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# Speeding Up the International Community's Response Time in Addressing Acts of Genocide: Deferring to the Judgment of Nongovernmental Organizations

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# **Speeding Up the International Community's Response Time in Addressing Acts of Genocide: Deferring to the Judgment of Nongovernmental Organizations**

JOSHUA M. KAGAN\*

“There is an urgent need to step up the level of preventive actions. There must be an end to the pattern where intervention by armed forces stops atrocities only after the fact...”

~  
Mary Robinson<sup>1</sup>

## **Abstract**

Although the United Nations' 1948 Genocide Convention was a well-intentioned step toward ending genocide, acts of genocide have continued since its ratification. This paper suggests that because genocide is widely considered to be the most horrific of all crimes, the leaders of the international community owe it to their constituents to put some teeth in the Genocide Convention by increasing the speed with which acts of genocide are identified and eradicated. In order to speed up the international community's response time in stopping existing situations of genocide, this paper asserts that certain specified international human rights non-governmental organizations (NGOs) should be given the designated role of identifying genocide and related acts. Such a designation would then initiate, within the U.N. system itself, appropriate action to stop these genocidal acts.

This paper examines the relevant statutory provisions and precedents for significant NGO involvement within the United Nations (UN) system. I also discuss several practical concerns associated with granting deference to NGOs and evaluate the degree to which such concerns may be refutable or

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\* J.D. candidate, 2006, University of San Diego School of Law. The author would like to offer his sincere thanks to his family for their unwavering support and to Professor Laura Adams for her invaluable guidance in the writing of this article. The author also wishes to profess his profound gratitude and admiration for all those that work for the causes of international humanitarian relief, international human rights, and the eradication of the scourge of genocide.

<sup>1</sup> See Mary Robinson, U.N. High Commissioner for Human Rights, Address at Fordham University School of Law, Nov. 4, 1999.

compelling. This paper explores the moral and pragmatic values of creating a new system to identify cases of genocide, in the hope that the “never again” mentality that permeated the original drafting of the Genocide Convention can finally be given some force.

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### **Genocide and the Convention**

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<sup>2</sup> Members of these four sub-groups (national, ethnical, racial, and religious) are explicitly included within the ambit of the Genocide Convention. *See* Convention on

While it has probably become the best-known example of genocide, the Nazi Holocaust was not the first time in the twentieth century that an attempt was made to destroy a national, ethnic, racial, or religious group.<sup>2</sup> Between 1915 and 1922, approximately 1.5 million Armenians living in Turkey were systematically killed through a series of forced deportations and massacres.<sup>3</sup> And during 1932 and 1933, in response to efforts by Ukrainians to seek independence from Soviet rule, Joseph Stalin forced a famine upon the Ukrainians that scholars believe led to somewhere between seven and ten million deaths.<sup>4</sup> In December of 1937, the Japanese Imperial Army marched into China's capital city of Nanking and murdered approximately half of the city's 600,000 inhabitants in the infamous Rape of Nanking.<sup>5</sup> But it was not until the horrors of the Nazi Holocaust (1938 to 1945), where approximately 6 million Jews, Gypsies, and other minority groups were systematically murdered, that the international community, and specifically the United Nations, made a concerted effort to identify and codify a response to the crime of genocide.<sup>6</sup>

It is generally accepted that the term "genocide" was first coined by a Polish-Jewish lawyer named Raphael Lemkin in 1944.<sup>7</sup> Lemkin used the term to describe the policies of systematic and mass murder used by the Nazis during the Holocaust.<sup>8</sup> While the Nazi Holocaust was neither the first, nor regrettably the last, incident of genocide, it opened the eyes of the international community to mankind's horrific potential for systematic and holistic cruelty. In 1945, top Nazis at the Nuremberg Trials were charged

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the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277, art. 2 [hereinafter Genocide Convention].

