President Theodore Roosevelt.<sup>32</sup>

Indeed, the annex to the 1907 treaty specifically prohibited attacking or bombarding undefended towns, villages, or

<sup>26</sup> See HOWARD BALL, *PROSECUTING WAR CRIMES AND GENOCIDE: THE TWENTIETH CENTURY EXPERIENCE* 13 (1999).

<sup>27</sup> See C. WARREN HOLLISTER, *MEDIEVAL EUROPE: A SHORT HISTORY* 186–87 (5th ed. 1982) (recounting a Christian eyewitness' description of the sack of Jerusalem by the Crusaders: "If you had been there you would have seen our feet colored to our ankles with the blood of the slain . . . None of them were left alive; neither woman nor children were spared . . ."); see also Smith, *supra* note 8, at 228–31.

<sup>28</sup> See Glick, *supra* note 6, at 51–52 (citing WALTER L. WAKEFIELD, *HERESY, CRUSADE AND INQUISITION IN SOUTHERN FRANCE, 1100–1250* (1974)).

<sup>29</sup> See KUPER, *supra* note 3, at 13.

<sup>30</sup> BALL, *supra* note 26, at 14 (citing Instructions for the Government of the Armies of the United States in the Field, General Order No. 100, Adjutant General's Office, April 24, 1863).

<sup>31</sup> See *Union General William T. Sherman*, Carl Vinson Institute of Government, The University of Georgia, at <http://www.cviog.uga.edu/Projects/gainfo/sherman.htm> (last visited July 19, 2002).

<sup>32</sup> See BALL, *supra* note 26, at 14–15 (discussing the Hague Conferences).

dwelling or making declarations of no quarter.<sup>33</sup> The treaty, however, lacked enforcement provisions. Article III merely stated that "a belligerent party which violates the provision of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."<sup>34</sup>

None of these tentative efforts, however, could allay the occurrence of three of the greatest genocides during the first half of the twentieth century that led to eventual international recognition, definition, and proscription of the crime. These atrocities were perpetrated during the First World War (against the Armenians in 1915), during the inter-war period (against the Ukrainians in 1932-1933), and during the Second World War (the Jewish Holocaust).<sup>35</sup>

#### A. *Genocide and the Period of World Wars (1915-1945)*

No previous epoch in history witnessed the shock and revulsion of mechanized carnage than that of the World War I generation.<sup>36</sup> While the war began with conflicts between cavalry units armed with rifles and lances, it soon escalated.<sup>37</sup> Science and the industrial revolution brought forth new weapons of war such as grenades, mortars, and flamethrowers, as well as airplanes outfitted with bombs, machine guns, tanks, and poison gas.<sup>38</sup> Chemical weapons alone accounted for 1.3 million

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<sup>33</sup> *Id.* at 15.

<sup>34</sup> *Id.* at 16.

<sup>35</sup> Although the author discusses several occurrences of genocide throughout the twentieth century as this Article progresses, it is not his intent to treat these episodes in a deep analytic manner individually. Indeed entire volumes have been written about each crime from various, sometimes conflicting perspectives. Given the space constraints and ultimate aim of this Article, it is only his intent to provide the reader with salient examples of genocide in a variety of cultures and contexts to explore the premise of changing international legal and political responses through time. Thus, abbreviated explanation and significant reduction in treatment of the various crimes should not be taken as a dismissive attitude on the part of the author.

<sup>36</sup> The First World War began after the assassination of Austrian Archduke Franz Ferdinand in Sarajevo on August 14, 1914, and it ended with the surrender of Germany in Paris on November 11, 1918. See S.L.A. MARSHALL, *WORLD WAR I* 33, 443-44 (1964).

<sup>37</sup> GUY HARTCUP, *THE WAR OF INVENTION: SCIENTIFIC DEVELOPMENTS 1914-18* 1 (1988).

<sup>38</sup> See generally ROBERT L. O'CONNELL, *OF ARMS AND MEN*, 241-69 (1989) (discussing weapons introduced and utilized in World War I).

casualties during the War.<sup>39</sup> By November 1918, this exponentially increased the decimation of humanity.<sup>40</sup> During those four years of butchery, casualties between the Allies<sup>41</sup> and the Central Powers<sup>42</sup> mounted to record levels: 7,485,600 battle deaths.<sup>43</sup>

It was in the context of this horrific opening to the twentieth century that a great tragedy unfolded in the mountainous region of the Caucasus controlled by the Ottoman Empire. This came as a pretextual response to both participation by a Christian Armenian division in a Russian-sponsored action against Turkey and the declaration of a provisional Armenian government in April 1915.<sup>44</sup> The Turkish government undertook an “undeclared campaign of genocide against [its] Armenian subjects.”<sup>45</sup> The resulting genocide of the Armenians was organized as a march “into the desert to die of starvation and thirst.”<sup>46</sup> This brutal action led to the deaths of approximately 700,000 men, women, and children.<sup>47</sup>

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<sup>39</sup> Kevin J. Fitzgerald, *The Chemical Weapons Convention: Inadequate Protection from Chemical Warfare*, 20 SUFFOLK TRANSNAT'L L. REV. 425, 430 (1996) (citing David B. Merkin, *The Efficiency of Chemical Arms Treaties in the Aftermath of the Iran-Iraq War*, 9 B.U. INT'L L.J. 175, 176 (1991)); see also Leonhard S. Wolfe, *Chemical and Biological Warfare: Medical Effects and Consequences*, 28 MCGILL L.J. 732, 736 n.7 (1983); Philip Louis Reizenstein, Note, *Chemical and Biological Weapons-Recent Legal Developments May Prove to be a Turning Point in Arms Control*, 12 BROOK. J. INT'L L. 95, 99 (1986) (citing PRENTISS, CHEMICALS IN WAR (1937)).

<sup>40</sup> HARTCUP, *supra* note 37, at 61–68, 80–91, 94–117, 145–65.

<sup>41</sup> The Allies were lead by the British Empire, France, Italy, and the United States beginning in 1917, and Czarist Russia until its withdrawal in 1917. See MARSHALL, *supra* note 36, at 21–22 (discussing the formation of the Triple Alliance).

<sup>42</sup> The Central Powers were lead by Germany, the Austro-Hungarian Empire, and the Ottoman Empire. See *id.* at 17–18.

<sup>43</sup> LEONARD P. AYERS, THE WAR WITH GERMANY: A STATISTICAL SUMMARY 119 (1919) (giving U.S. War Department estimates on battle deaths).

<sup>44</sup> JOHN KEEGAN, THE FIRST WORLD WAR 223 (2000).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; see also DU PREEZ, *supra* note 6, at 5. Some, however, put the death toll as high as 1.5 million. See H.R. REP. NO. 106-933, sec. 2, at 1 (2000) (noting the Armenian genocide killed 1.5 million men, women, and children); Robert F. Melson, *The Armenian Genocide as Precursor and Prototype of Twentieth-Century Genocide, in IS THE HOLOCAUST UNIQUE?: PERSPECTIVES ON COMPARATIVE GENOCIDE* 89 (Alan S. Rosenbaum ed., 1996) (stating that approximately one million Armenians, out of a total population of two million, were killed between 1915 and 1918); SHAVARSH TORIGUIAN, THE ARMENIAN QUESTION AND INTERNATIONAL LAW 9 (2d ed. 1988).

In fact, in 1915, the regime of the Young Turks that had replaced the centuries-old Sultanate cleverly used the outbreak of war in 1914 to affect this atrocity as an ultimate solution to the "Armenian question," which had long nagged the Turkish government.<sup>48</sup> Although the process was supposed to be carried out in secret,<sup>49</sup> dispatches from foreign officials clearly reflected the magnitude of what was happening.<sup>50</sup> Henry Morgenthau, America's Ambassador to Constantinople at the time, recounted after the war:

The final and worst measure used against the Armenians was the wholesale deportation of the entire population from their homes and their exile to the desert, with all the accompanying horrors on the way. No means were provided for their transportation or nourishment. The victims . . . had to walk on foot, exposed to attacks of bands of criminals especially organized for that purpose. Homes were literally uprooted; families were separated; men killed, women and girls violated

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The Turkish government still denies that the Armenian Genocide ever took place despite its recognition by countless historians and governments. See Henry R. Huttenbach, *The Psychology and Politics of Genocide Denial: A Comparison of Four Case Studies*, in *STUDIES IN COMPARATIVE GENOCIDE* 217-19 (Levon Chorbajian & George Shirinian eds., 1999); William H. Honan, *Princeton is Accused of Fronting for the Turkish Government*, N.Y. TIMES, May 22, 1996, at B1 (calling Armenian deaths "the unintended result of wartime deprivation"); Stephen Kinzer, *Turks Fume Over Stance by French on Armenia*, N.Y. TIMES, June 21, 1998, at A4 (explaining Turkey's denial of France's public recognition of the Armenian genocide); *International Affirmation of the Armenian Genocide*, Armenian National Institute, available at <http://www.armenian-genocide.org/affirmation/resolutions/index.php> (last visited Aug. 5, 2002) (listing nations which have publicly recognized the Armenian genocide).

Moreover, Turkey, currently a candidate for membership in the European Union, continues to strenuously lobby against recognition of the Armenian massacre as "genocide" by the United States. See Douglas Frantz, *Some in Turkey See Minefield Along Road to European Union*, N.Y. TIMES, Dec. 1, 2000, at A13 (discussing Turkey's progress with European Union admission); Eric Schmitt, *The House Races; Republican's Unusual Gift: A Vote on the House Floor*, N.Y. TIMES, Oct. 7, 2000, at A11 (describing Turkey's acknowledgment of Armenian deaths as the result of "civil unrest"); Eric Schmitt, *House Backs Off on Condemning Turks' Killing of Armenians*, N.Y. TIMES, Oct. 20, 2000, at A11 (explaining how Turkey will take political action to prevent United States recognition of Armenian genocide).

<sup>48</sup> TORIGUIAN, *supra* note 47, at 9-12.

<sup>49</sup> *Id.* at 12-13.

<sup>50</sup> *Id.* at 18-22 (excerpting correspondence of the German Foreign Ministry between 1914 and 1918 on the Armenian question); see also Vahakn N. Dadrian, *Documentation of the Armenian Genocide in German and Austrian Sources*, in *THE WIDENING CIRCLE OF GENOCIDE: A CRITICAL BIBLIOGRAPHIC REVIEW* 77-125 (Israel W. Charny ed., 1994).

daily on the way or taken to harems. Children were thrown into rivers or sold to strangers by their mothers to save them from starvation. *The facts contained in the reports received at the Embassy from absolutely trustworthy eye-witnesses surpass the most beastly and diabolical cruelties ever before perpetrated or imagined in the history of the world.*<sup>51</sup>

Telegrams from the Interior Ministry collected after the capitulation of Turkey confirmed the government's intention to destroy the Armenian population.<sup>52</sup> The United States subsequently dispatched Major General James G. Harbord to Anatolia and the Caucasus on a fact-finding mission in the summer of 1919; his report to the Senate the following year confirmed the extent of the massacres.<sup>53</sup>

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<sup>51</sup> TORIGUIAN, *supra* note 47, at 13 (quoting HENRY MORGENTHAU, THE TRAGEDY OF ARMENIA 6–8 (1918)).

<sup>52</sup> *Id.* at 15–18. Two particularly telling communications from the Interior Minister, Talaat Pasha, were directed toward the destruction of Armenian children:

To the Government of Aleppo,

January 15, 1916—We hear that certain orphanages which have been opened receive also the children of the Armenians. Whether this is done through some ignorance of our real purpose, or through contempt of it, the Government will regard the feeding of such children or any attempt to prolong their lives as an act entirely opposed to its purpose, since it considers the survival of these children as detrimental. I recommend that such children shall not be received into the orphanages, and no attempts are to be made to establish special orphanages for them.

March 7, 1916—Collect the children of the indicated persons who, by order of the War Office, have been gathered together and cared for by the military authorities. Take them away on the pretext that they are to be looked after by the Deportations Committee, so as not to arouse suspicion. Destroy them and report.

*Id.*

<sup>53</sup> *Id.*

Massacres and deportations were organized in the spring of 1915 under a definite system, the soldiers going from town to town. The official reports of the Turkish Government show 1,100,000 as having been deported. Young men were first summoned to their Government building in each village and then marched out and killed. The women, old men, and children were, after a few days, deported to what Talaat Pasha called 'agricultural colonies,' from the high, cool, breeze-swept plateau of Armenia to the malarial flats of the Euphrates and the burning sands of Syria and Arabia . . . Mutilation, violation and death have left their haunting memories in a hundred beautiful Armenian valleys, and the traveller [sic] in that region is seldom free from the evidence of the most colossal crime of all ages.

*Id.* at 22–23 (quoting MAJOR GENERAL JAMES G. HARBORD, CONDITIONS IN THE NEAR EAST: REPORT OF THE AMERICAN MILITARY MISSION TO ARMENIA, 66th Cong., S. DOC. NO. 266 at 7 (1920)).

Following the war, an effort was mounted to bring the responsible members of the Turkish government to trial for the perpetration of these horrible crimes.<sup>54</sup> The political will of the international community, however, proved insufficient to sustain the momentum for judicial redress,<sup>55</sup> and it was decided that the new Turkish government would investigate, prosecute, and punish the wrongdoers.<sup>56</sup> This process was undertaken in a half-hearted manner, resulting in a meager record of conviction and no state admission of responsibility.<sup>57</sup> The modern state of Turkey continues to maintain its innocence.<sup>58</sup>

During the inter-war period, the next great genocide to occur was that of Stalin's Soviet regime against ethnic Ukrainians. Forced agricultural collectivization of the peasantry undergirded this process.<sup>59</sup> Beginning in 1929, liquidation of the more prosperous peasant class, known as the Kulaks, who hired labor on their large farms, was the first step.<sup>60</sup> In the first two months of 1931, "300,000 Ukrainians were shipped out of the Ukraine to Siberia, Kazakhstan, and to the Far North."<sup>61</sup>

This was followed in 1932 and 1933 by a government-engineered famine of unprecedented proportions.<sup>62</sup> This planned

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<sup>54</sup> See SCHABAS, *supra* note 2, at 21.

<sup>55</sup> *Id.* at 21–22 (explaining that "the failure of the signatories to bring the [Treaty of Sèvres] into force [establishing a Tribunal to prosecute the war criminals] 'resulted in the abandonment of thousands of defenceless [sic] peoples . . .'" (quoting KAY HOLLAWAY, MODERN TRENDS IN TREATY LAW 60–61 (1967))).

<sup>56</sup> *Id.* at 21 (indicating that Allied pressure greatly influenced the decision).

<sup>57</sup> *Id.*; see also KUPER, *supra* note 3, at 112–13 (discussing the trial and Turkey's continued denial of the Armenian genocide); Vahakan Dadrian, *Armenian Genocide, Court-Martial of Perpetrators*, in 1 ENCYCLOPEDIA OF GENOCIDE 87 (Israel W. Charny ed., 1999) (explaining that of all tried, only three were convicted and hanged).

<sup>58</sup> See generally Taner Akçam, *The Genocide of the Armenians and the Silence of the Turks*, in PROBLEMS OF GENOCIDE 349 (1997); *Turkey and the Armenians: That Controversial G-Word*, ECONOMIST, Feb. 3, 2001, at 55 (capturing the Turk's fierce response to France's official recognition of the Armenian genocide).

<sup>59</sup> LIBRARY OF CONGRESS, *Revelations from the Russian Archives: Ukrainian Famine*, available at <http://lcweb.loc.gov/exhibits/archives/ukra.html> (last modified Jan. 4, 1996).

<sup>60</sup> See WASYL HRYSHKO, THE UKRAINIAN HOLOCAUST OF 1933 72–79 (Marco Carynnyk ed. & trans., 1983) (detailing the liquidation process).

<sup>61</sup> *Ethnocide of the Ukrainians in the U.S.S.R.*, 7–8 UKRAINIAN HERALD: AN UNDERGROUND JOURNAL FROM SOVIET UKRAINE 45 (Maksym Sahaydak ed., Spring 1974) (reprinted by Smoloskyp Publishers, 1976) [hereinafter *Ethnocide of the Ukrainians in the U.S.S.R.*].

<sup>62</sup> *Id.* However, in their zeal to establish the Jewish Holocaust of 1941–1945 as the ultimate genocide, some scholars prefer to consider the famine an unfortunate

natural disaster<sup>63</sup> decimated the Ukrainian peasantry, which had been incorporated into the U.S.S.R. after Lenin's seizure of power in 1917. While there is disagreement as to what precipitated Moscow's draconian action against the Ukraine—resistance to Soviet collectivization policy<sup>64</sup> or rising Ukrainian nationalism and political independence<sup>65</sup>—no one contests that it was both planned and devastating.<sup>66</sup>

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by-product of misguided communist policies.

It is important to bear in mind that Stalinist measures, when viewed only in terms of their impact on Ukraine, may appear as if they were directed specifically at Ukraine and Ukrainians. These measures were, however, intended as a means of transforming peasant society and solving the Soviet Union's serious grain problem, rather than as a policy directed at Ukrainians for genocidal reasons. Millions died during the famine of 1932–33, but not all mass deaths are genocide . . . .

Unlike the Holocaust, the Great Famine was not an intentional act of genocide. The purpose was not to exterminate Ukrainians as a people simply because they were Ukrainians. Extermination was not an end in itself. The famine was the result of Stalin's effort to . . . rapid[ly] industrializ[e]. The burden of industrialization, of necessity, fell most heavily on peasants. Since Ukrainians were overwhelmingly a peasant people, they suffered disproportionately.

Barbara B. Green, *Stalinist Terror and the Question of Genocide: The Great Famine, in IS THE HOLOCAUST UNIQUE?: PERSPECTIVES ON COMPARATIVE GENOCIDE* 138, 156 (Alan S. Rosenbaum ed., 1996).

<sup>63</sup> R.J. Rummel, *Democide in Totalitarian States: Mortocracies and MegaMurderers*, in *THE WIDENING CIRCLE OF GENOCIDE: A CRITICAL BIBLIOGRAPHIC REVIEW* 27 (Israel W. Chany ed., 1994).

<sup>64</sup> George J. Andreopoulos, *Introduction: The Calculus of Genocide*, in *GENOCIDE: CONCEPTUAL AND HISTORICAL DIMENSIONS* 6 (George J. Andreopoulos ed., 1994) (examining the persecution of peasant groups sharing the generic label "enemies of collectivization"); Helen Fein, *Genocide, Terror, Life Integrity, and War Crimes: The Case for Discrimination*, in *GENOCIDE: CONCEPTUAL AND HISTORICAL DIMENSIONS* 99 (George J. Andreopoulos ed., 1994) (discussing that Stalin labeled victims as enemies of the state).

<sup>65</sup> HRYSHKO, *supra* note 60, at 105, 112–14 (stating that the Twelfth Congress of the Communist party of Ukraine declared, in 1934, "the chief danger" to be "local Ukrainian nationalism").

<sup>66</sup> RESOLUTION OF THE COUNCIL OF PEOPLE'S COMMISARS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC AND OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY (BOLSHEVIK) OF UKRAINE ON BLACKLISTING VILLAGES THAT MALICIOUSLY SABOTAGE THE COLLECTION OF GRAIN.

In view of the shameful collapse of grain collection in the more remote regions of Ukraine . . . [t]he Council of People's Commissars and the Central Committee resolve: to place the following villages on the black list for overt disruption of the grain collection plan . . . (list omitted). The following measures should be undertaken with respect to these villages:

1. Immediate cessation of delivery of goods, complete suspension of cooperative and state trade in the villages, and removal of all available goods from cooperative and state stores.



Estimates of the death toll range from 4.8 million<sup>67</sup> to 15 million if the liquidation of the Kulaks and deaths resulting from the mass deportations are included.<sup>68</sup> While countless Ukrainians starved to death during the winter of 1932 through the following summer, Russians, even those directly across the border, were unaffected by the famine.<sup>69</sup> Almost immediately, a process of repopulation began with ethnic Russians moving into vacated areas of the Ukraine.<sup>70</sup> This redistribution was encouraged into the 1970s.<sup>71</sup>

Because the Ukrainian tragedy did not occur in the context of an international conflict, Stalin's regime was never held accountable for the crimes it perpetrated within its own borders. In the 1930s, the concept of collective security translated into collective responsibility for humanity did not yet exist. Indeed, it remains arguable whether this concept concretely exists today.

The third great genocide, and the most significant by measure of the premeditated, systematic butchery inflicted on innocent people, arose during World War II. It has been said that the Second World War was in large measure a continuation of the First.<sup>72</sup> Ironically, the war itself provided the perfect camouflage to commit genocide.<sup>73</sup> Prior to the outbreak of war in

2. Full prohibition of collective farm trade for both collective farms and collective farmers, and for private farmers.

3. Cessation of any sort of credit and demand for early repayment of credit and other financial obligations.

4. Investigation and purge of all sorts of foreign and hostile elements from cooperative and state institutions, to be carried out by organs of the Workers and Peasants Inspectorate.

5. Investigation and purge of collective farms in these villages, with removal of counterrevolutionary elements and organizers of grain collection disruption.

LIBRARY OF CONGRESS, *Revelations from the Russian Archives: Ukrainian Famine: Grain Problem* (translation) (Dec. 6, 1932), available at <http://lcweb.loc.gov/exhibits/archives/k2grain.html> (last modified Nov. 13, 1995).

<sup>67</sup> See HRYSHKO, *supra* note 60, at 102.

<sup>68</sup> See DU PREEZ, *supra* note 6, at 5; see also Richard C.O. Rezie, Note, *The Ukrainian Constitution: Interpretation of the Citizens' Rights Provisions*, 31 CASE W. RES. J. INT'L L. 169, 177 (1999) (discussing the Ukrainian deaths resulting from the state-engineered famine and de-Kulakization in 1932-33).

<sup>69</sup> See HRYSHKO, *supra* note 60, at 103.

<sup>70</sup> See *id.* at 102.

<sup>71</sup> See *Ethnocide of the Ukrainians in the U.S.S.R.*, *supra* note 61, at 67-94.

<sup>72</sup> See KEEGAN, *supra* note 44, at 9. See generally A.J.P. TAYLOR, *THE ORIGINS OF THE SECOND WORLD WAR* (1962).

<sup>73</sup> RITA STEINHARDT BOTWINICK, *A HISTORY OF THE HOLOCAUST: FROM IDEOLOGY TO ANNIHILATION* 182 (2d ed. 2001) (noting that the circumstances of war

1939, occasioned by Germany's invasion of Poland, there arose a dark power based on hatred and racism in the heart of Germany known as the Nationalist Socialist Party, or the Nazi party. Led by Adolf Hitler, the Nazis embodied and propagated an intense revulsion for Jews,<sup>74</sup> blaming them for all that was wrong both socially and economically in Germany.<sup>75</sup>

The German people responded to this self-reinforcing and scapegoating tactic and elected the Nazis to a large number of seats in the 1932 Reichstag elections, which would have constituted a clear majority were it not for proportional representation.<sup>76</sup> Shortly thereafter, Hitler was appointed Chancellor by President von Hindenburg, and the stage was set for the terror of the Jews to ensue.<sup>77</sup>

It was always Hitler's aim to replace the dysfunctional republic with a popular authoritarian regime.<sup>78</sup> Yet, he wanted this to occur through a legal and, therefore, legitimate process.<sup>79</sup> Indeed, after Hitler's accession to dictatorship, even the Jewish-owned newspaper *Frankfurter Zeitung* recognized that "[t]he movement [had] won power in a legal, democratic way."<sup>80</sup> Upon Hitler's appointment, the road from weak republic to popular dictatorship proved to be a short one:

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surrounding the Holocaust is responsible for causing discrepancies in the estimates of the death tolls).

<sup>74</sup> *Id.* (stating that the ideology of hatred, specifically Hitler's conviction that the Jews were the enemy of Germany, was at the core of the Holocaust).

<sup>75</sup> JOHN WEISS, *IDEOLOGY OF DEATH: WHY THE HOLOCAUST HAPPENED IN GERMANY* 301 (1996).

<sup>76</sup> *Id.* ("Everywhere calls resounded for a Hitler dictatorship . . . . The Nazis had achieved what no political party ever had in Germany, and it was anti-Semitism that enabled them to unite all Germans from all segments of society but the left.")

<sup>77</sup> *Id.* at 304.

On January 30, 1933, Adolf Hitler became the last chancellor of the Weimar Republic. Wild enthusiasm broke out in the army and the civil service, champagne celebrations lit up the homes of estate owners, all-night celebrations exploded at every university. The SA terrorized leftists, looted and burned Jewish stores and synagogues, desecrated Jewish cemeteries . . . and dragged Jews out of cafés and shops and beat them. Posters demanded death. As the Nazi deputies marched to the Reichstag, they chanted the familiar cry: Germany awake. Death to the Jews!

*Id.*

<sup>78</sup> *Id.* at 288.

<sup>79</sup> *Id.* (stating Hitler's belief that "[w]ith Nazi support the republic could be legally replaced").

<sup>80</sup> RICHARD LAWRENCE MILLER, *NAZI JUSTIZ: LAW OF THE HOLOCAUST* 1 (1995).

On February 27 [1933] the Reichstag burned down. Blaming the communists, Hitler issued a Decree to Protect the German People and the State. But the decree suspended the civil rights of all citizens, not just communists, and ended the powers of state governments as well, though none were pro-communist. The decree also gave the Nazis full power to terrorize anyone designated an enemy . . . . Hitler then requested an Enabling Act to give him full power for four years. Hindenburg and his cabinet approved . . . . [T]he Social Democrats [voted against it]. Communists were unrepresented. All other parties unanimously approved Hitler's dictatorship, and the bill passed in March . . . . In July 1933 the Nazis declared themselves the only legal party.<sup>81</sup>

An equally short road was the one from antagonizing the Jewish population, to outright persecution, confiscation of property, relocation, and isolation.<sup>82</sup> This was done via a rationalized legal process,<sup>83</sup> with all the proper statutes and judicial acquiescences in order.<sup>84</sup> Professor Raul Hilberg of the University of Vermont outlined the social progression of this process.<sup>85</sup>

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<sup>81</sup> WEISS, *supra* note 75, at 306-07.

<sup>82</sup> SCHABAS, *supra* note 2, at 39.

With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws were passed, which limited the offices and professions permitted [them]; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life.

*Id.*

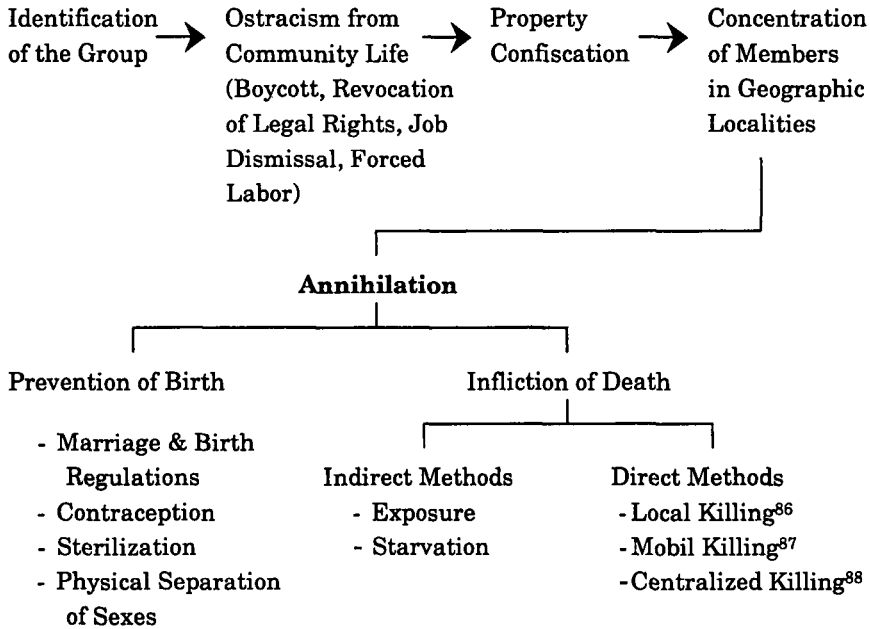
<sup>83</sup> See generally MILLER, *supra* note 80 (discussing Nazi treatment of Jews throughout the Holocaust).

A person having the status of Jew was forbidden to do things permitted to other persons. Such conduct was criminal for Jews; they were forbidden to engage in activities inherent to normal life, from driving a car to holding a job. Such a policy allowed Jews to roam through a community but excluded them from community life. They were the living dead.

*Id.* at 43.

<sup>84</sup> See *id.* at 135 (stating that "Courts took judicial notice of ostracism, and expressed civic duty by citing it as legal grounds for geographical concentration of victims").

<sup>85</sup> See *id.* at 3 (adapting outline of destruction process from RAUL HILBERG, *THE DESTRUCTION OF THE EUROPEAN JEWS* 762 (1st ed. 1961)).



Indeed, dehumanization of the Jews was the order of the day.<sup>89</sup> Its impact on and acceptance by German society at large was greatly facilitated by expanding the sources of anti-Jewish rhetoric beyond the Nazis and their supplicants to include

<sup>86</sup> Local killing occurred in places like the Jewish ghetto of Warsaw or in the terrible, but short-lived gas vans:

Fifty . . . men, women, and children . . . climb[ed] aboard each van. They had no inkling that a hose had been attached to the exhaust pipe of the diesel motor so that the deadly carbon monoxide fumes emptied into the interior . . . . [T]he driver rode around for fifteen minutes to poison his cargo.

See BOTWINICK, *supra* note 73, at 191.

<sup>87</sup> Mobil killing was carried out at the hands of Heinrich Himmler's Einsatzgruppen, which followed the German regular army eastward into the Soviet Union in four waves, "their mission was the slaughter of innocent civilians on a hitherto unprecedented scale. The *Einsatzgruppen* shot between 1.5–2 million Jews, as well as many hundreds of thousands of non-Jews, within a period of less than two years." *Id.* at 184–88.

<sup>88</sup> Centralized killing refers to the notorious death camps that were established by Germany's Nazi regime during the war. See generally PETER PHILLIPS, THE TRAGEDY OF NAZI GERMANY 161–205 (1969) (describing first-hand what life was like within a Nazi death camp).

<sup>89</sup> MILLER, *supra* note 80, at 34 ("The 'necessity' to kill all Jews becomes easier to accept if one believes they are not human.").

