

**Vilnius University Faculty of Law**  
**Department of Private Law**

J Arachchige Hiruney Marianne Saubhagya Perera

II study year, International and European Law Programme Student

**Master's Thesis**

**The application of the UN Genocide Convention in the recent  
jurisprudence of the International Court of Justice: a step back or  
forward in ensuring compliance with States' obligations under this  
Convention?**

**JT Genocido konvencijos taikymas naujausioje Tartautinio Teisingumo  
Teismo jurisprudencijai: žingsnis atgal ar į priekį siekiant užtikrinti  
valstybių įsipareigojimų pagal šią Konvenciją laikymąsi?**

Supervisor: Dr. Gabija Grigaitė – Daugirdė

Reviewer: Assoc. Prof. Dr. Indrė Isokaitė-Valuzė

Vilnius

2025

## ABSTRACT AND KEYWORDS

The master's thesis analyzes the application of the Convention on the Prevention and Punishment of the Crime of Genocide 1948, related to the jurisprudence of the International Court of Justice (ICJ). The primary aim is to analyze the recent jurisprudence of the ICJ and assess whether these decisions have taken a step forward or a step backward compared to the past, to ensure state compliance related to the prevention and punishment of genocide. Yet, under Article IX, the practical enforcement of these state obligations remains uneven. With the analysis of four landmark cases: *Bosnia and Herzegovina v Serbia and Montenegro* (2007), *Croatia v Serbia* (2015), *The Gambia v Myanmar* (2020), and *Ukraine v Russian Federation* (2022), this master's thesis evaluates how the ICJ has interpreted and sought to supervise states' genocide prevention-related duties.

**Keywords:** Genocide Convention, International Court of Justice, state obligations, jurisprudence, prevent and punish, compliance, provisional measures.

## TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	2
INTRODUCTION .....	3
I. LEGAL NATURE OF THE GENOCIDE CONVENTION AND OBLIGATION OF STATE PARTIES.....	6
1.1 The UN Genocide Convention: Foundations and Legal Character .....	6
1.1.1 Historical Background .....	6
1.1.2 Definition and Elements of Genocide in the Jurisprudence of the International Court of Justice .....	9
1.2 Obligation of state parties under the UN Genocide Convention .....	13
1.2.1 Distinction between State and Individual Responsibility.....	13
1.2.1 The ICJ’s Jurisdiction under Article IX.....	15
II. STATE OBLIGATIONS UNDER THE CASE LAW OF THE INTERNATIONAL COURT OF JUSTICE .....	20
2.1 Direct Responsibility of State Parties and Obligations not to Commit Genocide	20
2.2 Indirect Responsibility of State Parties: Preventive Duties and the Due Diligence Standard .....	23
2.3 Obligation of State parties to enforce individual criminal responsibility or extradite.....	29
III. THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN ENSURING COMPLIANCE OF STATE PARTIES.....	32
3.1 Enforcement through Provisional Measures and Judgements of The International Court of Justice .....	32
3.1.1 Legal Authority and Effects of Provisional Measures.....	33
3.1.2 International Court of Justice Case Law-Based Insights .....	36
3.2 Challenges of Enforcement .....	44
WAY TOWARDS COMPLIANCE .....	47
4.1 Role of the International Court of Justice in ensuring Compliance .....	47
4.2 Deterrent effect of the Convention.....	51
4.3 Recommendations for ensuring better Compliance with States’ Obligations. ..	54
CONCLUSIONS .....	57
LIST OF SOURCES.....	58
SUMMARY.....	67

## **LIST OF ABBREVIATIONS**

CERD - Committee on the Elimination of Racial Discrimination

ECOSOC - Economic and Social Council

ICC - International Criminal Court

ICJ - International Court of Justice

ICTR - International Criminal Tribunal for Rwanda

ICTY - International Criminal Tribunal for the former Yugoslavia

IMT – International Military Tribunal

UN - United Nations

USSR - Union of the Soviet Socialist Republic

## INTRODUCTION

In recent years, crimes of genocide have emerged as a critical issue in the world. States are turning themselves towards the International Court of Justice (further referred to as the ICJ or the Court) under the Convention on the Prevention and Punishment of the Crime of Genocide (further referred to as the UN Genocide Convention or the Convention). The Convention is the principal forum for the adoption of rights and obligations, to issue provisional measures, and resolve violations to prevent and punish genocide. These determine that the Convention is not historic, but it continues to live in the present to shape international law and state obligations.

The UN Genocide Convention remains one of the most cited human rights treaties before the ICJ,<sup>1</sup> which is an instrument of international law adopted in 1948 by the General Assembly of the United Nations in the aftermath of World War II. Thereby, this has led to issues on the ICJ's role to determine state obligations, and the effectiveness of the judicial intervention to prevent and punish genocide. In that way, the current relevance of the Convention helps to determine the origin. The Convention was considered a tremendous success of the international community that had survived the horrors of 'never again.'<sup>2</sup>

At present, 153 Member States have ratified the UN Genocide Convention; this indicates one goal for all State Parties: to liberate humankind from "such an *odious scourge*"<sup>3</sup> expressed in the Preamble, as well as the idea that this atrocious crime must be prevented. These are truly shared between States, which are devoted to their duty to prevent and punish genocide.<sup>4</sup> Accordingly, the importance of the master's thesis topic is to assess the evaluation of whether the Court's recent jurisprudence provided States with the means to fulfil their obligations, or whether there seems to be legal gaps that had undermine the application and goals of the Convention.

As stated above, the Genocide Convention has become one of the most used human rights treaties by the ICJ. The provisions have raised complex issues related to state responsibility and obligations related to punishment and prevention. According to the article written by Schabas, there has been evidence of atrocities committed in Serbia,

---

<sup>1</sup> SCHALLER, Dominik J. (2011). From Lemkin to Clooney: The Development and State of Genocide Studies. *Genocide Studies and Prevention: An International Journal*, 6(3), [online]. <https://digitalcommons.usf.edu/gsp/vol6/iss3/6>

<sup>2</sup> *ibid.*

<sup>3</sup> The Preamble of the UN Genocide states as follows; "The Contracting Parties, being convinced that, in order to liberate mankind from such an *odious scourge*, international co-operation is required."

<sup>4</sup> LEMKIN, Raphael (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC. Carnegie Enforcement for International Peace Division of International Law.

Rwanda, Bosnia, and Herzegovina, and most recently in Myanmar and Ukraine.<sup>5</sup> These cases provide a basis to analyze the ICJ's recent interpretations of the Genocide Convention, whether it has strengthened or weakened compliance to prevent and punish genocide. Therefore, the main aim of the master's thesis is to analyze whether the recent jurisprudence of the ICJ has been a step forward or backward to ensure compliance with states' obligations.

Moreover, the relevance of the thesis evolves from the growing dependence of the ICJ to decide based on the Genocide Convention, considering the recent cases. The originality depends on the fact that the master's thesis focuses on the most recent case laws of the ICJ. This master's thesis also includes a comparative analysis of the recent cases such as *Croatia v. Serbia*, *Bosnia and Herzegovina v. Serbia and Montenegro*, and *Ukraine v. Russian Federation*. The main aim of the thesis is to analyze the actions taken by the ICJ to ensure compliance of states.<sup>6</sup>

The objective is to analyze the application of the UN Genocide Convention in the recent ICJ jurisprudence, primarily focusing on the compliance of states' obligations to prevent and punish the crime of genocide. The aim of the research is to examine whether the recent application of the UN Genocide Convention by the ICJ has advanced or hindered the effective compliance of states with their obligations under the Convention. To achieve this aim, four main tasks are being set: 1. To examine the historical background and objectives of the Genocide Convention; 2. To assess the most recent ICJ case laws and judicial precedence based on the Genocide Convention; 3. To evaluate the effectiveness of the ICJ jurisprudence related state obligations to prevent and punish, and 4. To identify gaps and inconsistencies in the ICJ towards ensuring better compliance of states under the UN Genocide Convention.

To achieve these tasks, the methods utilized is doctrinal legal research, also known as black letter methodology, which is based on 'the discovery and exposition of legal doctrines and principles from authoritative legal sources.'<sup>7</sup> In simple terms, the master's thesis involves the use of legal statutes, case laws and scholarly commentaries. Furthermore, comparative analysis has also been utilized to compare different ICJ cases laws, because this allows to identify the approach ICJ has taken, to critically analyze different case laws to examine how the outcome of a legal issue could be different under

---

<sup>5</sup> SCHABAS, William A. (2002). *Genocide in International Law*. Cambridge: Cambridge University Press.

<sup>6</sup> *ibid.*

<sup>7</sup> BHBAT, Ishwara P (2020). *Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles*. [online]. Oxford Academic. DOI10.1093/oso/9780199493098.003.0005.

each scenario.<sup>8</sup> Apart from this, secondary sources such as journal or scholarly articles, books, and commentaries were also used which were gathered from databases of Vilnius University virtual library, JSTOR, Hein Online, Oxford Academic, and Google Scholar. Furthermore, to enhance the language and grammar of the thesis paper Grammarly editing tool were used, yet the analysis and conclusions remain the author's own.

Throughout the master's thesis, one of the most important sources used is the UN Genocide Convention, along with these main discussions revolve around certain important case laws; *Croatia v. Serbia*, *Bosnia and Herzegovina v. Serbia and Montenegro*, *The Gambia v. Myanmar*, and *Ukraine v. Russian Federation*, these were used to analyze the application of the UN Genocide Convention in the jurisprudence of the ICJ to ensure compliance with states' obligations under this Convention. The main secondary sources used are journal articles and research papers written by Raphael Lemkin, William Schabas, Kress Claus, Alberto Costi, Ines Gillich, and Aloysius P Llamzon.

---

<sup>8</sup> CELINE, Cocq and SZEKELY, Ora (2021). *Comparative Analysis*. [online]. Oxford: Oxford University Press. DOI10.1093/hepl/9780198850298.003.0011.

# **I. LEGAL NATURE OF THE GENOCIDE CONVENTION AND OBLIGATION OF STATE PARTIES**

The first chapter of the master's thesis provides the legal background and outline of the UN Genocide Convention and the obligations imposed on the State Parties. By analyzing important scholarly articles, case laws and judicial precedents of the ICJ, this chapter aims to pave way to respond to the research questions stated in the Introduction of the thesis.

## **1.1 The UN Genocide Convention: Foundations and Legal Character**

### **1.1.1 Historical Background**

The world has faced significant new threats during the first half of the 20th century, authoritarian brutality along with contemporary organizations and technology had led to higher levels of bloodshed. During the late 1890s this new reality was brought to public attention by the Ottoman Empire, which was against the Armenian people. Following World War I, the Treaty of Sèvres<sup>9</sup> was introduced which was a peace agreement entered between the Ottoman Empire and Allies. This treaty had a requirement for punishment for those who have “barbarous and illegitimate methods of warfare which includes offenses against the laws and customs of war and the principles of humanity.”<sup>10</sup> By the end of 1921, even though, countries like Russia, France, and Great Britain agreed to ensure that those who are guilty would be held accountable, political challenges and factors led to the freedom of accused criminals detained by the British in Malta.<sup>11</sup> This led to the agreement and ratification of a new treaty known as the Treaty of Lausanne 1923,<sup>12</sup> soon after revoking the Treaty of Sèvres during the Turkish War of Independence. Therefore, governments and jurists were not compelled to act to punish those responsible for atrocities that were unimaginable, until after a few years by the so-called “Armenian solution” was replaced in the minds of world leaders during World War II.<sup>13</sup>

It was during this time, the Armenian Genocide, which took over a million lives, and the Holodomor (“murder by hunger”) which was a man-made famine that murdered millions of Ukrainians in the Union of the Soviet Socialist Republic (USSR), this had a deep impact on the beliefs of a Polish Professor, Raphael Lemkin, who derived the word

---

<sup>9</sup> Treaty of Peace Between the Allied Powers and Turkey (Treaty of Sèvres) (1920), reproduced in *The Treaty of Peace 1919-1923*

<sup>10</sup> Treaty of Sèvres (1920) 112 LNTS 1, Article 230.

<sup>11</sup> SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press, pp. 16.

<sup>12</sup> Treaty of Lausanne (1923) 8 LNTS 113.

<sup>13</sup> TOYNBEE, A Joseph (1969). *Experiences*. New York: Oxford University Press, pp. 242.

“genocide” in 1944.<sup>14</sup> It was seen that the word ‘genocide’ was originated from the Latin word “*gens, gentis*,” which means “birth, race, stock, kind,” or the Greek root “*génos*,” and the Latin suffix “-cidium,” which means “cutting” or “killing.”<sup>15</sup> He lived in Poland and Sweden before migrating to the United States, this was when he gathered information related to the intentional attempt to exterminate Jewish by the Nazis. Lemkin’s earlier attempts to make the case for a distinct crime along these lines had been unsuccessful, but the World War II created a renewed reason of necessity.<sup>16</sup>

Before this time, what is today called “genocide” was classified as a “crime against humanity.” In the exact words of Lemkin, genocide was defined as follows: “genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the 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.”<sup>17</sup>

A year later, it was being commonly used to describe the destruction of the European Jews by the Nazi regime. This term was used in the by the defense prosecutors at the International Military Tribunal (IMT) in *Nuremberg Trials*<sup>18</sup> even though it does not appear in the judgment itself. Lemkin was taken aback by the lack of any accusations of genocide at Nuremberg. The Tribunal’s criterion of a connection between armed conflict and crimes against humanity created a significant gap for individuals who ought to commit genocide in times of peace.<sup>19</sup>

Thereby, genocide was first adopted during the Nuremberg trials, as a response to the results of World War II. Later, during the first session in 1946, the UN General

---

<sup>14</sup> LEMKIN, Raphael (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC. Carnegie Enforcement for International Peace Division of International Law, pp. 91-93.

<sup>15</sup> CASSESE, Antoio; ACQUAVIVA, Guido; FAN, Mary et al. (2011). *International Criminal Law: Cases and Commentary*. Oxford: Oxford University Press.

<sup>16</sup> GILLICH, Ines (2016). Between Light and Shadow: The International Law Against Genocide in the International Court of Justices’s Judgement in *Croatia v. Serbia* (2015). *Pace International Law Review*, 28(1), pp. 121-122. [online]. <https://digitalcommons.pace.edu/pilr/vol28/iss1/3/>

<sup>17</sup> LEMKIN, Raphael (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC. Carnegie Enforcement for International Peace Division of International Law, pp. 79

<sup>18</sup> Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (United Kingdom, United States, USSR, France) (1945) UNTS 82, 279.

<sup>19</sup> COSTI, Alberto (22008). The 60<sup>th</sup> Anniversary of the Genocide Convention. *Victoria University of Wellington Law Review*, 39, pp. 831. [online] <https://ssrn.com/abstract=3074736>

Assembly adopted Resolution 96(I)<sup>20</sup> which confirmed that genocide constituted a crime under international law and asked the Economic and Social Council (ECOSOC) to research the matter to prepare a convention. Since it was unanimously accepted by the UN's members, this resolution has frequently been described as codifying the ban on genocide under customary international law.<sup>21</sup> Schabas has criticized the Convention stating that it barred indictments for acts that occurred before World War II even though they were part of the same sequence of events. The idea of genocide as a crime gained momentum as it started to be recognized by the legal system.<sup>22</sup>

Signed and adopted on December 9, 1948, the Convention on the Prevention and Punishment of the Crime of Genocide became operative on January 12, 1951.<sup>23</sup> The phrase “genocide a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world” is used in the Convention's preamble to make this explicit.<sup>24</sup> Furthermore, the UN Genocide Convention establishes clear obligations for State parties. Article I is based on prevention and punishment for genocide, further affirms that genocide, whether committed in time of peace or in time of war, is a crime under international law.<sup>25</sup> Article II gives the definition and elements of genocide.<sup>26</sup> Article III sets five forbidden actions of genocide (including conspiracy, direct and public exhortation, attempt to commit, and cooperation in genocide).<sup>27</sup> Article IX provides for the CJ's mandatory jurisdiction over “disputes relating to the interpretation, application or fulfilment of the Convention”<sup>28</sup>

The need for a precise definition of genocide was emphasized from the very first draft of the Convention.<sup>29</sup> The negotiations included certain compromises which had positive and negative impacts on the final text of the Genocide Convention, related to the definition of genocide. Understanding the history of the UN Genocide Convention is of utmost importance to assess the actions of the ICJ regarding the recent cases. This was

---

<sup>20</sup> The United Nations General Assembly, 11 December 1946, Resolution 96(I), “The Crime of Genocide”, *United Nations General Assembly Official Records*, 1<sup>st</sup> session.

<sup>21</sup> *ibid.*

<sup>22</sup> SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press, pp. 46.

<sup>23</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948). UNTS 78, 277.

<sup>24</sup> Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide (1951), *ICJ Reports*. 16, para 23.

<sup>25</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948). UNTS 78, 277, Article I.

<sup>26</sup> *ibid.*, Article II.

<sup>27</sup> *ibid.*, Article III.

<sup>28</sup> *ibid.*, Article IX.

<sup>29</sup> NITOIU, Cristian (2024). The path to Russia's 2022 invasion of Ukraine: Moscow's framing of conflict and cooperation with the West under Putin's rule. *Southeast European and Black Sea Studies*, pp. 1–19 [online]. <https://doi.org/10.1080/14683857.2024.2324559>

evident in 2022, where the ICJ addressed allegations of genocide related to Russia and Ukraine. This case assessed the importance of historical obligations established more than 75 years ago continue to guide states in contemporary issues.<sup>30</sup>

### 1.1.2 Definition and Elements of Genocide in the Jurisprudence of the International Court of Justice

Article II which is considered as the heart of the Genocide Convention, provides the authoritative formulation of the crime of genocide.<sup>31</sup> Article II reads as follows: “Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- o
- i. Killing members of the group;
- ii. Causing serious bodily or mental harm to members of the group;
- iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv. Imposing measures intended to prevent births within the group;
- v. Forcibly transferring children of the group to another group.”<sup>32</sup>

The meaning of genocide is explained beyond what the international law states. The Article II of the Genocide Convention describes about the two main elements of a crime which is the *actus reus* and *mens rea*. *Actus reus* or the physical act could amount to ‘any act committed towards a national, ethnical, racial, or religious group. Whereas, *mens rea* or the mental act requires a perpetrators who committed the act intended to exterminate the group in its entirety or in part.<sup>33</sup> Therefore, it is important that both elements of *actus reus* and the *mens rea* should be present for acts to constitute as a genocide.<sup>34</sup>

The main acts prohibited by Article II of the Genocide Convention are analyzed below using a general analysis and examples from the decisions of the Trial Chamber (further referred as Tribunal) in the case *Prosecutor v. Akayesu*<sup>35</sup> The decisions of the Tribunal have provided subsequent rulings, and as such provided a useful definitional standard. However, determining what amounts to ‘conduct’ under article II depends on the

---

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*, n.23, Article II.

<sup>32</sup> *ibid.*

<sup>33</sup> SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press, pp.19.

<sup>34</sup> BERSTER, Lars (2014). Art. II. In: TAMS, Christian; BERSTER, Lars; SCHABAS, William A. et al. *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*. Oxford: Oxford University Press.