<sup>3</sup> PETER BALAKIAN, *THE BURNING TIGRIS: THE ARMENIAN GENOCIDE AND AMERICA'S RESPONSE* 175-180 (HarperCollins 2003).

<sup>4</sup> Anna Melnichuk, *Ukraine Marks Famine That Killed Millions*, ASSOCIATED PRESS, Nov. 22, 2003.

<sup>5</sup> IRIS CHANG, *THE RAPE OF NANKING: THE FORGOTTEN HOLOCAUST OF WORLD WAR II* 99-104 (BasicBooks 1997).

<sup>6</sup> The Website of the United States Holocaust Museum (Holocaust Museum), The Holocaust Encyclopedia, available at <http://www.ushmm.org/wlc/en/index.php?lang=en&ModuleId=10005143> (accessed Feb. 5, 2006).

<sup>7</sup> Holocaust Museum, *supra* note 6, The Committee on Conscience, available at <http://www.ushmm.org/conscience/history/> (last visited Feb. 5, 2006).

<sup>8</sup> *Id.*

with “crimes against humanity” rather than genocide.<sup>9</sup> However the indictment itself accused the Nazis of having “conducted deliberate and systematic genocide... in order to destroy particular races and classes of people and national, racial or religious groups...”<sup>10</sup> In the wake of the “never again” mentality that permeated much of post-World War II international affairs, the United Nations ratified the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948.<sup>11</sup>

The Genocide Convention was an ambitious attempt by the international community to attach international criminal liability to genocide, as well as related crimes, and to establish a system whereby the perpetrators of any future acts of genocide could be punished. But while the Genocide Convention has been, at best, arguably effective in punishing the perpetrators of acts of genocide, it has not met its initial goal of preventing future acts of genocide from occurring. Despite the ratification of the Genocide Convention in 1948 and its entry into force in 1951, with 41 signatories and 133 parties, the commission of genocidal acts has continued. For example, between 1975 and 1979, Cambodian Khmer Rouge leader Pol Pot orchestrated a systematic program of starvation, overwork, and executions, targeted largely at ethnic minorities, which left approximately two million people dead.<sup>12</sup> In 1994, approximately 800,000 Rwandans of Tutsi descent were killed by Rwandan Hutu militias using clubs and machetes,<sup>13</sup> at a rate as high as 10,000 killed per day.<sup>14</sup> Between 1992 and 1995, approximately 200,000 Bosnian-Muslims were slaughtered by the Serbian forces of Slobodan Milosevic in mass killings and various other acts of “ethnic cleansing.”<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See The Jewish Virtual Library: A Division of the American-Israeli Cooperative Enterprise, Nuremberg Trial Proceedings – Indictment: Count Three, available at <http://www.jewishvirtuallibrary.org/jsource/Holocaust/Count3.html> (last visited Feb. 3, 2006).

<sup>11</sup> Genocide Convention, *supra* note 3.

<sup>12</sup> Strobe Talbott, *Defanging the Beast (U.S. policies supported the Pol Pot activities in Kampuchea)*, TIME, Feb. 6, 1989, at 40.

<sup>13</sup> Ross Herbert, *Slaughter’s Fifth Anniversary Remembered: 800,000 were slain in genocide of ’94*, THE WASHINGTON TIMES, July 5, 1999, at A11.

<sup>14</sup> The Website for The History Place, Genocide in the 20<sup>th</sup> Century, Rwanda 1994, available at <http://www.historyplace.com/worldhistory/genocide/rwanda.htm> (last visited Feb. 5, 2006).

<sup>15</sup> William Drozdiak, *Milosevic to Face Genocide Trial For Role in the War in Bosnia; Yugoslav Ex-Leader First Head of State to Be So Charged*, WASHINGTON POST, Nov. 25, 2001, at A22.