“highly regarded scholars and scientists.”<sup>90</sup> Perpetuating popular myths was also integral to this process:

Stories of ritual murder by Jews were widely believed by the German populace. Years later a man related a childhood memory from 1941: One day, while I pretended I was playing in a corner while the adults spoke to each other in low voices, I heard them say that the German army in Czechoslovakia had captured a nest of Jews who had kidnapped and killed little Christian boys and girls and used their blood in baking matzos. They said they had found the small carcasses in a kosher butcher shop hanging from hooks like pigs and cows. I was a little Christian boy . . . .

My mind assembled from various elements what my ears had extracted from the adults' conversations—lurid scenes of terror over and over again. I was always on the verge of being captured by dark hairy Jews who wanted to hang me from a hook.<sup>91</sup>

The status of “Jew” evolved through definitional adjustments and moved beyond religious identification to ethnic identification regardless of religion. Therefore, Jews could not be saved simply by abandoning their religion. An early directive, issued in 1933, ordered companies to dismiss Jewish employees stating, “It is not religion but race that is decisive. Christianized Jews are thus equally affected.”<sup>92</sup> By shifting the definition from one based in religion to one based on lineage, the number of Jews in 1930s Germany may have tripled “from 600,000 by religious profession to two million by genealogy,”<sup>93</sup> thereby concomitantly increasing the number of potential victims.

As Hitler consolidated his power, especially during the war, his openly racist Nazi regime brought this persecution to a horrifying climax through its implementation of the “Final Solution”—mass extermination of the Jews in Germany and all areas controlled by Germany.<sup>94</sup> Recalling the world community's historic lack of political will to hold states accountable for atrocities—demonstrated by the light treatment of Turkey for

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<sup>90</sup> *Id.* at 36.

<sup>91</sup> *Id.* at 34 (quoting WINFRIED WEISS, *A NAZI CHILDHOOD* 44–45 (1983)).

<sup>92</sup> *Id.* at 18 (quoting *Nazi Orders Jews Dismissed by American Film Companies*, N.Y. TIMES, Apr. 2, 1933, at 1).

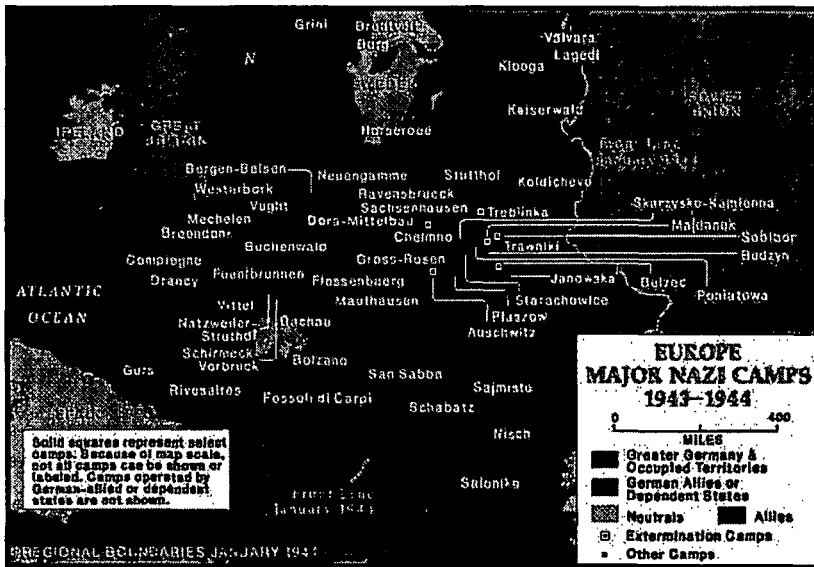
<sup>93</sup> *Id.* (citing James Wilford Garner, *Recent German Nationality Legislation*, 30 AM. J. INT'L L. 96–99 (1936)).

<sup>94</sup> See BOTWINICK, *supra* note 73, at 182–83.

the Armenian genocide, Hitler callously remarked, "Who still speaks of the extermination of the Armenians?"<sup>95</sup>

By 1941, the Third Reich occupied a large swath of continental Europe. Throughout Germany's territorial area of domination, the Nazis established a system of concentration camps for slave labor. The camps were mostly filled with Jews, captured partisans, political dissidents, communists, homosexuals, and other enemies of the Reich.<sup>96</sup> The concentration camps were easily converted into death camps with a more sinister purpose.<sup>97</sup>

Most of the camp conversions took place in the Reich's conquered eastern sector of Poland, in the vicinity of the Polish cities of Warsaw and Lublin.<sup>98</sup> (See map below).



<sup>95</sup> Chris Hedges, *As a Language Erodes, Armenian Exiles Fear a Bigger Loss*, N.Y. TIMES, July 6, 2000, at A22. This famous remark is a powerful statement of the degree to which history informs contemporary action.

<sup>96</sup> See WOLFGANG SOFSKY, *THE ORDER OF TERROR: THE CONCENTRATION CAMP* 33-37 (William Templer trans., 1993).

<sup>97</sup> See *id.* at 37. This is not to say that many thousands did not also die in the work camps due to starvation, disease, exhaustion, and relentless death marches at the end of the war. *Id.* at 36-43. However, the main purpose of the work camps was not extermination as was the purpose of death camps like Treblinka, Belzec, or

The concentration camps were outfitted with more efficient mass killing and cadaver disposal technologies, such as multiple crematoria and widened gas chambers with large capacities disguised in the form of showers that emitted poisonous doses of Zykon-B.<sup>99</sup> In short, they evolved into sinuous monsters of horror for the wretched masses that were led into them. For example, the following table illustrates the terrible technological capacities employed at the largest and most oppressive<sup>100</sup> of the extermination camps—Auschwitz:<sup>101</sup>

AUSCHWITZ-BIRKENAU	CONSTRUCTION & DAILY CAPACITY	PERIOD OF OPERATION
BUNKER I	Two gas chambers for 800 people; Disrobing rooms; Mass graves	1942
BUNKER II	Four gas chambers for 1200 people; Disrobing rooms; Burning pits	1942–1944
CREMATORIUM I	Gas chamber + three ovens for 340 bodies	Early 1942–Spring 1943
CREMATORIUM II	Gas chamber for up to 3000 people; Subterranean installation with five ovens for 1440 bodies	March 1943–November 1944
CREMATORIUM III	Gas chamber for up to 3000 people; Subterranean installation with five ovens for 1440 bodies	June 1943–November 1944
CREMATORIUM IV	Four gas chambers for up to 3000 people; Above-ground installation with two ovens for 768 bodies	March 1943–October 7, 1944
CREMATORIUM V	Four gas chambers for up to 3000 people; Above-ground installation with two ovens for 768 bodies	April 1943–November 1944

Sobibór. *Id.* at 260.

<sup>98</sup> See BOTWINICK, *supra* note 73, at 205; SOFSKY, *supra* note 96, at 260.

<sup>99</sup> See BOTWINICK, *supra* note 73, at 205; SOFSKY, *supra* note 96, at 260.

<sup>100</sup> See BENZ, *supra* note 7, at 139.

<sup>101</sup> See SOFSKY, *supra* note 96, at 263.

"The machinery of destruction was in place. Now the ghettos were emptied, and the trains from Nazi-occupied Europe began to roll toward the Polish countryside."<sup>102</sup> The sheer mass of humanity fed into the jaws of Hitler's extermination camps is truly astonishing. Auschwitz alone had the capacity to kill 12,000 prisoners a day.<sup>103</sup> While countless other victims of widely varying ethnicity (Gypsies [aka "Roma"], Hungarians, Russians, Slavs, etc.) were murdered by this system, it was the Jewish population that proportionally suffered the worst. It is estimated that four million Jews were put to death in the camps.<sup>104</sup> When added to the two million Jews slaughtered by the mobile killing squads,<sup>105</sup> this accounts for about six million total<sup>106</sup> eradicated from the face of Europe.<sup>107</sup>

Indeed, the concentration camp proved a much higher level of sophistication in the commission of genocide than merely marching victims into the desert, as the Turks had done to the Armenians, or starving them to death, as Stalin did to the Ukrainians.<sup>108</sup> Perhaps one of the most striking aspects of the Holocaust is the cold-blooded manner in which it was methodically carried out, as documented by the state bureaucratic machinery, as if it were just another normal function of government.

In many ways the Holocaust has become the benchmark for what people think of when they think of genocide.<sup>109</sup> It has been argued that the Holocaust was unique in history,<sup>110</sup> that it rises

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<sup>102</sup> BOTWINICK, *supra* note 73, at 192.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 194.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*; see also BENZ, *supra* note 7, at 152.

<sup>107</sup> See BENZ, *supra* note 7, at 152-53 (stating that on a country by country basis, the estimates of Jewish victims include: "165,000 Jews from Germany, 65,000 from Austria, 32,000 from France and Belgium, more than 100,000 from the Netherlands, 60,000 from Greece, the same number from Yugoslavia, more than 140,000 from Czechoslovakia, half a million from Hungary, 2.2 million from the Soviet Union, and 2.7 million from Poland").

<sup>108</sup> See generally SOFSKY, *supra* note 96.

<sup>109</sup> See Matthew Lippman, *The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later*, 15 ARIZ. J. INT'L & COMP. L. 415, 512 (1998).

<sup>110</sup> See Steven T. Katz, *The Uniqueness of the Holocaust: The Historical Dimension*, in IS THE HOLOCAUST UNIQUE?: PERSPECTIVES ON COMPARATIVE GENOCIDE 19-37 (Alan S. Rosenbaum ed., 1996).



above all other massacres, genocides, or large scale human tragedies, by virtue of its character, the social context of its occurrence, and the scale of its operation.<sup>111</sup> I would agree that it took something as shocking and undeniable as the Holocaust to spur the international community into formally outlawing genocide and establishing a special war crimes tribunal, like Nuremberg, on the international plane to prosecute the perpetrators of genocide.<sup>112</sup>

In fact, it was near the end of World War II that genocide received its sobriquet. Raphael Lemkin, a Jewish jurist who fled the Nazi's 1939 invasion of Poland, coined the term "genocide" in his 1944 book *Axis Rule in Occupied Europe*.<sup>113</sup> This new word used to describe a very old practice was formed by the fusion of the Greek *genos* (race or tribe) with the Latin *cide* (killing).<sup>114</sup> According to Lemkin, this was a two-step process: "In the first

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<sup>111</sup> *Id.* at 37 (distinguishing the massacre of Native Americans, the Ukrainian famine and the Armenian genocide from the Holocaust, and stating that "in all other cases that are said to parallel the Holocaust . . . they also are dissimilar insofar as they, too, would not be examples of an unlimited war that required complete annihilation—the death of every man, woman, and child—of the victim population. The Holocaust is a unique historical reality.")

<sup>112</sup> Perhaps because nothing like the Nuremberg tribunal had been successfully established before, the Allies were reluctant to proceed against the defeated Nazi leadership solely on the basis of their crimes. Horrific though they were, that did not occur in the context of international hostilities. As U.S. Supreme Court Justice and American Prosecutor at Nuremberg, Robert Jackson, explained:

It has been a general principle of foreign policy of our Government from time immemorial that the internal affairs of another government are not ordinarily our business; that is to say, the way Germany treats its inhabitants, or any other country treats its inhabitants is not our affair any more than it is the affair of some other government to interpose itself in our problems. The reason that this program of extermination of Jews and destruction of the rights of minorities becomes an international concern is this: it was part of a plan for making an illegal war. Unless we have a war connection as a basis for reaching them, I would think we have no basis for dealing with atrocities. They were part of the preparation for war or for the conduct of the war in so far as they occurred inside of Germany and that makes them our concern.

SCHABAS, *supra* note 2, at 35 (quoting Minutes of Conference Session of 23 July 1945, in REPORT OF ROBERT H. JACKSON, UNITED STATES REPRESENTATIVE TO THE INTERNATIONAL CONFERENCE ON MILITARY TRIALS 331 (1949)).

<sup>113</sup> KUPER, *supra* note 3, at 22; see also SCHABAS, *supra* note 2, at 14, 24–30, 38; LAWRENCE J. LEBLANC, THE UNITED STATES AND THE GENOCIDE CONVENTION 18–19 (1991). In 1946, the French Prosecutor at the Nuremberg trial, Champetier de Ribes, stated: "This crime is so monstrous, so undreamt of in history through the Christian era up to the birth of Hitlerism, that the term 'genocide' had to be coined to define it." *Id.* (quoting *France v. Goering* 22 I.M.T. 431 (1946)).

<sup>114</sup> See KUPER, *supra* note 3, at 22.

stage, the oppressor seeks to destroy the 'national pattern' of the oppressed group; in the second stage, the oppressor seeks to impose its own national pattern on the oppressed group."<sup>115</sup> This leads to the destruction of the group as an identifiable entity.<sup>116</sup>

This term was given its first official use in 1945 by the prosecution in the International Military Tribunal at Nuremberg, empanelled to try the Nazi leadership after the war.<sup>117</sup> The indictment of the war criminals charged them with having "conducted deliberate and systematic genocide, viz., the extermination of racial and national groups . . ."<sup>118</sup> While the Tribunal's judgment clearly concerned the substance of genocide, it did not use that term.<sup>119</sup> The term's first use in a trial and judgment came in 1946 when the Supreme National Tribunal of Poland convicted Rudolf Franz Hoess, the former commandant of Auschwitz, of the crime of genocide.<sup>120</sup>

Given its long history, a workable definition of genocide had to be created within a criminal statute. This was achieved in 1948 with the international community's adoption of the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>121</sup>

### B. *Genocide Convention Defines the Crime (1948)*

The Genocide Convention was negotiated and drafted in direct response to the systematic genocide conducted by the Nazi Regime in Europe.<sup>122</sup> In fact, it was at the first session of the new U.N. General Assembly, in the fall of 1946 in London, that

<sup>115</sup> LEBLANC, *supra* note 113, at 18 (quoting RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE* at 79 (1944)).

<sup>116</sup> *Id.* at 18.

<sup>117</sup> See KUPER, *supra* note 3, at 22.

<sup>118</sup> *Id.* at 22 (citing *Law Reports of the Trials of War Criminals*, vol. VII, 8).

<sup>119</sup> *Id.*; see also SCHABAS, *supra* note 2, at 38 (stating that "[m]ore than fifty years later, the International Criminal Tribunal for Rwanda noted that 'the crimes prosecuted by the Nuremberg Tribunal, namely the holocaust of the Jews or the 'Final Solution,' were very much constitutive of genocide, but they could not be defined as such because the crime of genocide was not defined until later' " (citing *Prosecutor v. Kambanda*, Case No. ICTR 97-23-S, Judgment and Sentence ¶16 (September 4, 1998))).

<sup>120</sup> See KUPER, *supra* note 3, at 22-23; SCHABAS, *supra* note 2, at 49.

<sup>121</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter *Genocide Convention*].

<sup>122</sup> See Timothy L.H. McCormack, *Selective Reaction to Atrocity: War Crimes And The Development of International Criminal Law*, 60 ALB. L. REV. 681, 723 (1997); see also LEBLANC, *supra* note 113, at 61.

three countries asked for the question of genocide to be put on the agenda.<sup>123</sup> Coincidentally, this was the same day that the Nuremberg Tribunal handed down its judgment on the surviving Nazi war leaders.<sup>124</sup>

The resolution that emerged in December of that year from the United Nations fleshed out Lemkin's concept significantly.<sup>125</sup> Adopted unanimously and without debate Resolution 96(I) stated:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern. The General Assembly, therefore

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices—whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable;

Invites the Member States to enact the necessary legislation for

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<sup>123</sup> SCHABAS, *supra* note 2, at 42 (stating the three requesting states were Cuba, India, and Panama).

<sup>124</sup> *Id.* at 42.

<sup>125</sup> Compare the language of the General Assembly Resolution 96(I) with Lemkin's much narrower definition of genocide that focuses on "national groups" yet also contemplates destruction of culture and livelihood.

[A] coordinated plan of different actions aiming at the destruction of essential foundation of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.

*Id.* at 25 (quoting RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE* 79 (1944)).

the prevention and punishment of the crime;

Recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.<sup>126</sup>

Within two years, an international treaty outlawing genocide was negotiated, drafted, redrafted, debated, and adopted. Using Resolution 96(I) and two initial drafts as a springboard, the drafters of the Convention on the Prevention and Punishment of the Crime of Genocide criminalized the act itself,<sup>127</sup> outlined the consequences for its commission, and defined its occurrence.<sup>128</sup> It is with the definition that emerged in the treaty that most scholars have been concerned since the Genocide Convention came into force in January of 1951.<sup>129</sup>

While this definition generally tracked the resolution, it departed from it in one significant manner—political groups were dropped from the protected class of individuals.<sup>130</sup> This was done at the Soviet Union's insistence and the rest of the parties' acquiescence.<sup>131</sup> Several alternate reasons were given for the exclusion of political groups from the definition. Some of these include: (1) the instability of political groups compared to national, ethnic, racial, or religious groups into which people are generally born and which by their very nature are more enduring groups, and (2) the possibility that support for the treaty itself may be jeopardized in many states if political groups

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<sup>126</sup> *Id.* at 45 (quoting G.A. Res. 96(I), U.N. Doc. (1946)).

<sup>127</sup> Genocide Convention, *supra* note 121, at 280.

<sup>128</sup> STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 27–28 (2001).

<sup>129</sup> *Id.* at 26; *see also* LEBLANC, *supra* note 113, at 57–67. Some academics have recommended either revising and expanding the definition of the crime or defining new, related crimes such as ethnocide, demicide, or politicide. Such ideas have been widely circulated, but not embraced by the international community. It remains unlikely that they will find their way into international law individually; however, they may be incorporated into broader human rights agreements in future. *See* ENCYCLOPEDIA OF GENOCIDE, *supra* note 57, at 3, 5, 7, 581.

<sup>130</sup> LEBLANC, *supra* note 113, at 57.

<sup>131</sup> *Id.* at 62.

were included.<sup>132</sup>

Consequently, the only groups protected under the new treaty were national, ethnic, racial, and religious groups.<sup>133</sup> Thus, the legal definition of genocide since 1951 has been:

[A]ny of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>134</sup>

While simultaneously attenuating the initial definition of the crime,<sup>135</sup> the treaty broadened its criminal applicability.<sup>136</sup> Beyond the actual commission of the genocide, Article III makes it a crime to serve as an accomplice in any genocidal act or to conspire, attempt, or directly and publicly incite others to commit any genocidal act.<sup>137</sup> Furthermore, Article IV effectively strips away any defense of immunity that could be raised on the traditionally accepted sovereign immunity or head of state grounds.<sup>138</sup>

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<sup>132</sup> *Id.* at 61–63. The instability argument was strongly supported by the representatives from Venezuela, Iran, Egypt, and Uruguay. However, “[C]ritics . . . [argue] that the deletion of the word ‘political’ from Article II created a loophole in the definition . . . that could be easily abused by totalitarian states . . . . [They] could commit genocide against a national or ethnic group but claim [their] actions were not genocidal . . . because they were aimed at political enemies . . . .” *Id.* at 57–58.

<sup>133</sup> *Id.* at 58–59.

<sup>134</sup> Genocide Convention, *supra* note 121, at 280.

<sup>135</sup> Not all scholars have accepted this definition of the crime. The debate on expanding the definition is a continuing one and several alternative definitions have been proposed, including reinsertion of the political group as a protected class. *See* SAMUEL TOTTEN & WILLIAM S. PARSONS, CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS XXIV (Samuel Totten et al. eds., 1997); ENCYCLOPEDIA OF GENOCIDE, *supra* note 58, at 3–7 (coining the term “democide”).

<sup>136</sup> TOTTEN & PARSONS, *supra* note 135, at XXIV.

<sup>137</sup> Genocide Convention, *supra* note 122, at 280.

<sup>138</sup> *Id.* (stating that “[p]ersons committing genocide or any of the other acts

As any lawyer will observe, this crime, as defined, constitutes a crime of specific intent.<sup>139</sup> *Mens rea*, however, is widely considered to be the most difficult element to prove.<sup>140</sup> Nonetheless, it may be successfully inferred through context. Thus, the International Criminal Tribunal for Rwanda, in the *Akayesu* case, its first conviction on charges of genocide, stated:

[I]t is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the preparation of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.<sup>141</sup>

The Tribunal also isolated the specific intent requirement to the act of genocide and disposed of this high threshold for establishing the guilt of accomplices:

[T]he mens rea, or special intent, required for complicity in genocide is knowledge of the genocidal plan, coupled with the actus reus of participation in the execution of such plan. Crucially, then, it does not appear that the specific intent to commit the crime of genocide . . . is required for complicity or accomplice liability. [Consequently] an accused is liable as an accomplice to genocide if he knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such a person or persons were committing genocide, even though the accused himself did not have the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such . . .<sup>142</sup>

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enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”).

<sup>139</sup> M. Cherif Bassiouni, *Observations Concerning the 1997–1998 Preparatory Committee’s Work*, 25 DENV. J. INT’L L. & POL’Y 397, 413 (1997) (indicating that the requirement for specific intent is a flaw in the definition of Genocide).

<sup>140</sup> *Id.*

<sup>141</sup> Johan D. van der Vyver, *Prosecution and Punishment of the Crime of Genocide*, 23 FORDHAM INT’L L.J. 286, 310 (1999) (quoting *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (1998)).

<sup>142</sup> EDWARD M. WISE & ELLEN S. PODGOR, *INTERNATIONAL CRIMINAL LAW: CASES & MATERIALS* 582 (2000) (quoting *Akayesu*, Case No. ICTR-96-4-T).

Ultimately, the Tribunal did find the defendant guilty of both genocide and public incitement to commit genocide, but not complicity in genocide, on the logical grounds that "the same person cannot be both a principal and an accomplice to the same offense."<sup>143</sup> As significant as the Tribunal's opinion was, it took forty-five years, from the Genocide Convention's entry into force in 1951 to the *Akayesu* case in 1996, for the crime to be adjudicated and enforced by an international criminal court.

Shortly after its adoption, many nations that signed and ratified the treaty did so with published reservations<sup>144</sup> or understandings.<sup>145</sup> Some have argued that such conditional acceptances of the treaty undermined its intent, and several states lodged official objections to such actions.<sup>146</sup> The U.N. General Assembly sought clarity on this point by requesting an advisory opinion from the International Court of Justice (the "Court").<sup>147</sup> The Court responded that reservations to the treaty were allowed so long as they did not undermine the object and purpose of the treaty itself.<sup>148</sup> Despite vehement dissents from the minority of judges on the Court,<sup>149</sup> this opinion carried the day, yet the majority failed to delineate what kind of reservation a state would have to make in order for it to be invalid.<sup>150</sup>

It is, therefore, apparently up to individual states in their relationship with one another to determine whether a reservation reached such an "undermining" threshold.<sup>151</sup> It has been argued that this dissolves the Genocide Convention as a true multilateral treaty regime and reconstitutes it as a series of bilateral regimes between individual states.<sup>152</sup> Article IX of the

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<sup>143</sup> *Id.*

<sup>144</sup> LEBLANC, *supra* note 113, at 210, 218.

<sup>145</sup> According to the U.S. State Department, a *reservation* is a condition attached to a country's acceptance of a treaty that "excludes or varies the legal effect of one or more of the provisions of [the] treaty in their application to the reserving state; an *understanding* merely explains or clarifies the meaning of one or more provisions of a treaty but does not exclude or vary their legal effect." *Id.* at 10 (citing *Hearing on the Genocide Convention before a Subcomm. of the Senate Comm. on Foreign Relations*, 92d Cong., 106-107 (1971)).

<sup>146</sup> *Id.* at 210, 218, 219-22.

<sup>147</sup> *Id.* at 214.

<sup>148</sup> *Id.* at 216-17.

<sup>149</sup> *Id.* at 215-16.

<sup>150</sup> *Id.* at 217-19.

<sup>151</sup> *Id.* at 216-17.

<sup>152</sup>

The object-and-purpose test implies...that a reservation could be

Convention, empowering the Court to resolve disputes or interpretations between state parties, is the most reserved from article.<sup>153</sup> Twenty percent of the states that are parties to the treaty have ratified it while denying the Court's jurisdiction.<sup>154</sup>

Article IX likewise triggered a reservation by the United States when it became a party to the treaty in 1988.<sup>155</sup> Part of the reason for the U.S. reservation was the Court's handling of the 1985 case *Nicaragua v. United States*,<sup>156</sup> wherein the Court found jurisdiction to hear the case even after the U.S. withdrew its consent to jurisdiction, and a decision resulted that was adverse to the U.S.<sup>157</sup> Mistrust of the Court and its potential use "for blatant political attacks or that it would allow itself to be used for such attacks" was a driving force in the Senate coalition that ultimately granted advice and consent for President Reagan to ratify the treaty.<sup>158</sup> The result:

Other parties to the Genocide Convention could object to the U.S. reservation on the ground that it is incompatible with the object and purpose of the convention, and even declare, as the Netherlands already has, that they do not recognize the United States as a party to the convention because of the reservation. And any of the other parties could, in accordance with the doctrine of reciprocity, invoke the U.S. reservation should it ever attempt to bring a case of genocide against them before the I.C.J. This effectively guts the U.S. ratification.<sup>159</sup>

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incompatible with the convention. If a party to the convention should find the reservation of another party incompatible, it could object. The reserving state might then either withdraw its reservation or maintain it. If it were to maintain the reservation, the objecting state could consider the reserving state not to be a party to the convention. That matters in the case of an objection, then, is how the objecting state views the status of the one making the reservation. Does the objecting state consider the reserving state not a party to the convention? Or does it object to the reservation but still consider the state a party to the convention? Because not all parties to the convention would necessarily object to the same reservations, the effect of the object-and-purpose test could be to convert a multilateral treaty into a series of bilateral agreements with varying terms.

*Id.* at 219.

<sup>153</sup> *Id.* at 218.

<sup>154</sup> *Id.* at 217-19.

<sup>155</sup> *Id.* at 228, 235.

<sup>156</sup> LEBLANC, *supra* note 113, at 228.

<sup>157</sup> *Id.* at 228, 239.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 228; see also *id.* at 221 (indicating that the Netherlands precisely and clearly objected to reservation, unlike the other states that object, but has not



Unfortunately, by the time the Genocide Convention entered into force, weakened as it was by a series of reservations and objections, the world had become a bipolar one—one that would remain locked for forty years in a state of cold war that discouraged any meaningful implementation of the treaty.

### C. *Genocide and Inaction During the Cold War (1950–1990)*

As both the United States and the Soviet Union squared off against one another, the globe became a chessboard. New states, emerging through the process of decolonization in Africa and Asia, were accordingly transformed into pawns of the two great superpowers.<sup>160</sup> Despots were promoted in these states by one power or the other in an effort to outmaneuver an ideological adversary.<sup>161</sup> Neither power had a genuine national interest in promoting the Genocide Convention's applicability against the other's pawn—thereby empowering the other to do the same—<sup>162</sup> or in promoting military intervention on a humanitarian basis to stop genocide—thereby upsetting the fragile military *status quo*.<sup>163</sup> This political/military tension tended to ensure a roughly balanced bi-polar world,<sup>164</sup> contributing to international stability:

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carried their objection to the level of dispute).

<sup>160</sup> See generally MICHAEL HAAS, GENOCIDE BY PROXY: CAMBODIAN PAWN ON A SUPERPOWER CHESSBOARD (1991); Philip C. Aka, *Africa in the New World Order: The Trouble with the Notion of African Marginalization*, 9 TUL. J. INT'L & COMP. L. 187, 192 (2001) (citing Thomas M. Callaghy, *Africa and the World Political Economy: More Caught Between a Rock and a Hard Place*, in AFRICA IN WORLD POLITICS: THE AFRICAN STATE SYSTEM IN FLUX 43, 44 (John W. Harbeson & Donald Rothchild eds., 2000)); Isaak I. Dore, *Constitutionalism and the Post-Colonial State in Africa: A Rawlsian Approach*, 41 ST. LOUIS U. L.J. 1301, 1312 (1997); Ravi Mahalingam, Comment, *The Compatibility of The Principle of Nonintervention with the Right of Humanitarian Intervention*, 1 UCLA J. INT'L L. & FOREIGN AFF. 221, 240 (1996); Editorial, *Unlikely Allies*, WASH. POST, Oct. 2, 2001, at A24.

<sup>161</sup> HAAS, *supra* note 160, at 76, 160–84.

<sup>162</sup> Judith Miller, *Iraq Accused: A Case of Genocide*, N.Y. TIMES MAGAZINE, Jan. 3, 1993, at 13 (“No genocide case has ever even been argued before the World Court. Such cases are enormously difficult to bring, let alone win. They must be sponsored by a government against a government—not by or against individuals—and few governments are willing to accuse another of such heinous conduct.”).

<sup>163</sup> Jules Lobel, *Benign Hegemony? Kosovo and Article 2(4) of the U.N. Charter*, 1 CHI. J. INT'L L. 19, 22–23 (2000).

<sup>164</sup>

It is unlikely that the Gulf Crisis would have occurred in a bipolar world, where the dynamics of mutual deterrence induced greater prudence in relation to challenges directed at obvious strategic interests and more effective control by superpowers over the initiatives undertaken by secondary states such as Iraq. It is also unlikely that the internal tensions

The second half of the twentieth century has demonstrated that the prevention of genocide, mass killing, and ethnic cleansing is a secondary value in the post-Holocaust world community. The comforts of inaction and the maintenance of relative 'peace,' non-interference in the internal affairs of nations, and geopolitical alliances and balances of power rank substantially higher in the operational values of the world community.<sup>165</sup>

Indeed, since the United States did not even become a full party to the Convention until its ratification took effect in 1989,<sup>166</sup> America was in no legal position to argue for enforcement of the treaty in any case. This dynamic, combined with the general lack of political will by state parties to the Convention to bring genocide charges against other states,<sup>167</sup> effectively curtailed the treaty's enforceability.

Thus, the treaty was essentially stillborn when it came into effect in 1951. That is not to say, however, that atrocities did not occur during the Cold War period. The 1950s and 1960s were a time of turmoil; as the Cold War was beginning, the European powers simultaneously released their colonial holdings and largely withdrew from their self-created responsibilities in Africa, Asia, and the Pacific. Preparation for self-government of these peoples was spotty and/or nonexistent.<sup>168</sup> Into this vacuum

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in Bosnia and Somalia would have spiraled out of control, as each country was of strategic importance within a Cold War setting; that is, they would have warranted the expenditure of lives and resources by superpowers to maintain a given alignment.

Richard Falk, *Regionalism And World Order After The Cold War*, 1995 ST. LOUIS-WARSZAW TRANSATLANTIC L.J. 71, 73-74 (1995).

<sup>165</sup> David M. Smolin, Essay, *The Future of Genocide: A Spectacle for the New Millennium?*, 23 FORDHAM INT'L L.J. 460, 464 (1999).