<sup>35</sup> *The Prosecutor v. Akayesu* [1998], Case No. ICTR-96-4, pp. 102.

case-by-case analysis of facts of the Courts.<sup>36</sup>

### **Material elements (*actus reus*)**

The term ‘killing’ initially appeared in the 1946 Saudi Arabian proposal where the Secretariat draft divided the *actus reus* into three categories, the first entitled ‘causing the death of members of a group or injuring their health or physical integrity.’ The Committee’s chair further reworked the text to contain two paragraphs dealing with physical genocide, and a third covering cultural genocide. The first form of physical genocide was ‘killing members thereof.’ The concept was uncontroversial, and, with the final wording changed to ‘killing of members of the group,’ it was adopted.<sup>37</sup>

The reference to ‘members of the group’ as victims of the genocidal act in paragraph (i) of Article II, as well as in the subsequent paragraphs, may suggest that the act itself must involve the killing of at least two members of the group. Such an interpretation seems a bit absurd, however, and, from a grammatical standpoint, the phrase can just as easily apply to a single act of killing.<sup>38</sup>

Furthermore, in *Akayesu* case, the Tribunal had to assess how the definition of genocide in the Convention should be interpreted. This was a challenge that reflected “causing serious bodily or mental harm” was initially not settled during the drafting stage of the Genocide Convention, based on a French Proposal. Article II has been introduced through the work of the Ad Hoc Committee, to assess which acts amount to genocide.<sup>39</sup> The drafting history shows the intentions for the Genocide Convention to allow for judicial interpretation. Having serious physical and mental harm in genocide as per the Convention, establishes that genocide is not just killing, this understanding was established in the *Eichmann* case.<sup>40</sup> But the District Court in 1961, held that serious bodily and mental harm of members of a group could be caused ‘by the enslavement, starvation, deportation and persecution and by their detention in ghettos, transit camps and concentration camps in conditions.’<sup>41</sup> The interpretation of the District Court aided to further clarify the scope of Article II and practical application.

Furthermore, Article II (iii) shows that genocide could also be committed without

---

<sup>36</sup> VAN SCHAACK, Beth (1997). The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot. *Yale Law Journal*, 106, pp. 2259-2299.

<sup>37</sup> *ibid*, n. 26

<sup>38</sup> GILLICH, Ines (2016). Between Light and Shadow: The International Law Against Genocide in the International Court of Justices’s Judgement in *Croatia v. Serbia* (2015). *Pace International Law Review*, 28(1), pp. 121-122. [online]. <https://digitalcommons.pace.edu/pilr/vol28/iss1/3/>

<sup>39</sup> *ibid*, n. 23, Article II

<sup>40</sup> *Israel v. Adolf Eichmann* [1968] 36 ILR 18 (District Court, Jerusalem)

<sup>41</sup> *ibid*, n.23, Article III.

immediate killing but calculated to destruct a group. In *Akayesu* case,<sup>42</sup> the ICTR held that “conditions of life calculated to bring about its physical destruction” includes methods of destruction by which the perpetrator does not immediately kill the members of the group, but will seek their physical destruction.<sup>43</sup> This was later applied by the Court in *Bosnia and Herzegovina v. Serbia and Montenegro* (further sometimes referred as the *Bosnian Genocide* case), where the Court argued that ‘forced separations of male and female Muslims in Bosnia and Herzegovina, was seen as decline which could also amount to genocidal conduct. This was based on the same claim as *Akayesu*, which was that genocide can happen through long-term conduct which could risk the survival of the group.’<sup>44</sup>

Article II paragraph (e), ‘forcibly transferring children of the group to another group,’ was added to the Convention as an afterthought, with little substantive debate or consideration. The provision is enigmatic because the drafters clearly rejected the concept of cultural genocide. The International Law Commission treated paragraph (e) as ‘biological genocide.’ The Convention does not specify what is meant by ‘children,’ and the question was not addressed by the drafters. During the drafting of the Genocide Convention, the Soviet delegate challenged the Sixth Committee to provide a historical example of genocide committed by transfer of children. There was no response, but delegates might have referred to the Nuremberg judgment.<sup>45</sup>

### **Mental elements (*mens rea*)**

Two distinct mental elements must be satisfied for a conviction for genocide: the general intent requirement which pertains to the material elements and the special intent requirement pursuant to which the perpetrator must act with the special intent to destroy, in whole or in part, a protected group as such. Whether or not the concept of special intent in the case of the perpetrator differs from that in the case of the accessory will be dealt with.<sup>46</sup>

The second requirement is regarding “the intent to destroy, in whole or in part, a protected group” as such as has been explained above, the requirement of the intent to destroy, in whole or in part, a protected group as such marks the specificity of the crime and explains, if correctly interpreted, its status as crime under international law.<sup>47</sup> The case

---

<sup>42</sup> *Prosecutor v. Akayesu* [1998], Case No. ICTR-96-4.

<sup>43</sup> *ibid.*, n. 23, Article II (ii)

<sup>44</sup> *ibid.*, n. 23, Article II.

<sup>45</sup> KRESS, Claus (2007). The International Court of Justice and the Elements of the Crime of Genocide. *European Journal of International Law*, 18(4), pp. 619-629. [online]. <http://ejil.org/pdfs/18/4/238.pdf>

<sup>46</sup> *ibid.*

<sup>47</sup> BERSTER, Lars (2014). Art. II. In: TAMS, Christian; BERSTER, Lars; SCHABAS, William A. et al.

law of the ad hoc Tribunals, however, points to the physical act of the term. The issue has come up most clearly in *Prosecutor v. Krstić*<sup>48</sup> where the Tribunal stated that it “recognizes that, despite recent developments, customary international law limits the definition of genocide to those acts seeking the physical and biological destruction of all or part of the group.” In Judge Shahabuddeen’s partial dissenting opinion in the ICTY Appeals Chamber Judgment in *Prosecutor v. Krstić*<sup>49</sup>, has explicitly challenged this view and has spoken in favor of drawing a “distinction between the nature of the ‘listed’ acts and the ‘intent’ with which they are done” and has concluded that “provided that there is a listed act, the intent to destroy a group as a group is capable of being proved by evidence of an intent to cause the non-physical destruction of the group in whole or in part”, meaning its dissolution as a group.<sup>50</sup> Drawing on this opinion, the ICTY Trial Chamber in *Prosecutor v. Blagojević*<sup>51</sup> stated: “The physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself particularly when it involves the separation of its members.”<sup>52</sup> Nevertheless, the ICTR and ICTY has shown that genocide requires *dolus specialis*<sup>53</sup> It shows that just by knowing the consequences is not sufficient. The specific intent requirement was seen beyond ICTR and ICTY.

As summarized in the Darfur Report, recent national judicial pronouncements shows intent as *dolus specialis* “which implies that the perpetrator consciously desired the prohibited acts he committed to result in the destruction, in whole or in part, of the group as such.”<sup>54</sup> This also aligns with Lemkin’s view original concept of genocide, where he stated that “genocide is directed against a national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of a national group.”

---

Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary. Oxford: Oxford University Press.

<sup>48</sup> *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, 2 August 2001.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*, n. 48, para. 580, Judge Shahabuddeen.

<sup>51</sup> *Prosecutor v. Blagojević and Jokić* [2005], Case No. IT-02-60-T.

<sup>52</sup> *ibid.*, Judgment, 17 January 2005, para. 647–649.

<sup>53</sup> GILLICH, Ines (2016). Between Light and Shadow: The International Law Against Genocide in the International Court of Justice’s Judgement in *Croatia v. Serbia* (2015). *Pace International Law Review*, 28(1), pp. 145-147. [online]. <https://digitalcommons.pace.edu/pilr/vol28/iss1/3/>

<sup>54</sup> Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004

## 1.2 Obligation of state parties under the UN Genocide Convention

### 1.2.1 Distinction between State and Individual Responsibility

Raphael Lemkin's statement which says, "sovereignty cannot be conceived as the right to kill millions of people," depicts view that a state's ability to exercise its sovereignty should not be used as a justification for conducting atrocities.<sup>55</sup> Traditionally, international law has attributed acts of individuals who function as state organs solely on states. Even though states act through individuals, in legal sense state responsibility comes out as an act of the states and not an individual.

State responsibility neither depends on nor implies the legal responsibility of individuals. The irrelevance of individual responsibility can be illustrated by the judgment of the European Court of Human Rights (ECHR) in *Selmouni v. France*.<sup>56</sup> In considering the responsibility of France for an act of torture by an individual police officer, the Court noted that the issue of guilt of the French police officials for the alleged acts of torture is a matter for the jurisdiction of the French courts and that 'whatever the outcome of the domestic proceedings, the police officers' conviction or acquittal does not absolve the respondent State from its responsibility under the Convention.' While this statement concerned the outcome of a domestic trial, it supports the broader principle that state responsibility under international law is separated from the legal responsibility of the individual.<sup>57</sup>

A drawback in the traditional law of State responsibility was shielding the individual as a subject of accountability. The invisibility of the individual in the traditional law of state responsibility did have a drawback. When the sole responsibility lies within the State, the legal framework tends to create a disparity gap, as Lauterpacht has stated, 'there is cogency in the view that unless responsibility is imputed and attached to persons of flesh and blood, it rests with no one.'<sup>58</sup> Likewise, Allott<sup>59</sup> has stated that 'the moral effect of the law is vastly reduced if the human agents involved are able to separate

---

<sup>55</sup> LEMKIN, Raphael (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC. Carnegie Enforcement for International Peace Division of International Law, pp. 88.

<sup>56</sup> *Selmouni v. France* [1999] 25803/94 ECtHR 87

<sup>57</sup> CAKAL, Ergün (2023). Torture and progress, past and promised: problematizing torture's evolving interpretation. *International Journal of Law in Context*, 19, pp. 236-254. [online]. doi:10.1017/S1744552323000010

<sup>58</sup> LAUTERPACHT, Hersch (1928). Revolutionary Activities by Private Persons Against Foreign States. *American Journal of International Law*, 22(4), pp. 972-993 [online]. <https://www.jstor.org/stable/2188972>

<sup>59</sup> MC CARTHY, Conor (2012). Victim Redress and International Criminal Justice: Competing Paradigms, or Compatible Forms of Justice? *Journal of International Criminal Justice*, 10(2), pp. 351-372. [online]. <https://doi.org/10.1093/jicj/mqs014>

themselves personally both from the duties the law imposes and from the responsibility which it entails.’<sup>60</sup> As seen, these commentaries allow to assess why the shift from State-centered shifted to one that considers individual criminal responsibility. The creation of many criminal law treaties, prosecutions of individuals in national and international courts and the establishment of the International Criminal Court (further referred as ICC) marked an important shift which has taken individuals away from being the shield of the state. In the context of genocide, such evolution shows that responsibility not just lie on the States but also on the individuals who conduct these policies.<sup>61</sup>

Several authorities have recognized the non-exclusive nature of individual and state responsibility. In the case of *Prosecutor v Furundzija*,<sup>62</sup> the ICTY held that, ‘under current international humanitarian law, in addition to individual criminal liability, state responsibility may ensue as a result of state officials engaging in torture or failing to prevent torture or to punish torturers.’ In its judgment on Preliminary Objections in the Application of the Genocide Convention case, the ICJ said with respect to Article IX of the Genocide Convention: the reference in Article IX to the responsibility of a State for genocide or for any of the other acts enumerated in Article III does not exclude any form of State responsibility.<sup>63</sup> Nor is the responsibility of a State for acts of its organs excluded by Article IV of the Convention, which contemplates the commission of an act of genocide by ‘rulers’ or ‘public officials.’ The possibility of dual attribution<sup>64</sup> is also recognized in the law on war crimes.<sup>65</sup>

Moreover, in the last years growing attention has been devoted in international legal literature to the complex relationship between state responsibility and the individual criminal responsibility of state organs. As observed by Ingadottir, there are four standard situations that may be envisaged. The first and second situations occurs when a wrongful act giving rise to state responsibility may be brought before an international court in an inter-state dispute, and decided positively or negatively, and third and fourth situations occur when the same wrongful act could be the object of an indictment in an international criminal proceeding, or the other way round.<sup>66</sup> In three of these situations, the decisions of

---

<sup>60</sup> ALLOT, Philip (1988). State Responsibility and the Unmaking of International Law. *Harvard International Law Journal*, 29(1), pp. 1-4.

<sup>61</sup> *ibid*, n. 52

<sup>62</sup> *Prosecutor v. Anto Furundzija* (Trial Judgement) [1998], IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY).

<sup>63</sup> *ibid*, n. 56

<sup>64</sup> Dual Attribution means that an act or omission can be attributed to two parties at the same time, in this case the individual and a State.

<sup>65</sup> *ibid*, n. 56

<sup>66</sup> INGADOTTIR, Thordis (2009). The ICJ Armed Activity Case: Reflections of States’ Obligations to Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the

a court does not determine the outcome of the other proceedings. The international criminal proceedings happen first and convicts an individual, technically not *res judicata*<sup>67</sup> for the purpose of the inter-state dispute, which implicates the responsibility of the state of which the individual is part of. A different finding by the subsequent court would inevitably be inconsistent with the first judgement.<sup>68</sup>

In cases of immunities, this complex relationship between State and the individual responsibility has been further illustrated. In the judgment delivered on 14 February 2002 in the Case Concerning the Arrest Warrant of 11 April 2000 (*Congo v. Belgium*).<sup>69</sup> Furthermore, the ICJ held that a former Minister for Foreign Affairs of a state is subjected to criminal jurisdiction of another state only in respect of acts conducted ‘in a private capacity.’ Therefore, the question arises of whether international crimes committed by persons with the status of state officials are to be regarded as acts done ‘in a private capacity.’<sup>70</sup> To this, Cassese and Wirth commented on this issue, where they stated that the ICJ said that an incumbent Minister for Foreign Affairs enjoys immunity from criminal jurisdiction while abroad, and inviolability for acts performed either in an ‘official’ or in a ‘private’ capacity, whether those acts were done before assuming office or during the term of office, even when the crime alleged is a war crime or a crime against humanity.<sup>71</sup> Furthermore, the Court has emphasized that, in an *obiter dictum*, that immunity from foreign jurisdiction does not mean impunity. The Court thereby implicitly affirmed that, in relation to acts committed not ‘in a private capacity’ but ‘in an official capacity,’ a former Minister for Foreign Affairs of a state cannot be subjected to the criminal jurisdiction of another state even after leaving office. It seems impossible to doubt that this is what the Court meant.<sup>72</sup>

### 1.2.1 The ICJ’s Jurisdiction under Article IX

In 1951, during the Advisory Opinion, three years since the adoption of the Convention the ICJ recognized the humanitarian character to go beyond State-centered formation. In an article written by Yordan, it was stated that along with the Universal Declaration of

---

Geneva Conventions. *Nordic journal of International Law*. 78, pp. 581. [online] <https://www.ohchr.org/sites/default/files/documents/issues/torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-ThordisIngadottir-1.pdf>

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*, n. 66

<sup>69</sup> CASSESE, Antonio (2002). When May Senior State Officials be Tried for International Crimes? Some Comments on the Congo v. Belgium Case. *European Journal of International Law*, 13(4), pp. 853–875.

<sup>70</sup> *ibid*

<sup>71</sup> WIRTH, Steffen (2002). Immunity for Core Crimes? The ICJ’s Judgement in the Congo v. Belgium Case. *European Journal of International Law*, 13(4), pp. 877–893.

<sup>72</sup> *ibid*, n. 69

Human Rights (UDHR) the birth of an unprecedented treaty came into place which marked a shift from state-centric to a human centric nature in international law.<sup>73</sup> This early recognition has underscored the UN Genocide Convention's ability regarding *erga omnes*. In the current international dynamics, without the ICJ jurisdiction or without Article IX, it would be seen that the Convention would lose its practicality in the real world.<sup>74</sup>

State responsibility for genocide can be invoked under customary law and treaty obligations. Under customary law these responsibilities invoked before various international forums like arbitral tribunals, courts for human rights. Genocide is exceptional since Article IX of the UN Genocide convention explicitly confers upon the ICJ jurisdiction to adjudicate 'disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III.'<sup>75</sup>

ICJ is the only legal body that examines the responsibilities of the state parties under Article IX. This is where Article IX is considered to be one of the most important provisions since it has a practical sense. But reservations to Article IX have undermined ICJ's role in implementing the Convention and safeguarding *jus cogens*, which has affected impartiality and equality in applying international law. This was evident in the dissenting opinion of Judge Koroma in the case of *Democratic Republic of the Congo v. Rwanda*<sup>76</sup> at the ICJ, where his Lordship stated that, "offering redress to some while denying it to others is neither in conformity with the Convention, nor with justice; nor does it further the purposes and principles of the UN Charter in respect of the peaceful settlement of disputes."<sup>77</sup> This opinion highlights that when States refuse to abide by the jurisdiction of the ICJ, it undermines the ability to enforce the Genocide Convention, which could result in unequal application of the law.

Significantly, the case of *Democratic Republic of The Congo v. Rwanda*<sup>78</sup> was the only case where the ICJ recognized and considered the validity of reservation of Article IX. The ICJ said that 'Rwanda's reservation to Article IX of the Genocide Convention

---

<sup>73</sup> GUNAWAN, Yordan; WHISLER, Refisyanti Sonya; MUFIDA, Aliza et al. (2020). Jurisdiction of International Court of Justice (ICJ) Over the Genocide Violations: with Special References to Rohingya Case. *Fiat Justisia: Faculty of Law, Universitas Lampung*, 14(4), pp. 313-336 [online]. DOI: 10.25041/fiatjustisia

<sup>74</sup> *ibid*, n. 66

<sup>75</sup> *ibid*, n. 25, Article IX.

<sup>76</sup> Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Judgment of 3 February 2006, ICJ Reports 2006.

<sup>77</sup> Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Judgment of 3 February 2006, ICJ Reports 2006, dissenting opinion of Judge Koroma

<sup>78</sup> *ibid*, n. 79

bears on the jurisdiction of the Court and does not affect substantive obligations relating to acts of genocide themselves under that Convention.<sup>79</sup> The Court based this peripheral finding on a flawed distinction between a reservation to a procedural aspect versus “substantive obligations relating to acts of genocide themselves.” It could be seen that the Court blundered in assuming that substantive provisions are more germane to the object and purpose of a treaty than procedural provisions.<sup>80</sup> Henceforth, Article IX can be considered as “the portal” on which the Convention depends based on practical operations. And not having it, could affect the substantive protections given by the Convention.

The *Bosnian Genocide* case,<sup>81</sup> opened a real opportunity for the ICJ to interpret the Genocide Convention. On 20 March 1993, Bosnia, and Herzegovina instituted proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro) for the alleged violation of the Genocide Convention. During the proceedings, ICJ’s first question was to determine whether it had jurisdiction *ratione materiae* under Article IX of the Convention. ‘In order to determine whether it has jurisdiction to entertain the case on the basis of Article IX of the Genocide Convention, it remains for the Court to verify whether there is a dispute between the Parties that falls within the scope of that provision.’<sup>82</sup> After analyzing the case, the ICJ found that it has *prima facie* jurisdiction ‘as both the States are parties to the Genocide Convention.’ ‘Having reached the conclusion that it has jurisdiction in the present case, both *ratione personae* and *ratione materiae* on the basis of Article IX of the Genocide Convention, it remains for the Court to specify the scope of that jurisdiction *ratione temporis*.’<sup>83</sup> From a logical perspective, this case has contributed to significance in the development of international law, because Article IX was seen as a gateway to enforce the Genocide Convention rather than just a clause. This has strengthened the role of the Convention as a ‘living instrument.’

