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## **An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention**

Zachary A. Karazsia

*Georgia Southern University*, [zkarazsia@georgiasouthern.edu](mailto:zkarazsia@georgiasouthern.edu)

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## **An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention**

### **Abstract**

This article addresses the under-theorized dual-mandate of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The Convention was drafted in the wake of the Holocaust and other Nazi genocidal atrocities committed during World War II. The primary mission of the Genocide Convention was to establish a uniform definition of this scourge, and insert its *prevention* and *punishment* into the list of obligations states hold within the current international legal regime. Based on the past 70 years, it is clear that the international community has overwhelmingly failed to uphold the Genocide Convention's prevention mandate. The Convention and its signatories have been more successful in punishing perpetrators posthaste (e.g., the 1940s Nuremberg and Tokyo trials; the 1990s tribunals in the former Yugoslavia and Rwanda; and the International Criminal Court). Eyeing the failure of the international community in Rwanda and the former Yugoslavia, the Canadian government created the International Commission on Intervention and State Sovereignty that created the doctrine of the "Responsibility to Protect" (R2P). The article argues that R2P has filled part of the gaps in the Genocide Convention and allowed states to take affirmative actions to prevent genocide in the modern era (e.g., Libya 2011).

## Introduction

The United Nations drafted the Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as Genocide Convention) in the aftermath of near universal recognition that Adolph Hitler's Nazi Germany attempted to systematically exterminate the Jewish population and other minority, so-called, "pariah" groups in Nazi occupied lands during the Second World War.<sup>1</sup> In 1941, Winston Churchill declared the Nazi's actions to be immoral and so severe that they amount to "a crime without a name."<sup>2</sup> Raphael Lemkin, a Polish-Jewish lawyer and human rights activist, was personally affected by the Nazi extermination of European Jews. So much so that he coined the term "genocide" and subsequently devoted his entire postwar life to advocating its eradication. The Genocide Convention was drafted three years after the conclusion of World War II. The Convention established a dual-mandate among its signatories.<sup>3</sup> As the official title of the Convention states, treaty members must take actions to "prevent" and "punish" the crime of genocide. This dual-mandate or "dual-pronged" treaty has created, by its elastic definition of genocide, difficulty in fulfilling its own mandate to prevent future genocides.<sup>4</sup>

This article explores the Genocide Convention's mandate to prevent large-scale intentional killing of unarmed civilians who identify as a protected group, its limitations in accomplishing this obligation, and how The Responsibility to Protect (R2P) doctrine may supplement the convention's limitations of prevention in future episodes of mass political violence. Section two unpacks the legal criminal definition of genocide and its limitations. Section three explores the Genocide Convention's prevention mandate, while section four investigates the emergence of R2P as a source of support for states in preventing genocide. Section five provides three examples of contemporary conflicts and how R2P may be used to supplement the Genocide Convention's shortcomings. Finally, section six concludes with several observations in how policymakers, practitioners, and academics address emerging threats from violent state and non-state perpetrators.

### Defining and Identifying the Legal Criminal Definition of Genocide

Article II of the 1948 Genocide Convention makes any actions committed with the intent to exterminate, "in whole or part, a national, ethnical, racial, or religious group" genocide. The UN recognizes the following acts as genocide:

- (a) Killing of 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 part;
- (d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.<sup>5</sup>

The legal criminal definition falls under two universal categories of international law: *Obligatio erga omnes* and *jus cogens*.<sup>6</sup> The former are crimes that supersede any individual state's borders and represent a threat to all humankind. The latter—*jus cogens*—are crimes that under no circumstances states or their nationals can commit, regardless of exigent circumstances: Crimes such as genocide, slavery, and piracy; constitute actions that threaten the welfare of all states. The international community has deemed these behaviors illegal and immoral in perpetuity under every circumstance. The legal criminal understanding of genocide has become the referent definition scholars have used for decades, despite three limitations.