<sup>166</sup> LEBLANC, *supra* note 113, at 235.

<sup>167</sup> Paul W. Khan, *American Hegemony and International Law, Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order*, 1 CHI. J. INT'L L. 1, 13 (2000) ("[T]he most prominent symbol of the gap between institutions and substantive law was the failure to replicate the Nuremberg Tribunal at any point throughout the Cold War, despite the proliferation of human rights law and the countless violations of that law."). For example, the flimsy official argument that Australia presented when it backed out of pressing charges against the Khmer Rouge for genocide in Cambodia centered on its unwillingness to recognize the Khmer Rouge in any form as the legitimate government of Cambodia. LEBLANC, *supra* note 113, at 208.

<sup>168</sup>

Institutions of European origin were superimposed on traditional African institutions. The last thing on the political and social agenda of the colonizing power was to allow the inhabitants of the colonized territories to benefit from the values and rights associated with classic constitutionalism

crept despotism,<sup>169</sup> which would be supported by the superpowers so long as the proxy rulers were obedient.<sup>170</sup>

After witnessing the eruptions of violence that immediately followed the independence of India in 1947, and the partition of Palestine to create Israel in 1948, subsequent hard-line leaders were determined to seize power within the fading colonial apparatus in an attempt to head off violent cleavages such as these. Once ensconced in power, they brutally held onto it and expanded their control to the artificially drawn borders of their respective countries<sup>171</sup> as a means of propping themselves up and perpetuating their regimes. As a result, the 1970s witnessed a series of genocides in Asia, Africa, and Latin America. In Bangladesh and Burundi, the killings were precipitated by coming elections wherein the ruling ethnic minority was likely to succumb to the long-subjugated ethnic majority.<sup>172</sup>

In Bangladesh, this took the sinister form of a state-engineered and military-produced genocide against Bengalis by Pakistanis. The withdrawal of the British from the Indian

as practiced in the metropolitan power, namely, responsible, limited government, with respect for the principle of equality and respect for political and individual liberty. The policy of divide and rule, as applied in the colonies, pitted one group against the other in every sphere of life, thus exacerbating ethnic tensions. African scholars have attributed many of Africa's current ethnic tensions to this policy. Indeed, the recent genocidal massacres in Rwanda involving the Hutu and the Tutsi have been tied to the colonial policy of Belgium. An additional reason why the ethnic divisions of Africa have always loomed large is the way in which Africa was carved up by the European powers during the great "scramble for Africa" after the Berlin Conference of 1885 organized to harmonize the various imperial powers' claims over the continent. Colonial boundaries were drawn up without regard to ethnic, linguistic, religious, cultural, economic, demographic or other social bonds in the various regions of Africa. The legacy of this callousness and the cynical disregard of the principle of ethnic integrity set the scene for the emergence of a series of conflict-ridden and highly unstable states in the post-independence era.

Dore, *supra* note 160, at 1303-04.

<sup>169</sup> *Id.* at 1307-11.

<sup>170</sup> HAAS, *supra* note 160, at 77 ("After . . . [America's] abortive effort to overthrow . . . Castro in Cuba, a more sophisticated strategy was devised for South Vietnam. Evidence of CIA involvement in the assassination of ROV Premier Ngo Dinh Diem in 1963 alerted [Cambodia's Prince] Sihanouk to the reality that Washington preferred proxy, not independent, rulers.").

<sup>171</sup> W. Michael Reisman, Comment, *International Law After The Cold War*, 84 AM. J. INT'L L. 859, 864 (1990).

<sup>172</sup> James D. Wilets, *The Demise of the Nation-State: Towards a New Theory of the State Under International Law*, 17 BERKELEY J. INT'L L. 193, 202 (1999).

subcontinent in 1947 resulted in a religion-based partition of the former colony into Muslim Pakistan, divided into East and West Pakistan, and a larger Hindu India in between the two Pakistans.<sup>173</sup> In 1971, General Yahya Khan, the Pakistani leader based in West Pakistan, dispatched thousands of military forces across the subcontinent into East Pakistan to quell growing nationalist sentiment among the Bengalis<sup>174</sup>—the ethnically, linguistically, and culturally distinct majority in East Pakistan that was nevertheless disenfranchised and persecuted by the ruling elite.<sup>175</sup>

While the initial intent of the Pakistani army was to stage mass killings and liquidate nationalist leaders in order to cow the Bengalis into submission, events spun out of control and the intent evolved into one of group destruction,<sup>176</sup> thus vaulting the massacres into the realm of genocide. As Professor Jahan, formerly of Dhaka University, noted, “A policy of genocide against fellow Muslims was deliberately undertaken by the Pakistanis on the assumption of racial superiority and a desire to cleanse the Bengali Muslims of Hindu cultural linguistic influence.”<sup>177</sup>

In the course of the next nine months, Pakistan’s army unleashed a genocide that resulted in the death of approximately three million people;<sup>178</sup> the violation of a quarter million girls and women, both in their homes in front of family members, and in specially designed rape camps situated near barracks;<sup>179</sup> the creation of ten million Bengali refugees who fled to India; and the internal displacement of thirty million people.<sup>180</sup>

<sup>173</sup> Rounaq Jahan, *Genocide in Bangladesh*, in *CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS* 291 (Samuel Totten et al. eds., 1997).

<sup>174</sup> *Id.* at 294.

<sup>175</sup> *Id.* at 292–93.

<sup>176</sup> *Id.* at 294–95 (“[T]he military commander in charge of the Dhaka operations reportedly claimed that he would kill four million people in forty-eight hours and thus have a ‘final solution’ of the Bengal problem.” (citing *ROUNAQ JAHAN, PAKISTAN: FAILURE IN NATIONAL INTEGRATION* (1972))).

<sup>177</sup> *Id.* at 296.

<sup>178</sup> Fox Butterfield, *Mujib Resentful of Nixon’s Policy*, *N.Y. TIMES*, Jan. 15, 1972, at A7; Jahan, *supra* note 173, at 291.

<sup>179</sup> Jahan, *supra* note 173, at 291, 298.

<sup>180</sup> *Id.* at 291 (citing *MOHAMMAD AYOUB & K. SUBRAHMANYAN, THE LIBERATION WAR* (1972), *DAVID LOSHAK, PAKISTAN CRISIS* (1971), *ANTHONY MASCARENHAS, THE RAPE OF BANGLADESH* (1971), *CHARLES PETER O’DONNELL, BANGLADESH* (1984), & *ROBERT P. PAYNE, MASSACRE* (1973)).

Due to the Cold War, the world's response was cautious. India favored Bangladesh in the conflict; consequently, so did the U.S.S.R. as an aspiring ally of India. China, however, favored Pakistan and so did the United States—who was using Pakistan as an intermediary to open the door to China at the time.<sup>181</sup> Thus, only India itself intervened, sending in troops to defeat the Pakistani army and thereby liberate Bangladesh, which emerged as a separate country.<sup>182</sup> A trial was planned for the captured Pakistani war criminals, but ultimately, India and Bangladesh agreed not to prosecute the 195 Pakistani perpetrators for commission of genocide in a quid pro quo for Pakistan's recognition of Bangladesh as a separate country.<sup>183</sup>

This dynamic of repressing a threatening ethnic majority was repeated during the following year in central Africa. Unlike the failed attempt of the ruling elite in East Pakistan to maintain control over the Bengali population, the ruling Tutsi minority of Burundi (twenty percent of the population) successfully maintained themselves in power after the genocide they committed against the Hutu majority (eighty percent of the population).<sup>184</sup> This mass killing eventually claimed the lives of between 100,000 and 150,000 people throughout the spring and summer of 1972.<sup>185</sup>

Both Burundi and Rwanda were part of the German colony of East Africa that was converted into a Belgian-administered League of Nations Mandate after Germany's defeat in World War I, and then a United Nations Trust Territory after World War II.<sup>186</sup> But as independent statehood approached in 1962, both countries experienced far different emergences onto the world stage. While Burundi emerged in relative peace, Rwanda emerged from bloody ethnic turmoil that resulted in a Hutu-dominated republic.<sup>187</sup>

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<sup>181</sup> *Id.* at 300–01.

<sup>182</sup> *Id.*

<sup>183</sup> Kristin Henrard, *The Viability of National Amnesties in View of the Increasing Recognition of Individual Criminal Responsibility at International Law*, 8 MSU-DCL J. INT'L L. 595, 640 (1999).

<sup>184</sup> René Lemarchand, *The Burundi Genocide, in CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS* 317–18 (Samuel Totten et al. eds., 1997).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 319; Linda Maguire, *Power Ethnicized: The Pursuit of Protection and Participation in Rwanda and Burundi*, 2 BUFF. J. INT'L L. 49, 54–58 (1995).

<sup>187</sup> Lemarchand, *supra* note 184, at 319–20. See generally L. Christian Marlin,

Mindful of the graphic example of Hutu violence against Tutsis, Burundi's ruling Tutsis became oversensitive to any perceived threats from their own Hutu majority population.<sup>188</sup> Thus, in April 1972, when a Hutu-led insurrection occurred in the southern towns of Rumonge and Nyanza-Lac, which claimed the lives of two to three thousand mostly Tutsi victims, the Tutsi regime overreacted.<sup>189</sup>

President Micombero declared martial law and requested assistance from the Zairean dictator, Mobuto—whose paratroopers occupied the airport, freeing the Burundian army to move *en masse* into the countryside and begin the slaughter of Hutu civilians.<sup>190</sup> Some suggest this was of a pre-arranged plan for mass annihilation that was put into effect by Foreign Minister Simbananiye, with the assistance of the Interior Minister and the leader of the ruling political party.<sup>191</sup> Even if such a plan did not exist, the decision by the government to eradicate all “educated Hutus,” from professionals to university and trade school students all the way “down to the level of secondary, and in some cases even primary school children,”<sup>192</sup> clearly constitutes the intent to commit genocide under the treaty definition of the term.

That the horrors wrought by the government on the ethnically distinct masses were based on the “exigencies of self-

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*A Lesson Unlearned: The Unjust Revolution in Rwanda, 1959–1961*, 12 EMORY INT'L L. REV. 1271 (1998) (discussing the internal war fought to bring the Hutu to power in Rwanda).

<sup>188</sup> Lemarchand, *supra* note 184, at 318–21.

<sup>189</sup> *Id.* at 322–23.

<sup>190</sup> *Id.* at 323.

<sup>191</sup> *Id.* For many Hutu, ‘le plan Simbananiye’ is the key to an understanding of the killings. According to this master plan, conceived long before the Hutu uprising, the aim was to provoke the Hutu into staging an uprising so as to justify a devastating repression and cleanse the country once and for all of the Hutu peril. There is little evidence of any such provocation; nor is it at all clear that any such plan existed prior to the Hutu uprising. What is beyond question, however, is that Simbananiye used the ‘clear and present danger’ posed by the Hutu insurgency as a pretext to go far beyond the immediate exigency of restoring peace and order. As the social profile of the victims clearly shows, the ultimate objective was to systematically kill all educated Hutu elements, including civil servants, university students, and school children, and in so doing, eliminate for the foreseeable future any serious threat of Hutu rebellion. It is this sense that one can indeed speak of a ‘Simbananiye plan.’ *Id.*

<sup>192</sup> *Id.* at 322–24. “Army units commandeered merchants’ lorries and mission vehicles, and drove up to schools removing whole batches of children at a time.” *Id.* at 324.

preservation [that made] it imperative for the Tutsi not only to retain control over the instruments of force but to use force whenever confronted with [perceived] threats to their own survival as a minority"<sup>193</sup> is no excuse for the genocide. Nonetheless, it suffices to at least make the events of 1972 somewhat more cognizable if still unconscionable. Predictably during this Cold War period, the response from the international community was non-existent.<sup>194</sup> As Professor Lemarchand of the University of Florida observed: "Typical of the general international indifference surrounding the genocide was the official stance of the United States during the Nixon administration which, according to a study of the Carnegie Endowment for International Peace, revealed an extraordinary combination of 'indifference, inertia, and irresponsibility.'"<sup>195</sup>

Other genocides unfolded in other parts of the world during this period. Some were on a smaller scale and less well-known, such as the effort of the Paraguayan government from 1972 to 1974 to exterminate and/or enslave the forest-dwelling Aché Indians as agricultural interests expanded into the country's interior.<sup>196</sup> Some were on a much larger scale, such as the Indonesian Army's campaign of destruction against the East Timorese people in 1975 immediately after the withdrawal of the colonial power, Portugal.<sup>197</sup> Representatives of the Catholic Church in Timor estimated the death toll of Timorese, after the first twelve months of invasion, at 60,000 (or almost ten percent of the population).<sup>198</sup> The general western response to these atrocities, especially the American response, was consistently indifferent.<sup>199</sup>

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<sup>193</sup> *Id.* at 327.

<sup>194</sup> *Id.* at 327-28.

<sup>195</sup> *Id.* at 317-18 (citing MICHAEL BROWN, GARY FREEMAN & KAY MILLER, *PASSING-BY: THE UNITED STATES AND GENOCIDE IN BURUNDI* (1973)).

<sup>196</sup> See *GENOCIDE IN PARAGUAY* 7-8 (Richard Arens ed., 1976) ("Physical extermination was being supplemented by enslavement and incarceration on Indian reservations . . . Achés were being systematically hunted by armed raiding parties.")

<sup>197</sup> See generally James Dunn, *Genocide in East Timor*, in *CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS* 264 (Samuel Totten et al. eds., 1997); James Dunn, *The East Timor Genocide*, in 3 *THE WIDENING CIRCLE OF GENOCIDE* 192, 206-07 (Israel W. Charney ed., 1994).

<sup>198</sup> See Dunn, *supra* note 197, at 274.

<sup>199</sup> *Id.* at 274-75; Richard Arens, *Introduction*, in *GENOCIDE IN PARAGUAY* 5, 11-12 (Richard Arens ed., 1976).

None of the other genocides of this period, however, approached the relative scale, brutality, and widespread acknowledgment as the genocide that unfolded in the small southeast Asian country of Cambodia from 1975 to 1979.<sup>200</sup> In the late 1960s, the Worker's Party of Kampuchea, which had struggled against French colonialism, was overtaken from within by communists.<sup>201</sup> The newly formed communist party staged uprisings against Prince Sihanouk, who attempted to steer a middle course between independence and statehood.<sup>202</sup> This policy culminated in an eventual overthrow of the successor regime of Marshal Nol in 1975.<sup>203</sup>

The new, at least nominally communist government immediately proclaimed the State of Democratic Kampuchea, and a ruling body was organized from Phnom Penh as a central committee.<sup>204</sup> The chief member who rose to prominence as the committee's Secretary General was Saloth Sar, better known as Pol Pot.<sup>205</sup> The effects of the coup were immediate. As Yale's Professor Ben Kiernan notes:

In the first few weeks after Cambodia fell to the Khmer Rouge in April, 1975, the nation's cities were evacuated, hospitals emptied, schools closed, factories deserted, money and wages abolished, monasteries emptied, and libraries scattered.

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<sup>200</sup> See generally GENOCIDE AND DEMOCRACY IN CAMBODIA 141 (Ben Kiernan ed., 1993); WILLIAM SHAWCROSS, THE QUALITY OF MERCY: CAMBODIA, HOLOCAUST AND MODERN CONSCIENCE 328-29 (1984); Ben Kiernan, *The Cambodian Genocide 1975-1979*, in CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS 334 (Samuel Totten, William S. Parsons & Israel W. Charney eds., 1997) [hereinafter *The Cambodian Genocide*].

<sup>201</sup> *The Cambodian Genocide*, supra note 200, at 336.

<sup>202</sup> HAAS, supra note 160, at 77 ("[W]hen Sihanouk went to Washington to enlist support for an independent Cambodia, he received a lecture from Secretary of State . . . Dulles that he should support France in the fight against Communism. [Sihanouk's] argument, that French colonial rule was the most potent recruiting theme for the Indochinese Communist movements, was rejected." ).

<sup>203</sup> *The Cambodian Genocide*, supra note 200, at 336.

<sup>204</sup>

Internally and externally, Cambodia was sealed off. Its borders were closed, all neighboring countries militarily attacked, use of foreign languages banned, embassies and press agencies expelled, local newspapers and television shut down, radios and bicycles confiscated, mail and telephones suppressed. Worse, Cambodians had little each other anyway. They quickly learned that any display of knowledge or skill, if 'contaminated' by foreign influence . . . was folly in Democratic Kampuchea. Human communications were reduced to daily instructions.

*Id.* at 336-37.

<sup>205</sup> *Id.* at 336.



Freedom of the press, movement, worship, organization association, and discussion, all completely disappeared for nearly four years. So did everyday family life. A whole nation was kidnapped [sic.], and then besieged from within. . . . Democratic Kampuchea was a prison camp state, and the 8 million prisoners served most of their time in solitary confinement. And 1.5 million of the inmates were worked, starved, and beaten to death.<sup>206</sup>

Seeking a resurrection of the Cambodian race cleansed of all impurities, Pol Pot's regime launched a countrywide purge of foreign-educated intellectuals, Buddhists, non-Cambodian ethnicities, and finally his own people.<sup>207</sup> This amounted to several religious or ethnically-driven genocides within the larger context of the atrocities that were perpetrated by the Khmer Rouge during its reign of terror.<sup>208</sup>

For example, the genocide of the monks was carried out on an expedited plan. It was achieved quickly in order to rid Cambodia of Buddhism altogether.<sup>209</sup> It is estimated that only 2,000 of Cambodia's 70,000 Buddhist monks survived the mass extermination that was targeted at the monasteries. The clear intent of the government is reflected in a 1975 Central Committee document which proclaims: "Monks have disappeared from 90 to 95 percent. . . . Monasteries. . . are largely abandoned. The foundation pillars of Buddhism. . . have disintegrated. In the future they will dissolve further. The political base, the economic base, the cultural base must be uprooted."<sup>210</sup>

The genocide of ethnic groups was not limited to a particular group but carried out against all non-Cambodians.<sup>211</sup> The Vietnamese were either expelled or extinguished: "Over 100,000

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<sup>206</sup> *Id.* at 334.

<sup>207</sup> *Id.* at 339-43. "Given the sacrifices from the population that the nationalist revival required, the resistance it naturally provoked, and the regime's preparedness to forge ahead 'at all costs,' genocide was the result." *Id.* at 339.

<sup>208</sup> Gregory H. Stanton, *The Cambodian Genocide and International Law*, in GENOCIDE AND DEMOCRACY IN CAMBODIA 141 (Ben Kiernan ed., 1993) ("Cambodia has been a party to the Genocide Convention since 1950.")

<sup>209</sup> *The Cambodian Genocide*, *supra* note 200, at 340.

<sup>210</sup> *Id.* (citing Chantou Boua, *Genocide of a Religious Group: Pol Pot and Cambodia's Buddhist Monks*, in STATE-ORGANIZED TERROR: THE CASE OF VIOLENT INTERNAL REPRESSION 227-40) (P.T. Bushnell, V. Schlapentokh, C. Vanderpool & J. Sundram eds., 1991).

<sup>211</sup> *Id.*

[Vietnamese] were driven out by the Pol Pot regime in the first year after its victory in 1975. The ones who remained in Cambodia were simply murdered."<sup>212</sup> Chinese casualties were even more egregious: "Of the 1975 population of 425,000, only 200,000 Chinese survived the next four years . . . . Further, the Chinese language . . . was banned, and so was any tolerance of a culturally and ethnically distinguishable Chinese community. That was to be destroyed 'as such.'"<sup>213</sup> The Muslim Chams were also systematically decimated:

Pol Pot[']s] army forcibly emptied all 113 Cham villages in the country. About 100,000 Chams were massacred and the survivors were dispersed in small groups of several families. Islamic schools and religion as well as the Cham language, were banned. Thousands of Muslims were physically forced to eat pork. Many were murdered for refusing.<sup>214</sup>

Beyond destroying ethnic and religious minority groups, the killing frenzy turned on the majority Khmers. This group was artificially divided into a crazed scheme of "old citizens" who had lived in the Khmer Rouge areas prior to 1975, and "new citizens" who were city dwellers and generally supporters of the deposed Marshal Nol.<sup>215</sup> All cities were evacuated, emptying people into the countryside; by 1976, the "new citizens" were reclassified as "deportees" setting them up as the principle victims of the 1977–1978 countrywide massacres that ultimately claimed fifteen percent of the rural population and twenty-five percent of the urban.<sup>216</sup>

By the time the Vietnamese army invaded and deposed Pol Pot's Khmer Rouge in 1979,<sup>217</sup> the death toll had reached 1,671,000, or a staggering twenty-one percent of the population.<sup>218</sup> Despite wide-spread recognition of the genocides

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<sup>212</sup> *Id.* at 340–41.

<sup>213</sup> *Id.* at 341 (citing Ben Kiernan, *Kampuchea's Ethnic Chinese under Pol Pot: A Case Study of Systematic Social Discrimination*, 16 J. CONTEMPORARY ASIA 18 (1986)).

<sup>214</sup> *Id.* at 342.

<sup>215</sup> *Id.* at 342. Because the Khmers constituted a majority of the population and the massacres were not directed against ethnic or religious groups, but were at least partially politically motivated, the wholesale slaughter of the Khmers by its own government cannot be considered genocide under the terms of the treaty definition. See Stanton, *supra* note 208, at 140.

<sup>216</sup> *The Cambodian Genocide*, *supra* note 200.

<sup>217</sup> *Id.* at 336, 339.

<sup>218</sup> *Id.* at 343.

occurring in Cambodia, the overwhelming majority of states, including the United States, voted in the U.N. to condemn Vietnam's invasion of its neighbor.<sup>219</sup> Indeed, the Vietnamese invasion itself was not principally about stopping the unfettered killing in neighboring Cambodia, so much as it was about superpower politics.<sup>220</sup> Some scholars argue that such politics began the cycle, allowing the accession of the Khmer Rouge and the subsequent genocides.<sup>221</sup>

Vietnam's entry into Cambodia and its establishment of a client regime known as the People's Republic of Kampuchea<sup>222</sup> was ironically both the cause and the result of triangulated geopolitical strategic thinking in Beijing, Moscow, and Washington.<sup>223</sup> The ensuing conflict was one that U.S. National Security Advisor Zbigniew Brzezinski characterized as a "proxy war."<sup>224</sup> Pol Pot and the Khmer Rouge faded into the rainforest to take up opposition against successive governments in Phnom Penh.<sup>225</sup>

<sup>219</sup> Lobel, *supra* note 163, at 23.

<sup>220</sup> HAAS, *supra* note 160, at 27, 74-75.

<sup>221</sup> *Id.* at 79 ("Reflecting on the era of U.S. involvement in Southeast Asia under Nixon and Kissinger, Sihanouk later stated, 'They demoralized America, they lost all of Indochina to the Communists, and they created the Khmer Rouge.'" (citing WILLIAM SHAWCROSS, *SIDESHOW: NIXON, KISSINGER AND THE DESTRUCTION OF CAMBODIA* (1979))); see also *The Cambodian Genocide*, *supra* note 200, at 344.

Pol Pot's regime would not have come to power without the massive economic and military destabilization of Cambodia by the United States, beginning in 1966. n 18 March 1969, the U.S. Air Force began a secret B-52 bombardment of Vietnamese sanctuaries in rural Cambodia. Exactly one year later, Prince Norodom Sihanouk was overthrown by the U.S.-backed general Lon Nol. he Vietnam War spilled across, Sihanouk swore revenge, and a new civil war tore Cambodia apart. The U.S. bombing of the countryside increased from 1970 until August 15, 1973, when Congress imposed a halt. Up to 150,000 Cambodians were killed in the American bombardments. . . . In the ashes of rural Cambodia arose the CPK regime, led by Pol Pot.

Pol Pot's forces had profited greatly from the U.S. bombardment . . . [T]he Khmer Rouge used the bombings' devastation and massacre of civilians as recruitment propaganda, and as an excuse for their brutal, radical policies . . . .

*The Cambodian Genocide*, *supra* note 200, at 344.

<sup>222</sup> SHAWCROSS, *supra* note 221, at 390.

<sup>223</sup> *The Cambodian Genocide*, *supra* note 200, at 27.

<sup>224</sup> *Id.* at 27-28.

<sup>225</sup> See RATNER & ABRAMS, *supra* note 128, at 239-42.

Absent any intervention to stop it, the most graphic chapter in the Cold War saga of genocide perpetration ended.<sup>226</sup> The Genocide Convention, created after the Holocaust in order to outlaw the crime, accordingly remained on the books—unused and ignored. Ironically, and sadly, Cambodia itself had been a party to the treaty since 1950.<sup>227</sup>

*D. Genocide and Reaction After the Cold War (1990–2000)*

After the Cold War, client states were generally released from their fealty to the superpowers.<sup>228</sup> The Soviet empire had collapsed, and America began to redirect its foreign aid towards Eastern Europe.<sup>229</sup> Thus, the hard-line leaders of smaller states that were supported in varying degrees were cut loose. Subsequently, many such leaders were overthrown by popular movements within their own countries.<sup>230</sup>

This change in climate generally brought about more willingness on the part of western democracies to intervene abroad in a military capacity for humanitarian reasons, and to eventually hold responsible those in power who could historically hide behind the shield of sovereignty.

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<sup>226</sup> “The United States and the Western powers stood back, paralyzed by their defeat in Vietnam from involvement in another ground war in Southeast Asia.” Stanton, *supra* note 208, at 155.

<sup>227</sup> UNITED NATIONS, MILLENNIUM SUMMIT MULTILATERAL TREATY FRAMEWORK: AN INVITATION TO UNIVERSAL PARTICIPATION 5 (2000).

<sup>228</sup>

Africa lost attractiveness with the end of the Cold War and the advent of the post-Cold War era. 1996 Economist survey of the continent reported . . . ‘all the former colonial powers now regard Africa as marginal to their own well-being and security. So does Russia. America has all but disengaged.’

Aka, *supra* note 160, at 192 (citing Tony Thomas, *Africa for the Africans: So Little Done, So Much to Do*, ECONOMIST, Sept. 7, 1996, at 3).

<sup>229</sup> See *id.* at 188.

<sup>230</sup> See Reisman, *supra* note 171.

### 1. Political/Military Responses <sup>231</sup>

The traditional concept of state sovereignty disallowed intervention by foreign powers in the internal affairs of a state.<sup>232</sup> On the basis of reciprocity, this principle was a cornerstone of international law in that each state recognized the inviolability of other states' borders.<sup>233</sup> Indeed, international border stability is regarded by the U.N. Charter as indispensable to the maintenance of international peace and security.<sup>234</sup> This is the legal rationale that salved the collective conscience of the West during its long period of inaction to stop genocides during the Cold War period. A breach of borders is exactly what must be done if there is to be any kind of foreign intervention to stop a genocide from occurring within those borders. Therein is the dilemma.

Certainly, this past pattern of practice colored the response of the West, the only group of nations with a capability to project force globally, when genocide was unleashed in Southern Europe in 1992 and in Central Africa in 1994. The political reaction was at first timid, but gained strength. The military action was virtually non-existent or weak. After the atrocities occurred and a peace settlement was reached, significant ground forces were deployed in Europe.

In Bosnia, genocide took the form of what became known as "ethnic cleansing."<sup>235</sup> After the ethnically and religiously heterogeneous region of Bosnia-Herzegovina declared independence from Yugoslavia in 1992, hostilities immediately erupted among three distinct groups: Croats, Muslims, and

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<sup>231</sup> To support the condemnation in the U.N. of Vietnam's invasion of Cambodia, Britain, a permanent member of the Security Council,

[I]n 1986 gave three reasons that the overwhelming majority of legal opinion refused to recognize the existence of a right to use force on behalf of humanitarian intervention: (1) The UN Charter and corpus of modern international law do not seem to specifically to incorporate such a right. (2) State practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all; and (3) on prudential grounds, that the scope for abusing such a right argues strongly against its creation.

Lobel, *supra* note 163, at 22-23.

<sup>232</sup> See BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 33 (3d ed. 1999).

<sup>233</sup> See *id.*

<sup>234</sup> U.N. CHARTER, art. 2, para. 4.

<sup>235</sup> See generally, NORMAN CIGAR, GENOCIDE IN BOSNIA: THE POLICY OF "ETHNIC CLEANSING" 53-61 (1995) (discussing theories and providing examples).

Serbs.<sup>236</sup> The Bosnian Serbs quickly achieved a string of military successes that captured large segments of territory within Bosnia.<sup>237</sup> They received direct aid and intermittent direction from the Serbian leader within the state of the Yugoslav federation bordering Bosnia, Slobodan Milosevic. This Serbian leader relied on incitement of nationalist sentiment as an organizing principle in the vacuum of communism's ideological collapse.<sup>238</sup>

The ensuing military campaign generally comported with the long-awaited and rhetorically useful plan of cobbling together an ethnically homogenous "Greater Serbia" from remnants within the former Yugoslavia.<sup>239</sup> Part of that plan was to ostracize and drive out non-Serbs through terror and destruction<sup>240</sup> in order to create the envisioned ethnic purity.<sup>241</sup> Unfortunately, this process of ethnic cleansing included extreme

<sup>236</sup> See *id.* at 38. According to the 1991 census, of the three main groups, the population consisted of a 44% Muslim, 31% Serb, and 17% Croat mix that was significantly intertwined geographically. *Id.* at 5.

Some believe that it was the act of international recognition that sparked the outbreak of civil war in Bosnia. [R]ecognition . . . was the trigger . . . to the formal outbreak of a war . . . . The critical mistake made by the EC as well as the US was to continue down the path towards [recognition] . . . when every single sign indicated that it would be like pouring petrol on a smoldering fire."

DAVID OWEN, *BALKAN ODYSSEY* 46 (1995) (Secretary-General Perez de Cuellar's characterization of premature recognition as a "potential time-bomb").

<sup>237</sup> Yasushi Akashi, *The Use of Force in a United Nations Peace-Keeping Operation: Lessons Learnt From The Safe Areas Mandate*, 19 *FORDHAM INT'L L.J.* 312, 314 (1995).

<sup>238</sup> See *CIGAR*, *supra* note 235, at 33-34 (stating that "[a]s part of his effort to solidify popular opinion on his behalf, Milosevic encouraged the Serbs to focus their wrath, in particular, against those ethnic groups who stood in the way of fulfilling the [establishment of Greater Serbia]").

<sup>239</sup> OWEN, *supra* note 236, at 77, 87; *CIGAR*, *supra* note 235, at 1621, 22-24.

