It Happened and it Can Happen Again: The International Response to Genocide in Rwanda

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Cover Page Footnote
International Law; Commercial Law; Law

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We have managed to forget Auschwitz and Buchenwald; perhaps we could never really believe or understand them in the first place. They seem to have been some horrifying intrusion, a prolonged nightmare that we have suppressed and prefer not to discuss. And yet it happened and it can happen again or worse.

—Jack Bemporad, The Concept of Man After Auschwitz

I. Introduction

On November 15, 1996, after more than two years of suffering in camps near Goma, Zaire, a stream of over 300,000 Hutu refugees began trudging back into Rwanda.\(^2\) The refugees had fled Rwanda in 1994 after Tutsi rebels gained control of the country. As Hutu, they feared that they might be the targets of Tutsi reprisals for the Hutu-led massacres of ethnic Tutsi between April and June of 1994.\(^3\) The Hutu refugees were forced to remain in the camps by the Hutu militia and former-government army members, many of whom were suspected of perpetrating the massacres and of later continuing their campaign against the Tutsi from the camps in Zaire.\(^4\)

The refugee exodus came just as the United Nations Security Council approved a plan for deploying a multinational force to assist in the delivery of humanitarian aid to the more than one million Rwandan refugees now further displaced by fighting in Zaire.\(^5\) As the Security Council considered what effect this new activity would have on the need for international intervention, President Clinton reaffirmed his commitment to international action.\(^6\) After more than two years of turmoil in Central Africa marked by refugee crises, civil war and genocide,\(^7\) during which

\(^2\) See Dele Olojede, *Hutu Refugees Stream Home*, THE NEWS & OBSERVER (Raleigh, N.C.), Nov. 16, 1996, at A1. Because the events referenced in this Comment took place prior to the overthrow of Zaire’s dictator Mobutu Sese Seko and the creation of the new government of the Democratic Republic of the Congo, the name Zaire will be used throughout this work.


\(^4\) See id; see also infra notes 80-106 for a description of the massacres and the suspected perpetrators.

\(^5\) See Olojede, *supra* note 2, at A16. The fighting between Zairian Tutsi rebels, known as Banyamulenge, and the Zairian army began in October 1996 after the deputy governor of the South Kivu province ordered all Tutsi, long deprived of citizenship, to leave Zaire within six days. See Kevin Fedarko, *Death Cries of a Nation as Two Countries Near Full-Scale War, A Million Refugees Set Up Camp and Brace for a Massive Catastrophe*, TIME, Nov. 11, 1996, at 46.


\(^7\) Genocide is the attempt to destroy, through killing or other specified acts, a national, ethnic, racial or religious group. See *Convention on the Prevention and
the United States and the international community maintained a
careful distance, the President’s remarks took an ironic turn: “The
world’s most powerful nation must not turn its back on so many
desperate people and innocent children who are now at risk.”

The events in Rwanda since 1994 raise many questions about
the obligations of the international community and the United
Nations in dealing with violence and slaughter within one nation’s
borders. Fifty years ago, the atrocities of Nazi Germany served as
a catalyst for the formation of the United Nations and the
international commitment to the promise: “never again.”

The 1948 Convention on the Prevention and Punishment of the Crime
of Genocide more specifically sought to fulfill this promise by
defining the crime and articulating the international community’s
belief that genocide was “contrary to the spirit and aims of the
United Nations and condemned by the civilized world[.]

However, comparing the United Nations’ response to recent
genocidal events with the Allied governments’ response to the
plight of the Jews during the Holocaust suggests that the promise
is a hollow one. One critic, writing before the April 1994 eruption
of violence in Rwanda, noted of the United Nations’ response in
the former Yugoslavia that:

[I]t would be as well to examine the mistakes of the past forty-
five years: in particular, the consistent unwillingness and
apparent inability of the member-states of the United Nations to
intervene in the “sovereign affairs” of one of their own number;
and their consequent failure to invoke—even once—the United

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Punishment of the Crime of Genocide, Dec. 9, 1948, art. II, 78 UNTS 277 [hereinafter
Genocide Convention]. See infra notes 23-38 for a detailed analysis of the term and its
application in international law.

8 Erlanger, supra note 6, at A16. Critics charge that the Clinton administration
led the Security Council in its ambivalence toward events in Rwanda. See Holly
Burkhalter, The Question of Genocide: The Clinton Administration and Rwanda,
WORLD POL’Y REV., Winter 1994, at 44. See also infra notes 156–62 and accompanying
text for a discussion of U.S. actions during the crisis in Rwanda.

The United Nations, which met for the first time in April 1945 in San Francisco, was
formed with the optimistic objective of resolving international conflicts. See DONALD
KAGAN ET AL., THE WESTERN HERITAGE SINCE 1300, at 998 (1987) (caption to
photograph). Thus, the “new world order . . . would ‘never again’ permit the sort of
horrors that had so recently sprung from Nazi Germany.” Destexhe, supra, at 3.

10 Genocide Convention, supra note 7.
Nation's Genocide Convention of 1948.\textsuperscript{11}

This unwillingness to be proactive in preventing the crime of genocide has serious implications for the future. For example, the decolonization of Africa and elsewhere has already led to an increase in conflict and violence.\textsuperscript{12} This type of political atmosphere can serve as the necessary catalyst for genocide.\textsuperscript{13} Instead of turning away, the United Nations, through the Genocide Convention, has the obligation to intervene and ultimately to punish perpetrators of this heinous crime.\textsuperscript{14}

This Comment will explore the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in the context of the Jewish Holocaust and apply its mandate for prevention to the situation in Rwanda. First, Part II will look at the origin of the term "genocide" and its definition as spelled out in the 1948 Convention.\textsuperscript{15} Next, Part III will briefly review the history of the Jewish Holocaust, focusing in particular on evidence of the Allied governments' knowledge of Nazi atrocities and opportunities these governments might have had for intervening.\textsuperscript{16} Following this, Part IV will outline the history of the Rwandan conflict, including background on the country's colonial history, recent civil war punctuated by the genocidal acts of April-June 1994, and the subsequent refugee crisis involving its neighbor Zaire.\textsuperscript{17} Part V will analyze the application of the Genocide


\textsuperscript{12} See id. at 8 (noting the chaos resulting from decolonization as a political context for genocide). See also notes 211-21 and accompanying text for further discussion of decolonization and other potential factors which trigger genocide.

\textsuperscript{13} See Landau, supra note 11, at 8.

\textsuperscript{14} See Genocide Convention, supra note 7. See infra notes 29-35 (describing the terms of the Convention); see also Jennifer A. Widner, States and Statelessness in Late Twentieth-Century Africa, DAEDALUS, Summer 1995, at 129. Fearing this tendency to turn away, Melissa Wells, the U.S. Special Envoy to the Sudan, "remarked that the spectacle of spreading conflict in central Africa may engender such despair that it will lead many to redraw the definition of humanity, removing many people from the world community because the awfulness of the conflict is too much for our moral imaginations." Id. at 130.

\textsuperscript{15} See infra notes 23–38 and accompanying text.

\textsuperscript{16} See infra notes 39–58 and accompanying text.

\textsuperscript{17} See infra notes 59–134 and accompanying text.
Convention to these events as they have transpired since 1994. It will look at the applicability of the genocide convention to the situation in Rwanda in the context of prevention, looking at missed opportunities for prevention or mitigation, and in the context of punishment, analyzing the adequacy of the International War Crimes Tribunal for Rwanda as a response to the genocide. Part VI compares the United Nations’ policies toward Rwanda, established in the shadow of the Genocide Convention, with the policies of the Allies during the Jewish Holocaust, before the adoption of the Convention. Finally, Part VII summarizes policy arguments for an international approach to genocide.

II. What is Genocide?

“Genocide” has become an emotion-laden term which conjures up images of the extermination of six million Jews in the Holocaust by the Nazis during World War II. Professor Raphael Lemkin, a Polish-born Jew, coined the term in his 1944 book *Axis Rule in Occupied Europe* by combining the Greek *genos*, meaning “race” and the Latin *cide* meaning “killing” to describe the acts being committed by the Nazis. Although the term “genocide” is of recent origin the activities the word describes are not new.

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18 See infra notes 135–92 and accompanying text.
19 See infra notes 136–64 and accompanying text.
20 See infra notes 165–92 and accompanying text.
21 See infra notes 193–206 and accompanying text.
22 See infra notes 207–53 and accompanying text.
23 See JOHN P. MCKAY ET AL., A HISTORY OF WESTERN SOCIETY 1056 (2d ed. 1983). Hitler’s death camps also persecuted, enslaved, or murdered as many as 5.5 million members of other “inferior” groups including gypsies, Slavs, Poles, homosexuals, the mentally ill, and the infirm. See ALAN S. ROSENBAUM ED., IS THE HOLOCAUST UNIQUE? PERSPECTIVES ON COMPARATIVE GENOCIDE 2 (1996) [hereinafter IS THE HOLOCAUST UNIQUE?].
25 History is punctuated by pogroms against Jews in many countries. See, e.g., MCKAY ET AL., supra note 23, at 460-62. Genocide has been aimed at other groups as well. The slaughter of approximately 1.5 million Armenians by the Turks between 1915 and 1923 has been characterized by some as a prototype of genocide in the twentieth century. See Robert F. Melson, The Armenian Genocide as Precursor and Prototype of Twentieth-Century Genocide, in IS THE HOLOCAUST UNIQUE?, supra note 23, at 87-88.
Lemkin focused not only on mass killings, but further looked to the intent and aim of perpetrators attempting to destroy a group: “The objective of such a plan . . . would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”

Lemkin became a sometimes fanatical advocate for the United Nations adoption of a convention on genocide. Though he worked on the first draft of the convention that was later adopted by the United Nations General Assembly, the completed work fell short of Lemkin’s goals.

The preamble to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, explains the impetus for the convention: “Recognizing that at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required.” Thus, “genocide . . . is a crime under international law which [the contracting parties] undertake to prevent and punish.”