First, the Genocide Convention establishes a dual-mandate of its signatories to prevent and punish individuals who intend to destroy one of the four protected groups: National, ethnic, racial, or religious groups. Determining intent requires the “establish[ment] beyond a reasonable doubt [of] the appropriate mode of liability or form of participation by the accused in the relevant crime,” in other words, the plain delineation beyond an objective threshold that an individual has set out to systematically murder unarmed civilians on a massive scale.<sup>7</sup> The requirement for establishing intent prior to the behaviors associated with genocide under points a through e of Article II has led governments to deny complicity in this criminal act absent written or agreed upon documentation of orders that explicitly call for the extermination of a group. The question of intent has become a hotly debated issue in international relations where accused perpetrators deny claims based on this requirement. It has also become a common political and legal defense in recent decades (for example, the controversy in Turkey over the term genocide to describe the massacre of Armenians during World War I).<sup>8</sup> The difficulty in proving intent, in real-time, has created a daunting task for the international community; therefore, this mandate limits the effectiveness of prevention strategies to retroactivity and not concurrent with exigent circumstances. This de facto, retroactive process of prevention does little to thwart genocides from emerging, as does the politics of genocide acknowledgment.<sup>9</sup>

Second, the Genocide Convention limits the application of genocide to four protected groups, that is, national, ethnic, racial, and religious groups. The restrictive application of the convention was accomplished through considerable negotiations and debate among permanent UN Security Council members and other drafters of the Convention's text, eventually agreeing upon these four specified groups as earning the status of protection under international law.<sup>10</sup> The UN's minimalist definition excludes groups that form because of political affiliation, gender, sexual orientation, or others categories and prohibit these groups from claiming protective rights under the Genocide Convention. The narrow legal definition of genocide, as set forth in the 1948 convention, led to a lacuna between legal scholars' understanding of genocide and the academy's conceptualization. This divergence between the legal crime

and social processes established by academics has held back our collective understanding of what can constitute genocide for decades.

Third, the phrase “mental harm” creates challenges of application under Article II, point b of the convention.<sup>11</sup> The category of mental harm is vast, establishing causality from behaviors associated with points a through e under Article II is difficult, particularly in measuring perpetrator effects on survivors’ mental state. Point b requires “serious bodily or mental harm to members of the group” be carried out; no threshold is set for establishing mental harm (or other indicators). This disjuncture between individual harm and group harm is problematic and creates gray areas under international law, and limits the ability of courts to punish such unseen effects from said crimes. The shortcomings of the legal criminal definition of genocide have led scholars to redefine the operationalized definition in the decades since 1948.

## A Dual-Mandate: Prevent and Punish the Crime of Genocide

As discussed above, in brief, the Genocide Convention establishes two obligations for states. First, states should work to prevent mass atrocities from developing into genocidal massacres. Second, any state may and should punish perpetrators of this crime, as it maintains *erga omnes* and *jus cogens* status.<sup>12</sup> With respect to the former, four issues arise under the Genocide Convention for its members to engage in successful prevention methods. First, there is an identification problem. Under the Genocide Convention member-states (of the UN) must prove “intent” exists within the minds of the perpetrators in order for the convention to take effect. As discussed above proving intent can be an arduous task, particularly, when government records are classified and no paper trail exists. Proving intent makes prevention in the short term exceedingly difficult and near impossible.

For example, the twentieth century’s most swiftly executed genocide occurred in a small landlocked country in East Africa just over twenty years ago. The 1994 Rwanda genocide consumed between 500,000 and 800,000 Tutsi and moderate Hutu lives coupled with an approximately 200,000 deaths associated with the concurrent civil war. The Rwanda genocide transpired over 100 days, but in fact, a far-superior amount of the killing took place within the first six to eight weeks.<sup>13</sup> The vast amount of killing emerged because of the assassination of Hutu President Juvénal Habyarimana on April 6 and lasted for three weeks.<sup>14</sup> There were two subsequent spikes for killing in the following three-five weeks. Under the Genocide Convention, members would have had to establish intent by the government and Interahamwe, grassroots militias, in order to have sanctioned the indigenous peacekeepers to take appropriate action to stop and prevent the genocide from evolving. The Rwanda case is a well-known failure for many reasons, one of which is the international community’s failure to recognize genocide from civil war or ethnic conflict and to prevent such actions from occurring on a massive scale.<sup>15</sup> Additionally, the issue of proving intent held up authorized intervention forces from deploying to the war zone and participating in ending the bloodshed. Critiques of the intervention used this necessary piece

to stymie genocide recognition and slow the process of response. Proving intent before action is the Achilles heel of the Genocide Convention.

The second issue pertains to process. Once identification is established that there is a genocide occurring, a process issue emerges. Members must go through the UN Security Council and receive Chapter VII approval before embarking on a humanitarian military intervention.<sup>16</sup> The process to obtain official recognition is rigid and often mechanical in nature compared with dynamic events on the ground. This official recognition requirement mandates that member states must proceed through the UN Security Council before engaging in a legal humanitarian military intervention.