[T]he genocide—or ethnic cleansing, as it has been commonly known—that befell the Muslims of Bosnia-Herzegovina was not simply the unintentional and unfortunate by-product of combat or civil war. Rather, it was a rational policy, the direct and planned consequence of conscious policy decision, taken by the Serbian establishment in Serbia and Bosnia-Herzegovina. This policy was implemented in a deliberate and systematic manner as part of a broader strategy intended to achieve a well-defined, concrete, political objective, namely, the creation of an expanded, ethnically pure Greater Serbia.

*Id.*

<sup>240</sup> *CIGAR*, *supra* note 235, at 5 (providing examples of the techniques implemented). "[I]n the town of Kozarac, houses were color-coded according to the owner's ethnicity and then "destroyed systematically." *Id.*

<sup>241</sup> See *id.* at 56.

victimization of Muslims in the captured territories, mass deportation to prison camps,<sup>242</sup> large scale collective massacres and burials,<sup>243</sup> and debasement of the population through mass rapes,<sup>244</sup> public torture, and religious defilement.<sup>245</sup> Conservative estimates released by the Bosnian government in early 1994 calculated over 140,000 dead or missing and over 160,000 wounded during the initial phase of the conflict.<sup>246</sup>

These activities were carried out alternately by the Yugoslav Army, the Bosnian Serb forces, or special Serb militia units formed for exactly this purpose. These units, which roamed throughout the countryside, have been compared to the special German *Einsatzgruppen* that followed the regular army into the U.S.S.R., liquidating "racially and politically undesirable elements."<sup>247</sup> The initial response of the West was extreme concern followed by fervent hesitation and crippling self-doubt.

After much debate in the U.N. Security Council, small U.N. forces were deployed around designated "safe areas" and acted as escorts for humanitarian relief convoys.<sup>248</sup> The blue-helmeted

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<sup>242</sup> See OWEN, *supra* note 236, at 14.

The men were taken from the village at gunpoint and forced into freight cars. As many as 180 were jammed, standing, into boxcars measuring thirty nine by six feet. They were kept that way for three days, without water or food, as the train moved slowly across the countryside. Nazis transporting Jews in 1942? No, Serbs transporting Muslim Bosnians in 1992: one glimpse of the worst racial and religious bestiality Europe has known since World War II.

*Id.* at 19 (quoting Anthony Lewis, *Yesterday's Men*, N.Y. TIMES, Aug. 3, 1992, at A19).

<sup>243</sup> CIGAR, *supra* note 235, at 54-55.

<sup>244</sup> In response to reports of "rape camps" in which Muslim women and girls were savagely raped by Serbian soldiers and held captive until either death or pregnancy, the European Community's investigation found that "as many as 20,000 Muslim women have been systematically raped." Lori Lyman Bruun, *Beyond the 1948 Convention—Emerging Principles of Genocide in Customary International Law*, 17 MD. J. INT'L L. & TRADE 193, 201 (1993).

<sup>245</sup> See CIGAR, *supra* note 235, at 56-57. [I]n Bratunac, the local Muslim cleric reportedly was tortured in front of the townsfolk, who had been rounded up in the soccer stadium, was ordered to make the sign of the cross, had beer forced down his throat, and then was executed." *Id.* at 59.

<sup>246</sup> *Id.* at 9.

<sup>247</sup> See *id.* at 54-55.

<sup>248</sup> The multinational United Nations Protection Force (UNPROFOR) had been deployed in neighboring Croatia after hostilities there had stabilized in March 1992 under UNSC Res. 743, and this force was extended into Bosnia later that year. See OWEN, *supra* note 236, at 42-56, 330-31; Akashi, *supra* note 237, at 312.

peacekeepers, however, eventually became targets themselves.<sup>249</sup> Thus NATO decided, pursuant to U.N. Security Council authorization, to support forces on the ground in Bosnia with air power but under an awkward dual command structure requiring joint approval for air strikes from the U.N. Secretary General and the NATO Commander.<sup>250</sup> This proved unworkable in the field and eventually resulted in placing the power of decision in military hands.<sup>251</sup>

Subsequently, Bosnian-Serb positions were attacked by massive NATO air strikes in 1994 and 1995 in response to repeated shelling of civilian safe areas.<sup>252</sup> Eventually, NATO's action empowered the Bosnian federation forces to advance on Bosnian Serb positions, thus turning the tide of the war.<sup>253</sup> At this point, Slobodan Milosevic took control and represented pan-Serb interests<sup>254</sup> at the Dayton-Paris peace talks. The talks finally ended the conflict, establishing a multi-ethnic federation in Bosnia and providing for military occupation of the country by NATO forces.<sup>255</sup>

The military and political stumbles by the West that were evident during the Bosnian effort are understandable in that they were the first tentative efforts of an untested alliance to

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<sup>249</sup> OWEN, *supra* note 236, at 326–27 (recounting capture of Dutch soldiers); Chris Hedges, *U.N. Warns Serbs of Bombing if They Attack Dutch Unit*, N.Y. TIMES, July 10, 1995, at A1, A3.

<sup>250</sup> See John Darnton, *Accord in London: Policy: Allies Warn Bosnian Serbs of 'Substantial' Air Strikes If U.N. Enclave Is Attacked; Accord in London*, N.Y. TIMES, July 22, 1995, at A1, A4; Craig R. Whitney, *Conflict in The Balkans: The Policy; NATO Gives U.N. Officials Veto on Air Strikes in Bosnia*, N.Y. TIMES, July 26, 1995, at A1, A8.

<sup>251</sup> See John Darnton, *Allies Warn Bosnian Serbs of 'Substantial' Air Strikes If U.N. Enclave Is Attacked; Accord in London*, N.Y. TIMES, July 22, 1995, at 4; see also Christopher S. Wren, *Russia Fails In U.N. to Bar Raids on Serbs*, N.Y. TIMES, Sept. 13, 1995, at A11.

<sup>252</sup> See Yoram Dinstein, *The Thirteenth Waldemar A. Solf Lecture in International Law*, 166 MIL. L. REV. 93, 100 (2000).

<sup>253</sup> See generally North Atlantic Treaty Organization, *NATO's Role in Bosnia and Herzegovina*, NATO Fact Sheet, at <http://www.nato.int/docu/facts/2000/rolebih.htm> (last modified August 2000) (discussing NATO's role in the conflict).

<sup>254</sup> See OWEN, *supra* note 236, at 331.

<sup>255</sup> Six days after the agreement was signed on December 14, 1995, NATO's 60,000 man Implementation Force (IFOR) was deployed. This contingent was replaced by the smaller 32,000 man Stabilization Force (SFOR), deployed between December 1996 and November 1999. SFOR's current complement is 20,000 personnel. See NATO, *supra* note 254, at <http://www.nato.int/docu/facts/2000/rolebih.htm>.



move into a new situation of controlling genocidal forces in a hostile country. But, the lack of interest, general acknowledgment, or even pretense of threatened intervention in the 1994 Rwandan genocide, while perhaps understandable, is possibly unforgivable in humanitarian terms.

The roots of conflict in Rwanda find their source in the ethnic manipulation of colonial times. After decades of supporting minority Tutsi rule,<sup>256</sup> Belgian policies shifted in the 1950's to gradually support majority Hutu rule.<sup>257</sup>

"[This] culminat[ed] in January 1961 with a Hutu-led, Belgian-assisted coup that formally abolished the monarchy and led to the proclamation of a de facto republican regime under Hutu rule. By the time Rwanda acceded to independence [in] 1962, some 200,000 Tutsi had been forced into exile."<sup>258</sup>

It was not until 1991 that the brutally deposed Tutsi were able to once again form themselves into significant opposition parties capable of pressuring the Hutu-led regime into accommodating their needs.<sup>259</sup> A complicated sequence of events then occurred that affected the psychology of all parties, which led to the commission of the genocide. The Arusha Accords, negotiated in neutral Tanzania between 1992 and 1993, which granted the disenfranchised Tutsis greater representation in the Rwandan government, legislature, and army, were derailed with the assassination of Burundi's first popularly-elected Hutu president, Melchior Ndadaye, in October by an "all-Tutsi army."<sup>260</sup>

The ruling Hutus in neighboring Rwanda received the message that the Tutsis could not be trusted. In April 1994, when Rwandan President Habyalimana's plane was shot down, the Hutu government quickly blamed the Tutsi (although hard-liners in the government were suspected of killing their own president in order to avoid power-sharing with the Tutsi), and this became a sort of justification for the genocidal retribution.<sup>261</sup>

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<sup>256</sup> The Tutsis only comprised seventeen percent of the population. ALAN J. KUPERMAN, *THE LIMITS OF HUMANITARIAN INTERVENTION: GENOCIDE IN RWANDA* 5 (2001).

<sup>257</sup> René Lemarchand, *The Rwanda Genocide*, in *CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS* 410 (Samuel Totten et al. eds., 1997).

<sup>258</sup> *Id.* at 410.

<sup>259</sup> *Id.* at 411-14.

<sup>260</sup> *Id.* at 414-15.

<sup>261</sup> *Id.* at 415.

In January of that year, Rwanda had taken its seat as a non-permanent member of the U.N. Security Council.<sup>262</sup> By the close of the summer, the death toll had reached between 800,000 and one million Rwandans, mostly Tutsi.<sup>263</sup> When Hutu were encouraged through government and party radio broadcasts to take revenge upon the Tutsi for the president's murder, the embryonic violence started to emerge.<sup>264</sup> Initially, this took the form of attacks upon Tutsi homes, occasionally burning them, followed by attempted murders, robberies, and rapes that were generally unsuccessful because most Hutu were unarmed. The violence, however, was threatening enough to scare the Tutsi into taking increasingly defensive postures.<sup>265</sup>

Soon the Tutsi fled their homes to form larger and larger concentrated congregations at gathering places such as schools, churches, hospitals, and stadiums.<sup>266</sup> By this ill-advised tactic, they unwittingly sewed the seeds of their own destruction. One week later, when better-armed Hutu troops and militia arrived at the sites, their targets were already gathered for slaughter:

Typically, a few grenades would be tossed in on the Tutsi, followed by light arms fire. Those Tutsi not killed or wounded by the initial fusillade often attempted to flee, whereupon they usually were cut down by gunfire or surrounded and killed by the mob. Militia-led Hutu then would enter the site and hack to death those still alive.<sup>267</sup>

Although some rifles were prevalent, it was the gruesome machete that became the symbol of the Rwandan genocide. Records show that over half a million were imported from China in 1993 in anticipation of the bloodbath.<sup>268</sup> The rough and tumble Hutu militias, their ranks swelled by unemployed and delinquent Hutus eager to take out their frustrations on Tutsis, were provided the weapons and the means to continue the cleansing of the country.<sup>269</sup> Radio broadcasts encouraged them to

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<sup>262</sup> L.R. MELVERN, A PEOPLE BETRAYED: THE ROLE OF THE WEST IN RWANDA'S GENOCIDE 244 (2000).

<sup>263</sup> *Id.* at 222-23.

<sup>264</sup> KUPERMAN, *supra* note 256, at 15.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* at 15-16.

<sup>268</sup> MELVERN, *supra* note 262, at 64-65.

<sup>269</sup> *Id.* at 64. His militia was "trained to kill 1,000 human beings every twenty minutes. Local administrators organized the disposal of bodies in garbage trucks." *Id.* at 5.

do their duty using horrific agricultural euphemisms for genocide: " 'It is time to gather in the harvest,' 'The baskets are only half full; they should be filled to the brim.' "270 The militants carried out the atrocities with astonishing speed.

In the spring and early summer of 1994 a program of massacres decimated the Republic of Rwanda, killing every tenth person in a population. Although the killing was low-tech—performed largely by machete—it was carried out at a dazzling speed: of an original population of about seven and a half million, at least eight hundred thousand people were killed in just one hundred days. Rwandans often speak of a million deaths, and they may be right. The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki.<sup>271</sup>

The clergy was also not immune from the exhortations to Hutu national imperative. For example, the trial of two Hutu Roman Catholic nuns, convicted for complicity in the commission of genocide by a Belgian court, revealed that they had offered 7,000 Tutsis up to the killers who were hiding in their convent. The nuns also "provided petrol so that militiamen could set fire to a barn in which about 500 Tutsis had taken refuge."<sup>272</sup>

How could such a catastrophe as this happen in the post-Cold War world without any intervention whatsoever to stop it? First, there were no longer any definable interests for the West in central Africa. Second, the U.N. Security Council was still seized with the Bosnia question, and it was not altogether clear in the spring of 1994 how that would work out. Third, there was no available, readily deployable military alliance in that region even remotely similar to Europe's NATO. Fourth, psychologically, U.S. policymakers had still not recovered from the debacle in Somalia,<sup>273</sup> which arguably colored their

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<sup>270</sup> ARTHUR JAY KLINGHOFFER, *THE INTERNATIONAL DIMENSION OF GENOCIDE IN RWANDA* 45 (1998).

<sup>271</sup> PHILIP GOUREVITH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* 4 (1998).

<sup>272</sup> *War-Crimes Tribunals: Judging Genocide*, *ECONOMIST*, June 16, 2001, at 24 [hereinafter *War Crimes Tribunal*].

<sup>273</sup> See DAVID WEISSBRODT ET AL., *INTERNATIONAL HUMAN RIGHTS* 300 (3d ed. 2001) (noting that Presidential Decision Directive 25 (PDD-25), which was issued in response to the Somalia experience, generated great concern among some scholars and policy-makers as to its legality and financial costs).

perceptions about going into Africa without clear entrance and exit strategies, or definable goals that were short term and assurances of local support.

These are by no means excuses so much as ex post facto rationales offered in an attempt to explain the lack of response.<sup>274</sup> In a May 5, 1994 White House press briefing, President Clinton's National Security Advisor, Anthony Lake, responded to a question about Rwandan intervention this way:

When I wake up every morning and look at the headlines and the stories and the images on television of these conflicts, I want to work to end every conflict. I want to work to save every child out there. And I know the president does, and I know the American people do. But neither we nor the international community have the resources nor the mandate to do so. So we have to make distinctions. We have to ask the hard questions about where and when we can intervene . . . these kinds of conflicts are particularly hard to come to grips with and to have an effect on from outside, because basically, of course, their origins are in political turmoil within these nations. And that political turmoil may not be susceptible to the efforts of the international community. So, neither we nor the international community have either the mandate nor the resources nor the possibility of resolving every conflict of this kind.<sup>275</sup>

Returning to the Balkans four years later, the evil of ethnic cleansing raised its ugly head once again—this time within Serbia.<sup>276</sup> The epicenter of the violence was in Kosovo, the small southern province wedged between Albania and Macedonia.<sup>277</sup>

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<sup>274</sup> The world community, and especially the Western powers, were roundly chastised in subsequent fact-finding reports by the U.N. and the O.A.U. establishing that even minor, low-level intervention would have likely stopped the bloodshed. *Id.* at 301 (citing INGVAR CARLSSON ET AL., REPORT OF THE INDEPENDENT INQUIRY INTO THE ACTIONS OF THE UNITED NATIONS DURING THE 1994 GENOCIDE IN RWANDA (1999) & INTERNATIONAL PANEL OF EMINENT PERSONALITIES TO INVESTIGATE THE 1994 GENOCIDE IN RWANDA, RWANDA: THE PREVENTABLE GENOCIDE (2000)).

<sup>275</sup> MELVERN, *supra* note 262, at 190–91. Indeed, U.S. State Department officials wrangled for a month over whether to call what was happening in Rwanda 'acts of genocide' or 'genocide.' A recently disclosed internal memo stated: "Be careful. Legal at State [the Office of Legal Adviser at the State Department] was worried about this yesterday—Genocide finding could commit [the U.S.G.] to actually 'do something.'" Neil A. Lewis, *Did Machete-Wielding Hutus Commit Genocide or Just 'Acts of Genocide'?*, N.Y. TIMES, Aug. 26, 2001, at A7 (alteration in original).

<sup>276</sup> Leslie A. Burton, *Kosovo: To Bomb or Not to Bomb? The Legality is the Question*, 7 ANN. SURV. INT'L & COMP. L. 49 (2001).

<sup>277</sup> *Id.* at 49.

Traditionally part of Serbia, even after the devastating defeat of the Serbs by the Muslim Turks in the 1389 Battle of Kosovo, the province's demographics shifted down through the centuries. By 1998, Serbs were a clear minority and Albanian Muslims constituted close to ninety percent of the population in Kosovo.<sup>278</sup> During the 1980s the Serb minority was vociferous about discrimination against them by the autonomous Albanian authorities, which lead Slobodan Milosevic, then president of Serbia, to rescind Kosovo's self-governing authority and take direct control of the province.<sup>279</sup>

Soon thereafter, the region descended into turmoil. Yugoslavia broke into separate states in 1991 and 1992, and Bosnia quickly descended into civil war.<sup>280</sup> Seeing their chance for a break, the Kosovars held a referendum and voted for independence. This vote, however, was ignored in Belgrade and Yugoslav army forces were sent into the province to secure it.<sup>281</sup> Two years after the Bosnian situation cooled down, the Albanian government collapsed in 1997, allowing for an unregulated fresh flow of arms to militant Muslim separatists who had formed themselves into the Kosovo Liberation Army.<sup>282</sup>

To counter this new threat, more federal forces rolled into Kosovo and Milosevic unleashed an ethnic cleansing campaign to depopulate the province of non-Serbs.<sup>283</sup> The terror campaign of rapes, tortures, and mutilations drove an estimated 800,000 Albanians out of Kosovo<sup>284</sup> and into the neighboring states of Montenegro, Albania, and Macedonia, which were ill-prepared for the massive influx of wretched humanity. Those refugees, however, were the lucky ones. Up to 10,000 were killed outright.<sup>285</sup>

An investigative journalist for *Newsday* managed to gain interviews from both Albanian and Serbian witnesses about the

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<sup>278</sup> WEISSBRODT, *supra* note 273, at 328.

<sup>279</sup> *Id.* at 328–29.

<sup>280</sup> *Id.* at 329.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Frances X. Clines, *NATO Hunting for Serb Forces; U.S. Reports Signs of 'Genocide'*, N.Y. TIMES, Mar. 30, 1999, at A1.

<sup>284</sup> WEISSBRODT, *supra* note 273, at 330; Chris Stephen, *The Men Who Must Now Face Justice*, THE SCOTSMAN, Oct. 8, 2000, at 19.

<sup>285</sup> WEISSBRODT, *supra* note 273, at 341; Charles M. Sennott, *Dissecting a War Crimes Machine: In Pec, Kosovars and Tribunal Amass Mound of Data*, BOSTON GLOBE, July 1, 1999, at A1.

atrocities that happened in Kosovo.<sup>286</sup> The stories he uncovered were chilling, hearkening back to Hitler's Germany:

Late one night at the end of March, Shkelzen Kruezi, an ethnic Albanian in the Yugoslav army reserves, climbed behind the wheel of a refrigerator truck at the cold-storage plant in Prizren's industrial zone. The fully loaded truck had recently been painted white with a large red cross on the roof to ward off NATO bombs. Although a full colonel in uniform, Kruezi was taking directions from his civilian Serb passenger, Spiro Nikolic, who told him to drive to Balkan Rubber, a factory 12 miles away in Suva Reka. There, Kruezi said, he parked inside the factory compound and he and his passenger left to rest. When they returned the next morning the truck was empty. Gone was their cargo of frozen corpses, nearly all Albanians killed in the ethnic-cleansing campaign by Yugoslav security forces. The forces launched their mayhem March 20, and it accelerated when NATO's air war began March 24.

After the truck left, a cloud of black smoke hung over the shuttered factory. At least 10 times during the more than 11-week conflict, smoke rose, said Fisnik Kryezic, 21, a Kosovo Liberation Army member who kept an eye on the otherwise inoperative plant from a nearby hill. "It was a terrible smell, the smell of rubber burning and also a much sharper stench," said Sinan Bajraktari, whose house is next door to the complex. "Smell that smell," a Serbian woman told a close relative of Bajraktari. "These are Albanians we are burning."<sup>287</sup>

Clearly this mass deportation plan, together with the resulting deaths, constituted genocide under the treaty definition's terms.<sup>288</sup> After failed negotiations and duplicitous conduct by Milosevic, NATO decided, for credibility's sake at

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<sup>286</sup> Roy Gutman, *Atrocities in Kosovo / The Killings, and the Killers / Evidence of Ethnic Cleansing Machine*, *NEWSDAY*, July 27, 1999, at A4.

<sup>287</sup> A cover-up and fear soon followed:

An important part of the coverup was the removal of the very instruments of removal. According to Krasniqi, the cold-storage plant's deputy manager, the white refrigerated truck left for Serbia two days before the arrival of German NATO troops. Nikolic also departed for Serbia. Kruezi arrived in Albania under a different name and fears that his activities could earn him an indictment for war crimes. "They mobilized me. They forced me to go into the army," he said. "I must hide somewhere."

*Id.* at A4.

<sup>288</sup> Kathleen Sarah Galbraith, Note, *Moving People: Forced Migration and International Law*, 13 *GEO. IMMIGR. L.J.* 597, 615-16 (1999) (arguing that such mass deportation would meet the requirements of the treaty's terms).

least, that it had to follow through on its threat to use force to stop the genocide.<sup>289</sup> As NATO Ambassador Balanzino recalled: “[E]thnic cleansing in Kosovo began many months before NATO launched its first strike. It was to stop Milosevic from writing the final chapter in his campaign to systematically depopulate Kosovo that NATO decided it could no longer postpone military action.”<sup>290</sup>

The military operation was massive. NATO flew 32,000 bombing missions, delivering massive payloads of ordnance into Serbia and Kosovo against both military and non-military targets.<sup>291</sup> Three weeks later, the bombing ended and NATO troops entered and occupied the province, setting up a provisional run government run by the U.N.<sup>292</sup> Subsequently, 200,000 Serbians left Kosovo and moved to Serbia.<sup>293</sup> Evidence of the atrocities, which will prove vital to the success of later prosecutions at the Hague Tribunal, immediately began to surface once the area was secured:

It took a walk of no more than 400 yards . . . off the main road to Prizren to the outbuilding of a small farm in the Kosovan village of Velika Krusa to witness at first hand the gruesome depravity of ethnic cleansing.

The village, which once had a population of 6,500 was eerily silent apart from a few dozen refugees who had arrived home that morning. But, despite what they had already been through, the ethnic Albanians found their much-longed-for homecoming almost a burden too far.

Serb paramilitary police and Yugoslav soldiers had dedicated an entire three weeks to an unimaginable orgy of destruction and murder. Every single house in this large Muslim village had been torched and shelled. The mosque had not been spared either.

But far worse was to come.

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<sup>289</sup> Michael J. Kelly, *Traveling the Road to Rambouillet: Is the Imposition of Federalism in Kosovo Pragmatic Foreign Policy or Unwise Meddling?*, 40 S. TEX. L. REV. 789 (1999).

<sup>290</sup> Sergio Balanzino, *NATO's Actions to Uphold Human Rights and Democratic Values in Kosovo: A Test Case For a New Alliance*, 23 FORDHAM INT'L L.J. 364, 365 (1999).

<sup>291</sup> WEISSBRODT, *supra* note 273, at 330.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

Just behind a burnt-out farmhouse off one of the small cratered roads, was a quiet courtyard . . . Across on the other side of the yard was a building which had once been used to house farm materials. The stone walls were pock marked with bullet holes . . . The scene inside was sickening. In a small room lay six bodies, charred beyond all recognition. All the skulls bore bullet marks. The holes in the wall at waist height indicated that the people—it was impossible to tell their sex—had been shot while sitting down with short bursts of machine gun fire.

Starving dogs, which roam all over Kosovo, had been there too and had picked at some of the flesh. The floor was blackened, which suggested the victims had been set alight by their captors afterwards . . . In the next room, there were the remains of 15 people who had endured the same horror. A ceiling had collapsed in on the remains which lay all over the floor. Burnt clothing, which looked liked short-sleeved shirts, was stuck to some of the bodies. The smell of death was everywhere. Nobody knew what to say.

Dutch soldiers . . . were informed of the discovery by returning Albanians . . . . A forensic team from the International War Crimes Tribunal was last night on its way to the scene from Pristina.<sup>294</sup>

In a strange and cruel twist of irony, it was Milosevic's Yugoslav government that was the first to file charges of genocide against NATO for its bombing campaign against the Serbs in the Court.<sup>295</sup> The Court dismissed the action.<sup>296</sup>

## 2. Institutional Responses: International War Crimes Tribunals

International criminal tribunals were almost unheard of prior to the last century. In fact, efforts to create such tribunals following World War I to prosecute the defeated German Kaiser and the Turkish perpetrators of the Armenian genocide ultimately came to naught,<sup>297</sup> although a handful of Germans

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<sup>294</sup> Ciaran Byrne, *Bodies Litter a Village Laid Waste by Hatred*, THE SCOTSMAN, June 16, 1999, at 3.

<sup>295</sup> WEISSBRODT, *supra* note 273, at 343.

<sup>296</sup> *Id.* (noting that the I.C.J. dismissed for lack of jurisdiction against the U.S. and Spain, but is officially still seized of the action against other NATO member states that submit to its jurisdiction).

<sup>297</sup> See Lippman, *supra* note 109, at 417–22; SCHABAS, *supra* note 2, at 19.



and Turks were tried by their own domestic courts.<sup>298</sup> After the undeniable horror of the Holocaust, the Allies established the International Military Tribunal at Nuremberg to prosecute the surviving Nazi war chiefs.<sup>299</sup> This was the first successful creation of an international criminal tribunal,<sup>300</sup> and resulted in the conviction and sentencing of several Nazi leaders for what amounted to genocide within the context of crimes against humanity.<sup>301</sup>

Nuremberg set the stage for more prosecutions to follow<sup>302</sup> and established a political will on the part of the world community. This newfound political resolve translated to the establishment of the Tokyo Tribunal to prosecute the Japanese war criminals who, although not indicted on charges of genocide,<sup>303</sup> were held accountable for atrocities such as the "Rape of Nanking" in 1937 in which 12,000 non-combatant ethnic Chinese were arbitrarily killed and 2,000 were raped.<sup>304</sup>

No other international criminal tribunals were established during the Cold War period of mutual strategic stasis. Individual states, however, could assert universal jurisdiction over the crime of genocide to prosecute perpetrators in their domestic courts.<sup>305</sup> Poland tried former Nazis in its national courts during the late 1940s;<sup>306</sup> Israel did this most prominently with the capture, trial, and conviction of Adolph Eichmann in 1961–1962.<sup>307</sup> Equatorial Guinea tried and executed its former dictator for genocide in 1979<sup>308</sup> and, although clearly politically motivated, the Vietnamese-installed government of Cambodia tried and convicted Pol Pot *in absentia* on charges of genocide, also in 1979.<sup>309</sup>

After the Cold War, the world again collectively decided to pursue those responsible for the commission of genocide via a

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<sup>298</sup> SCHABAS, *supra* note 2, at 20–22.

<sup>299</sup> Lippman, *supra* note 109, at 425–31.

<sup>300</sup> SCHABAS, *supra* note 2, at 19.

<sup>301</sup> *Id.* at 36–42; Lippman, *supra* note 109, at 430.

<sup>302</sup> SCHABAS, *supra* note 2, at 47–50.

<sup>303</sup> *Id.* at 79 n.216.

<sup>304</sup> Lippman, *supra* note 109, at 430.

<sup>305</sup> SCHABAS, *supra* note 2, at 386–88.

<sup>306</sup> *Id.* at 388.

<sup>307</sup> *Id.* at 360–61, 386–88.

<sup>308</sup> RATNER & ABRAMS, *supra* note 128, at 146–47.

<sup>309</sup> *Id.* at 147.

supranational juridical apparatus.<sup>310</sup> Thus, the U.N. Security Council established ad hoc war crimes tribunals to address the rampant atrocities committed in both the former Yugoslavia (ICTY) and Rwanda (ICTR).<sup>311</sup> The tribunals were charged with investigating, indicting, prosecuting, and punishing those who had been accused during the conflict of committing war crimes, genocide, and crimes against humanity.<sup>312</sup>

Paradoxically, while the better-funded and staffed Hague tribunal<sup>313</sup> initially failed to secure a genocide conviction, it was the financially and organizationally shaky ICTR<sup>314</sup> that was the first to make such a conviction.<sup>315</sup> The ICTR also was the first court to hold that rape can “legally be considered an aspect of genocide.”<sup>316</sup> Subsequently, and perhaps most significantly, the ICTR successfully tried and convicted the first head of government for his role in the gruesome carnage between Hutus and Tutsis.<sup>317</sup> Following is an excerpt from the ICTR’s landmark opinion finding the former Rwandan Prime Minister guilty of genocide and sentencing him accordingly:

[T]here was in Rwanda in 1994 a widespread and systematic attack against the civilian population of Tutsi, the purpose of which was to exterminate them. Mass killings of hundreds of thousands of Tutsi occurred in Rwanda, including women and children, old and young who were pursued and killed at places where they had sought refuge i.e. prefectures, commune offices, schools, churches and stadiums . . . .

Jean Kambanda acknowledges that following numerous meetings of the Council of Ministers between 8 April 1994 and 17 July 1994, he as Prime Minister, instigated, aided and abetted the *Prefets*, *Bourgmestres*, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu. Furthermore, between 24 April 1994 and 17 July 1994, Jean Kambanda and Ministers of

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<sup>310</sup> *Id.* at 165–66.

<sup>311</sup> Lippman, *supra* note 109, at 494.

<sup>312</sup> RATNER & ABRAMS, *supra* note 128, at 166–68, 173–75.

<sup>313</sup> *War-Crimes Tribunals*, *supra* note 272, at 24–25.

<sup>314</sup> RATNER & ABRAMS, *supra* note 128, at 176; SCHABAS, *supra* note 2, at 382–83.

<sup>315</sup> van der Vyver, *supra* note 141, at 287 (citing Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T (Sept. 2, 1998) (summary available at 37 I.L.M. 1399 (1998))).

<sup>316</sup> *War-Crimes Tribunals*, *supra* note 272, at 23.

<sup>317</sup> *Id.*

his Government visited several prefectures . . . to incite and encourage the population to commit these massacres . . . .

[He] acknowledges that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital and he did not respond. On the same day, after the meeting, the children were killed . . . .

Jean Kambanda acknowledges that he ordered the setting up of roadblocks with the knowledge that these roadblocks were used to identify Tutsi for elimination, and that as Prime Minister he participated in the distribution of arms and ammunition to members of political parties, militias and the population knowing that these weapons would be used in the perpetration of massacres of civilian Tutsi.