While the Genocide Convention was a well-intentioned step in the right direction, more must be done in order to rid the world of the scourge of genocide.<sup>16</sup> As genocide is widely considered to be the most horrific of all crimes, the leaders of the international community owe it to their constituents to “put some teeth” in the Genocide Convention by (a) increasing the speed by which acts of genocide are identified and dealt with, and (b) imputing more responsibility to states and international alliances to employ forceful intervention to stop acts of genocide.<sup>17</sup> This paper will focus on the first prong of this recommendation: speeding up the response time of the international community in stopping existing acts of genocide by giving certain specified international human rights NGOs the designated role of identifying genocide and related acts, and thus initiating, within the U.N. system itself, action to stop these genocidal acts.

### **The Existing Structure: The Genocide Convention and How It Works**

The Genocide Convention defines genocide as certain acts that are done with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.<sup>18</sup> For the purposes of the Convention, these acts include: killing members of such a group; causing serious mental or bodily harm to the members of such a group; deliberately inflicting on such a group conditions of life calculated to bring about the group’s physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.<sup>19</sup> Thus, a variety of acts are considered by the Convention to constitute genocide, with the primary distinguishing attribute being that such acts are committed against a national, ethnic, racial, or religious group with the intention of destroying that group in whole or in part. In addition to specific acts of genocide, as defined above, the Genocide Convention also attaches criminal liability to a variety of associated acts including:

- conspiracy to commit genocide;
- direct and public incitement to commit genocide;

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<sup>16</sup> Genocide Convention, *supra* note 3, at preamble.

<sup>17</sup> For a discussion of the second prong of this recommendation, see Joshua M. Kagan, Comment, *The Obligation to Use Force to Stop Acts of Genocide: An Overview of Legal Precedents, Customary Norms, and State Responsibility*, 7 SAN DIEGO INT’L L. J. (forthcoming May 2006).

<sup>18</sup> Genocide Convention, *supra* note 3, at art. 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

- attempt to commit genocide; and
- complicity to commit genocide.<sup>20</sup>

This criminal liability can attach to either responsible leaders or private individuals for the commission of any of these aforementioned acts.<sup>21</sup>

Each contracting party to the Genocide Convention undertakes to enact domestic legislation that gives effect to the provisions of the Convention and provides domestic penalties for persons under that particular state's jurisdiction who are found to be guilty of committing genocide or any of the other associated acts as stated in the Convention.<sup>22</sup> Under the Convention, persons charged with the commission of genocide or one of the related acts may be tried in a competent national court of the state where the act was committed or by an international penal tribunal which has jurisdiction over the matter.<sup>23</sup> The Genocide Convention states that the jurisdiction of this international penal tribunal is established when the contracting parties involved in the dispute have accepted such jurisdiction.<sup>24</sup> It is presumably under this framework, and in accordance with the U.N. Security Council's Chapter VII powers of the U.N. Charter,<sup>25</sup> that the international community has established the ad hoc criminal tribunals in Rwanda<sup>26</sup> and Bosnia<sup>27</sup> to try those responsible for the genocidal acts committed in those nations.

One may also assume that the international penal tribunal envisioned by the drafters of the Genocide Convention<sup>28</sup> has now been established through the creation of the International Criminal Court (ICC). The ICC was established by the Rome Statute of the International Criminal Court on July 17, 1998, when 120 states adopted the Statute.<sup>29</sup> The Rome Statute entered into force on July 1, 2002.<sup>30</sup> It specifically states that the subject matter

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<sup>21</sup> Genocide Convention, *supra* note 3, at art. 4.

<sup>22</sup> Genocide Convention, *supra* note 3, at art. 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> U.N. Charter, art. 39; U.N. Charter, art. 41; *see* Prosecutor v. Tadic, Jurisdiction Appeal, ICTY, Case No. IT-94-1-AR72 (1995).

<sup>26</sup> The International Criminal Tribunal for Rwanda was created by U.N. Security Council Resolution 955 of November 8, 1994. S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994).

