

International law and organizations, such as the ICC, ICJ or the UN Security Council, are often unable to prevent genocide and war crimes effectively

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Abstract

This paper evaluates the structural and political obstacles that prevent international institutions such as the International Criminal Court and the UN Security Council from effectively preventing genocide. It discusses the limitations on the enforcement of state sovereignty and voluntary cooperation, rather than on a centralized, independent authority. Through case studies in Libya, Myanmar, Gaza, and Srebrenica, the research highlights how legal barriers and geopolitical interests often paralyze accountability and leave populations at risk. Furthermore, the analysis addresses ethical tensions in which efforts for judicial fairness can come at the expense of the urgent protection of victims.

The paper concludes by suggesting reforms, such as strengthening the Responsibility to Protect (R2P) framework and creating an independent enforcement body to minimize political interference.

Keywords: Genocide prevention, International Law, War Crimes, International Criminal Court, International Court of Justice, United Nations, Political Influence, State sovereignty, International Law Enforcement

Introduction

Genocide is considered a sensitive subject among people, nations and cultures. Its definition clarifies what it refers to in international law. The United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. According to its Article II, “*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: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.*” However, the term “genocide” has been used carelessly in the media, politics and social discourse in recent years, resulted in false, and misleading assumptions due its specific frameworks in international law.

First, it is the responsibility of the international community, as a community of states, as well as individual states acting within their own jurisdictions, to address violations, resolve conflicts, and uphold international justice. In this process, international organizations such as the United Nations and the International Criminal Court (ICC) play a supplementary and secondary role. As an example, the International Court of Justice (ICJ), as the organ of the United Nations, takes action only when a state brings a case against another, and the ICC only steps in as a complementary mechanism rather than a primary authority. However, political power and state sovereignty have a significant influence on how international law is enforced. Legal standards cannot be applied independently of political interests because these institutions depend on state cooperation, including funding, enforcement and jurisdiction. Therefore, when powerful states refuse to cooperate or put their national interests first, even clearly defined international crimes may go unpunished, leaving communities at risk of being

unprotected if political interests block intervention or prosecution. When legal enforcement is perceived as politically motivated, states and the global public lose confidence in bodies such as the International Criminal Court or the United Nations. This criticism has been placed into practice as some African states, including South Africa, have refused to carry out ICC decisions, like the arrest warrant for Sudan's Omar al-Bashir. Furthermore, when the ICC restricts or interprets international law to support its own investigations, it may also cause a loss of confidence. Injustice increases insecurity, conflicts persist in the absence of justice, and may lead to violent cycles.

Justification

A central challenge in international law is the gap between legal obligations and their enforcement in practice. This issue matters because the protection of human life and dignity depends not only on law being written, but on law being upheld. When international institutions cannot act effectively, accountability collapses, and victims are left without justice.

Therefore, the decision to explore this topic is justified not only because genocide is a crime of extraordinary significance but also because preventing it puts the entire framework of international law to the test. It highlights the tension between collective responsibility and state sovereignty, between what states are willing to undertake in practice and what is mandated by law, as reflected in ongoing debates over intervention, jurisdiction, and cooperation with institutions such as the International Criminal Court. We can better understand why atrocities continue despite clear legal prohibitions by examining these structural tensions.

Factual description

The institution handling the case and the degree of state cooperation determine the implications for the parties involved if an act is legally recognized as genocide under international law. Prosecution for international crimes, including genocide is first and foremost the responsibility of domestic courts, which investigate individuals suspected of such offences, as states bear the primary responsibility for enforcing international criminal law. Where national authorities are unwilling or unable to act, cases may be brought before international tribunals such as the ICC, which operates on the principle of complementarity. The ICC has jurisdiction over individuals and may impose penalties such as imprisonment, reparations to victims, and symbolic measures including declarations of guilt. Only the International Court of Justice can hold a state responsible for genocide, because it handles disputes between states, not individuals. In these situations, the Court may propose provisional measures, order reparations, and obligate the state to undertake measures to stop further violations. The question of jurisdiction is therefore a central preliminary question in proceedings before the ICJ. However, the practical impact of such rulings is limited due to the lack of a comprehensive global enforcement authority.

State sovereignty is the main structural issue with applying international criminal law. Because there isn't a single authority above states to enforce compliance, the international system operates a state-centered order, in which enforcement depends on the cooperation and consent of individual states. Participation in international legal institutions is primarily voluntary, and all states are formally equal. Fundamental international treaties, such as the Genocide Convention, require states to stop and punish acts of genocide and to hold individuals criminally accountable; however, enforcement of these obligations is not always guaranteed. Rather, enforcement relies on states' readiness to look into crimes and detain suspects.