Following the *Bosnia Genocide* case, the ICJ had a more complex situation in the case of *Croatia v. Serbia*, where there was a narrow interpretation of Article IX. The most important question was to assess whether the Genocide Convention applied to the acts prior to 27 April 1992 when the Federal Republic of Yugoslavia (FRY) became a party to the Convention. During the merits stage, the Court stated that “although the absence of a temporal limitation in Article IX is not without significance, it is not sufficient to establish

---

<sup>79</sup> *ibid*, n. 79

<sup>80</sup> *ibid*, n. 79

<sup>81</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007.

<sup>82</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment of 3 February 2015, ICJ Reports 2015.

<sup>83</sup> *ibid*, n. 69.

jurisdiction over that part of Croatia's claim."<sup>84</sup> This decision demonstrated a cautious approach compared to the *Bosnian Genocide* case. Bosnia emphasized on the humanitarian and practical sense of Article IX while *Croatia v. Serbia* case emphasized on the limitations.

In another instance, a case between Rwanda and Congo the Court finds that both States parties to the Convention, however, Rwanda's accession includes these wordings: "The Rwandese Republic does not consider itself as bound by article IX of the Convention." Congo has challenged this reservation, as also observed in the case of *Sudan v. United Arab Emirates*.<sup>85</sup> The Court states that "the rights and obligations enshrined by the Convention are rights and obligations *ergo omnes*" and that, as it already had pointed out, "the *ergo omnes* character of a norm and the rule of consent to jurisdiction are two different things" and that it does not follow from the mere fact that rights and obligations *erga omnes* are at issue in a dispute that the Court has jurisdiction to adjudicate upon that dispute.<sup>86</sup>

It was seen that the Genocide Convention does not prohibit any form of reservation, but here Congo did not object to Rwanda's reservation under Article IX at the time it was made, so, this only bears by the Jurisdiction of the Court. Thereby, this reservation is not contrary to the object and purpose of the Convention.<sup>87</sup> These cases shows that *erga omnes* of the Genocide Convention protects humanity but the ICJ's jurisdiction is limited to procedural consent. As observed by Xaba, "this challenge brings to fore an issue that has been controversial for decades, the question of reservations that ouster the jurisdiction of the court in the Genocide Convention as well as other treaties with *erga omnes* status."<sup>88</sup> This shows that the importance of Article IX is undermined even though it is in the center acting as a mechanism of enforceability, this could also undermine the main purpose of the Genocide Convention, to prevent and punish genocide.

A timely example regarding the relevance of Article IX and reservations was posted on the *Opinio Juris* website an article written by Diamond. Diamond stated that, "of the 153 States parties to the Genocide Convention, there remain sixteen States with Article IX reservations on the books, in effect shielding a fringe group of States from any

---

<sup>84</sup> AKHAVAN, Payam (2015). Balkanizing Jurisdiction: Reflections on Article IX of the Genocide Convention in *Croatia v. Serbia*. *Leiden Journal of International Law*, 28, 893–897 [online]. <https://doi.org/10.1017/S0922156515000473>

<sup>85</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (*Sudan v. United Arab Emirates*), Order of 5 May 2025, I.C.J. Reports 2025 Case No. 197.

<sup>86</sup> *ibid*, n. 76

<sup>87</sup> *ibid*, n. 76

<sup>88</sup> XABA, Zwelithini E (2025). Why the Sudan's Case Against the UAE at the ICJ Has Limited Prospects of Success. *AfricLaw*. [online] <https://africlaw.com/2021/06/01/the-cost-of-separating-powers/>

judicial scrutiny into their responsibility for suspected breaches of Genocide Convention.”<sup>89</sup> This statement gives effect to what was stated in *Congo v. Rwanda* case, regarding undermining ICJ’s ability to adjudicate disputes. Furthermore, Diamond sets forth a convincing argument that the ICJ ‘evidently erred in assuming that substantive provisions are more germane to the object and purpose of a treaty than procedural provisions.’ Article IX of the Convention plays a key role in enforcing State responsibility for genocide, this provides the Court with ample jurisdiction related to disputes between State parties.

---

<sup>89</sup> DIAMOND, Yonah (2025). The Invalidity of Art. IX Reservations to the Genocide Convention. *Opinio Juris* [online]. <https://opiniojuris.org/2025/03/12/the-invalidity-of-art-ix-reservations-to-the-genocide-convention/>

## II. STATE OBLIGATIONS UNDER THE CASE LAW OF THE INTERNATIONAL COURT OF JUSTICE

The second chapter of the thesis will explore the key State obligations under the Genocide Convention, as interpreted by the jurisprudence of the ICJ. It will be seen that, even though the Convention does not establish individual criminal responsibility, it has created binding duties on State Parties to work towards preventing genocide and punish perpetrators. The chapter is divided in to three sections; 2.1 discusses the direct responsibility on State Parties mainly focusing on the obligation of not to commit genocide, 2.2 addresses the indirect responsibility of the States mainly focusing on how ICJ defines due diligence standards and obligations to prevent genocide; lastly 2.3 examines the obligations of State Parties to prosecute or to extradite.

### 2.1 Direct Responsibility of State Parties and Obligations not to Commit Genocide

Article I of the *Genocide Convention* enshrines the most fundamental obligation for State Parties. It expressly states, that “whether committed in time of peace or in time of war, genocide is considered as a crime under international law which the Contracting Parties undertake to prevent and to punish.”<sup>90</sup> The Article is important because it shows genocide as grave violation that involves the responsibilities of the States. This Article vests direct responsibility on States to not engage in any acts of genocide. Even though, initially the Convention was drafted in terms of ‘individual criminal responsibility,’ the case laws and judicial precedents of the ICJ demonstrates that Article I can also impose direct obligations towards State Parties, to make them accountable for the acts committed by them and for any instances they failure to prevent and punish genocide.<sup>91</sup>

In relation to obligations set out by Article I, the ICJ’s rationale is based on the understanding that a State can, by definition, commit genocide through the official agents or organs.<sup>92</sup> This approach was seen in the case of *Bosnia and Herzegovina v Serbia and Montenegro*, where the Court affirmed that the Convention forbids both the State and specific persons from carrying out acts of genocide.<sup>93</sup> Moreover, Article IV of the Genocide Convention, stated unequivocally that “persons committing genocide, shall be punished, whether they are constitutionally responsible rulers, public officials, or private

---

<sup>90</sup> *Ibid*, n. 23, Article I.

<sup>91</sup> HAKIMI, Monica (2010). State Bystander Responsibility. *The European Journal of International Law*. 21(2). pp. 480-481. [online]. <https://www.ejil.org/pdfs/21/2/2010.pdf>

<sup>92</sup> *Ibid*

<sup>93</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, ICJ Reports 2007.

individuals,” served as the foundation for this interpretation. By stating the terms “rulers” and “public officials” the Court has undermined that State agents may act on behalf of the State, implying both State accountability and personal criminal liability. Based on this, the Court explained that under the conventional standards of State responsibility, a state bears responsibility for genocide when actions that fit the description in Article II can be attributed to it. Hence, when two conditions are met, genocide becomes an internationally wrongful act of the State: (a) the material elements of genocide, such as killing, causing serious bodily or mental harm, or other acts listed in Article II, are proven; and (b) those acts were carried out with the necessary *dolus specialis*<sup>94</sup>, or intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.<sup>95</sup> This was seen in *Croatia v Serbia*, where the Court found out that, “obligations of *erga omnes* and that the prohibition of genocide has the character of a peremptory norm (*jus cogens*).”<sup>96</sup>

Another principal factor to determine direct State responsibility is attribution, which was evident in the case of *Bosnia v Serbia*, where the ICJ focused on “The question of attribution of the Srebrenica genocide to the Respondent based on direction or control. The Court then determines whether the massacres at Srebrenica were committed by persons who, though not having the status of organs of the Respondent, nevertheless acted on its instructions or under its direction or control.”<sup>97</sup> This is called the ‘effective control test,’ which was set out in the case of *Nicaragua v. United States*<sup>98</sup>. When applying this test, ICJ found out that genocide at Srebrenica (1995) constituted genocide within the meaning of the Convention, but it was not attributable to Serbia because the Bosnian Serb forces (the VRS) were not under the “effective control” of the Serbian State. ‘The question is whether such acts can be attributed to organs of the Respondent or to persons acting under its instructions or under its effective control.’<sup>99</sup> Thereby, in this case it was seen that Serbia’s responsibility failed because they did not prevent or punish genocide. This logic has faced scholarly criticism for establishing an unduly elevated standard for attribution, so protecting States that exert considerable but indirect influence on non-State actors.<sup>100</sup>

---

<sup>94</sup> Special deceit - (1) A harm resulting from an act specifically intended to cause that harm. (2) The specific intent to cause a specific kind of harm.

<sup>95</sup> MILANOVIĆ, Marko (2006). State Responsibility for Genocide, *European Journal of International Law*, 17(3), pp.6535. [online]. <https://doi.org/10.1093/ejil/chl019>

<sup>96</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, ICJ Reports 2007.

<sup>97</sup> *Ibid*

<sup>98</sup> Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Merits), judgment of 27 June 1986, at paras. 105 – 115

<sup>99</sup> *ibid*, n.98

<sup>100</sup> CASSESE, Antonio (2007). The *Nicaragua* and *Tadic* Tests Revisited in Light of the ICJ Judgement on Genocide in Bosnia. *European Journal of International Law*, 18(4), pp.650. [online] <https://doi.org/10.1093/ejil/chm034>

Conversely, the ‘overall control’ test<sup>101</sup> resorted in *Tadić*,<sup>102</sup> was used to assess ‘if it can possibly be applicable when determining whether an armed conflict is international, or ‘ unpersuasive ‘ if used to establish whether a state is responsible for acts performed by armed forces.’<sup>103</sup> The ICJ’s assertion is that the ‘ overall control’ test has a major drawback of excessively broadening state responsibility by going beyond the three ILC standards stated in Article 8 of the Articles on State Responsibility. Yet, the ICJ used the standard of ‘effective control’ test, where States are held responsible for the acts where States had control, but still genocide occurred.<sup>104</sup> Even though this states a distinction between State and individual responsibility, it opens a lacuna for enforcement purposes.

As seen in Chapter I, the mental element (*dolus specialis*) of genocide creates significant challenges to practice State responsibility. The ICJ held in the case of *Bosnia and Herzegovina v. Serbia and Montenegro* that intent should be proved beyond reasonable doubt. “It would be paradoxical, if States were thus under an obligation to prevent, but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law.” The Court determined that, while the atrocities in Srebrenica demonstrated the necessary intent on the part of individual military officials, there was insufficient evidence to prove that the intent to destroy the Bosnian Muslim minority extended to Serbian central authorities. This restricted evidential method has been attacked for limiting the Convention’s scope, particularly in cases when genocidal programs are carried out through deniable proxies.<sup>105</sup> This judgement has undermined the powers given by Article I of the Genocide Convention.

More emphasis could be added through the analysis of scholarly comments related to the scope of State obligations vested by the Convention. To this Gaeta in her analysis on, ‘On What Conditions Can a State Be Held Responsible for Genocide?’ argues that ‘nowadays nobody would dare to deny that customary international law contains a rule

---

<sup>101</sup> The “overall control” test had been suggested by the ICTY with respect to the question of determining whether an armed conflict was international and not with regard to the different issue of state responsibility; secondly, in any case the test would have overly broadened the scope of state responsibility.

<sup>102</sup> *The Prosecutor v. Duško Tadić* [1999], IT-94-1-Tbis-R117

<sup>103</sup> SASSOLI, Marco and LAURA, M Olson (2000), *Prosecutor v. Tadic* (Judgement). Case No. IT-94-a-A. 38 ILM 1518 (1999). *American Journal of International Law*, 94(3), pp. 571 [online]. DOI 10.2307/2555326

<sup>104</sup> See Note 104

<sup>105</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007.

prohibiting states from committing genocide. It is contended that such a rule not only exists, but also belongs to *jus cogens*.<sup>106</sup>

According to the discussion above related to the main obligations vested on States to not commit genocide, the ICJ has clarified through judicial precedence the outcomes of violating these obligations. The Court in the *Bosnian Genocide* case mentioned that prohibiting genocide is an absolute right.<sup>107</sup> This is where the Genocide Convention is considered as a legal instrument that exists beyond the scope of criminal law because the Convention bridges responsibility of states and the enforcement through the Security Council or the UN General Assembly.

Thereby, the obligation of the states to not commit genocide serves as the foundation for the prevention and punishment obligations. The ICJ has defined these obligations as ‘distinct but complementary.’ In simple terms, the duty to prevent is when states avoid commission and the duty to punish is where a state is held accountable for violations. A state that commits genocide invariably fails its preventive commitment, but the opposite is not always true. Even though these two obligations are necessary, the negativity that is surrounded serves as the legal basis to determine the State obligations.<sup>108</sup> Therefore, it could be seen that the UN Genocide Convention playing a dual role to prevent and punish genocide.

## **2.2 Indirect Responsibility of State Parties: Preventive Duties and the Due Diligence Standard**

The first thing to note is that the concept of ‘due diligence’ is not new to international law. It was recognized as early as 1872 in the *Alabama Arbitration* case, where the issue of due diligence arose in relation to the US’s allegation that the UK did not fulfil its duties of neutrality during the American Civil War (1861-65).<sup>109</sup> That said, “the term ‘due diligence’ is trickier to define, particularly since definitional nuances and associated normative parameters can differ between legal regimes in which the principle of due diligence can be found.” Though no uniform, widely agreed, definition of due diligence exists, nonetheless

---

<sup>106</sup> PAOLA, Geta (2007). On What Conditions can a State Be Held Responsible for Genocide?. *European Journal of International Law*, 18(4), pp. 632. [online]. <https://doi.org/10.1093/ejil/chm037>

<sup>107</sup> MOHAMED, Saira (2009). A Neglected Option: The Contributions of State Responsibility for Genocide to Transitional Justice. *University of Colorado Law Review*. 80(2). pp. 327. [online] <https://scholar.law.colorado.edu/lawreview/vol80/iss2/3/>

<sup>108</sup> *Ibid*

<sup>109</sup> KATJA, Samuel (2018), *The Legal Character of Due Diligence: Standards, Obligations, or Both?* Central Asian Yearbook of International Law 1(1), p. 30-34, SSRN: <https://ssrn.com/abstract=3264764>

key aspects of due diligence are identifiable, such as the indivisible element of “due, or merited, care” which lies at its core.<sup>110</sup>

It is seen that a crucial element of the Genocide Convention apart from prohibition is that it imposes an obligation on the States to prevent such acts of genocide. These two obligations; prevent and prohibit, are the most common and centerpieces of the Convention. Article I provides that the Contracting Parties “under international law should undertake to prevent and to punish” this creates complementary duties.<sup>111</sup> In the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ stated that the obligation to prevent genocides is independent and it is distinct from the obligation to punish, where the ICJ has confirmed that the obligation to prevent genocide operates independently of the obligation to punish, the preventive duty therefore functions as an expression of collective responsibility, translating moral imperatives into binding legal standards applicable to all States Parties. The Court explained that the obligation of the State is measured by due diligence and not its outcomes. “A State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. The obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, to prevent genocide so far as possible.”<sup>112</sup> This was seen as the ICJ explained regarding the serious risk threshold.

Schabas has analyzed and highlighted further regarding the duty to prevent is enforceable. In his article has stated that, “the Court’s decision confirms that the duty to prevent genocide is not merely rhetorical but entails concrete measures which States must adopt in proportion to their capacity to influence the actors and the circumstances.” This was seen as a transformation of Article I of the Genocide Convention into an enforceable duty.<sup>113</sup> Moreover, it can also be stated that the obligation to prevent genocide is one of conduct, not of result: a State cannot be held responsible for the mere occurrence of genocide, but it can incur responsibility if it fails to take reasonable measures to avert it.<sup>114</sup> The ICJ in Serbia’s case said that, “Serbia’s responsibility stemmed not from

---

<sup>110</sup> *Ibid*

<sup>111</sup> *ibid*, n. 23, Article I.

<sup>112</sup> Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany), Declaration of Judge Cleveland

<sup>113</sup> SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press

<sup>114</sup> *Ibid*

complicity but from omission; it possessed the means to prevent the genocide yet failed to use them.” This is a state’s omission and indirect responsibility. Thus, prevention is not a uniform standard but an inconsistent standard.<sup>115</sup> Here, the States are evaluated based on their ability to act towards preventing by using all means available.

Based on the above, omission aligns with the due diligence framework by the ICJ. As stated by Rosenberg “according to the ICJ, the duty to prevent is an obligation of conduct and not a duty of result.”<sup>116</sup> This means that the states must do everything they can including modifications to their own domestic laws to prevent actions of genocide. In case of failure, states will not be held automatically responsible for lack of prevention but will be provided the opportunity to demonstrate that they had used the due diligence required by the convention.<sup>117</sup> This was directly viewed in the decision of the *Bosnian Genocide* case, where the ICJ declared that ‘the obligation to prevent genocide is territorially unlimited.’ So, a state must prevent genocide, on acts which are even committed outside its borders. It was also stated that the countries have a sole duty to interfere in sovereign sphere of another state who are about to commit or are going to tolerate genocides.<sup>118</sup>

In addition, the *Bosnian Genocide* case, the Court found that a state’s obligation to prevent genocide under Article I of the Genocide Convention, and the corresponding duty to act, “arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed”<sup>119</sup>. This is seen as the introduction of constructive knowledge, which means that ‘the assumption that a person should have been aware of a particular fact or circumstance due to their responsible behavior or level of attention.’<sup>120</sup> When is State is fully aware that there is some risk, they cannot plead ignorance. Thereby, the preventive actions arises as soon as there is some evidence regarding any actions of atrocities.<sup>121</sup> So, based on the jurisprudence of the ICJ, States are obliged to respond early rather than to react to any completed crimes. This could weaken the practical aspect of the Convention; to prevent genocide. The Court decided that Serbia wielded significant power over Bosnian Serb forces and was fully aware of the

---

<sup>115</sup> *Ibid*, n. 107

<sup>116</sup> ROSENBERG, Sheri P (2012). Genocide Is a Process, Not an Event. *Genocide Studies and Prevention: An International Journal*, 7(1). <https://digitalcommons.usf.edu/gsp/vol7/iss1/4>

<sup>117</sup> ROSENBERG, Sheri P (2012). Genocide Is a Process, Not an Event. *Genocide Studies and Prevention: An International Journal*, 7(1). <https://digitalcommons.usf.edu/gsp/vol7/iss1/4>

<sup>118</sup> *Ibid*

<sup>119</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007 (I), p. 222, para. 431.