<sup>27</sup> The International Criminal Tribunal for the Former Yugoslavia was created by U.N. Security Council Resolution 827 of May 25, 1993. S.C. Res 827, U.N. Doc. S/RES/827 (May 25, 1993).

<sup>28</sup> *See* Genocide Convention, *supra* note 3, at art. 6.

<sup>29</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]

<sup>30</sup> *Id.*

jurisdiction of the ICC extends to alleged cases of genocide,<sup>31</sup> using the same definition of the crime that is found in the Genocide Convention.<sup>32</sup> Thus, for future incidents of genocide, it seems safe to assume that the ICC will provide the forum for adjudication that was proposed in the Genocide Convention.

But in order to try a person for allegedly committing genocide or any of the related acts, the ICC must also have personal jurisdiction over that person. This personal jurisdiction of the ICC extends only to states that have accepted the jurisdiction of the court either generally, by becoming a party to the Rome Statute,<sup>33</sup> or specifically, by accepting the court's jurisdiction for this particular case or crime.<sup>34</sup> The ICC may then exercise its jurisdiction if such jurisdiction has been accepted by either the state where the alleged genocidal act occurred<sup>35</sup> or the state of which the person accused of the crime is a national.<sup>36</sup>

Cases brought before the ICC, including those involving allegations of genocide, may be initiated in one of three ways. First, the ICC may exert jurisdiction over a case occurs when a situation is referred to the Prosecutor of the ICC by a State Party to the Rome Statute.<sup>37</sup> Second, the Court may exercise jurisdiction when a case is referred to the Prosecutor by the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations.<sup>38</sup> Third, a case may be brought before the ICC when the Prosecutor initiates an investigation herself.<sup>39</sup>

### Problems with the Current System

Given the examples above, it seems clear that the international response to acts of genocide must be a swift one. Urgent action is necessitated both by the speed with which genocidal acts can occur and the severity of those acts. The importance of such urgency becomes all the more evident when viewed in light of the death rates that have ensued from some of the commonly considered acts of genocide in the 20<sup>th</sup> century: 10,000 deaths per day in 1994 Rwanda,<sup>40</sup> over 9,000 deaths per day at Auschwitz in the

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<sup>31</sup> *Id.* at art. 5.

<sup>32</sup> *See id.* at art. 6.

<sup>33</sup> *Id.* at art. 12(1).

<sup>34</sup> *Id.* at art. 12(3).

<sup>35</sup> *Id.* at art. 12(2)(a).

<sup>36</sup> *Id.* at art. 12(2)(b).

<sup>37</sup> *Id.* at art. 13(a).

<sup>38</sup> *Id.* at art 13(b).

<sup>39</sup> *Id.* at art. 13(c).

<sup>40</sup> *See* The Website for The History Place, Genocide in the 20<sup>th</sup> Century, Rwanda 1994, *supra* note 20.

summer of 1944;<sup>41</sup> 25,000 deaths per day during the spring of 1933 as a result of Stalin's Forced Famine in the Ukraine.<sup>42</sup>

Unfortunately, the responses of the international community to the genocidal acts that occurred more recently in Rwanda and the former Yugoslavia suffered from what I refer to as the "time lag problem," and thus did not have this requisite urgency. By labeling the current system (to the extent that the system used in both Rwanda and the former Yugoslavia can be referred to as the "current system," an issue which I will address below), as having this "time lag problem," I suggest that the response from the international community to these suspected situations of genocide was too slow given their severity and the propensity for almost instantaneous mass murders that occurs in cases of genocide.

