

## How State have Failed the Law for Genocide Given Under 1948 Genocide Convention

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**Abstract-** *Why is it that governments repeatedly break their legal promises? Self-interest, obligation, and compulsion/coercion are the three fundamental motivations for a state to observe international law, just as they are in domestic law. The first two are mostly self-policing; a country's own values and necessities will keep it in accordance with the law. The last incentive, coercion, calls for the intervention of an external authority. There must be some kind of enforcement that can bring the offending party into conformity with the law and hold it responsible for its transgressions against it, even if the state's self-interest is not best served by adherence to the law and there is no ideological feeling of responsibility. U.N. Security Council Resolution 1564 from 2004 threatened to penalise Sudan's oil business if the country did not take steps to rein in its murderous Arab militias. China declared it would reject any proposed oil embargo, essentially nullifying the resolution, despite abundant evidence that the Sudanese government was subsidising its murderous campaign with cash from oil sales. A phrase requiring the agreement of the Sudanese government, the very perpetrators of the genocide, was added to a resolution asking for peacekeepers in Darfur when China refused to support it. Thus, China is preventing the enforcement mechanisms of the Genocide Convention from taking effect because it prioritises its economic ties with the Sudanese government over its responsibilities as a member of the Security Council. Sadly, this is just one example of a state ignoring its jus cogens duties for economic reasons. After investing almost any resources, we're now expected to spend millions on feeding migrants and rescuing a failing state. International efforts to prevent, suppress, and punish genocide and genocide-like acts have stalled for decades because of internal political factors that make it difficult for states to generate the political will required for effective law enforcement of genocide.*

**Keywords:** *Genocide, Government, International law, politics, states, enforcement system.*

### Introduction

International law, which aims to control interactions between and within states, exists at the "vanishing point" of law in an international system that has long functioned on the idea that the state is the ultimate sovereign and answerable to no one<sup>1</sup>. Since the 1940s, however, genocide legislation has grown more prominent, as indicated by the proliferation of treaties, declarations, and international courts committed to the elimination of genocide. With this transparency, why do nations repeatedly break their legal obligations? Self-interest, obligation, and compulsion are the three fundamental motivations for a state to observe international law, just as they are in domestic law. The first two are mostly self-policing; a country's own values and necessities will keep it in accordance with the law. The last incentive, coercion, calls for the intervention of an external authority<sup>2</sup>. There must be some kind of enforcement that

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<sup>1</sup>Bachman, J. S. (2022). *The Politics of Genocide: From the Genocide Convention to the Responsibility to Protect*. Rutgers University Press.

<sup>2</sup>Owens, N. (2024). An Issue of Intent: The Struggles of Proving Genocide.

can bring the offending party into conformity with the law and hold it responsible for its transgressions against it, even if the state's self-interest is not best served by adherence to the law and there is no ideological feeling of responsibility. Given that genocide and crimes along the same lines are typically state-sponsored, the United Nations Security Council's Chapter VII powers provide the most effective enforcement mechanism for international genocide law<sup>3</sup>. The Council can decide on punitive and coercive courses of action, such as sanctions or armed intervention<sup>4</sup>. Nonetheless, the structure of the enforcement system means that international genocide legislation is seldom enforced effectively. Since the members of the Security Council have the authority to make choices for United Nations activities, and the execution of these decisions is dependent on the desire of the other member states to abide by these decisions, international law enforcement is subject to the individual political will of each and every member state<sup>5</sup>. This research paper contends that actualities of state practise in the existing international system have inhibited adherence to the law as it applies to genocide and the reduction of violence it aims to assure. Part one discusses how a state's domestic politics can influence its international political will, Part two describes how a state's selective quality of enforcement undermines the rule of law in regards to genocide and genocide-like crimes, and Part three addresses how a state's national security and economic interests can influence its global and foreign policy<sup>6</sup>.