<sup>120</sup> *ibid*

<sup>121</sup> ZIMMERMANN, Andreas (2011). *The Obligation to Prevent Genocide: Towards a General Responsibility to Protect?*. Oxford: Oxford University Press, pp. 645.

possibility of genocide.<sup>122</sup> Despite these circumstances, it did not take any diplomatic, political, or other actions to discourage the criminals.<sup>123</sup>

One of the most essential elements used to assess the obligation of preventing genocide is ‘due diligence.’ As per the *Bosnian Genocide* case, which says that prevention is “conduct and not a duty of result”.<sup>124</sup> According to Koivurova and Singh, “due diligence can best be viewed as a concept that lies at the interface between primary rules of conduct and secondary rules of State responsibility. It is part of the subjective component of State responsibility, but its content varies between different primary rule sets in international law. Due diligence has traditionally been invoked in situations where it establishes the legal responsibility of a State in connection with the behaviour of private actors that cannot be attributed directly to the State. The obligation of due diligence in these cases stems from a State’s exclusive power over certain areas and entities.”<sup>125</sup> Ridings discusses the concept of due diligence during the nineteenth-century where State practice and arbitral decisions in the context of the law of neutrality and the protection of aliens and their property.”<sup>126</sup> This historical development shows how the ICJ has viewed prevention, because the States are required to exercise vigilance and take reasonable precautions to avert foreseeable harm.<sup>127</sup> This approach is seen to be avoiding unnecessary standards on State Parties, and it creates a flexible standard to ensure compliance.

When seeing how the ICJ has applied due diligence in their decisions, it can be concluded that the Court has evaluated the States’ capacity, resources, and the level of control used to prevent genocide. The *Nicaragua* case is relevant here since it shows that a State does not always need to overachieve. The ICJ held that when considering whether Nicaragua had breached its due diligence obligations by failing to prevent the trafficking of arms through its territory that were then used by armed opposition in El Salvador. The Court found that, “it would clearly be unreasonable to demand of the Government of Nicaragua a higher degree of diligence than is achieved by even the combined efforts of the other three States (including the US)”, the Court also referred to “the much smaller resources at its disposal for subduing this traffic.”<sup>128</sup> Although, in the *Tehran Hostage*

---

<sup>122</sup> *Ibid*

<sup>123</sup> *Ibid*, n. 123

<sup>124</sup> ROSENBERG, Sheri P (2012). Genocide Is a Process, Not an Event. *Genocide Studies and Prevention: An International Journal*, 7(1). <https://digitalcommons.usf.edu/gsp/vol7/iss1/4>

<sup>125</sup> KOIVUROVA, Timo and SINGH, Kritika (2022). *Due Diligence*. Oxford: Oxford University Press, [online] <https://opil.oup.com/display/10.1093/law/epil/9780199231690/law-9780199231690-e1034?print=pdf>

<sup>126</sup> RIDINGS, Penelope (2025). Annex II: Due Diligence in International Law. [online] <https://legal.un.org/ilc/reports/2024/english/annex2.pdf>

<sup>127</sup> *Ibid*

<sup>128</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

case,<sup>129</sup> the ICJ has a view that ‘Iran’s means were sufficient to meet its international obligations, but that these had not been deployed sufficiently.’<sup>130</sup> This method of differentiating between the financial means of states is similarly reflected within other legal regimes, such as in international environmental law. Similarly, in *Trail Smelter* case,<sup>131</sup> the court evaluated ‘the required standard of due diligence against Canada’s capacity as a state to adopt measures aimed at limiting the possibility of transboundary damage from occurring, including by improving emissions control technologies.’<sup>132</sup> This pattern has shown the approach of the ICJ in the *Bosnian Genocide* case; related to the obligation to prevent by taking all measures possible.

Another element used to assess the obligation of preventing genocide is the ‘knowledge factor’ which plays a pivotal role in promoting the duty to prevent. The ICJ has used a standard test for the *Bosnian Genocide* case. If a state falls short of the required standard for example, if it “knew or ought to have known” of the situation, and failed to “take appropriate measures” or “to exercise due diligence to prevent” or “to do all that could be reasonably expected of it”, it will be considered to have acted negligently and, therefore, to have breached its due diligence obligations.<sup>133</sup> This boundary allows State’s not to avoid liability for wrong doings. A similar approach was evident in the case of *Gambia v. Myanmar* where it was seen that since there was a serious risk to the Rohingya people, this triggered Myanmar acting immediately to take all prevention measures.<sup>134</sup> Moreover, several more specific characteristics of due diligence are discernible too from the Alabama Arbitration case. The first is its variable and contextual nature. As Cockburn observed, citing Mr. Justice Story in *Alabama Arbitration* case, “in different times and in different countries the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle.”<sup>135</sup> This statement shows that due diligence is not rigid.

The interpretations of the ICJ made in the *Bosnian Genocide case* reveals that the duty to prevent is an external dimension, where the Court stated that the duty to prevent is

---

Merits, Judgment. I.C.J. Reports 1986

<sup>129</sup> United States Diplomatic and Consular Staff in Tehran, *United States v Iran*, Judgment, ICJ GL No 64, [1980] ICJ Rep 3, ICGJ 124 (ICJ 1980), 24th May 1980, United Nations [UN]; International Court of Justice [ICJ]

<sup>130</sup> *Ibid*

<sup>131</sup> *United States v. Canada*, 3 R.I.A.A. 1905 (Trail Smelter Arbitration 1941)

<sup>132</sup> *Ibid*

<sup>133</sup> KATJA, Samuel (2018), *The Legal Character of Due Diligence: Standards, Obligations, or Both?* Central Asian Yearbook of International Law 1(1), p. 30-34, SSRN: <https://ssrn.com/abstract=3264764>

<sup>134</sup> *Ibid*

<sup>135</sup> Cockburn’s Dissenting Opinion, *The London Gazette* 1872, above n 59, pp. 4141-4142

‘one of conduct and not territorially limited.’<sup>136</sup> The Convention is broadly explained here to include that the states are obliged to act against acts of genocide even when its outside their territories. This interpretation reflects on the *erga omnes partes* character where each state has a common interest to achieve the obligations set forth in the Genocide Convention. The states must ensure to take all lawful steps to prevent genocide.<sup>137</sup>

In a broader perspective, prevention is also connected with the international law doctrine of collective responsibility. One way guilt attaches to a collective is when it accepts responsibility for a damage that has occurred. In practical sense, this is when cases will be referred to the UN Security Council, where there can be warning issued at initial stages. By recognizing these aspects, the Court has included the Genocide Convention into a larger network of collective security commitments.<sup>138</sup>

As seen in the previous sections, the ICJ does not explicitly state in Article I of the Genocide Convention that an obligation to prevent should include early warnings. But the *Bosnian Genocide* case has clearly set out the fact that prevention starts as soon as a State knew or ought to have known regarding a genocide. The preventive obligation also entails a procedural dimension akin to an early-warning duty. This derives the principle of ‘Responsibility to Protect (R2P).’<sup>139</sup> According to Genser, “R2P was meant to provide an implementation mechanism for the international community to respond to governments that were perpetrating mass atrocity crimes.”<sup>140</sup> Despite the ICJ’s precise definition of the preventive duties, the practical use of it is inconsistent. The decision in *Bosnia v Serbia* has not been followed by systematic state action in following crises, such as Darfur, Syria, and Myanmar. The jurisprudence of the ICJ has established a legal framework for states and to utilize in order to justify the preventive measures.<sup>141</sup> The provisional measures issued in the case of *Gambia v. Myanmar* is seen as an example where Myanmar was required to submit reports related to compliance and how they exercise the duty to prevent. The Court revealed through the help of the Genocide Convention, serves as an important aspect to exercise the obligations vested upon states.

---

<sup>136</sup> HEIECK, John (2018). *Chapter 1: The P5’s duty to prevent genocide under the Genocide Convention*. UK: Edward Elgar Publishing, pp. 15. [online] <https://doi.org/10.4337/9781788117715.00007>

<sup>137</sup> *Ibid*

<sup>138</sup> KLABBERS, Jan (2002). *An Introduction to International Institutional Law*. Cambridge: Cambridge University Press, pp. 60.

<sup>139</sup> According to the UN R2P means a that all States have a responsibility to protect and end any forms of violence of genocide, war crimes, ethnic cleansing, or prosecutions.

<sup>140</sup> GENSER, Jared (2018). The United Nations Security Council’s Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement. *Chicago Journal of International Law*, 18(2). [online]

<sup>141</sup> *Ibid*

### **2.3 Obligation of State parties to enforce individual criminal responsibility or extradite.**

Another aspect of the obligations of States under international criminal law is captured by a formula known as *aut dedere aut iudicare*, which primarily means to extradite or prosecute. This concept was first proposed by Hugo Grotius in 1625, where he said that, “the State...ought to do one of two things ... It should either punish the guilty person as he deserves, or it should entrust him to the discretion of the party making the appeal. This latter course is rendition. People or king is not absolutely bound to surrender a culprit, but ...either to surrender or to punish him.” The choice is up to the requested State who has the right to choose to prosecute rather than to extradite. For instance, when there could be issues related to fairness of the prosecution by the so-called requesting State.<sup>142</sup>

Moreover, the combination of Articles IV, V and VI imposes a duty on State Parties to deliver criminal responsibility and punish offenders, to adopt implementing legislation and to prosecute or extradite them for the offences committed.<sup>143</sup> In such cases, the ICJ has played a key role in interpreting these provisions to fit into cases of such nature. Because it is legally binding, separate from the State’s prohibitions on committing genocide, and helpful to the Convention’s preventive and retributive goals, its jurisprudence affirms that the duty to prosecute or extradite is an important aspect for States’ compliance with the Convention.<sup>144</sup>

The ICJ has played a key role to ensure the scope of the obligations, it is seen that the duty to prosecute. The evolving cases brought before the ICJ confirms this scope. As seen in *Belgium v. Senegal* case,<sup>145</sup> questions the Court on the rule that Senegal must prosecute Mr. H. Habré for crimes such as crimes against humanity and torture, and if the prosecution is unable to do so, must extradite him to Belgium. Although the case focuses on a state’s principal obligation rather than a secondary one, it illustrates how states appear to be less reluctant to submit ideas for national implementation these days. There seems to be a similar trend in the developments at other international courts and tribunals, including the regional human rights tribunals. Having previously taken a cautious approach to the matter, they are now increasingly choosing national investigations and prosecutions as a remedy in their reparations judgments.<sup>146</sup> Contrastingly, it was stated by Ingadottir that the

---

<sup>142</sup> *Ibid*

<sup>143</sup> *Ibid*, n. 23, Article IV, V and VI

<sup>144</sup> *Ibid*, n. 144

<sup>145</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*).

<sup>146</sup> INGADOTTIR, Thordis (2009). The ICJ Armed Activity Case: Reflections of States’ Obligations to

Court's jurisprudence establishing the state's primary obligation to prosecute is not extensive.<sup>147</sup>

The duty to refer the case to the appropriate authorities for prosecution is a duty under the Convention, "the violation of which is a wrongful act engaging the responsibility of the State," as the ICJ and the "Hague formula" confirmed in the *Habré* case. The only way the forum state can avoid this duty is to extradite the suspect to a state party that makes the extradition request. The forum State can only decide whether to forward the matter to its own competent authorities for prosecution or to respond positively to the extradition request and transfer the defendant to the requesting State after receiving such a request. If there was no such request, then it should be referred to its own capable authorities for prosecution.<sup>148</sup>

The UN Genocide Convention explicitly shows this duty in Article IV where it states that, "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" and Article V states that "the Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III." Whereas, Article VI provides that, "persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction." Article IX (described below in its adjudicative role) provides a judicial venue in which inter-State disputes over the meaning or application of these enforcement duties can be resolved by the ICJ. When read together, these clauses form a two-pronged enforcement regime: internal criminalization and prosecution, supported by extradition where appropriate, and subject to inter-State judicial supervision where States disagree on compliance.<sup>149</sup>

---

Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the Geneva Conventions. *Nordic journal of International Law*. 78, pp. 583. [online] <https://www.ohchr.org/sites/default/files/documents/issues/torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-ThordisIngadottir-1.pdf>

<sup>147</sup> *Ibid*

<sup>148</sup> SCHMIDT, Roland (2019). *Aut Dedere aut Judicare* [online]. Oxford Commentaries on International Law Pro <https://doi.org/10.1093/law/9780198846178.003.0009>

<sup>149</sup> *ibid*, n. 23, Article IX

In addition to the above, the ICJ in the case of *Bosnia and Herzegovina v Serbia and Montenegro*<sup>150</sup> explains the enforcement obligations. The Court emphasized that the responsibility to punish genocide is separate from and in addition to the responsibility to prevent. According to the Court, states are required by Article IV to pass laws punishing genocide, and this obligation is “independent” of whether the state has committed genocide; failing to pursue prosecutions or work with international criminal justice systems could constitute a violation of the Convention. Importantly, the Court determined that duties under the Convention “are of an autonomous character,” the responsibility to punish materially advances the object and purpose of the Convention.<sup>151</sup>

---

<sup>150</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*).

<sup>151</sup> *Ibid*

### **III. THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN ENSURING COMPLIANCE OF STATE PARTIES**

The ICJ plays a key role as the principal judicial organ on the United Nations, which has been delegated for the application and interpretation of the Genocide Convention. The ICJ provides for the judicial enforcement of the obligations vested by the Convention. In this sense, ICJ authority extends beyond dispute settlement. The Court ensures that all State Parties comply with their obligations and guidelines.

This chapter assesses how the ICJ in practice exercises enforcement, through provisional measures and final judgements. This section evaluates the legal effects of provisional measures, analysis of recent landmark cases to illustrate the role of the ICJ in ensuring compliance of State parties. Lastly, the chapter considers challenges of enforcement. It will be seen that while the ICJ's capacity to induce compliance is confined, the jurisprudence includes important sources which leads to prevent and punish genocide.

#### **3.1 Enforcement through Provisional Measures and Judgements of The International Court of Justice**

Article 41 of the International Court of Justice states that the Court has power to indicate provisional measures if they are satisfied with the circumstances and the final decision of the measures should be informed to the parties and to the Security Council.<sup>152</sup> This gives power to the ICJ to order legally binding provisional measures. According to Kempen and He, "provisional measures in international law refer to orders issued to the parties in an ongoing dispute to preserve their rights and prevent irreparable harm until a final decision is rendered."<sup>153</sup>

The application of Article 41 in cases relating to genocide holds a significant position because these acts are repetitive,<sup>154</sup> and these could escalate faster. Usually, these provisional measures issued by the ICJ are referred to as 'orders.' Thereby, the provisional measures could impose obligation on parties to take a certain action or to prevent taking such action or behave in a specific conduct. These orders may also call on the parties to halt violations of international law.<sup>155</sup> Provisional measures give power to the ICJ to

---

<sup>152</sup> Statute of the International Court of Justice 1946, Article 41

<sup>153</sup> KEMPEN, B and HE, Z (2009). The Practice of the International Court of Justice on Provisional Measures: The Recent Development. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 69(3). pp. 920. [online]. [https://www.zaoerv.de/69\\_2009/69\\_2009\\_4\\_a\\_919\\_930.pdf](https://www.zaoerv.de/69_2009/69_2009_4_a_919_930.pdf)

<sup>154</sup> *Ibid*

<sup>155</sup> KARAOGLU, Ali Osman (2025). Assessing The Effectiveness and Adequacy of Provisional Measures in Genocide Cases: A Comparative Study. *Journal of Balkan Studies*. 5(1). pp. 7-8. [online].

intervene and order State parties to take necessary actions to prevent genocides. Moreover, it is seen that provisional measures are remedies granted in exceptional cases by Courts. They aim to the rights of the parties pending decision from the Courts.<sup>156</sup>

### 3.1.1 Legal Authority and Effects of Provisional Measures

Panagis has stated in his article has stated that the orders provisional measures by the ICJ are legally binding, and non-compliance could result in violations of obligations by the States.<sup>157</sup> He further identifies the case of *Germany v. United States (LaGrand case)* as a landmark decision related to provisional measures where the ICJ mentioned about the binding nature of provisional measures. After this judgement, ICJ has received may cases compared to what was received almost fifty years prior. For most scholars, these provisional measures serve are part of a litigation strategy, where certain States are more interested in obtaining orders based on these measures rather than interested in proceeding with the case further. Compliance with provisional measures is key for requesting states and for the states which bears the obligation of compliance, non-compliance is also common in such situations.<sup>158</sup> Therefore, with the birth of the judgement in the *LaGrand* case, ICJ has “has shown a willingness, at the stage of the merits, to assess compliance with its orders on provisional measures when it is requested to do so. Not all cases, however, in which provisional measures have been indicated culminate in a judgment on the merits.”<sup>159</sup>

After the order of a provisional measure, “the usual practice is that the case may be discontinued, or, more commonly, the Court may find that it cannot adjudicate the dispute on the merits. In such instances, the question arises whether the Court, while not proceeding to the merits, may nonetheless entertain any claims of non-compliance with its previously issued orders on provisional measures.”<sup>160</sup> The modifications of the pre-existing legal situation, rights, and obligations which are imposed on parties are judicial pronouncements that has a constitutive effect. Usually, provisional measures have these

---

<https://doi.org/10.51331/A057>

<sup>156</sup> ACERIS Law (2024). Provisional Measures Through the Lens of the ICJ’s Decision in South Africa v. Israel [online]. [https://www.acerislaw.com/provisional-measures-through-the-lens-of-the-icjs-decision-in-south-africa-v-israel/#\\_ftn7](https://www.acerislaw.com/provisional-measures-through-the-lens-of-the-icjs-decision-in-south-africa-v-israel/#_ftn7)

<sup>157</sup> PANAGIS, Nikiforos (2024). Jurisdictional Entanglement: the Relationship between the Jurisdiction over a Dispute and the Jurisdiction to Assess Compliance with Provisional Measures. *The Law & Practice of International Courts and Tribunals* 23, 1, 7-35, <https://doi.org/10.1163/15718034-bja10113>

<sup>158</sup> *Ibid*

<sup>159</sup> *LaGrand, Germany v. United States*, Judgment, Jurisdiction, Admissibility, Merits, ICJ GL No 104, [2001] ICJ Rep 466, (2001) 40 ILM 1069, ICGJ 51 (ICJ 2001), 27th June 2001]

<sup>160</sup> PANAGIS, Nikiforos (2024). Jurisdictional Entanglement: the Relationship between the Jurisdiction over a Dispute and the Jurisdiction to Assess Compliance with Provisional Measures. *The Law & Practice of International Courts and Tribunals* 23, 1, 7-35, <https://doi.org/10.1163/15718034-bja10113>

legal effects since they create temporary legal obligations on one or both parties. The ICJ has repeatedly affirmed that specific orders it has issued “created legal obligations,” with which the relevant party or parties were legally bound to comply. For this, Miles has stated that, “the obligation that a provisional measure imposes arises entirely at the instigation of the judiciary and its scope and content are defined by the Court on a case-by-case basis.”<sup>161</sup> International courts and tribunals have not yet answered the question whether non-compliance jurisdiction is sufficient to use in the absence of main jurisdiction. This is a complex issue because provisional measures are usually ordered in urgent scenarios; related to genocide cases, where immediate protection for the people is required. In absence of supervisory powers, States tend to avoid accountability where they can challenge the jurisdiction of the ICJ. There is a growth of positive responses in literature, and it has become popular regarding this matter. These implications are accessed focusing on the authority affirmed in *LaGrand* case along with the case of *Belgium v. Senegal*, which discussed a pressing issue related to ‘plausibility of the protected right.’<sup>162</sup>

Furthermore, there have been general failures from parties to intentionally align with the Courts decisions, or could be said as ‘poor compliance with provisional measures’, certain judges like Her Lordship Oda stated separately in the case of *DRC v. Uganda*<sup>163</sup> that “if the Court agrees to be seized of the application or request for the indication of provisional measures of one State in such circumstances, then the repeated disregard of the judgments or orders of the Court by the parties will inevitably impair the dignity of the Court and raise doubt as to the judicial role to be played by the Court in the international community.” This is in connection with the argument stated by Huneus, “compliance nonetheless matters, particularly in the study of adjudication. It is the essence of legality. The rule of law is premised on the idea that all must obey the law. It is from the uniform application of rules to everybody that law derives its core legitimacy.”<sup>164</sup> Compliance is more than solving a dispute, its injunctive role of the ICJ is not limited to parties that does not comply. By exercising strong compliance, state parties can act as a role model by adhering to the norms to strengthen legitimacy and uphold the powers of the UN.<sup>165</sup> When it goes beyond issues of compliance, provisional measures are seen to

---

<sup>161</sup> CAMERON, Miles (2017). “Provisional Measures and the Margin of Appreciation before the International Court of Justice,” 8 JIDS, 1, 4.