Bosnia. In 1991, the Serbian minority in Croatia rebelled against the government.<sup>43</sup> It was widely contended that Serbian president Slobodan Milosevic had prompted this revolution in order to "establish a Greater Serbia."<sup>44</sup> After the city of Vukovar fell on November 18, 1991,<sup>45</sup> the Serbs began the first mass executions of the conflict, killing hundreds of Croat men and burying them in mass graves.<sup>46</sup> More bombs were dropped on Vukovar in three months than during the entirety of World War II.<sup>47</sup> In response to reports of such atrocities, the United Nations Security Council adopted Resolution 780 on October 6, 1992.<sup>48</sup> This Resolution urged the Secretary-General to establish an impartial Commission of Experts to examine and analyze the situation, and to specifically consider the international law implications of actions being committed in the former Yugoslavia.<sup>49</sup> Once the Commission of Experts had concluded that violations of international law were occurring in Bosnia, the Security Council adopted Resolution 827 on

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<sup>41</sup> *Id.* at The Nazi Holocaust, 1938-1945, available at <http://www.historyplace.com/worldhistory/genocide/holocaust.htm> (last visited Feb. 5, 2006).

<sup>42</sup> *Id.* at Stalin's Forced Famine, 1932-1933, available at <http://www.historyplace.com/worldhistory/genocide/stalin.htm> (last visited Feb. 5, 2006).

<sup>43</sup> Laura Silber, *Anxious Croats Watch and Wait, Expecting the Worst*, FINANCIAL TIMES (LONDON), Aug. 5, 1991, at 2.

<sup>44</sup> *Id.*

<sup>45</sup> *Bloodbath Feared as Croats Desperately Seek Surrender; Vukovar Falls After 3 Months of Fighting; 1,000 Casualties*, HOUSTON CHRONICLE, Nov. 18, 1991, at A7.

<sup>46</sup> Georgie Anne Geyer, *U.N. Intervention Too Late; European City of Vukovar Drew Wrath of the Serbs*, WASHINGTON TIMES, August 11, 2002.

<sup>47</sup> *Id.*

<sup>48</sup> See United Nations Security Council Resolution 780, S.C. Res. 780, U.N. Doc. S/RES/780 (Oct. 6, 1992).

<sup>49</sup> *Id.*

May 25, 1993, establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>50</sup>

Rwanda. On January 11, 1994, the military commander of the United Nations peacekeeping force in Rwanda, General Romeo Dallaire, sent a fax to U.N. headquarters in New York, warning that genocide was being planned by the Hutu majority against the Tutsi minority.<sup>51</sup> Dallaire's fax did not receive a substantive response from the United Nations Secretariat, despite mounting evidence not only that ethnic and political tensions were increasing, but that Tutsis were being registered to facilitate the process of their extermination.<sup>52</sup> Finally, on July 1, 1994, the Security Council adopted Resolution 935, once again establishing a Commission of Experts.<sup>53</sup> The Commission's findings indicated that mass exterminations being conducted by Hutus against Tutsis constituted genocide.<sup>54</sup> In response, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994, when it adopted Resolution 1168.<sup>55</sup>

Despite credible indications that genocide was being committed in both Rwanda and Bosnia, the response of the United Nations, and thus the international community, lacked the speed that genocide requires. There seem to be two distinct problems that kept the international response from being as quick as it should have been to stop the killings in these two situations. First, the existing system under the UN in which a Commission of Experts was established to examine each situation was too slow and deliberate to deal adequately with ongoing cases of genocide. Though this system is not well suited to dealing with acts of genocide I will not elaborate extensively on the deficiencies of the specific systems used in Rwanda and Bosnia as this is likely now a moot point. Suffice it to say that it lacks the requisite sense of

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<sup>50</sup> United Nations Security Council Resolution 827, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).

<sup>51</sup> Karin Davies, *Annan: UN Lacked Members' Support to Prevent Rwandan Genocide*, ASSOCIATED PRESS ONLINE, May 4, 1998.

<sup>52</sup> See *Annan Knew of Genocide, Report Says*, ATLANTA JOURNAL & CONSTITUTION, May 4, 1998, at A7.

<sup>53</sup> United Nations Security Council Resolution 935, S.C. Res. 935, U.N. Doc. S/RES/935 (July 1, 1994).

<sup>54</sup> See Alain Destexhe, *The Third Genocide (Rwanda)*, 97 FOREIGN POLICY, Dec. 22, 1994.

