Genocide Spotting: Between Recognition and Prosecution

by

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Author's declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

Abstract

This thesis delves into the challenges of identifying and proving genocide in a court of law, using Bosnia as a case study. Genocide, considered one of the most atrocious human rights violations, involves the deliberate and systemic extermination of a specific ethnic, national, racial, or religious group. The research analyzes the legal definition and judicial process related to genocide, focusing on the parameters outlined in the Convention on the Prevention and Punishment of Genocide. It examines the difficulty in recognizing and categorizing events as genocide, exploring the political and geostrategic factors influencing identification and international response. The thesis seeks to clarify the obstacles in appropriately identifying and effectively prosecuting genocide in a legal context. Furthermore, it differentiates between the legal complexities and practical requirements and, along with empirical evidence, attempts to dispel the notion that "genocide is overwhelmingly difficult to prove" (if the event meets the legal criteria). The study emphasizes the importance of expert input in assessing potential genocides and highlights the risks of layperson identifications. Ultimately, the research offers recommendations to address the issues explored in this thesis.

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I wish to express gratitude to my family, who have shown the ultimate support for my efforts.

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Dedication

Dedicated to the victims and to those who risk their lives in the struggle to enforce human rights.

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BBC	British Broadcasting Company
BiH	Bosnia i (and) Hercegovina
CAH	Crimes Against Humanity
CPPCG	Convention for the Prevention and Punishment of the Crime of Genocide
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	(UN General Assembly) Economic and Social Council
EU	European Union
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFOR	Implementation Force
JCE	Joint Criminal Enterprise
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PCIJ	Permanent Court of International Justice
R2P	Responsibility to Protect
UNGA	United Nations General Assembly

Introduction

In this thesis, I will be arguing for the following points:

1. Genocide is commonly perceived as the most severe of crimes in society's view. However, there is a noticeable trend to view any large-scale violence against any distinct group as genocide. This broad usage has diminished public deliberation of what genuinely qualifies as genocide and has encouraged an instrumentalization and weaponization of the charge.
2. The actual crime of genocide, in law, is defined very narrowly. Therefore, many horrific crimes against humanity do not technically meet the threshold to qualify as genocide, although they are no less morally objectionable than if they did.
3. The public's thirst for genocide convictions both (a) distorts the allocation of resources to investigations and prosecutions of war crimes and crimes against humanity and (b) generates frustration and disenchantment when tribunals do not deliver convictions.
4. It is quite probable that individuals responsible for war crimes and crimes against humanity have avoided justice due to the eagerness to prosecute and convict them specifically for genocide. In other terms, the aggressive pursuit of labeling actions as genocide may inadvertently allow some to evade punishment. Paradoxically, the very charge of genocide could serve as a loophole for avoidance of liability.
5. Because of these pressures, international tribunals deliver genocide convictions that are legally dubious as a response.
6. On the balance, the international community and victims would likely be better off without a separate crime of genocide.

The research will support these arguments by analyzing the legal definition and judicial processes concerning genocide, specifically within the parameters set by the Convention on the Prevention and Punishment of Genocide. It does not extend to exploring social or historical perceptions of genocide, which fall beyond the Convention's framework, but instead examines the tensions with social constructs being conflated with legal definitions. Additionally, the thesis will scrutinize the empirical evidence to determine if it supports or contradicts the prevalent belief that proving genocide in a court of law is exceedingly challenging (Blakemore, 2022). The difficulties may revolve not around the act of providing legal proof per se but rather around the initial recognition and categorization of an event as genocide. This task involves navigating complex political and geostrategic factors that influence both the identification and the international response to such events. The thesis seeks to clarify the obstacles present in both identifying genocide appropriately and prosecuting it effectively in the legal arena.

Without a doubt, any ideas or propositions of intervening in another state, regardless of its power status, present a complex dilemma for larger entities such as the United Nations or powerful countries like the United States. These sorts of interventions can often bring up two specific issues. First, there are legal complexities, although not that necessarily difficult, and second, there are practical requirements associated with intervening in or dealing with the aftermath of a genocide. These two distinct matters are frequently confused or linked together, creating the general notion that "genocide is hard to prove." This notion may lay more in the domain of geopolitics and cost-benefit calculations than in the domain of legal processes. Additionally, I emphasize the valuable role of expert input in interrogating potential genocides, contrasting it with the risks of layperson identification (Morgan, 2023). I conclude by proposing recommendations.

I want to make clear that I am not denying genocide. My argument in no way attempts to detract from, diminish, or deny any events or relevant facts about events that people commonly perceive or construe as genocide. My argument does not rely on the facts of events but focuses only on the legal structure of arguments being made and whether the facts of an event fall within the scope of the Convention and are correctly adjudicated.

What is genocide in a legal context? There is only one universally accepted legal definition of genocide, which is found in Article II of the 1948 U.N. Convention on the Prevention and Punishment of the Crime of Genocide:

> … [G]enocide 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 (United Nations, 1948).

Identifying cases of and proving genocide are fundamental pillars of ensuring justice, holding perpetrators accountable, and preventing future atrocities. However, identifying events that might constitute genocide and proving it within a court of law may present significant challenges, as does any complex legal case (Schabas, 2009).

Genocide is a crime of broad magnitude that requires precise determinations to distinguish it from other forms of violence and human rights abuses such as war crimes, crimes against humanity, and ethnic cleansing. The exploration of challenges in identifying events that might constitute genocide is crucial because it helps establish clear criteria and guidelines to assess and respond to potential genocidal situations effectively if interested parties have the will, interest, and resources to intervene or eventually adjudicate.

The study and acknowledgment of genocides, actual or perceived, in recent history are crucial for understanding how to craft appropriate international responses. However, international human rights investigations attract diverse actors with varied motivations. Politically motivated actors, including

governments and advocacy groups, seek to validate or challenge genocides for strategic purposes, such as garnering international support, triggering legal action, or justifying interventions like the 1999 NATO bombing of the former Yugoslavia (Weiss, 2016). Historical revisionists aim to deny genocides to rewrite narratives and preserve a public image. Understanding the challenges associated with proving genocide is also essential to help dispel misconceptions and skepticism surrounding the reality of genocide.

The investigation of genocide in preparation for prosecution demands an interdisciplinary approach encompassing legal, sociological, historical, and political perspectives (Verdeja, 2012). By examining relevant approaches, this research strives to shed light on the complexities inherent in proving genocide, contributing to more effective documentation and prosecution of actual and alleged crimes.

It is essential to exercise caution when examining the legal dimensions of genocide, as the legal framework surrounding this grave crime is relatively recent and lacks an extensive history of jurisprudence. The limited jurisprudence developed thus far primarily stems from the tribunals established for the Rwanda and Yugoslav conflicts. However, it should be noted that rulings in this area of law occasionally exhibit inconsistencies and contradictions.

Methodology

The methods I will employ in this study include the following:

1. Qualitative Case Studies: Conducting qualitative case studies allows for a detailed examination of specific events and the challenges faced in proving them as genocide. This approach involves collecting and analyzing primary and secondary sources, such as legal documents, archival records, and media reports.

2. Legal Analysis: A legal analysis approach examines the legal frameworks, international conventions, and jurisprudence related to proving genocide. This approach involves analyzing relevant legal documents, court cases, and judgments to understand the legal requirements and challenges in proving genocide. It also allows for assessing the effectiveness and shortcomings of existing legal mechanisms and potential improvements in legal procedures.

3. Discourse Analysis: Adopting a discourse analysis approach involves examining the language, narratives, and discourses surrounding genocide. This approach explores how the challenges in proving genocide are constructed and communicated by different actors, including governments, media, academics, and activists. Discourse analysis helps uncover power dynamics, denialism (Charny, 2000), and the impact of political interests on the recognition and proof of genocide.

5. Policy Analysis: A policy analysis examines the policies, strategies, and mechanisms employed by governments, international organizations, and civil society actors in addressing the challenges of proving genocide. This approach involves analyzing policy documents, reports, and interviews to understand how different actors navigate the complexities of proving genocide and advocate for justice and accountability.

Outline of the analysis

I will proceed as follows. First, I discuss the development of the concept of genocide and examine the legal definition established in international law via the United Nations Genocide Convention. I will describe the elements required for an act to be considered genocide, focusing on specific acts, intent, and targeted groups. I will then investigate the legal challenges faced when presenting genocide cases in court. This will involve discussing the burden of proof, the requirements for establishing intent, and difficulties in obtaining testimony or evidence. Third, I will examine specific challenges in gathering and presenting evidence. Finally, I will study the role of international criminal tribunals, such as the International Criminal Court (ICC) and the International Criminal Tribunal for the former Yugoslavia (ICTY) in prosecuting genocide cases, evaluating their effectiveness, identifying challenges that they have faced, and the contributions they have made in shaping the jurisprudence on genocide. In this analysis, I will draw upon my own experience working for the ICTY from 1999–2006.

This research reviews the comprehensive works of world-renowned genocide scholars William A. Schabas and Adam Jones due to their broad approaches. Their work guides the identification of additional literature and primary sources for research. These sources include materials from the United Nations, the

Hague and Rwanda Tribunals, the Organization for Security and Co-operation in Europe (OSCE), and European Union Human Rights Monitoring Missions.

Chapter one discusses the concept of genocide and the Genocide Convention to illustrate that reading the law does not necessarily mean one understands the law as it would be examined and weighed in a court of law. Chapter one elucidates the complexity of the Genocide Convention and its definitions or lack thereof.

In my research on data analysis, I aim to compare cases of genocide charges, i.e., cases lost and convictions obtained. By carefully examining this data, I aim to identify any discernible patterns in either difficulty or ease in proving a case for genocide in court. These findings will be particularly relevant to Chapter Two of my study, titled "Challenges in Identifying Genocide," where I plan to integrate and explore the connections between various factors in the identification process.

Chapter Three will identify and analyze the motivations for proving or disproving an event as genocide and examine the legal challenges of proving genocide in a court of law. Chapter Three will also examine a case study of contested cases of genocide in Bosnia. Chapter Four will examine the empirical court data, its findings, and the conclusion.

This research comprehensively examines the "perceived" difficulty in proving genocide. By applying a multidisciplinary approach encompassing legal, sociological, historical, and psychological perspectives, this study aims to provide a framework for comprehending the complexities surrounding the proof of genocide. Examining theories, case studies, and existing literature will advance the understanding of this critical issue and inform efforts to strengthen the documentation and prosecution of genocide as a specific crime comporting the to law rather than politically motivated agendas which may substantially affect the trajectory of "stated" goals of "so-called" justice.

Chapter One: The Concept of Genocide and The Genocide Convention

The Evolution of the Concept of Genocide

Although the Holy Bible is often revered as a source of peace, wisdom, and holy teachings, it is essential to recognize that it also contains accounts of intentional mass killings, which can be understood as acts of genocide in both historical and colloquial terms, used as methods to conquer other peoples.

The concept of Genocide predates the Bible and was employed by early civilizations to signify total "destruction." This notion of "destruction" can be viewed as an inherent part of human history as societies clashed (Kiernan, 2007).

However, it is crucial to distinguish this strategy of "destruction" from the "modern" concept of Genocide based on the element of "intent" and the development of contemporary international laws. Prior to the 20th century, acts of aggression may have aimed at wiping out an enemy to conquer or cleanse rather than solely intending to eliminate an entire group of people "because of" their identity. Scholars such as Ben Kiernan (2007) argue that Genocide can be considered a concept that dates to the earliest organized societies. However, others, like Mark Levene (Levene, 2008), contend that Genocide is only applicable during the era of the sovereign state.

Regarding the modern concept of Genocide, one might consider the Treaty of Westphalia of 1648 a good starting point. According to Williams (Williams, 2007), the treaty codified the elements of the modern state, separating "them and us" with strict boundaries. However, with its sacrosanct prime foundational concept of "sovereignty," the treaty allowed states to kill their own people en masse and with impunity (Williams, 2007). Thus, it is a good inception point for the "modern genocide concept."

Another significant development of the modern genocide concept was the 1878 Congress of Berlin, which, according to Fink (Fink, 2004), contained a diplomatic innovation that reappeared in

modified form at the Paris Peace Conference in 1919. The treaty made the Great Powers' recognition of the newly independent and autonomous Balkan state of Bulgaria contingent upon guarantees of religious and civic freedoms for the new states' religious minorities (the diplomatic innovation; Fink, 2004). Additionally, the Great Powers linked the security of minority rights to territorial gain. As Fink noted, "the imposed clauses on minority rights became requirements not only for recognition but were also, as in the cases of Serbia, Montenegro, and Romania, conditions for receiving specific grants of territory" (Fink, 2004, p. 37). He argued that the minority rights provisions of the Berlin Treaty were ultimately unenforceable. The focus and eventual recognition of minority rights during this period led to significant progress in human rights. This progress was discussed again in the modern genocide concept coined by Raphael Lemkin (1944) as he focused on the mass persecution of national minorities.

World War I proved to be a seminal turn for developing human rights, minority rights, and punishment for acts of Genocide. As Genocide lies at the intersection of international law and human rights, developing both was a necessary precursor to the eventual establishment of the modern genocide concept and genocide convention (UN Resolution, 1946). The peace treaties that ended World War I began to legally "codify" human rights laws and the protection of minorities within international law (Schabas, 2000, p. 16). On January 25, 1919, the victorious World War I powers created the "Commission on the Responsibility of the Authors of the War and Enforcement of Penalties" (Schabas, 2000). This Commission was responsible for investigating the blame for the breaches of the laws of war and crimes against humanity (Rhea, 2014, p. 147). The Commission laid the groundwork for the future development of war crimes and prosecution of Genocide by finding that the blame for the war rested with Germany, Austria-Hungary, Bulgaria, and Turkey (Rhea, 2014, p. 162).

The notable recommendations proposed the establishment of an international tribunal seeking the prosecution of suspected war criminals. However, even at this time, the great powers of the United Kingdom (U.K.) and the United States of America (U.S.) sought to "water down" the potency of prosecuting leaders and to protect the concept of sovereignty (Schabas, 2000, p. 21). The U.S. delegation at Versailles objected to the Commission's recommendations of prosecuting heads of state; the delegation

proposed that prosecutions be limited to those who committed war crimes (Rhea, 2014, p. 164). The U.S. delegation also opposed the creation of a permanent tribunal for prosecuting war crimes and suggested that in future wars, tribunals would be created by those nations suffering such crimes (Rhea, 2014, p. 164). Nevertheless, this Commission importantly created the legal platform for crafting the 1948 Genocide Convention, despite the political concerns expressed for sovereignty issues and holding leaders themselves responsible. With the defeat of the Ottoman Empire, the Treaty of Sèvres in 1920 contained provisions aimed at safeguarding minorities and establishing accountability for acts of massacres and atrocities (contrary to the laws of humanity) committed during the war (Garibian, 2010, para.17). However, in 1923, the Treaty of Lausanne replaced the unratified Treaty of Sèvres. The new treaty effectively absolved the newly formed Republic of Turkey from legal responsibility for actions taken by the Ottoman Empire between 1914 and 1922, including those against the Armenian population" (Garibian, 2010 para.24).

The patchwork of these post-World War I treaties provided the basis for furthering the development and progress of minority rights, including a greater public awareness of crimes of epic proportions, crimes against humanity, and war crimes. All this eventually culminated in the term "genocide," coined by Lemkin near the end of World War II. Lemkin established the word by combining the Greek word "genos," meaning "family race," and the Latin word "cide," meaning "killing" (Irvin-Erickson, 2016, p. 81).

Lemkin's primary goal in developing the concept of genocide was to establish a law that would universally safeguard national minorities. This law, possessing "universal" jurisdiction, would require the international community's involvement to prevent, halt, and penalize instances of genocide. However, a significant obstacle arises when attempting to implement such a law, as it often challenges the principle of national sovereignty. If nations agree to interfere in the affairs of other nations under certain circumstances, it follows that they could also face potential intervention and encroachment on their sovereignty (Shelton, 2005, p. 238).

As Lemkin considered the events of the prior 40–50 years, including minorities being persecuted, the genocide concept was worded to contain several elements (elements meaning the ideas intended by the words used in the Convention; Schabas, 2000). First is substantial scale, whereas the foundational concept of the Genocide Convention sought to define and address "the crime without a name," a crime so grave and immense in scale as to shock the conscience of humanity. At its core, this legal instrument was envisioned to prevent and punish acts that could potentially annihilate an identifiable group of people, threatening their very survival and existence. The Convention hinges on the notion of substantial scale, which is not about isolated incidents, but systematic and widespread actions instigated to undermine the viability of a group's continued existence. Article II of the Convention explicitly targets the destruction of the "group" as an entity, and this is understood to mean the collective erosion of its members rather than isolated individuals — a notion of "in whole."