Some describe the treatment of native groups of North and South America by European colonizers as genocide. See John McGarry & Brendan O’Leary, The Political Regulation of National and Ethnic Conflict, 47 PARLIAMENTARY AFF. 94, 95 (1994). More recent victims of genocide include Muslims in Bosnia, the Chinese and indigenous populations in East Timor, the Bengalis in what is now Bangladesh, and the Kurds in Iraq. See id. at 95-96.

Raphael Lemkin, Axis Rule in Occupied Europe 79 (1944). Lemkin later extends this definition from national groups to populations. See LeBlanc, supra note 24, at 18.

See LeBlanc, supra note 24, at 19.

See id. The original draft that incorporated Lemkin’s ideas was ultimately heavily revised to address the various concerns of the many states. See id. Among other things, the draft was criticized for being too broad, too wide in its application, and, thus, politically unrealistic. See id. at 27. Specific criticisms focused on the issue of state sovereignty and concerns that the terms of the Convention be based on legal and moral principles that would be universally accepted by all member states. See id. The final version was drafted by an ad hoc committee which included representatives from Venezuela, the Soviet Union, the United States, Poland, Lebanon, France, and China. See id. at 28.

Genocide Convention, supra note 7.

Id.
The Convention expands Lemkin’s definition of genocide, focusing on the element of intent: “[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 a 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.

Beyond criminalizing acts of genocide, Article III of the convention extends culpability to those who conspire to commit genocide, incite others publicly to commit genocide, attempt genocide or are accomplices to the crime. Further, private individuals as well as public officials can be held responsible for their actions.

In addition to establishing a framework for the punishment of genocide as an international crime, the Convention establishes a mechanism aimed at encouraging prevention of that crime. Article VIII provides that “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.” However, how prevention or suppression should be undertaken is problematic, since “appropriate action” can take on many forms including political,

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31 Id. art. II.
32 Id.
33 See id. art. III.
34 See id. art. IV. “Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.” Id. These persons “shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction . . . .” Id. art. VI.
35 Id. art. VIII.
economic or military action.\textsuperscript{36} The Convention was adopted unanimously on December 9, 1948 by the United Nations General Assembly, and it had been ratified by enough countries to become effective in 1951.\textsuperscript{37} The United States finally ratified the Convention in 1986 and by 1989 a total of 102 parties, including many Western powers, had ratified it.\textsuperscript{38}

III. The Jewish Holocaust of World War II

Hitler's rise to power in Germany and aspirations for world domination were predicated on a philosophy of extreme nationalism supported by fanatical racism.\textsuperscript{39} Evidence of his

\textsuperscript{36} The U.N. Charter empowers the Security Council with decisions regarding the use of force. See U.N. CHARTER art. 42. The United Nations political structure and the competing priorities of its member states influence the decision making process. However, the range of options is spelled out in Articles 41 and 42 of the Charter:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.\textsuperscript{Id.} art. 41.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operation by air, sea, or land forces of Members of the United Nations. \textsuperscript{Id.} art. 42.

\textsuperscript{37} See LEBLANC, supra note 24, at 1.

\textsuperscript{38} See id. Whether or not to ratify the Convention "became the subject of sporadic, acrimonious debate for almost forty years" in the United States. \textit{Id.} When it finally was ratified, it was subject to the conditions of the Lugar-Helms-Hatch Sovereignty Package. See id. at 2. The Sovereignty package limited U.S. approval of the Genocide Convention with a number of reservations and understandings. These understandings include, in part: a requirement for specific intent, a definition of mental harm limited to permanent impairment of mental faculties accomplished by specified means, and Senate approval of U.S. participation in any tribunal punishing genocide. See \textit{id.} at 253-54.

\textsuperscript{39} See McKAY ET AL., supra note 23, at 1039-48. Hitler's anti-semitism was based not on religious principles but on the biological racial theories of the nineteenth century. See KAGAN ET AL., supra note 9, at 953-54. These theories supplied the foundation for
ideological bent was evident from an early period, most clearly in his 1924 autobiography, *Mein Kampf*, written while he was imprisoned for plotting against the German government. Once in power, Hitler perpetrated a campaign of hatred against Jews and other “inferior” races within Germany and by 1935 had successfully taken away all of their civil rights. In a speech given in 1939, Hitler articulated his plans for the European Jews, threatening their survival if war broke out.

Nevertheless, “until the start of the war, the Nazis gave the Jews every encouragement to leave Germany, albeit stripped of

Hitler’s racist policies, beginning with the work of Arthur de Govineau in *Essay on the Inequality of the Human Races* (1853-54), which posited that Western civilization’s problems stemmed from the degeneration of the Aryan race. This theory was supplemented by Houston Stewart Chamberlain’s assertion in 1899 that the Jews were the particular enemies of the European races. See id. at 859-62.

40 Hitler characterized the Jew as “only and always a parasite in the body of other peoples.” ADOLF HITLER, *MEIN KAMPF* 304 (Ralph Manheim trans., Houghton Mifflin Co. 1943). He continued, “[I]n his vileness he becomes so gigantic that no one need be surprised if among our people the personification of the devil as the symbol of all evil assumes the living shape of the Jew.” *Id.* at 324. “If we pass all the causes of the German collapse in review, the ultimate and most decisive remains the failure to recognize the racial problem and especially the Jewish menace.” *Id.* at 327. Some would argue that Hitler capitalized on hatred of the Jews as a means of gaining power. See generally McGarry & O’Leary, *supra* note 25 (describing genocide as a political tool).

41 See MCKAY ET AL., *supra* note 23, at 1047. The legislation enacted on September 15, 1935, entitled *Law for the Protection of German Blood and Honor* included provisions forbidding marriages or sexual intercourse between Jews and Germans, prohibiting the employment of German women under age 45 as servants in Jewish households, and proscribing the display of the German flag by Jews. See KAGAN ET AL., *supra* note 9, at 954.

42 See RICHARD L. RUBENSTEIN, THE CUNNING OF HISTORY: THE HOLOCAUST AND THE AMERICAN FUTURE 11 (1975). Recent declassification of wartime documents suggests that British intelligence may have had access to information about actual Nazi executions of Russian Jews as early as September 1941. Alan Cowell, *The Holocaust: What London Knew About Genocide: Files Suggest Code-Breakers had Early Knowledge About Atrocities in Eastern Europe*, MONTREAL GAZETTE, Nov. 19, 1996, at B1. However, it has been suggested that the Allied powers could not have acted on this information. See William J. vanden Heuvel, *The Holocaust Was No Secret: But, a New Book Argues, the Allies Were Right to Focus on Defeating Nazis Rather than Rescuing Jews; Indeed, They Had No Choice*, THE NEWS & OBSERVER, (Raleigh, N.C.), Jan. 5, 1997, at A21 (reviewing a forthcoming book, *The Myth of Rescue*, by William D. Rubenstein, which suggests that even if the British were aware that genocide was taking place, the best option available to the Allies to save the Jews was to put an end to the killing by winning the war as quickly as possible).
almost all of their possessions.”

Unfortunately, Allied governments made escape difficult if not impossible. The French foreign minister, Georges Bonnet, expressed the sentiments of many Western powers when he told the German Foreign Minister in 1938 that his country “did not want to receive any more Jews from Germany and [wondered] whether we could not take some sort of measures to keep them from coming to France.” This response is understandable in light of the overwhelming burden on countries created by the influx of large numbers of refugees.

However, these same considerations led the Allies to turn away from the plight of Hitler’s victims even after the war was underway. The British concern was captured in the words of Lord Moyne, the British High Commissioner in Egypt. When alerted to the possibility of rescuing Hungarian Jews bound for extermination at Auschwitz through a deal with Adolf Eichmann, Lord Moyne reportedly replied, “What shall I do with those million Jews? Where shall I put them?” In fact, Jewish refugees headed for Palestine were intercepted and forced to return to Europe by British warships, despite the British government’s knowledge that their return would doom them to extermination.

In addition to their failure to assist escaping Jews, the Allied governments failed to take definitive steps to intervene or mitigate Hitler’s systematic extermination of Jews and others through the

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43 Rubenstein, supra note 42, at 17.

44 Id. at 18 (quoting a letter dated Dec. 9, 1938 from Joachim von Ribbentrop, German Foreign Minister, to Adolph Hitler). In the 1939 poem Refugee Blues, W.H. Auden expressed the dilemma of Jews trying to flee Germany:

Thought I heard the thunder rumbling in the sky;
It was Hitler over Europe, saying, “They must die”:
O we were in his mind, my dear, O we were in his mind.

Saw a poodle in a jacket fastened with a pin,
Saw a door opened and a cat let in:
But they weren’t German Jews, my dear, but they weren’t German Jews.


46 See Rubenstein, supra note 42, at 19.
use of concentration camps and gas chambers. In 1944, during a time when the Americans and British were bombing oil refineries and rubber plants near Auschwitz, the Allies had knowledge of the atrocities being perpetrated in the concentration camps. The Americans and the British considered but ultimately denied requests by several Jewish groups to bomb the gas chambers and railway lines leading to Auschwitz. The Americans considered the request "impracticable" due to the diversion of forces it would presumably require. The British similarly rejected the request. By this point in the war, such action may well have been ineffective. However, whether or not Allied rescue attempts were possible or would have been successful, approximately half a million Jews were exterminated at Auschwitz between May and

47 See id. at 20.
48 See Hilberg, supra note 45, at 1129.
49 See id. at 1129-31.
50 See id. at 1131.
51 See id. at 1130. The following letter, written in 1944 in response to an appeal for Allied military intervention by Chaim Weizmann, later to become the first president of Israel, illustrates the reluctance of the international community to act to prevent further slaughter:

My dear Dr. Weizmann:

You will remember that on the 6th of July you discussed with the Foreign Secretary the Camp of Birkenau in Upper Silesia, and the atrocities that were being committed there by Germans against Hungarian and other Jews. You enquired whether any steps could be taken to put a stop to, or even to mitigate those massacres, and you suggested that something might be achieved by bombing the camps and, also, if it was possible, the railway lines leading to them.

As he promised, Mr. Eden immediately put the proposal to the Secretary of State for Air. The matter received the most careful consideration of the Air Staff, but I am sorry to have to tell you that, in view of the very great technical difficulties involved, we have no option but to refrain from pursuing the proposal in present circumstances.