Because of this, accountability frequently reflects the priorities and influence of individual states rather than legal requirements; the effectiveness of international legal institutions is limited, proving that international law operates inside rather than outside of the current international system's power structure. Such structural constraints are not abstract in nature. They are manifested in the day-to-day functioning of international legal institutions, where political, institutional and resource constraints affect decisions about investigations, prosecutions and case selection. This makes it necessary to examine the role of practitioners, like judges, prosecutors and investigators, whose actions are directed by international law requirements as well as the rules of the organizations they represent.

The reliance on state cooperation significantly restricts their professional role in international legal institutions. Even if ICC judges, prosecutors, and investigators fulfil their duties with complete accuracy, they are still unable to make arrests or enforce the law without the cooperation of states. Professionals are ethically obligated to seek justice, but their ability to enforce decisions and hold offenders accountable is limited by international institutions' reliance on state cooperation, putting them in a difficult situation.

Legal cases

The International Criminal Court often faces challenges in enforcing its decisions due to its reliance on state cooperation, as illustrated by its actions in Sudan, Kenya, and Libya. In the Libyan case, the ICC issued an arrest warrant for Saif al-Islam Gaddafi on charges including alleged crimes against humanity in connection with the violent suppression of protests during the 2011 uprising, including murder and persecution of civilians. However, political instability and competing domestic interests led Libyan authorities to resist cooperation with the Court, including requests for his transfer.

Combined with limited enforcement capacity and inconsistent backing from the UN Security Council, these constraints have hindered the ICC's ability to ensure effective accountability in practice.

The Rwandan genocide also exposed major internal weaknesses within the International Criminal Tribunal for Rwanda (ICTR) that limited its effectiveness and credibility. Although the tribunal was created to deliver justice, defence lawyers often went unpaid or worked with minimal resources, and early proceedings were held in makeshift, poorly equipped "grass courts" that lacked professionalism. Many survivors were too afraid to testify due to threats, trauma, or pressure from their communities, and the tribunal struggled with witness protection and relocation. Access to evidence was slow, communication between lawyers and defendants was obstructed, and delays meant trials stretched on for years. These structural and financial problems showed that even when international courts pursue justice, lack of funding, support, and security can severely weaken their impact. This case demonstrates the ethical dilemma that defense attorney and tribunal employees faced in upholding due process and ensuring fair trials in the face of severe financial, institutional, and security constraints. In an attempt to uphold legal integrity in these circumstances, experts unintentionally contributed to drawn-out proceedings, denying survivors of justice and highlighting the boundaries of professional accountability in courts with inadequate funding.

The International Court of Justice is still considering South Africa's case against Israel, as it has not yet reached a final decision regarding the reality of the genocide accusations. In its orders on provisional measures, it recalled Israel's obligations under the Genocide Convention and ordered actions to prevent acts forbidden by the Convention and to guarantee the provision of humanitarian assistance. According to reports from humanitarian organizations, such as the Refugees International (2024) and the United Nations Office for the Coordination of Humanitarian Affairs (2025), there is severe food insecurity, widespread restrictions on humanitarian access, mass displacement, and

extensive destruction of civilian infrastructure in Gaza. These findings coexist with Israel's claims that its military actions in response to the 7 October 2023 attacks are legitimate self-defense and that they adhere to international humanitarian law. The Israeli authorities have also formally rejected claims of unlawful conduct and serious humanitarian restriction, stating that the restrictions on aid are justified by operational and security considerations and that the humanitarian difficulties are partly caused by the conduct of Hamas.

At the same time, the situation also brings up more general legal issues regarding the scope and implementation of the Genocide Convention. Specifically, the attacks of 7 October 2023 were carried out by Hamas, a non-state actor that does not operate under the territorial jurisdiction of a recognized state. Although the Convention reflects *jus cogens* principles -meaning that one of the fundamental and widely accepted principles of international law is the prohibition of genocide- it cannot be used as a basis for bringing Hamas itself before the ICJ, because proceedings involve state responsibility, not non-state actors. Therefore, this means that only individuals, not Hamas as an entity could face criminal charges before the proper national or international courts.