<sup>162</sup> *Ibid*

<sup>163</sup> Armed Activities on the Territory of the Congo, the *Democratic Republic of the Congo v. Uganda*, Judgment, Merits, ICJ GL No 116, [2005] ICJ Rep 168, ICGJ 31 (ICJ 2005), 19th December 2005, Her Lordship Oda.

<sup>164</sup> HUNEEUS, Alexandra Valeria (2013). Compliance with International Court Judgements and Decisions. Oxford Handbook of International Adjudication. [online] <http://ssrn.com/abstract=2198595>

<sup>165</sup> See Note 183

serve institutional purposes. To this Ramsden stated that, “the court employed different tactics to ensure its relevance on a wider set of issues.” Furthermore, adds that these measures serve more purpose to interpret international law and assist States to take a broader vision regarding resolving the wider dispute.<sup>166</sup>

The relationship between compliance and provisional measures is widely evident in armed conflict cases. *Georgia v. Russia*<sup>167</sup> case serves as the clearest example of how, in armed conflict situations, urgency is frequently a given, given the elevated risk of irreversible damage to civilian life and property during armed hostilities, among other factors. A request for the indication of provisional measures will therefore have precedence over all other instances in accordance with Rule 74(1).<sup>168</sup> The Court in *LaGrand* rejected the argument that the measures were to be non-binding since the French word *indiquer* (indicate) was used instead of *ordonner* (order) in the preparation work for Article 41 of the ICJ Statute. The Court stated that “the lack of means of execution and the lack of binding force are two different matters” and attributed this wording to the fact that the Court does not have a way to enforce its rulings. Provisional measures are therefore directives that the parties must abide by.<sup>169</sup>

However, there have been instances where the requesting State has relied on more criteria of the jurisdiction. The Court considers the fact that based on one of these criteria the case will be dropped. For example, in the case of *Belgium v. Senegal*<sup>170</sup> the Court said that “the prima facie jurisdiction which the Court derives from the Convention against Torture is sufficient. The Court declined to evaluate Article 36 (2) of the Statute.”<sup>171</sup> As Uchkunova states, it could be assumed that the requesting State has sought measures which goes beyond the scope of the Convention (torture). By denying evaluating the alternatives, the ICJ risks issuing provisional measures that are not aligning with the legal rights.<sup>172</sup>

The Court was not prepared to adopt to these cases. ICJ stated here when the Court determines criteria for the implementation of Article 41, “it is incumbent on each party to

---

<sup>166</sup> RAMSDEN, Michael (2023). Strategic Litigation in Wartime: Judging the Russian Invasion of Ukraine through the Genocide Convention. *Vanderbilt Journal Of Transnational Law*. 56(1), pp. 181-182.

<sup>167</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination, *Georgia v Russian Federation*, Judgment on preliminary objections, ICJ GL No 140, ICGJ 429 (ICJ 2011), 1st April 2011

<sup>168</sup> WHITE, Jeremy (2003). A New Remedy Stresses the Need for International Education: The Impact of the Lagrand Case on a Domestic Court's Violation of a Foreign National's Consular Relations Rights Under the Vienna Convention. *Washington University Global Studies Law Review*, 2.

<sup>169</sup> *Ibid*

<sup>170</sup> Questions relating to the Obligation to Prosecute or Extradite, *Belgium v Senegal*, Judgment, ICJ GL No 144, ICGJ 437 (ICJ 2012), 20th July 2012

<sup>171</sup> *Ibid*

<sup>172</sup> UCHKUNOVA, Inna (2013). Provisional Measures before the International Court of Justice. *The Law & Practice of International Courts and Tribunals* 12(3), 392-393. Brill <https://doi.org/10.1163/15718034-12341263>

take the Court's indication seriously into account, and not to direct its conduct solely by reference to what it believes to be its rights." In cases of armed conflict, the Court may undo the actions and effects when there are no monetary claims.<sup>173</sup> Thereby, regarding interim measures the ICJ's judgement in *LaGrand* had a significant advancement. In *LaGrand*, the Court held that "claims concerning non-compliance with interim obligations which can only be raised after the filing of the application fall within that category. The Court stated that where the Court has jurisdiction to decide a case, it also has jurisdiction to deal with submissions requesting it to determine that an order indicating measures which seeks to preserve the rights of the Parties to this dispute has not been complied with."<sup>174</sup> Lastly, Panagis stated that, "In the aftermath of *LaGrand*, it was suggested that the Court might be equally circumspect with respect to claims for non-compliance with provisional measures and that it would decline to entertain them where the principal claim is dismissed for lack of jurisdiction or admissibility."<sup>175</sup>

### 3.1.2 International Court of Justice Case Law-Based Insights

This section analyzes the most recent landmark cases and the practical engagement of the ICJ with enforcement of State obligations under the Genocide Convention. The aim is to assess how the ICJ acts to promote compliance and to evaluate the impact of the interventions have had on State behaviour. This discussion revolves around four recent case laws: *Bosnia and Herzegovina v Serbia and Montenegro* (2007), *Croatia v Serbia* (2015), *Gambia v. Myanmar* (2020), and *Ukraine v Russian Federation* (2022). This section will focus on the judicial precedence of the ICJ rather than the facts of the cases. A separate discussion will follow for each case, to assess how the ICJ has articulated the scope of the State obligations and how it was structured the orders. By performing this comparative analysis, this section seeks to find out general patterns of the evolving role of the ICJ.

#### i. *Ukraine v. Russia*

In 2022, the Government of Ukraine filed a case with ICJ relating to 'a dispute on the interpretation, application and fulfilment of the UN Genocide Convention to order

---

<sup>173</sup> *ibid*

<sup>174</sup> PANAGIS, Nikiforos (2024). Jurisdictional Entanglement: the Relationship between the Jurisdiction over a Dispute and the Jurisdiction to Assess Compliance with Provisional Measures. *The Law & Practice of International Courts and Tribunals* 23, 1, 7-35, <https://doi.org/10.1163/15718034-bja10113>

<sup>175</sup> *Ibid*

provisional measures against Russia.<sup>176</sup> Ukraine requested to enforce immediate suspension of military operations.<sup>177</sup> The ICJ fast-tracked this procedure and stated that; Russia must suspend the military operations launched in Ukraine immediately, Russia must ensure that any military or irregular armed units directed or supported by it, and should not take any further steps to aggregate the operations, and lastly both Ukraine and Russia must refrain from any action which might aggravate or which would cause difficulty for the ICJ to solve.<sup>178</sup>

This case has shown that provisional measures not only settle disputes between States they play distinct roles. The ICJ observed, in the Russia-Ukraine provisional measures, ‘all states must act in conformity with their obligations under the UN Charter and other rules of international law, including international humanitarian law’, at the same time, it was also stated that, ‘case before it was limited in scope, raising issues only under the Genocide Convention’, thus indicating the fact that it is limited by jurisdictional constraints.<sup>179</sup> Here, the ICJ has played the role to operate with the jurisdiction while also trying prevent harm.

The main claim from Ukraine was that “Russia has falsely accused it of attempting a genocide in the Luhansk and Donetsk oblasts of Ukraine as a pretext for recognizing Luhansk and Donetsk as independent republics and engaging in a military invasion.” It is seen that Ukraine does not explicitly mention that Russia has committed the crime of genocide, they are assuming that Russia could be ‘planning acts of genocide in Ukraine.’<sup>180</sup> This was evident in Paragraph 62 of the judgement, where the Court observes that the “first aspect of the dispute between the Parties involves a disagreement on a point of fact as well as on the interpretation, application or fulfilment of their rights and obligations under the Genocide Convention”,<sup>181</sup> thereby giving prominence and upholding the rights set out under Article IX. This could be viewed as an aspect where the ICJ’s compliance role has expanded since it speaks about the misuse of the Convention.

Another serious difficulty during these proceedings, was regarding the fact that

---

<sup>176</sup> Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, *Ukraine v Russian Federation*, Provisional measures, ICJ GL No 182, ICGJ 559 (ICJ 2022), 16th March 2022.

<sup>177</sup> HATHAWAY, Oona A.; GARAY, Cindy and ZHANG, Kevin (2025). The World Court's Enforcement Dilemma—And How to Solve It. *Georgetown Law Journal*, 113, [online]. Yale Law School, Public Law Research Paper. <https://ssrn.com/abstract=5197374>

<sup>178</sup> *Ibid*

<sup>179</sup> Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, *Ukraine v Russian Federation*, Provisional measures, ICJ GL No 182, ICGJ 559 (ICJ 2022), 16th March 2022.

<sup>180</sup> *Ibid*

<sup>181</sup> *Ibid*, n.182.

Russia was not willing to attend Court. Even though this was of utmost important, and a notice was issued in advanced stating that the Russian Federation will not participate in any oral proceedings regarding Ukraine's claim to grant provisional measures. The general non-responsiveness of the Russian Federation has extended even to the ICJ's order of provisional measures.<sup>182</sup> In addition, in view of compliance, this case is seen as one of the most recent and ambitious application of the Genocide Convention. The legal basis revolved around Article IX. "Given the lack of evidence for Russia's genocide allegations, and the principle that any action to prevent genocide must be taken in good faith and in line with international law, the Court called on Russia to suspend military operations immediately."<sup>183</sup>

Considering the orders issued by the ICJ, they should not be underestimated because even though there was no straightforward evidence to support the allegations of Russia. The ICJ ordered Russia to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine. This has protected the rights of Ukraine and prevented genocide and use of unlawful forces for destruction. Furthermore, ICJ added that "in order to prevent irreparable prejudice to the rights of Ukraine and its people and to avoid aggravating or extending the dispute between the parties under the Genocide Convention" is important to protect both the *Convention's object and purpose* and to ensure it is not manipulated to justify unlawful acts.<sup>184</sup> As seen in the report of the European Parliament Research Service 2022,<sup>185</sup> Ukraine has argued regarding the misuse of the Convention by Russia to justify its invasion, and that the ICJ found jurisdiction under the Convention. Therefore, based on this, it could be stated that the "ICJ's provisional measures ordered Russia to suspend military operations, though compliance with such orders remains a challenge."<sup>186</sup>

Therefore, this case is seen as an example which shows that the ICJ has capabilities and limitations to its authority. This shows that the ICJ has used the UN Genocide Convention as a powerful tool to support its jurisdiction and it also shows certain challenges of enforcement' for example; when Russia has failed to participate in the proceedings. Also, the expansion of the application of provisional measures is evident in this case.

---

<sup>182</sup> *Ibid*, n.182.

<sup>183</sup> *Ibid*, n.182.

<sup>184</sup> KULICK, Andreas (2022). Provisional Measures after Ukraine v Russia (2022). *Journal of International Dispute Settlement*, 13(2), pp. 323-333. [online] <https://doi.org/10.1093/jnlids/idac012>

<sup>185</sup> *Ibid*

<sup>186</sup> *Ibid*, n. 182

ii. *Gambia v. Myanmar*

Over the years, *Gambia v. Myanmar* case was seen as a progressive one that gave authors some hope, Amulya Vadapalli stated that, “a recent example of the ICJ’s effectiveness, and a potential blueprint for Yemen, is a case filed by Gambia against Myanmar for violations of the Convention on the Prevention and Punishment of the Crime of Genocide. The case is a powerful parallel for Yemen in terms of UN politics Myanmar is supported by the Chinese government, which previously intimated that it would veto any international community action against Myanmar.”<sup>187</sup> Gambia’s application stated that the military of Myanmar and the other forces committed acts of genocides for people in Rohingya which is in the Rakhine province, through mass murder, sexual violences, and rape. This case was the first where a state has invoked the jurisdiction to seek for redress for acts committed against citizens of another state.<sup>188</sup>

ICJ was of the view that “Myanmar should take all necessary measures to guarantee the preservation of any evidence related to allegations of acts within the scope of Article II of the Genocide Convention. Certainly, the ICJ ordered that: Myanmar shall in accordance with its obligations under the Genocide Convention, in relation to the Rohingya group in its territory, take all measures to prevent the commission of all acts within the scope of Article II of this Convention.”<sup>189</sup> One of the most important statements made by the ICJ in this case is regarding the jurisdiction under Article IX. ICJ held that States may commit genocide, but when a State is responsible for such acts it is subjected to this Article where States owe a duty to prevent genocide. This was the first case where provisional measures with reporting was required by the ICJ. It is evident that strong judicial supervision exists within the ICJ. ‘Myanmar is required to submit a compliance report to the ICJ on all measures taken to give effect to this order within four months, as from the date of the order, and thereafter every six months, until a final judgment is rendered.’<sup>190</sup> ICJ has acted as a compliance-monitory body in this case. Even though Article IX “has been invoked before the ICJ on a few occasions. The case of Gambia is unique because it was the first time a State Party invoked Article IX when its own nationals were not the alleged victims of either genocide or another violation of any provision of the

---

<sup>187</sup> VADAPALLI, Amulya (2023). Justice Without Power: Yemen and The Global Legal System.

*Michigan Law Review*. 121(5) pp. 811. [online]. <https://repository.law.umich.edu/mlr/vol121/iss5/4/>

<sup>188</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Gambia v Myanmar*, Provisional measures, ICJ GL No 178, ICGJ 540 (ICJ 2020), 23rd January 2020

<sup>189</sup> *Ibid*

<sup>190</sup> See Note 191

Genocide Convention.”<sup>191</sup>

When determining regarding the indication of provisional measures, the ICJ addressed four important questions: 1. jurisdiction of the Court to hear the case, including the existence of a dispute relating to the interpretation, application, or fulfilment of the Genocide Convention and the reservation of Myanmar to Article VIII of the Convention; 2. the standing of Gambia; 3. the rights whose protection is sought and the link between these rights and the provisional measures requested by Gambia; and, 4. the risk of irreparable prejudice and urgency posed to the aforementioned rights, needed to indicate provisional measures.<sup>192</sup>

In this case Myanmar has violated other essential obligations under the Genocide Convention. The petition of Gambia said that Myanmar ‘attempted to commit genocide, conspired to commit genocide, incited genocide, was complicit in genocide, and failed to prevent and punish genocide.’ In this instance, the *jus cogens* character was noted by Gambia and the *erga omnes* or *erga omnes partes* character of the obligations that are owed under the Genocide Convention. Gambia argued stating that both Gambia and Myanmar are State Parties to the Genocide Convention. Thereby, the Convention requires each State Party have an interest to comply in any given case. “Gambia has standing because any State Party to the Genocide Convention may invoke the obligation of another State Party to determine the alleged failure to comply with its obligations *erga omnes partes* and to bring that failure to an end.” Thereby, ICJ has highlighted that any State party can refer to the responsibility of another for breaches of the Convention. This is an important aspect since it had made compliance a matter of ‘collective interest.’

Kronberga in her research article has stated that, “it should not be neglected that the invocation of responsibility of Myanmar by Gambia has wider political implications besides the purely legal dimension.” Which means that international law is highly politicized, and “nowhere else is this more apparent than in the invocation of State responsibility, especially so with respect to the alleged breaches of obligations which the entire international community have in common.” In this case, the UN General Assembly, Human Right Council has seen ICJ’s decisions as authoritative. The provisional measures have expanded compliance indirectly.<sup>193</sup> Llamzon states a crucial factor which is that “the prospect of a state’s compliance or non-compliance depends on the ICJ’s wordings in its

---

<sup>191</sup> See Note 191

<sup>192</sup> See Note 191

<sup>193</sup> KRONBERGA, Linda Ingeborga (2020). Genocide, state responsibility, and obligations *erga omnes* in the case of the Gambia v. Myanmar before the International Court of Justice. *The Law and Practice of International Courts and Tribunals*. 22(1) pp. 62. [online] <https://doi.org/10.1163/15718034-bja10088>

final judgment because if the operative parts are created broadly, it allows the losing state party to claim compliance without really complying.”<sup>194</sup>

iii. *Bosnia and Herzegovina v. Serbia and Montenegro*

This case is considered as the cornerstone that relating to compliance. This recent judgment on the ICJ was a historic moment for the global community. This case was brought forth under Article IX of the Convention and the question before the ICJ was whether Serbia could be held responsible for genocide on the basis of atrocities committed in Bosnia and Herzegovina following the 1992 break-up of the former Yugoslavia.<sup>195</sup> This was the first time where a Court had adjudicated whether a sovereign state could be held responsible for genocide in the almost sixty years since the Convention on the Prevention and Punishment of the Crime of Genocide was unanimously approved by the General Assembly of the United Nations.<sup>196</sup> In 1993, by an Order, the ICJ, after hearing the Parties, indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. This order has shown that the Court was willing to act preemptively to protect the right under the Genocide Convention.<sup>197</sup>

In the final judgement, the Court ordered that, “the Federal Republic of Yugoslavia (Serbia and Montenegro) must immediately cease the above conduct and take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.”<sup>198</sup> The Court also found out that Serbia has violated the obligations to prevent and punish genocides. This was the first instance where the Court held a State accountable for failing to oblige with the obligations vested under the Genocide Convention.

Rebecca Hamilton in her Article has stated that, “the obligation to prevent genocide binds a State to thwart genocidal behaviors which are attributable to other States and to non-State actors. In this respect, one should distinguish the obligation to prevent from the obligation not to commit genocide, which also stems from the UN Convention.”<sup>199</sup>

---

<sup>194</sup> LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5), pp. 815-817. [online] <https://www.ejil.org/pdfs/18/5/250.pdf>.

<sup>195</sup> PAULSON, Colter (2004). Compliance with Final Judgements of the International Court of Justice since 1987. *The American Journal of International Law*. 98 (3). pp. 434. [online] <https://doi.org/10.2307/3181640>

<sup>196</sup> *Ibid*

<sup>197</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007.

<sup>198</sup> *Ibid*

<sup>199</sup> HAMILTON, Rebecca (2008). Bosnia v Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia. *Leiden Journal of International Law*. 21(1). pp. 95-97. [online].