Jean Kambanda acknowledges that he knew or should have known that persons for whom he was responsible were committing crimes of massacre upon Tutsi and that he failed to prevent them or punish the perpetrators. Jean Kambanda admits that he was an eye witness to the massacres of Tutsi and also had knowledge of them from regular reports of prefets, and cabinet discussions . . . .

Trial Chamber I, for the foregoing reasons . . . [and] having found Jean Kambanda guilty [of genocide and crimes against humanity] . . . sentences [him] to life imprisonment[.]<sup>318</sup>

The ICTY quickly caught up with the ICTR,<sup>319</sup> issuing a flurry of indictments, including eight for genocide.<sup>320</sup> ICTY's jurisdiction covers crimes in all the territories of former Yugoslavia.<sup>321</sup> Although it has yet to extradite key genocidal players such as Bosnian Serb leader Radovan Karadzic and General Ratko Mladic,<sup>322</sup> it has, nevertheless, produced significant results in the *Tadic* and *Krstic* cases.<sup>323</sup>

Despite the relative success of the ad hoc tribunals, the question arises as to where the world goes next after these courts

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<sup>318</sup> Prosecutor v. Kambanda, Case No. ICTR 97-23-S (Sept. 4, 1998), available at <http://www.ictt.org/wwwroot/ENGLISH/cases/Kambanda/judgement/Kambanda.html> (visited Feb. 7, 2001).

<sup>319</sup> Patricia M. Wald, *Judging War Crimes*, 1 CHI. J. INT'L L. 189, 190 (2000).

<sup>320</sup> SCHABAS, *supra* note 2, at 378; Carlotta Gall, *Serb on Trial for Genocide of Albanians in Kosovo*, N.Y. TIMES, Dec. 6, 2000, at A11 (stating that "[t]hese courts [in Kosovo] have begun to try Serbs for genocide and other war crimes").

<sup>321</sup> SCHABAS, *supra* note 2, at 99.

<sup>322</sup> *See id.* at 380.

<sup>323</sup> *See id.* at 209-11; *see also* David J. Lynch, *One of the Worst Places on Earth*, USA TODAY, Nov. 17, 2000, at 19A.

have finished their work. There is an emerging political/legal tension among states regarding the preference for continuing to promulgate such ad hoc tribunals, limited as they are territorially and by subject matter, and establishing a permanent, independent international criminal court (discussed below) to deal with offenses such as genocide.<sup>324</sup>

An agreement reached in 2001 between Cambodia and the U.N. will establish a tribunal in Phnom Penh composed of both Cambodian and U.N. judges to try surviving members of the Khmer Rouge for atrocities committed during their reign.<sup>325</sup> The highest ranking defendants are unfortunately unavailable for prosecution on charges of genocide—Pol Pot is dead and his foreign minister, Ieng Sary, has been pardoned by the king. A similar formula is being negotiated to set up a tribunal in Freetown to redress the inhuman atrocities visited upon the people of Sierra Leone by rebel forces during its recently concluded civil war.<sup>326</sup>

Thus, simultaneously, more ad hoc tribunals are being created as the treaty establishing a permanent criminal court enters into force. Moreover, the invocation of universal jurisdiction by a Belgian national court in the summer of 2001, leading to the prosecution and conviction of two individuals on charges of genocide in Rwanda<sup>327</sup> raises the possibility of re-energized national courts acting beyond their traditional territorial boundaries.

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<sup>324</sup> Critics have been articulate about the weaknesses of the ad hoc tribunal system. As Professor Sharon Williams of Osgoode Hall explains:

[I]t is not sufficient to act on an ad hoc basis. To do so requires the selective political consent of the United Nations Security Council, acting under Chapter VII of the *Charter* . . . and there is a possibility that one of the five permanent members will veto the action. Albeit, the Security Council's necessary actions in this way led to the expeditious formation of the [ICTY] and [ICTR], a permanent court not hampered by geographical limits and time is necessary.

Sharon A. Williams, *The Rome Statute on the International Criminal Court: From 1947-2000 and Beyond*, 38 OSGOODE HALL L.J. 297, 299-300 (2000).

<sup>325</sup> *Trials in Cambodia, Better Late than Never*, ECONOMIST, July 14, 2001, at 40 (noting that human rights advocates are worried that this will be a weaker version of the ICTY and ICTR because ill-trained Cambodian lawyers will hold majorities on the panels and do not grasp the finer points of international law); RATNER & ABRAMS, *supra* note 128, at 275-77.

<sup>326</sup> *Trials in Cambodia, supra* note 325, at 40; *War-Crimes Tribunals, supra* note 272, at 25.

<sup>327</sup> *War-Crimes Tribunals, supra* note 272, at 24.

### III. ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

On July 17, 1998, the United Nations Diplomatic Conference of Plenipotentiaries, meeting in Rome, adopted a treaty by a vote of 120 to 7,<sup>328</sup> establishing the first<sup>329</sup> permanent International Criminal Court (the ICC).<sup>330</sup> Although the idea of international criminal culpability has existed for some time, the modern effort to create the ICC was the culmination of initial discussions begun in the early 1950s to found a post-Nuremberg entity in which criminal cases could be brought against individuals who had perpetrated heinous crimes in violation of international law.<sup>331</sup>

Widely hailed as a key component in the future administration of criminal justice internationally,<sup>332</sup> the treaty contained a provision whereby it would automatically enter into force, and thereby formally establish the ICC, on the first day of the month sixty days after the deposit of the sixtieth ratification.<sup>333</sup> Given this threshold, the treaty entered into force on July 1, 2002, and it currently has 139 signatories and 76 parties.<sup>334</sup>

#### A. *Genocide Included as a Crime*

The crime of genocide was included among other crimes in the Rome Statute's conferral of jurisdictional competence on the Court.<sup>335</sup> The definition of the crime is taken verbatim from the 1948 Genocide Convention.<sup>336</sup> The U.N. Preparatory

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<sup>328</sup> See UNITED NATIONS, Documents relating to International Criminal Court, available at <http://www.un.org/icc/docs.htm> (last visited July 20, 2002).

<sup>329</sup> Barbara Crossette, *U.S. Accord Being Sought on U.N. Dues and on Court*, N.Y. TIMES, Dec. 7, 2000, at A6.

<sup>330</sup> UNITED NATIONS, Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999 [hereinafter Rome Statute]; BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW: SELECTED DOCUMENTS 2001-2002 at 921 (2001).

<sup>331</sup> See generally RATNER & ABRAMS, *supra* note 128, at 177; Marcus R. Mumford, *Building upon a Foundation of Sand: A Commentary on the International Criminal Court Treaty Conference*, 8 J. INT'L L. & PRAC. 151, 160-63 (1999); Leila Nadya Sadat, *The Establishment of the International Criminal Court: From the Hague to Rome and Back Again*, 8 J. INT'L L. & PRAC. 97 (1999).

<sup>332</sup> Mumford, *supra* note 331, at 151.

<sup>333</sup> Rome Statute, *supra* note 330, at 1068.

<sup>334</sup> UNITED NATIONS, Rome Statute of the International Criminal Court, at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterxviii/treaty10.asp> (last visited July 20, 2002) [hereinafter United Nations].

<sup>335</sup> Rome Statute, *supra* note 330, art. 5.

<sup>336</sup> See *id.* art. 6.

Commission, however, has broken out the elements of the crime individually as separate crimes of genocide.<sup>337</sup>

#### ARTICLE 6 GENOCIDE

##### *Introduction*

With respect to the last element listed for each crime:

- The term “in the context of” would include the initial acts in an emerging pattern;
- The term “manifest” is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

##### Article 6 (a) Genocide by killing

##### *Elements*

1. The perpetrator killed\* one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself affect such destruction.

\*The term “killed” is interchangeable with the term “caused death.”

#### ARTICLE 6 (B) GENOCIDE BY CAUSING SERIOUS BODILY OR MENTAL HARM

##### *Elements*

1. The perpetrator caused serious bodily or mental harm to one or more persons.\*
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

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<sup>337</sup> PREPARATORY COMMISSION FOR THE INTERNATIONAL CRIMINAL COURT, *Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II: Finalized Draft Text of the Elements of Crimes*, U.N. Doc. PCNICC/2000/1/Add.2 (June 30, 2000), available at <http://www.un.org/law/icc/statute/elements/elemfra.htm>.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself affect such destruction.

\*This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

ARTICLE 6 (C) GENOCIDE BY DELIBERATELY INFLECTING CONDITIONS OF LIFE CALCULATED TO BRING ABOUT PHYSICAL DESTRUCTION

*Elements*

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.\*
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself affect such destruction.

\*The term "conditions of life" may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

ARTICLE 6 (D) GENOCIDE BY IMPOSING MEASURES INTENDED TO PREVENT BIRTHS

*Elements*

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself affect such destruction.

ARTICLE 6 (E) GENOCIDE BY FORCIBLY TRANSFERRING CHILDREN

*Elements*

1. The perpetrator forcibly transferred one or more

persons.\*

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself affect such destruction.

\*The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.

Thus, the crime of genocide, although defined similarly in the Rome Statute and the Genocide Convention, is now articulated with much more clarity through its elemental subdivision in the ICC's supporting documents; however the status of political groups remains unprotected.

### B. Prospects for Enforcement

Prospects for successful enforcement against the crime of genocide by the ICC hinge on three issues: (1) interpretation of the Court's jurisdictional limitations; (2) depoliticization of the legal process; and (3) willingness of states to participate in the judicial and prosecutorial apparatus.

Article 5 of the Rome Statute confers competence on the ICC to undertake cases involving only genocide, crimes against humanity, war crimes, and aggression.<sup>338</sup> This narrow list, therefore, neither criminalizes terrorism as such nor does it capture the traditional *jus cogens* crimes over which states have historically asserted universal jurisdiction, such as piracy and slavery.<sup>339</sup> Given the broad definition of crimes against humanity, however, and the qualification that they can be committed in times of peace, the acts themselves (murder, rape,

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<sup>338</sup> Rome Statute, *supra* note 330, art. 5

<sup>339</sup> See *id.*; William F. Wright, *Limitations on the Prosecution of International Terrorists by the International Criminal Court*, 8 J. INT'L L. & PRAC. 139, 145 (1999).



torture, etc.) that compose commission of those crimes can be prosecuted and punished.<sup>340</sup>

Article 12 empowers the Court to exercise its jurisdiction on states that are a party to the Rome Statute. The jurisdiction covers events that take place within the territory of a member party, and the acts of member party nationals. Jurisdiction may also lie where a state accepts the jurisdiction of the Court with respect to a particular crime.<sup>341</sup> Prior to such an exercise, a referral system must trigger an investigation by the Prosecutor, who in turn must decide whether to proceed. In the case of a state party linked to the territory of the crime or the suspected national, the referral can come from a state party or by self-initiation from the Prosecutor *proprio muto* with the approval and authorization of the Pre-Trial Chamber.<sup>342</sup> If, however, the referral comes from the U.N. Security Council,<sup>343</sup> then "the Court can exercise jurisdiction even when neither the state in whose territory the crimes have been committed nor the state of nationality of the accused is a State Party."<sup>344</sup>

Perhaps inevitably, politics can intervene in this legal process. The U.N. Security Council is empowered under Article 16 to truncate any investigation or prosecution if a resolution is adopted under the U.N. Security Council's Chapter VII authority.<sup>345</sup> This deferral lasts for twelve months and may be renewed indefinitely.<sup>346</sup> Nonetheless, the U.N. Security Council deferral system is still preferable from a procedural point of view to granting the five permanent Council members individual veto power over each prosecution as originally proposed.<sup>347</sup>

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<sup>340</sup> Rome Statute, *supra* note 330, art. 7.

<sup>341</sup> *Id.* art. 12.

<sup>342</sup> *Id.* art. 13-15.

<sup>343</sup> *Id.* art. 13(b).

<sup>344</sup> Young Sok Kim, *The Preconditions to the Exercise of the Jurisdiction of the International Criminal Court: With a Focus on Article 12 of the Rome Statute*, 8 J. INT'L L. & PRAC. 47, 55 (1999).

<sup>345</sup> Rome Statute, *supra* note 330, art. 16.

<sup>346</sup> *Id.*; see also Brian D. Keatts, Comment, *The International Criminal Court: Far from Perfect*, 20 N.Y.L. SCH. J. INT'L & COMP. L. 137 (2000).

<sup>347</sup> Jelena Pejic, *Conceptualizing Violence: Present and Future Developments in International Law: Panel II: Adjudicating Violence: Problems Confronting International Law and Policy on War Crimes and Crimes Against Humanity: The Tribunal and the ICC: Do Precedents Matter?*, 60 ALB. L. REV. 841, 858 (1997) (stating that "[t]he Security Council . . . might be paralyzed by a veto in deciding to refer a matter to the court. It is imaginable that a permanent member of the Council might wield its veto power to shield either its own, or an allied national from

The willingness of state parties to participate in the ICC's enforcement mechanism is ultimately a question of political will.<sup>348</sup> If they can muster the political fortitude to see through the implementation of the requirements domestically, and support the Court when requests are made by its Prosecutor, then enforcement can become a reality. There is, however, no provision in the statute itself to force compliance by states that are parties. As with most treaties, there is no central enforcing authority, and affirmative punishment for non-compliance is lacking. Indeed, this is often the general problem with international law.<sup>349</sup> International legal regimes are usually reliant for their success on the good will and consent of the states that belong to them. Absent that, failure can be imminent.

The commitment of non-states parties who may only be signatories to the convention not to actively undermine the ICC is also important. Although the United States declined to become a party to the treaty because of its opposition to the final language, which allows for the remote possibility of U.S. nationals (such as soldiers serving abroad) to come under the ICC's jurisdiction,<sup>350</sup> it did sign the document along with Israel and Iran on New Year's Eve of 2000,<sup>351</sup> the last day that the Rome Statute was open for signature.

This signature carries with it an obligation under international law to avoid undermining the "object and purpose" of the treaty.<sup>352</sup> Naturally, the question arises as to what this

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international justice"); see also Jonathan I. Charney, *Progress in International Criminal Law?*, 93 AM. J. INT'L L. 452, 454-55 (1999).

<sup>348</sup> Charney, *supra* note 347, at 455 (explaining that "[a] key obstacle to the ICC is that its activities could touch on highly political interests over which some states are not willing to relinquish control, even to facilitate prosecution of international crimes.").

<sup>349</sup> MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 2-3 (3d ed. 1999).

<sup>350</sup> See generally Kim, *supra* note 344, at 73 ("[F]or example, if a U.S. citizen committed a crime against humanity in State A, and State A was a State Party to the ICC, the ICC could exercise its jurisdiction over the U.S. citizen without the consent of the United States, provided that other requirements . . . are met."); Ambassador David Scheffer, *America's Stake in Peace, Security and Justice*, 8 J. INT'L L. & PRAC. 1 (1999).

<sup>351</sup> United Nations, *supra* note 334.

<sup>352</sup> Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, Art. 18, 1155 UNTS 333, 336 (stating that the 'object and purpose' clause is contained in article 18 of The Vienna Convention on the Law of Treaties, which

means. In the broadest sense, it could mean complying with prosecutorial requests and/or turning over evidence and suspects to the ICC. Failure to do so upon reasonable request could be interpreted as actively undermining the treaty's object and purpose.<sup>353</sup> In the narrowest sense, it could mean simply avoiding the ICC altogether, ignoring its requests, power, and jurisdiction, but at the same time not trying to dismantle it either.

Nonetheless, the ICC cannot arbitrarily invoke its jurisdiction when a national court is already seized of a matter since its jurisdiction is specifically complementary.<sup>354</sup> In other words, the ICC is designed to work in practice as a prosecutorial gap-filler. "In every instance, national courts—and not the ICC—would be the preferred forum for the trial of accused war criminals. Only if national courts were either [unable] or [unwilling] would the ICC proceed."<sup>355</sup> Thus, while political fears of national governments about the ICC are largely unjustified, they unfortunately may remain for a while, hampering further international prosecution of genocide in the post-Bosnia, post-Rwanda world.

#### IV. THE EROSION OF SOVEREIGN IMMUNITY AND THE SIGNIFICANCE OF THE MILOSEVIC PROSECUTION

While it remains unclear how effective the ICC will be in deterring and prosecuting genocide, sovereigns must now, nonetheless, think twice before inciting or committing this grievous crime, for trends are moving against them. Notions of state sovereignty, inviolability of borders, and sovereign

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entered into force in 1980); CARTER & TRIMBLE, *supra* note 233, at 113 (explaining that the United States is a signatory to this treaty but did not ratify it; however, the U.S. State Department has acknowledged the binding effect of its rules as essentially a codification of existing customary law; therefore, the U.S. follows its provisions); Michael J. Kelly, *Clinton's Decision Commits America*, LANSING ST. J., Feb. 22, 2001, at 8A [hereinafter Kelly, *Clinton's Decision*]; Michael J. Kelly, *Imperfect Justice*, SAN DIEGO UNION-TRIB., Feb. 7, 2001, at B7.

<sup>353</sup> Kelly, *Clinton's Decision*, *supra* note 352.

<sup>354</sup> van der Vyver, *supra* note 141, at 335–36.

<sup>355</sup> See *id.* at 341 (quoting Jerome J. Shestack & David Stoelting, *The International Criminal Court: Setting the Record Straight*, CICC MONITOR, July 16, 1988, at 3); see also Michael A. Newton, *Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court*, 167 MIL. L. REV. 20, (2001) (providing further commentary on the principle of complementarity contained in the Rome Statute).

immunity are rapidly eroding on parallel tracks. Although certainly not irrelevant, the concept of nation-state sovereignty, gleaned from the seventeenth century Westphalian system, is under considerable pressure from increasing numbers of secessionist groups within states either clamouring for, or achieving independence.<sup>356</sup> Moreover, *just cause* has emerged as a practically internationally recognized excuse for western powers to cross theoretically unbreachable frontiers to either capture sovereigns, as in the case of Noriega in Panama, or otherwise affect government policy, as in the case of Serbia on behalf of Kosovo. Part and parcel of this process, inevitably, is the erosion of sovereign immunity.

Whereas sovereignty theory traditionally linked these concepts, perhaps most eloquently articulated when France's King Louis XIV remarked "l'etat cest Moi," the gradual erosion of sovereign immunity has longer historical roots than the others. The first crack in this wall appeared when King John signed the Magna Carta at Runnymede in 1215, placing him under the law. American jurisprudence has likewise wrestled with the concept, recalling Justice Sutherland's observation that sovereignty finds its source in international law<sup>357</sup> and Justice Jackson's famous stratification of the president's sovereign power depending on whether he acts in accordance with Congress, in its silence, or in derogation of its wishes.<sup>358</sup>

But it was during the world's emergence from the Cold War that all these related concepts began to rapidly deplete, leading to a sequence of events that allowed the international community to move forward in its application of immutable rules of conduct by sovereigns within their own borders. After the Gulf War, President Bush, albeit belatedly in 1991, ordered the cessation of Iraqi military activity north of the 36<sup>th</sup> parallel to stop Saddam Hussein's renewed brutalisation of the Kurdish minority there, thus placing a large portion of President

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<sup>356</sup> Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 *DRAKE L. REV.* 209, 253 (1999)

<sup>357</sup> See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936) (discussing United States sovereignty in light of international treaties, understandings, compacts, and principles).

<sup>358</sup> See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring) (discussing the sovereign power of the President).

Hussein's country off-limits to his sovereignty.<sup>359</sup> Similar action was previously called for to stop Hussein's use of poison gas against the Kurds in 1988,<sup>360</sup> but none materialized. Clearly, the difference between no action in 1988 and action in 1991 to similar events track the continuance and cessation of the Cold War. A sea of change in attitude toward sovereignty was occurring.<sup>361</sup>

Differences in the operation of evolving legal theory were played out on the field of Southeastern Europe. Sovereignty was not implicated in the Bosnian intervention because NATO was invited to become involved by Bosnian President Izabegovitch with the blessing of the U.N. Security Council. But sovereignty was clearly implicated in the Kosovo intervention four years later when NATO conducted punitive air strikes against Yugoslav positions and cities—definitely not at the invitation of President Milosevic.<sup>362</sup>

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<sup>359</sup> See Kelly, *supra* note 356, at 277 (noting that the creation of safe zones for the Kurdish people limiting Iraq's sovereignty in Northern Iraq (quoting William Safire, Essay, *Woodrow Wilson Lives*, N.Y. TIMES, Sept. 28, 1998, at A17)); Orrin G. Hatch, *Safe Haven's Aren't Enough*, N.Y. TIMES, Apr. 13, 1991, at A23 (discussing United States control of Iraq and its occupation of one fifth of Iraq's territory); William Safire, Editorial, *Duty to Intervene*, N.Y. TIMES, Apr. 15, 1991, at A17 (discussing that George Bush Sr. designated Kurdistan off-limits to Hussein and directed the military to take actions to aid refugees).

<sup>360</sup>

Not just a whiff but the stench of genocide drifts from the Kurdish areas of Iraq and the green hills of Burundi, homeland of the Hutu tribe. Those who commit such acts should know the world watches, that sovereignty cannot legitimize genocide . . . Burundi is indeed sovereign, and so is Iraq. In a world in which states jealously guard their sovereignty, no international police can be summoned if a country slaughters within its own frontiers . . . Enough silence.

See Editorial, *Murder Within Sovereign Borders*, N.Y. TIMES, Sept. 5, 1988, at A20.

<sup>361</sup> In fact, the Gulf War may be seen as the seminal event that actually encompassed the diverging concepts. No one intervened in 1988 because of sovereignty, and one of the reasons articulated for the American-led coalition to enter the Gulf War was the restoration of Kuwaiti sovereignty. Moreover, the decision was made not to eliminate Iraq's sovereign, and he was never prosecuted for war crimes, genocide or crimes against humanity. The war itself, however, is bookended by two events immediately before and after that cast doubt on the inviolability of sovereignty: America's trampling of Panama's sovereignty in 1989 when it invaded the country to capture Manuel Noriega, and America's designation prohibiting Iraqi military activity in the Northern 'no-fly zone' in 1991. See *Woodrow Wilson Lives*, N.Y. TIMES, Sept. 28, 1998, at A17.

<sup>362</sup> See Kelly, *supra* note 289, at 799 (noting that stopping genocide in Kosovo involved intervention that violated that borders of a sovereign state).

The Kosovo operation was a military intervention by an international alliance against a sovereign state that was conducting internal "ethnic cleansing." This intervention occurred without prior authorization from the U.N. Security Council (China and Russia objected due to their own 'internal matters' of Tibet and Chechnya).<sup>363</sup> It led to occupation of an internationally acknowledged internal province of Serbia.<sup>364</sup> The decision to go forward, clearly a violation of traditional sovereign prerogative and border inviolability, was a defining moment for NATO—and a politically courageous one.<sup>365</sup> Thus, it is the Kosovo intervention that many consider to be reflective of the seismic paradigm shift in the once sacrosanct notion of state sovereignty, as SUNY-Buffalo's Professor Westbrook notes:

At some fundamental level, international law scholars appear to have subordinated the doctrine of state sovereignty to international law's prohibition on genocide, a position which has been explicitly taken by Michael Glennon: 'Intrastate genocide is no longer entitled to the protection of sovereignty.' Kosovo appears to teach two lessons . . . . First, genocide is barbarism, and the civilized world need not respect the sovereignty of barbarians, even when they pose no threat to security. Warfare against barbarians is permissible . . . . Warfare may even . . . be required—hence the "new interventionism."

If barbarian (at least genocidal) states are not sovereign, they cease to be states. The second lesson is the converse of the first: statehood is defined in terms of participation in the civilized order. Whereas international law was once understood to be the product of express or tacit agreement among states, the state itself has come to be defined by its conformity to the basic requirements of international law. Failure to conform to such requirements, for example, by slaughtering one's minorities, results in the forfeiture of sovereignty and so loss of statehood.<sup>366</sup>

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<sup>363</sup> See *id.* (noting that stopping genocide in Kosovo implicated uninvited violation of sovereign state borders, and opposition within the council); GENOCIDE IN TIBET, A STUDY IN COMMUNIST AGGRESSION (Rodney Gilbert ed., 1975) (discussing the political history of Tibet); MARY CRAIG, TEARS OF BLOOD, A CRY FOR TIBET (1992).

<sup>364</sup> See Kelly, *supra* note 289, at 799.

<sup>365</sup> See *id.*

<sup>366</sup> David A. Westbrook, Essay, *Law Through War*, 48 BUFF. L. REV. 299, 328–29 (2000).

This very point was reinforced by the United Nations Secretary-General, Kofi Annan, in his address to the U.N. Human Rights Convention, thus signalling the subordination of state sovereignty interests to human rights interests, at least for the most heinous violations of those rights in callous disregard of international prohibitions:

Secretary General Kofi Annan . . . unveiled a doctrine with profound implications for international relations in the new millennium. The air strikes against Yugoslavia [to protect Albanians in Kosovo], he said . . . showed that the world would no longer permit nations intent on committing genocide to 'hide' behind the United Nations [C]harter, which has traditionally safeguarded national sovereignty. The protection of human rights, he said, must 'take precedence over concerns of state sovereignty . . . . He was, he acknowledged . . . embracing an 'evolving' international norm.<sup>367</sup>

So the question shifts to whether sovereign immunity has eroded even further than the concept of sovereignty? The answer is yes, although this erosion occurred with a much longer historical paper trail, therefore, making it arguably more justified. The Nuremberg Principles that emanated from the post-World War II trial of Nazi leaders, adopted by the U.N. General Assembly, specifically provided that heads of state or other public officials were not immune from prosecution nor were they deserving of mitigated punishment.<sup>368</sup>

This concept blossomed in the 1990s. Domestically, the Eleventh Circuit Court of Appeals denied Manuel Noriega's head of state immunity defense in his trial and appeal on cocaine

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<sup>367</sup> Miller, *Sovereignty*, *supra* note 80.

<sup>368</sup> The Nuremberg Principles provide:

- I. Any person who commits a crime under international law is responsible therefore and liable to punishment;
- II. The fact that domestic law does not punish an act which is an international crime does not free the perpetrator of such crimes from responsibility under international law;
- III. The fact that a person who committed an international crime acted as Head of State or public official does not free him from responsibility under international law or mitigate punishment;
- IV. The fact that a person acted pursuant to order of his Government or of a superior does not free him from responsibility under international law. it may, however be considered in mitigation of punishment;
- V. Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Mumford, *supra* note 331, at 161.

trafficking in 1997.<sup>369</sup> Internationally, as noted earlier, in 1998, Rwanda's deposed head of government, Jean Kambanda, was tried and convicted of genocide by the ICTR.<sup>370</sup> Sovereign immunity was of no avail.

In 1999, responding to a Spanish request for extradition, the British House of Lords determined that former Chilean dictator Augusto Pinochet, physically in England, "did not enjoy former head of state immunity for acts of torture that he or his government committed during his reign."<sup>371</sup> Although he was allowed to return to Chile on the grounds that he was unfit for trial, the House of Lords decision dealt a blow to traditional notions of impunity, which dictators cling to as a shield from justice.<sup>372</sup>

On this point, the University of Colorado's Professor Bradley and the University of Chicago's Professor Goldsmith remarked, "[The] Pinochet [case] is significant because it shows that international law and the mechanisms of its enforcement are changing. Recent developments in international law, especially in the areas of human rights and criminal law, have placed substantial pressure on traditional notions of sovereignty, including notions of sovereign immunity."<sup>373</sup>

Indeed, during the Pinochet deliberations, other autocratic leaders of questionable and sometimes brutal repute began to worry about their own untouchability:

At the same time that Pinochet was being detained by British authorities in London, the French government was hosting Democratic Republic of Congo president Laurent Kabila, who stands accused of playing an active role in the Rwandan genocide. Kabila was reportedly nervous about traveling to

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<sup>369</sup> See *United States v. Noriega*, 117 F.3d 1206, 1212 (11th Cir. 1997) (affirming the district court's denial of head of state immunity to Noriega).

<sup>370</sup> *Prosecutor v. Kambanda*, Case No. ICTR 97-23-S, part IV (Sept. 4, 1998) available at <http://www.ictt.org> (last visited July 20, 2002) (holding Jean Kambanda guilty of genocide).

<sup>371</sup> Christopher L. Blakesley, *Autumn of the Patriarch: The Pinochet Extradition Debacle and Beyond—Human Rights Clauses Compared to Traditional Derivative Protections Such as Double Criminality*, 91 J. CRIM. L. & CRIMINOLOGY 1, 15 (2000).

<sup>372</sup> See Stephen Kim Park, Article, *Dictators in the Dock: Retroactive Justice in Consolidating Democracies, A Comparative Analysis of Chile and South Korea*, 25 FLETCHER F. 127, 129 (2001) (discussing the Pinochet prosecution as a move toward justice for leaders who commit atrocities).

<sup>373</sup> Curtis A. Bradley & Jack L. Goldsmith, *Pinochet and International Human Rights Litigation*, 97 MICH. L. REV. 2129, 2183 (1999).



Europe and inquired about formal assurances of diplomatic immunity prior to leaving his home country.<sup>374</sup>

Now, in 2001, with the trial of former Serbian and Yugoslav president Slobodan Milosevic on charges of genocide,<sup>375</sup> a nail can be put in the proverbial coffin of immunity for heads of state that perpetrate this atrocity. Although Mr. Milosevic, a wily attorney himself,<sup>376</sup> has attempted to wrangle out of the ICTY's jurisdiction by filing an action with a Dutch district court arguing that the ICTY, created by the U.N. Security Council, was illegal, the court dismissed the case.<sup>377</sup> He will likely try other appeals to higher Dutch courts as well as the European Court of Human Rights.<sup>378</sup>

Continuation of such legalistic tactics, together with expansion of the indictment to include genocide, by which the prosecution hopes to build on its recent conviction of General Krstic for the genocidal massacre in Srebrenica during the Bosnian conflict, indicates that Milosevic's trial will be a long, drawn-out, and exhaustive one that could take years.<sup>379</sup>

Ultimately, however, although the form of prosecution, arguments rendered, evidence admitted, and rules employed are important in and of themselves, they are not dispositive of the incredible expansion of international law in this regard. It is the very fact of Milosevic's arrest and prosecution as a former head of state that is of utmost importance. The outcome of the trial is of secondary significance. Amenability to a court's jurisdiction equates to legal responsibility for one's actions while in office. While there is no formal recognition of *stare decisis* in international law, cases can become reflective of existing norms

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<sup>374</sup> Michael J. Kelly, *Case Studies "Ripe" for the International Criminal Court: Practical Applications for the Pinochet, Ocalan, and Libyan Bomber Trials*, 8 DETROIT CO. L. J. INT'L L. & PRAC. 21, 24 n.17 (1999).