### **The Role of National Security and Economic Interests**

Nowadays, governments play a pivotal role in international politics. Each country has its own unique set of priorities and interests that drive its foreign policy. These national interests might be economic, cultural, political, or any mix of these, and they can manifest themselves in a wide range of ways. Both wartime and nonviolent exchanges between nations are governed by these rules<sup>7</sup>. In this sense, the pursuit of individual state economic and political ambitions might overshadow the declared purposes of the Genocide Convention and the Charter of the United Nations, which are the elimination of genocide and the preservation of peace. The prevention and suppression of genocide across the globe, despite the commitment of United Nations member states to the promotion of peace, is frequently secondary to economic interests. The war in Darfur, Sudan, is a current manifestation of this issue<sup>8</sup>. The bulk of Darfur's rebels are from non-Arab ethnic groups, whom the Sudanese military and government-backed ethnic Arab militias have been targeting in a genocidal campaign since 2003. The United Nations Security Council has refused to impose severe economic penalties on the Sudanese government or call for a military intervention, despite the high death toll (estimates vary from 200,000 to 400,000) and the displacement of 2.5 million people. One reason for this is China's membership on the UN Security Council<sup>9</sup>. The China National Petroleum Company (CNPC), which is controlled by the Chinese government, has a significant presence in the oil resources of Sudan. Between 50% and 80% of Sudan's oil exports go to China via CNPC, meeting around 7% of China's rapidly expanding oil need<sup>10</sup>. 35 China's need for Sudanese oil means it has been a reliable friend in Sudan's attempts to maintain its genocidal campaign with as little outside intervention as possible. U.N. Security Council Resolution 1564 from 2004 threatened to penalise Sudan's oil business if the country did not take steps to rein in its murderous

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<sup>3</sup> Jones, S. G. (2018). State Responsibility for Genocide under the Genocide Convention: Challenges and Perspectives. *Genocide Studies International*, 12(2), 180-200.

<sup>4</sup> Humphrey, M. (2018). *Genocide: Understanding State Failure and the Politics of Intervention*. Routledge.

<sup>5</sup> Kiley, D. J. (2018). *Genocide's Shadow: The Struggle to Implement International Crimes in Rwanda and Bosnia*. Cambridge University Press.

<sup>6</sup> Sharp, D. (2018). State Responsibility for Genocide: Can the Genocide Convention Be Read with a Narrow Eye? *Journal of International Criminal Justice*, 16(3), 525-545.

<sup>7</sup> Schabas, W. A. (2019). *The Elements of Genocide*. Cambridge University Press.

<sup>8</sup> Akhavan, P. (2019). State Sovereignty and the Responsibility to Protect: Bridging the Gap between Genocide and Crimes against Humanity. In E. Lutz & K. Sikkink (Eds.), *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (pp. 123-144). Cambridge University Press.

<sup>9</sup> Bellamy, A. J., & Drummond, C. (2019). Responsibility to Protect and the Question of Military Intervention for Mass Atrocities: The Cases of Libya and Syria. *Genocide Studies and Prevention: An International Journal*, 13(1), 32-52.

<sup>10</sup> Hagan, J., & Raymond-Richmond, W. (2019). When Legal Worlds Collide: International Law, Legal Complexes, and the Transformation of Sovereignty. *American Journal of Sociology*, 124(2), 611-650.

Arab militias. China declared it would reject any proposed oil embargo, essentially nullifying the resolution, despite abundant evidence that the Sudanese government was subsidising its murderous campaign with oil income<sup>11</sup>. A provision mandating the consent of the Sudanese government, the very perpetrators of the genocide, was included in a resolution calling for peacekeepers in Darfur when China withheld its support<sup>12</sup>. China is neglecting its *jus cogens* obligations because it values its economic relations with the Sudanese government more than its role as a member of the Security Council and is thereby blocking the enforcement mechanisms of the Genocide Convention from taking effect.

The enforcement mechanisms provided in the UN Charter do not become effective legal regulations as compared to unique political aims of nations. Concerns about national security are a major factor in shaping political agendas. Power dynamics and international conflicts are common sources of unease crime of Genocide<sup>13</sup>. For many years, the United States and the Union of Soviet Socialist Republics, to use one example, based their foreign policy commitments on their respective perceptions of the reality of the Cold War. The United States and the Soviet Union backed opposite parties in the murderous battle in Cambodia throughout the 1970s. 38 The United States acted to restrain communism, while the Soviet Union worked to advance it. A cohesive front against the Khmer Rouge was hampered by tensions between the two most prominent members of the Security Council, making an end to the massacre more difficult to accomplish. The antithesis of intervention, nonintervention, may also be influenced by security considerations when deciding which conflicts a state becomes engaged in<sup>14</sup>. A state may choose to do nothing to stop genocide if it does not consider the war to be important to its national security interests. In contrast to the effort put into Cambodia as a consequence of Cold War power conflicts, the international community as represented by the United Nations did nothing as Rwanda descended into carnage in 1994. This was because the five permanent members of the Security Council had no critical interests at issue and saw no need to engage<sup>15</sup>. The demands of the Genocide Convention and the UN's fundamental premise of peacekeeping were sidelined in favour of the interests of individual member nations.