I realize that this decision will prove a disappointment for you, but you may feel fully assured that the matter was most thoroughly investigated.

Yours sincerely,

Richard Law [Minister of State in the Foreign Office]

Rubenstein, supra note 42, at 20.

52 See Hilberg, supra note 45, at 1130. "The most effective rescue is that which is undertaken before the danger point has been reached." Id. at 1109.
November 1944 after requests for bombing had been denied.\(^3\)

In December 1945, the Allies confronted the Nazis with their atrocities in the Nuremberg trials. In his opening statement, Associate U.S. Supreme Court Justice Robert Jackson of the International Military Tribunal said: "The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."\(^4\) This comment reflects the view of the participants in the Nuremberg trials that this action by the international community would act to deter future aggressors.\(^5\)

The Jewish Holocaust stands as a paradigm of horror in the twentieth century. The actions of the international community in conducting the Nuremberg trials and adopting the Genocide Convention speak to our rejection of the act of group annihilation. If the memory of the Holocaust is the motivator, then it is important to note the results of one recent poll.\(^6\) French, British and American citizens were questioned as to whether, in light of the movement to deny that the Holocaust took place, they believed that mass murders of Jews took place in the Second World War; although 94% of French and 84% of Britons polled believed it had, only 62% of Americans polled believed it.\(^7\) Seventy-nine percent of French and 73% of Britons disagreed with the notion that the Holocaust was no longer relevant, while only 63% of Americans rejected this statement.\(^8\)

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\(^3\) See id. at 1132.

\(^4\) Bill Powell, Lessons of Nuremberg: Atrocities Have Continued in 50 Years Since Nazi War Crimes Trial, Newsweek, Nov. 6, 1995, at 52.

\(^5\) See id. at 54.

\(^6\) See Knowledge of the Holocaust, Soc’y, Mar.-Apr. 1994, at 2. This Louis Harris-France poll was conducted for the American Jewish Committee and was designed to gauge the amount of public information about the Holocaust. See id.

\(^7\) See id.

\(^8\) See id. David Singer, the research director of the American Jewish Committee that commissioned the poll, attributes these results to American ignorance about the Holocaust rather than to anti-semitism: While French and foreign Jews were deported during the German occupation of Europe, many Americans were not first-hand witnesses to the plight of the Jews, and were thus less aware of the genocide. See id. However, a book of oral history reveals a troubling indifference toward the Holocaust.
IV. The Genocide in Rwanda

A. Rwanda's Colonial History

The region which now includes the countries of Rwanda and Burundi began to be colonized by the Germans in 1903. At approximately the same time, French Roman Catholic missionaries began to proselytize in the area. The German colonizers found a country inhabited by three ethnic groups: the Twa, who were the original inhabitants; the Hutu agriculturists, who had entered the area between the 4th and 7th centuries A.D.; and the Tutsi pastoralists, who were the newest inhabitants though they had been in the region for centuries. In 1919, after Germany's defeat in the First World War, the colonies were taken over by Belgium which took a more invasive approach to governing.

At the time the region was colonized, the Tutsi appear to have been the more dominant group, despite the greater numbers of Hutu. Although resentment between the groups may have existed already, the Belgian system of administration exacerbated tribal tension by increasing Tutsi power and treating them as the favored group.

One analyst, looking at Africa in general, noted what may also be accurately applied to Rwanda: "[W]hen the Europeans first came to Africa there were coherent, functioning among Polish peasants. See Claude Lanzmann, Shoah: An Oral History of the Holocaust (1985). This book and a nine-and-a-half hour film tell the story of the Holocaust through the narratives not only of survivors, but of witnesses and bureaucrats who participated in the process.


See id. The Twa are now a small minority. Hutu comprise 85-90% of the population and Tutsi comprise 9-14% of the population. See id. at 6. The origin of the Rwandan Tutsi is the subject of debate, but it appears that Tutsi chieftains first concentrated power in the 15th century. See id. at 3.

See id.

See id.

See id. Physically, the Tutsi tend to be taller and to have lighter skin and more aquiline features. See Nancy Gibbs, Why? The Killing Fields of Rwanda, Time, May 16, 1994, at 57, 61. The Belgians, relying on notions of racial hierarchy, saw the Tutsi as the superior group in the region and gave them positions of power in the colonial government, as well as other privileges such as access to education. See id.
societies of varying degrees of sophistication, some of great political subtlety and artistic accomplishment, others simple hunting and gathering communities . . . . This was destroyed by colonialism.\textsuperscript{64}

Rwanda gained independence from Belgium in 1962.\textsuperscript{65} Prior to this, in 1959, a Hutu uprising against the dominant Tutsi resulted in hundreds of deaths and approximately 150,000 Tutsi refugees fleeing the country.\textsuperscript{66} The Belgians, responding to external pressures for democratization within its colonies, supported the Hutu coup.\textsuperscript{67} Thus, at the time of independence, the country was governed by the majority Hutu.\textsuperscript{68} However, instability and violence between Hutu and Tutsi in the wake of this political turnover lasted into 1966.\textsuperscript{69}

\textsuperscript{64} William Pfaff, \textit{A New Colonialism? Europe Must Go Back into Africa}, FOREIGN AFF., Jan./Feb. 1995, at 2, 3-4.


\textsuperscript{66} See id. During the uprising, some gangs of Hutu attacked Tutsi and cut off their feet with machetes, literally cutting the generally taller Tutsi “down to size.” Gibbs, supra note 63, at 61.

\textsuperscript{67} See Gibbs, supra note 63, at 61-62.

\textsuperscript{68} See ECONOMIST INTELLIGENCE UNIT, \textit{COUNTRY PROFILE: RWANDA/BURUNDI} 4 (1993-1994). This coup brought Mr Kayibanda of the Mouvement democratique republicain–PARMEHUTU (MDR-PARMEHUTU) into power. See id. In 1973, Major General Juvenal Habyarimana led a successful coup against Kayibanda’s government, killing him and dissolving the parliament. See id. Habyarimana created the Mouvement revolutionnaire national pour le developpement party (MRND) in 1975, which remained the sole political party until 1991, when the president was forced to allow the creation of new parties. See id. In order to maintain control, the Hutu government capitalized on the racial divisions among the population: A system of racial-identity cards was instituted and a form of apartheid was considered to isolate the Tutsi in specified regions. See Gibbs, supra note 63, at 62.

\textsuperscript{69} See Copson, supra note 65, at 5. A number of massacres of Tutsi occurred during this volatile period, and again in 1973, Tutsi were targeted for slaughter during a coup which brought President Habyarimana to power. See ECONOMIST INTELLIGENCE UNIT, \textit{COUNTRY PROFILE: RWANDA/BURUNDI} 4 (1995-96). However, it should be noted that Hutu have been the targets of massacres by Tutsi in the neighboring country of Burundi since 1972. See id; see also All Things Considered: Long History of Tribal Tension in Rwanda Continues (NPR radio broadcast, Aug. 8, 1994), available in 1994 WL 8678889 (featuring interviews with Hutu and Tutsi refugees). The leader of the Tutsi Refugee camp remembered, “[I]n 1959 we had the same thing. In 1964 they repeat it. In 1973 they tried also to eliminate Tutsi. In 1990 they tried again and in 1994.” Id. In general see LEO KUPER, \textit{THE PITY OF IT ALL: POLARIZATION OF RACIAL AND
Although there is evidence that the tension between the Hutu and Tutsi preexisted Belgian rule, colonial intervention greatly exacerbated these difficulties and shattered the peace that had previously been maintained. "Colonialism lasted long enough to destroy the preexisting social and political institutions, but not long enough to put anything solid and lasting in their place." By treating the Tutsi as the favored group throughout colonial rule, and then supporting the Hutu coup prior to granting independence, the Belgian colonizers heightened ethnic tensions. Ultimately, they left behind conditions that would eventually produce genocide.

B. Civil War in 1990

While in exile, the Tutsi who had fled Rwanda in 1959 organized the Rwandan Patriotic Front (RPF) and launched an offensive against the Hutu government beginning in October of 1990. This civil war continued until a peace agreement mediated by the Organization for African Unity (OAU) was reached in August 1993 in Arusha, Tanzania. The Arusha Peace Agreement called for the formation of a transitional government, with power-sharing between the existing government, the RPF, and other recently formed political parties. This transitional government was to govern until elections could be held for a democratically elected government.

70 Pfaff, supra note 64, at 4.
71 See Copson, supra note 65, at 5.
73 See id. The make-up of this agreement is complex due to the number of parties and political positions represented. See generally ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT: 2ND QUARTER 1994 UGANDA/RWANDA/BURUNDI 19 (1994) [hereinafter EIU 2ND QUARTER 1994]. The president’s party, and the sole party up until 1991, was the Mouvement republicain national pour la democratie et le developpement (MRNDD). See id. This side was also supported by the radical Hutu-supremacist party Coalition pour la defense de la republic (CDR), factions of the Mouvement democratique republicain (MDR) and Parti liberal (PL), and other minor parties. See id. It appears President Habyarimana worked to create breakaway factions which could lend him political support. See id. at 20. On the opposing side, the RPF was joined by the majority factions of PL and MDR, as well as the Parti chretien democrat (PCD) and the
Mission for Rwanda (UNAMIR) to assist in implementing this peace agreement with a mandate to "monitor observance of the Arusha Peace Agreement of August 4, 1993 between the Republic of Rwanda and the Rwandese Patriotic Front and contribute to the security and assist in implementation of the Agreement, the goal of which is to move toward transitional government and elections in October 1995."\(^{74}\) The force began with 800 troops, with authorization to eventually increase to 2,500 troops, civilians and observers.\(^ {75}\) Despite the peace agreement and noticeable progress toward its implementation, resistance to the shift in power was evident among hard-liners, particularly within the president's party, the Mouvement republicain national pour la democratie et le developpement (MRNDD), and the Hutu-supremacist party, Coalition pour la defense de la republique (CDR). The illegal radio/television station RTLM, controlled by the CDR, broadcast propaganda against the Tutsi and the Arusha Accords, with no documented attempts of government intervention.\(^ {76}\) Further, the RPF, validated by the concerns of a representative of the United Nations High Commissioner for Refugees (UNHCR), accused the government of training Hutu refugees for attack.\(^ {77}\)