<sup>375</sup> Indictment attached as Appendix II. See Marlise Simons, *Genocide Trial for Milosevic*, N.Y. TIMES, Sept. 2, 2001, at sec. 4, 2 (stating that Milosevic would be charged with genocide and other war crimes).

<sup>376</sup> See Roger Cohen & Marlise Simons, *At Arraignment, Milosevic Scorns His U.N. Accusers*, N.Y. TIMES, July 4, 2001, at A1 (noting Milosevic's intention to act as his own council and his attempts to assert that the ICTY was an illegal tribunal).

<sup>377</sup> Marlise Simons, *Milosevic Loses Appeal*, N.Y. TIMES, Sept. 1, 2001, at A6.

<sup>378</sup> See *id.* (noting that Milosevic's Dutch lawyers stated they would appeal or go to the European Court of Human Rights).

<sup>379</sup> See Marlise Simons, *Milosevic to Face Charges Covering 3 Wars in Balkans*, N.Y. TIMES, Aug. 31, 2001, at A1 (noting that the inclusion of genocide in indictments against Milosevic will draw out Milosevic's trial).

and thereby persuasively mandatory in their own right.<sup>380</sup>

Milosevic attempted to redirect the prosecution's case by focusing on recasting the Kosovo conflict as a war against terrorism, styling the Kosovo Liberation Army as terrorists.<sup>381</sup> This tactic is likely to fail. Another chief argument asserts that his actions reflected the desire of the masses: "[M]y conduct was the expression of the will of the people. The prosecution is accusing the population of supporting me, and let me say that my behavior here is an expression of the will of the citizens as well, the will of the people."<sup>382</sup> This tactic will also fail. Just as Hitler could not have clothed his actions in the desire of the masses, so too Milosevic will not be allowed the same moral/political justification.

Just as the arrest and detention of Augusto Pinochet three years ago was a bellwether, indicative of the slide of sovereign immunity now cited by Peruvian lawyers in their extradition request to Japan for former president Alberto Fujimori to stand trial for massacres under his regime,<sup>383</sup> the arrest and trial of Milosevic in and of itself—regardless of a conviction—is the clarion call of the new century, heralding the end of impunity for sovereigns with genocidal blood on their hands. Yale's Professor Fiss notes the significance: "The aspiration of the world after World War II was for some form of universal jurisdiction for a limited number of crimes, including genocide . . . [b]ut it is only in the decade of the 1990's that this aspiration has been given some substance, and Mr. Milosevic's trial is the culmination."<sup>384</sup>

### CONCLUSION

Genocides, once they are committed do not tend to go away. Modern Armenians and modern Ukrainians, now in their own

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<sup>380</sup> See Raj Bahla, *The Myth About Stare Decisis and International Trade Law*, 14 AM. U. INT'L L. REV. 845, 852–53 (1999) (discussing the problem in identifying binding precedent in international law).

<sup>381</sup> See Ian Fisher & Marlise Simons, *Defiant, Milosevic Begins His Defense by Assailing NATO*, N.Y. TIMES, Feb. 15, 2002, at A1 (stating that Milosevic claimed to have fought a war against Albanian separatists that he claims were terrorists).

<sup>382</sup> *The Accused: Expressing the 'Will of the People'*, N.Y. TIMES, Feb. 15, 2002, at A8.

<sup>383</sup> Clifford Krauss, *Peru, Pressing Japan, Issues an Order for Fujimori's Arrest*, N.Y. TIMES, Sept. 14, 2001, at B3 (discussing an international arrest order issued for Alberto K. Fujimori by Peru).

<sup>384</sup> Cohen & Simons, *supra* note 376, at A6 (quoting Owen Fiss, Professor of Law, Yale Law School).

independent nations since the collapse of the Soviet Union on Christmas Day 1991, are actively raising awareness about the long ignored plight of their ancestors who perished in the early part of the last century. To be certain, the latent effects of the Holocaust continue to powerfully and hauntingly affect humanity's collective memory even today:

The concentration camp is part of the history of modern society. The destructive power of modern technology was tested on the battlefields of mass war, with the slaughterhouses of the concentration camps serving as a proving ground for the destructive power of modern organization. The modern era liberated humanity from incomprehensible forces, yet at the same time immensely increased the power of human beings to kill. Measured against this hypertrophy, earlier forms of power seem fragmentary, irrational, crude in their means, and limited in scope.<sup>385</sup>

In a legal sense, reverberations of genocide's enormous cruelty have found their way into the courtroom, demanding redress. Claims against banks for recovery of accounts and assets seized and deposited by Hitler's Nazi regime, claims against German corporations that used slave labor under the Reich, and claims to recover stolen property have all been brought within the past ten years—sometimes *en masse* as class-action suits in both American and foreign courts.<sup>386</sup> This is certainly appropriate where either the actual survivors or the victims' children can directly benefit.

Cambodians are only now coming to terms with prosecuting their own devastating version of genocide that occurred in the 'killing fields' of Kampuchea in the 1970s through establishment of a mixed national/international tribunal to punish the surviving perpetrators. In Australia, modern aborigines are raising the argument that government-sponsored forced relocation and resettlement of aboriginal children with Anglo families in the 1960s and 1970s constitutes genocide. In

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<sup>385</sup> SOFSKY, *supra* note 96, at 276 (emphasis omitted).

<sup>386</sup> See generally THE PLUNDER OF JEWISH PROPERTY DURING THE HOLOCAUST: CONFRONTING EUROPEAN HISTORY (Avi Beker ed., 2001); THE LEGACIES OF THE HOLOCAUST: HEARING BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS, *supra* note 1 (discussing the difficulties in providing restitution for Holocaust victims); Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States, *Plunder and Restitution: The U.S. and Holocaust Victims' Assets* (Dec. 2000).

America, modern Native Americans are raising similar arguments about the U.S. government's brutal settlement of the South and West, relocation along the 'trail of tears' to reservations west of the Mississippi, and subsequent policies that ensured continued cultural impoverishment.<sup>387</sup>

What is the lesson? Genocides do not fade quietly away into the history books. Past atrocities visited upon a people linger in the collective memory of humanity as if mass death takes on an ethereal life of its own. We must endeavour not to ignore them, as we have done, but to intervene and forestall them where we can. Once a bloodbath is interrupted, we must then seek to not only mourn those who perished, but investigate, prosecute, try, convict, and punish the perpetrators, be they uneducated thugs, savvy politicians, or even Catholic nuns as in Rwanda.

With the fall of communism and the collapse of dictatorships like dominoes all across the globe, twenty-first century society is on track to become more enlightened and dominated by the rule of law, just as America has become. Consequently, it is important to support those institutions, such as the International Criminal Court, that perpetuate this ideal and help export it to more societies. At the same time, we must take care to monitor and suppress the spread of weapons of mass destruction: biological, chemical, and nuclear. For these may become the new tools of genocide, as Saddam Hussein graphically demonstrated in 1988 with his release of poison against the Iraqi minority Kurdish population, decimating the population by 5,000.<sup>388</sup>

Heretofore, inconceivable genocides could be committed instantaneously without any actual inhuman brutalities occurring in a face-to-face manner on the ground.<sup>389</sup> President Nixon once remarked, "I can go into my office and pick up the

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<sup>387</sup> See Robert K. Hitchcock & Tara M. Twedt, *Physical and Cultural Genocide of Various Indigenous Peoples*, in *CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS* 372-91 (Samuel Totten et al. eds., 1997); Katz, *supra* note 110, at 24-27 (discussing the creation of Indian reservations and treatment of Native Americans by the United States government).

<sup>388</sup> See Alan Cowell, *Kurds Fall Back from Iraqi Forces*, N.Y. TIMES, Apr. 2, 1991, at A8 (noting that government forces used chemical weapons at Halabja and killed an estimated 5,000 people).

<sup>389</sup> See SCHABAS, *supra* note 2, at 203-05 (noting the International Court of Justice's finding that where the requisite intent is present, genocide may be committed by the use of nuclear weapons).

telephone and in 25 minutes 70 million people will be dead.”<sup>390</sup> Indeed, as the International Court of Justice recognized, if the intent is present, nuclear genocides of staggering proportions can be carried out long-distance, continents away.<sup>391</sup>

It has been a long road down a particularly brutal path through the twentieth century toward the definition, criminalization, and punishment of genocide. Now, as the last vestiges of former sovereigns' immunity defense against genocide wane with the Milosevic trial at The Hague, the world community can look forward to a better century, secure in the knowledge that genocides are indeed cognizable crimes and perpetrators, whatever their position, are punishable, even if they cannot readily be gotten when hiding behind strong armies. Justice is patient. And once they are captured, the old artificial shield of legal impunity cannot save them.

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<sup>390</sup> Paul A. Hemesath, Note, *Who's Got the Button? Nuclear War Powers Uncertainty in the Post-Cold War Era*, 88 GEO. L.J. 2473, 2473 (2000) (citing *First Use of Nuclear Weapons: Preserving Responsible Control: Hearings Before the Subcomm. on Int'l Sec. & Scientific Affairs of the Comm. on Int'l Relations of the House of Rep.*, 94th Cong. 218 (1976)).

<sup>391</sup> See SCHABAS, *supra* note 2, at 474-75 (discussing the ICJ's determination that nuclear attack allowed for an inference of intent to destroy a protected group given the potential enormity of casualties).

APPENDIX I  
CONVENTION ON THE PREVENTION AND PUNISHMENT OF  
THE CRIME OF GENOCIDE

ADOPTED BY THE GENERAL ASSEMBLY  
OF THE UNITED NATIONS ON 9 DECEMBER 1948

THE CONTRACTING PARTIES,

HAVING CONSIDERED the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

RECOGNIZING that at all periods of history genocide has inflicted great losses on humanity, and

BEING CONVINCED that, in order to liberate mankind from such an odious scourge, international co-operation is required,

HEREBY AGREE AS HEREINAFTER PROVIDED:

*Article I*

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

*Article II*

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

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

*Article III*

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

*Article IV*

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

*Article V*

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

*Article VI*

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

*Article VII*

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

*Article VIII*

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention

and suppression of acts of genocide or any of the other acts enumerated in article III.

*Article IX*

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

*Article X*

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

*Article XI*

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any nonmember State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article XII*

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

*Article XIII*

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall



draw up a process-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

#### *Article XIV*

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

#### *Article XV*

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

#### *Article XVI*

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### *Article XVII*

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article 11;
- (b) Notifications received in accordance with article 12;
- (c) The date upon which the present Convention comes into force in accordance with article 13;

- (d) Denunciations received in accordance with article 14;
- (e) The abrogation of the Convention in accordance with article 15;
- (f) Notifications received in accordance with article 16.

*Article XVIII*

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

*Article XIX*

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

APPENDIX II  
THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE  
FORMER YUGOSLAVIA

CASE NO. IT-01-51-I

THE PROSECUTOR OF THE TRIBUNAL AGAINST SLOBODAN  
MILOSEVIC<sup>1</sup>

*INDICTMENT*

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the International Criminal Tribunal for the former Yugoslavia ("the Statute of the Tribunal"), charges:

SLOBODAN MILOSEVIC

with GENOCIDE, CRIMES AGAINST HUMANITY, GRAVE BREACHES OF THE GENEVA CONVENTIONS and VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR as set forth below:

*THE ACCUSED*

1. SLOBODAN MILOSEVIC, son of Svetozar Milosevic, was born on 20 August 1941 in Pozarevac, in the present-day Republic of Serbia, one of the constituent republics of the Federal Republic of Yugoslavia ("FRY"). In 1964, he graduated from the Law Faculty of the University of Belgrade and began a career in management and banking. Until 1978, he held the posts of deputy director and later general director at *Tehnogas*, a major oil company in the then Socialist Federal Republic of Yugoslavia ("SFRY"). Thereafter, he became president of *Beogradska banka (Beobanka)*, one of the largest banks in the SFRY, a post he held until 1983.

2. SLOBODAN MILOSEVIC, joined the League of Communists of Yugoslavia in 1959. In 1984, he became Chairman of the City Committee of the League of Communists of Belgrade. In 1986, he was elected Chairman of the Presidium of the Central Committee of the League of Communists of Serbia and was re-elected in 1988. On 16 July 1990, the League of Communists of Serbia and the Socialist Alliance of Working People of Serbia united, forming a new party named the Socialist Party of Serbia ("SPS"). On 17 July 1990, SLOBODAN MILOSEVIC was elected President of the SPS

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<sup>1</sup> Prosecutor v. Milosevic, No. IT-01-51-I (Int'l Crim. Trib. Fmr. Yugoslavia 2001), available at <http://www.un.org/icty/indictment/english/mil-ii011122e.htm>.

and remained in that post except during the period from 24 May 1991 to 24 October 1992.

3. SLOBODAN MILOSEVIC was elected President of the Presidency of the then Socialist Republic of Serbia on 8 May 1989 and re-elected on 5 December 1989. After the adoption of a new Constitution, on 28 September 1990, the Socialist Republic of Serbia became the Republic of Serbia, and SLOBODAN MILOSEVIC was elected to the newly established office of President of the Republic of Serbia in multi-party elections, held in December 1990. He was re-elected to this office in elections held on 20 December 1992.

4. After serving two terms as President of the Republic of Serbia, SLOBODAN MILOSEVIC was elected President of the Federal Republic of Yugoslavia on 15 July 1997, beginning his official duties on 23 July 1997. Following his defeat in the Federal Republic of Yugoslavia's presidential election of September 2000, SLOBODAN MILOSEVIC relinquished his position on 6 October 2000.

### *INDIVIDUAL CRIMINAL RESPONSIBILITY*

#### Article 7(1) of the Statute of the Tribunal

5. SLOBODAN MILOSEVIC is individually criminally responsible for the crimes referred to in Articles 2, 3, 4 and 5 of the Statute of the Tribunal as described in this indictment, which he planned, instigated, ordered, committed, or in whose planning, preparation, or execution he otherwise aided and abetted. By using the word "committed" in this indictment, the Prosecutor does not intend to suggest that the accused physically committed any of the crimes charged personally. "Committed" in this indictment refers to participation in a joint criminal enterprise as a co-perpetrator.

6. SLOBODAN MILOSEVIC participated in the joint criminal enterprise as set out below. The purpose of this joint criminal enterprise was the forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina (hereinafter referred to as "Bosnia and Herzegovina"), through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the Tribunal.

7. The joint criminal enterprise was in existence by 1 August 1991 and continued until at least 31 December 1995. The individuals participating in this joint criminal enterprise included SLOBODAN MILOSEVIC, Radovan KARADZIC, Momcilo KRAJISNIK, Biljana PLAVSIC, General Ratko MLADIC, Borisav JOVIC,

Branko KOSTIC, Veljko KADIJEVIC, Blagoje ADZIC, Milan MARTIC, Jovica STANISIC, Franko SIMATOVIC, also known as "Frenki," Radovan STOJICIC, also known as "Badza," Vojislav SESELJ, Zeljko RAZNATOVIC, also known as "Arkan," and other known and unknown participants.

8. The crimes enumerated in Counts 1 to 29 of this indictment were within the object of the joint criminal enterprise. Alternatively, the crimes enumerated in Counts 1 to 15 and 19 to 29 were natural and foreseeable consequences of the execution of the object of the joint criminal enterprise and the accused was aware that such crimes were the possible outcome of the execution of the joint criminal enterprise.

9. In order for the joint criminal enterprise to succeed in its objective, SLOBODAN MILOSEVIC worked in concert with or through other individuals in the joint criminal enterprise. Each participant or co-perpetrator within the joint criminal enterprise, sharing the intent to contribute to the enterprise, played his or her own role or roles that significantly contributed to achieving the objective of the enterprise. The roles of the participants or co-perpetrators include, but are not limited to, the following:

10. Radovan KARADZIC was President of the Serbian Democratic Party of Bosnia and Herzegovina (*Srpska demokratska stranka Bosne i Hercegovine* or "SDS") throughout the period of the indictment. On 27 March 1992, KARADZIC became the President of the Bosnian Serb "National Security Council." On 12 May 1992, he was elected President of the three-member Presidency of the self-proclaimed Serbian Republic of Bosnia and Herzegovina (hereinafter referred to as "Republika Srpska") and remained in this position after the Presidency was expanded to five members on 2 June 1992. On 17 December 1992, KARADZIC was elected President of Republika Srpska and remained in that position throughout the period of this indictment. In his capacity as a member of the Bosnian Serb National Security Council, member of the Presidency, as President of Republika Srpska, and in his position of leadership within the SDS party and organs of the Republika Srpska government, Radovan KARADZIC, together with others, commanded, directed, or otherwise exercised effective control over the Territorial Defence ("TO"), the Bosnian Serb army ("VRS") and the police forces of Republika Srpska who participated in the crimes specified in this indictment.

11. Momcilo KRAJISNIK, a close associate of Radovan KARADZIC, was a member of the SDS Main Board from 12 July 1991. On 24 October 1991, the day of the founding of the "Assembly of the Serbian People of Bosnia and Herzegovina," (hereinafter referred to as the "Bosnian Serb Assembly") KRAJISNIK was elected its President. From 27 March 1992, KRAJISNIK was a member of the Bosnian Serb National Security Council. He became a member of the five-member Presidency on 2 June 1992. When the Bosnian Serb Assembly elected Radovan KARADZIC President of Republika Srpska on 17 December 1992, KRAJISNIK ceased to be a member of the Presidency, but continued to be one of the most important political leaders in Republika Srpska and remained the President of its National Assembly until 19 October 1996. In his capacity as a member of the Bosnian Serb National Security Council as a member of the Presidency of Republika Srpska, and in his position of leadership within the SDS party and organs of the Republika Srpska government, Momcilo KRAJISNIK, together with others, commanded, directed, or otherwise exercised effective control over the TO, the VRS and the police forces of Republika Srpska who participated in the crimes specified in this indictment.

12. Biljana PLAVSIC, a high-ranking SDS politician, on 28 February 1992, became one of two Acting Presidents of the Serbian Republic of Bosnia and Herzegovina, together with Nikola KOLJEVIC. As an Acting President, Biljana PLAVSIC became an *ex officio* member of the Bosnian Serb National Security Council. On 12 May 1992, she was elected as a member of the three-member Presidency and remained in this position after it was expanded to five members. When the Bosnian Serb Assembly elected Radovan KARADZIC President of Republika Srpska on 17 December 1992, it also elected Biljana PLAVSIC one of two Vice-Presidents, a position she held until 19 July 1996. In her capacity as Vice-President, member of the Bosnian Serb National Security Council as a member of the Presidency of Republika Srpska, and in her position of leadership within the SDS party and organs of the Republika Srpska government, Biljana PLAVSIC, together with others, commanded, directed, or otherwise exercised effective control over the TO, the VRS and the police forces of Republika Srpska who participated in the crimes specified in this indictment.

13. General Ratko MLADIC, a military career officer previously stationed in Macedonia and Kosovo, became the commander

of the 9<sup>th</sup> Corps (Knin Corps) of the Yugoslav People's Army ("JNA") in June 1991 and participated in the fighting in Croatia. On 4 October 1991, the SFRY Presidency promoted him to Major General. Subsequently, in May 1992, he assumed command of the forces of the Second Military District of the JNA in Sarajevo. From 12 May 1992 until November 1996, he was the Commander of the Main Staff of the VRS and in this capacity, together with others, commanded, directed, or otherwise exercised effective control over the VRS and other units acting in co-ordination with the VRS who participated in the crimes specified in this indictment.

14. Borisav JOVIC was successively the Vice-President, President and then a member of the SFRY Presidency from 15 May 1989 until April 1992, as well as the President of the SPS from May 1991 until October 1992, and a high ranking official of the SPS until November 1995. Borisav JOVIC and Branko KOSTIC, the Vice-President and then Acting President of the Presidency of the SFRY, together with others during the relevant period, commanded, directed, or otherwise exercised effective control over the JNA and members of the TO and paramilitary units acting in co-ordination with, and under supervision of, the JNA.

15. General Veljko KADIJEVIC, as Federal Secretary for National Defence from 15 May 1988 until 6 January 1992, commanded, directed, or otherwise exercised effective control over the JNA and other units acting in co-ordination with the JNA.

16. General Blagoje ADZIC, in his capacity as JNA Chief of Staff from 1990 to 28 February 1992 and Acting Federal Secretary for National Defence from mid-1991 to 28 February 1992, Federal Secretary for National Defence from 28 February 1992 to 27 April 1992 and JNA Chief of Staff from 27 April 1992 to 8 May 1992, together with others, commanded, directed, or otherwise exercised effective control over the JNA and other units acting in co-ordination with the JNA.

17. Jovica STANISIC, in his capacity as chief of the State Security (*Drzavna bezbednost* or "DB") of the Republic of Serbia from March 1991 to October 1998, commanded, directed, or otherwise exercised effective control over members of the DB, who participated in the perpetration of the crimes specified in this indictment. In addition, he provided arms, funds, training, or other substantial assistance or support to Serb paramilitary units and police units that were subsequently involved in the crimes specified in this indictment.

18. Franko SIMATOVIC, also known as “Frenki,” as head of the special operations component of the DB of the Republic of Serbia, commanded, directed, or otherwise exercised effective control over agents of the DB who perpetrated crimes specified in this indictment. In addition, he provided arms, funds, training, or other substantial assistance or support to Serb paramilitary units and police units that were subsequently involved in the crimes charged in this indictment.

19. Radovan STOJICIC, also known as “Badza,” as Deputy Minister of Interior of Serbia and head of Public Security Service, commanded, directed or otherwise exercised effective control over special forces of the Serbian MUP and volunteer units who participated in the crimes specified in this indictment. In addition, he provided arms, funds, training, or other substantial assistance or support to Serb paramilitary units and police units that were subsequently involved in the crimes specified in this indictment.

20. Milan MARTIC, as “Secretary of the Secretariat of Internal Affairs” of the so-called Serbian Autonomous Region (“SAO”) Krajina from 4 January 1991 until 29 May 1991; as “Minister of Defence” of the SAO Krajina from 29 May 1991 to 27 June 1991; and as “Minister of Internal Affairs” for the SAO Krajina (later “Republic of Serbian Krajina”) from 27 June 1991 to January 1994, established, commanded, directed, and otherwise exercised effective control over members of his police force (referred to as “Martić’s Police,” “Martić’s Militia,” “Marticevci,” “SAO Krajina Police” or “SAO Krajina Militia”) who were subsequently involved in the crimes specified in this indictment.

21. Zeljko RAZNATOVIC, also known as “Arkan,” in 1990 established and commanded the Serbian Volunteer Guard, a paramilitary unit commonly known as “Arkanovci” or “Arkan’s Tigers,” who during the time relevant to this indictment operated in Bosnia and Herzegovina and were involved in the crimes charged in this indictment. In addition, he maintained a significant military base in Erdut, Croatia, where he functioned as commander. Other paramilitary groups and TO units were trained at this base and were subsequently involved in the crimes charged in this indictment.

22. Vojislav SESELJ, as President of the Serbian Radical Party (SRP) from at least February 1991 throughout the time relevant to this indictment recruited or otherwise provided substantial assistance or support to Serb paramilitary units, commonly



known as "Seseljevci" or "Seselj's men," who perpetrated crimes as specified in this indictment. In addition, he openly espoused and encouraged the creation of a "Greater Serbia" by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred.

23. From 1987 until late 2000, SLOBODAN MILOSEVIC was the dominant political figure in Serbia and the SFRY/FRY. He acquired control of all facets of the Serbian government, including the police and the state security services. In addition, he gained control over the political leaderships of Kosovo, Vojvodina, and Montenegro.

24. In his capacity as the President of Serbia and through his leading position in the SPS party, SLOBODAN MILOSEVIC exercised effective control or substantial influence over the above listed participants in the joint criminal enterprise and either alone or acting in concert with them and additional known and unknown persons effectively controlled or substantially influenced the actions of the Federal Presidency of the SFRY and later the FRY, the Serbian Ministry of Internal Affairs ("MUP"), the JNA, the Yugoslav Army ("VJ") and the VRS, as well as Serb paramilitary groups.

25. SLOBODAN MILOSEVIC, acting alone and in concert with other members of the joint criminal enterprise participated in the joint criminal enterprise in the following ways:

a) He exerted effective control over elements of the JNA and VJ which participated in the planning, preparation, facilitation and execution of the forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina.

b) He provided financial, logistical and political support to the VRS. These forces subsequently participated in the execution of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the Tribunal.

c) He exercised substantial influence over, and assisted, the political leadership of Republika Srpska in the planning, preparation, facilitation and execution of the take-over of municipalities in Bosnia and Herzegovina and the subsequent forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from those municipalities.

d) He participated in the planning and preparation of the take-over of municipalities in Bosnia and Herzegovina and the subsequent forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from those municipalities. He provided the financial, material and logistical support necessary for such take-over.

e) He participated in the formation, financing, supply, support and direction of special forces of the Republic of Serbia Ministry of Internal Affairs. These special forces participated in the execution of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the Tribunal.

f) He participated in providing financial, logistical and political support and direction to Serbian irregular forces or paramilitaries. These forces participated in the execution of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the Tribunal.

g) He controlled, manipulated or otherwise utilised Serbian state-run media to spread exaggerated and false messages of ethnically based attacks by Bosnian Muslims and Croats against Serb people intended to create an atmosphere of fear and hatred among Serbs living in Serbia, Croatia and Bosnia and Herzegovina which contributed to the forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina.

26. SLOBODAN MILOSEVIC knowingly and wilfully participated in the joint criminal enterprise, while being aware of the foreseeable consequences of this enterprise. On this basis, he bears individual criminal responsibility for these crimes under Article 7(1) of the Statute of the Tribunal, in addition to his responsibility under the same Article for having planned, instigated, ordered or otherwise aided and abetted in the planning, preparation and execution of these crimes.

#### Article 7(3) of the Statute of the Tribunal

27. SLOBODAN MILOSEVIC, while holding positions of superior authority, is also individually criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute of the Tribunal. A superior is responsible for the criminal acts of his subordinates if he knew or had reason to know that his subordinates were about to commit such acts or had done so,

and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

28. From at least March 1991 until 15 June 1992, SLOBODAN MILOSEVIC exercised effective control over the four members of the "Serbian Bloc" within the Presidency of the SFRY. These four individuals were Borisav JOVIC, the representative of the Republic of Serbia; Branko KOSTIC, the representative of the Republic of Montenegro; Jugoslav KOSTIC, the representative of the Autonomous Province of Vojvodina; and Sejdo BAJRAMOVIC, the representative of the Autonomous Province of Kosovo and Metohija. SLOBODAN MILOSEVIC used Borisav JOVIC and Branko KOSTIC as his primary agents in the Presidency and through them he directed the actions of the "Serbian Bloc." From 1 October 1991, in the absence of the representatives of the Presidency from Croatia, Slovenia, Macedonia and Bosnia and Herzegovina, the four members of the "Serbian Bloc" exercised the powers of the Presidency, including that of collective "Commander-in-Chief" of the JNA. This "Rump Presidency" acted without dissension to execute SLOBODAN MILOSEVIC's policies. The Federal Presidency had effective control over the JNA as its "Commander-in-Chief" and other units under the supervision of the JNA. Generals Veljko KADIJEVIC and Blagoje ADZIC, who directed and supervised the JNA forces in Bosnia and Herzegovina, were in constant communication and consultation with the accused.

29. On 27 April 1992, the Supreme Defence Council was formed. Throughout the time relevant to this indictment, SLOBODAN MILOSEVIC was a member of the Supreme Defence Council and exercised substantial influence and control over other members of the Council. The Supreme Defence Council and the President of the FRY had *de jure* control over the JNA and later the VJ. In addition to his *de jure* powers, at all times relevant to this indictment, SLOBODAN MILOSEVIC exercised *de facto* control over the JNA and the VJ through his control over the high ranking officers of these armies.

30. SLOBODAN MILOSEVIC is therefore individually criminally responsible, under Article 7(3) of the Statute of the Tribunal, for the participation of the members of the JNA and the VJ and other units under the supervision of the JNA and the VJ in the crimes described in this indictment.

31. From the time SLOBODAN MILOSEVIC came to power in Serbia, he exercised control over key officials in the Serbian MUP,

among them Radmilo BOGDANOVIC and Zoran SOKOLOVIC, who were both, at different times, the Minister of Internal Affairs of Serbia. He also exercised control over Jovica STANISIC and Franko SIMATOVIC, both high-ranking officials in the DB. Through these officials, SLOBODAN MILOSEVIC exercised effective control over agents of the MUP, including the DB, who directed and supported the actions of the special forces and Serb paramilitary groups operating in Bosnia and Herzegovina. The accused SLOBODAN MILOSEVIC is therefore individually criminally responsible, under Article 7(3) of the Statute of the Tribunal, for the participation of the members of the Serbian MUP, including the DB, in the crimes described in this indictment.

### *THE CHARGES*

#### COUNTS 1 and 2 GENOCIDE OR COMPLICITY IN GENOCIDE

32. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with other members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation and execution of the destruction, in whole or in part, of the Bosnian Muslim and Bosnian Croat national, ethnical, racial or religious groups, as such, in territories within Bosnia and Herzegovina, including: Bijeljina; Bosanski Novi; Bosanski Samac; Bratunac; Brcko; Doboj; Foca; Sarajevo (Ilijas); Kljuc; Kotor Varos; Sarajevo (Novi Grad); Prijedor; Rogatica; Sanski Most; Srebrenica; Visegrad; Vlasenica and Zvornik. The destruction of these groups was effected by:

a) The widespread killing of thousands of Bosnian Muslims and Bosnian Croats, during and after the take-over of territories within Bosnia and Herzegovina, including those listed above, as specified in SCHEDULE A to this indictment. In many of the territories, educated and leading members of these groups were specifically targeted for execution, often in accordance with pre-prepared lists. After the fall of Srebrenica in July 1995, almost all captured Bosnian Muslim men and boys, altogether several thousands, were executed at the places where they had been captured or at sites to which they had been transported for execution.

b) The killing of thousands of Bosnian Muslims and Bosnian Croats in detention facilities within Bosnia and Herzegovina, in-

cluding those situated within the territories listed above, as specified in SCHEDULE B to this indictment.

c) The causing of serious bodily and mental harm to thousands of Bosnian Muslims and Bosnian Croats during their confinement in detention facilities within Bosnia and Herzegovina, including those situated within the territories listed above, as specified in SCHEDULE C to this indictment. Members of these groups, during their confinement in detention facilities and during their interrogation at these locations, police stations and military barracks, were continuously subjected to, or forced to witness, inhumane acts, including murder, sexual violence, torture and beatings.

d) The detention of thousands of Bosnian Muslims and Bosnian Croats in detention facilities within Bosnia and Herzegovina, including those situated within the territories listed above, under conditions of life calculated to bring about the partial physical destruction of those groups, namely through starvation, contaminated water, forced labour, inadequate medical care and constant physical and psychological assault.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 1: GENOCIDE*, punishable under Articles 4(3)(a) and 7(1) and 7(3) of the Statute of the Tribunal; or

*Count 2: COMPLICITY IN GENOCIDE*, punishable under Articles 4(3)(e) and 7(1) and 7(3) of the Statute of the Tribunal.