Furthermore, jurisprudence developed since the Convention's inception in 1948 elucidates that the cataclysmic "in part" criterion pertains to a substantial portion of the group. It is interpreted to encompass a segment whose extermination would impact the group's overall ability to persist across generations, jeopardizing its long-term survival. This legal interpretation was borne out in cases like the Srebrenica massacre, where the elimination of a significant part of the Bosnian Muslim population in that enclave was recognized as genocidal (ICTY, 2004).

The historical context in which the Genocide Convention is essential in understanding it. This was an era characterized by mass atrocities and industrial-scale slaughter that the world witnessed during events such as the Holocaust — carnage of such magnitude that it was ostensibly beyond the capacity of non-state entities and required the machinery and resources of state actors to perpetrate. As Jones (2017, p. 17) notes, the Convention emerged in an age when the term "mass atrocities" denoted a scale and method of execution only sovereign organs seemed capable of accomplishing.

The second element is intent, as defined in the Genocide Convention, as "specific intent" (dolus specialis) to destroy a group of people by its membership as such, distinguishing genocide from other

crimes against humanity. The perpetrator must have the conscious aim to achieve the destruction of the targeted group, in whole or in part (Kuper, 1981, p. 32).

Third, state policy; the concept of genocide involves not merely isolated acts by unauthorized individuals but state policy and actions that systematically seek to destroy entire groups. Typically, only state actors possess the means to carry out such extensive and systematic acts of destruction, as evidenced by the historically recognized genocides in Armenia, the Holocaust, and the legally adjudicated genocides in Cambodia, Rwanda, and Srebrenica, where state machinery was employed to facilitate genocidal acts. This perspective aligns with Lemkin's framework, wherein he posited that the destruction of a nation or ethnic group constitutes genocide when it is orchestrated as a "multipronged campaign under the rubric of policy" (Jones, 2017, p. 15). Acts by unauthorized individuals, in contrast, are better categorized as crimes against humanity or war crimes.

Moreover, the Genocide Convention, established within the domain of international law (Quayle, 2005), principally aims to hold states accountable for their sovereign duty to defend their citizens against mass atrocities (Schabas, 2000, p. 2). The duty to protect underscores the state's responsibility, a mandate that is not similarly imposed on independent groups of unauthorized individuals. Although the Convention does not entirely rule out the potential for non-state actors to perpetrate genocide, its priority unmistakably rests on scrutinizing and remedying state behavior and state-endorsed policies in the perpetuation and prevention of such grave crimes.

Finally, the concept focuses on the element of eventual physical destruction (Kuper, 1981, p. 22), which means all the acts within Article II have the eventual result of physical destruction of the targeted group. It is, therefore, unlikely that with given restraints with time and resources, a court would consider a case of genocide without dead victims in large numbers. Extrapolative interpretations of the Convention may be theorized with outlier scenarios; however, courts remain focused on the most critical cases reflecting the most fundamental meanings of the Convention.

At the heart of the genocide concept lies the "right to life" for national/ethnic groups (Schabas, 2000). This modern concept of genocide garners some confusion as it has considerable overlap with crimes

against humanity. The considerable overlap between the Genocide Convention and crimes against humanity arose from their shared historical origins in the aftermath of World War II, as the international community sought to legally define and address the horrors experienced during the Holocaust and other mass atrocities. Both legal categories encompass a range of inhumane acts against civilians, such as murder and serious bodily or mental harm, leading to an inherent overlap in their scope. The specific intent to destroy a group required for genocide often intersects with the broader criteria for crimes against humanity, which include widespread or systematic attacks against civilians. This overlap reflects the international legal system's efforts to ensure accountability for mass atrocities, eliminating gaps in legal protection and addressing challenges associated with proving genocidal intent.

This was further reinforced by UN General Assembly Resolution 96/I in 1946, which stated that " Genocide is a denial of the right of entire human groups, as homicide is the denial of the right to live of individual human beings" (United Nations General Assembly, 1946) thus laying the foundation of the Convention reflecting the recent experience of the Holocaust which was an intentional wide-scale action to destroy, in whole or in part, the Jews of Europe.

Motivations for and Objectives of Genocide

Williams (2016) contended that the causes of genocide could be broken into two categories: the first is "priming conditions," or the factors that "facilitate" genocide; the second is "triggering events." Williams (2016) looked at 40 putative genocides from 1955 to 1998 and identified five priming conditions: autocracy (found in 95% of the cases); salient elite ethnicity (80%); war (65%); political upheaval (62.5%); and exclusionary ideology (also 62.5%). According to Williams, these conditions may help explain and alert the world community to situations that often facilitate genocides. Fein explores the sociological constructs of genocide, writing:

> Genocide is one way that non-democratic ruling elites (no check power) resolve real solidarity and legitimacy conflicts [ethnoclass exclusion being a leading cause of

> challenges to legitimacy], or challenges to their interests (conflict/challenge) against victims decreed outside their universe of obligation (moral exclusion) [by ideology, religions, nationalism or group ethnocentrisim] in situations in which 1) a crisis or opportunity [most often associated with war] a) is a cause by or blamed on the victim (victim blame or victim enemy) or b) leads people to view the victim as inhibiting national or economic development (victim in the way), and 2) they believe that they can get away with it (patrons' tolerance; Fein, 1993, p. 101).

Based on my personal experience of investigating war crimes during and after the wars in the former Yugoslavia for over a decade, I agree with Verdeja (2012) and Valentino (2013), who write that the post-war genocides (or crimes against humanity in general) have their origins in power-political objectives, or as Valentino (2013) states, "a strategic perspective on mass ethnic killing" (Valentino 2013, p. 153). Indeed, culture, religion, and class are "markers" of "us and them," and these factors are certainly used and often manipulated to "mobilize" the dominant population to support genocide. For example, according to Evans (2008), most mass killings during World War II by the Nazi regime were committed by the S.S. and the Einsatzgruppen and not the regular German Wehrmacht, let alone civilians (although the Wehrmacht did commit war crimes and aided and abetted crimes against humanity in general; Hughes, 1962). During the war in the former Yugoslavia, my investigations found that many of the "worst" war crimes were committed by a relatively small number of specialized groups who moved strategically throughout the occupied territory and committed atrocities. Some of these groups were the Serbian paramilitary units of the White Eagles, Scorpions, Arkan's Tigers, the Croatian units in the Domobrani (Home guard), which were Ustashe units, and the "specialist" Bosniak units (Valentino, 2013).

Similarly, historian Ronald Suny (2015) theorized that ultimately, authorities in Turkey decided upon a massive genocide (referring to genocide in a historical context) to eliminate the Armenians as they were an "imminent existential threat to the future of the empire" (Suny, 2015, p. 245).

Some Limits of Contemporary Literature on Genocide

There have been notable criticisms from contemporary genocide scholars regarding the limitations of the current literature on Genocide. Alexander Laban Hinton and Dirk Moses have criticized the predominant focus on the Holocaust paradigm in genocide studies, for example, because it neglects the examination of contemporary instances of mass violence (Hinton, 2014; Moses, 2011). Ugur Umit Ungor, an expert in genocide studies, has raised concerns about overemphasizing the element of intent in defining and analyzing genocide while diminishing the role of historical and political contexts (Ungor, 2014). Professor Ungor's opinion is a continued attempt to downplay the critical element of intent, which distinguishes the unique crime of genocide from a social construct that is more descriptive of crimes against humanity. Additionally, Elisa von Joeden-Forgey has highlighted the failure of contemporary genocide studies to recognize the intersection of gender with violence and power dynamics (von Joeden-Forgey, 2011).

It is crucial to acknowledge differing views about the legal (Convention) definition of genocide and lay understandings. Inconsistency in defining genocide muddles the concept, leading to discrepancies in how genocide laws are applied, in court verdicts, and in public perceptions of whether justice has been served or denied.

Is Ethnic Cleansing Genocide?

Despite the broadening of terms and concepts related to genocide during the Yugoslav and Rwanda Tribunals (predictable norms, customary law, etc.), ethnic cleansing has never been established as genocide (Southwick, 2005). The vague conclusion of the Yugoslavia Tribunal was that ethnic cleansing "could" be an act of genocide depending on the intent being to "destroy" rather than "deport" a targeted group (ICTY, 2016, Count 7). The International Criminal Court treats ethnic cleansing as a crime against humanity under Article 7 of the Rome Statute, specifically Article 7 (1) (b) deportation or forcible transfer of population, but not as genocide (Chambers & Savelsberg, 2020). Nevertheless, in principle,

ethnic cleansing aims to displace a given territory of a particular group. This plan does not comport with the focus and objectives (intent) of genocide, as genocide is to "destroy" (physically or biologically) a specific group, as such, with special intent (knowing the result of the actions). Therefore, the two crimes are properly distinguished (Sirkin, 2010).

The Genocide Convention: Development and Construction

Raphael Lemkin, a legal professional who coined the term genocide, employed various strategies to persuade Western democracies to establish an international genocide law. One such approach involved invoking the horrors of the Holocaust to engage the conscience and gain leverage among these countries (Cooper, 2008, p. 58). Subsequent research has affirmed the magnitude of Lemkin's determined endeavors to garner support from United Nations member states for sponsoring the Genocide Convention (1948) and to draw media attention to this groundbreaking concept (Cooper, 2008; Schabas, 2000).

To establish a fair and just legal framework, the creation of new laws aims at curtailing cycles of violence and fostering societal healing following acts that egregiously violate human morals and established customs was required. Ratner et al. (1998) contend that the enactment of laws against specific crimes is intended to avert a perpetuation of vengeance and to achieve moral closure for offenses that deeply contravene traditional and customary conduct. Moreover, for such laws to fulfill their intended purpose and to ensure that justice is not merely symbolic, Becker (2008) stresses that they must be enforced consistently and without prejudice, upholding a standard of universality in their application.

Robert H. Jackson, chief U.S. prosecutor at the Nuremberg trials, wrote, "The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devasting, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated" (United States Holocaust Memorial Museum, n.d.). Furthermore, the Tribunal laid the groundwork for the Genocide Convention (1948) in creating structures and legal precedents for delineating massive crimes that are systematic, widespread, and planned to be aimed at groups.

By 1947, the U.N. Secretary-General directed the ECOSOC to draft a treaty convention on genocide. Experts were called in, and the various countries began rough drafts, recorded as the "Travaux préparatoires," which also involved negotiations among the drafters of the Convention (Schabas, 2000). Several significant issues were sources of contention during the negotiations until the U.N. adopted a final treaty at the end of 1948 (Phillips & Deutsch, 1970). The definition of genocide was generally agreed upon, as advocated by Lemkin, to mean the "destruction" of a particular "group" of humans "because" of their membership in that group (Cooper, 2008). The drafters created the main points (Kuper, 1981):

- Groups to be included.
- What was meant by "destroy or destruction of the targeted group"?
- Intent.
- Universality, or applicability of the law, if a state ratified the Convention (1948).
- Temporality.
- "In whole or in part": what constitutes "part"? Do numbers count?

The groups that the drafting parties considered including in the Convention were political, cultural, religious, racial, ethnic, linguistic, and national, with a final agreement that limited the groups protected to be national, ethnic, racial, and religious (Genocide Convention, 1948, Art. II). The negotiations then proceeded to clarify what was meant by "destroy or destruction," which was finally agreed upon to be "physical" destruction but excluded cultural or political destruction (Genocide Convention, 1948, Art. II — Section C). The drafting process of the Genocide Convention led to a definitive decision that excluded the concept of cultural genocide from the Convention's final provisions, reflecting a consensus among the preparatory bodies that the legal framework should focus on physical and biological destruction (Schabas, 2020, p. 73).

If one were to broadly interpret the wording of the Genocide Convention, black on white, one might argue that it includes a cultural dimension. This perspective could be derived from the social

constructs outlined in the definitions provided by the Convention. However, the practical application of law, particularly concerning genocide, does not lend itself to such expansive and loose interpretations.

In the realm of legal proceedings concerning genocide, a case hinging solely on the destruction of cultural artifacts, such as a library, without corresponding mass fatalities would not be viable. For an act to be legally recognized as genocide, there must be a direct and clear link to the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.

The argument that the forcible transfer of children from one group to another constitutes a form of "cultural" genocide, as purportedly intended by Raphael Lemkin, the originator of the term "genocide," is not compelling. This contention lacks persuasive power and credibility for several reasons. During the drafting stages of the Genocide Convention, discussions surrounding the inclusion of the forcible transfer of children did not predominantly hinge on the premise of cultural genocide (Schabas, 2000, pp. 176–7). Instead, this act was considered one of several destructive practices against the survival and integrity of a group. Moreover, older children, ages 12–18 — who, according to the United Nations Convention on the Rights of the Child, are individuals under 18 — can retain their cultural identity simply by memory. Older children may recall their heritage, language, and customs, and although some may indeed be estranged from their original identity, undoubtedly, many would not. Hence, the act of forcible removal of children is not a definitive clause in representing an act of "cultural genocide."

It is conceivable that evidence of cultural destruction could serve as supporting evidence in a broader case of genocide, where it demonstrates a pattern of intent to obliterate a group's heritage and identity in conjunction with acts causing physical or biological destruction. However, cultural elements alone are insufficient grounds for a genocide charge under the current legal framework.

In a scholarly context, the interpretation of the Genocide Convention may allow for a wide array of theoretical deliberations, yet in the judicial process, resources and time are limited. This limitation necessitates that prosecutorial offices triage to select cases with the most substantial evidence, often involving significant numbers of victims and ample supporting evidence. Therefore, cases that fit the strict legal criteria for genocide have priority, while more theoretical explorations of the Convention's

definitions rarely influence prosecutorial decisions or move forward within the justice system. In practice, without the element of mass killing, any claim of genocide based solely on assaults against culture would not hold weight within established legal proceedings.

In the definition of the Convention, the word "destroy" means "physical" and/or "biological" destruction (Schabas 2000, 152). This would exclude the "destroying" of a group's culture or politics and furthermore reinforces the assertion that "ethnic cleansing" as "deportation" per se could not be "genocide" as deportations, per se, do not "physically" or "biologically" destroy the targeted group. The Appeals Chamber in the Krstic case explained:

> The Genocide Convention, and customary international law in general, prohibit only the physical or biological destruction of a human group. The Trial Chamber expressly acknowledged this limitation and eschewed any broader definition. The Chamber stated: " (C (ustomary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. (A (n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide (ICTY, 2004 para 25).

Furthermore, this was echoed by the International Court of Justice, which is the primary court designated to interpret the Genocide Convention, which stated:

> The Court explained that the aim must be the physical or biological destruction of the protected group or a substantial part of that group. Evidence of this intent is to be sought, first, in the State's policy (while at the same time accepting that such intent will seldom be expressly stated), but it can also be inferred from a pattern of conduct when this intent

is the only inference that can reasonably be drawn from the acts in question (Croatia v. Serbia, 2015).

Intent

During the negotiations leading to the 1948 Genocide Convention, the element of "intent" was a significant point of discussion that culminated in adopting a more rigorous standard known as "dolus specialis," or special intent. This concept of special intent elevates the required state of mind from mere knowledge of the destructive consequences of one's actions to a deliberate and purposeful objective to destroy a targeted group, either in whole or in substantial part (Ambos, 2009). In legal terms, this goes beyond "mens rea," which refers to the general intent to commit a crime and specifies that the perpetrator must have the specific intent to achieve the group's destruction.

This concept was eventually adopted in Article II of the Genocide Convention (1948), undoubtedly raising the threshold of proving genocide. However, one might point out that any crime is difficult to prove in court if evidence is scarce. The special intent element of genocide is part and parcel of the core definition of genocide (Jones, 2017, pp. 49–50) and not, as some assert in public discourse, some "technical" hurdle that has made genocide exceedingly difficult to prove in court. Without the special intent clause, you no longer have the crime of genocide (although you may still have a crime against humanity).