Progress toward implementation of the peace accords was repeatedly delayed, and by February 1994 only the transitional presidency had been established.\(^ {78}\) On April 5, 1994, the UNAMIR mandate was renewed for four months.\(^ {79}\)

\textit{C. Genocidal Acts (April–June 1994)}

On April 6, 1994, a plane carrying President Juvenal Habyarimana of Rwanda and the president of neighboring

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\(^{74}\) \textsc{UNITED NATIONS, SECURITY COUNCIL, U.N. Doc. S/872 (Oct. 5, 1993).}

\(^{75}\) \textit{See id.}


\(^{77}\) \textit{See id.}

\(^{78}\) \textit{See id. at 18. In retrospect, following the events of April 6, it appears that these delays may have been deliberately orchestrated in order to allow the arming and training of the Presidential Guard and militias which were to be instrumental in the commission of genocide. See EIU 2ND QUARTER 1994, \textit{supra} note 73, at 20.}

\(^{79}\) \textsc{UNITED NATIONS, SECURITY COUNCIL, U.N. Doc. S/909 (1993).}
Burundi, who were returning from a peace conference in Tanzania, crashed, killing both men.80 Within the hour, according to some reports, the Presidential Guard of Rwanda had begun killing members of the opposition.81 Early victims included the Prime Minister, the President of the Supreme Court, and Rwandan human rights activists.82

By the time the RPF gained control of the government two months later, ending the genocide and instituting a new power structure, the loss of human life was staggering. On May 31, the U.N. Secretary-General reported that between 250,000 and 500,000 had been killed. By late August, U.N. estimates reached one million dead, with some estimates reaching 1.5 million.83

The massacres were initiated by the Presidential Guard, which reportedly worked from a list of names to wipe out specific members of the opposition, both Tutsi and moderate Hutu.84 However, beginning almost immediately, militias trained and armed in the preceding months began the indiscriminate massacre of Tutsi civilians.85 Within the first week, the Presidential Guard, together with militia members, had killed approximately 20,000 Tutsi and moderate Hutu.86

The Hutu militias involved in the killings included the Interhamwe (“those who attack together”), a group of people who were reportedly organized by the President’s party, MRNDD, and

80 See EIU 2ND QUARTER 1994, supra note 73, at 19. The contents of the plane’s black box, if it was recovered, were not released and the identities of those responsible for the fatal crash have not been discovered. See ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT: 3RD QUARTER 1994 29 (1994) [hereinafter EIU 3RD QUARTER 1994]. Though it was widely assumed that the RPF was responsible for the crash, some diplomats believe the plane could have been downed by Hutu militants opposed to the peace process. See Copson, supra note 65, at 1.
81 See HUMAN RIGHTS WATCH AFRICA, GENOCIDE IN RWANDA: APRIL–MAY 1994 3 (1994) [hereinafter HUMAN RIGHTS WATCH].
82 See id. Victims included thirty local International Committee of the Red Cross employees and seven Rwandan U.N. Children’s Fund workers, among others. See EIU 2ND QUARTER 1994, supra note 73, at 21.
83 See Copson, supra note 65, at 3.
84 See EIU 2ND QUARTER 1994, supra note 73, at 20.
85 See id. at 21.
86 See Copson, supra note 65, at 1-2.
the Impuzamugambi ("those who have the same goal"), associated with the CDR, a group that reportedly advocates Tutsi extermination. In mid-April, the militias reportedly received distributions of firearms from authorities within the government.

Although carried out initially by the Presidential Guard and organized militias, the violence soon spread throughout the civilian population. Radio stations controlled by the Hutu broadcasted daily messages urging all Hutu to take part in the killing of Tutsi. The effectiveness of these broadcasts can be measured by the reported participation of Hutu civilians in the killings.

The character of the violence in Rwanda was particularly appalling and perhaps difficult for Western cultures to comprehend. The attackers utilized weapons such as screwdrivers, machetes and Uzis. People in places traditionally regarded as safe havens, such as churches, hospitals and orphanages were killed.

Almost immediately following the outbreak of violence, the 2,500-troop United Nations peacekeeping force, UNAMIR, had its

87 See HUMAN RIGHTS WATCH, supra note 81, at 2.
88 See id. at 3.
89 See id. at 2. Between April and June 1994, human rights activists and others frequently urged the United States to jam these radio broadcasts. See Burkhalter, supra note 8, at 51. Since these broadcasts served not only to incite civilians to take up arms against the Tutsi population, but also operated as a means of communication between the militia and their political leaders, their interruption may well have had a significant impact on the momentum of the genocide. See id. Though the Defense Department may have possessed the capacity, it responded that "jamming the broadcasts was technically and legally impossible." Id. Whether or not the United States had the technical capability, the Clinton administration failed to act on this option. See id.
90 See Copson, supra note 65, at 3. According to Janet Fleischman, researcher at Human Rights Watch, propaganda urging soldiers to rape Tutsi women was spread even before and continued during the genocide: "Hutu militia raped thousands, possibly tens of thousands, of girls and women, leaving emotional and physical scars and spreading diseases such as AIDS." All Things Considered: Human Rights Report Details Aspect of Rwandan Genocide (NPR radio broadcast, Oct. 6, 1996), available in 1996 WL 12726722.
91 See Gibbs, supra note 63, at 59.
92 See id. at 58-59.
mandate suspended. After requested reinforcements were not authorized, Belgium withdrew its troops on April 15, followed shortly by most of the remaining force. The U.N. Security Council rejected the option of a substantial intervention in April because its members were unwilling to provide troops for the mission. In the end, United Nations efforts were targeted primarily at attempting to broker a cease-fire between the newly warring factions, but not at adequately addressing the question raised by the genocidal killings. Troops did help protect some civilians, but they did not organize widespread efforts or evacuate civilians.

Individual Western powers quickly moved to evacuate their own citizens from the country—however, Rwandans were not included in these efforts. In some cases, even Rwandan employees of foreign embassies were left behind.

Eventually, France would offer the most comprehensive attempt to intervene for the protection of civilians through Operation Turquoise, launched in late June. However, this intervention was itself highly problematic, in that France had been a strong supporter of President Habyarimana in the past. The RPF, which was continuing to make progress in its military

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93 See EIU 2ND QUARTER 1994, supra note 73, at 24.
94 See id. Ten Belgian peacekeepers attempted to protect Prime Minister Uwilingiyimana, one of the early targets of the Presidential Guard. Three Belgians were killed, along with the Prime Minister, and the other seven were then tortured and murdered by the mob after they had laid down their arms in an attempt to appear nonthreatening. See Burkhalter, supra note 8, at 46.
95 See EIU 2ND QUARTER 1994, supra note 73, at 24.
96 See id. at 25.
97 See id. at 24. General Dallaire of UNAMIR reportedly said that his forces could have stopped the genocide with additional equipment and an expanded mandate. See Burkhalter, supra note 8, at 47. Instead, the withdrawal of troops left Tutsi who had sought refuge throughout the country in churches, schools and other sanctuaries at the mercy of the militias. See id.
98 See Gibbs, supra note 63, at 58.
99 See HUMAN RIGHTS WATCH, supra note 81, at 11.
100 See EIU 3RD QUARTER 1994, supra note 80, at 26.
101 See id. at 25-26. Since the President's party MRNDD is francophone and the RPF, coming from Uganda, is anglophone, French foreign policy favored protection of the status quo. See id.
campaigns, had previously been suspicious of the French.\(^{102}\) Ultimately, however, Operation Turquoise successfully protected the Tutsi population in western Rwanda, where over 60,000 Tutsi had already been killed.\(^{103}\)

On July 19, the victorious RPF established a new government in Kigali, committed to the Arusha Peace Agreement.\(^{104}\) The choice of Pasteur Bizimungu, a Hutu, as president was meant, in part, to demonstrate the new government's commitment to national reconciliation.\(^{105}\) Spokesmen also stressed the government's intention to prosecute those guilty of perpetrating the massacres.\(^{106}\)

**D. Subsequent Refugee Crisis**

The genocide, combined with the RPF campaign against the government, led to the exodus of both Tutsi and Hutu refugees.\(^{107}\) After the RPF's victory and grasp of power, a massive exodus of refugees began, as Hutu fled fearing reprisal attacks.\(^{108}\) Refugee camps developed along the Rwandan borders in Tanzania, Burundi and Zaire.\(^{109}\) By far, most refugees fled to camps near Goma, Zaire, leading to overwhelming humanitarian difficulties.\(^{110}\) Food and water shortages and the spread of disease combined to create

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102 See EIU 2ND QUARTER 1994, supra note 73, at 25-26. During peace negotiations in 1993, the RPF had demanded that French troops leave Kigali and that they not be part of UNAMIR. See EIU 1ST QUARTER 1994, supra note 76, at 18. Later, after the outbreak of ethnic violence in April, the RPF accused France of colluding with the representative of Rwanda on the Security Council to keep "genocide" out of U.N. resolutions. See EIU 2ND QUARTER 1994, supra note 73, at 26.

103 See EIU 3RD QUARTER 1994, supra note 80, at 27-28. Conversely, however, the French intervention served to end any other United Nations initiatives to intervene. See id. Further, the safe-zones set up to protect besieged Tutsi also served to offer rest and protection for government forces engaging in the genocide. See id.

104 See id. at 25.

105 See id. However, Paul Kagame, the former general of the RPF, is the real commander of the new government in the role of Vice President and Defense Minister. See Nancy Gibbs, *Can the Strongman Make Peace?*, TIME, Aug. 8, 1994, at 41.