Thereby, this case clearly sets out these abovementioned differences. Firstly, the Convention binds States not to commit genocides, but to terminate Serbia's arguments and avoid any issues that would be a shortcoming to the legal context set out by the Convention.<sup>200</sup> But Serbia was not held liable here, since the genocide committed was not attributable to the Serbian States. Next, the Court held that Serbia was legally responsible for not preventing genocides in Srebrenica also not cooperating with the ICTY. Furthermore, Rebecca in her article has commented that, "while the judgment thus confirmed the clear-cut and autonomous nature of the obligation to prevent genocide, problems arise however in identifying the specific features of this obligation, in particular its nature, the conditions under which it applies, and its content."<sup>201</sup>

Moreover, this case holds that the 'commission of genocide is a precondition of responsibility for an omitted prevention.' The approach followed by the ILC regarding the obligations of prevention is followed here. The ICJ states that, the intensity of the action required depends on the actual capacity of a State to "influence effectively the action of the persons likely to commit, or already committing, genocide. This solely depends on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events." Thereby, there is some point of impossibility to recognize what behaviors would be needed to fulfil the obligation to prevent. It is then stated that this "does not mean however that compliance is left only to the State's good will and assessment of political opportunity. While the relevance of those factors cannot be underestimated, the issue is also regulated by legal standards."<sup>202</sup>

Based on the above, according to the application of Article I, IV and VI of the Convention by the ICJ, it is seen that there is the dual nature of compliance; punish and prevent. Serbia's breach amounts to omission where they failed to act even though they were in full knowledge. Furthermore, Serbia failed to fully comply with the decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY). Contrastingly, Rebecca Hamilton states that, "if its factfinding approach in *Bosnia and Herzegovina v. Serbia and Montenegro* is to set any precedent for how the ICJ will adjudicate future cases under the Genocide Convention, it is hard to see how the Court will ever make a positive

---

[https://digitalcommons.wcl.american.edu/facsch\\_lawrev/1290?utm\\_source=digitalcommons.wcl.american.edu%2Ffacsch\\_lawrev%2F1290&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.wcl.american.edu/facsch_lawrev/1290?utm_source=digitalcommons.wcl.american.edu%2Ffacsch_lawrev%2F1290&utm_medium=PDF&utm_campaign=PDFCoverPages)

<sup>200</sup> *Ibid*

<sup>201</sup> See Note 220

<sup>202</sup> See Note 220

genocide determination in the absence of a criminal court having already convicted individual perpetrators of genocide.”<sup>203</sup>

iv. *Croatia v. Serbia*

Following the *Bosnia Genocide* case, the case of *Croatia v. Serbia* was decided on 3 February 2015. This case has given a new opportunity to the ICJ to reaffirm their legal standards of State responsibility and clarify the obligations where States are required to adhere with the UN Genocide Convention.<sup>204</sup> From a compliance perspective, this case has shown how the ICJ uses its authority to establish State conduct even when there is no direct responsibility of the States.<sup>205</sup> “Even though the decision technically only binds the two parties, its significance reaches far beyond the dispute. This is because genocide cases against states (unlike cases against individual perpetrators) are seldom brought before international courts. This case, therefore, provided the ICJ with the opportunity to further sharpen the contours of genocide under the Genocide Convention.”<sup>206</sup>

In this case, Croatia alleged that Serbia has committed or conspired to commit, failed to prevent, and punish genocide during mid-1991 and mid 1992 conflict periods in Croatia. As basis for the Court’s jurisdiction, Croatia invoked Article IX of that Convention to which, according to it, both Croatia and former Yugoslavia were parties. On 11 September 2002, Yugoslavia filed preliminary objections to the jurisdiction of the Court and to the admissibility of the claims made. To this the Republic of Serbia filed a counterclaim saying that Croatia had committed genocides against the Serbians. The basis was that the ICJ stated that the specific intent requirement (*dolus specialis*) is important to establish genocide. This judgement holds significance regarding ‘compliance’ since it reaffirms the principles said in *Bosnia v. Serbia* case, which is regarding the continuing obligations of State parties, to prevent and punish genocides.<sup>207</sup>

Although this judgement binds two parties, its significance reaches far beyond the dispute. Because genocide cases against States ‘are seldom brought before international courts.’<sup>208</sup> Ines Gillich has analyzed that, “this case, therefore, provided the ICJ with the opportunity to further sharpen the contours of genocide under the Genocide Convention.

---

<sup>203</sup> *Ibid*, n. 200

<sup>204</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Croatia v Serbia*, Judgment, ICGJ 470 (ICJ 2015), 3rd February 2015

<sup>205</sup> *Ibid*

<sup>206</sup> *ibid*, n. 203

<sup>207</sup> *ibid*, n. 203

<sup>208</sup> GILLICH, Ines (2016). Between Light and Shadow: The International Law Against Genocide in the International Court of Justices’s Judgement in *Croatia v. Serbia* (2015). *Pace International Law Review*, 28(1), pp. 121-122. [online]. <https://digitalcommons.pace.edu/pilr/vol28/iss1/3/>

Grabbing this chance, the ICJ meticulously elaborated on the constituent elements of genocide as well as on important questions of proof and evidence. In addition to the difficulties in determining the substantive elements of this international crime, a jurisdictional problem further complicated the case: the ICJ was asked to assess acts that had been committed before Serbia became a party to the Genocide Convention.”<sup>209</sup> Therefore, as established generally, the principle is that the Genocide Convention ‘binds only state parties with respect to acts that took place after the date when the state becomes a party to the Convention.’<sup>210</sup> In addition, the Convention sets out the legal basis for the jurisdiction of the ICJ not only setting out the substantive legal obligations.

The interpretation of the Convention here has revealed that Bosnia judgement focuses on States omissions and the present case focuses on the evidentiary factors. the Court stated that complying with the Convention requires effective methods of accountability which are consistent with Article IV. ICJ also recommends that the duty to enact legislation and to punish is a continuing obligation which goes beyond post-conflict reconciliations. This shows that punishment and holding accountable is of utmost important to assure that genocides does not continue to occur in the future.<sup>211</sup> As per Article IX of the Convention, the ICJ had to reject the jurisdiction on the alleged acts that occurred prior to the date. Yet, the Court did not follow this under Article IX, instead the Court questioned whether the framework under this Article is established by SFRY’s responsibility for the violations of the Convention regarding Serbia.<sup>212</sup>

### **3.2 Challenges of Enforcement**

Through the analysis of the recent cases of the ICJ, it was concluded that there seems to be instances under the Genocide Convention when full compliance remains limited.<sup>213</sup> These case laws reveal that even with the legally binding nature of the provisional measures certain structural and political limitations tend to undermine this nature. Thereby, this section analyzes the reasons as to why States do not fully or partially comply with the decisions of the ICJ.

Primarily, as per Llamzon it is important to analyze ‘the theoretical compliance framework originally envisaged by the UN Charter,’ when discussing about compliance

---

<sup>209</sup> HAMILTON, *ibid*, n. 203

<sup>210</sup> HAMILTON, *ibid*, n. 203

<sup>211</sup> HAMILTON, *ibid*, n. 203

<sup>212</sup> HAMILTON, *ibid*, n. 203

<sup>213</sup> LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5), pp. 820-821. [online] <https://www.ejil.org/pdfs/18/5/250.pdf>

and the ICJ. As per Article 94(1) the obligation of member states is stated such that each member of the UN undertakes to comply with the decisions of the International Court in any case to which it is a party.<sup>214</sup> This obligation is only seen on the UN Charter and not the Statute of the ICJ. To further clarify, Professor Rosenne has stated that ‘non-compliance may give rise to new political tensions, and the efficacy of the post-adjudicative phase is not determined by another judicial examination, but rather by immediate political action.’<sup>215</sup> Thereby according to these opinions it could be stated that ‘the responsibility for ensuring compliance is not within the ICJ’s mandate, but rather, with the principal political organ for maintaining peace and security the Security Council.’<sup>216</sup>

This leads to an important structural limitation. Article 94(2) provides ‘if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.’<sup>217</sup> As observed by Llamzon, the enforcement of ICJ is limited institutionally because as per the Article 94(2) gives power to the Security Council. This explains as to why, Llamzon states that ‘the enforcement of ICJ judgments involves quintessentially political acts by both parties and the Security Council, in which the Court itself has little involvement and over which it has no power. It is thus at least partly improper to blame the ICJ when states do not comply with its decisions, as the Charter assigns the responsibility to enforce to the Security Council.’<sup>218</sup> This explains the situation in the *Bosnian Genocide* case, where Serbia failed to prevent genocide and even after this there was no action taken by the Security Council. Also, in *Ukraine v. Russia* when provisional measures were ordered, Russia ignored these orders, this raises a question related to ICJ’s inability to enforce the power vested upon it. As rightly stated by Pellet, “the law is inseparable from form even though it is not purely formal, it must have a normative content.”<sup>219</sup> Therefore, it is evident that it is important to assess the level of enforcement because the UN has limited the capacities of the ICJ to ensure that all

---

<sup>214</sup> *Ibid*

<sup>215</sup> *Ibid*, n. 216

<sup>216</sup> AL-QAHTANI, Mutlaq (2002). The Role of the International Court of Justice in the Enforcement of Its Judicial Decisions, *Leiden Journal of International Law*, 15(4), pp. 781. doi:10.1017/S0922156502000353.

<sup>217</sup> *Ibid*

<sup>218</sup> LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5), pp. 815-817. [online] <https://www.ejil.org/pdfs/18/5/250.pdf>

<sup>219</sup> PELLET, Alain (2018). Decisions of the ICJ as Sources of International Law?. *Gaetano Morelli Lectures Series*, 2, pp. 7-9.

obligations are fulfilled. Provisional measures itself could not enforced unless there are no limitations to the authority, ICJ, that uploads it.

Beyond these challenges, enforcement could also be limited due to political and institutional constraints. According to the *Bosnian Genocide* case, political resistance which was involved had constrained the decisions of the ICTY; for instance, the arrest of Ratko Mladic. Under Article VI of the UN Genocide Convention this amounts to a violation of the respondent's duties.<sup>220</sup> This political motivation has been evident in the cases of Gambia and Ukraine whereas Sir Franklin Berman stated, "the more politicized and general the legal questions referred to the ICJ Advisory opinion, the more difficult it becomes to preserve the judicial integrity of the Court."<sup>221</sup> ICJ giving value and encouraging political bodies amounts to non-compliance of the decisions.

---

<sup>220</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007.

<sup>221</sup> *Ibid*

## IV. WAY TOWARDS COMPLIANCE

It third chapter analyzed regarding the willingness of the States to comply with the application of the UN Genocide Convention by the ICJ. Yet, there seems to be certain challenges and problems in enforcement which could weaken the rule of law, thereby, the fourth and concluding chapter of this master's thesis analyzes how the ICJ has upheld and will uphold its role to promote the way towards compliance, the mechanisms to be utilized to strengthen compliance. This is done by assessing the role of the ICJ in ensuring compliance with the obligations of the States. Next, the deterrent effects of the UN Genocide Convention are also reflected, lastly based on this analysis the writer of the thesis seeks to provide recommendations to enhance compliance which could focus to reform the existing practices or to implement new standards.

### 4.1 Role of the International Court of Justice in ensuring Compliance

The contemporary role of the ICJ in ensuring compliance with the UN Genocide Convention must be understood as an active and evolving role. The ICJ has evolved as one of the most prominent legal bodies, which is designed to interpret legal orders of States, even after seven decades of the existence of the Genocide Convention and almost two decades of interpreting by the jurisprudence. The main legal question is not to assess whether the ICJ holds the authority to determine state responsibility, but to see how effectively it interprets the authority to ensure compliance and sustain the obligations.<sup>222</sup>

As observed by Pineschi the ICJ creates a framework for collective compliance through its rulings. The Court has confirmed that each State party has a legal interest in ensuring that everyone abides by the UN Genocide Convention by acknowledging that the duties outlined in the Convention are owed *erga omnes partes*.<sup>223</sup> Else, the significant implications result from this will reinterpret compliance as a shared obligation rather than a bilateral one. This can be seen as compliance was raised to the level of a collaborative worldwide endeavor. This was evident in *Gambia v. Myanmar*<sup>224</sup> case where the ICJ said

---

<sup>222</sup> URAZ, Onur (2025). The Growing Role of the International Court of Justice as a Field of Lawfare: Perils and Prospects. *Lawfare and the Future of International Crime*, 5(1), [online]. <https://doi.org/10.6092/issn.2724-6299/21521>

<sup>223</sup> PINESCHI, Laura (2024). *International Courts versus Compliance Mechanisms through the Lens of the Gabčíkovo-Nagymaros and Bystroe Canal Cases*, n VOIGT, C and FOSTER, C (eds) *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation*. Cambridge: Cambridge University Press. [online] <https://www.cambridge.org/core/books/international-courts-versus-noncompliance-mechanisms/international-courts-versus-compliance-mechanisms-through-the-lens-of-the-gabcikovonagymaros-and-bystroe-canal-cases/D14F18724DE5EC67CEF5797967A45994>

<sup>224</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Gambia v Myanmar*, Provisional measures, ICJ GL No 178, ICGJ 540 (ICJ 2020), 23rd January 2020, United Nations [UN]; International Court of Justice [ICJ].

that all States parties have the authority to claim responsibility for violations of the Convention.<sup>225</sup> Here, the Court has tried to show that its responsibilities have evolved far beyond to a limit that compliance applies to all States Parties involved rather than the responsible party. This proves the fact that the Genocide Convention was application a significant way where the ICJ, encourages compliance even more. The Court has guaranteed that the Convention remains a functional tool of international law by considering cases like *Gambia v. Myanmar*.<sup>226</sup> Furthermore, according to Attila, The ICJ's "simply existing as a judicial forum acts as a compliance catalyst, maintaining the visibility of legal obligations and deterring their erosion through political neglect."<sup>227</sup> These prove the fact that the ICJ under the UN Genocide Convention will continue to hold States responsible for the actions committed and also if there are any omission of their duties.

The procedural tools created by the ICJ has created a modern example for the responsibility to ensure compliance. Even though, the final pronouncement of the ruling is often marked as the end of the ICJ's involvement in cases, nonetheless, the Court has come to recognize the necessity of ongoing oversight in cases involving genocide. Periodic reporting obligations were imposed by the directives on Provisional Measures in *The Gambia v. Myanmar*, which required Myanmar to provide frequent reports on how the Court's directives were being implemented.<sup>228</sup> Most recently, in 2024, in the case of *South Africa v. Isarel*,<sup>229</sup> the Court through provisional measures ordered Israel to report all measures taken to give effect to the orders related to actions in Gaza Strip. By doing this, the ICJ created an iterative accountability approach and improved compliance and transparency by establishing a framework for ongoing participation. Thus, the procedural innovation bridges the gap between adjudication and follow-up by transforming court orders into live instruments of compliance.<sup>230</sup> Judge Hersh Lauterpacht, has engraved in one of his work that the ' primary purpose of the ICJ lies in its function as one of the instruments for securing peace in so far as this aim can be achieved through law',<sup>231</sup> and that 'the very existence of the Court, in particular when coupled with the substantial

---

<sup>225</sup> *Ibid*

<sup>226</sup> KIRBY, James and HODGSON, Amy (2022). *The Gambia v Myanmar at the International Court of Justice: A Search for National and International Values. The Round Table; The Commonwealth Journal of International Affairs*. 111(2). pp. 196-198 [online]. <https://doi.org/10.1080/00358533.2022.2058778>

<sup>227</sup> TANZI, Attila (1995). Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. *European Journal of International Law*, 6, pp. 539-540.

<sup>228</sup> See Note 245

<sup>229</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*)

<sup>230</sup> See Note 247

<sup>231</sup> LAUTERPACHT, Hersh (1958). *The Development Of International Law The International Court*. New York:Stevens and Sons Limited. pp. 3.

measure of obligatory jurisdiction already conferred upon it, must tend to be a factor of importance in maintaining the rule of law.<sup>232</sup>

Another instance where the Court promotes compliance is through consistency, as stated by Attila, by promoting normative coherence throughout the international system, the ICJ's jurisprudence guarantees compliance. Its rulings serve as interpretive pillars that direct the application of the UN Genocide Convention by other national and international organizations. The ICJ has used the definition of preventive duty adapted by the *Bosnian Genocide* case. This definition was used by national tribunals, regional organizations, and UN bodies to determine a state's accountability for atrocity risks.<sup>233</sup> This was addressed by Ventura in his study where it was referred to as "compliance through interpretation" this produced the Court's logic that becomes the common legal language which is used to express and uphold duties.<sup>234</sup> By the creation of these consistent interpretations of the provisions of the Genocide Convention, the ICJ guarantees compliance in cases where they are not actively involved or even though when they are not directly enforcing their own decisions.<sup>235</sup> The ICJ reveals that the predictions are enriched by repeating the duties vested by the Genocide Convention. For example, Tams has stated that such predictions is "a regulatory form of compliance assurance."<sup>236</sup>

An important aspect of the ICJ's role in compliance is seen under the Article 94 of the UN Charter, where the limited legal framework of the post-adjudicative phase of a dispute is restricted.<sup>237</sup> Broadly speaking, this Article states that; (1) Each Member of the United Nations undertakes to comply with the decision of the ICJ in any case to which it is a party and (2) If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council may make recommendations, or decide upon measures to be taken to give effect to the judgment.<sup>238</sup> As seen, section (ii) is the only means of enforcement of ICJ judgements. This is considered as ineffective and impractical. Therefore, it is seen that the ICJ ensures compliance through legal and political ways that comes through the

---

<sup>232</sup> *Ibid*, pp. 5.

<sup>233</sup> TANZI, Attila (1995). Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. *European Journal of International Law*, 6, pp. 539-540.

<sup>234</sup> VENTURA, Manuel J. (2016). Christian Tams, Lars Berster and Björn Schiffbauer, Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary, Munich/Oxford/Baden-Baden, C.H. Beck/Hart Publishing/Nomos, 2014. *Leiden Journal of International Law*, 29(1), pp. 279-281. [online] DOI 10.1017/S092215651500076X.

<sup>235</sup> *Ibid*

<sup>236</sup> TAMS, C. J. (2023). Who's afraid of the articles on state responsibility. In: BULL, SC, C., MALINTOPPI, L. and PARTASIDES, KC, C. (eds.) *Arbitration's Age of Enlightenment?* Series: ICCA congress series (21). Kluwer Law International. [online]. <https://eprints.gla.ac.uk/308703/1/308703.pdf>

<sup>237</sup> Charter of the United Nations, Chapter XIV Article 94

<sup>238</sup> Charter of the United Nations, Chapter XIV Article 94 (i) and (ii)

international law bodies.<sup>239</sup> As per the analysis conducted by Tanzi on the Problems of Enforcement of Decisions of the ICJ and the Law of the United Nations, the scholar has drawn attention to the fact that, when considering the literal reading of the provision it highlights that the mechanisms is discretionary as the Council may ‘if it deems necessary’ act in situations of non-compliance. It could be said that this was designed in such a way to balance judicial independence with state sovereignty.<sup>240</sup> Furthermore, the scholar stated that ‘the obligation to ‘give effect to the judgment of the Court’ seems to be not only of treaty character but also constituting a norm of customary international law, deeply rooted in basic principles of good faith and *pacta sunt servanda*.