Universality

The Convention (1948) negotiations discussed the jurisdictional aspects of the Convention with the eventual agreement that the legal principles of *delicta juris gentium* (crimes against the laws of nations) and *erga omnes* (universal obligation) would apply (Adanan, 2021). The tradition in international law up to 1946–48 was that jurisdiction and applicability of laws were based on national territory, no matter the victim's or perpetrator's nationality (Schabas, 2000). However, the 1927 Lotus Case introduced a caveat to this principle, in that the jurisdiction of a state might be exercised over offenses

committed partially abroad if there is no explicit rule to the contrary. This broadened the application of laws beyond national boundaries (PCIJ, 1927).

The case of genocide seemed to transcend this as the recent actions of World War II involved a significant number of transgressions of the national territory, which made the adjudication of genocide more complex. The Convention interlocutors believed that states would prosecute genocide subjects themselves or extradite them to states that would (Adanan, 2021). The jurisdiction of the Convention is no longer a significant issue as over 150 states have already ratified or acceded to the treaty, and for those who have not yet done so, the U.N. considers them bound to the Convention by "customary law" principle (U.N. Factsheet, 2019).

The Issues of Temporality and Retroactivity

The Convention highlights the temporal issue surrounding crimes of genocide committed before 1948 and how it was addressed using legal principles such as *nullum crimen sine lege* and *nulla poena sine lege*. These principles state that no one can be prosecuted for an act not considered a crime when it was committed. The issue of retroactivity, although not explicitly mentioned in the Convention, remained unaddressed for many decades. It was eventually clarified in the 2015 case of Croatia v. Serbia, where the International Court of Justice stated that obligations to prevent genocide only apply to acts that occur after the Convention has entered into force for a state.

In Whole or in Part

The terms "in whole" and "in part" have sparked significant legal and philosophical debates. On the one hand, the clause aims to consider both massive annihilations (in terms of destroying substantial numbers of a targeted and protected group- under the Convention) and attempts to eradicate a smaller section of a group. However, this broad characterization also opens doors to ambiguity, subjective interpretations, and inconsistent application, thus creating a potential gap for legal manipulation and avoidance.

One of the significant issues surrounding this clause lies in the interpretation of "in part." Legally, this could apply to the incitement of violence against a tiny fraction of a specific social group; however, this raises the question, what is the threshold? The ambiguity over what constitutes a substantial part of a population invites inconsistent interpretations and applications, potentially letting smaller-scale atrocities slip through the net or, conversely, diluting the term "genocide" by applying it too broadly. Further, the delineation between "in whole" and "in part" is almost impossible to draw practically. Are intended actions supposed to be measured numerically, by the percentage of a specific group, or by their cultural or political influence within the group? Existing jurisprudence allows for both (Nersessian, 2010; Jones, 2017).

In determining the whole and in part, do numbers count? Are the numbers affected by the crime a key element in identifying and or proving intent? The significance of numerical data in genocide cases was explicitly addressed by the International Court of Justice (ICJ) in the Croatia v. Serbia case, which, on February 3, 2015, confirmed that genocide entails acts aimed at the physical or biological destruction of a protected group — or a significant part of it — regardless of whether those acts lead to immediate death (Croatia v. Serbia, 2015). The Court clarified that genocidal intent can be inferred from the State's policy or a consistent pattern of conduct when such intent is the only reasonable conclusion drawn from the acts committed.

As such, the argument that the Genocide Convention's silence on specific numbers gives free rein to label any number of victims as indicative of genocide is a flawed interpretation. For instance, the ICJ noted in Croatia v. Serbia that while acts associated with the physical element of genocide occurred during the conflict, the scale did not necessarily point to the sole conclusion of a genocidal intent. The Court underscored the relationship between the number of deaths and the ability to infer genocidal intent beyond reasonable doubt (Croatia v. Serbia, 2015). This judicial insight substantiates the argument that numbers are critical in establishing genocide cases. While numbers are not explicitly mentioned in the

	Genocide	Crimes Against Humanity
Definition	The deliberate killing of a large group of people, especially those of a particular protected group, such as ethnicity or religion.	A widespread or systematic attack against a civilian population, including murder, extermination, enslavement, deportation, and other acts that violate human rights.
Intent	The intent is to destroy, in whole or in part, a particular ethnic, national, racial, or religious group.	The intent is to commit inhumane acts against a civilian population, regardless of ethnic, national, racial, or religious background.
Target	The targets are specific groups.	The targets can be any civilian population, regardless of background.
Acts	The acts include killing members of the group, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to destroy the group, and imposing measures intended to prevent births within the group (all of which these acts are with the intent to destroy in whole or in part the group as such)	The acts include murder, extermination, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts.
Punishment	Genocide is a specific crime under international law punishable by the International Criminal Court and national courts.	Crimes against humanity are also under international law and are punishable by the International Criminal Court and national courts.

Table 1. Genocide in Law (Genocide Convention) v. Crimes Against Humanity

Convention, proportions are- expressed as "in whole or in part," which require comparisons that inherently require examining the numbers in question. The numbers serve as a contextual and circumstantial element, bolstering arguments of intent, especially when lacking direct evidence.

In the ICTY's Srebrenica rulings, again Chambers referenced the numbers to infer genocidal intent, saying:

> The Trial Chamber was also entitled to consider the long-term impact that the elimination of seven to eight thousand men from Srebrenica would have on the survival of that

> community. In examining these consequences, the Trial Chamber properly focused on the likelihood of the community's physical survival. As the Trial Chamber found, the massacred men amounted to about one fifth of the overall Srebrenica community. The Trial Chamber found that, given the patriarchal character of the Bosnian Muslim society in Srebrenica, the destruction of such a sizeable number of men would "inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica (ICTY, 2004).

The absence of numerical specifics in the Convention does not negate the reality that the magnitude of victims affected is essential. It leaves room to consider a broad spectrum of situations — from millions affected in a large group to a substantial portion of a smaller community — as potentially genocidal. However, the numerical context influences the plausibility and viability of asserting genocide, as evidenced by the cautious approach of the ICJ. Therefore, numbers do indeed play a critical role in legal decisions around genocide, providing essential context to the arguments and shaping the inferential process regarding genocidal intent.

Chapter Two: Challenges in Identifying and Proving Genocide

Is it a genocide?

The inquiry "Is it a genocide?" often expects a binary response — yes or no. However, this framing typically indicates a layperson's perspective. Within the legal realm, where complexity defines reality, assessing events as genocide is not easy to determine. Legal professionals approach such situations by weighing the strength of evidence supporting a claim of genocide and rigorously scrutinizing any vulnerabilities within that claim.

Direct affirmation or denial of genocide (in the legal context) is reserved for judicial authorities — the verdict of a judge or a panel of judges — after thoroughly examining the facts. Occasionally, a clear-cut resolution emerges through unequivocal admission from perpetrators or undisputed documentary evidence of genocidal intent from government archives. Short of these definitive proofs, the intricate task of establishing genocide legally demands a nuanced and investigative approach, adhering strictly to legal protocols and thorough evidential examination.

In attempting to prove that a particular event constitutes genocide, experts and laypersons often find a contention of uncertainties. However, these intricacies may not necessarily stem from the complexities of proving an event as genocide in court but rather the arduous task of scrutinizing an event to determine whether it genuinely matches the legal qualifications and parameters of genocide. When an individual labels an event as a "textbook case of genocide," it often signals a strictly sociological perspective without the legal nuances that might substantially change such conclusions. In the legal field, professionals do not usually phrase the issue in such absolute terms. As already explained, only a judge can proclaim an event or action a legal genocide; any other sourced declarations hold little to no legal weight (Graziosi et al. 2022, pp. 15, 200; van den Herik, 2007).

The complexity and rigorous standards of genocide law often mean that prosecution, and even discussions around potential prosecution for genocide, may be fraught with difficulties if the event in question does not unambiguously fulfill the definition of genocide. While concerns exist that some incidents are mislabeled as genocide for political motivations, such misclassifications leading to prosecutions are mainly theoretical and have rarely manifested in actual legal proceedings. This underscores an overarching perception that many situations suspected of being genocidal may go unprosecuted not only because of the stringent legal criteria required to substantiate a case of genocide but also due to the immense challenges involved in navigating these issues in international law and politics.

The central role of intent in defining genocide is paramount; it is not merely a technical detail but a core element distinguishing genocide from other crimes. The absence of proven intent to destroy a group "in whole or in part" means that categorically and without any ambiguity, an event cannot be classified as genocide. Conversely, the failure to prove intent does not, on its own, confirm that an act was not genocidal; it simply indicates that the requisite intent to classify an occurrence as genocide has not been sufficiently demonstrated. Regrettably, the reluctance to apply the classification of "crimes against humanity" frequently leads to recourse to allegations and declarations of genocide as a default position.

Law professionals may argue that certain events, despite their horrific nature, do not technically meet the legal prerequisites to be labeled as genocides (United Nations Office On Genocide Prevention And The Responsibility To Protect, n.d). Instead, these events may qualify as other severe extrajudicial crimes, such as war crimes or crimes against humanity. Thus, when adjudicating potential cases of genocide, examiners encounter significant pitfalls. Any decision to not classify an event as genocide can potentially result in them being unfairly branded as a genocide denier or misconstrued as denying the criminal nature of the event.

United Nations officials are sometimes asked to comment on whether specific events, past or present, can be referred to as genocide. The UN Genocide Office advises that:

> It is extremely important that United Nations officials adhere to the correct usage of the term, for several reasons; (1) its frequent misuse in referring to large-scale, grave crimes committed against particular populations; (2) the emotive nature of the term and political sensitivity surrounding its use; and (3) the potential legal implications associated with a determination of genocide. This note aims to provide guidance on the correct usage of the term "genocide," based primarily on legal rather than historical or factual considerations (United Nations Office On Genocide Prevention And The Responsibility To Protect, n.d.).

The UN Office on Genocide calls for a relevant and competent court to determine whether an event constitutes genocide and does not refer to the ability of parliaments, presidents, scholars, media pundits, victims, or lay persons to make such determinations. The UN Office furthermore instructs that "This must be done by a competent international or national court of law with the jurisdiction to try such cases after an investigation meeting appropriate due process standards." Moreover, it warns that if events are determined as being genocide other than the relevant courts, "The use of the term is likely to be vigorously contested by affected communities and can result in political tensions" (ibid.).

With a strict interpretation of the Convention, the case can be argued that since 1948, there have been no cases of genocide. In the case of Rwanda, approximately 800,000 people, predominantly Tutsis, were slaughtered over three months in 1994. Despite recognition as genocide by the International Criminal Tribunal for Rwanda, this event remains subject to debate. Critics argue that the Tutsi and Hutu, who share a language and a culture and intermarry, represent *social* rather than national, ethnic, racial, or religious groups — which the genocide law does not include (Lingaas 2016; Newbury, 1999).

Similarly contested is the Cambodian genocide under Pol Pot's Khmer Rouge regime from 1975–1979, which resulted in the deaths of approximately a quarter of the Cambodian population. However, the atrocities in Cambodia primarily targeted political opponents rather than specific ethnic, racial, or

religious groups. Despite the staggering number of deaths, this event does not neatly fit the legal definition of genocide (Lingaas, 2016).

The Srebrenica massacre in 1995, where over 8,000 Bosnian Muslim men and boys were killed by Bosnian Serb forces during the Bosnian War, has also faced controversy. While the Chambers of the International Criminal Tribunal for Yugoslavia did rule it a genocide, critics argue that the ruling is flawed.

The International Criminal Tribunal for the former Yugoslavia (ICTY) faced the complex task of determining intent in the Srebrenica massacre case. Chambers, in the Krstic judgment, had to consider the rationale behind the killing of military-aged men, which dismissed the notion that it was merely to neutralize a military threat. Instead, the finding was that the Serbian military's intent was genocide, rather than the defense's contention that the over-arching rational was neutralizing military capabilities in an area for which they (Bosnian Serbs) were woefully outnumbered, intending to consolidate Serb territories (ICTY, 2004).

Intent is a crucial component in adjudicating genocide, and when doubts arise regarding this intention, courts must err on the side of caution, adhering to the standard of proof beyond a reasonable doubt. This principle was reflected in the International Court of Justice's approach when reviewing Croatia v. Serbia, emphasizing the need for unmistakable and singular inference of genocidal intent (Croatia v. Serbia, 2015) but abandoned in the Krstic case by Chambers.

The ICTY Chambers concluded that the Bosnian Serb forces aimed to eliminate a specific part of the Bosnian Muslim population (ICTY, 2004 para 6–8) — the residents of Srebrenica. This was deemed sufficient under the Genocide Convention, which allows for targeting a "part" of a larger group. Chambers recognized the "whole" group as the Bosnian Muslims of Bosnia, with those in Srebrenica representing a targeted subset- "in part" (ICTY, 2004 paras. 6–8).

However, the argument becomes more tenuous when considering the further subdivision of this group into military-aged males. This sub-subgroup, defined by gender and perceived military capability, does not fit within the protected categories outlined by the Genocide Convention. The Chambers accepted

and identified the victims killed as being "military-aged males," which is a delineation based on their gender and age — not as members of a national, ethnical, racial, or religious group, which are the protected categories under the Convention. It raises a legal conundrum, as parsing out a group by these characteristics extends beyond the Convention's original scope.

Moreover, the Krstic ruling hints at the potential for excessive fragmentation, suggesting that the targeted group could still be divided further — to exclude injured soldiers (which was true in this case-Krstic), for example. Such granular subdivision — able-bodied military-aged males within a fraction of the Eastern Bosnian Muslims, themselves a fragment of the whole Bosnian Muslim populace — stretches the application of the Genocide Convention to its limits. This approach resulted in a ruling fraught with problematic interpretations and a departure from the Convention's intended application to protect clearly defined groups from deliberate destruction (Southwick, 2005).

Understanding the challenges of prosecuting genocide cases requires us to look closely at the language used to describe these cases. Terms like "difficult," "challenging," or "overly difficult" are subjective and can mean different things in different situations. To truly grasp the difficulty of proving genocide in court, we need concrete numbers, such as statistics on how many potential cases were not brought forward as genocide since 1948 because of the anticipated hurdles for prosecutors and examination of the number of failed cases compared to successful prosecutions. However, Potential uncertainty prosecutors face regarding the outcomes of more tenuous cases is found in all complex criminal cases. The inability to predict whether these less robust cases might result in convictions reflects a significant challenge within the judicial process, but without empirical evidence, this does not support assertions of proving genocide in court to be overly problematic.

The need for "special intent" to constitute genocide also acts as a barrier, or one may consider the perspective that it is a "qualifier," in many cases, further adding to the debates about the "difficult" nature of genocide convictions. However, this discrepancy might stem from misconceptions about genocide prevalence as opposed to the relatively few instances adjudicated as legal genocides. The public has difficulties in accepting that without proof of intent, we simply do not know if it was a genocide, whereas

the public and some scholars insist on events as being genocide no matter the legal opinions. My problem is that if scholars are promoted as experts and give such opinions publicly, they should be clear and transparent that they are doing so without legal rigour.

Experienced international prosecutors may attribute their challenges in prosecuting genocide to a factor of "negation" against inferential reasoning. Actions might be inferred as genocide when they may have stemmed from different motives, resulting in the court discarding the prosecution's assertions when presented with reasonable alternatives. The issue here lies in the prosecutor's inability to prove or disprove the suspect's true intent without concrete evidence (Brydon, 2023).

I can attest from my professional experience that, frequently, experts in the realm of legal adjudication do not perceive genocides nearly as frequently as does the public or as do scholars. Moreover, legal experts do not usually conclude that something is a genocide before a thorough investigation.

Challenges in Identifying Genocide

The conceptual maze of defining genocide is deeply rooted in multifaceted socio-political realities and the volatile nature of international relations (Levene, 2000). The discourse on identifying genocide unearths an array of ambiguous elements, each contributing to the ongoing debate among scholars, legislatures, and the general populace. This section examines the conceptual hurdles that burden the comprehension and identification of genocide, illustrating the reasons behind its ambiguous nature.

The socio-political landscape, including factors like the role of media, public sentiment, and political orientation, plays a more significant part in identifying genocide than we may realize or admit. Often, these elements can skew interpretations, biasing the identification process. For instance, perpetrators may strategically manipulate media narratives to obscure reality or sow seeds of doubt, thereby circumventing the identification and subsequent prosecution of genocide. Public sentiment, fueled by nationalism or propaganda, can also deny or diminish the persecution of targeted groups, further muddying the waters of genocide identification.