106 See EIU 3RD QUARTER 1994, supra note 80, at 25.

107 See Gibbs, supra note 63, at 59-60.

108 See Olojede, supra note 2, at A16.

109 See EIU 3RD QUARTER 1994, supra note 80, at 29.

110 See id.
intolerable conditions.\textsuperscript{111}

Apart from these humanitarian problems, the presence of refugees raised other concerns. Along with the civilian Hutu population, many of the perpetrators of the genocide took refuge in the camps.\textsuperscript{112} Former government soldiers and militias were able to regroup and pose military and political threats on two fronts: In Rwanda and among the Rwandan refugees, the groups continued to exert their influence;\textsuperscript{113} in Zaire, they exacerbated and ultimately contributed to the escalation of existing local ethnic tensions.\textsuperscript{114}

The camps, located near the Rwandan border, served as launching points for both organized attacks and guerrilla forays back into Rwanda.\textsuperscript{115} These sorties in effect continued the genocidal mission of the perpetrators, albeit on a much smaller scale.\textsuperscript{116} The attacks also successfully eliminated witnesses who may have been able to testify against the perpetrators.\textsuperscript{117} The attacks were often carried out with the complicity of Hutu family and friends who remained in Rwanda, and though many incidents may have been continuations of the genocide or directed at destabilizing the new government, human-rights workers viewed many as aimed at sabotaging the trials: close to 40 potential witnesses were reported murdered in June alone.\textsuperscript{118}

Furthermore, the threats of the militias and other militants served to keep ordinary Hutu civilian refugees from returning to

\begin{itemize}
\item \textsuperscript{111} See id.
\item \textsuperscript{112} See Tim Zimmerman, Awaiting a New Spark: Genocide and Civil War Stalk Bloodied Burundi and Rwanda—Again, U.S. NEWS & WORLD REP., Apr. 15, 1996, at 46.
\item \textsuperscript{113} See id.
\item \textsuperscript{114} See Andrew Purvis, A Contagion of Genocide: The Civil Wars of Rwanda and Burundi Spread to Eastern Zaire, in a Bloody Conflict the World Ignores, TIME, July 8, 1996, at 38-39.
\item \textsuperscript{115} All Things Considered: Humanitarian Aid Crisis in Zaire Grows (NPR radio broadcast, Oct. 28, 1996), available in 1996 WL 12727023.
\item \textsuperscript{117} See id.
\item \textsuperscript{118} See id.
\end{itemize}
Rwanda by spreading fear of Tutsi reprisals. As a result UNHCR called for the removal from the camps of Hutu who intimidated refugees or were possible perpetrators of the genocide. The new Rwandan president asserted: “Let the international community remove this factor and 95 percent of people would return . . . . The philosophy of genocide is still rampant in the refugee camps.” In fact, as refugees finally began returning to Rwanda in November 1996, “[m]any of the refugees said they would have returned home even earlier had they not been forced to stay by the Hutu militia that had controlled the camps by terror tactics since 1994.”

In Zaire, a similar ethnic mix has led to a history of internal conflict. Eventually, the fighting in Zaire between rebel Tutsi and the government army motivated Rwandan Hutu refugees to return home. Evidence suggests, however, that the Hutu refugees’ presence to some degree led to the escalated tension that ended in the Zairian Tutsi rebellion.

Zaire’s ethnic Tutsi, who have been in the eastern part of the country for more than 200 years, are known as the Banyamulenge. The group achieved economic success in a poor region, leading to resentment among other ethnic groups. Since the 1980s, politicians from these other groups have called for the denial of Zairian citizenship to the Banyamulenge, ultimately leading to sporadic violence several years ago. However, in 1994, when nearly one million Rwandan Hutu fled to refugee

119 See Zimmerman, supra note 112, at 46.
121 Id.
122 Olojede, supra note 2, at 16A.
123 See Fedarko, supra note 5, at 46.
124 See Olojede, supra note 2, at 1A, 16A.
126 See Fedarko, supra note 5, at 46.
127 See Fighting Forces Hutus to Flee, supra note 125.
128 See id.
camps in Zaire, the violence escalated, fueled by the participation of the new Hutu refugees.\textsuperscript{129} Hutu who carried out the massacre of Rwanda's Tutsi were able to continue their campaign of genocide, this time against the Zairian Banyamulenge, unhindered by the Zairian authorities.\textsuperscript{130} According to human rights workers, the Hutu pillaged Tutsi villages, raping Tutsi women and stealing cattle.\textsuperscript{131} The government may even have been complicit in the attacks, by helping the Hutu militias with training and arms.\textsuperscript{132}

Eventually, in September of 1996, South Kivu province's deputy governor ordered the Banyamulenge "foreigners" to leave Zaire within six days.\textsuperscript{133} The rebel Tutsi groups responded with intensified fighting that ultimately would win them substantial gains and trigger the exodus of the Rwandan refugees from Zaire.\textsuperscript{134}

V. Applicability of the Genocide Convention

The Genocide Convention provides "that genocide, whether committed in time of peace or in time of war, is a crime under international law which [the Contracting Parties] undertake to prevent and to punish."\textsuperscript{135} Under the Convention, the international community has two obligations: to attempt to prevent or suppress genocide and to attempt to punish those responsible once genocide has been committed. In Rwanda, the actions of the international community on April 6 and thereafter must be evaluated in light of the stated goal of preventing genocide. The adequacy of the International Tribunal for Rwanda can be measured against the responsibility to punish the perpetrators of genocide.

\textsuperscript{129} See id.
\textsuperscript{130} See id.
\textsuperscript{131} See id.
\textsuperscript{132} See id.
\textsuperscript{133} See Fedarko, supra note 5, at 46.
\textsuperscript{134} See Olojede, supra note 2, at A1. It is also important to note that the ethnic tensions that led both to the genocide in Rwanda and the civil war in Zaire are also present and volatile in Burundi. In July 1996, after the murders of close to 340 Tutsi by Hutu rivals, Major Pierre Buyoya seized power and raised fears of violence akin to the events in Rwanda. See Burundi Hit with Sanctions, MACLEAN'S, Aug. 12, 1996, at 29.
\textsuperscript{135} Genocide Convention, supra note 7, art. I.
A. Prevention

The 1948 Genocide Convention provides a mandate for the intervention of the United Nations "for the prevention and suppression of acts of genocide." Thus, it has been observed that "once a determination was reached by a U.N. body that genocides as opposed to other human rights violations had been committed, there would be overwhelming public demand . . . for action to be taken."

Whether or not such a public response would have occurred, officials seemed to fear the possibility. The U.N. Security Council avoided the possibility of this demand by effectively avoiding a determination of genocide in Rwanda. In its April 30 "Condemnation of all breaches of international humanitarian law . . . in Rwanda," the Security Council placed the onus for ending the slaughter of civilians on the warring parties themselves:

The Security Council demands the interim Government of Rwanda and the Rwandese Patriotic Front take effective measures to prevent any attacks on civilians in areas under their control. It calls on the leadership of both parties to condemn publicly such attacks and to commit themselves to ensuring that persons who instigate or participate in such attacks are prosecuted and punished.

Thus, the Council called upon the interim government, formed by the actual perpetrators of the genocide, and the RPF, comprised of Tutsi who were the targets of the genocide, to prevent and punish the attacks. In effect, the Security Council was "acting as though both sides were equally guilty for the violence against

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136 Id. art. VIII.
138 See id. United States officials were careful not to use the word "genocide." See Burkhalter, supra note 8, at 47. Finally, in mid-June 1994 after an onslaught of criticism from the Congress and the press, Secretary of State Warren Christopher adopted the term. See id.
GENOCIDE IN RWANDA

By substituting such words as “human rights violations” for the emotional term “genocide,” the obligation to intervene was avoided. The decision to use force is enormously complex, involving multinational cooperation with no guarantee of success. However, given the unique circumstances in Rwanda, military intervention was appropriate and may well have been effective. The United Nation’s failure to intervene resulted in grave ramifications.

The most tragic cost can be counted in lives lost: “Early intervention . . . could have saved tens of thousands of . . . [Tutsi] . . . who were huddled in churches, schools, and stadiums before being killed.” The United Nations might have chosen to set up safe zones to protect the Tutsi, “without incurring serious risk to soldiers on the ground. The militias who carried out most of the killing did not have the means or the inclination to engage a well-supported military force.” Such an effort might ultimately have cost less in dollars than the subsequent support sent to refugee camps after the genocide. Instead, months after the genocide erupted, close to a million people had been killed.

The eventual cost both in dollars and human suffering created by the refugee camps may also have been avoided had the United Nations intervened sooner. Instead, 1.7 million Hutu eventually fled their homes, taking refuge in camps in three neighboring countries. Humanitarian relief to serve these camps throughout

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140 Destexhe, supra note 9, at 9.
141 See Defining Genocide, supra note 137.
142 See supra note 36 and accompanying text (describing the power of the Security Council).
143 See supra note 97 (recounting the assessment of potential intervention by the General of UNAMIR).
144 Destexhe, supra note 9, at 9.
146 See id.
147 See supra note 83 and accompanying text.
148 See supra notes 107-11 and accompanying text.
149 See Zimmerman, supra note 112, at 46.
Central Africa was estimated to cost around two million dollars a day by April 1996. In Zaire, these refugees suffered from a lack of food, clean water, and medicine. Their plight was made even worse by many Hutu militia members who continued to intimidate the other refugees and to launch forays into Rwanda, hazarding a re-ignition of civil war.

The activities of these militants ultimately risked the inflationation of regional hostilities. The presence of refugees in Burundi and Zaire, where similar ethnic tensions lurk, created the danger of a full-scale regional war. In Zaire, the refugees were participants in the beginnings of a civil war.

Prevention was possible, in part, since UNAMIR was present at the time the violence erupted. However, the presence of personnel in Rwanda may also have given the United Nations the opportunity to anticipate the impending genocide. The history of ethnic conflicts and massacres of Tutsi in Rwanda, evidence of militias being trained and arms being shipped prior to violence, and the resistance of the hard-liners in the Hutu government to the peace agreement were all signs of the possibility of forthcoming violence.