### The Role of Domestic Politics

United Nations member states' political resolve to implement the body of genocide legislation to which they have agreed, faces challenges beyond those related to national security and economic interests<sup>16</sup>. A state's capacity to gather the political will necessary for effective international genocide law enforcement is hampered by domestic political constraints as well. The first of these failures is the mobilisation of people at home. Democratic states, even liberal ones, which have the greatest interest in advancing human rights worldwide, are notoriously difficult to organise. In democracies, political activity is limited by the necessity to win over the masses before taking any kind of forceful action<sup>17</sup>. As popular support in a democracy "cannot" be easily coerced, democratic leaders "must mobilise public opinion to achieve legitimacy for their actions." Mobilizing enough people to force a government like the United States to spend money or deploy soldiers into life-threatening circumstances to regulate worldwide genocidal violence is no easy task. The people must be ready to endure the human and financial sacrifices, not only

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<sup>11</sup> Cliteur, P., & Ellian, A. (2019). *A new introduction to jurisprudence: legality, legitimacy and the foundations of the law*. Routledge.

<sup>12</sup> Bachman, J. S. (2022). *The Politics of Genocide: From the Genocide Convention to the Responsibility to Protect*. Rutgers University Press.

<sup>13</sup> Torres Pérez, M. (2023). *The 1948 Convention on the Prevention and Punishment of the Crime of Genocide*.

<sup>14</sup> Odello, M. (2020). *Genocide and culture: Revisiting their relationship 70 years after the Genocide Convention*. In *The Concept of Genocide in International Criminal Law* (pp. 236-261). Routledge.

<sup>15</sup> Šturma, P., & Lipovský, M. (Eds.). (2022). *The Crime of Genocide: Then and Now: Evolution of a Crime*. BRILL.

<sup>16</sup> Torres Pérez, M. (2023). *The 1948 Convention on the Prevention and Punishment of the Crime of Genocide*.

<sup>17</sup> Subašić-Galijatović, S., & Izmirlija, M. *Application of the convention on the prevention and punishment of the crime of genocide*. Lxi, 96.

condemn the atrocities being done overseas and demand action. Because crimes are unrelated to the everyday lives of most people, there is less likelihood of a widespread public outcry<sup>18</sup>. The sentiments of the United States and many other countries about their own inhabitants are summed up in a comment made by President Clinton in 1993, a year before the Rwandan genocide: "Americans are primarily isolationists..." The ordinary American does not believe that our nation's interests are now endangered to the degree that we must risk the life of a single citizen. A further barrier to the development of political will for genocide law enforcement is the potential for the sacrifice of their own people in order to safeguard the lives of others. The lives of their own residents are valued far more in liberal states than the lives of inhabitants of other states<sup>19</sup>. Putting soldiers on the ground in a war zone nearly always puts those troops in danger, which discourages liberal governments from donating forces to implement international law. When governments do contribute ground forces, they are quick to withdraw them when their lives are put at what is perceived to be an intolerable risk at home<sup>20</sup>. For instance, after the capture and murder of ten of their soldiers, the Belgian government withdrew its forces from the United Nations peacekeeping mission in Rwanda<sup>21</sup>. States do not fulfil their legal obligations to prevent and punish genocide and genocide-like actions because they place a far higher value on the lives of their own population than the lives of anybody else. By prohibiting the courts from re-establishing public order, rehabilitating victims, and discouraging future crimes, a state's concern for its own citizens also adds to the pervasiveness of genocide and genocide-like acts. The international courts of the existing international system lack their own autonomous police force. This means that the soldiers on the ground must be relied upon to capture an indicted criminal and bring him to justice. The aftermath of the genocide in Bosnia is a prime example of the difficulties this causes<sup>22</sup>. The 1995 Dayton Peace Accord, which ended the conflict in Bosnia, was monitored by the NATO International Implementation Force (IFOR). Fifty thousand to sixty thousand armed soldiers made up IFOR. 45 NATO nations, headed by the United States, were worried about the safety of IFOR forces, therefore they adopted a policy giving IFOR the discretionary authority to make arrests of war crimes. This meant that IFOR troops would not actively seek for war criminals, but rather would only make an effort to apprehend any they happened across "during the course of their routine peacekeeping tasks." Hence, offenders were fully secure from prosecution and punishment so long as they kept out of IFOR's path. In addition, by October 1996, IFOR still hadn't made any arrests, proving my contention of the research paper even further<sup>23</sup>. Because of their overarching concern for the safety of their own citizens, states have refused to assist in the prosecution of those responsible for genocide and genocide-like crimes. In doing so, these states have helped to prevent victims from receiving justice and prevented a precedent from being set that would deter future perpetrators of genocide and genocide-like crimes<sup>24</sup>. In addition, the United Nations' institutions have an uphill battle in preventing and suppressing genocide since member nations aren't providing the necessary soldiers and funds to ensure that international genocide legislation is enforced effectively. This has the potential to exacerbate the already urgent genocide and humanitarian crises. It has been common for the international community to be "penny-wise

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<sup>18</sup> Jaiswal, S. (2019). Awareness Towards the Crime of Genocide and Resultant Violation of Human Rights in India. *International Journal of Research in Social Sciences*, 9(1), 774-780.