Clarity

It is of paramount importance that public evaluations of events as potential genocides make clear whether the evaluation is based on social constructions, which are inconsistent and varied, or legal evaluations, which meet legal adjudication standards and follow the Genocide Convention. Too often, public discourse of genocide does not make a demarcation or identification of the type of evaluation as well as deceptively conflating the Convention with social definitions of genocide, leaving the public misinformed and considering social definitions to be an accurate "legal" determination of genocide. The substantial bias in exposing social construction viewpoints to the public creates a vast chasm in understanding how and why an event may never be ruled genocide, creating cynicism, doubts of justice, and wasteful expectation gaps. Media is giving the audience what it wants, so-called 'experts" calling out any and all events as genocides.

Legal determinations, on the other hand, have resulted in several international tribunals to adjudicate and bring justice to those found guilty. In contrast, non-legal proclamations, such as those done by parliaments, presidents (McDaniel, 2022), and scholars, have brought no legal adjudications, have brought not a single person to justice, and have, conversely, brought misinformation and expectation gaps to the public, leaving so many with feelings that justice had not been or is not being served.

While the advocates of democratic dialogue perceive merit in the amateur scrutiny of potential genocides, this thesis underscores the weightiness of juridical and legal expertise in correctly identifying instances of genocide.

An In-depth Understanding of Genocide Convention

Comprehending and applying the Genocide Convention requires substantial contextual understanding. Despite having access to these conventions, a layperson would not have the deep understanding that can be gained from years of legal study and exposure. Legal texts need interpretation within a massive body of legal principles and jurisprudence. The Genocide Convention, its

interpretations, applications, and the accompanying legal jargon are best understood by trained professionals who intuitively know how to interpret and apply these laws.

Applicability of Legal Framework

Contextualizing and prosecuting genocides is an inherently legal process. Reading about genocide or having rudimentary knowledge does not replace the thorough grounding in investigative procedures, evidence law, criminal procedures, and human rights law that actual practitioners have. Lawyers, judges, and investigators would discern nuances and legalities that a layperson may overlook, no matter how well-informed.

Jurisprudence in Genocide Identification

Understanding the concept of genocide involves more than just understanding the legal definition. It also includes understanding the judicial decisions that interpret what genocide means. Jurisprudence in genocide is a relatively new and evolving field. It is cumulative knowledge that serves as a line of legal progression. It presents perspectives and interpretations through precedent-setting court decisions over time. Such understanding cannot be gleaned merely from reading a single document like the Convention itself, which emphasizes the importance of professional involvement in genocide identification. For example, in contemporary discussions about "possible" genocides, there is a tendency by laypersons to over assign weight to "public rhetoric," which might be perceived as genocidal or contributing to determining genocidal intent. However, the "courts" give this type of rhetoric much less weight (Hefti, 2020), as evidenced in the Yugoslav and Rwanda Tribunals (Kellow & Steeves, 1998), and it would require a layperson to review all the jurisprudence established on genocidal rhetoric to realize the "minor" role rhetoric- thus far, played in court cases asserting genocide (Barat, 2023). A review of such cases would also be required for lay persons to appreciate all the elements of such rhetoric to meet the requirements of "incitement" to genocide. To gain an understanding of how genocidal rhetoric can be recognized by a court as a "vehicle" for genocidal actions (Thompson, 2007), it is essential for a

layperson to review extensive jurisprudence from multiple sources. These include the Yugoslav and Rwanda Tribunals and cases such as Gambia v. Myanmar, Ukraine v. Russia, Bosnia v. Serbia, Croatia v. Serbia, and Congo v. Rwanda. Delving into the voluminous jurisprudence provided by these cases will enable individuals to identify the criteria and principles used by courts to establish the connection between genocidal rhetoric and the corresponding genocidal acts. Some speeches may be hateful and result in violence; however, one would need to prove that the incitement was "understood" by the consumers that they are going to commit violence in furtherance of genocide rather than mere violence of one group against another. Less than this equates to a layperson making very subjective and uninformed opinions about any rhetoric they or the media considers to be "evidence" of genocidal intent. Rhetoric "can" be an "indicator," but the indicator must then be examined in the legal context of existing jurisprudence before it can be assigned any amount of legal weight in proving genocide (Gordon, 2014). As Gordon writes in "Speech along the atrocity spectrum," rhetoric might be general statements, harassment, or incitement to genocide. One would need to wade through often coded language, predictions of destruction, accusations in mirror, euphemisms, and metaphors found in such rhetoric (Gordon, 2014), which again calls into question the ability of lay persons to make such determinations. In addition, there needs to be an *actus reus* present indicative of genocide to bolster further claims about any rhetoric being a "strong" indicator of genocide or genocidal intent. In instances of recent global events, the *actus reus* may not meet the scale of genocide sufficiently to provide a strong case for genocide.

Understanding Genocidal Intent

The legal definition of genocide, as expounded in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), hinges on the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." This intent — the mental design to carry out destructive acts — separates genocide from many other violent crimes. This distinction may create the perception that a high burden of proof is required, potentially making it difficult for the prosecution to establish genocidal intent even when physical evidence of atrocities exists. The difficulty

lies with the actions being negated by a judge as having other reasonable alternatives for having taken place. However, if other reasonable alternatives may be present, then again, one just does not know if the event in question is a genocide. Another complexity in the law the distinctions between "intent" and "motive," which is not written in the Genocide Convention but instead extrapolated by the Conventions' use of the term "as such" (Schabas, 2000, p. 46). Motive and intent are often conflated, but in a legal context, they refer to distinct aspects related to the commission of a crime.

Intent refers to the mental state or decision to commit a particular criminal act. It represents the perpetrator's state of mind and their consciousness of their actions. For example, if someone meant to cause harm to another person, they had the intent to do so.

Motive, on the other hand, refers to the reason an individual committed a crime. The driving force aims to lead an individual to commit a particular criminal act. For example, jealousy, revenge, or financial gain could be motives for committing a crime. Keeping in mind that while intent must generally be proven to secure a conviction, motive does not necessarily need to be proven, though it may shed light on the reasons behind an action (Dressler 2018, pp. 116–118).

It is not uncommon for those outside the legal domain to misinterpret the Genocide Convention, particularly Article II, which outlines the specific "acts" constituting genocide, such as the forced relocation of children. However, such acts only amount to genocide when they are unmistakably part of a calculated and systematic effort to destroy a protected group physically or biologically, either in its entirety or substantially. While the forced transfer of children to another group is undoubtedly a severe criminal offense, it only rises to the level of genocide when it can be established as an orchestrated strategy aimed at the group's destruction. Wherein Article II reads: "Genocide means any of the following acts committed with the *intent to destroy*…" thus, it must be proven that the exhaustive list of acts enumerated, killing, serious bodily or mental harm, inflicting group conditions to bring about its physical destruction, imposing measures to prevent births and forcibly transferring children of the group to another group" having a result of "destruction" of the targeted protected group- and the enumerated acts- carried

out- without such a plan, would not constitute genocide within the scope of the Convention (Schabas, 2000, p. 236).

Recognizing this distinction is critical to understanding and applying genocide law effectively. Moreover, *dolus specialis*, a term denoting 'special intent,' is often misconstrued as an intricate legal hurdle that must be overcome in court proceedings. Contrarily, this 'special intent' is the sine qua non of genocide legislation: it enshrines the defining feature of these laws. Without this vital element, a regrettable incident, regardless of its magnitude, does not constitute genocide (within the scope of the Convention).

The Importance of Widespread and Systematic Patterns

An important key to decoding various elements of evidence is recognizing widespread and systematic patterns of violence. These constitute crucial elements in terms of distinguishing genocidal acts from other war-related atrocities. The concept of *intent to destroy a group* is explicit in the definition of genocide, which necessitates a scope and scale that extends beyond isolated acts of violence. While the extermination of a group can commence with smaller targeted killings, these actions would only be considered genocidal if they are part of a larger, methodical plan aiming at the large-scale destruction of a protected group. This intention is manifested systematically rather than randomly or spontaneously. For the act to be convincing of genocide, there must be a strategy in place — an overarching plan or policy — designed to cause substantial damage to the group's integrity or numbers. Thus, there would be no other way to *destroy* a group *as a whole or in part* without such devastation being conducted in a systematic and widespread manner (Jones, 2017, p. 31). Mass scale does not imply a specific threshold number but rather a significant impact relative to the group's size and the likelihood of obliterating the group's future viability.

This explanation underscores that while individual instances of violence, including the killing of one or several people, could be part of genocidal acts if they are part of a plan that targets a group with the intent of its eventual large-scale destruction, the genocide convention primarily concerns itself with

coordinated plans aimed at the significant reduction or total devastation of a group recognized under the convention (Jones, 2017, p. 31).

The Misconception of Surface-Level Knowledge: Cancer and Genocide Diagnosis — A Parallel as a Comparative Standard and the Risks of Misidentification

On the path from recognizing genocides to prosecution, the events are invariably scrutinized in public to a significant degree, which may influence government reactions. The lack of professional and expert evaluations, however, of events that might be genocides poses severe risks for misinterpretation and misidentification by people inadequately prepared to understand the complexity of the term genocide. In the hands of untrained individuals, the determination of genocide could lead to dangerous outcomes, such as unwarranted social panic, cultural misunderstanding, and, in the worst cases, even detrimental geopolitical implications (Epstein, 1997).

Genocide identification, like cancer diagnosis, relies significantly upon understanding layered complexities rather than a mere surface-level reading of the available material. An untrained individual relying on a simple reading of the Genocide Convention is like a layperson attempting to self-diagnose an illness based on a chapter about cancer in a medical book. Having a cough and tiredness (indicators) are known symptoms of cancer; however, they are indicative of a hundred other maladies also. The conflation between inconsistent, generic definitions and the legal definition is commonplace. An experienced professional, however, looks at hundreds of cases, both in cancer and severe violations of international humanitarian law. With such experience, opinions, and evaluations are much more reliable, and often, an experienced person can quickly recognize fact patterns and levels of evidence that they have reencountered repeatedly. Lay persons, once early on convinced that an event is a genocide, almost dogmatically, remain convinced it is genocide no matter what contravening evidence or arguments are presented, as lay persons are committed to "labeling" an "event" rather than the "legal adjudication" of an event. Lay persons have "skin in the game" once they have labeled an event a genocide, especially if they have carelessly done so- prematurely in a public fashion, making retreat even more unpalatable.

Laypersons' Misunderstanding of Indicators and Inference

Indicators are complex when framing them in legal adjudication, another source of confusion among non-legal experts. This confusion primarily results from an oversimplification of complex sociopolitical scenarios, coupled with a limited understanding of consentaneous happenings in war scenarios versus specific constructs of crimes against humanity or genocide. This section attempts to elucidate this issue, delving into the nuanced world of "indicators" and their interpretation.

Indicators of genocide, while often shared with other forms of extreme violence during conflict, are distinguished by not only their nature but also their scale, intent, and systematic application. While possessing a powerful military and endorsing genocidal rhetoric may indicate criminal intent (mens rea), if only a small number of individuals are killed, primarily as collateral damage during warfare, the presence of criminal intent does not necessarily constitute a criminal act (actus reus). In this scenario, the absence of one or both elements — either criminal intent or the actual criminal act — would diminish the likelihood of a crime being deemed to have been committed. A mighty military power may "threaten" or "declare" in public rhetoric to destroy the enemy, but if the consequent actions are not at the scale of genocide, the "argument" for genocide is weakened. There may be numerous crimes taking place, yet asserting that these constitute the crime of genocide must be proven within the parameters of the Convention. All the cases brought by Croatia against Serbia regarding genocide at the International Court of Justice failed on this account. The number of deaths did not convince the judges that the scale, compared with the capabilities to kill, met the threshold of genocidal killing in whole or in part (ICJ, 2015). Again, public discourse with short attention spans demands a yes or no for genocide, but "cases" and "arguments" for genocide are built over time with strenuous legal rigor and not by comparing a "list" of actions against the Convention and declaring on the spot, "that is a genocide."

Indicators are often present in war and do not necessarily imply genocide — they could instead be indicators of war crimes or other crimes against humanity or no crimes at all. While laypersons may interpret these indicators as pointing directly toward genocide, professionals engaged in documenting

human rights abuses, international law enforcement, and mass atrocity prevention (such as myself), among others, are cognizant of the complexities of such signals. Indicators might suggest a myriad range of occurrences in a war, from armed conflict and famine to forced migration and mass murder, and yes, even full-scale genocide.

"Non-experts may compile a list of harrowing events and quickly conclude that these amount to genocide:

- Discovery of mass graves suggests coordinated killing.
- Forced removal of children from their families indicates an intention to destroy a cultural or social lineage.
- Prevalent hate speech points to widespread animosity and justification for violence
- Incidents of large-scale killings show severe aggression against a group.

However, while these aspects may be suggestive of genocide, such a determination in a court of law requires a deeper analysis. Each of these points, marked here, must be carefully evaluated to establish the specific genocidal intent as legally required — it is not enough to simply tally violent acts and label the result as genocide without considering the broader context of these actions and their relation to the targeted group. Hence, it is a complex legal and evidentiary process to prove that such actions are part of a deliberate plan to destroy a protected group as defined by international law systematically. The rigorous legal procedures required in genocide cases are not unique to this crime; they are standard practice in all complex homicide investigations.

The formula for the final determination of an event as being genocidal, within the scope of the Convention, would be challenging to endeavor without expert analysis and detailed legal scrutiny after investigations were completed. If this formulation, drawing up lists of various actions of determining genocide, were valid, one would question why the ICTY Chambers ruled only one event as the single case of genocide in all the wars of the former Yugoslavia, that being Srebrenica. (Indeed, multiple

individuals have been convicted of genocide in relation to the atrocities committed in Bosnia; however, these convictions largely stem from their involvement in the singular event recognized as genocide by the ICTY — the Srebrenica massacre). While various individuals were indeed found guilty of genocide, it is crucial to understand that their convictions were not for separate, distinct genocidal events scattered throughout Bosnia. Instead, they were found to share responsibility for the collective crime committed at Srebrenica, as they contributed to and participated in a common plan that culminated in the systematic elimination of the Bosniak men and boys of that region.

This misunderstanding of "indicators" is among the most significant elements that drives lay persons to "assume" they have correctly identified a genocide. For example, one can observe the citation of *mass graves* in public discourse and media reports as a sure indicator of foul play, as in the case of the indigenous people of Canada (Austen, 2021), which is used as an indicator in asserting Canada's culpability in committing genocide. An experienced human rights investigator with experience in combat zones (such as myself, having investigated war crimes for 12 years in various active and post-active war zones) will attest that mass graves are common in sustained war environments and hardly unique definitional indicators of foul play. Mass graves require forensic investigations to determine the causes of death, whereas mass graves are usually an efficient way to remove bodies from a combat environment for obvious reasons of hygiene and rapid disposal. Mass graves, collateral damage and deaths, dual-use infrastructure, mobile incinerators, and apartment buildings being destroyed are all common in wars, and without specific investigations, all or none of these could be indicators of war crimes, but just as easily not. Placement of weapons, weapon making, or soldiers in civilian structures negate their protections in war and thus are "legitimate" targets. This is a frequent discussion among legal experts with adjudication experience but is rarely mentioned among layperson public discourses (Fein, 1993).

Inference

In courts, the choice of methods for inference is critical to establish intent. Inference refers to deducing facts based on existing knowledge or evidence. In a criminal court, the prosecutor uses

inference of circumstances to demonstrate intent underlying the actions when there is a paucity of direct evidence, i.e., documents revealing genocide plans. This method involves meticulously tying together individual events to form a comprehensive picture of the alleged genocide. Lay individuals and non-legal experts may not always appreciate the complexity and importance of this careful, sequential linkage of events, leading to the over-simplification of genocide identification. The prosecution, as well as the layperson aiming to "spot" a genocide, must show the court that the actions in question did not have alternative reasonable reasons for having taken place. For example, in Srebrenica, the prosecution contended that the killing of military-aged males could have only one intent: that of genocide.