Certain studies have shown that compliance with the judgements of the ICJ are far from negligible. This is argued by Llamzon where despite this institutional fragility, empirical studies show that compliance with ICJ judgments is far from negligible. His analysis defined that compliance implies many criteria, ‘to be meaningful it should consist of acceptance of the judgment as final and reasonable performance in good faith of any binding obligation.’<sup>241</sup> The ICJ in *Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*, good faith was defined in context as a duty ‘to give effect to the Judgment of the Court.’ This states that to uphold good faith, it is impossible to avoid compliance with the decisions of the ICJ or to find any reasons to avoid abidance.<sup>242</sup>

In addition, Chapter XIV of the UN Charter explicitly states the enforcement regime of the ICJ. Article 59 states that, “The Organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.”<sup>243</sup> Which means that these decisions are binding between the contracting parties. The obligation to comply under Article 94(1) of the UN Charter is linked with the principle of *res judicata* of ICJ decisions as stipulated in Articles 59 and 60 of the ICJ Statute. The latter underline that those rulings have a binding force between parties to a case and are ‘final and without

---

<sup>239</sup> TANZI, Attila (1995). Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. *European Journal of International Law*, 6, pp. 539.

<sup>240</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Gambia v Myanmar*, Provisional measures, ICJ GL No 178, ICGJ 540 (ICJ 2020), 23rd January 2020, United Nations [UN]; International Court of Justice [ICJ].

<sup>241</sup> LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5), pp. 822. [online] <https://www.ejil.org/pdfs/18/5/250.pdf>

<sup>242</sup> CHAYES Abram and CHAYES Antonia Handler (1995). *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge: Harvard University Press, pp. 19.

<sup>243</sup> Charter of the United Nations, Chapter IX Article 59

appeal.’<sup>244</sup> Hence, the compliance and *res judicata*<sup>245</sup> principles create together two obligations for a judgment-debtor, a negative and a positive one.

Despite the above-mentioned limitations to enforcement of compliance, it is evident that the ICJ employs several methods to promote compliance and how to promote the role of the ICJ in ensuring compliance. The most important factor is the binding nature of the ICJ judgements, which is the doctrine of *res judicata*, ‘which is a principle of litigation that ensures the finality of disputes in order to protect parties from being vexed with the same matter twice.’<sup>246</sup> Article 41 (1) of the Statute of the ICJ states as follows: ‘The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.’<sup>247</sup> This provision has given power to the ICJ to exercise the powers vested by the use of provisional measures. This was evident in the case of *Germany v United States of America*, the judgement stated that, ‘indicating provisional measures, the Court pointed out that it was the first time it had been called upon to determine the legal effects of such orders made under Article 41 of its Statute the interpretation of which had been the subject of extensive controversy in the literature.’<sup>248</sup>

When considering the above-mentioned aspects, it could be seen that the ICJ utilizes its interpretation, harmonization, and legalization to ensure that all State parties adhere to the powers of the UN Genocide Convention. It contributes by influencing the conditions that make compliance legally, politically, and morally required rather than by using force. The Court converts the prohibitions of the Convention into operational responsibilities, maintains their visibility through ongoing procedures, and mobilizes the UN institutional ecosystem to strengthen their observance.<sup>249</sup>

## 4.2 Deterrent effect of the Convention

As was discussed previously, Article I of the Genocide Convention stated that genocide

---

<sup>244</sup> TANZI, Attila (1995). Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. *European Journal of International Law*, 6, pp. 540-541.

<sup>245</sup> Meaning: The principle by which one judgment has a binding effect on subsequent proceedings.

<sup>246</sup> LOIZOU Demetra (2021). The Concept of Res Judicata in the Common Law System with Emphasis on Cypriot and UK perspectives. *Journal of Law and Economics*, 13(2), pp. 136 [online]. <https://doi.org/10.18690/lexonomica.13.2.135-150.2021>

<sup>247</sup> Statute of the International Court of Justice, Article 41 (1)

<sup>248</sup> *Germany v United States of America* ICJ GL No 104, [2001] ICJ Rep 466, (2001) 40 ILM 1069, ICGJ 51 (ICJ 2001), 27th June 2001, United Nations [UN]; International Court of Justice [ICJ]

<sup>249</sup> FIKFAK, V. (2015) ‘Reinforcing the ICJ’s central international role? Domestic courts’ enforcement of ICJ decisions and opinions,’ in M. Andenas and E. Bjorge (eds.) *A Farewell to Fragmentation: Reassertion and Convergence in International Law*. Cambridge: Cambridge University Press (Studies on International Courts and Tribunals), pp. 343–368.

could be committed ‘in time of peace or war,’ this is where it differs from crimes against humanity. Article I link obligations of prevention and punishment, this was when in 2007 the ICJ recognized in the *Bosnian Genocide* case that “not only was genocide prevented because of the deterrent effects of punishment, the duty to prevent genocide had its own autonomous scope which was both ‘normative and compelling.’”<sup>250</sup>

As observed by Mennecke in his article on ‘The ICJ and the Responsibility to Protect Learning from the case of *Gambia v. Myanmar*,’ states that “after joining the International Criminal Court, the ICJ’s option to institute legal proceedings can act as a general deterrent regarding potential violations of the UN Genocide Convention. This preventive function would be stronger if the ICJ since Genocide Convention’s enforcement had seen more applications regarding genocide or would be able to initiate such proceedings itself, as the Prosecutor at the ICC.”<sup>251</sup> This means that the structural framework of the Genocide Convention includes preventive obligations, where States can prevent future crimes and the exercise deterrent function. The Preamble itself states that ‘being convinced that, in order to liberate mankind from such an odious scourge, international co-operation,’ this highlights the fact that deterrence is of utmost importance.<sup>252</sup>

Moreover, as stated by Diamond and Packer, Article I and VIII of the Genocide Convention includes clauses regarding the preventive duties, these are created as a framework that can be seen as a cover of deterrence by imposing obligations before and not after. The legal expectation that States must monitor acts that could lead to genocide is a strong deterrent. From that moment onwards, if the State is aware or ought to have known of a violent crime it means to have a deterrent effect.”<sup>253</sup> The ICJ has also sought to describe the substantive element of each State’s duty to prevent, recognizing that genocide prevention requires collective action from all States which must engage in individualized due diligence assessments “to employ all means reasonably available to them, so as to prevent genocide as far as possible depending on a State’s capacity to influence effectively the actions.”<sup>254</sup>

For example, according to The Polish Yearbook of International Law 2012,

---

<sup>250</sup> *ibid*, n. 83.

<sup>251</sup> MENNECKE, Martin (2021). The International Court of Justice and the Responsibility to Protect: Learning from the Case of *The Gambia v. Myanmar*. *Global Responsibility to Protect*, 13(2-3), pp. 324-325. [online]. DOI <https://doi.org/10.1163/1875-984X-13020012>

<sup>252</sup> See Note 276

<sup>253</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, ICJ Reports 2007

<sup>254</sup> *Ibid*

“Article I of the Genocide Convention all contracting parties are under an obligation not only not to commit genocide themselves but are also under a positive obligation to prevent genocide committed by others. One ought to also recall that in 2007, the ICJ, in the case brought by *Bosnia and Herzegovina v. Serbia and Montenegro*, confirmed that obligation and stated that this constitutes a due diligence obligation. Because these could lead to future accountability of States. The Court stated more specifically that there exists: a state’s obligation to prevent and the corresponding duty to act, which arises at the instant that the State learns of, or should normally have learnt of, the existence of a serious risk that genocide will be committed. For the same reason, that duty also entails a duty to employ “all the means likely to have a deterrent effect on those suspected of preparing genocide.” This is an important interpretation where the ICJ has reinforced this deterrent dimension under the Genocide Convention continues to hold weight for future decisions.

In the ICJ’s recent case law of *Gambia v Myanmar*,<sup>255</sup> it is seen that the deterrent powers of the Genocide Convention have gain strength by emphasizing on *erga omnes* and making sure that all States have an obligation to comply. Furthermore, “it is noteworthy that the Court decided to follow The Gambia’s argumentation that the provisional measures aimed to protect both The Gambia’s rights as party to the UN Genocide Convention and those of the Rohingya as protected group under that treaty.”<sup>256</sup> According to Mennecke, this statement compelled Myanmar to prevent further genocidal actions. Even though provisional measures are temporary, it holds a huge weight that can contribute to deterrence by making the judicial supervision public.<sup>257</sup> This is another crucial factor where deterrent effects depends on. These proceedings are an example that no matter which State whether small or big, they can invoke the Convention’s deterrent force to protect populations beyond their borders. This represents a significant shift in the deterrent paradigm.<sup>258</sup>

Through the lens of an institutional level, deterrence of the Convention is seen by criminal accountability mechanisms. According to Article VI of the UN Genocide Convention, “persons charged with genocide will be heard by a competent tribunal of the State in the territory of which the act was committed, or by such international penal

---

<sup>255</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Gambia v Myanmar*, Provisional measures, ICJ GL No 178, ICGJ 540 (ICJ 2020), 23rd January 2020, United Nations [UN]; International Court of Justice [ICJ].

<sup>256</sup> *Ibid*

<sup>257</sup> MENNECKE, Martin (2021). The International Court of Justice and the Responsibility to Protect: Learning from the Case of The Gambia v. Myanmar. *Global Responsibility to Protect*, 13(2-3), pp. 324-325. [online]. DOI <https://doi.org/10.1163/1875-984X-13020012>

<sup>258</sup> *Ibid*

tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”<sup>259</sup> This article gives power to hold individuals liable for genocide which ensures that freedom is curtailed. Supported by Reed in his study based on ‘The Forgotten Promise: Alternative Solution for Enforcing the UN Genocide Convention’ highlighted that “the Convention as applied here is nothing short of good intentions, adverse consequences. When a piece of international law can be so easily flipped on its head albeit, absurdly to catalyze the very crime it sought to eliminate, clarification and correction is required.”<sup>260</sup> Thereby, it is seen that, when there is lack of enforcement the States who are liable is even able to turn the Convention upside down. And, through the establishment of ad hoc tribunals, the International Criminal Court, it allows to view the case in a new lens and these courts shows the commitment of the community to work towards preventing genocidal acts.<sup>261</sup>

Finally, it could be seen that the Convention has not been much invoked by prosecutors seeking to punish atrocities in the international community. It has been argued that they were deterred from bringing actions in genocide because of the difficult evidentiary requirements of proving specific genocidal intent in Article II of the Convention.<sup>262</sup> It can be relied upon to effectively punish those who infringe international criminal justice. Consequently, it deserves to be given greater use than it has been to date.<sup>263</sup>

#### **4.3 Recommendations for ensuring better Compliance with States’ Obligations.**

This section of the master’s thesis outlines recommendations for States to ensure better compliance to the Genocide Convention. Throughout the previous sections it was evident that the effectiveness of the Convention in exercising the main duties of prevention and punishment depends mostly on the intensity to which States comply with their obligations. Even though this is the case, as seen in the previous section of thesis there have been certain issues in compliance and enforcement that prevents the ICJ’s role from functioning

---

<sup>259</sup> *ibid*, n. 23, Article VI.

<sup>260</sup> REED, Joseph B. (2025). The Forgotten Promise: Alternative Solutions to Enforcing the Genocide Convention. *Ohio Northern University Law Review*, 51(2), pp. 315-316. [online]. [https://digitalcommons.onu.edu/onu\\_law\\_review/vol51/iss2/4?utm\\_source=digitalcommons.onu.edu%2Fonu\\_law\\_review%2Fvol51%2Fiss2%2F4&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.onu.edu/onu_law_review/vol51/iss2/4?utm_source=digitalcommons.onu.edu%2Fonu_law_review%2Fvol51%2Fiss2%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages)

<sup>261</sup> *Ibid*

<sup>262</sup> *Ibid*, n. 23, Article II.

<sup>263</sup> POLISH YEARBOOK OF INTERNATIONAL LAW, XXXII (2012). Warsaw: Wydawnictwo Naukowe. [online] <https://scholar.com.pl/en/books/1400-2012-polish-yearbook-of-international-law-vol-xxxii.html>

otherwise.<sup>264</sup> Therefore, all the below mentioned recommendations have drawn inspiration from the most recent jurisprudence of the ICJ and ways on which States can act to achieve full adherence to the UN Genocide Convention.

Primarily, it is important to strength domestic incorporation and implementation. The foundation of compliance remains the effective when the provisions of the Genocide Convention are incorporated into the domestic legal systems of the States. Article V of the Convention explicitly states that “The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.”<sup>265</sup> Even though this is the case, many States have failed to adopt comprehensive implementing laws or to ensure that individuals that commit genocide are held liable in domestic courts. The strengthening of domestic courts allows to achieve prevention and punishments for genocide by States. This was *Bosnia and Herzegovina v Serbia and Montenegro*, but, even after this there were certain gaps,<sup>266</sup> like most countries does not have a statute related to Genocides which deals with criminal responsibility that highlights the intent element.<sup>267</sup> For this the UN should put together and introduce news mechanisms to uplift all countries in order to be consistent with Article II of the Genocide Convention to have uniform domestic setting.

Secondly it is important to enhance and improve reporting and monitoring within the legal system. The UN Genocide Convention does not have a treaty body or a problem reporting system like the other human rights treaties. This could hinder the effect of compliance within the system. For example, the establishment of a committee like the Committee on the Elimination of Racial Discrimination (CERD) is enforced then this could fill in the lacuna to work to prevent genocide. This was already recommended by certain scholars and advisors of the UN. If such action is taken by gaining insights from the Universal Periodic Review process of the Human Rights Council, all States could use such mechanism to submit national reports regarding prevention of genocides, which will

---

<sup>264</sup> LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5), pp. 815-817. [online] <https://www.ejil.org/pdfs/18/5/250.pdf>

<sup>265</sup> *ibid*, n. 23, Article V.

<sup>266</sup> SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press.

<sup>267</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, ICJ Reports 2007.

be available to be accessed by other Member States which could also promote transparency.<sup>268</sup>

Thirdly, the use of provisional measures as a force of prevention of genocide could be encouraged more. Through the cases of *Gambia v. Myanmar* and *Ukraine v. Russia* the jurisprudence of the Court embodies the importance of provisional measures as a constraint imposed on State conduct. Even though these measures are temporary, they can have a significant impact to bind laws, which is why this is referred to as legally binding in nature.<sup>269</sup> Thereby, to ensure better compliance, the UN along with the States should have an implementation method to make sure provisional measures are in place. To further enhance these mechanisms, the General Assembly could embark on to request for briefings from the Court to measure the states of compliance regarding genocide case laws.<sup>270</sup>

---

<sup>268</sup> KEANE, D., & WAUGHROY, A. (Eds.). (2017). *Fifty years of the International Convention on the Elimination of All Forms of Racial Discrimination: A living instrument* (1st ed.). Manchester University Press. <http://www.jstor.org/stable/j.ctvnb7p4c>

<sup>269</sup> *Ibid*

<sup>270</sup> PELLET, Alain (2018). Decisions of the ICJ as Sources of International Law?. *Gaetano Morelli Lectures Series*,

## CONCLUSIONS

1. In conclusion, the term ‘genocide’ cannot be viewed or understood without admitting the emotional weight that is surrounded by it. The attempts taken by Lemkin to introduce this term, even at the present context has immensely contributed to uphold the main objectives of the UN Genocide Convention which is to prevent and punish genocide. Lemkin has rightly pointed out that genocide is not just a legal term but a responsibility to prevent violence and uphold humanity.
2. It could also be concluded that the analysis of the recent cases of *Ukraine v. Russian Federation*, *Gambia v. Myanmar*, *Bosnia and Herzegovina v. Serbia and Montenegro*, *Croatia v. Serbia*, decided by the ICJ had a similar pattern and approach towards their final decisions, because the doctrine of *erga omnes partes* and provisional measure being considered as legally binding led to achieve the goals of the Convention, to prevent and punish. The ICJ has used practices from the past for future developments.
3. By examining the established legal standards of due diligence and preventive measures of States has clarified States obligations to prevent and punish genocide. The interpretation of recent jurisprudence has shown signs of a step forward, even though there seems to be structural limitations, political and institutional constraints that limits the effectiveness of the ICJ.
4. Even though there were progression, several inconsistencies were identified which affects the compliance with the UN Genocide Convention. The inconsistencies identified were related to proof of evidence for intention and difficulties to distinguish the application of the Convention in practice.
5. Overall, the ICJ was seen as the only legal forum that scrutinizes State responsibility for genocidal violence under the Genocide Convention. And its very existence reveals that the ICJ’s interpretation of the Convention directly influences international law as well as it reflects that the jurisprudence has improved and will continue to improve.

## LIST OF SOURCES

### I. Legal Acts

1. Charter of the United Nations 1945
2. Convention on the Prevention and Punishment of the Crime of Genocide 1948
3. Statue of the International Court of Justice 1946
4. The Treaty of Peace (1919-1923)
5. The United Nations General Assembly, 11 December 1946, Resolution 96(I)
6. Treaty of Lausanne (1923) 8 LNTS 113.
7. Treaty of Sèvres (1920) 112 LNTS 1, Article 230.
8. Vienna Convention on the Law of Treaties 1969

### II. Scientific Literature

1. BERSTER, Lars (2014). Art. II. In: TAMS, Christian; BERSTER, Lars; SCHABAS, William A. et al. *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*. Oxford: Oxford University Press.
2. BHBAT, Ishwara P (2020). *Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles*. [online]. Oxford Academic. DOI10.1093/oso/9780199493098.003.0005.
3. CAMERON, Miles (2017). "Provisional Measures and the Margin of Appreciation before the International Court of Justice," 8 JIDS, 1, 4.
4. CASSESE, Antoio; ACQUAVIVA, Guido; FAN, Mary et al. (2011). *International Criminal Law: Cases and Commentary*. Oxford: Oxford University Press.
5. CELINE, Cocq and SZEKELY, Ora (2021). *Comparative Analysis*. [online]. Oxford: Oxford University Press. DOI10.1093/hepl/9780198850298.003.0011.
6. CHAYES Abram and CHAYES Antonia Handler (1995). *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge: Harvard University Press.
7. DIAMOND, Yonah (2025). The Invalidity of Art. IX Reservations to the Genocide Convention. *Opinio Juris* [online]. <https://opiniojuris.org/2025/03/12/the-invalidity-of-art-ix-reservations-to-the-genocide-convention/>
8. FIKFAK, V. (2015) 'Reinforcing the ICJ's central international role? Domestic courts' enforcement of ICJ decisions and opinions,' in M. Andenas and E. Bjorge (eds.) *A Farewell to Fragmentation: Reassertion and Convergence in International Law*. Cambridge: Cambridge University Press (Studies on International Courts and Tribunals).