Third, there is the international legal concept and norm of state sovereignty. This adds additional complexity to the mix when using the Genocide Convention to prevent such large-scale intentional killing of unarmed civilians. The final issue is tactics, that being, the chance of success for such a humanitarian military intervention to succeed in stopping genocide from progressing.<sup>17</sup> These four issues emerge under the Genocide Convention when states seek to prevent this crime. The next section explores R2P doctrine as a mechanism for supplementing the Genocide Convention's prevention processes. In other words, relying on R2P allows for the elimination of the first and potentially second issues discussed above, thus improving the likelihood of success, dramatically.

## The Emergence of R2P as Genocide Prevention

The notion of absolute state sovereignty has evolved over the past two centuries. Since the Treaty of Westphalia states have reserved the right of absolute sovereignty over the territories they control, govern, and manage.<sup>18</sup> This notion of absolute state sovereignty has evolved over time because of increasing "transsovereign problems."<sup>19</sup> In recent years, under international law and as a response to grave human rights violations that have resulted in tens of millions of civilian deaths throughout the twentieth century, the international community have carved out exceptions to state sovereignty and bestowed obligations upon the state as well.<sup>20</sup> With the emergence of *jus cogens* states were restricted in the breadth and depth of possible actions taken (for example, there can be no slavery, piracy, or genocide under any circumstances).

As the twentieth century ended the international community comprised of states, international nongovernmental actors, and global citizens reflected on the mass atrocities perpetrated throughout the previous century. In 2001, human rights activists and leaders working for the International Commission on Intervention and State Sovereignty (ICISS) first drafted the proposed doctrine of R2P.<sup>21</sup> The emergence of R2P, for the first time in human history, provided obligations upon the state to protect its population but if the state neglected to do so transferred this obligation to the international community,

de facto, placing a higher authority above the state during episodes of extreme violence.

The Responsibility to Protect establishes two basic principles. First, embedded within the “concept of sovereignty” is a notion that the state maintains a “responsibility to protect its populations [from harm].”<sup>22</sup> This is a basic responsibility of the state. Second, if the population of a state is facing “serious harm, and the state in question is unwilling or unable to halt or avert it, the responsibility to protect those people lies in the international community.”<sup>23</sup> This article restricts the scope of analysis to presumed cases of extreme political violence that rise to the magnitude and definition of genocide. Given these major episodes of extreme violence, R2P may act as a safety mechanism that supports the Genocide Convention in preventing the emergence of such acts in the twenty-first century. Section three details four issues that arise when employing the Genocide Convention’s prevention mandate. In short, using R2P, the international community can eliminate in some cases the mass murder of protected groups by governments abrogating their solemn duties.

The first issue is an obligation to prove intent to destroy a protected group in whole or part under the Genocide Convention. The benefit of “R2P [is that it] explicitly eliminates the specific intent requirement” of the Genocide Convention.<sup>24</sup> Eliminating the intent requirement enables states to respond directly to R2P’s Just Cause Threshold, that being, “large scale loss of life, actual or apprehended, with genocidal intent or not.”<sup>25</sup> This reduces, if not eliminates the politicization of the term genocide and in its place organizes the international community around a response to extreme violence that is causing the death of unarmed civilians on a massive scale.

Second, under the Genocide Convention there is a formal process for states and the international community writ large to appeal to the Security Council to authorize such interventions to save lives.<sup>26</sup> Under R2P states, regional organizations, and the Security Council are capable of taking actions given certain criteria are met.<sup>27</sup> There are four precautionary principles established by R2P before action is authorized. Any state or regional organization intent on employing R2P must establish the “right intention” principle, meaning the intervention must be executed primarily to “halt or avert human suffering” this cannot be a secondary, tertiary or other cause.<sup>28</sup> The principle of right intention prohibits the use of R2P for the advancement of a state’s own geostrategic interests. Second, the use of force must be a last resort and not the first alternative in taking action against a violating state. Humanitarian military intervention is a costly endeavor full of difficulties. One of the complicating factors of humanitarian military interventions is that of second order effects that stem from the intervention (in other words, more civilians may be killed because of the intervention from collateral damage or direct harm in some cases). Third, there must be proportional means employed by the intervening state(s). This principle requires states to use proportional military means that would eliminate the human suffering but not exceed or exacerbate the conflict in any conceived manner. Finally, there must be a

reasonable prospect of success. If humanitarian military intervention is unlikely to bring about a conclusion to the conditions that are leading to human suffering then R2P should not be employed by a member state because the likelihood of success is significantly reduced, if not absent.