A similar dynamic is evident in *The Gambia v. Myanmar* before the International Court of Justice, which concerns alleged violations arising from the Rohingya crisis. The Court told Myanmar to stop genocidal acts and to preserve evidence, but in realistic terms, enforcement relies on whether states actually cooperate and on outside political pressure. There's no real muscle behind these orders. Even after the world's top judges admitted there's a real risk of genocide, reports still show Rohingya communities getting pushed out and persecuted. So, even when the Genocide Convention gets dusted off, and international courts step in, they can't actually stop the violence unless countries get together and act.

The situation involving China and the Uyghurs presents a different but equally significant set of constraints. The UN has reported serious abuses in Xinjiang that may amount to crimes against humanity. However, China is not a member of the International Criminal Court (ICC), creating a clear jurisdictional barrier, and any referral would require UN Security Council approval, where China holds veto power. While a case could theoretically be brought before the International Court of Justice (ICJ), this is considered unlikely given political realities. This highlights how major powers can limit accountability within the international system.

The lack of a final judicial determination, and limited enforcement tools beyond temporary ones serve as examples of structural limitations on international law's ability to bring accountability during an ongoing armed conflict.

The Srebrenica genocide really shows just how weak international law and organizations can be when it comes to stopping mass atrocities. Antonio Cassese, the first president of the ICTY, called Srebrenica a “temporary defeat” for the Tribunal. He saw that just having an international court does not actually scare people into following the rules. The ICTY was created to go after those who broke international humanitarian law, but the war was still raging, and the Tribunal had no real way to enforce its ruling. Cassese later pointed out that the UN Security Council seemed to treat the Tribunal as if it could replace real political or military action – hiding the fact that the UN itself was unable to intervene effectively due to institutional and political constraints.

At the heart of all this was a legal puzzle: how do you link non-state actors- like the Bosnian Serb forces and Republika Srpska- to the Federal Republic of Serbia? In the Tadić case, Cassese pushed for the “overall control” test. He argues that in modern wars, you often have proxy forces and entities that aren't official states, and if you only recognize state responsibility when there is strict

“effective control” (the standard the ICJ used in Nicaragua and later in Bosnia v. Serbia), then states can just work through proxies and dodge any blame. When the ICJ refused in 2007 to hold Serbia directly responsible, it proved Cassese’s point: if the bar for evidence is too high, accountability falls apart.

So even when the law said what happened was genocide, international institutions still could not stop it, or really pin responsibility on the states pulling the strings behind these groups. Srebrenica makes it painfully clear: without real political will, the power to enforce decisions, and legal standards that fit how modern conflicts work, organizations like the UN, ICTY, and the ICJ end up reacting to genocide after the fact, not preventing it.

Ethics

From an ethical standpoint, there are significant moral issues with the regulation of humanitarian access in Gaza. International Humanitarian Law, particularly under the Geneva Convention IV and Additional Protocol I permits a party to a conflict to impose restrictions and regulate relief efforts for essential security reasons—such as preventing provisions from reinforcing the enemy—as long as such actions do not prevent civilians from receiving the supplies they need. At the same time, reports from humanitarian and international observers have raised concerns that Hamas has diverted or controlled aid supplies and has been accused of prioritizing its military infrastructure over civilian needs, while also being responsible for holding Israeli and foreign hostages for a long time after the 7 October 2023 Hamas-led attacks on Israel.

However, when a party has significant control over the civilian population’s access to necessities within the territory affected by the conflict (meaning control exercised on the ground inside Gaza over internal movement, local administrative structures, and the coordination of aid

distribution, including through its influence over security arrangements and the functioning of crossings and permit systems), it can substantially affect the flow of essential goods and services. Israel has argued that such regulatory measures are necessary to prevent aid from being diverted and to counter Hamas's security threats.

The moral burden of predictable civilian suffering remains even if some restrictions are within the boundaries permitted by IHL. This tension between protecting civilian welfare and enforcing security-based regulations shows the practical and normative difficulties that exist in the IHL framework.

UN agencies repeatedly warned of starvation, disease, and mass civilian death, yet lacked the authority to compel the opening of border crossings, deploy aid convoys, or establish humanitarian corridors without the consent of relevant state actors. This reveals a structural limitation of the international system, in which the effectiveness of humanitarian action depends on state cooperation, including that of parties whose conduct is under scrutiny. As a result, humanitarian access can become dependent on political and security considerations, raising difficult ethical questions about the balance between sovereignty, security, and the principles of humanity and impartial relief.