<sup>55</sup> The tribunal was officially named "The International Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994." See United Nations Security Council Resolution 1168, S.C. Res. 1168, U.N. Doc. S/RES/1168 (May 21, 1998).

urgency that must exist to prevent mass killings and genocidal acts. This is because future cases of genocide will likely be investigated and dealt with under the new system established by the Rome Statute of the International Criminal Court.<sup>56</sup> As discussed above, rather than relying on recommendations made by a Commission of Experts, the ICC has jurisdiction over cases in three distinct ways, none of which requires the establishment of a Commission of Experts.<sup>57</sup>

But the second, more significant problem with the international community's response to the genocidal acts committed in Rwanda and Bosnia was the amount of time it took to initiate any United Nations action in the first place. In the case of Bosnia, the time lag between the atrocities of Vukovar and relevant action by the UN at least to take steps toward stopping the genocide (in this case, the establishment of the Commission of Experts) was nearly eleven months.<sup>58</sup> In Rwanda, the time lag between the Dallaire fax and the establishment of the Commission of Experts was almost six months.<sup>59</sup> Given that genocide can result in thousands of people being killed each day, these response times are inexcusable.<sup>60</sup>

Of course, it is possible that under the newly enacted system of the International Criminal Court, cases of genocide will be dealt with swiftly and appropriately. However, given that it is widely accepted that genocidal acts are being committed today in Darfur, Sudan,<sup>61</sup> Neither the current structure of the ICC nor that of the UN has taken adequate measures to deal with these atrocities,<sup>62</sup> so it must appear that the newer ICC system will also lack the urgency of action that plagued the UN process in Rwanda and Bosnia.

### **Fixing the Problem: Increasing the Role of International Human Rights NGOs in Identifying Cases of Genocide**

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<sup>56</sup> Rome Statute, *supra* note 43.

<sup>57</sup> Rome Statute, *supra* notes 49-51.

<sup>58</sup> See *Bloodbath Feared*, *supra* note 59; See S.C. Res. 780, *supra* note 62 (Vukovar fell on November 18, 1991, and the Security Council passed Resolution 780, establishing a Commission of Experts, on October 6, 1992).

<sup>59</sup> See Davies, *supra* note 65; See S.C. Res. 935, *supra* note 67 (Dallaire sent his fax to the U.N. on January 11, 1994, and the Security Council passed Resolution 935, establishing a Commission of Experts, on July 1, 1994).

<sup>60</sup> See *supra* notes 54-57.

<sup>61</sup> Richard O'Brien, *More Than Words for Darfur*, WASHINGTON POST, Oct. 26, 2004, at A25.

<sup>62</sup> See *Rice Mixes Tactics in Darfur Response; U.S. Backs U.N. Probe, Not Court*, WASHINGTON POST, July 31, 2005, at A6.

But all hope is not lost. There is a practical and feasible solution to this problem. By granting more deference to international human rights NGOs to identify cases of genocide, and thereby setting the wheels in motion for a concerted response by the international community, genocidal acts will be addressed promptly and the killings can be stopped before the true horror is realized.

### **Statutory Provisions Relevant to Increasing the Role of NGOs in Identifying Cases of Genocide**

This article assumes that these NGOs will function as a part of the new ICC system. Thus, in considering whether the current framework allows for NGOs to take such a significant role in identifying cases of genocide, interest must be paid to both the Genocide Convention and the Rome Statute of the International Criminal Court. It is my contention that both of these documents allow for such deference to be given to NGOs.

The Genocide Convention allows for any Contracting Party to request that “the competent organs” of the United Nations take appropriate action for the prevention and suppression of genocide, as long as that action is in accordance with the U.N. Charter.<sup>63</sup> Thus, once a State Party to the Genocide Convention has asked the United Nations to intervene, the Genocide Convention authorizes the UN to take any reasonable action under its Charter to prevent cases of genocide or to halt ongoing cases of genocide. Thus, it flows from this language that in order to analyze whether the Genocide Convention allows for the involvement of NGOs, one must first analyze whether the United Nations Charter makes any allowances for such NGO involvement.