These four precautionary principles guide the use of force under R2P and may supplement the Genocide Convention's mandate to prevent the spread of large-scale intentional killing of a protected group that would result in their destruction in whole or part. States or regional organizations are not required to progress through the Security Council in exercising the use of force under R2P. This is one option available to member states but they may also engage in direct intervention if these precautionary and guiding principles are met and the state's intentions are clearly laid out and transparent to the international community.

Jeffrey Bachman classifies the distinction between sovereignty as defined by the Peace of Westphalia and R2P. Bachman notes sovereignty under the Peace of Westphalia establishes the right of "territorial integrity or political independence," in other words, states are deemed the supreme governing authority within their geographically defined territory, and the actions taken by the states are not questioned by its equal partners around the globe.<sup>29</sup> Under R2P, the notion of sovereignty "emphasizes the responsibility of the governing authority for the welfare of its population."<sup>30</sup> This concept of state sovereignty is in line with the drafter's intent of the Genocide Convention to protect groups from persecution, though R2P enables greater pragmatic prevention methods than the convention for reasons stated above.

Finally, as addressed in section two one restriction on the ability to prevent genocide is the narrow definition of the crime. Essentially the targeting of a group that identify based on political affiliation in place of a national, ethnic, racial or religious foundation is pragmatically similar. The Responsibility to Protect enables the international community to respond to cases of genocide that are similar by academia standards if not international law. This being, the intentional killing of unarmed civilians who identify based on political affiliation. The Responsibility to Protect supplements the Genocide Convention in providing legal protection of the four named groups; but R2P increases the protection to all human beings facing extreme conditions of suffering by perpetrators. Therefore, R2P is a supporting doctrine that can help prevent genocide in the twenty-first century but it is a stand-alone doctrine that, when used, can help save human lives beyond the legal criminal definition.

## Contemporary Conflicts and R2P

Three recent conflicts that, at least on paper, are amenable to an R2P style intervention: The Yazidis in Iraq, Rohingya Muslims in Burma (Myanmar), and Libyans in Benghazi (circa 2011). Let us examine each of these humanitarian crises in turn.

On June 29, 2014 Abu Bakr al-Baghdadi, the self-appointed leader of the so-called Islamic State (ISIS) declared its seized territories in Iraq and Syria a caliphate.<sup>31</sup> ISIS is a Salafi – ultra-conservative Sunni Islamic movement – whose near term goal is to establish a sovereign territory in the Levant region of the Middle East. As an ultra-conservative militant organization, ISIS has singled out the ethnic and religious minority group Yazidis in Iraq as “devil worshippers” for persecution.<sup>32</sup> The Yazidis, numbering less than one million people, largely reside in northern Iraq.<sup>33</sup> The Yazidis practice an amalgamation of various religious traditions of Christianity and Islam. The Yazidis have faced many genocidal massacres in their history, including at least 72 separate pogroms under the Ottoman Empire in the 18<sup>th</sup> and 19<sup>th</sup> centuries alone.<sup>34</sup> Given their long running marginalization in the region and ISIS’s quick seizure of land, the Yazidis became a prime target for extermination in 2014-2015.

Within six weeks of declaring its caliphate, ISIS attacked the northern Iraqi town on Sinjar, home too many Yazidis in the region, and forced approximately 30,000 to flee into the Sinjar Mountains. At the time of this attack, the United States had yet to form The Global Coalition to Defeat ISIS and US president Barack Obama declared, “As commander in chief, I will not allow the United States to be dragged into fighting another war in Iraq.”<sup>35</sup> Though ultimately an inaccurate statement, Obama authorized “targeted airstrikes” by US air force assets against ISIS positions in Iraq to protect both US personnel and “prevent potential genocide of minority groups.”<sup>36</sup> Within several weeks of this targeted intervention by US, Iraqi, and Kurdish forces, the US would officially announce its coalition to combat ISIS and significantly ramped up its intervention force in the region – which remains in the region today. This limited action by US and allied forces is considered a “light” R2P intervention given the justification for action.