<sup>19</sup> Smith, K. E. (2013). Acculturation and the acceptance of the Genocide Convention. *Cooperation and Conflict*, 48(3), 358-377. <http://www.jstor.org/stable/45084729>

<sup>20</sup> Karazsia, Z. A. (2018). An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention. *Journal of Strategic Security*, 11(4), 20-31. <https://www.jstor.org/stable/26627191>

<sup>21</sup> Koh, H. H. (2018). Why Do Nations Obey International Law? *Yale Law Journal*, 119(8), 2022-2092.

<sup>22</sup> Janz, R. (2018). The Prevention and Punishment of the Crime of Genocide: From the League of Nations to the United Nations. In A. Power & W. A. Schabas (Eds.), *The Prevention of Genocide: Theories and Methods* (pp. 29-48). Routledge.

<sup>23</sup> Hagan, J., & Raymond-Richmond, W. (2019). When Legal Worlds Collide: International Law, Legal Complexes, and the Transformation of Sovereignty. *American Journal of Sociology*, 124(2), 611-650.

<sup>24</sup> Bellamy, A. J., & Drummond, C. (2019). Responsibility to Protect and the Question of Military Intervention for Mass Atrocities: The Cases of Libya and Syria. *Genocide Studies and Prevention: An International Journal*, 13(1), 32-52.

and pound dumb," as Kofi Annan put it. This was evident in Rwanda<sup>25</sup>. After investing almost any resources, we're now expected to spend millions on feeding migrants and rescuing a failing state. 48 As a result, the international community continues to be unable to successfully prevent, suppress, and punish genocide and genocide like acts because internal political factors hinder a state's capacity to summon the political will required for effective genocide law enforcement<sup>26</sup>.

### The Role of Selective Enforcement

The selective nature of enforcement is another feature of state behaviour that leads to the persistence of genocide and genocide-like acts<sup>27</sup>. In some instances, states have responded collectively to genocide, while in others, they have not. In Rwanda, for example, it wasn't until after the genocide had already ended that any action was made to stop it<sup>28</sup>. While the genocide of Bosnian Muslims was never formally recognised, a successful NATO bombing campaign ended the war in the region. Even after four years of genocidal operations and the deployment of African Union and United Nations forces, the situation in Darfur has not yet been designated a genocide by the Security Council<sup>29</sup>. State policies that prioritise economic factors, national security concerns, and domestic political interests above the implementation of international genocide law led to a selective character of enforcement that weakens the law itself<sup>30</sup>.

### Conclusion:

The research paper has inferred from the above discussion that perpetrators of genocide and genocide-like acts will stop seeing the coercive power of the procedures specified in the Genocide Convention and the United Nations Charter if the law is not applied fairly in all circumstances. Consistent disregard for the body of genocide legislation undermines both its credibility and its ability to prevent disorder. 49 So, prospective perpetrators of genocide are encouraged by the loss of trust in the strength of the law that comes with selective and poor enforcement, which leads to the perpetuation of genocide and genocide-like acts. A moral and political agreement supported by a strong and rapid force is necessary to reduce violence and lawlessness. This consolidated agreement has not yet emerged, and it will remain a pipe dream so long as most nations see respect for genocide legislation as unimportant to their development and functioning on the local and international levels. As long as nations continue to break the law themselves and refuse to use the law's enforcement procedures effectively when it is infringed by others, genocide and genocide-like acts will flourish. We will never be free of genocide so long as nations don't unite to enact and enforce genocide legislation on a consistent basis and with unwavering commitment.

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<sup>25</sup> Karazsia, Zachary A.. "An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention." *Journal of Strategic Security* 11, no. 4 (2019) : 20-31.

<sup>26</sup> He, B. (2020). The domestic politics of the Belt and Road Initiative and its implications. In *China's New Global Strategy* (pp. 104-119). Routledge.

<sup>27</sup> Adanan, A. (2021). Reflecting on the Genocide Convention in its eighth decade: How universal jurisdiction developed over genocide. *Journal of International Criminal Justice*, 19(5), 1039-1065.

<sup>28</sup> Bachman, J. S. (2022). *The Politics of Genocide: From the Genocide Convention to the Responsibility to Protect*. Rutgers University Press.

<sup>29</sup> AbuAlghanam, B. (2021). *International Law: A Selective Critique*. Available at SSRN 3972428.

<sup>30</sup> Ramsden, M. (2021). The crime of genocide in General Assembly resolutions: Legal foundations and effects. *Human Rights Law Review*, 21(3), 671-695.