The United States, as the lone superpower on the Security Council, held great sway over the decisionmaking process. In particular, specific actions of the United States delayed or blocked efforts to intervene earlier to prevent or suppress the genocide. The United States supported the complete pull out of UNAMIR right after violence erupted. Shortly thereafter, in May 1994, President Clinton issued a Presidential Directive limiting U.S. involvement in U.N. peacekeeping, reducing contributions to

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150 See id.
151 See Fedarko, supra note 5, at 47.
152 See supra notes 115-22 and accompanying text.
153 See supra notes 123-34 and accompanying text.
154 See id.
155 See supra notes 59-79 and accompanying text.
156 See Destexhe, supra note 9, at 10. U.N. Secretary-General Boutros Boutros-Ghali urged humanitarian intervention—the use of force to end the killings—but could not gather support from the Council. See Burkhalter, supra note 8, at 49.
157 See Burkhalter, supra note 8, at 47.
peacekeeping operations and stressing that American troops would not be involved unless national security had been directly threatened. This Directive provided the justification for U.S. opposition to an expanded U.N. mission in Rwanda. Also, in May, the United States opposed a resolution that might have allowed U.N. troops to protect both refugees and aid workers throughout the country. The resolution that was finally passed did not include a mandate to use force in combatting the massacres. U.S. stipulations then delayed deployment of additional U.N. troops after the mandate was finally issued.

The failure to intervene earlier ultimately made it more difficult to punish the perpetrators of the Rwandan genocide. First, the scale of the killings themselves, just during the period from April to June 1994, makes the likelihood of bringing the guilty to justice logistically impracticable. Yet even after the RPF won the war and took control of the Rwandan government, Hutu insurgents in the camps continued the genocide. While deplorable in their own right, the continued killings had the additional effect of decreasing the likelihood of successful

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158 See Destexhe, supra note 9, at 10. The shocking deaths of U.S. soldiers during the intervention in Somalia led the Clinton administration to rethink its willingness to participate in foreign crises. See id. Ultimately, this led to the Presidential Decision Directive on Reforming Multilateral Peace Operations, which severely limited the possibility of intervention in Rwanda. See id. Although this Directive was announced in the middle of the Rwandan crisis, the administration had been considering it for nearly a year. See Burkhalter, supra note 8, at 48.

159 See id. at 49.

160 See Destexhe, supra note 9, at 10.

161 See id. Agreement on the mission was delayed from May 2 to May 17 because of U.S. disagreement with the Secretary-General’s proposal. See Burkhalter, supra note 8, at 49-51. Boutros-Ghali’s plan provided for a mandate “to obtain a cease-fire, open the airport, and support humanitarian assistance and displaced populations.” Id. at 50. The United States balked at even this narrow mandate, proposing, instead, that troops be positioned to assist refugees along the borders of Rwanda, instead of in Kigali, where much of the killing was concentrated. See id. Thus, the plan ultimately approved on May 17 was a compromise. See id.

162 See Burkhalter, supra note 8, at 50. The U.S. equipment, fifty armored personnel carriers (APCs) requested by the United Nations to implement the approved plan, was not completely delivered until June 25. See id. The United Nations finally moved the APCs into Kigali during the first week of August. See id.

163 See Purvis, supra note 116, at 35.
prosecutions of the perpetrators: While some witnesses were actually murdered, others feared for their lives if they continued to cooperate with the process.\textsuperscript{164}

\textbf{B. Punishment}

Rwanda’s Justice Minister opened the first public session of the U.N. Tribunal for Rwanda by saying: “It is the responsibility of humanity as a whole to avenge those who perished in this Rwandan tragedy.”\textsuperscript{165} The words were reminiscent of opening statements made fifty years earlier in December 1945 when the International Military Tribunal, later known as the Nuremberg war-crimes trial, began.\textsuperscript{166} In that trial, twenty-two alleged Nazi war criminals were tried, and ultimately all but three were convicted.\textsuperscript{167} More than 5,000 Nazis would be convicted in later trials.\textsuperscript{168} The Nuremberg trial may have been successful in part because it represented “victor’s justice,” bolstered by tremendous international support.\textsuperscript{169} The future success of the Rwandan tribunal may be more dubious.

The U.N. authorization to punish perpetrators of genocide is outlined in the 1948 Convention: “Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.”\textsuperscript{170} These persons “shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”\textsuperscript{171}

\textsuperscript{164} See id.


\textsuperscript{166} See Powell, supra note 54, at 52.

\textsuperscript{167} See id. at 54.

\textsuperscript{168} See id.

\textsuperscript{169} Id.

\textsuperscript{170} Genocide Convention, supra note 7, art. IV.

\textsuperscript{171} Id. art. VI. There is increasing support for a permanent International Criminal Court to prosecute violations of international humanitarian law. \textit{See generally} David Stoelting, \textit{The Proposed Int’l Criminal Court}, 216 N.Y. L.J. 1 (1996). Such a court
In establishing the International Tribunal for Rwanda, the Security Council expressed its concern about reports of genocide and “other systematic, widespread and flagrant violations of international humanitarian law.”\(^{172}\) As these violations represented “a threat to international peace and security,” the Council “determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them.”\(^ {173}\) It further noted that the prosecution of the persons responsible “would contribute to the process of national reconciliation and to the restoration and maintenance of peace.”\(^ {174}\)

The resolution stated that the Council believed “the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law [would] contribute to ensuring that such violations are halted and effectively redressed . . . .”\(^{175}\) Bolstering this optimism, the U.N. legal chief Hans Corell said that the Tribunal would be “a powerful signal that genocide and other crimes against humanity can no longer be tolerated and that the same law applies whether in central Europe or in Africa.”\(^ {176}\)

The optimism and sweeping aspirations expressed by the United Nations in the creation of the Tribunal for Rwanda belies the rather limited objectives of the tribunal itself. The scope of the statute is limited to “violations . . . committed in the territory of Rwanda and Rwandan citizens responsible for [genocide and

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\(^{173}\) Id.

\(^{174}\) Id.

\(^{175}\) Id.

\(^{176}\) Kelly, supra note 165.
other] such violations committed in the territory of neighboring States" and is further limited to violations committed "between 1 January 1994 and 31 December 1994."

Rwanda would have preferred to include cases dating back to 1990, which would encompass massacres that took place between 1990 and 1993 at Kibilira, Bigogwe, and Bugesera. Avocats sans Frontières (Lawyers without Frontiers), a Brussels-based group established in 1991, has also expressed concern over the limits of the Tribunal: "There is much evidence that the planning of the Rwandan genocide took place before 1994 . . . For example, those responsible for transport, financing and delivery of arms, and those responsible for inciting the population should also be held responsible." A further point of contention is the fact that the International Tribunal for Rwanda has the power to overrule Rwandan judicial decisions. The statute provides that "the International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence . . . ." Finally, "the penalty imposed by the Trial Chamber shall be limited to imprisonment." Directly in opposition with Rwanda’s desires, the death penalty would not be available.

The Tribunal was established at the request of the Government of Rwanda "for the sole purpose of prosecuting persons responsible for genocide and other serious violations of

177 RWANDAN TRIBUNAL, supra note 172, art. 1.
180 See Cabinet Discusses Differences, supra note 178.
181 RWANDAN TRIBUNAL, supra note 172, art. 8.
182 Id. art. 23.
international humanitarian law. In the end, however, Rwanda voted against the Tribunal. In a statement concerning the Tribunal, former U.N. Ambassador Madeleine Albright said: “We regret that the Government of Rwanda cast its vote against the resolution . . . . While we understand their concerns regarding several key issues—indeed, on the death penalty we might even agree—it was simply not possible to meet those concerns and still maintain broad support on the Council.”

Though unhappy with the provisions for the Tribunal noted above, the Rwandan government agreed to cooperate.

The Tribunal’s work is also riddled with external difficulties: “It has suffered from a lack of funding, a shortage of criminal investigators, and poor co-operation from countries where suspects have sought refuge.” Further, because so many have been arrested, the suspects are suffering in overcrowded jails. The first indictments, announced on December 12, 1995, included only eight people. These people, though not among those who organized the genocide, are local leaders charged with the slaughter of tens of thousands.

The mission of the International Tribunal for Rwanda, like that of the Nuremberg trials, reveals the symbolic and actual importance of punishing the guilty. Unfortunately, the failure to exact retribution will further impair the goal of deterrence.

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184 Rwanda Tribunal, supra note 172, art. 1.
185 See id.
189 See id.
191 See id.; see also Paul Lewis, U.N. Report Comes Down Hard on Rwandan Genocide Tribunal, N.Y. Times, Feb. 13, 1997, available in 1997 WL-NYT 9704402803. A United Nations report evaluating the Tribunal found that it “suffers from chaotic management and widespread financial abuses, is paralyzed by bureaucratic infighting, lacks qualified staff and has been handicapped by weak support from the United Nations headquarters in New York.” Id.
Anticipating the danger of this failure, Rwandan lawyer Frederic Mutagwera warns:

We are in the process of falling into the trap that these murderers have set for us . . . . This genocide is distinguished by the fact that a maximum number of people have been implicated in the killings—there is talk of a million killers . . . . The Hutu extremists estimated that no court in the world could judge that many criminals, and they bet that they were going to get off. Are we going to say that they're right? 192

VI. Similarities Between the Jewish Holocaust and Rwanda

The Jewish Holocaust happened before the adoption of the U.N. Convention on the Prevention and Punishment of the Crime of Genocide. 193 By contrast, the genocide in Rwanda was allowed to happen notwithstanding the provisions of the Genocide Convention. However, a comparison reveals more similarities than might be expected. What does this say for the effectiveness of the Convention or for the international community's commitment to the rights of minorities and other potential victims of genocide?

The foregoing discussion has outlined the significant facts of the attempted extermination of the Jews by the Nazis during World War II 194 and the attempted annihilation of the Tutsi by their Hutu compatriots in 1994. 195 These two episodes illustrate the tremendous destructive power inherent in the crime of genocide. Between 1939 and 1945, the Nazis succeeded in wiping out one-third of the world's Jewish population, and nearly eliminated the European Jewish population. 196 By July of 1994, more than half of the Tutsi population in Rwanda had been killed. 197

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192 Laurent Bijard, Can Justice Be Done? Massacred: 1,000,000; Tried: 0, WORLD PRESS REV., June 1996, at 7.
193 See supra notes 29-35 and accompanying text (discussing the provisions of the Genocide Convention).
194 See supra notes 39-58 and accompanying text.
195 See supra notes 80-106 and accompanying text (outlining the events of the Rwandan genocide).
196 See HILBERG, supra note 45, at 1047-48.
relative impact of such targeted destruction on a discrete population can be more devastating than a mere body count may reveal. The following comparison notes how little the opportunity for prevention has improved since the adoption of the Genocide Convention.