The second conflict amenable to an R2P intervention is Burma (Myanmar’s) present-day genocidal campaign against Rohingya Muslims. Though unrecognized by Burma’s government, the Rohingya have resided in western Burma since the precolonial era.<sup>37</sup> In 2012 and 2016, communal violence broke out across Rakhine state, a western province home to most Rohingya Muslims. Though initially perpetrated by local political entrepreneurs, “the subsequent military operation saw over a thousand homes burnt to the ground, as well as allegations of rape perpetrated by Burmese forces against Rohingya civilians.”<sup>38</sup> For years, Muslims in Burma have faced widespread societal discrimination, with many innocent Islamic practitioners often inappropriately compared to ISIS or al-Qaeda militant organizations.<sup>39</sup>

In many ways the *Tatmadaw*, Burmese Armed Forces, have followed a long held process of genocide preparation. Burmese officials ordered the confiscation of “sharp and blunt objects” that could be used for protection by Rohingya civilians, then trained and armed local non-Rohingya civilians, deprived the Rohingya of food and other aid, systematically built-up *Tatmadaw* security and military personnel in the western regions, and finally order the looting, burning of villages, rape, forced relocation, and widespread

murder of Rohingya Muslims.<sup>40</sup> Since the government-led “clearance operations” began, more than 700,000 Rohingya have been forced from their homes and have sought refuge in Bangladesh.<sup>41</sup> The evidence is clear, Burma’s *Tatmadaw* continue to commit, enact, prescribe, coerce, mastermind, or otherwise engage in humanity’s most abominable crime – genocide. In November 2017, former Secretary of State Rex Tillerson called the situation “ethnic cleansing.” As of December 2017, Médecins Sans Frontières has estimated that at least 9,400 Rohingya have died, among which 6,700 died from violence, shootings, torture, rape, or immolation, and another 647,000 have fled to neighboring Bangladesh (now more than 700,000). It is important to note, it is likely that these figures underestimate the true cost and violence perpetrated against the Rohingya – due to the enormous difficulty in counting civilian casualties in authoritarian states. Given the enormity of the situation, Burma is ripe for an R2P humanitarian military intervention to protect the lives, dignity, and cultural heritage of Rohingya Muslims. Yet none has taken place.

Finally, the third humanitarian crisis, which embodies the spirit of R2P, is the US-led humanitarian military intervention in Libya (circa 2011). On March 17, 2011, the UN Security Council (UNSC) approved Resolution 1973, which authorized military intervention in Libya to protect civilians and civilian-populated areas from attack. “The goal, Obama explained, was to save the lives of peaceful, pro-democracy protesters who found themselves the target of a crackdown by Libyan dictator Muammar al-Qaddafi.”<sup>42</sup> This intervention is often lauded as the quintessential R2P example, and in some respects, it is. The international community, led in this case by western powers, advocated for the protection of civilians in eastern Libya who were specifically targeted for mass murder by the regime. Within hours of the UNSC Resolution’s passage, a multi-state NATO-led coalition began bombarding regime units on their way toward Benghazi. This humanitarian military intervention is largely credited with saving the lives of civilians located in eastern Libya, principally the city of Benghazi. Despite initial success of the R2P-style intervention, the Libyan model poses some risks. First, R2P does not establish a uniform timetable for withdrawal. As such, the NATO-led coalition was successful in routing Libyan troops from exterminating civilians in the east; however, the intervention lacked any long-term follow through in creating a stable governing regime. Though initiated under the auspices of good intentions, it is possible that the second order effects of the 2011 intervention outweigh the short-term benefits.

## Conclusion

One lesson learned from the Holocaust and articulated by A. Dirk Moses in 2011, was one significant problem remains, particularly in contemporary Western societies, that the Holocaust is still portrayed as “the epitome of evil.” Therefore, if mass violence does not mimic the signs and symptoms of the Holocaust it can be excluded as non-genocidal. Despite much advancement in international law, technology, and human rights during the twentieth century as many as 350 million people were intentionally killed by

governments or organized groups.<sup>43</sup> The 1948 Genocide Convention was an attempt to eliminate the scourge of genocide from human experience. The convention establishes two mandates: The prevention and punishment of the crime of genocide. The former has gone unfilled. The international community has had greater progress with punishing the crime of genocide, though much work remains, but prevention of this extreme violence has eluded the international community for decades. With the creation of the R2P doctrine in the early 2000s, the international community has established a better prevention and intervention mechanism for states and regional organizations to employ in times of great human suffering and genocide.