The difficulties the ICTR encountered during the Rwandan genocide highlight a serious moral dilemma between guaranteeing fair trials and providing victims with justice. On the one hand, even in situations where resources were scarce and solicitors were unpaid, the tribunal had a moral and legal duty to provide defendants with capable legal representation, respect due process, and uphold professional standards. However, owing to these delays and procedural constraints, survivors experienced prolonged waits for accountability, perpetrators remained at liberty for extended periods, and numerous witnesses were deterred by fears of retaliation. This raises the moral question of

whether it is appropriate to prioritize accused individuals over procedural justice when doing so prolongs suffering and denies victims instant protection or closure. The ICTR's struggle to balance these competing responsibilities underscores how resource constraints and security risks can turn the pursuit of justice into a morally complex decision.

An ethical issue between thorough legal accuracy and the pressing need for justice and victim protection is presented by the ICTY's handling of the Srebrenica genocide. Even though the tribunal carefully gathered evidence, made sure that trials were fair, and followed procedural rules, these protections led to incredibly long delays, which allowed offenders like Radovan Karadžić and Ratko Mladić to go free for more than ten years. This raises ethical concerns about whether, in upholding the principles of the rule of law and due process, it is appropriate to prioritize exhaustive legal procedures when doing so prolongs the suffering of survivors, leaves communities vulnerable, and allows intimidation and denial to persist. Furthermore, when it is shown that genocide only took place in Srebrenica while other massacres went unreported, there is a conflict between legal definitions and the moral obligation to recognize and reject all atrocities. The ICTY's experience shows how the immediate ethical obligation to protect victims and provide immediate accountability can clash with compliance with procedural justice.

These examples show that international practitioners are actors working within limited systems rather than neutral actors of policy. Humanitarian workers, ICC staff and UN officials must find a balance between legal process, professional neutrality, and the moral need to prevent harm. Professionals struggle to balance carrying out their duties correctly with doing what is morally required when institutions lack the power or resources to take action.

Possible solutions

Genocide prevention remains one of the most urgent and challenging responsibilities of the international community. Active international and domestic actions that recognize and address early warning indicators before atrocities worsen are necessary to prevent genocide. The implementation of strong early warning and early action mechanisms under the Responsibility to Protect (R2P) framework is one important way to address the difficulties in preventing genocide. Preventing atrocity crimes is far more effective and less expensive than responding to them after they happen, according to the 2018 UN report *Responsibility to Protect: From Early Warning to Early Action* (United Nations, 2018). Humanitarian intervention, diplomatic pressure, sanctions, and the deployment of peacekeeping and peace-enforcing troops when necessary are examples of rapid responses. It is also essential to support independent human rights organisations, national officials, and civil society groups because they can provide advocacy, reporting, and monitoring alongside state-led prevention, though their work should be approached with appropriate scrutiny to ensure accuracy, transparency, and impartiality. The international community can uphold legal and ethical obligations, prevent atrocities before they turn into genocide, and lessen reliance on political will in times of crisis by institutionalising early-warning systems and connecting them to swift action.

The increase of national and regional abilities is necessary to stop genocide. States should implement comprehensive strategies to pinpoint risk factors, defend the rights of minorities, outlaw hate speech, and encourage inclusivity. Establishing R2P centres, involving civil society, and educating people about mass atrocities all aid in identifying early warning indicators and fostering societal resilience. Timely action to stop atrocities before they happen is further supported by regional collaboration and information exchange (Global Centre for the Responsibility to Protect, 2021).

Strengthening current institutions or establishing an independent enforcement body with actual authority are potential solutions to the limitations of international organizations and international law in addressing genocide. Currently, state cooperation is necessary for international courts and UN mechanisms to function, allowing offenders to avoid accountability when political interests get in the way. Strengthening enforcement would require reducing reliance on geopolitical bargaining and ensuring that accountability mechanisms can operate without obstruction by powerful states or their allies. Imagine an independent enforcement body- and an international force that is always ready to step in when genocide happens. It wouldn't need to wait around for each country to give permission, which tends to slow everything down. Instead, this force could quickly and consistently, unhindered by political games. In order to keep it truly independent, fixed leadership terms, reliable funding, and clear legal rules would be needed, as well as real judicial oversight to keep everything in check.

States that support accountability procedures or hold other states accountable for transnational crimes should not be subject to political or economic retaliation. States are frequently deterred from taking action by fear of diplomatic repercussions, which strengthens the system in which power supersedes the law. The idea that stopping and punishing genocide is a universal duty rather than a political decision should serve as the foundation for international cooperation. Regardless of the standing or power of the state committing the crime, moving accountability beyond regional alliances and power politics would reaffirm that genocide is a violation of international law that cannot be excused or disregarded.

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