As early as 1924, Hitler had exposed his extreme racist views in an autobiography. In addition, the Allies had uncovered evidence of the atrocities being committed in the Nazi concentration camps well before the liberation of those camps. Although they may have been aware of the violence against Jews and others, and despite the history of genocidal events prior to World War II, the Allies may have been unable to comprehend the magnitude of the crimes that were being committed. At the time, the Allies simply made a series of discrete decisions, the ramifications of which can only be recognized in hindsight. However, after the Holocaust, the Nuremberg trials, and the adoption of the Genocide Convention, knowledge of what could happen should motivate the international community to take action when faced with similar atrocities. The history of ethnic conflicts between the Hutu and Tutsi in Central Africa, and in particular the knowledge of Tutsi massacres in the recent past, coupled with the hard-liner resistance to the Arusha Accords, should have given some advanced warning that genocide was probable.

With respect to either World War II or Rwanda, even if foreknowledge of the genocide was not possible, once it commenced, action could have been taken to save lives. However, in both instances, such action was not taken. As described above, there was great ambivalence among the Allies, in particular the

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198 See supra notes 40-42 and accompanying text (describing Hitler's early activities and Allied intelligence about the plight of the Jews).

199 See supra note 25.

200 Although reaching consensus among the Security Council members requires compromise, the decisive action taken in the Persian Gulf when Iraq invaded Kuwait in 1991 is an example of the Council's power to effectively intervene when motivated.

201 See supra notes 66-69 and accompanying text (discussing past conflicts); supra note 76 and accompanying text (discussing hard-liner resistance).
British, to admitting Jewish refugees.\textsuperscript{202} Similarly, despite the fact that troops were able to evacuate foreign nationals from Rwanda quickly and efficiently, no effort was made to conduct endangered Rwandans to safety.\textsuperscript{203} Thus, Rwandans, seeking refuge within the country in churches and schools, were at the mercy of the armed militias.\textsuperscript{204}

Finally, in both the Jewish and Rwandan genocides, the international community was slow to take action to end or even to mitigate the killing. Despite evidence of the atrocities being committed in the Nazi concentration camps, Allied governments rejected proposals to bomb either the camps or access routes to them, even though such bombings might have saved hundreds of thousands of lives.\textsuperscript{205} At the time, of course, the Allied governments were engaged in a world war. In Rwanda, however, such countervailing considerations were not present. International troops were actually in place, but the United Nations decided to pull out UNAMIR at a time when a build up or other reinforcement could have saved civilian lives.\textsuperscript{206}

This comparison is outlined here to highlight the poor progress made in combating genocide during the last fifty years. Although the international community has not yet learned to prevent or otherwise deal with genocide, there are compelling reasons to work toward improvement. The following section examines the phenomenon of genocide, its potential causes, and the case for strengthening international responsibility for prevention and punishment.

\section*{VII. Policy Arguments for an International Approach to Genocide}

The international community has both the moral duty and the legal power to attempt to prevent and punish the crime of
Analysts have suggested that it is possible to identify particular contexts in which genocide is likely to occur, thus providing the opportunity to intervene before widespread destruction takes place. As these dangerous political contexts are increasingly prevalent, the United Nations and its members should work to identify and implement appropriate programs of prevention in response to these cues. Recently, the United Nations has confined itself to providing humanitarian aid in the wake of disasters and, at least in the former Yugoslavia and Rwanda, to meting out punishment for human rights violations. The inadequacy of these approaches suggests that the time has come to seriously consider more proactive intervention strategies.

Exactly what form these intervention strategies should take is a matter for debate. The first step is to recognize that since the community of nations has ratified a convention declaring genocide to be intolerable, the United Nations has an obligation to fulfill this pledge. Ultimately, this will require a case-by-case evaluation of options in each situation where genocidal events are occurring.

Genocide is a unique crime in that it imposes a moral duty on humanity as a whole to respond. This duty primarily arises from the observation that "[t]he elimination of any group that is representative of the human race must affect the whole human race." Beyond this, there are also pragmatic reasons for an international response. The regulation and prevention of genocide cannot be entrusted to governments at a national level since "by its very nature, the author of the crime is the state, or powerful groups who have the backing of the state." Thus, if help is to be

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207 See Genocide Convention, supra note 7.
208 See Destexhe, supra note 9, at 3.
209 Id. at 4.
210 Destexhe, supra note 9, at 4 (quoting Raphael Lemkin). Theologians and others have struggled with the meaning of the Holocaust. One particularly troubling question has to do with the power of moral arguments in a secular society. See RUBENSTEIN, supra note 42, at 91. In a secular society, the state steps into the role of a god, wielding the sole power to define right and wrong, what will be rewarded, and what will be punished. See id. In such a case, the state can only be limited by "the laws of men acting in concert, at best a tenuous guarantee of a humane society." Id. Similarly, the enforcement of human rights within the state is troublesome: "[I]n the face of new forms of domination, assertions about innate human dignity are either false or meaningless."
forthcoming at all, international attention and action will be crucial.

In many cases, including Rwanda, there is a further source of moral responsibility, particularly on Western powers: Political upheaval may be a direct result of former colonial intervention. In fact, "[f]rom the colonial period to the Cold War, the West has been engaged in Africa, often with damaging results. Now, faced with the opportunity to bring change for the better, it should not turn its back." As conflict and political instability continue on the African continent, Western countries must act to keep the problems from getting worse.

The Genocide Convention, explained in detail above, is the legal foundation upon which the United Nations and its member states can seek to prevent and suppress genocide and to punish the perpetrators of genocidal acts. If genocide can be identified or predicted, members of the Security Council have the power together to intervene.

Although the Genocide Convention does not distinguish between different types of genocide, instead focusing on the common elements of the crime, in order to formulate appropriate preventative actions, it is important to recognize that genocide arises in different contexts. Leo Kuper, in his book The Prevention of Genocide, identifies the following four types of genocide:

1. Genocide against indigenous peoples;
2. Genocide against hostage groups.

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_id._ at 92. Might we look to an international definition of rights to protect the individual from the state?

211 Purvis, _supra_ note 145.

212 See Pfaff, _supra_ note 64, at 5.

213 _supra_ notes 29-35.

214 _supra_ note 36 for a description of the Security Council’s powers.


216 _Id._ at 151. Examples of this type of genocide include the treatment of Native Americans by the colonizers of the Americas, or the Aboriginal peoples in Australia. _See id._

217 _Id._ at 152. This type of genocide targets “vulnerable minorities who serve as hostages to the fortunes of the dominant groups in the state.” _Id._ For example, the Jews and Gypsies in Nazi Germany served this role. _See id._
3. Genocide following upon decolonization of a two-tier structure of domination;\(^{218}\)

4. Genocide in the process of struggles by ethnic or racial or religious groups, for power or secession, greater autonomy or more equality.\(^{219}\)

The last two categories have particular significance for the international community in the late twentieth century. Recent events illustrate both the danger and pervasiveness of these different political contexts. Decolonization in Africa has led to significant political upheaval on that continent.\(^{220}\) In addition, the end of the Cold War has ushered in a period of transformation for many other areas of the globe.\(^{221}\)

If it is possible to identify these difficult political situations, then it should be possible to act upon them. Ideally, prevention would consist of early efforts to reconcile the divisions of differing groups: “[M]any of the conditions that might encourage . . . genocide could be eliminated . . . by the abolition of inequality between groups and their full incorporation into the political and other institutions of the society.”\(^{222}\)

\(^{218}\) Id. at 153. Kuper identifies the political climates of Rwanda and Burundi as classic examples of this phenomenon. See id. To illustrate the instability of this political context, he cites the massacres in Rwanda in the early 1960s: “Between 10,000 and 12,000 Tutsi were murdered in a sequence of events clearly predictable in their general course, if not in their specific detail.” Id. at 154.

\(^{219}\) Id. at 155. This form suggests that genocide can serve as a type of political regulation. See McGarry & O’Leary, supra note 25, at 94. “Genocides are intended to terminate national and ethnic conflict, and they often succeed in securing the relevant territories for imperial rulers.” Id. at 96. However, genocide as a political tool also has the counterproductive effect of creating “explosive and historically entrenched bitterness and fear amongst the descendants of victims.” Id.

\(^{220}\) See generally Purvis, supra note 145 (citing problems in Rwanda, Liberia, Burundi and Somalia). However, those wars have devastated only a small portion of the continent. Other regions have experienced positive political, economic and social progress, including South Africa, Uganda, and Ethiopia. See id.

\(^{221}\) “National and ethnic conflict has been a persistent feature of modernity but the last few years have brought seismic changes in the relations between several ethnic communities around the world. The disintegration of the Soviet Union and Yugoslavia have led to multiple ethnic wars.” McGarry & O’Leary, supra note 25, at 94.

\(^{222}\) KUPER, supra note 215, at 209. Along these lines, in Africa, “more attention needs to be paid to the root causes of conflict, and to supporting those countries which have shown a willingness to adopt more representative rule.” Purvis, supra note 145.
However, if such optimistic political goals prove impossible, an awareness of the dangers may allow early intervention once the conflict erupts, saving lives and halting the spread of violence. In order to achieve this, there must be some kind of early warning system. Impartial information gathering could uncover evidence of mounting repression, increasing polarization, or other threats to ethnic, racial or religious groups. To be effective, though, “[i]t would need to be linked with procedures to forewarn, to monitor, and to initiate preliminary preventative action.”

What kind of action is appropriate and who might intervene is unclear. To some extent the answer will depend on the context and scope of the problem. However, it is clear that providing emergency humanitarian aid only after the worst violence is neither a morally nor economically sound strategy. The magnitude of human suffering produced by genocidal and pre-genocidal conflicts simply increases with time and ultimately, as in the Rwandan genocide, leads to overwhelming numbers of refugees who end up dependent on Western support. Again, military intervention has its own costs and risks which must be assessed in the context of the specific event. However, early military deployment in Rwanda “would have cost a fraction of the millions of dollars it took . . . to maintain the . . . refugees.”