This study articulates the benefits of R2P in supporting and enhancing the prevention mandate of the Genocide Convention. Until R2P's emergence on the scene, the international community could at best respond to circumstances of genocide after the fact but were hard pressed to engage in prevention methods. The Responsibility to Protect provides states and regional organizations with the legal and normative ability to engage in prevention and intervention to stop the crime of genocide and other large-scale human suffering. Since R2P's emergence the record has not greatly improved but we have witnessed some positive cases of intervention that saved lives (for example, Iraq 2014; Libya 2011). The international community no longer has its hands tied by the Genocide Convention, with the advent of R2P. Only time will tell if this new international legal norm will suffice in preventing genocide from emerging again.

## Endnotes

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<sup>1</sup> I am grateful to Harry D. Gould and the reviewers for their helpful comments and criticisms of this article.

<sup>2</sup> Rebecca Joyce Frey, *Global Issues: Genocide and International Justice* (New York: Facts on File, Inc., 2009), 12.

<sup>3</sup> Since its ratification, scholars find the Genocide Convention to be customary international law. This means that all states, regardless of their ratification of the treaty or not, are bound by the Convention under international law. Jeffrey S. Bachman, "The Genocide Convention and the Politics of Genocide Non-prevention" (Doctoral dissertation, Northeastern University, 2013), 20, <https://repository.library.northeastern.edu/files/neu:1538/fulltext.pdf>.

<sup>4</sup> Bachman, "The Genocide Convention," 20.

<sup>5</sup> "Convention on the Prevention and Punishment of the Crime of Genocide." Adopted by Resolution 260 (III) A of the United General Assembly on 9 December 1948.

<sup>6</sup> Jordan J. Paust, M. Cherif Bassiouni, Michael Scharf, Leila Sadat, Jimmy Gurulé, and Bruce Zagaris, *Human Rights Module: On Crimes Against Humanity, Genocide, Other Crimes Against Human Rights, and War Crimes: Third Edition* (Durham, NC: Carolina Academic Press, 2014), 5.

<sup>7</sup> Individuals can be charged with the crime of genocide irrespective of their affiliation with a government or if albeit they are a private citizen. See Morten Bergsmo, "Intent," in *The Genocide Studies Reader*, eds. Samuel Totten and Paul R. Bartrop (New York: Routledge, 2009), 22.

<sup>8</sup> Vahakn N. Dadrian and Taner Akçam's *Judgment at Istanbul: The Armenian Genocide Trials* (New York: Berghahn Books, 2011), 4-5; *Judgment at Istanbul* explains the difficulty and research bias of some academic publications in Turkey that "almost completely ignore the rich source-material available outside Turkey... [and rely on] dogmatic state officials, entrenched bureaucrats who, relying on a method of extreme selectivity in the use of domestic sources, are trying to validate this state-authorized viewpoint."; Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven, CT: Yale University Press, 1981), 33.

<sup>9</sup> I use the phrase "politics of genocide acknowledgement," which refers to two risks associated with state recognition of the crime of genocide. First, recognition that genocide has occurred places a burden upon the recognizing government to take steps to prevent, punish, and minimize the destruction of human life associated with the crime. Second, governments may feel pressure from its constituencies after acknowledgement to take action, thus electoral pressure could influence the decision of governments to act. This pressure from below could also restrict the actions of governments that wish to use force as a means of stopping such crimes. One risk associated with genocide acknowledgement stems from signatories' legal obligation (and the international community writ large originating with *jus cogens* crimes) and the second originates from domestic political considerations.

<sup>10</sup> David Shea Bettwy, "The Genocide Convention and Unprotected Groups: Is the Scope of Protection Expanding Under Customary International Law?" *Notre Dame Journal of International & Comparative Law* 2, no. 1 (2011), 167, <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1009&context=ndjicl>.

<sup>11</sup> Barbara Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955" *American Political Science Review* 97, no. 1 (2003), 58, <http://dx.doi.org/10.1017/S0003055403000522>.

<sup>12</sup> The term *erga omnes*, is a Latin phrase that loosely translates to "towards all." In legal use, *erga omnes* rights or obligations require all nation-states to take action; therefore, enforcement is universal. *Jus cogens* means that this legal category is a fundamental

tenet of international law and allows no derogation under any circumstances. No state, party, or actor is allowed to enact genocidal campaigns under any circumstances.

<sup>13</sup> Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca: Cornell University Press, 2006), 57.