In contrast, the defence offered what might be a more reasonable explanation, that the killings of military-aged males were to reduce the combat effectiveness and military threat this group posed. If the killing of military-aged males were to wipe out the Srebrenica community, it is a highly dubious prospect when considering that women, children, and "wounded soldiers" were not only allowed to leave the enclave but even provided buses and vast amounts of fuel, which was in short supply. If genocide were the intent, it would be curious that such a large group of the intended victims of genocide were allowed to leave and live and regenerate the Srebrenica community, providing "reasonable doubt" of genocidal intentions. Although the ICTY Chambers disregarded this long tenet of criminal law in the single sole case of Srebrenica, in general, inference of intent cannot be used when there are reasonable alternatives as to why the actions were taken and might be cited as the single most difficult challenge to overcome when trying to prove genocide in court (Southwick 2005; Lattimer, 2024, paras. 13, 14). In established jurisprudence of the International Court of Justice (ICJ), the court ruled that in case of inferring intent in cases of genocide, that the action or actions in question were "genocidal" can be the "only inference that could be reasonably drawn from the acts in question" (ICJ, 2015).

Importance of Negation in Spotting Genocide: Disproving Elements of Evidence

Negation, a process that may be overlooked in public discourse, is a critical component of legal examination, particularly in gauging genocide allegations. At the intersection of laypersons and experts,

Figure 1. Volunteers make Molotov cocktails in a basement bomb shelter in Kyiv.
Source: Chris Mcgrath, Getty Images.

negation is frequently neglected while appraising potential genocide "indicators" or evidence. Both prosecutors and defenders work to "disprove" evidence, which would result in weakening the opposition's case being made. As it is also a process for internal indictment reviews before a case is presented to a court, it serves as a useful exercise even for lay persons when trying to establish a case for genocide. It is also a key element in creating "reasonable doubt" in a court case or even a case for genocide in public discourse (Sankoff, n.d.; Williams, 2020).

Consider an instance where proposed genocide indicators in Ukraine include mobile cremation trucks and "supposedly" targeted civilian apartment buildings. Although these elements may suggest genocide, they also warrant examination for potential negation according to legal rules of evidence, as this is a step the defence in a trial will invariably undertake. The judge then determines the reasonability of these negations. Similarly, the presence of mobile cremation trucks can be refuted using open-source accounts of their actual purpose. For instance, if Russia provided the trucks to eliminate the bodies of

Russian soldiers, thereby preventing the Russian public from perceiving the war as costly and unsuccessful, this reasoning would be seen as a viable negation by a judge in the absence of conflicting evidence and creates a "reasonable doubt." The targeting of civilian apartment buildings initially appears to constitute a war crime. However, the legal standing of this indicator could change in a trial setting. For instance, if the defence proves that the targeted building harbored soldiers or military equipment or that civilians there were participating in wartime activities (like making Molotov cocktails (Turak, 2022), the building would no longer be protected under international humanitarian law (ICRC, 2016). Instead, it would be deemed a legitimate wartime target, thus negating its status as a genocide indicator or any other war crime for that fact. Therefore, negation, or disproving evidence, is pivotal in legal examinations and endlessly exercised in the legal realm (Williams, 2020). This crucial procedure, often misconstrued by non-legal individuals, dramatically affects the way circumstances are evaluated and the legitimacy of an event being classified as a genocide is determined. Keeping in mind, negation is not just a "legal strategy" but a method to more accurately examine whether the event "qualifies" as the crime in question.

Impacts of Genocide Identification: Intervention/Prevention and Sovereignty Issues

The evident challenge of genocide identification deepens when contrasted against matters of sovereignty and intervention, invoking heated debates around the Responsibility to Protect (R2P) doctrine and even anticipatory self-defence. The contestation is two-fold. At one level, unrestricted respect for state sovereignty may provide a haven for genocidal regimes. On the other hand, the potential abuse of genocide identification as a pretext for intervention could challenge the contemporary international order, such as the case of Russia's invasion of Ukraine, which is partially predicated upon an alleged genocide being committed against ethnic Russians in Eastern Ukraine (Donbas, Luhansk). This tension has been manifesting in instances like the NATO intervention in Kosovo, where the international community was divided over whether the intervention represented humanitarian action or invalidated state sovereignty (Mandelbaum, 1999), which resulted in an aggressive war (which is a war crime (United Nations General Assembly Resolution 3314, 1974) when conducted without a UN Security Council Resolution.

The politics of international relations additionally blur the lines of genocide identification. Since the United Nations plays a crucial role in recognizing and responding to genocide, diplomatic relationships and political alliances often influence these decisions. Throughout history, it has seemed that geopolitical considerations often overshadow the gravity of mass atrocities, delaying or denying genocide recognition to avoid international involvement or conflict (Herman & Peterson, 2011). An additional challenge is that legally, the identification of genocide possesses profound implications, predominantly the triggering of the Responsibility to Protect (R2P) principle. It necessitates countries to intervene when a State is unable or unwilling to prevent genocide. However, the R2P principle brings numerous political, economic, and practical complications, often leading states to exercise great caution or seek to downplay the nature of humanitarian crises. Even with a UN Security Council Resolution, states who might consider intervention must consider their ability to marshal resources and survive any domestic opposition in military action, which may pose multiple risks. Therefore, whether in an authoritarian or democratic regime, these risks and calculations play a role in a cost/benefit ratio.

Legal Obstacles to Establishing Genocide

This section will unwrap some of the complex legal aspects of proving genocide in a court of law, often described as an insurmountable challenge, making the Genocide Convention an unreasonable consideration (Kaye 2007).

The Significance of Evidentiary Standards in Criminal Trials: From Reasonable Suspicion to 'Beyond a Reasonable Doubt'

In the complex tapestry of criminal law, evidentiary standards hold a central position. They serve as the measuring stick that paves the path to justice by dictating the quality and quantity of evidence necessary to affirm a legal claim. The various standards of evidence within criminal jurisprudence, ranging from "Reasonable Suspicion" to "Beyond a Reasonable Doubt," each play a unique and vital role

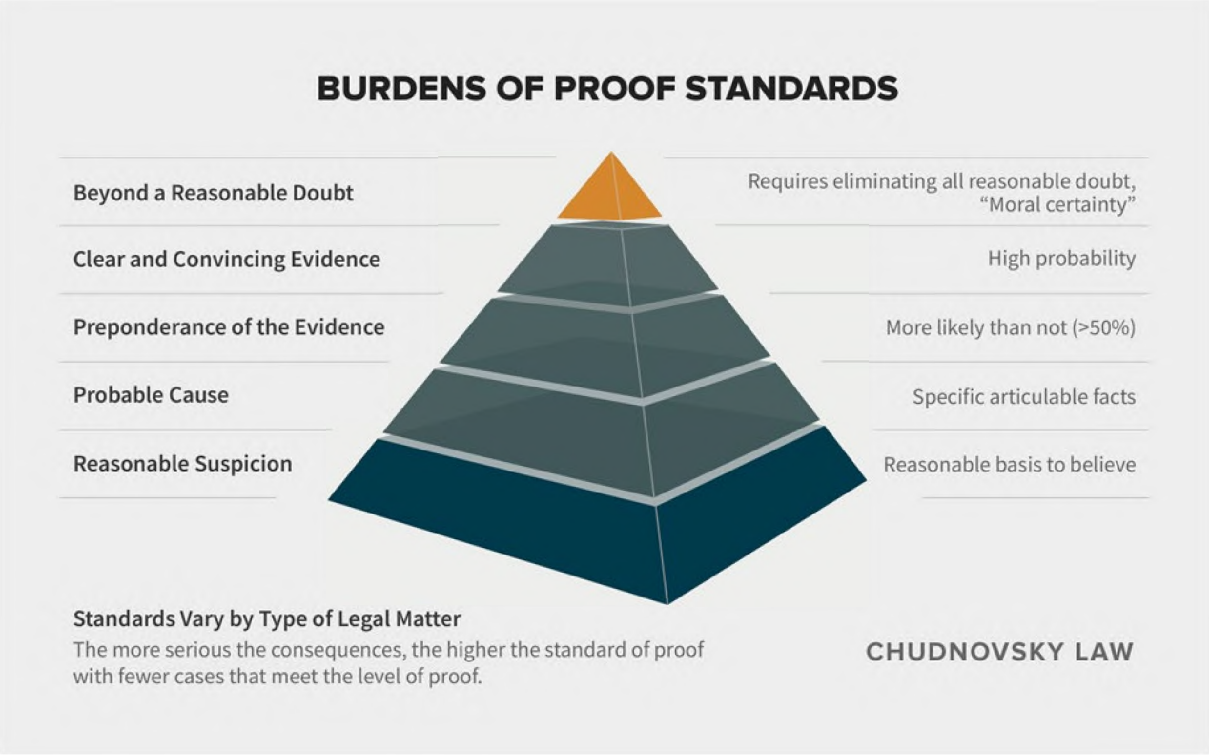

Figure 3. Burden of proof standards
Source: Chudnovsky, 2019.

in ensuring a fair legal process. Notably, the highest standard, "Beyond a Reasonable Doubt," is the only one accepted as sufficient in proving a case in the court. When evaluating an event as a possible genocide, it is essential to have knowledge and experience in using these standards in various scenarios, something which persons without legal experience may lack, resulting in often inaccurate evaluations.

There are several evidentiary standards, each with its degree of certitude and applied circumstances. Each threshold testifies to the credibility, reliability, and substantiality of the proof available. 'Reasonable Suspicion' is the lowest threshold law enforcement officers use to initiate an investigation or briefly detain a person. It hinges on specific, articulable, and intelligent reasons indicating criminal involvement, but it cannot fully justify an arrest or an extensive search. This low-level standard of evidence is, unfortunately, often, by default, used by lay persons in spotting genocides, as well as some "motivated" expert actors or organizations who spot a genocide, but in their preambles, revealingly admit that the standard they are using is the lowest of all, the 'reasonable suspicion or reasonable grounds'

standard. It is important for consumers of fact-finding missions by the United Nations, special ad hoc missions, and NGOs to realize that their conclusions cannot be compared to an analysis — and, finally, a ruling by a competent international judicial tribunal. These "expert" missions, NGO's, etc., may or may not have specific agendas. However, in any case, laypersons should understand the qualitative and authoritative differences in their conclusions and a judicial body that exercises legal rigor to evidence and arguments against a case for genocide (Wilkinson, 2012). For example, the May 2022 evaluation for genocide by Russia in Ukraine by the New Lines Institute reveals it is "standard of proof" in section 1 of the Executive Summary: "reasonable grounds to believe Russia is responsible for (i) direct and public incitement to commit genocide, and (ii) a pattern of atrocities from which an inference of intent to destroy the Ukrainian national group in part can be drawn (Diamond, 2022. p. 1). The New Lines Institute, an organization that offers insights and analysis on various issues, receives funding from the Washington Institute for Education and Research, also known as the "The Washington Institute for Near East Policy." Notably, Professor John Mearsheimer has characterized this institute as a pro-Israel lobby organization. When considering the New Lines Institute's conclusions regarding genocide, it is important that laypersons would be aware of the background and affiliations of the New Lines Institute to evaluate its potential biases of an NGO operating with ties to a foreign lobby group (Mearsheimer and Walt, 2007, pp. 175–176) as well as the standard of evidence being used.

As these "expert" findings — albeit with low standards of evidence — are frequently cited in general media, an idea is created with the public that there are "overwhelming" cases of "proof" for genocide for whichever crisis is the hot topic of the day (Hansler, 2022). This creates an even more significant imbalance of public perception of what is and is not a genocide under the law, as general citations in the media do not generally distinguish the quality of the evaluation for genocide (Wilkinson, 2012, p. 1). Theo Boutruche, a legal advisor to the EU Georgia-Russia Inquiry, writes, "Most fact-finding bodies do not elaborate on the criteria of proof used to ascertain facts when applying the most common standard of "balance of probabilities" (Boutruche, 2011). In public discourse, assessments that assert the occurrence of genocides tend to garner more attention, publication, funding, and broader audiences

compared to legal expert evaluations that refrain from making definitive binary conclusions regarding the existence of genocide. This trend establishes a reinforcing cycle of "confirmation bias," where the predominant focus becomes validating preexisting beliefs or assumptions. This distortion in public discourse can hinder nuanced discussions and comprehensive evaluations of complex situations related to genocide in the legal context.

At the apex of this hierarchy of evidence sits "Beyond a Reasonable Doubt," the highest standard of evidence. Applied within criminal trials, it requires such "evidence that no reasonable person would question the defendant's guilt" (Schabas, 2000), ensuring the most significant level of certainty. The gravitas of this standard reflect the seriousness of criminal charges and potential penalties and the principle that it is better to set the guilty free than imprison the innocent. This is a particularly pertinent element when considering the labeling of events as genocide, which, when done in public, entails finding persons guilty without an investigation, trial, or judges' decisions, an unacceptable violation of justice. Knowing these varying standards not only enhances the understanding of the legal procedures but also encapsulates the "egalitarian credo" of the legal system. They function as safeguards against arbitrary decision-making and potential abuse of power. The escalated use of the highest standard, 'Beyond a Reasonable Doubt,' particularly in criminal trials, is both a testament to and a guardian of the cherished belief in 'innocent until proven guilty.' By requiring the highest certitude for convictions, the law intact protects the rights of individuals even when pitted against the public's interest.

The Weight of Direct v. Circumstantial Evidence in Proving Genocide and Intent

In legal parlance, direct evidence usually signifies firsthand testimony or physical evidence that unequivocally connects the accused with the crime. Scholarly work on genocide trials demonstrates that direct evidence often emanates in two forms: testimonial and documentary. Survivor or eyewitness testimonies, while providing intimate accounts of the crime, can face criticism over accuracy, trauma-induced memory distortion, and delays between the crime occurrence and testimony recollection (Hinton, 2022). Similarly, while documentary evidence like governmental decrees, communications, or operational

plans can help establish intent, it relies on the premise that perpetrators systematically record their actions (Peskin, 2008).

On the other hand, circumstantial evidence refers to a collection of facts from which the guilt or innocence of a party can be inferred. In the absence of substantial direct evidence, circumstantial evidence, such as artifacts, death records, mass graves, aerial photographs of destroyed villages, and population data analyses, becomes crucial (Schabas, 2000). Circumstantial evidence may have the advantage of being less subjective than testimonial evidence, providing context and establishing patterns of genocidal behavior (Straus, 2012).

In genocide trials, direct evidence often carries more weight, given that it can directly link the perpetrators to the crime, conclusively determining guilt (Ambos, 2009). However, such direct evidence is often challenging to obtain due to the secretive and systematic nature of so-called genocidal regimes, making circumstantial evidence equally significant.

For instance, in the Srebrenica genocide, the International Criminal Tribunal for the former Yugoslavia relied mostly on circumstantial evidence to establish the elements of genocide (ICTY, 2004). Here, evidence was not a smoking gun implicating individual planners directly, but through an array of circumstantial evidence, a pattern of conduct materialized that pointed towards genocidal intent (Southwick, 2005).

In the ongoing situation in Ukraine, the ICC has not charged Russian President Putin with genocide but only with 'war crimes.' These charges are based on the removal of persons (children), as outlined in Article 8 (2) (a) (vii) and Article 8 (2) (b) (viii) of the Rome Statute. Instead, Article 6 (c) pertains to the forcible transfer of children from one protected group to another, which can be classified as genocide if committed with the intention to destroy, in whole or in part, the group in question (Dickinson, 2023).

This means that based on circumstances, there is insufficient evidence to 'infer' genocidal intent and that the actions might not encompass a widespread and systematic action. The actions of Putin may have 'several' reasonable alternatives- other than trying to destroy- in whole or in part, a protected group.

Although this may be a challenging element in a court of law (Owens, 2023), one might also say that if genocidal intent were present in a systematic and widespread manner, it would not be much of a challenge to observe that there could not be any other reasonable reason why the actions were being taken. This makes the standards of criminal law and the Genocide Convention more difficult to abuse for political reasons.

Driving Forces in Genocide Confirmation or Denial

The Evolving Motivations Behind Genocide Acknowledgement and Denial

Genocides, as "mass killings," are horrific, human-made, global phenomena occurring throughout history (mass killings) and have been recorded with varied motivations to either acknowledge or deny their occurrence. These motivations' underpinnings span political ambitions, historical revisionism, academic pursuits, media reach, public sentiment, and, in some cases, a burgeoning 'genocide industry' (Schabas, 2009).

Political ambitions often play an instrumental role in affirming or challenging genocide narratives. State governments may choose to accept or refute genocidal acts for reasons such as national pride, aligning with allies, or suppressing dissent (Bloxham, 2008). The recognition of the Armenian genocide, in the context of a historical case (although genocide was not yet a term used, nor a legal crime at the time of the Armenian Genocide, the Genocide Convention itself recognizes genocide historically, "recognizing that at all periods of history, genocide has inflicted great losses on humanity") (United Nations, 2022) where international politics and Turkish nationalism have significantly influenced its global acknowledgment (Akçam, 2012).