There are other reasons besides cost to be concerned with the increasing numbers of refugees. Kurt Jonassohn, in the 1993 article Famine, Genocide and Refugees, suggested that the flow of refugees, in some cases, may itself be evidence that a subtle and insidious form of genocide is taking place. Thus, he suggests, the movement of refugees could be an early sign of a coming

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223 See KUPER, supra note 215, at 218.
224 See id.
225 Id. As argued above, this kind of evidence was available about the situation in Rwanda, yet it was not tied into a mechanism that could trigger decisive international action. See supra notes 136-64 and accompanying text.
226 See id.
227 Id.
228 See Kurt Jonassohn, Famine, Genocide and Refugees, Soc’y, Sept.-Oct. 1993, at 72. “Until recently, there has been little awareness of the fact that refugees fleeing from famines are not fleeing from natural events but are victims of persecution and even genocide.” Id.
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... genocide and... with... vivid illustrations of this supposition.

Belated humanitarian aid, then, is an ineffective tool for dealing with genocide. However, the alternative of military intervention is highly controversial. A fundamental question is who should ultimately be responsible for intervening. Some commentators suggest that the burden, at least in the context of upheavals brought about by decolonization, should lie with the European colonial powers most responsible for the current instability. These powers are likely to maintain continuing interests in the region, as Europe continues to be a primary consumer of agricultural and mineral exports from Africa.

Arguably, individual European powers, as opposed to the United Nations itself, would be most competent to provide peacekeeping and development support to their former colonies since they know the language and have scholars and specialists familiar with the regions. "If anybody is competent to deal sympathetically with

229 See id. "Understanding the deliberate use of starvation as a form of persecution should and can have wide-ranging consequences for action. It forcefully brings out the fact that humanitarian supplies reach the victims only rarely." Id. Jonassohn suggests that the supplies intended to provide humanitarian relief are more likely to be sold or bartered to arm the persecutors. See id. He contends that U.N. decisions about aid should be informed by an analysis of the refugee flows and famines as potentially related to genocide, rather than as isolated events. See id.

230 The refugee crises today are also reminiscent of a problem which turned out to be a precursor to the Jewish Holocaust. See RUBENSTEIN, supra note 42, at 12-13. Following the upheaval of World War I, the new states formed from the Romanov and Hapsburg empires became home to people who were now national minorities—apartides or stateless persons. See id. International conferences were held on the "refugee problem," recognizing the danger that these minorities held uncertain political and legal rights. See id. Then, as now, there was also concern about unwarranted interference in the internal affairs of the new states. See id. "The stateless could neither be assimilated nor, in most cases, expelled .... There seemed to be no solution. In reality, there was a 'solution' that was obvious to Hitler." Id. at 16-17. Also see HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 268-87 (1951) for further discussion of the "Nation of Minorities" and stateless people.

231 See Pfaff, supra note 64, at 5. Colonial intervention in many cases disrupted the existing political and social structures of the society. See id. Upon decolonization, the former colonies were left without stable functioning political systems and legal institutions. See id.

232 See id.

233 See id. Reportedly, Italian and French peacekeepers warned against attempting
these countries, the Europeans are.” 234

Leo Kuper, author of *The Prevention of Genocide*, also supports the responsibility of individual or groups of nations to intervene, even militarily, in lieu of action by the United Nations. 235 He suggests that:

given the many failures of the United Nations to act against regimes engaging in continuous massacres of their subjects, . . . there is a great need for individual nations, . . . to reassert under carefully defined conditions the right of humanitarian intervention against genocide and other gross, consistent, and murderous violations of human rights. 236

Regardless of the need, however, such unilateral action would be illegal under the present U.N. Charter. 237

Antithetically, other analysts reject these arguments and urge that the sole power and responsibility for military intervention should rest with the United Nations. 238 Intervention by individual nations, even those with past colonial ties to the troubled region, may, in fact, be a pretense to disguise ulterior agendas. 239

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234 *Id.*

235 See KUPER, supra note 215, at 226-27.

236 *Id.* at 226. According to Kuper, humanitarian intervention by individual governments should be allowed when:

1. the United Nations fails to take action under its peacekeeping machinery (where the genocide raises a threat to peace), or by the exercise of other powers in cases of the more purely domestic genocides;

2. a regional intergovernmental organization, with interests in the area, similarly fails to act; and

3. the offending regime is deaf to appeals.

*Id.* at 226-27.

237 The Charter provides that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” U.N. CHARTER art. 2, para. 4. The U.N. Security Council may elect to use military force under Chapter VII of the Charter. See supra note 36 for the text of Chapter VII, Articles 41 and 42. It should be noted, however, that procedures for the amendment of the Charter are provided for in Articles 108 and 109.

238 See Destexhe, supra note 9, at 17.

239 See *id.*; see also supra notes 100-03 (discussing the RPF’s concerns about
intervention could be characterized as a return to the “gunboat diplomacy” of the nineteenth century.\textsuperscript{240} However, because the intervening country will likely seek United Nation’s approval for their unilateral intervention, the action acquires a legitimacy which may or may not be warranted.\textsuperscript{241} Support for unilateral action in lieu of United Nations intervention raises several concerns: First, in such a case, impartiality is important but not assured; second, the mere existence of historical ties does not guarantee that one country will act in the best interests of the other;\textsuperscript{242} and finally, the populations with little strategic importance may be abandoned and ignored.\textsuperscript{243} In order to combat these dangers, then, “it should be up to the Security Council to decide when a force should be deployed, and then it should have the capacity to deploy it.”\textsuperscript{244}

One of the strongest arguments for unilateral action, however, is the great difficulty attending the deployment of a United Nations military force. The United Nations must rely on its member nations to supply troops and equipment for any United Nations action.\textsuperscript{245} This arduous process often results in delays, wasted time, and ultimately an ill-prepared force lacking in equipment and staff.\textsuperscript{246} In emergencies such as the genocide in Rwanda, intervention requires a force which can be rapidly mobilized and deployed. Thus, when time is of the essence, the current clumsy process is predestined to failure.

One alternative to this currently inadequate process would be

\textsuperscript{240} Destexhe, supra note 9, at 17.
\textsuperscript{241} See id.
\textsuperscript{242} See id. This is especially true when there has been a history of exploitation. See id. Nevertheless, historical ties and geographic proximity have been the foundation for recent unilateral intervention: “Russia was given the green light to mediate in Georgia, France in Rwanda, and the United States in Haiti, while in Liberia, the ECOWAS (Economic Community of West African States) Ceasefire Monitoring Group is dominated by neighboring Nigeria.” Id. at 16-17.
\textsuperscript{243} See id.
\textsuperscript{244} Id.
\textsuperscript{245} See id. at 16.
\textsuperscript{246} See supra notes 156-62 and accompanying text for a discussion of the obstacles faced in outfitting the U.N. relief force eventually sent to Rwanda.
the creation of a United Nations standing army. The idea had support from the former United Nations Secretary-General Boutros Boutros-Ghali, who has called for the creation of such a force that could be deployed more efficiently to defuse conflicts such as the one in Rwanda.

While such a force would give the United Nations an effective means to intervene in the increasing number of genocidal situations, critics are skeptical. Arguments that the United Nations is "bloated and wasteful," and thus incompetent to command a permanent force hold sway, particularly in the United States. The specters of Somalia and Vietnam are still powerful, sparking fears that a permanent U.N. military force "would suck U.S. forces into prolonged conflicts that have nothing to do with American security interests." Perhaps in response to these concerns, President Clinton has proposed an all-African force, to be used to intervene in crises on the continent like the one in Rwanda. Although the force would have the benefit of U.S. assistance with organization and training, the troops would come from African nations. Of course, this proposal, prompted by the instability in Central Africa, does not address the dangers of ethnic violence in other areas of the globe. Thus, this proposal ignores the broader questions of international responsibility for ethnic conflict.

247 See Destexhe, supra note 9, at 16.

248 See A United Nations Army? Pro & Con, U.S. News & World Rep., Aug. 5, 1996, at 45. The former Secretary-General's proposal would have predesignated military units from member states, that though based at home, could have been rapidly deployed. See id.

249 See id.

250 See id.

251 Id.

252 See All Things Considered: Clinton Proposes All-African Military Force (NPR radio broadcast, Oct. 7, 1996), available in LEXIS, News Library, Script File. The administration had found support in Africa for an African peacekeeping force, dubbed the Africa Crisis Response Force. See id. However, before the election last November, the proposal did not seem to have much support from Republicans in Congress. See id. Critics pointed out that the President's proposal was unclear on how the force would have been used—whether for purely humanitarian relief or for more interventionist missions. See id.

253 See id.
As this Comment has argued, dangerous political contexts which endanger the survival of groups based on racial, ethnic, or religious grounds are becoming more common and increasingly destructive, both to the victims and for the stability of the globe. As the voice of the international community, the United Nations is the most appropriate body to intervene and seek to prevent these conflicts. However, as recent conflicts have demonstrated, the United Nations has lacked the means and the will to act decisively. The United Nations and its member states must devise a program of action, whether in the form of a permanent U.N. military force or through some other method. Even though the Genocide Convention provides for the prevention and suppression of genocide, without some concrete plan for action the international community will remain powerless in the face of this inhuman crime.

VIII. Conclusion

The purpose of this Comment has been to draw attention to the problem of genocide in the late twentieth century. While genocide has occurred throughout history, it is now defined as a crime and condemned by the international community. When the visual images of skeletal, almost inhuman Holocaust survivors were projected at the Nuremberg trials, horrified witnesses must have felt an overwhelming sense of outrage. This outrage and the world’s rejection of the Nazi atrocities were ultimately manifested in the Genocide Convention. Yet, in 1994, as brutal images of slaughter in Rwanda were transmitted around the world via television, newspaper, and magazines, the international community’s leaders were able to resist the mandate of the Convention and of history. In light of this resistance, it remains to ask: What level of horror would compel intervention?

DORINDA LEA PEACOCK

254 During the trial at Nuremberg, the prosecution introduced films depicting the liberation of the concentration camps, showing the now familiar images of bulldozers filling ditches with thousands of emaciated corpses. See Powell, supra note 54, at 53.

255 See Judging War Criminals, supra note 187, at B6.