<sup>14</sup> Carol McQueen, *Humanitarian Intervention and Safety Zones: Iraq, Bosnia and Rwanda* (New York: Palgrave Macmillan, 2005), 96-104.

<sup>15</sup> Michael Keren and Donald S. Sylvan eds., *International Intervention: Sovereignty versus Responsibility* (Portland, OR: Frank Cass, 2002), 56-57.

<sup>16</sup> Michael O'Hanlon, *Saving Lives with Force: Military Criteria for Humanitarian Intervention* (Washington, DC: Brookings Institution Press, 1997), v.

<sup>17</sup> For an excellent discussion of conditions for success and failure of humanitarian military intervention see Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Solna, Sweden: Oxford University Press, 2008).

<sup>18</sup> Jeremy Moses, *Sovereignty and Responsibility: Power, Norms and Intervention in International Relations* (New York: Palgrave Macmillan, 2014), 25.

<sup>19</sup> Maryann K. Cusimano, *Beyond Sovereignty: Issues for a Global Agenda*. (Boston: Bedford/St. Martin's, 2000), 4.

<sup>20</sup> Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012), 1-11.

<sup>21</sup> See Aidan Hehir and Robert Murray eds., *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2013).

<sup>22</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: The International Development Research Centre, 2001), XI.

<sup>23</sup> ICISS, *The Responsibility to Protect*, XI.

<sup>24</sup> Bachman, "The Genocide Convention," 208.

<sup>25</sup> ICISS, *The Responsibility to Protect*, XII.

<sup>26</sup> Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World* (New York: Routledge, 2009).

<sup>27</sup> ICISS, *The Responsibility to Protect*, XI.

<sup>28</sup> ICISS, *The Responsibility to Protect*, XII.

<sup>29</sup> Bachman, "The Genocide Convention," 212.

<sup>30</sup> Bachman, "The Genocide Convention," 212.

<sup>31</sup> Alissa J. Rubin, "Militant Leader in Rare Appearance in Iraq," *The New York Times*, July 5, 2014, <https://www.nytimes.com/2014/07/06/world/asia/iraq-abu-bakr-al-baghdadi-sermon-video.html>.

<sup>32</sup> Raya Jalabi, "Who are the Yazidis and why is Isis hunting them?" *The Guardian*, August 11, 2014, <https://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>.

<sup>33</sup> Jalabi, "Who are the Yazidis."

<sup>34</sup> Jalabi, "Who are the Yazidis."

<sup>35</sup> This coalition was established on September 10, 2014, approximately one month after the Sinjar attack. For quote see, Chelsea J. Carter, Tom Cohen, and Barbara Starr, "U.S. jet fighters, drones strike ISIS fighters, convoys in Iraq," *CNN*, <https://www.cnn.com/2014/08/08/world/iraq-options/index.html>.

<sup>36</sup> Carter et al., "U.S. jet fighters."

<sup>37</sup> Adam E. Howe and Zachary A. Karazsia, "A Long Way to Peace: Identities, Genocide and State Preservation in Burma, 1948-2018," *Politics, Groups, and Identities*, <http://dx.doi.org/10.1080/21565503.2018.1529604>.

<sup>38</sup> Howe and Karazsia, "A Long Way to Peace," 13.

<sup>39</sup> Matt Schissler, Matthew J. Walton, and Phyu Phyu Thi, "Reconciling Contradictions: Buddhist-Muslim Violence, Narrative Making and Memory in Myanmar," *Journal of Contemporary Asia* Vol. 47, no. 3 (2017), 376-395, <http://dx.doi.org/10.1080/00472336.2017.1290818>.

<sup>40</sup> "They Gave Them Long Swords': Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar," *Fortify Rights*, July 30

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[https://www.fortifyrights.org/downloads/Fortify\\_Rights\\_Long\\_Swords\\_July\\_2018.pdf](https://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf).

<sup>41</sup> “Genocide in Burma,” *The Weekly Standard*, August 28, 2018,

<https://www.weeklystandard.com/the-editors/genocide-in-burma>.

<sup>42</sup> Alan J. Kuperman, “How a Well-Meaning Intervention Ended in Failure,” *Foreign Affairs*, March/April 2015, <https://www.foreignaffairs.com/articles/libya/obamas-libya-debacle>.

<sup>43</sup> Benjamin A. Valentino, *Final Solutions: Mass Killing and Genocide in the 20<sup>th</sup> Century* (Ithaca, NY: Cornell University Press, 2004), 1.