Historical revisionism, too, impacts the dialogue surrounding genocides. The revisionist narrative often seeks to absolve guilt, uphold national identities, or support political ideologies (Shermer & Grobman, 2002). Deliberate distortions of past events in textbooks and educational material can mold societal views, thus influencing recognition or repudiation of genocides.

Mass Popularity of the Genocide Label: An Investigation

The term "genocide" carries profound implications, its powerful historical connotations arousing significant emotions, often influencing global perceptions, and leading to international action.

To start, the popularity of using the genocide label lies in its weight and gravity. The label conjures up images of the absolute worst in humanity, indicative of widespread and systemic extermination of a racial, ethnic, or religious group (Lemkin, 1944). Such is its potency that its application or denial can dramatically shift views on global conflicts and invariably intrigues academia, media, and public discourse. However, the term's inherent power is often exploited for purposes beyond its intended design. The misuse of the genocide tag is visible across political, legal, and socio-cultural domains. For reasons that are sometimes strategic and occasionally inadvertent, the label is assigned or discarded based on motives diverging from core international law (Shaw 2007). Politically, the label may be employed or avoided to leverage international influence or evade international condemnation and intervention. Schabas (2000) noted that the term is often exploited to exert pressure or embed prejudices in the international landscape. One significant example is the Darfur conflict, where the labeling of genocide by Western countries legitimized engagement despite the debate over the term's applicability (Hagan, Raymond-Richmond & Parker, 2005).

Socio-culturally, the genocide label may be misused when it is appropriated for rhetorical effect or manipulated for propagandistic purposes (Dudko, 2022). This can trivialize the term and overstretch its usage. For instance, invoking the label for socio-political 'crises,' while they are severe, dilutes the gravitas and specificity of the genocide construct (Manoff, 1998, p. 6). For example, in his article, Hopper (2023) observes a troubling trend in the overuse of the term "genocide" in Canada, noting, "Climate genocide, pipeline genocide, prison genocide… there are few contentious Canadian issues that have not been equated to genocide" (ibid, p. 1).

Genocide Incorporated: Motivated Experts

As there has been an upsurge in public interest and awareness about genocide since the Yugoslav and Rwanda Tribunals, there has been a noticeable increase in 'motivated experts' who publicly identify events as genocide. Even though these figures carry a presumed sense of authority due to their supposed expertise in the field, it is imperative to scrutinize the motives behind their assertions and elicit their credibility. This illuminates a scenario where the quest to establish oneself in the public sphere might outweigh the moral responsibility of genocide identification. For instance, media visibility, career advancement, book sales, or merely a chase for popularity might contribute to these motivations. The underlying concern is the possible perpetuation of misinformation, or 'crying wolf,' which inevitably serves to take the severity of the term 'genocide' lightly, risking critical global responses when actual occurrences of genocide arise.

The prevalent misuse of the term "genocide" in international law, as examined by scholars Alvarez (2008) and Quigley (2011), indicates a compelling need to reassess its application. This misusage often presents opportunities for personal or political gains, raising ethical concerns about motivations within the human rights sector.

In his article, "The Misuse of Genocide: Why catch-all definitions under the law must end," Alvarez (2008) argues that these broad definitions create loopholes susceptible to exploitation to serve self-interests. Alvarez examines how these motivations often translate into creating jobs in the human rights sector or pursuing research grants and academic prestige. This highlights a potential conflict of interest, wherein the concept of genocide carries monetary or social reward, nudging the human rights sector away from its primary goal of preventing such heinous acts.

One hopefully assumes that most individuals and institutions in genocide research and human rights work are sincerely committed to halting atrocities and promoting justice. The actions of the few who might misuse the term "genocide" should not overshadow the crucial work many undertake in this field.

Chapter 3: Proving Genocide in Bosnia: Challenges, Successes, and Failures

The Role of Ad Hoc Courts: The ICTY

One of the primary challenges in proving genocide is the fact that most states do not prosecute their leaders and chains of command for genocide unless a particular regime has been defeated and a post-war government engages in such prosecutions, i.e., post-war Croatia, Kosovo, Serbia, Bosnia. This makes the role of international courts, whether permanent or ad hoc, more significant in prosecuting and proving genocide in law.

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are important examples of ad-hoc courts established by the United Nations Security Council to address severe breaches of international humanitarian law. While they have engaged in the prosecution of heinous war crimes, genocides, and crimes against humanity, their limitations and the complexities of international law were equally significant.

Ad-hoc courts, such as the ICTY, had a significant role in interpreting and enforcing international law and developing jurisprudence. The primary purpose is to prosecute those responsible for egregious violations of humanitarian law, such as wartime atrocities or genocides that might otherwise go unpunished due to geopolitical factors or the instability of domestic judicial systems in conflict-stricken regions (Schabas, 2006).

The ICTY offered some accountability and potential justice for severe breaches of the Geneva Convention and other human rights instruments. The ICTR, for instance, was instrumental in characterizing rape as a war crime and a tool of genocide (Jones, 2017, p. 497), reflecting how some international courts can aid in the progression of international law. Moreover, ad-hoc courts might assist in bringing peace and fostering reconciliation among communities affected by the grave abuses they

adjudicate, although in post-conflict analysis, this may not have been the case for the former Yugoslavia (Romano, 2005).

The Limits of Ad-Hoc Courts

Despite these significant roles, the effectiveness of ad-hoc courts in international law is constrained by several limitations. One limitation relates to the issue of jurisdiction and selectivity. Ad-hoc courts are established for specific conflicts and are often accused of "selective justice" (Akhavan, 1998). Because of their specific mandate, they have no jurisdiction over other disputes or conflicts that occur concurrently or subsequently, potentially leaving countless crimes unaddressed.

The second limitation is the temporal and financial issues. Ad-hoc courts, given their temporary nature, can pose challenges due to lengthy and costly investigations and trials. For example, these tribunals have often faced criticisms over their high operating costs and the prolonged nature of their proceedings. Whereas some may complain that potential genocides go unadjudicated, one could posit that there are simply not the resources to begin to address all the cases if they were feasible to adjudicate otherwise (Stahn 2009).

Another notable limitation is the lack of effective enforcement mechanisms. Ad-hoc courts, as well as the permanent courts of the International Court of Justice (ICJ) and the International Criminal Tribunal (ICC), greatly depend on states to arrest and surrender accused individuals. When states are unwilling or unable to cooperate in fulfilling these obligations, courts like the ICTY and ICTR often struggle to carry out their mandates effectively. As Akande wrote:

> The International Criminal Court (ICC) and other ad hoc courts, like the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), face significant challenges in the enforcement of their mandates, chiefly due to their heavy reliance on state cooperation. The courts are often handicapped by the lack of mechanisms to enforce their decisions independently, and

> their effectiveness is further diminished in instances where states are either unwilling or unable to carry out mandated actions such as the arrest and surrender of accused individuals. The inextricable link between court functionality and state cooperation thus presents a major limitation (Akande 2011, p. 43)

Moreover, their legitimacy and acceptance can be questioned in local communities. Post-conflict societies may harbour resentment and perceive these international interventions as neo-colonial or political maneuvers rather than impartial attempts to bring justice. Writes Robert M. Hayden:

> Many American lawyers, commentators, and politicians view the International Criminal Tribunal for the former Yugoslavia (hereafter, ICTY or "the Tribunal") as a manifestation of the triumph of law and justice in international affairs since those who violate international humanitarian law and the laws of war are not shielded by state sovereignty… The ICTY, however, delivers a "justice" that is biased, with prosecutorial decisions based on the personal and national characteristics of the accused rather than on what available evidence indicates that he has done. This bias is seen in the failure to prosecute NATO personnel for acts that are comparable to those of people already indicted and in the failure to prosecute NATO personnel for prima facie war crimes. This pattern of politically driven prosecution is accompanied by the use of the Tribunal as a tool for those Western countries that support it, and especially the United States, to pursue political goals in the Balkans. Further, the Tribunal's rules (some of which resemble those of the Spanish Inquisition), and procedural decisions make it difficult for defendants to receive a fair trial (Hayden, 2019, p. 91).

In conclusion, ad-hoc courts could play a crucial role in international law if more curbs on the institutional biases, i.e., funding and managerial staffing, from the U.S., have been, at times, overly

influential at the ICTY (Blewitt, 2023, p. 121). Although their creation does not represent a silver bullet solution to violations of humanitarian law, they have the potential to establish norms of accountability and justice at the international level. Understanding their limitations is essential to inform and improve future international justice initiatives if there is the political will to accomplish such a goal.

Problems of the Intersections between Crimes Against Humanity, Ethnic Cleansing, and Genocide

The landscape of international human rights has seen an evolution in the typology of atrocities committed on humanity, particularly those relating to crimes against humanity, ethnic cleansing, and genocide, which were all highlighted by the ICTY. These classifications underscore a range of acts that provoke international condemnation and should necessitate legal intervention. However, in practice, a myriad of problems arises due to their intersections and variants that often blur the lines of legal definitions and elude justice.

Intersecting Definitions

Crimes against Humanity are defined as widespread or systematic attacks perpetrated on a civilian population, mainly involving widespread and systematic acts of violence and persecution. Ethnic Cleansing refers to the systematic forcible removal or extermination of a particular ethnic or religious group from a specific geographic area, usually accompanied by violent acts. Genocide, which some contend is the most severe of the three, is a planned act to physically annihilate a national, ethnic, racial, or religious group, in part or total (Shaw, 2008). The evaluative criteria for these acts partially overlap and lead to interpretive challenges. For example, ethnic Cleansing may essentially contribute to genocide but could also concur with crimes against humanity. Furthermore, the question of scale often complicates the distinctions. While both genocide and crimes against humanity can involve mass atrocities, the differentiation comes in terms of intent — an intent to destroy an entire group in the former versus a wide-scale yet possibly indiscriminate attack on civilians in the latter (Schabas, 2000).

Problems in Judicial Responses

The intersection of these classifications complicates the process of judicial responses, impacting both the prosecution of offenders and the protection of victims.

The International Criminal Court (ICC) has been primarily tasked with addressing crimes of genocide, crimes against humanity, and war crimes at the individual level since the closing of the ad-hoc tribunals (ICTY & ICTR), often dealing with challenges in categorizing such atrocities. However, state-level responsibilities for these crimes fall under the jurisdiction of the International Court of Justice (ICJ), which deals with cases between nations.

Whereas the ICJ's rulings are binding on states, it entirely relies on other parties for enforcement. The ICC may issue arrest warrants for individuals, but it does not have an independent force to execute the warrants and relies on state cooperation and, at most, the UN Security Council if the Council refers the case. This uncertain categorization influences the court's ability to impose effective and proportionate punitive measures. Furthermore, the tribunal's limited jurisdiction, influenced by state compliance and geopolitical considerations, occasionally impedes its effectiveness in prosecution and deterrence and is therefore limited by the confusion caused by the intersectionality of the three crimes (Milanovic et al., 2018).

Joint Criminal Enterprise in the ICTY: A Doctrine to Meet the Challenge of Proving Genocide in Court

Before examining a case sample of genocide prosecution, it is essential to understand the concept of Joint Criminal Enterprise (JCE). JCE is a legal doctrine utilized in various courtrooms across the globe, as well as the International Criminal Tribunal for the former Yugoslavia (ICTY). Established in 1993, the ICTY formulated the Joint Criminal Enterprise framework to manage the complex cases of criminality that arose during the Yugoslav conflicts.

Definition and Use of Joint Criminal Enterprise at the ICTY

Joint Criminal Enterprise is a form of liability used to hold multiple persons accountable for crimes they committed collectively. The ICTY has used JCE to prosecute and sentence key figures involved in serious crimes during the Yugoslav conflicts, recognizing distinct categories of JCE: Basic, Systemic, and Extended JCE, each reflecting a different degree of involvement, intent, and foresight (Boas, 2007).

Basic JCE requires that all accused have a common plan, that the accused participate willingly in its execution, and that the crime is a probable outcome of the plan. Systemic JCE is used when the crime results from the existence of an organized system of ill-treatment. Extended JCE allows the prosecution of members of a group who carry out crimes that, while not the original objectives of the common plan, are a foreseeable outcome (Van Sliedregt 2007).

Why Joint Criminal Enterprise was Created

The atrocities committed during the former Yugoslavian wars were of such gravity and complexity (Roudometof, 1996) that traditional models of individual criminal responsibility seemed inadequate to capture the collective and organized nature of the crimes. The ICTY needed a mechanism for punishing not just those who pulled the triggers or gave immediate orders but also those who pulled the strings from behind (chain of command), orchestrating the widespread and systematic crimes. Thus, the ICTY formulated the JCE doctrine, grounded in the premise that those executing a joint criminal plan should bear responsibility for its outcomes according to their involvement, intent, and foreseeability (Boas 2007).

The creation of the JCE doctrine was not uncontroversial, and it paradoxically originated from the challenges surrounding its implementation. A salient issue was the inherent difficulty in proving, beyond a reasonable doubt, an accused person's degree of involvement and intent in a *collective crime* such as genocide. Furthermore, distinguishing between individual and collective responsibility and navigating the

complex hierarchy of command in many instances of mass atrocities proved difficult. This complexity was heightened because many accused were high-ranking officials who did not directly commit crimes but contributed to their occurrence (Lord, 2013). The ICTY faced criticisms over the expansive use of JCE, especially in cases of Extended JCE, where individual culpability can become diluted and the principle of guilt by association is contested. Critics argued that this could potentially undermine the legitimacy of the Tribunal and affect the perception of justice being served (Boas, 2007).

While its intention aligns with the tandem goals of justice and deterrence, JCE has exhibited numerous controversial features that provoke debate. The first qualm against the JCE doctrine lies in its ambiguity. The doctrine's complexity and wide-ranging implications make it an unwieldy tool for legal application, causing difficulties in interpreting, applying, and understanding the rules. In practice, this ambiguity has led to uncertainty as to which individuals can be held accountable, potentially criminalizing individuals based on association rather than evidenced contribution to the crime (Ambos, 2007)

In essence, the concept of Joint Criminal Enterprise suggests guilt by association. However, this contradicts the widely accepted principle of individual criminal responsibility. Without substantial clarity on liability boundaries, JCE could unavoidably lead to the assumption of collective guilt, thereby violating the fundamental principle of criminal law: that guilt should be established individually based on personal involvement and intent in the commission of a criminal act. (Ohlin, 2007)

The controversial 'third category' of JCE, known as JCE III or the Extended JCE, complicates issues surrounding the doctrine. It allows for members of a group to be held accountable for crimes that fall outside of the original agreed plan if they were foreseeable and carried out in the execution of that plan. Critics argue that this dangerously broad interpretation has the potential to include individuals who might have merely been aware of a crime, thus jeopardizing legal principles of fairness and individual culpability (Sluiter, 2007).

The flexibility and broad scope of the JCE doctrine can lead to misuse by the prosecution. It provides an expedient way to establish guilt for complex crimes without demonstrating each accused

person's intricate chain of command, individual duty, and concrete proof of intent. As such, it risks eroding the nuances of case-specific realities and potentially promotes judicial efficiency at the expense of justice. It allows prosecutors to charge many based on the actions of a few, undermining the fundamental principle of culpability.

Lastly, the doctrine's application often ends in disproportionate sentences, as it does not distinguish sufficiently between the varying degrees of participation in a crime. High-ranking officials and lower-level participants can receive similar sentences due to the collective responsibility attributed to the JCE. This lack of distinction undermines the Rome Statute's principle of culpability based on individual conduct and intent, ultimately creating an unequal justice system (Ambos, 2007).

While the Joint Criminal Enterprise doctrine was developed to facilitate the prosecution of individuals involved in collective criminal activities, the concept presents more challenges to balanced justice than it resolves. Its inherent ambiguity, the problems associated with its 'third category,' potential prosecutorial misuse, and the disproportionate application of justice beg for a critical review of this highly questionable doctrine. Stricter guidelines and improvements in its articulation may be advisable if the JCE is to remain a part of the jurisprudential landscape. More importantly, it is vital to preserve the sanctity of the basic principles of criminal law: individual criminal responsibility and personal guilt based on evidence, not association. The effectiveness and perceived impartiality of ad-hoc courts may be subject to scrutiny when considering their operational frameworks. These tribunals, often funded and administered at the managerial level by nations such as the United States, United Kingdom, and other Commonwealth countries, raise questions about the breadth of international representation and the balance of perspectives. This concern is sometimes articulated through the term "Victor's Justice," which hints at a potential bias favoring the interests of the contributing countries (Meernik, 2003; Bass, 2000; Herman & Peterson, 2011; Mazower, 2012).