### COUNT 3 PERSECUTIONS

33. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of persecutions of non-Serbs, principally Bosnian Muslims and Bosnian Croats, within the territories of Banja Luka; Bihac; Bijeljina; Bileca; Bosanska Dubica; Bosanska Gradiska; Bosanska Krupa; Bosanski Novi; Bosanski Petrovac; Bosanski Samac; Bratunac; Brcko; Cajnice; Celinac; Doboj; Donji Vakuf; Foca; Gacko; Gorazde, Sarajevo (Hadzici); Sarajevo (Ilidza); Sarajevo (Ilijas); Kljuc; Kalinovik; Kotor Varos; Nevesinje; Sarajevo (Novi Grad); Sarajevo (Novo Sarajevo); Sarajevo (Pale); Prijedor; Prnjavor; Rogatica; Rudo; Sanski Most;

Sekovici; Sipovo; Sokolac; Srebrenica; Teslic; Trebinje; Sarajevo (Trnovo); Visegrad; Vlasenica; Sarajevo (Vogosca) and Zvornik.

34. Throughout this period, Serb forces, comprised of JNA, VJ, VRS units, local TO units, local and Serbian MUP police units and paramilitary units from Serbia and Montenegro, attacked and took control of towns and villages in these territories. After the take-over, the Serb forces in co-operation with the local Serb authorities established a regime of persecutions designed to drive the non-Serb civilian population from these territories.

35. These persecutions were committed on the discriminatory grounds of political affiliation, race or religion and included:

a) The extermination or murder of thousands of Bosnian Muslim, Bosnian Croat and other non-Serb civilians, including women and the elderly, in those territories listed above, the details of which are set out in SCHEDULES A AND B to this indictment.

b) The prolonged and routine imprisonment and confinement of thousands of Bosnian Muslim, Bosnian Croat and other non-Serb civilians in detention facilities within and outside of Bosnia and Herzegovina, the details of which are set out in SCHEDULE C to this indictment.

c) The establishment and perpetuation of inhumane living conditions against Bosnian Muslim, Bosnian Croat and other non-Serb civilians, within the above mentioned detention facilities. These living conditions were brutal and characterised by inhumane treatment, overcrowding, starvation, forced labour and systematic physical and psychological abuse, including torture, beatings and sexual assault.

d) The prolonged and frequent forced labour of Bosnian Muslim, Bosnian Croat and other non-Serb civilians, from these detention facilities. The forced labour included digging graves and trenches and other forms of manual labour at the frontlines.

e) The cruel and inhumane treatment of Bosnian Muslim, Bosnian Croat and other non-Serb civilians during and after the take-over of the municipalities specified above. Such inhumane treatment included, but was not limited to, sexual violence, torture, physical and psychological abuse and forced existence under inhumane living conditions.

f) The imposition of restrictive and discriminatory measures against Bosnian Muslims, Bosnian Croats and other non-Serbs, such as, the restriction of freedom of movement; removal from positions of authority in local government institutions and the po-

lice; dismissal from jobs; arbitrary searches of their homes; denial of the right to judicial process and the denial of the right of equal access to public services, including proper medical care.

g) The beating and robbing of Bosnian Muslim, Bosnian Croat and other non-Serb civilians.

h) The forcible transfer and deportation of thousands of Bosnian Muslim, Bosnian Croat and other non-Serb civilians, from the territories listed above, to locations outside of Serb held territories as described in paragraphs 40 and 41 and SCHEDULE D to this indictment.

i) The appropriation and plunder of property belonging to Bosnian Muslim, Bosnian Croat and other non-Serb civilians.

j) The intentional and wanton destruction of homes, other public and private property belonging to Bosnian Muslims and Bosnian Croats, their cultural and religious institutions, historical monuments and other sacred sites, as described in paragraph 42.

k) The obstruction of humanitarian aid, in particular medical and food supplies into the besieged enclaves Bihac, Gorazde, Srebrenica and Zepa, and the deprivation of water from the civilians trapped in the enclaves designed to create unbearable living conditions.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 3:* Persecutions on political, racial or religious grounds, a CRIME AGAINST HUMANITY, punishable under Articles 5(h) and 7(1) and 7(3) of the Statute of the Tribunal.

#### COUNTS 4 to 7

#### EXTERMINATION, MURDER AND WILFUL KILLING

36. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with other members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the extermination, murder and wilful killings of non-Serbs, principally Bosnian Muslims and Bosnian Croats living in the territories of Banja Luka; Bihac; Bijeljina; Bileca;; Bosanska Gradiska; Bosanska Krupa; Bosanski Novi; Bosanski Petrovac; Bosanski Samac; Bratunac; Brcko; Cajnice; Celinac; Doboj; Foca; Gacko; Sarajevo (Ilijas); Kljuc; Kalinovik; Kotor Varos; Nevesinje; Sarajevo (Novi Grad); Prijedor; Prnjavor;

Rogatica; Rudo; Sanski Most; Sokolac; Srebrenica; Teslic; Visegrad; Vlasenica and Zvornik. The extermination, murder and wilful killings of these groups were affected by:

a) The killing of Bosnian Muslims, Bosnian Croats and other non-Serbs in their towns and villages, during and after the takeover of the territories listed above including those specified in SCHEDULE A to this indictment.

b) The killing of Bosnian Muslims, Bosnian Croats and other non-Serbs in detention facilities and during their deportation or forcible transfers, including those specified in SCHEDULE B to this indictment.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 4:* Extermination, a CRIME AGAINST HUMANITY, punishable under Articles 5(b) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 5:* Murder, a CRIME AGAINST HUMANITY, punishable under Articles 5(a) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 6:* Wilful killing, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(a) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 7:* Murder, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

#### COUNTS 8 to 15

#### UNLAWFUL CONFINEMENT, IMPRISONMENT, TORTURE, WILFULLY CAUSING GREAT SUFFERING, OTHER INHUMANE ACTS

37. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful confinement or imprisonment under inhumane conditions of Bosnian Muslims, Bosnian Croats and other non-Serbs within the territories of Banja Luka; Bihać; Bijeljina; Bileća; Bosanska Dubica; Bosanska Krupa; Bosanski Novi; Bosanski Petrovac; Bosanski Samac; Bratunac; Brčko; Čajnice; Celinac; Doboj; Donji Vakuf; Foca; Gacko; Ključ; Kalinovik;



Kotor Varos; Nevesinje; Prijedor; Prnjavor; Rogatica; Rudo; Sanski Most; Sokolac; Teslic; Visegrad; Vlasenica and Zvornik.

38. Serb military forces, comprised of JNA, VJ, VRS, TO and paramilitary units acting in co-operation with local police staff and local Serb authorities, arrested and detained thousands of Bosnian Muslim, Bosnian Croat and other non-Serb civilians from the territories listed above. These civilians were held in short and long-term detention, of which the major facilities are specified in SCHEDULE C to this indictment.

39. The living conditions in these detention facilities were brutal and characterised by inhumane treatment, overcrowding, starvation, forced labour, inadequate medical care and systematic physical and psychological assault, including torture, beatings and sexual assault.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 8:* Imprisonment, a CRIME AGAINST HUMANITY, punishable under Articles 5(e) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 9:* Torture, a CRIME AGAINST HUMANITY, punishable under Articles 5(f) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 10:* Inhumane acts, a CRIME AGAINST HUMANITY, punishable under Articles 5(i) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 11:* Unlawful Confinement, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(g) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 12:* Torture, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(b) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 13:* Wilfully causing great suffering, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(c) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 14:* Torture, a VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 15:* Cruel Treatment, a VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR as recognised by Common Article 3(1)(a)

of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 16 to 18  
DEPORTATION AND INHUMANE ACTS  
(FORCIBLE TRANSFERS)

40. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the unlawful forcible transfer, also qualifying as deportation where indicated hereinafter, of tens of thousands of Bosnian Muslim, Bosnian Croat and other non-Serb civilians from their legal domiciles in the territories of Banja Luka (deportation); Bihac; Bijeljina; Bileca (deportation); Bosanska Dubica; Bosanska Gradiska; Bosanska Krupa; Bosanski Novi; Bosanski Petrovac; Bosanski Samac (deportation); Bratunac; Brcko; Cajnice; Celinac; Doboje; Donji Vakuf; Foca; Gacko (deportation); Sarajevo (Hadzici); Sarajevo (Ilidza); Sarajevo (Ilijas); Kljuc; Kalinovik; Kotor Varos; Nevesinje; Sarajevo (Novi Grad); Sarajevo (Novo Sarajevo); Sarajevo (Pale); Prijedor; Prnjavor; Rogatica; Rudo (deportation); Sanski Most; Sekovici; Sipovo; Sokolac; Srebrenica; Teslic; Trebinje; Sarajevo (Trnovo); Visegrad; Vlasenica; Sarajevo (Vogosca) and Zvornik (deportation), to other areas both inside and outside Bosnia and Herzegovina. The details of such acts and omissions are described in SCHEDULE D.

41. In order to achieve this objective, Serb forces comprised of JNA, VJ, VRS and TO, paramilitary units acting in co-operation with local police staff, local Serb authorities and special forces of the Serbian Ministry of Internal Affairs under the effective control of SLOBODAN MILOSEVIC or other members of the joint criminal enterprise, subjugated villages and towns in Bosnia and Herzegovina and participated with members of the SDS in the disarming of the non-Serb population. The towns and villages, including areas in which the inhabitants complied and offered no resistance, were then attacked. These attacks were intended to compel the non-Serb population to flee. After taking control of the towns and villages, the Serb forces often rounded-up the remaining non-Serb civilian population and forcibly removed them from the area. On other occasions, the Serb forces in co-operation with the local Serb authorities imposed restrictive and discriminatory measures on

the non-Serb population and engaged in a campaign of terror designed to drive them out of the territory. The majority of non-Serbs that remained were eventually deported or forcibly transferred from their homes.

By these acts and omissions SLOBODAN MILOSEVIC committed:

*Count 16:* Deportation, a CRIME AGAINST HUMANITY, punishable under Articles 5(d) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 17:* Inhumane Acts (Forcible Transfers), a CRIME AGAINST HUMANITY, punishable under Articles 5(i) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 18:* Unlawful Deportation or Transfer, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(g) and 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 19 to 22  
WANTON DESTRUCTION, PLUNDER OF PUBLIC OR  
PRIVATE PROPERTY

42. From on or about 1 March 1992 until 31 December 1995, SLOBODAN MILOSEVIC, acting alone or in concert with members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the wanton destruction and plunder of the public and private property of the Bosnian Muslim, Bosnian Croat and other non-Serb populations within the territories of Banja Luka; Bihac; Bijeljina; Bileca; Bosanska Dubica; Bosanska Gradiska; Bosanska Krupa; Bosanski Novi; Bosanski Petrovac; Bosanski Samac; Bratunac; Brcko; Cajnice; Celinac; Doboj; Donji Vakuf; Foca; Gacko; Sarajevo (Hadzici); Sarajevo (Ilidza); Sarajevo (Ilijas); Kljuc; Kalinovik; Kotor Varos; Nevesinje; Sarajevo (Novi Grad); Sarajevo (Novo Sarajevo); Sarajevo (Pale); Prijedor; Prnjavor; Rogatica; Rudo; Sanski Most; Sekovici; Sipovo; Sokolac; Srebrenica; Teslic; Sarajevo (Trnovo); Trebinje; Visegrad; Vlasenica; Sarajevo (Vogosca), and Zvornik. This intentional and wanton destruction and plunder was not justified by military necessity and included:

a) The appropriation and plunder of property belonging to Bosnian Muslim, Bosnian Croat and other non-Serb civilians, in-

cluding the coerced signing of documents relinquishing property rights.

b) The intentional and wanton destruction of homes and other property owned by Bosnian Muslim, Bosnian Croat and other non-Serb civilians. Such destruction was employed as a means to compel non-Serbs to flee their legal domiciles and to prevent their subsequent return.

c) The intentional and wanton destruction of religious and cultural buildings of the Bosnian Muslim and Bosnian Croat communities including, but not limited to, mosques, churches, libraries, educational buildings and cultural centres.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 19:* Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(d) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 20:* Wanton destruction of villages, or devastation not justified by military necessity, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Articles 3(b) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 21:* Wilful destruction or wilful damage done to historic monuments and institutions dedicated to education or religion, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Articles 3(d) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 22:* Plunder of public or private property, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Articles 3(e) and 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 23 to 29  
MURDER, WILFUL KILLING, WILFULLY CAUSING GREAT  
SUFFERING, CRUEL TREATMENT, ATTACKS  
ON CIVILIANS

43. Between April 1992 and November 1995, SLOBODAN MILOSEVIC, acting alone or in concert with members of the joint criminal enterprise, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of a military campaign of artillery and mortar shelling and sniping onto civilian areas of Sarajevo and upon its civilian popu-

lation, killing and wounding thousands of civilians of all ages and both sexes.

44. In this time period, the Sarajevo Romanija Corps of the VRS, under the effective control of Radovan KARADZIC and General Ratko MLADIC, launched an extensive, forty-four month shelling and sniping attack on Sarajevo, mostly from positions in the hills surrounding the city with an unobstructed view of Sarajevo.

45. The Sarajevo Romanija Corps conducted a protracted campaign of shelling and sniping upon Sarajevo during which civilians were either specifically targeted or the subject of reckless fire into areas where civilians were known to have been. Among the victims of this campaign were civilians who were, amongst other things, tending vegetable plots, queuing for bread or water, attending funerals, shopping in markets, riding on trams, gathering wood. Specific instances of sniping are described in SCHEDULE E attached to this indictment. Specific instances of shelling are set forth in SCHEDULE F.

By these acts and omissions, SLOBODAN MILOSEVIC committed:

*Count 23:* Murder, a CRIME AGAINST HUMANITY, punishable under Articles 5(a) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 24:* Inhumane acts, a CRIME AGAINST HUMANITY, punishable under Articles 5(i) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 25:* Wilful killing, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(a) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 26:* Wilfully causing great suffering, a GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949, punishable under Articles 2(c) and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 27:* Murder, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 28:* Cruel treatment, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

*Count 29:* Attacks on civilians, a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, as recognised by Article 51 (2) of Additional Protocol I and Article 13 (2) of Additional Protocol II to the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal.

#### GENERAL LEGAL ALLEGATIONS

46. All acts and omissions alleged in this indictment occurred on the territory of the former Yugoslavia.

47. At all times relevant to this indictment, a state of international armed conflict and partial occupation existed in Bosnia and Herzegovina.

48. All acts and omissions charged as Grave Breaches of the Geneva Conventions of 1949 occurred during the international armed conflict and partial occupation of Bosnia and Herzegovina. All such acts and omissions were committed against persons protected under the Geneva Conventions.

49. All acts and omissions charged relative to the destruction of property as Grave Breaches of the Geneva Conventions of 1949 involved “protected property” under the relevant provisions of the Geneva Conventions.

50. At all times relevant to this indictment SLOBODAN MILOSEVIC was required to abide by the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 1949 and the Additional Protocols thereto.

51. All conduct charged as Crimes against Humanity was part of a widespread or systematic attack directed against the Bosnian Muslim, Bosnian Croat and other non-Serb civilian populations within large areas of Bosnia and Herzegovina.

#### ADDITIONAL FACTS

52. In November 1990, multi-party elections were held in Bosnia and Herzegovina. At the Republic level, the SDA (*Stranka Demokratske Akcije*—Party of Democratic Action) the party of the Bosnian Muslims won 86 seats; the SDS, the party of the Bosnian Serbs, won 72 seats and the HDZ (*Hrvatska demokratska zajednica*—Croatian Democratic Community) won 44 seats in the Assembly.

53. The central idea within the SDS political platform, as articulated by its leaders, including Radovan KARADZIC, Momcilo KRAJISNIK and Biljana PLAVSIC, was the unification of all

Serbs within one state. The SDS regarded the separation of Bosnia and Herzegovina from the SFRY as a threat to the interests of the Serbs.

54. On 5 February 1991 the Assembly of the Republic of Serbia passed a "Law on Ministries" submitted by SLOBODAN MILOSEVIC. This law established twenty "Ministries" of the Serbian government, including the Ministry for Links with Serbs outside Serbia. This Ministry assisted the SDS to establish the Serb Republic of Bosnia and Herzegovina.

55. The results of the November 1990 elections meant that, as time went on, the SDS would be unable through peaceful means to keep the Republic of Bosnia and Herzegovina in what was becoming a Serb-dominated Yugoslavia. As a result, Serb people within certain areas of Bosnia and Herzegovina, with Serb majorities, began to organise themselves into formal regional structures that they referred to as "Associations of Municipalities." In April 1991 the Association of Municipalities of Bosnian Krajina, centred in Banja Luka, was formed.

56. In March 1991, the collective Presidency of the SFRY reached a deadlock on several issues including the issue of instituting a state of emergency in Yugoslavia. The representatives on the Presidency from the Republic of Serbia, the Republic of Montenegro, the Autonomous Province of Vojvodina, and the Autonomous Province of Kosovo and Metohija all resigned from their posts. In a televised address on 16 March 1991, SLOBODAN MILOSEVIC, in his capacity as President of the Republic of Serbia, declared that Yugoslavia was finished and that Serbia would no longer be bound by decisions of the Federal Presidency.

57. On 25 March 1991, SLOBODAN MILOSEVIC and Franjo TUDMAN met in Karadjordjevo and discussed the partition of Bosnia and Herzegovina between Serbia and Croatia.

58. On 25 June 1991, Slovenia and Croatia declared their independence. On 26 June, the JNA intervened in Slovenia. In the summer of 1991, fighting broke out in Croatia.

59. In August 1991 Radovan KARADZIC instituted a system of secret communication between the local boards of the SDS and the Main Staff and with the Republic of Serbia. This secret communication protocol was declared mandatory for the transmission of reports and orders.

60. From autumn 1991, the JNA began to withdraw its forces out of Croatia. Forces under the control of the JNA began to re-

deploy in Bosnia and Herzegovina. Many of these troops were deployed to areas in which there was no garrison or other JNA facility.

61. As the war continued in Croatia it appeared increasingly likely that Bosnia and Herzegovina would also declare its independence from the SFRY. The SDS, realising it could not prevent the secession of Bosnia and Herzegovina from the SFRY, began the creation of a separate Serbian entity within Bosnia and Herzegovina. During the period from September to November 1991, several Serbian Autonomous Regions (SAO) were formed, some of them on the basis of the Associations of Municipalities referred to above.

62. On 12 September 1991, the Serbian Autonomous Region of Herzegovina was proclaimed. On 16 September 1991, the Autonomous Region of Krajina was proclaimed by the Assembly of the Association of Municipalities of Bosnian Krajina. By 21 November 1991, the Serbian Autonomous Regions and Autonomous Regions consisted of the Autonomous Region of Krajina, the SAO Herzegovina, the SAO Romanija-Birac, the SAO Semberija, and SAO Northern Bosnia.

63. On 3 October 1991, the four members of the SFRY Presidency from Serbia and Montenegro (Borisav JOVIC, Jugoslav KOSTIC, Sejdo BAJRAMOVIC and Branko KOSTIC) assumed the function of the SFRY Presidency, circumventing the roles and responsibilities of the Presidency members from Slovenia, Croatia, Bosnia and Herzegovina and Macedonia.

64. On 15 October 1991, at the meeting of the SDS Party Council the decision was reached to form a separate assembly, entitled the "Assembly of the Serbian People of Bosnia and Herzegovina" to secure Serb interests.

65. On or around 22 October 1991, SLOBODAN MILOSEVIC, together with other members of the joint criminal enterprise, continued to advocate for a unitary Serb state governed from Belgrade, Serbia. On the same date the "Rump Presidency" called for the mobilisation of reservists in Serbia and "other regions that want to stay in Yugoslavia."

66. On or about 26 October 1991, Radovan KARADZIC declared a full mobilisation of the TO and the formation of field units in the Serb Republic of Bosnia and Herzegovina.

67. On 24 October 1991, the Assembly of the Serbian People in Bosnia and Herzegovina, dominated by the SDS, decided to con-



duct a "Plebiscite of the Serbian People in Bosnia and Herzegovina" in order to decide whether to stay in the common state of Yugoslavia with Serbia, Montenegro, the Serbian Autonomous Region of Krajina, SAO Western Slavonia and SAO Eastern Slavonia, Baranja and Western Srem.

68. On 9 and 10 November 1991, the Bosnian Serbs held the plebiscite on the issue of whether Bosnia and Herzegovina should stay in Yugoslavia or become an independent state. The results overwhelmingly showed that the Bosnian Serbs wanted to stay in Yugoslavia.

69. On 21 November 1991, the Assembly of the Serbian People of Bosnia and Herzegovina, proclaimed as part of the territory of the federal Yugoslav state all those municipalities, local communities and populated places, in which over 50% of the people of Serbian nationality had voted, during the plebiscite, to remain in that state as well as those places where citizens of other nationalities had expressed themselves in favour of remaining in Yugoslavia.

70. On 11 December 1991, the Assembly of the Serbian People delivered a detailed request to the JNA to protect with all available means as "integral parts of the State of Yugoslavia" the territories of Bosnia and Herzegovina in which the plebiscite of the Serbian people and other citizens on remaining in a joint Yugoslav state had been conducted.

71. On 19 December 1991, the SDS issued instructions for the "Organisation and Activity of the Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances" which provided a plan for the SDS take-over of municipalities in Bosnia and Herzegovina.

72. On 9 January 1992, the Assembly of the Serbian People of Bosnia and Herzegovina adopted a declaration on the Proclamation of the Serbian Republic of Bosnia and Herzegovina. The territory of that republic was declared to include "the territories of the Serbian Autonomous Regions and Districts and of other Serbian ethnic entities in Bosnia and Herzegovina, including the regions in which the Serbian people remained in the minority due to the genocide conducted against it in World War Two", and it was declared to be a part of the federal Yugoslav state. On 12 August 1992, the name of the Bosnian Serb Republic was changed to Republika Srpska.

73. From 29 February to 2 March 1992, Bosnia and Herzegovina held a referendum on independence. At the urging of the SDS, the majority of Bosnian Serbs boycotted the vote. The referendum resulted in a pro-independence majority.

74. On 18 March 1992, during the 11th session of the Assembly of the Serbian People, a conclusion was reached to "prepare for the next session proposals for the take-over of power in the Republic of Serbian People of Bosnia and Herzegovina."

75. From March 1992 onwards, Serb regular and irregular forces seized control of territories within Bosnia and Herzegovina, including those specified in this indictment.

76. On 6 April 1992, the United States and the European Community formally recognized the independence of Bosnia and Herzegovina.

77. On 27 April 1992, Serbia and Montenegro proclaimed a new Federal Republic of Yugoslavia and declared it the successor state of the Socialist Federal Republic of Yugoslavia.

78. On 12 May 1992, at the 16th Assembly of the Serbian People in Bosnia and Herzegovina, Radovan KARADZIC announced the six strategic objectives of the Serbian People in Bosnia and Herzegovina. These objectives included the eradication of the Drina River as a border between the Serbian states. During the same session, General Ratko MLADIC told the Assembly that it would not be possible to separate Serbs from non-Serbs and have the non-Serbs simply leave the territory. He warned that attempting this process would amount to genocide.

79. On 15 May 1992, the United Nations Security Council in its resolution number 752 demanded that all interference from outside Bosnia and Herzegovina by units of the JNA cease immediately and that those units either be withdrawn, be subjected to the authority of the Government of the Republic, or be disbanded and disarmed.

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Carla Del Ponte  
Prosecutor

Dated this 22nd day of November 2001  
At The Hague  
The Netherlands

SCHEDULE A  
KILLINGS NOT ASSOCIATED WITH DETENTION FACILITIES

No	MUNICIPALITY	VICTIMS (KILLED)	DATE
1	BANJA LUKA	In Culum-Kostic, 5 non-Serbs were killed.	15 Aug 92
2	BIHAC	In Orasce and Duljci, approximately 18 non-Serbs were killed.	20-22 Sep 92
3	BIJELJINA	In Bijeljina, at least 48 Bosnian Muslim and/or Bosnian Croat men, women, and children were killed.	01-02 Apr 92
4	BOSANSKA GRADISKA	Killing of at least 4 Bosnian Muslim civilians near the market place in Bosanska Gradiska.	15 Aug 92
5	BOSANSKI NOVI	In Blagaj Japra, 7 Bosnian Muslim men were killed during the expulsion of Bosnian Muslims.	09 Jun 92
		In Alici, 27 Bosnian Muslim men were killed.	23 Jun 92
6	BOSANSKI PETROVAC	Killing of at least 2 Bosnian Muslims near Hujici.	20 Sep 92
7	BRATUNAC	In Glogova, approximately 65 Bosnian Muslim and Bosnian Croat civilians killed by members of the JNA, acting together with Serb paramilitary forces.	09 May 92
8	BRCKO	In Brcko, approximately 12 Bosnian Muslim males and other non-Serbs were killed at the Hotel Posavina.	04 May 92
9	CELINAC	Rifet MUJKANOVIC, shot to death by Serb soldier.	31 Jul 92
		Killing of 2 non-Serb civilians by Serb soldiers.	02 Aug 92
10	DOBOJ	In Gornja Grapska, approximately 34 Bosnian Muslim civilians were killed during shelling of village.	10 May 92
11	FOCA	In Djidjevo, at least 11 Bosnian Muslim men were executed by Serb soldiers.	20 Apr 92
		In Filipovici, at least 5 Bosnian Muslims were killed by Serb soldiers in a military warehouse.	26 Apr 92
		In Jelec, 18 Bosnian Muslims, including elderly people and 8 members of one family, were executed by JNA soldiers.	04-10 May 92
		In Brod, 14 Bosnian Muslim men from Trnovaca were executed by Serb soldiers.	22 Jun 92
12	GACKO	At least 5 non-Serbs were killed in the village of Meduljici	17 Jun 92
		2 Muslim males killed by Serbs in a field near Mount Zelengora	18 Jun 92

		At least 8 Muslims killed by Serb soldiers near Mount Zelengora	18-23 Jun 92
13	KLJUC	In Pudin Han, 11 Bosnian non-Serb civilians were killed during the Serb attack on the village.	27 May 92
		In Prhovo, 38 Bosnian Muslim villagers, including women and children, were killed by shooting and grenades.	01 Jun 92
		Near Peci, 9 Bosnian Muslim men were killed by Serb soldiers.	01 Jun 92
		In Velagici, approximately 100 Bosnian Muslim men were killed.	01 Jun 92
14	KOTOR VAROS	In Kotor Varos town, approximately 13 non-Serbs were killed in and around the Medical Centre.	25 Jun 92
		In a barn in Dabovci, at least 15 Bosnian Muslim men were killed.	Aug 92
		In Vrbanjci 7 Bosnian Muslim men were killed in and around the Alagic café.	25 Jun 92
		In Grabovice, a large number of Bosnian Muslim and Bosnian Croat detainees were held in the Grabovice School, beaten and never seen again.	Nov 92
15	NEVESINJE	At or near Lipovaca and Dubrovaci, at least 34 Bosnian Muslim men, women, and children were killed.	Jun-Jul 92
		Near Kiser, approximately 17 Bosnian Muslim civilians were killed by Serb soldiers.	Mid-Jul 92
16	PRIJEDOR	In the Brdo region numerous non-Serbs were killed.	Jul 92
		In Hambarine and Behlici, at least 3 Bosnian Muslims were killed.	11 Jun-01 Jul 92
		In Kamicani, approximately 8 non-Serbs were killed in Mehmed Sahoric's house.	26 May 92
		In Jaskic, at least 19 Bosnian Muslim men were killed.	14 Jun 92
		In Biscani, about 40 non-Serbs were killed.	20 Jul 92
		In Carakovo, at least 19 Bosnian Muslims were killed.	23 Jul 92
		In Brisevo, at least 68 non-Serbs were killed during the attack.	24 Jul 92
		In Kipe iron ore mine (near Ljubija), at least 8 Bosnian Muslim men were executed.	25 Jul 92
		In Ljubija, at least 3 Bosnian Muslim men were executed at the football stadium.	25 Jul 92
		In Tomasica, 4 non-Serbs were killed.	03 Dec 92

17	PRNJAVOR	In Kremna, 8 Bosnian Muslim civilians from Derventa were killed.	Apr 92
		In Lisnja, 4 Bosnian Muslim men were executed.	May 92
18	RUDO	At least 50 non-Serb civilians were killed during the take over in mass executions at Setovo, Vranj, Mrsovo, and massacres in Srpci and Sjeverin.	May 92
		Approximately 40 elderly non-Serb civilians were killed.	May 92
		A number of Muslims were killed on the hill of Vranja.	02 Aug 92
19	SANSKI MOST	In Hrustovo, at least 24 Bosnian Muslim women and children were killed.	31 May 92
		On or near Vrhpolje bridge, at least 13 Bosnian Muslim men from Begici were killed.	31 May 92
		In Sanski Most, a number of non-Serbs were killed near the Partisan cemetery.	22 Jun 92
		In Kenjari, 19 Bosnian Muslim men were killed in Dujo Banovic's house.	27 Jun 92
		In Budin, 12 members of one family were killed.	01 Aug 92
		In Donji Kruhari near Skrljevita, 5 Bosnian Croat men were killed.	02 Nov 92
		In Trnova near Sanski Most town, approximately 11 non-Serb men were executed by members of Arkan's Tigers.	20 Sep 95
		In Sasina, at least 65 non-Serb men were executed by members of Arkan's Tigers under the direct command of Arkan.	21 Sep 95
20	SOKOLAC	Approximately 7 non-Serb villagers were killed by Serbs in massacre at Tocionik village.	21 Jul 92
		In the village of Meljine, 3 elderly non-Serb women were killed.	31 Jul 92
		In the village of Zulj, two non-Serbs were killed.	01 Aug 92
21	SREBRENICA	Following the take-over of Srebrenica, several thousand Bosnian Muslim men were executed by Bosnian Serb forces, including at the following locations:	Jul 95
		1) Cerska Valley, approximately 150 Bosnian Muslim men;	13 Jul 95
		2) Kravica warehouse (Zvornik Municipality), approximately 1,000 Bosnian Muslim men;	13 Jul 95
		3) Orahovac (Zvornik Municipality), approximately 1,000 Bosnian Muslim men;	14 Jul 95