9. HEIECK, John (2018). *Chapter 1: The P5's duty to prevent genocide under the Genocide Convention*. UK: Edward Elgar Publishing. [online] <https://doi.org/10.4337/9781788117715.00007>
10. HUNNEUS, Alexandra Valeria (2013). Compliance with International Court Judgments and Decisions. In: ALTER, Karen J.; ROMANO, Cesare and SHANY, Yuval (eds.), *Oxford Handbook of International Adjudication*. Madison, WI: University of Wisconsin Legal Studies Research Paper No. 1219 [online]. <https://ssrn.com/abstract=2198595>
11. KATJA, Samuel (2018), *The Legal Character of Due Diligence: Standards, Obligations, or Both?* Central Asian Yearbook of International Law 1(1). SSRN: <https://ssrn.com/abstract=3264764>
12. KEANE, D., & WAUGHRAY, A. (Eds.). (2017). *Fifty years of the International Convention on the Elimination of All Forms of Racial Discrimination: A living instrument* (1st ed.). Manchester University Press. <http://www.jstor.org/stable/j.ctvnb7p4c>
13. KEANE, D., & WAUGHRAY, A. (Eds.). (2017). *Fifty years of the International Convention on the Elimination of All Forms of Racial Discrimination: A living instrument* (1st ed.). Manchester University Press. <http://www.jstor.org/stable/j.ctvnb7p4c>
14. KEMPEN, B and HE, Z (2009). The Practice of the International Court of Justice on Provisional Measures: The Recent Development. *Zeitschrift fur auslndisches offentliches Recht and V6lkerrechct.* 69(3). [online]. [https://www.zaoerv.de/69\\_2009/69\\_2009\\_4\\_a\\_919\\_930.pdf](https://www.zaoerv.de/69_2009/69_2009_4_a_919_930.pdf)
15. KLABBERS, Jan (2002). *An Introduction to International Institutional Law*. Cambridge: Cambridge University Press.
16. KOIVUROVA, Timo and SINGH, Kritika (2022). "Due Diligence." In: RÈUDIGER, Wolfrum; PETERS, Anne (eds.) *The Max Planck Encyclopedias of Public International Law*. Oxford: Oxford University Press, [online]. <https://doi.org/10.1093/law:epil/9780199231690/law-9780199231690-e1034>
17. KRONBERGA, Linda Ingeborga (2020). Genocide, state responsibility, and obligations erga omnes in the case of the Gambia v. Myanmar before the International Court of Justice. *The Law and Practice of International Courts and Tribunals.* 22(1). [online] <https://doi.org/10.1163/15718034-bja10088>
18. LAUTERPACHT, Hersch (1958). *The Development Of International Law The International Court*. New York:Stevens and Sons Limited.

19. LEMKIN, Raphael (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC. Carnegie Enforcement for International Peace Division of International Law.
20. NITOIU, Cristian (2024). The path to Russia's 2022 invasion of Ukraine: Moscow's framing of conflict and cooperation with the West under Putin's rule. *Southeast European and Black Sea Studies* [online]. <https://doi.org/10.1080/14683857.2024.2324559>
21. PANAGIS, Nikiforos (2024). Jurisdictional Entanglement: the Relationship between the Jurisdiction over a Dispute and the Jurisdiction to Assess Compliance with Provisional Measures. *The Law & Practice of International Courts and Tribunals* 23. [online] <https://doi.org/10.1163/15718034-bja10113>
22. PELLET, Alain (2018). Decisions of the ICJ as Sources of International Law?. *Gaetano Morelli Lectures Series*,
23. PINESCHI, Laura (2024). *International Courts versus Compliance Mechanisms through the Lens of the Gabcikovo-Nagymaros and Bystroe Canal Cases*, n VOIGT, C and FOSTER, C (eds) *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation*. Cambridge: Cambridge University Press. [online] <https://www.cambridge.org/core/books/international-courts-versus-noncompliance-mechanisms/international-courts-versus-compliance-mechanisms-through-the-lens-of-the-gabcikovonagymaros-and-bystroe-canal-cases/D14F18724DE5EC67CEF5797967A45994>
24. POLISH YEARBOOK OF INTERNATIONAL LAW, XXXII (2012). Warsaw: Wydawnictwo Naukowe. [online] <https://scholar.com.pl/en/books/1400-2012-polish-yearbook-of-international-law-vol-xxxii.html>
25. SCHABAS, William A (2002). *Genocide in International Law*. Cambridge: Cambridge University Press.
26. SCHARF, Michael P. (2008). "Aut dedere aut iudicare." In: WOLFRUM, Rüdiger (ed.), *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press.
27. TAMS, C. J. (2023). Who's afraid of the articles on state responsibility. In: BULL, SC, C., MALINTOPPI, L. and PARTASIDES, KC, C. (eds.) *Arbitration's Age of Enlightenment?* Series: ICCA congress series (21). Kluwer Law International. [online]. <https://eprints.gla.ac.uk/308703/1/308703.pdf>
28. TOYNBEE, A Joseph (169). *Experiences*. New York: Oxford University Press.

29. UCHKUNOVA, Inna (2013). Provisional Measures before the International Court of Justice. *The Law & Practice of International Courts and Tribunals* 12(3). Brill <https://doi.org/10.1163/15718034-12341263>
30. URAZ, Onur (2025). The Growing Role of the International Court of Justice as a Field of Lawfare: Perils and Prospects. *Lawfare and the Future of International Crime*, 5(1), [online]. <https://doi.org/10.6092/issn.2724-6299/21521>
31. ZIMMERMANN, Andreas (2011). *The Obligation to Prevent Genocide: Towards a General Responsibility to Protect?*. Oxford: Oxford University Press.
32. AKHAVAN, Payam (2015). Balkanizing Jurisdiction: Reflections on Article IX of the Genocide Convention in Croatia v. Serbia. *Leiden Journal of International Law*, 28, [online]. <https://doi.org/10.1017/S0922156515000473>
33. ALLOT, Philip (1988). State Responsibility and the Unmaking of International Law. *Harvard International Law Journal*, 29(1).
34. AL-QAHTANI, Mutlaq (2002). The Role of the International Court of Justice in the Enforcement of Its Judicial Decisions, *Leiden Journal of International Law*, 15(4). doi:10.1017/S0922156502000353.
35. CAKAL, Ergün (2023). Torture and progress, past and promised: problematizing torture's evolving interpretation. *International Journal of Law in Context*, 19. [online]. doi:10.1017/S1744552323000010
36. CASSESE, Antonio (2002). When May Senior State Officials be Tried for International Crimes? Some Comments on the Congo v. Belgium Case. *European Journal of International Law*, 13(4).
37. CASSESE, Antonio (2007). The *Nicaragua* and *Tadic* Tests Revisited in Light of the ICJ Judgement on Genocide in Bosnia. *European Journal of International Law*, 18(4). [online] <https://doi.org/10.1093/ejil/chm034>
38. COSTI, Alberto (2008). The 60th Anniversary of the Genocide Convention. *Victoria University of Wellington Law Review*, 39. [online] <https://ssrn.com/abstract=3074736>
39. GENSER, Jared (2018). The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement. *Chicago Journal of International Law*, 18(2). [online] <https://chicagounbound.uchicago.edu/cjil/vol18/iss2/2/>
40. GILLICH, Ines (2016). Between Light and Shadow: The International Law Against Genocide in the International Court of Justices's Judgement in *Croatia v. Serbia* (2015). *Pace International Law Review*, 28(1). [online]. <https://digitalcommons.pace.edu/pilr/vol28/iss1/3/>

41. GUNAWAN, Yordan; WHISLER, Refisyanti Sonya; MUFIDA, Aliza et al. (2020). Jurisdiction of International Court of Justice (ICJ) Over the Genocide Violations: with Special References to Rohingya Case. *Fiat Justisia: Faculty of Law, Universitas Lampung*, 14(4). [online]. DOI: 10.25041/fiatjustisia
42. HAKIMI, Monica (2010). State Bystander Responsibility. *The European Journal of International Law*. 21(2). [online]. <https://www.ejil.org/pdfs/21/2/2010.pdf>
43. HAMILTON, Rebecca (2008). Bosnia v Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia. *Leiden Journal of International Law*. 21(1). [online]. [https://digitalcommons.wcl.american.edu/facsch\\_lawrev/1290?utm\\_source=digitalcommons.wcl.american.edu%2Ffacsch\\_lawrev%2F1290&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.wcl.american.edu/facsch_lawrev/1290?utm_source=digitalcommons.wcl.american.edu%2Ffacsch_lawrev%2F1290&utm_medium=PDF&utm_campaign=PDFCoverPages)
44. HATHAWAY, Oona A.; GARAY, Cindy and ZHANG, Kevin (2025). The World Court's Enforcement Dilemma—And How to Solve It. *Georgetown Law Journal*, 113, [online]. Yale Law School, Public Law Research Paper. <https://ssrn.com/abstract=5197374>
45. INGADOTTIR, Thordis (2009). The ICJ Armed Activity Case: Reflections of States' Obligations to Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the Geneva Conventions. *Nordic journal of International Law*. 78. [online] <https://www.ohchr.org/sites/default/files/documents/issues/torture/cfi-report-hrc52/submissions/csos/submission-srtorture-hrc52-cso-ThordisIngadottir-1.pdf>
46. KARAOGLU, Ali Osman (2025). Assessing The Effectiveness and Adequacy of Provisional Measures in Genocide Cases: A Comparative Study. *Journal of Balkan Studies*. 5(1). [online]. <https://doi.org/10.51331/A057>
47. KIRBY, James and HODGSON, Amy (2022). The Gambia v Myanmar at the International Court of Justice: A Search for National and International Values. *The Round Table; The Commonwealth Journal of International Affairs*. 111(2). [online]. <https://doi.org/10.1080/00358533.2022.2058778>
48. KRESS, Claus (2007). The International Court of Justice and the Elements of the Crime of Genocide. *European Journal of International Law*, 18(4). [online]. <http://ejil.org/pdfs/18/4/238.pdf>
49. KULICK, Andreas (2022). Provisional Measures after Ukraine v Russia (2022). *Journal of International Dispute Settlement*, 13(2). [online] <https://doi.org/10.1093/jnlids/idac012>

50. LAUTERPACHT, Hersch (1928). Revolutionary Activities by Private Persons Against Foreign States. *American Journal of International Law*, 22(4). [online]. <https://www.jstor.org/stable/2188972>
51. LLAMZON, Aloysius P. (2007). Jurisdiction and Compliance in Recent Decisions of the International Court of Justice. *European Journal of International Law*, 18(5). [online] <https://www.ejil.org/pdfs/18/5/250.pdf>
52. LOIZOU Demetra (2021). The Concept of Res Judicata in the Common Law System with Emphasis on Cypriot and UK perspectives. *Journal of Law and Economics*, 13(2). [online]. <https://doi.org/10.18690/lexonomica.13.2.135-150.2021>
53. MC CARTHY, Conor (2012). Victim Redress and International Criminal Justice: Competing Paradigms, or Compatible Forms of Justice? *Journal of International Criminal Justice*, 10(2). [online]. <https://doi.org/10.1093/jicj/mqs014>
54. MENNECKE, Martin (2021). The International Court of Justice and the Responsibility to Protect: Learning from the Case of The Gambia v. Myanmar. *Global Responsibility to Protect*, 13(2-3). [online]. DOI <https://doi.org/10.1163/1875-984X-13020012>
55. MILANOVIĆ, Marko (2006). State Responsibility for Genocide, *European Journal of International Law*, 17(3). [online]. <https://doi.org/10.1093/ejil/chl019>
56. MOHAMED, Saira (2009). A Neglected Option: The Contributions of State Responsibility for Genocide to Transitional Justice. *University of Colorado Law Review*. 80(2). [online] <https://scholar.law.colorado.edu/lawreview/vol80/iss2/3/>
57. PAOLA, Geta (2007). On What Conditions can a State Be Held Responsible for Genocide?. *European Journal of International Law*, 18(4). [online]. <https://doi.org/10.1093/ejil/chm037>
58. PAULSON, Colter (2004). Compliance with Final Judgements of the International Court of Justice since 1987. *The American Journal of International Law*. 98 (3). [online] <https://doi.org/10.2307/3181640>
59. RAMSDEN, Michael (2023). Strategic Litigation in Wartime: Judging the Russian Invasion of Ukraine through the Genocide Convention. *Vanderbilt Journal Of Transnational Law*. 56(1).
60. REED, Joseph B. (2025). The Forgotten Promise: Alternative Solutions to Enforcing the Genocide Convention. *Ohio Northern University Law Review*, 51(2). [online]. [https://digitalcommons.onu.edu/onu\\_law\\_review/vol51/iss2/4?utm\\_source=digitalcommons.onu.edu%2Fonu\\_law\\_review%2Fvol51%2Fiss2%2F4&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.onu.edu/onu_law_review/vol51/iss2/4?utm_source=digitalcommons.onu.edu%2Fonu_law_review%2Fvol51%2Fiss2%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages)
61. ROSENBERG, Sheri P (2012). Genocide Is a Process, Not an Event. *Genocide Studies*

*and Prevention: An International Journal*, 7(1).

<https://digitalcommons.usf.edu/gsp/vol7/iss1/4>

62. SASSOLI, Marco and LAURA, M Olson (2000), Prosecutor v. Tadic (Judgement). Case No. IT-94-a-A. 38 ILM 1518 (1999). *American Journal of International Law*, 94(3) [online]. DOI 10.2307/2555326
63. SCHALLER, Dominik J. (2011). From Lemkin to Clooney: The Development and State of Genocide Studies. *Genocide Studies and Prevention: An International Journal*, 6(3), [online]. <https://digitalcommons.usf.edu/gsp/vol6/iss3/6>
64. TANZI, Attila (1995). Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations. *European Journal of International Law*, 6.
65. VADAPALLI, Amulya (2023). Justice Without Power: Yemen and The Global Legal System. *Michigan Law Review*. 121(5). [online]. <https://repository.law.umich.edu/mlr/vol121/iss5/4/>
66. VAN SCHAACK, Beth (1997). The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot. *Yale Law Journal*, 106.
67. VENTURA, Manuel J. (2016). Christian Tams, Lars Berster and Björn Schiffbauer, Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary, Munich/Oxford/Baden-Baden, C.H. Beck/Hart Publishing/Nomos, 2014. *Leiden Journal of International Law*, 29(1). [online] DOI 10.1017/S092215651500076X.
68. WHITE, Jeremy (2003). A New Remedy Stresses the Need for International Education: The Impact of the Lagrand Case on a Domestic Court's Violation of a Foreign National's Consular Relations Rights Under the Vienna Convention. *Washington University Global Studies Law Review*, 2.
69. WIRTH, Steffen (2002). Immunity for Core Crimes? The ICJ's Judgement in the Congo v. Belgium Case. *European Journal of International Law*, 13(4).

### **III. Information Publication**

1. ACERIS Law (2024). Provisional Measures Through the Lens of the ICJ's Decision in South Africa v. Israel [online]. [https://www.acerislaw.com/provisional-measures-through-the-lens-of-the-icjs-decision-in-south-africa-v-israel/#\\_ftn7](https://www.acerislaw.com/provisional-measures-through-the-lens-of-the-icjs-decision-in-south-africa-v-israel/#_ftn7)
2. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (United Kingdom, United States, USSR, France) (1945) UNTS 82, 279.

3. POLISH YEARBOOK OF INTERNATIONAL LAW, XXXII (2012). Warsaw: Wydawnictwo Naukowe. [online] <https://scholar.com.pl/en/books/1400-2012-polish-yearbook-of-international-law-vol-xxxii.html>
4. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004
5. RIDINGS, Penelope (2025). Annex II: Due Diligence in International Law. [online] <https://legal.un.org/ilc/reports/2024/english/annex2.pdf>
6. SCHMIDT, Roland (2019). *Aut Dedere aut Judicare* [online]. Oxford Commentaries on International Law Pro <https://doi.org/10.1093/law/9780198846178.003.0009>
7. UNITED NATIONS International Law Commission (2001). Article 4: Conduct of Organs of a State. In: *Draft Articles on Responsibility of States for Internationally Wrongful Acts – Book 25 (Part 1, Chapter II)* [online]. United Nations. [https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25\\_part1\\_ch2\\_art4.pdf](https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25_part1_ch2_art4.pdf)
8. XABA, Zwelithini E (2025). Why the Sudan’s Case Against the UAE at the ICJ Has Limited Prospects of Success. *AfricLaw*. [online] <https://africlaw.com/2021/06/01/the-cost-of-separating-powers/>

#### IV. Case Laws

1. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, *Ukraine v Russian Federation*, Provisional measures, ICJ GL No 182, ICGJ 559 (ICJ 2022), 16th March 2022.
2. Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (*Nicaragua v. Germany*)
3. Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Gambia v Myanmar*, Provisional measures, ICJ GL No 178, ICGJ 540 (ICJ 2020), 23rd January 2020, United Nations [UN]; International Court of Justice [ICJ].
4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, ICJ Reports 2007.
5. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment of 3 February 2015, ICJ Reports 2015.
6. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (*Sudan v. United Arab Emirates*), Order of 5 May 2025, I.C.J.

Reports 2025 Case No. 197.

7. Application of the International Convention on the Elimination of All Forms of Racial Discrimination, *Georgia v Russian Federation*, Judgment on preliminary objections, ICJ GL No 140, ICGJ 429 (ICJ 2011), 1st April 2011
8. Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of the Congo v. Rwanda*), Judgment of 3 February 2006, ICJ Reports 2006.
9. Arrest Warrant of 11 April 2000, *The Democratic Republic of Congo v. Belgium*, Judgment, Merits, Preliminary Objections, ICJ GL No 121, [2002] ICJ Rep 3, [2002] ICJ Rep 75, ICGJ 22 (ICJ 2002), 14th February 2002, International Court of Justice [ICJ]
10. *Belgium v. Senegal*, Judgment [2012], ICJ
11. *Germany v. United States of America* [2001] ICJ GL No 104
12. *Israel v. Adolf Eichmann* [1968] 36 ILR 18
13. Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*) Merits, Judgment. I.C.J. Reports 1986
14. *Prosecutor v. Anto Furundzija* (Trial Judgement) [1998], IT-95-17/1-T, ICTY.
15. *Prosecutor v. Blagojević and Jokić* [2005], Case No. IT-02-60-T.
16. *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, 2 August 2001
17. *Selmouni v. France* [1999] 25803/94 ECtHR 87
18. *The Prosecutor v. Akayesu* [1998], Case No. ICTR-96-4.
19. *The Prosecutor v. Duško Tadić* [1999], IT-94-1-Tbis-R117
20. *United States v. Canada*, 3 R.I.A.A. 1905 (Trail Smelter Arbitration 1941)
21. United States Diplomatic and Consular Staff in Tehran, *United States v Iran*, Judgment, ICJ GL No 64, [1980] ICJ Rep 3, ICGJ 124 (ICJ 1980), 24th May 1980, United Nations [UN]; International Court of Justice [ICJ]

## SUMMARY

### **The application of the UN Genocide Convention in the recent jurisprudence of the International Court of Justice: a step back or forward in ensuring compliance with States' obligations under this Convention?**

**J Arachchige Hiruney Marianne Saubhagya Perera**

The thesis paper examines the application of the Genocide Convention in the recent jurisprudence of the ICJ. The cases of *Croatia v. Serbia*, *Bosnia and Herzegovina v. Serbia and Montenegro*, *The Gambia v. Myanmar*, and *Ukraine v. Russian Federation* were assessed to evaluate whether the ICJ has improved its framework in promoting compliance with States' obligations to prevent and punish genocide. The historical background of the UN Genocide Convention, indirect and direct responsibility of States and individuals, role of the ICJ in ensuring compliance, provisional measures, and deterrent effect of the Convention, were the main key areas of analysis throughout the thesis. The key developments include the use of due diligence and the concept of *erga omnes partes*, which has allowed States to invoke responsibility. The use of provisional measures was seen as one of the most important tools for ensuring compliance. Overall, this thesis concludes that the ICJ has progressed the interpretation and scope of the Convention, making a clear step forward, even though achieving full compliance remains a challenge.