Proving Genocide in Bosnia: Prosecutorial Wins v. Losses

Radovan Karadžić: Guilty and Innocent of Genocide Charges

Radovan Karadžić, whom I met several times during my service in Bosnia with the United Nations, was the wartime leader of the Bosnian Serbs during the Bosnian War from 1992–1995 and was indicted for multiple charges by the International Criminal Tribunal for the former Yugoslavia (ICTY), including two counts of genocide. These charges were related to incidents in various municipalities in Bosnia in 1992 (Count 1) and the Srebrenica massacre that happened in 1995 (Count 2; ICTY, 2017). While Karadžić was indeed found guilty of genocide concerning the Srebrenica massacre, he was acquitted on the first count of genocide concerning the seven Bosnian municipalities in 1992. The key reason for this lies in the criteria that need to be fulfilled for convictions on genocide charges. The acquittal of Karadžić on the first count of genocide may be used as an example of the challenge of proving genocide in court; however, one must note that there is nothing unique or surprising that a particular prosecution of a particular count fails while other counts are successful. The use of "prosecutorial overcharging" is quite common, where prosecutors file multiple charges, hoping that a few — or at least one — will stick. Overdone, the practice might infringe on defendants' rights (Bennett, 1979). For the 1992 charges related to the seven municipalities, the ICTY concluded that the prosecution did not present sufficient evidence to prove beyond reasonable doubt that Karadžić or his subordinates had the specific intent to exterminate the non-Serb population, a necessary element to substantiate a charge of genocide (ICTY, 2017).

There was indeed "collective" pressure from Bosnians who suffered under the Serb onslaught and made public their disappointment in the Chambers's dismissal of the first count of genocide. Edin Ramulic, who heads an association of victims in Bosnia's Prijedor region, said in response, "We are shocked and disappointed… We have no reason to hope now that the Serbs will go through catharsis and acknowledge that the non-Serbs in Prijedor had been killed, tortured, exterminated, raped" (Associate Press, 2012)

The expression of disappointment, however empathetic, again reveals a lack of understanding created in the environment of predominantly layperson evaluations of genocide. In prosecuting Karadžić, ICTY Chambers ruled that the heinous acts associated with Radovan Karadžić in Prijedor, which included the killing, torturing, exterminating, and raping of innocent victims, were not classified as genocide but as crimes against humanity. It is worth noting that the sentences for crimes against humanity can be equal to or even greater than those for genocide (Schabas, 2000). Edin Ramulić's reaction serves as a quintessential example of an "expectation gap" created by misinformation by conflating social constructs of genocide with legal constructs.

Karadžić Prosecution: Prosecution Fails

Specifically, in Karadžić's case, the Chamber sat for 499 days, heard 434 witnesses, and examined 11,469 exhibits and trial records totaling over 48,000 pages (ICTY, 2017). In count 1 of genocide, the prosecution alleged an "overarching JCE" of genocide over seven villages. Mass ethnic Cleansing was purported to have taken place, along with various atrocities of murder, torture, and rape (ICTY Trial Chamber, 2016). Although the Chamber recognized the actions *actus reus* of the Serb forces, which were atrocities in its totality, it did not, however, agree that "intent' based on inference of actions were "beyond a reasonable doubt," indicating "genocidal intent" (ibid.). The defence for the Serbs alleged that there was no ethnic cleansing but that the residents took it upon themselves to flee the war. The defence made its argument, but again, I would like to add my own experience, that in many instances, and to "some" degree, people on all three sides were often "motivated" and "cajoled" by their own leaders, in person, via radio and television and public pronouncements, to "move" before advancing forces reached them. This in no way negates or invalidates reports and crimes of ethnic cleansing but attests that often there are many blurred lines during war and not as black and white as the media had portrayed it. Suffice it to say that the line of argument presented by the defence in the Karadžić case regarding ethnic cleansing was true to a certain extent in many of the events of ethnic cleansing that took place during the Bosnian war. However, it is only to reveal the difficulty in prosecuting a very complex crime, such as ethnic

cleansing, and attempt to portray it as genocide, which, in the case of Karadžić, failed, and the Chamber ruled the event not meeting the threshold of genocide (ICTY Trial Chamber, 2016).

Chambers also ruled that the evidence presented did not prove that Karadžić had "mass murder" as part of the "common plan" (JCE; ICTY Trial Chamber, 2016, p. 5.), and this may have played a pivotal role in finding the action to be ethnic cleansing and crimes against humanity, but not as part of a genocidal plan.

Karadžić Prosecution: Prosecutor Wins

In genocide count 2, the Chamber found that the evidence presented for the massacres at Srebrenica reached the threshold of genocide, and thus the Prosecution won. Chambers agreed with the Prosecution's argument that Karadžić was "aware" of Directive 7, the plan to rid the enclave of Bosnian Muslims, and spoke in "code" about the mass killings of primarily military-aged males captured in the enclave. As Karadžić was the Supreme Commander and President of the Republika Srpska, he had the authority to either "cancel" the mass murder plans or to issue orders preventing any large-scale massacres from taking place, and Karadžić could not prove that he did either (ICTY Trial Chamber, 2016, p. 13). Keeping in mind that Karadžić was found guilty of nine other counts of crime against humanity, violation of customs of war, inhumane acts, etc.

However, the "win" for the Prosecution in the second count of genocide might be problematic in the Chamber ruling itself. The ruling, which I will label as the "Srebrenica formula," was only possible by employing the "questionable" methodology of the Joint Criminal Enterprise as well as other unique interpretations of the Srebrenica massacre/genocide within the context of the Convention, which has been already discussed in detail in Chapter Two, pages 25–27. Furthermore, the International Court of Justice (ICJ) later reviewed the issue (genocides in Bosnia) and confirmed that Srebrenica was the only case of genocide during the Bosnian conflict (ICJ, 2017). There would be no doubt that Srebrenica was a case of crimes against humanity, ethnic Cleansing, extrajudicial murder, etc., but the genocide ruling might be questionable (Southwick 2005; Schabas 2000, p. 96).

Therefore, one might conclude that the "big" victory in proving genocide for the ICTY, in the single sole case of Srebrenica, is not necessarily very "solid" in its jurisprudence and interpretation of events within the scope of the Genocide Convention.

Arresting Genocide Indictees Posed a Problem

It is important to address the challenges in arresting Karadžić as it highlights the intricate process of identifying and prosecuting genocide, particularly within the framework of the International Criminal Tribunal for the former Yugoslavia (ICTY), where the inability to try individuals in absentia underscores the necessity of capturing the indictee or securing their voluntary surrender for prosecution to proceed.

As the public knows, finding and arresting Karadžić took some time and trouble. The story of capturing Radovan Karadžić is a chronicle of persistent international efforts (Todorovich, 2008), investigative breakthroughs, and opaque failures. After being indicted in 1995, Karadžić went into hiding and assumed a new identity as Dr. Dragan David Dabic, a specialist in alternative medicine. He drastically altered his appearance, growing a long beard and hair, and wore large glasses that further obscured his identity. He conducted a very public life under this alias, attending conferences and lectures across Europe. His evasion was highly controversial as it raised severe questions about the complicity of various state agencies in shielding him from justice. The international community was accused of not being proactive enough in hunting him down. Karadžić, the former Bosnian Serb political leader, claimed that Richard Holbrooke, an American diplomat, and Carl Bildt, former Swedish Prime Minister, made him a secret promise. Karadžić asserted that he received assurances that he would not be arrested or prosecuted by the International Criminal Tribunal for the former Yugoslavia (ICTY) if he withdrew from public and political life (Associated Press, 2009).

These claims have always been a subject of widespread debate and controversy. Holbrooke and Bildt denied the allegations categorically (BBC NEWS/Karadžić Immunity Claim Rejected, 2009), although in a recent new book by my former boss, ICTY Deputy Prosecutor Graham Blewitt, there is further evidence to Karadžić's claims and my own experience. Blewitt writes in his new book, "Justice

and War Crimes, Documenting the First 10 Years of the ICTY," that the issue of arresting Karadžić by NATO forces in Bosnia (IFOR) began a litany of insincere excuses as to why Karadžić, specifically, despite good intelligence, was not being arrested. Writes Blewitt:

> …the attempts by Del Ponte [ICTY Prosecutor] to secure the arrest of the remaining ICTY fugitives, in particular, Radovan Karadžić… …it demonstrates the deceitful nature of the U.S., the French, and the Montenegrins in blocking Del Ponte's attempts to achieve a just and proper outcome… (Blewitt 2023, p. 216) …Nell said that when he spoke to the SFOR Commander about arranging transport in the event Karadžić was prepared to surrender, General Montgomery Meigs insisted General Clark required prior presidential approval before anything could happen. Apart from Karadžić, Nell advised, Clark held delegated authority to carry out all other arrests [only not for Karadžić]. It appeared to Nell that some sort of deal had been made and Karadžić would never be arrested. The U.K. would not carry out the arrest as they did not want to upset their U.S. ally (Blewitt, 2023, pp. 216–217).

The breakthrough came in 2008 after years of false leads and near misses (UPI, 2008). Karadžić was arrested in Belgrade by the Serbian security services while traveling on a public bus, a momentous event in Europe's most extended manhunt. The path to his capture involved months of surveillance by the Serbian security authorities, aided by international intelligence agencies.

The arrest so late in 2008 raised critical questions about the fact that a war criminal could live incognito in plain sight for over a decade. His trial started in 2009, and by 2016, he was found guilty of genocide, war crimes, and crimes against humanity, leading to a 40-year sentence, which was later increased to life imprisonment on appeal in 2019 (Karadžić, 2021).

This apparent resounding success for proving genocide, seven wins out of eight charges, in court might contrast with the disappointment by many that from years of terrible warfare in Bosnia and

countless stories of massacres and civilian deaths, a paltry eight charges of genocide, all related to one single event, Srebrenica, was the total result? From this perspective, the ICTY and the threat of prosecuting genocide crimes seemed to have fallen flat when compared to the apparent ease that the public has in spotting genocides. Of course, many other cases were a success within the categories of war crimes, crimes against humanity, grave breaches of international humanitarian law, and grave breaches of the Geneva Convention. The public expected that the numerous deaths, so-called concentration camps, executions, mass graves, the siege of Sarajevo, and incessant ethnic cleaning would have resulted in many dozens of charges for the crime of genocide in the Bosnian war. It would be highly speculative to measure this perspective in the context of evaluating the difficulty in proving genocide, meaning, perhaps there were many cases where the ICTY Prosecution intended to charge genocide but relented and changed the charges due to the inability to prove intent or produce enough evidence to sustain such charges. This could be true to an extent, but not after 2003 when the UN Security Council, in Resolution 1503, directed the ICTY to limit prosecutions to only the most senior leaders suspected of being responsible for the most drastic crimes (Del Ponte, 2004). This postulation of cherry-picking cases to prosecute applies to all severe criminal cases, and genocide is not unique in this aspect. From my own experience of 12 years working with the United Nations (Human Rights, U.N. Centre for Human Rights, U.N. Commissioner for Human Rights, U.N. International Police Task Force Commander Sector West, UN ICTY Criminal Tribunal/ Deputy Head of Office Belgrade/Operations Officer) during the Bosnian war and afterward, there was an overall expectation that the widespread use of ethnic Cleansing would have resulted in many genocide charges. However, for those, such as myself, who worked in the field (in situ), with direct contact and access to individuals, including suspected perpetrators, soldiers, victims, witnesses, generals, and Presidents, without the need to filter media reports for accuracy, presented a unique perspective. Despite these advantages, the possibility that ethnic cleansing would lead to multiple genocide charges did not materialize for two primary reasons:

First, it was apparent that the "intent" of ethnic cleansing was to create contiguous states, i.e., a Serbian state, Croatian state, and Bosnian state, which would not have allowed viable states to exist.

Therefore, as that was the intent, and not destroying in whole or in part a protected group, as such, it would be useless to prosecute genocide charges. The second dilemma would be that a particular narrative was created by the allied Western states and their media, that the situation was black and white, good versus evil, and as the Serbs were labeled as the "bad guys," the preponderance of indictments for war crimes and genocide would be expected to be mainly aimed at the Serbs.

At the outset of the war, ethnic cleansing was predominantly carried out by the Serbs — an action that might have led to numerous genocide charges. However, as the conflict progressed and neared its end, the dynamics shifted; the Croats, Bosnians, and Kosovar Albanians increasingly engaged in ethnic cleansing against Serb populations. Ultimately, the most significant percentage of individuals who were forcibly and permanently removed from Bosnia were Serbs. This would have "inconveniently" resulted in just as many genocide charges against "the good guys," the ethnic groups that were supported by the Western NATO states.

Chapter Four: Data Analysis

Genocide regularly features in public conversation as a grievous and heinous crime shrouded in legal complexity and by the perception of its 'difficulty' to prosecute and win in court. However, a careful examination and comparison of adjudication data between genocide and national homicide cases offer a contrast to this commonly held perspective. This section will challenge the commonly held view that genocide is overly difficult to prosecute, arguing instead that genocide conviction rates are comparable to those of domestic homicides in many jurisdictions.

Aside from the already discussed challenges of proving and winning a conviction for genocide in court, it is important to consider that other factors are also at play in every court trial, and these factors are sometimes ignored in discourse about proving genocide in court. The judicial proceedings sphere is replete with complex, intricate dynamics where the outcome often relies on various circumstances (Robinson, 2015).

Court cases are not solely dictated by law but influenced by several factors. One such factor is the relationship between each client and their lawyer — the lawyer's skill, the preparedness of both parties, and the ability to articulate situations can influence case outcomes. Likewise, psychological factors, including personal biases, feelings of sympathy, and the narrative's appeal, can impact judicial opinions. The orderly presentation of case proceedings also plays a significant role, with the timing and order of witness testimonies and their presentation carrying potential weight in shaping the final verdict. The dynamic between the defence and prosecution plays a significant role in influencing the final decision. Factors like investigation quality, pretrial preparations, and courtroom performance matter significantly (Wright et al., 2021).

The nature of the alleged crime and applicable laws — the prosecution's chances highly depend on the severity of the defendant's alleged offense and the clarity of the legal provisions. More severe,

unambiguous offenses often prompt prosecution victories, while more complex laws or offenses can potentially lead to prosecution failure, which plays a significant role in prosecutions of genocide law.

Another relationship involves judges, especially those from different countries and legal systems, and their perception of war crimes. Their perspectives can significantly influence the case's outcome. In conclusion, the variable dynamics of judicial proceedings offer a comprehensive understanding of the complexities shaping court case outcomes (Robinson, 2015).

Interpreting the Data: Is Genocide Overly Difficult to Prosecute?

Despite the myriad of challenges involved in prosecuting genocide, the assertion that genocide is overly difficult to prove does not find support from empirical adjudication data. When considering the unique hurdles that genocide cases must overcome, an 83% (see below) conviction rate is substantively comparable to and higher than the 70–76% conviction rate for domestic homicides in the US and Canada (Reaves, 2013; Canada, Department of Justice, 2022).

It serves as an alert that while challenges and complexities are inevitable, they are not insurmountable in the pursuit of justice for victims of heinous crimes such as genocide.

Empirical Analysis

Statistics Versus Perception: Exploring the Evidence: An Examination of Validating Genocide Accusations in Legal Proceedings

This discourse aims to lay a framework to scrutinize the widely held view that affirming genocide in court is significantly arduous.

To examine this question, I have chosen to examine the decisions regarding genocide charges from three courts (the ICC has not completed any trials for genocide): the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR); and the Extraordinary Chambers in the Courts of Cambodia (ECCC). These courts provide a mechanism for

undertaking empirical research to confirm or challenge the prevalent opinion that substantiating genocide within a legal proceeding includes disproportionately complicated requirements.