		4) Petkovci Dam (Zvornik Municipality), approximately 1,500 - 2,000 Bosnian Muslim men;	14-15 Jul 95
		5) Branjevo Military Farm (Zvornik Municipality), approximately 1,000 - 1,200 Bosnian Muslim men;	16 Jul 95
		6) Pilica Cultural Dom (Zvornik Municipality), approximately 500 Bosnian Muslim men;	16 Jul 95
		7) Kozluk (Zvornik Municipality), at least 340 Bosnian Muslim men.	15-16 Jul 95
22	VISEGRAD	Near Vidova Gora, at least 11 non-Serbs, including women and children, were executed and thrown into the Drina.	Jun 92
		In Nova Mahala (Visegrad town), over 60 Bosnian Muslim and/or Bosnian Croat civilians from Koritnik were burnt to death in a house ignited by Serb paramilitaries led by Milan Lukic.	14 Jun 92
		In Bikavac settlement, approximately 70 Bosnian Muslim and other non-Serb civilians were burnt to death in a house ignited by Serb paramilitaries led by Milan Lukic.	27 Jun 92
23	VLASENICA	In Drum (Vlasenica town), approximately 22 Bosnian Muslim men were killed.	Jun 92
		In Zaklopaca, at least 58 Bosnian Muslim men, women and children were executed during the Serb attack on the village.	16 May 92
24	ZVORNIK	In Zvornik town, 15 Bosnian Muslim and Bosnian Croat males were executed by Arkan's soldiers.	09 Apr 92
		In Drinjaca, at least 55 Bosnian Muslim men were killed.	30 May 92
25	Ilijas (Greater Sarajevo)	In Ljesevo, 21 Bosnian Muslims were killed.	04 Jun 92

**SCHEDULE B**  
**KILLINGS ASSOCIATED WITH DETENTION FACILITIES**

NO	MUNICIPALITY	VICTIMS (KILLED)	DATE
1	BANJA LUKA	In Manjaca camp, 2 non-Serb men were killed.	6 Jun-18 Sep 92
		At Manjaca camp, approximately 7 non-Serbs were killed after being transported from Hasan Kikic Sports Hall in Sanski Most.	03-04 Jun 92
		Between Krings camp and Manjaca camp, approximately 20 non-Serb men were killed during transportation between the camps.	04 Jul 92
		At Manjaca camp, at least 8 non-Serb men were killed in front of camp after their transportation from Omarska camp	06 Aug 92
2	BILECA	In SUP Detention facility, 2 non-Serb detainees were killed.	25 Jun-18 Dec 92
3	BOSANSKA KRUPA	In Petar Kocic Elementary School, approximately 11 non-Serb detainees were killed.	1-10 Aug 92
4	BOSANSKI SAMAC	In Crkvina camp, approximately 17 non-Serb detainees were killed.	06 May 92
5	BRATUNAC	In Vuk Karadzic school, at least 14 non-Serb men were killed.	10-16 May 92
6	BRCKO	In Luka Camp, approximately 30-35 Bosnian Muslim detainees were executed.	11-16 May 92
7	CAJNICE	At Mostina Hunting Lodge, 53 non-Serbs were killed.	19 May 92
8	FOCA	In Livade camp, a number of non-Serb detainees were killed.	13-18 Apr 92
		At KP Dom prison, at least 266 Bosnian Muslim detainees were killed.	Jun-Dec 92
9	GACKO	5 Bosnian men were killed in the SUP building in Gacko.	03 Jul 92
10	KALINOVIK	Approximately 23 Muslim men and boys from the Gunpowder warehouse were shot in a field near Ratine.	05 Aug 92
11	KLJUC	In Biljani, at least 30 elderly Muslim men were killed.	10 Jul 92
12	PRIJEDOR	In Trnopolje camp, at least 2 non-Serbs were killed.	28 May-Oct 92
		In Omarska camp, hundreds of Bosnian Muslims and Bosnian Croats were killed.	May-Aug 92
		In Keraterm camp, approximately 150 non-Serbs were killed.	24 Jul 92
		On Vlasic mountain in Skender Vakuf municipality, approximately 200 Bosnian Muslim and/or Bosnian Croat males from Trnopolje camp were killed.	21 Aug 92

13	ROGATICA	Near Crvenka, at least 10 Bosnian Muslim males from Visegrad were executed.	15 Jun 92
14	RUDO	At least one elderly Muslim man was killed in detention facility in JNA barracks in Rudo.	In or around 1992
		At least one Muslim man was killed in the detention camp in the JNA barracks.	In or around 1992
15	SANSKI MOST	Near Hrastova Glavica, approximately 100 non-Serb men were taken from Keraterm and Omarska camps were killed.	05 Aug 92
		In Sanski Most town, at least 2 non-Serb men were killed in the Hotel Sana by Arkan's Tigers.	18-21 Sep 92
		At Sanakeram ceramics factory, at least 10 non-Serb men were killed.	30 Sep-09 Oct 92
16	SOKOLAC	In village of Novoseoci, approximately 44 non-Serb men were detained and killed.	22 Sep 92
17	TESLIC	In Teslic town, at least 5 non-Serb men were killed at the Territorial Defence building.	Jun 92
		In Pribinic camp, at least 7 or 8 non-Serb detainees were killed.	Jun-Oct 92
18	VLASENICA	At Susica camp, at least 6 non-Serb male detainees were killed.	21-23 Jun 92
19	ZVORNIK	At Ekonomija farm, Karakaj, approximately 6 non-Serb detainees were killed.	12-14 May 92
		At Novi Izvor building, at least 2 non-Serb male detainees were killed.	May 92
		At Celopek Dom Kulture, at least 30 non-Serb male detainees were killed.	09-26 Jun 92
		At Karakaj Technical School, approximately 110 Bosnian Muslim males were killed.	01-03 Jun 92
		At Gero's slaughter-house, approximately 190 non-Serb detainees were killed.	07 Jun 92
20	Novi Grad (Sarajevo)	Near Srednje, 47 Bosnian Muslim men from Rajlovac camp were killed.	14 Jun 92



SCHEDULE C  
DETENTION FACILITIES

No	MUNICIPALITY	DETENTION CAMP	DATES
1	BANJA LUKA	Former JNA Barracks Mali Logor (Military Remand Prison)	Aug-Sep 92
		Viz Tunjice Penitentiary	Jun-Nov 92
		Manjaca Camp	Jun-Dec 92
2	BIHAC	Traktorski Servis, Ripac (Garages and Houses)	Jul-Oct 92
3	BIJELJINA	Batkovici Detention Centre	Jul 92-Jun 95
		New Slaughterhouse (Nova Klaonica)	From Mar 92
4	BILECA	SUP Detention facility	10 Jun-19 Dec 92
		Student Hostel (Dacki Dom)	25 Jun-05 Oct 92
5	BOSANSKA DUBICA	SUP Building	Jun-Sep 92
6	BOSANSKA KRUPA	Petar Kocic Elementary School	Apr-Sep 92
		Jesenica Primary School	Apr-Sep 92
7	BOSANSKI SAMAC	Crkvina Camp	May-Oct 92
8	BOSANSKI NOVI	Bosanska Kostajnica Police Station	May-Jul 92
		Mlake Football Stadium	Jun-Jul 92
		Bosanski Novi Fire Station	Jul-Aug 92
9	BOSANSKI PETROVAC	Kozila Camp	May-Aug 92
10	BRCKO	JNA Barracks Brcko	Apr-Jul 92
		Luka Detention Centre	04 May-13 Jul 92
11	BRATUNAC	Vuk Karadzic School	Jul 92
12	CAJNICE	Mostina Hunting Lodge	Apr-May 92
		Cajnice SUP Building	Jun-Jul 93
13	CELINAC	Municipal Building in Celinac	01 Aug 92
14	DOBOJ	Spreca Prison	Apr 92-Feb 93
		Percin's Disco (Restaurant Kod Perco)	May-Aug 92
		Ammunition Warehouse, Bare	May 92
		SUP Station	May-Aug 92
		JNA Hangars near Bosanska Plantation (Bosanka Camp)	May 92-Jun 93
		Seslija Camp	Mar-Oct 93
15	DONJI VAKUF	Vrbas Promet Camp	11 Jun 92
		"The House," a house across the street from the MUP building	07 Jun 92
		SUP Building	16 Jun 92
		TO Warehouse	16 Jun 92
16	FOCA	Foca High School (Srednjoskola Centar)	Jun 92
		Partisan Sports Hall	Jul 92
		Livade Camp	Apr 92
		KP Dom Prison	Apr 92-Oct 94

17	GACKO	Dom Kulture Avtovac.	01 Jun 92
		SUP Building	08 Jun 92-05 Jul 92
		Hotel Connected to Power Plant	01 May 92
		Hotel "Metohija"	01 May 92
18	KALINOVIK	Kalinovik School (Primary/Elementary)	Jul 92-Sep 92
		Gunpowder Warehouse Between Jelasica and Jazici.	05 Jul 92
19	KLJUC	Nikola Mackic Elementary School	May 92
20	KOTOR VAROS	Kotor Varos Prison	Jun-Nov 92
		Kotor Varos Sawmill	Jun 92
		Kotor Varos Police Station	May-Sep 92
		Kotor Varos Elementary School	Aug-Sep 92
21	NEVESINJE	Central Heating Factory (Kilavci)	Jun-Jul 92
22	PRIJEDOR	Omarska Camp	May-Aug 92
		Keraterm Camp	May-Aug 92
		Miska Glava	Jul 92
		Prijedor Barracks	May-Jun 92
		Trnopolje Camp	May-Dec 92
23	PRNJAVOR	Stari Mlin	Oct 92-Mar 94
		Sloga Shoe Factory	May-Dec 92
		Ribnjak	Nov 92-Jan 93
24	ROGATICA	Veljko Vlahovic School	May 92-Early 93
		Rasadnik	Jun 92-Jun 93
25	RUDO	Basement of the Cultural Centre	Jun 93-Feb 94
26	SANSKI MOST	Krings Factory	May-Aug 92
		Hasan Kikic School	May-Jun 92
		Betonirka Cement Factory	May-Jul 92
		Boiler Room of Old Hotel	21-25 Sep 95
27	SOKOLAC	KTK Leather Factory	Jul-Dec 92
		Slavisa Vajner Cica Elementary School	
		Planja's House	
		Cavarine	
28	TESLIC	Pribinic (Old Post Office)	Jun-Oct 92
		TO Building	Jun 92
		SUP Building	Jun 92
29	VISEGRAD	Detention Centre in Tourist Hotel in Vilina Vlas.	01 May 92
		Uzamnica, a Former Military Warehouse and Barracks.	Aug 92-Oct 94
30	VLASENICA	Susica Territorial Defence Installation	Jun 92
31	ZVORNIK	Celopek Dom Kulture	May-Jul 92
		Karakaj Technical School	May-Jul 92
		Novi Izvor Building, Zvornik Town	Apr-Sep 92
		Ekonomija Farm, Karakaj	Jun-Aug 92

SCHEDULE D  
FORCIBLE TRANSFERS

No	MUNICIPALITY	NON-SERB DISPLACED PERSONS AND REFUGEES	DEPORTATIONS
1	Banja Luka	19359	Hungary
2	Bileca	993	Montenegro
3	Bihac	2588	
4	Bijeljina	13159	
5	Bosanska Krupa:		
	- <i>Bosanska Krupa</i>	1439	
	- <i>Buzim</i>	389	
	- <i>Krupa na Uni</i>	1	
6	Bosanska Dubica	3310	
7	Bosanska Gradiska	7516	
8	Bosanski Novi	6288	
9	Bosanski Petrovac:		
	- <i>Bosanski Petrovac</i>	778	
	- <i>Petrovac</i>	unknown	
10	Bosanski Samac:		Croatia
	- <i>Samac</i>	1563	
	- <i>Domaljevac-Samac</i>	217	
11	Bratunac	8048	
12	Brcko:		
	- <i>Brcko</i>	14607	
	- <i>Ravne/Rahic</i>	1532	
13	Cajnice	2214	
14	Celinac	608	
15	Doboj:		
	- <i>Doboj</i>	18569	
	- <i>Doboj Istok</i>	405	
	- <i>Doboj Jug</i>	310	
16	Donji Vakuf	1729	
17	Foca:		
	- <i>Foca/Srbinje</i>	8258	
	- <i>Foca FBiH</i>	1039	
18	Gacko	1899	Macedonia
19	Gorazde:		
	- <i>Gorazde FBiH</i>	2563	
	- <i>Srpsko Gorazde</i>	1834	
20	Kalinovik	612	
21	Kljuc:		
	- <i>Kljuc</i>	3852	
	- <i>Kljuc/Ribnik</i>	26	
22	Kotor Varos	6870	

23	Nevesinje	1483	
24	Prijedor	20256	
25	Prnjavor	3490	
26	Rogatica	6650	
27	Rudo	1614	Macedonia
28	Sanski Most:		
	- <i>Sanski Most</i>	6257	
	- <i>Srpski Sanski Most</i>	221	
29	Srebrenica	25,000	
30	Sekovici	162	
31	Sipovo	1427	
32	Sokolac	2670	
33	Teslic	7789	
34	Trebinje:		
	- <i>Trebinje</i>	3116	
	- <i>Ravno</i>	201	
35	Visegrad	6690	
36	Vlasenica	6942	
37	Zvornik:		Hungary; Austria
	- <i>Zvornik</i>	15436	
	- <i>Sapna</i>	1335	
38	Ilidza:		
	- <i>Ilidza</i>	218	
	- <i>Srpska Ilidza</i>	60	
39	Novi Grad Sarajevo	9008	
40	Novo Sarajevo:		
	- <i>Novo Sarajevo</i>	7097	
	- <i>Srpsko Novo Sarajevo</i>	4	
41	Vogosca	2099	
42	Hadzici	1390	
43	Ilijas	1889	
44	Pale:		
	- <i>Pale</i>	1697	
	- <i>Pale FBiH</i>	115	
45	Trnovo:		
	- <i>Trnovo RS</i>	744	
	- <i>Trnovo FBiH</i>	415	

SCHEDULE E  
SARAJEVO SNIPING INCIDENTS

No	INCIDENT	DATE
1	Fadila ZGODIC, a woman aged 52 years, was shot and wounded in the hip while carrying bread near Darovalaca Krvi Street, presently Kolodvorska Street, in the area of Novo Sarajevo.	07 Nov 92
2	Anisa PITA, a girl aged 3 years, was shot and wounded in the right leg as she was taking off her shoes while on the porch of her residence on Zagrici Street in the Sirokaca area of Sarajevo.	13 Dec 92
3	The victim, a girl aged 9 years, was shot and wounded in the back as she played in the front garden of her house in the Sedrenik area of Sarajevo.	17 Apr 93
4	Muhamed HAZNADAREVIC, a man aged 52 years, was shot and wounded in the back and chest while trying to tend a vegetable plot in Slatinski Put 5, presently Slatinski Put 13, Kobilja Glava, north of Sarajevo.	25 Jun 93
5	Almasa KONJHODZIC, a woman aged 56 years, was shot dead near the junction of Dure Dakovica and Kranjcevic Street, presently Alipasina and Kranjcevic, while walking with her family.	27 Jun 93
6	Munira ZAMETICA, a woman aged 48 years, was shot dead while collecting water from the Dobrinja River in area of Dobrinja II and III.	11 Jul 93
7	Hajrija DIZDAREVIC, a woman aged 66 years, was shot dead in her apartment at Kranjcevic 11/5, presently Dzamijska Street, during her prayers.	On or about 17 Jul 93
8	Mejra JUSOVIC, a woman aged 45 years, was shot and wounded while pulling a load of wood towards her home near Rasadnjak, Sedrenik area, Sarajevo.	24 Jul 93
9	Vildana KAPUR, a woman aged 21 years, was shot and wounded in the leg while transporting water home along Stara cesta, Hotonj area.	05 Aug 93
10	Nafa TARIC, a woman aged 35 years, and her daughter Elma TARIC, aged 8 years, were shot by a single bullet while walking together in Ivana Krndelja Street, in the centre of Sarajevo. The bullet wounded the mother in the left thigh and wounded the daughter on the hand and in the abdomen.	03 Sep 93
11	Sacir BOSNIC, a man aged 56 years, was shot dead while gathering wood across the road from the Hambina Carina Reservoir and adjacent to Zelengorska Street, presently Hambina Carina Street, at Sirokaca, Skenderija.	07 Sep 93
12	Edina TRTO, a woman aged 25 years, was shot dead while walking in front of Ivana Krndelja Street 6, presently Azize Sacerbegovic 12, Sarajevo.	26 Sep 93
13	Faruk KADRIC, a boy aged 16 years, was shot and wounded in the neck while riding as a passenger in his father's truck along Ante Babica Street, in the west end of Sarajevo.	04 Oct 93
14	Edin RAMOVIC, a man aged 29 years, was shot and wounded in the left upper arm while walking in Stara cesta Road, in the Bare area of Sarajevo.	07 Oct 93

15	Ramiz VELIC and Milan RISTIC, aged 50 and 56 years respectively, were wounded by a burst of gunfire while they were working clearing rubbish along Brace Ribara Street, presently Porodice Ribar Street, in the Hrasno area of Sarajevo.	02 Nov 93
16	Ramiza KUNDO, a woman aged 38 years, was shot and wounded in the left leg while she and another woman were returning from a water well carrying buckets of water near Brijesko Brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.	02 Nov 93
17	Fatima OSMANOVIC, a woman aged 44 years, was shot and wounded in the right side of her face while she was carrying water in Brijesko brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.	13 Nov 93
18	Sanija DZEVLAN, a woman aged 32 years, was shot and wounded while riding a bicycle across a bridge in Nikola Demonja Street, Dobrinja.	06 Jan 94
19	Edin HUSOVIC, a man aged 17 years, was shot and wounded in the abdomen while standing outside a pizza restaurant Seste Proleterske Brigade Street, presently Bulevar Mese Selimovica.	10 Jan 94
20	Hetema MUKANOVIC, a woman aged 38 years, was shot and killed in her apartment on the first floor of Obala 27. Jula 89/I, presently Aleja Lipa 64, in the Hrasno area of Sarajevo. At the time she was sitting with her husband and neighbours, drinking coffee by candlelight.	11 Jan 94
21	Ivan FRANJIC, a man aged 63 years, was walking with two others on Ante Babica Street in Vojnicko Polje, in the west end of Sarajevo. He was shot and wounded in the stomach while one of his companions Augustin VUCIC was shot and later died from his injuries.	13 Mar 94
22	Sadeta PLIVAC, a woman aged 53 years and Hajra HAFIZOVIC a woman aged 62 years, were both shot and wounded in their legs while passengers in a crowded bus near the junction of Nikolje Demonje and Bulevar AVNOJ, presently Nikolje Demonje and Bulevar Branioca Dobrinja, in Dobrinja.	25 May 94
23	Fatima SALCIN, a woman aged 44 years, was shot and wounded in the hand when walking with her father-in-law in Ive Andrica Street, in the Mojnilo area of Sarajevo.	13 Jun 94
24	Sanela MURATOVIC, a girl aged 16 years, was shot and wounded in the right shoulder while walking with a girlfriend in Dure Jaksica Street, presently Adija Mulabegovica, in the west end of Sarajevo.	26 Jun 94
25	Jasmina KUCINAR, a pregnant woman aged 31 years, and her son Damir KUCINAR, aged 4 years, were lightly wounded in the legs by a shot penetrating a crowded tram in which they were travelling. The tram was travelling west on Zmaja od Bosne Street towards Alipasino Polje. Mensur JUSIC, a man aged 36 years, sustained a slight leg wound and Belma SUKIC nee LIKIC, a woman aged 23 years, was wounded in the left armpit in the same attack. The tram was near the Holiday Inn hotel at the time of the incident.	6-10 Jul 94
26	Rasid DZONKO, a man aged 67 years, was shot and wounded in the back whilst sitting watching television in his apartment situated at Milanka Vitomira Street, presently Senada Mandica Dende Street 5 in Vojnicko Polje, in the west end of Sarajevo.	17 Jul 94

27	Seid SOLAK, a boy aged 13 years, shot and wounded in the abdomen whilst window shopping with his mother and sister in Miljenka Cvitkovic Street, presently Ferde Hauptmana, in the Cengic Vila area of Sarajevo.	22 Jul 94
28	Alma CUTUNA, a woman aged 43 years, was wounded in the right upper leg while travelling on a tram on Zmaj od Bosne Street in Sarajevo.	08 Oct 94
29	Adnan KASAPOVIC, a boy aged 16 years, was shot in the chest and killed while walking in an alley adjoining Dordje Andrijevića Kuna Street.	24 Oct 94
30	Fata GUTA, a woman aged 59 years, was shot and wounded in the hand while she was going with jerri-cans to collect water from the Moscanica spring in Gazin Han, to the east of Sarajevo.	08 Nov 94
31	Sanja SMJECANIN, a pregnant woman aged 28 years, was shot and wounded while travelling with her husband and sister-in-law in a car on Zmaj od Bosne Street.	09 Nov 94
32	Dzenana SOKOLOVIC, a woman aged 31 years, and her son Nermin DIVOVIC, a boy aged 7 years, were fired on while walking in Zmaj od Bosne Street. Ms. SOKOLOVIC was wounded with a bullet in the abdomen. The bullet passed through her and hit her son in the head, killing him. They had been walking home from Hrasno, where they had gone to collect firewood the previous day.	18 Nov 94
33	Hajrudin HAMIDIC, a man aged 52 years, was wounded in the arm and face when the tram he was driving westbound on Zmaj od Bosne was fired on.	21 Nov 94
34	Sanela DEDOVIC, a girl aged 12 years, was wounded in the left ankle while she was walking to school. The incident occurred at the junction of Sedrenik Street and Red'epa Gorusanova Street, in the north east corner of Sarajevo.	22 Nov 94
35	Hafiza KARACIC, a woman aged 31 years and Sabina SABANIC, a woman aged 26 years, were both wounded in the right shoulder when the tram they were travelling on came under fire on Zmaj od Bosne, between the Technical School and Marshal Tito Barracks.	23 Nov 94
36	Lejla BAJRAMOVIC, a woman aged 24 years, was sitting in a friend's apartment in Franca Lehara Street, near the centre of Sarajevo, when she was shot in the head and killed. The shot came through the apartment window.	08 Dec 94
37	Dervisa SELMANOVIC, a woman aged 49 years, was shot and wounded in the right knee while she was gathering firewood in the backyard of a house in Sedrenik Street, in the north east end of Sarajevo.	10 Dec 94
38	Malkan PLEHO, a man aged 62 years, was shot and wounded in the right lower leg while climbing the front steps to his house in Sedrenik, in the north east end of Sarajevo.	11 Dec 94
39	Halid DEMIROVIC, a man aged 62 years, was shot and wounded in the right heel while he was gathering firewood on Pasino Brdo, in the north east corner of Sarajevo.	13 Dec 94
40	Senad KESMER, a man aged 31 years, Alma CEHAGIC, a woman aged 19 years, Alija HOLJAN, a man aged 55 years, and others, were shot and wounded while travelling in a westbound tram on Zmaj od Bosne Street. The tram was near the Tito Barracks at the time.	27 Feb 95

41	Azem AGOVIC, a man aged 46 years and Alen GICEVIC, a man aged 33 years, were shot and wounded while travelling in an eastbound tram on Zmaj od Bosne Street. The tram was near the Holiday Inn at the time.	03 Mar 95
42	Tarik ZUNIC, a boy aged 14 years, wounded in the hand while he was walking home from school at Sedrenik Street, in the north east of Sarajevo. He emerged from behind a protective screen, about 100 metres from home, when he was hit.	06 Mar 95
43	Vahid BALTA, a man aged 52 years, was walking with his wife in Sedrenik Street, in the north east of Sarajevo, when he was shot in the ankle.	06 Mar 95
44	A young man was crossing the junction of Nikole Demonje and Bulevar Avnoj Streets in the Dobrinja area, when he was shot in the left side and killed.	18 Mar 95
45	Semsa COVRK, a woman aged 27 years, was shot and wounded in the abdomen while walking in Josipa Krasa Street, Novi Grad, holding her young son's hand at the time.	03 May 95
46	A man was shot and killed in Dinarska Street, Hrasno Brdo.	13 May 95
47	Durgut COBIC, a man aged 80 years, was shot and wounded in the shoulder when he opened the balcony of his apartment door Kunovska Street 4/I, Dobrinja.	25 May 95



SCHEDULE F  
SARAJEVO SHELLING INCIDENTS

No	INCIDENT	DATE
1	2 shells were fired upon a crowd of approximately 200 persons who were watching and participating in a football game in a parking lot bordered on three sides by residential apartment blocks and on the fourth side by the Lukavica Road in Dobrinja 3B, a residential settlement. At least 12 people, including 3 children under the age of 15 years, were killed and at least 70 people, including 10 children, were wounded. The origin of fire was VRS-held territory approximately to the east-southeast.	01 Jun 93
2	An 82 mm mortar shell was fired upon about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakijske Turajlice (previously Aleja Branka Bulica then Spasenije Cane Babovic) in Dobrinja, a residential settlement. At least twelve people were killed and fourteen people were wounded. The origin of fire was VRS-held territory approximately to the west-north-west.	12 Jul 93
3	Three mortar shells landed in the area of Alipasino Polje, the first in a park behind, and the second and third in front of residential apartment buildings at 3 Geteova Street (previously Centinjska Street) and at 4 Bosanska Street (previously Klara Cetkin Street), where children were playing. The second and third shells killed six children under the age of 15 years and wounded one adult and four such children. The origin of fire was from VRS-held territory approximately to the west.	22 Jan 94
4	A salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential area. The first landed to the front of a block of flats at Oslobodilaca Sarajeva Street hitting persons who were distributing and receiving humanitarian aid and children attending religious classes. The second and third landed among persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 children were wounded. The origin of fire was from VRS-held territory, approximately to the east.	04 Feb 94
5	A 120 mm mortar shell hit a crowded open air market called "Markale," situated in a civilian area of Old Town Sarajevo, killing 66 people and wounding over 140 people, including 3 children under the age of 15 years. The origin of fire was VRS-held territory approximately to the north-northeast.	05 Feb 94
6	A 120 mm mortar shell impacted on the Igman Road amongst a group of civilians at a bus stop. 1 person was killed and 15 were injured. The origin of fire was Vojkovici VRS territory.	30 Oct 94
7	Three mortar shells struck Livanjska Street, a street of civilian dwellings. 2 persons were killed and 6 were injured. The origin of fire was Poljine direction VRS territory.	08 Nov 94
8	One 120 mm mortar shell hit Partizanska Street 18 in Hrasnica. 2 children aged 8 years and 2 years were killed and 3 adults were injured.	17 Nov 94
9	An 82 mm mortar shell hit adjacent to a civilian dwelling killing an elderly man and injuring his elderly wife. The origin of fire was VRS territory.	12 Dec 94

10	Two 76 mm shells in quick succession hit a flea market in the old commercial quarter of Bascarsija in Old Town. 2 persons were killed and 7 were injured. The origin of fire was Trebevic, VRS positions.	22 Dec 94
11	A modified aircraft bomb hit a residential area in Hrasnica at the foot of Mount Igman destroying one dwelling, severely damaging eleven other dwellings. 1 person was killed and 3 injured. The origin of fire was Ilidza, VRS territory.	07 Apr 95
12	A 60 mm mortar shell hit a concrete area near the Sarajevo railway station. 7 people were injured. The origin of fire was Zlatiste, VRS territory.	12 Apr 95
13	A missile landed and exploded on the asphalt of Safeta Zajke street at approximately 9.45, killing 2 and injuring 5 people. The missile came from the southeast, direction of Lukavica..	24 May 95
14	A modified air-bomb landed at Majdanska Street bb. 2 civilians were killed and 6 were wounded. The origin of fire was from the southeast VRS territory of Pavlovac.	24 May 95
15	A modified air-bomb struck a building near apartment blocks in Safeta Hodzica Street, destroying the top 3 floors of an apartment building. This explosion was followed by several artillery rounds landing in the same area. Serious damage was caused to a number of buildings. 2 people were seriously injured and 15 persons were slightly injured. The fire was determined to have come from VRS territory to the west-southwest.	26 May 95
16	At about 10.00 hours, a modified aircraft bomb was fired from the northwest. The bomb landed and exploded on the building of the UMC and Oncology Department at Dositejeva street 4-a. There was a lot of damage and 3 persons were slightly injured.	16 Jun 95
17	At about 15.20 hours, a modified aircraft bomb, most probably fired from Lukavica, exploded next to 10, Trg Medjunarodnog Prijateljstva, slightly injuring 7 people and causing considerable damage to neighboring buildings.	16 Jun 95
18	At 17.20 hours, a modified aircraft bomb was fired from the northwest. It exploded on the builder house at Cobanija Street 7. 2 people were wounded.	16 Jun 95
19	A 120 mm mortar shell struck a line of civilians, numbering approximately 50-70, waiting for water distribution in Marka Oreskovica Street, Dobrinja. 7 people were killed and 12 injured. The origin of fire was Nedzarici, VRS territory.	18 Jun 95
20	A projectile was fired into the street Bulevar Mese Selimovica, probably from the direction of Rajlovac. There were no victims.	29 Jun 95
21	At about 13.30 hours, a high impact missile landed just outside the house number 5 in Radenko Abazovica. It was fired from the western part of the city (Ilidza - Rajlovac). There were no victims.	01 Jul 95
22	At about 21.30 hours, a rocket projectile with a concussion warhead exploded in Bunicki Potok street. 13 people were injured. The projectile came from Ilidza.	01 Jul 95
23	A 120 mm mortar shell hit close to a dwelling at Vrbanjusa 95 (a residential area). 1 boy was killed. The origin of fire was VRS territory in the south.	19 Jul 95
24	A rocket missile with concussion warhead, coming from the direction of Ilidza/Blazuj, landed on the house Sokolovici, Bjelasnicka Street 54. 2 persons were killed and 11 were lightly wounded.	23 Jul 95

25	A modified explosive device exploded at the staircase between the 2nd and the 3rd floor of the BITAS building in Zmaja od Bosne Street 64. 1 person died, another received light injuries. The origin of fire was VRS territory in the southwest.	22 Aug 95
26	A 120 mm mortar shell landed in Mula-Mustafe Baseskije Street outside the entrance to the City Market. 43 people were killed and 75 were injured. The origin of fire was Trebevic, VRS territory.	28 Aug 95