Various reasons make these three courts suitable for such a complicated analysis. Principally, their undeniable international standing assures, as much as possible, a balanced and diverse panel of judges, serving to lessen the possibility of implicit biases and thus reinforcing the sanctity of the resulting judgments, as implied in the doctrine of natural justice *audi alteram partem* (hear the other side). Moreover, these tribunals function under a uniform and semi-standardized legal framework, largely inclined towards a Western model, as evident in the principle of legality: *nullum crimen, nulla poena sine lege* (no crime, no punishment without law). This enhances the consistency of the applied legal codes and decision-making processes, echoing the legal principle of consistency, "stare decisis" (stand by things decided). A crucial factor behind reviewing these courts lies in their abidance by the 1948 Genocide Convention, ensuring a universally accepted and well-defined understanding of the crime of genocide. This aligns with the principle of legality and predictability in international law, favoring a uniform understanding. Every legal document corresponding to each trial is made public, allowing for a detailed examination and comprehension of each proceeding's basic facts, evidence presented, and subsequent judgments. This process enforces the principle of openness in court proceedings, a long-held tenet of justice.

Finally, the bodies are predominantly funded by the United Nations and international donations, implying that they have withstood intensive scrutiny by global experts, reinforcing the trustworthiness and neutrality of judicial operations and decisions. Although it is implausible for any tribunal to eliminate factors with potential bias impact when assessing the intricacies of establishing genocide in courts, these four internationally recognized bodies offer an adequately comprehensive and relevant system to explore this question and infer substantial conclusions. Other trials for genocide have taken place, but at the domestic national level of law and, therefore, may not attain the same level of integrity as the international courts. Other genocide trials have taken place in Bosnia and Herzegovina War Crimes Chamber, Germany, Rwanda, Canada, Equatorial Guinea, Ethiopia, Iraq, and Guatemala. These courts

and trials may not offer the levels of reliability required for a valid analysis. This is due to institutional biases, lack of resources, political interference from the national governments, inadequate training, and expertise (Wippman 2006).

The analysis of the International Court's findings contradicts the common perception that prosecuting genocide is extremely difficult, as the empirical data suggests otherwise.

When considering the indictments and subsequent convictions for genocide, an interesting pattern surfaces. There are often multiple charges for such crimes, but not all are equivalent in the strength of their supporting evidence. This is a strategic move by prosecutors: by introducing multiple charges (discussed in the previous chapter as "overcharging"), they are aiming to secure at least one conviction for genocide (Bennett, 1979). However, this strategy could lead to an overstated perception of the frequency and scale of genocide charges, making it seem as though such convictions are harder to come by than they are. Many believe that the relative, rarity of genocide convictions stems from the high evidentiary standards required to substantiate such charges and prove them beyond a reasonable doubt, as expressed in the NPR program "Why Genocide is Difficult to Prove Before an International Criminal Court" (NPR, 2022). Many public references (Blakemore, 2022; LeBlanc, 2022; Marquand, 2007; Kaye, 2007) assert this argument of the difficulty in proving genocide in court, absent any supporting data, and one would question by what empirical metrics they are ascertaining such conclusions. It is clear, however, that a case that manifestly does not meet the legal criteria for genocide would undoubtedly be challenging to prove in court- as would any case without legal merit. The complete reverse may be true, that genocides falling within the scope of the Genocide Convention are exceedingly rare. The use of "generic" definitions as a framework to achieve justice has proven to be confusing, sometimes deceptive, and undoubtedly fruitless (as evidenced by the very sparse numbers of adjudications of genocide since 1948).

The empirical conclusion indicates that, contrary to common belief, genocide convictions occur at a higher rate than homicide convictions in the USA and Canada. In international courts, the rate of convictions for genocide stands at a noteworthy 83%. When this figure is considered alongside national statistics, it becomes even more striking. For instance, Canada reports a homicide conviction rate of 76%,

while the United States sees a slightly lower rate at 70%, according to the Bureau of Justice Statistics for 2023 and Canadian sources for the year 2022. These percentages reflect how international legal bodies handling cases of genocide are achieving conviction rates that are on par with, or even exceed, those of national systems dealing with homicides.

Conviction rates for genocide charges laid at the ICTY reached a 100% success rate based on the number of persons charged and a 78% conviction rate based on the number of charges laid. The ICTY charged seven persons with genocide, covering nine (9) counts of genocide.

For the ICTR, an 80% conviction rate was achieved based on persons charged with genocide and a 64% conviction rate based on the number of genocide charges prosecuted. The ICTR indicted 93 persons, charging 66 persons with 143 counts of genocide.

The Extraordinary Chambers in the Courts of Cambodia achieved a 100% conviction rate based on both persons charged with genocide and counts of genocide, albeit this was with only two persons charged with the crime of genocide (see the Appendix for full data tables).

The pursuit of justice in cases of genocide is often marred by the perception that genocide is exceedingly difficult to prove in court. However, a comparative analysis of the limited empirical data can provide insights and serve as benchmarks to evaluate this assertion. This analysis is valuable even if the empirical base for comparison is scant and the data is not robust. For instance, looking at the successful track record of genocide prosecutions at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) can challenge the notion of inherent difficulty in proving genocide.

Contrary to the belief that genocide cases are almost insurmountable, these tribunals have demonstrated a high rate of success in securing convictions. Moreover, comparing the conviction rates for genocide at the ICTY and ICTR to those of domestic homicide cases in the United States and Canada reveals certain parallels. These similarities may be attributed to the influence of the common law system, 1given that the ICTY and ICTR were predominantly staffed by senior professionals well-versed in this legal tradition (although the ad hoc courts were a mixture of common and civil law systems).

As mentioned earlier in the thesis 2003, the ICTY's operations became more complex due to a directive from UN Security Council Resolution 1503, which limited the tribunal to prosecuting mainly high-ranking officials implicated in serious crimes. This shift focused the ICTY's resources on the challenges of high-stakes trials involving top leaders and their associated political and legal complexities. Despite these constraints, the ICTY maintained a high conviction rate, suggesting that its prosecutorial success was not merely the result of selecting the easiest cases to win.

While the broader analysis of factors influencing conviction rates in criminal cases, including homicide, felony, and organized crime, is undeniably complex, there remains significant value in examining the concrete outcomes of genocide prosecutions in courts of law. The nuanced macro perspective typically encompasses a multitude of variables — from legal procedures and standards of evidence to political and social contexts. Despite this complexity, assessing the "real world" success rates of genocide convictions provides a tangible metric against which the effectiveness of international legal frameworks and the efficacy of judicial processes can be gauged. Engaging with these empirical results can yield insights into the mechanics of international justice and the capacity of courts to handle cases of such gravity, guiding future policymaking and potentially refining the pursuit of global justice.

It might be noted that considering the exceptionally high Japanese conviction rates for felonies, of over 99% for felony offenses, it may speak more about strategic prosecutorial choices rooted in financial and staffing constraints than any inherent feature of the Japanese legal system. Japanese prosecutors, facing limited resources, may be more selective, taking only their strongest cases to trial (Rasmusen et al., 2009).

These points of comparison underscore that, with the proper judicial framework and international cooperation, justice for the gravest of crimes can indeed be attained. The ICTY and ICTR, in securing convictions and establishing precedents, have shown that with dedication and support, even the seemingly impenetrable crime of genocide can be successfully prosecuted in the international arena and dispelling the common assertion that "we know it is a genocide, we just cannot prove it."

Conclusion

What did we Learn from this Thesis?

In concluding this thesis, my analysis demonstrated that the public's broad labeling practices have blurred the precise and legal understanding of genocide. This thesis has shown that the term 'genocide' is often misapplied to situations of significant violence against groups, leading to a diluted meaning and creating a discrepancy between public perception and the stringent legal definitions established in international law.

This disconnect has become evident as the research has affirmed that many grave violations, while morally indistinguishable, do not meet the stringent legal parameters to be classified as genocide. The rigorous criteria set by law delineate boundaries that, while potentially excluding other serious offenses, serve to preserve the term's integrity for the gravest of crimes.

Furthermore, the thesis has indicated that the public's fervent demands for genocide convictions have inadvertently skewed judicial priorities, funneled resources ineffectively, and fostered a culture of dismay when legal bodies are unable to meet these expectations. The discourse revealed that there is a potential for actual war criminals to sidestep accountability because the legal system becomes preoccupied with pursuing the more formidable but less applicable genocide charges.

Moreover, the scrutiny of the thesis has elucidated that under significant public pressure, judicial institutions may have felt compelled to issue tenuous verdicts, marking an unsettling deviation from legal prudence. While convictions are intended to signal the triumph of justice, these contentious decisions hint at a justice system swayed by external influences rather than steadfast legal reasoning.

The thesis has interlaced these core findings with the established conventions and judicial experiences since 1948; it becomes palpable that the challenges in proving genocide, while existent, are

not as insurmountable as commonly posited. This thesis has substantiated that the notion of genocide as a distinct crime has paradoxically become a potential means of escape from justice.

A more grounded approach to categorizing and prosecuting crimes against humanity may enhance accountability and advance the pursuit of universal justice without the burden of proving a "gold standard" crime that paradoxically seems to protect as much as it punishes.

Recommendations

1. Consideration should be given to abolishing the Genocide Convention.

It can be argued that under its narrow and unique definition, there have been few, if any, instances of genocide since the Convention's establishment in 1948. Instead, the egregious crimes since 1948 have more convincingly met the criteria for Crimes Against Humanity and Ethnic Cleansing than for genocide-within the scope of the Convention. This suggests that the Convention's rigid parameters have led to its being ignored in international fora over its initial 75 years (Lester, 2002). The Convention's "perceived" and/or "construed" ambiguity has often been used as a convenient impediment to intervention, interfering with the international response to potential genocides, thereby echoing its definitional "uniqueness" at the ground level. These shortcomings give rise to situations where considerable crimes, which could be actionable as Crimes Against Humanity, are ensnared in debates over their classification as genocide, thus stymieing decisive international action. The Convention's application, predominantly seen in the temporary courts of Rwanda and Yugoslavia Tribunals, has had no discernable enduring preventive effort against further widespread devastation, such as in the cases of Russia/Ukraine, Israel/Gaza (Psaledakis & Lewis, 2024), or yielded lasting peace and reconciliation, as seen in the persistent human rights violations in the former Yugoslavia and Rwanda. The ineffectual impact of the Convention on the alleged Uyghur genocide in China further echoes this argument (BBC News, 2021). Although in instances such as the disputed genocide status in Sudan — affirmed by the United States but denied by the United Nations — one could attribute the inaction to political disagreements rather than the Convention itself, such experiences reveal a lack of an effective "trigger" mechanism within the Convention.

If abolished, the opportunity surfaces to enhance and prioritize Crimes Against Humanity as a more identifiable, prosecutable, and actionable legal doctrine. Moreover, the process would address the misuse of the term "genocide" in the international legal discourse by revoking its potential for weaponization or misuse. Sans the Genocide Convention, the implication of a "generic" genocide being illegal would be averted, and the global community could refocus its attention to Crimes Against Humanity, war crimes, and other severe violations of international law as the primary legal tools in the battle against mass atrocities.

2. Citizens must hold their governments to account for enforcing the "rule of law" rather than "might makes right."

In recent times, the process of identifying and prosecuting genocide has faced external challenges due to geopolitical dynamics. The shift from a rules-based system to a "Might Makes Right" paradigm has overshadowed the principle of "Rule of Law." This shift is evident in cases involving Russia/Ukraine and Israel. Western democracies were quick to invoke international law and accuse Russia of human rights violations and genocide despite a lack of confirmation of genocide by international bodies such as the United Nations and the ICC. However, when it comes to recent events in Israel, there has been a notable lack of vocalization on potential war crimes or acts of genocide from many leading Western democratic nations (Lederer, 2023). The effectiveness of any international judicial framework hinges on its capacity to apply its principles uniformly, irrespective of the actors involved. However, when some nations appear to circumvent or escape scrutiny due to their strategic alliances, it undermines their standing and credibility. Secondly, the perception of bias or favoritism by the global community and human rights leaders can obstruct investigations and hinder the delivery of justice. It breeds skepticism and can potentially embolden nations to commit atrocities, secure in their belief that their political or strategic affiliations will offer protection from international indictments.

3. The media should enrich their reportage by inviting competent international law experts who could shed light on grave humanitarian offenses with credibility.

The current trend of relying on non-expert political pundits or others lacking expertise and experience in adjudication perpetuates a cycle of misinformation about genocides, war crimes, and crimes against humanity. Scholarly experts discussing the subject in public should clarify whether they are discussing genocide in a legal or social construct context.

An informed electorate can only emerge when the media prioritizes delivering accurate analysis and comprehensive discussions, serving to hold their representatives accountable. It is essential to acknowledge that previous attempts to remediate these issues through amending the Genocide Convention, strengthening judicial bodies, facilitating early warnings, implementing sanctions, encouraging dialogue, and more have been largely unsuccessful. Unless powerful democratic countries commit to upholding the rule of law rather than engaging in Realpolitik, such measures remain futile. Given the current state of authoritarian regimes worldwide, it is up to the populace of leading Western democracies to ensure reforms to reflect international humanitarian laws consistently and effectively. Only through these means can we hope to mitigate and prevent the mass loss of human life in the future.

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Appendix

International Criminal Court for the former Yugoslavia ICTY

ICTY Indictee	Genocide counts	Convictions	Acquittal
Mladic	2	1	1
Karadžić	2	1	1
Krstic	1	1	0
Popovic	1	1	0
Beara	1	1	0
Nikolic	1	1	0
Tolimir	1	1	0
TOTALS	**9**	**7**	**2 (78% conviction rate)**

International Criminal Court (ICC)

ICC	Genocide Charges	Convictions	Acquittal
Al-Bashir	3 not tried	0	0

International Criminal Tribunal for Rwanda (ICTR)

ICTR (Rwanda)	Genocide counts	Convictions	Acquittal
Bagilishema	1	0	1
Kayishema	1	1	0
Ruzindana	1	1	0
Muhimana	2	2	0
Akayesu	2	2	0
Rutaganda	1	1	0
Ntakirutimana	3	2	1
G. Ntakirutimana	3	2	1
E. Ndindabahizi	1	1	0
Bagambiki	1	0	1
Bagaragaza	1	1	0
Bagosora	2	1	1
Barayagwiza	4	4	0
Bicamumpaka	4	0	4
Bikindi	4	1	3
Ag. Bizimungu	3	3	0
Cas. Bizimungu	2	0	2
Gacumbitsi	2	2	0
Gatete	2	1	1
Hategekimana	1	1	0
Imanishimwe	3	1	2
Kabiligi	2	0	2
Kajelijeli	4	3	1

ICTR (Rwanda)	Genocide counts	Convictions	Acquittal
Kalimanzira	2	2	0
Kambanda	4	4	0
Kamuhanda	2	2	0
Kanyabashi	4	3	1
Kanyarukiga	1	1	0
Karemera	3	3	0
Karera	2	1	1
Mugenzi	2	0	2
Munyakazi	1	1	0
Murgiraneza	4	0	4
Musema	3	1	2
Muvunyi	3	1	2
Nahimana	4	4	0
Nchamihigo	1	1	0
Ndahimana	3	3	0
Ndindiliyimana	1	0	1
Ngeze	4	4	0
Ngirabatware	3	2	1
Ngirumpatse	3	3	0
Niyitegeka	3	3	0
Nizeyimana	3	3	0
Nsabimana	1	0	1 (later acquitted)
Nsengimana	2	0	2
Nsengiyumva	2	1	1
Ntabakuze	1	1	0
Ntagerura	2	0	2
Ntahobali	1	1	0
Ntawukuliyayo	2	1	1
Nyiramasuhuko	2	1	1
Nzabonimana	3	3	0
Nzuwonemeye	1	0	1
Renzaho	3	2	1
Ruggiu	1	1	0
Rukundo	1	1	0
Rwamakuba	2	0	2
Sagahutu	1	1	0
Semanza	3	1	2
Seromba	2	1	1
Serugendo	2	2	0 *
Serushago	1	1	0
Setako	1	1	0
Simba	1	1	0
Zigiranyirazo	2	1	1
Genocide Counts	143	92	**64% conviction rate**
Persons charged with genocide (and tried ICTR)	66	53 (**80% conviction rate)**	13 acquitted

The Extraordinary Chambers in the Courts of Cambodia
Established by the Cambodian government and the UN, its mandate is to try serious crimes committed during the Khmer Rouge regime 1975–1979.

Cambodia ECCC	Genocide counts	Convictions	Acquittal
Chea	1	1	0
Samphan	1	1	0
Totals:	2	2 100% conviction rate	
Persons charged with genocide:	2	2 100% conviction rate	