While not an express authorization for NGO involvement, it is significant enough to note that the very first stated purpose of the United Nations, according to the U.N. Charter, is the maintenance of international peace and security.<sup>64</sup> Therefore, actions taken in furtherance of this goal -- such as measures intended to stop acts of genocide -- would more likely be found acceptable under the auspices of the Charter than would any sort of action not directly associated with such a fundamental tenet of the UN. As such, granting an NGO authority to identify existing cases of genocide, and thereby allowing for genocidal acts to be more promptly identified and dealt with, would presumably be forwarding the goal of maintaining international peace and security and thus would be acceptable under the Charter.

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<sup>63</sup> Genocide Convention, *supra* note 3, at art. 8.

<sup>64</sup> See U.N. Charter, art. 1.

But the Charter also expressly authorizes one of the “competent organs” of the UN to involve NGOs in its decision-making process. The UN Charter gives the Economic and Social Council (ECOSOC) the right to consult with any NGOs which are concerned with matters within ECOSOC’s area of competence.<sup>65</sup> ECOSOC itself is permitted by the Charter to make recommendations for the purpose of promoting human rights.<sup>66</sup> It follows logically then that the UN Charter authorizes the Economic and Social Council (a “competent organ” of the United Nations) to consult with NGOs in making recommendations to the rest of the UN related to upholding and promoting human rights. Given that the suppression of genocide must inherently be an act which is promoting human rights, the UN Charter allows for NGO consultation regarding acts of genocide. Since such consultation is permitted by the UN Charter, it is then also in accordance with the language of the Genocide Convention.<sup>67</sup>

In addition – and perhaps more relevant – under the present system for addressing cases of genocide, the Rome Statute of the International Criminal Court also makes an allowance for the involvement of NGOs in identifying cases of genocide. As mentioned above, one of the ways that cases may be brought before the ICC is when an investigation into such a case is initiated by the ICC Prosecutor.<sup>68</sup> The Rome Statute also specifically provides that the Prosecutor may seek additional information towards this end from NGOs.<sup>69</sup> It is within this framework, and still in accordance with the provisions of the Rome Statute, that I am suggesting an expanded role for NGOs.

Rather than overhauling the existing system, I propose granting enough authority to certain designated international human rights NGOs who already may be cognizant of ongoing acts of genocide, to identify a situation to be genocide for purposes of triggering applicable UN processes and the ICC process of dealing with genocide and crimes against humanity. This recommendation would be made by the NGO to the ICC Prosecutor who would then bring the case before the ICC itself. Thus, the case would still be brought before the ICC by the Prosecutor, as in the current system, but the Prosecutor could appropriate the allegations of genocide being made by the NGO as his own. By deferring to the initial determination by the NGO that genocide is occurring, the international community, specifically the ICC, would be able to address more promptly the atrocities that are being committed.

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<sup>65</sup> *Id.* at art. 71.

<sup>66</sup> *Id.* at art. 62, para. 2.

<sup>67</sup> Genocide Convention, *supra* note 74.

<sup>68</sup> Rome Statute, *supra* note 51.

<sup>69</sup> Rome Statute, at art. 15(2).

### Precedents for Increasing the Role of NGOs

In addition to the statutory allowances contained in the Genocide Convention and the Rome Statute of the International Criminal Court, there are also existing precedents for increasing roles and granting greater deference to the decisions of NGOs in international affairs. While these examples do not deal explicitly with granting NGOs greater deference in identifying cases of genocide, they do suggest that precedents exist for giving NGOs greater control and responsibility within the international arena.

As mentioned above, the UN Charter grants the Economic and Social Council the ability to consult with NGOs.<sup>70</sup> ECOSOC has a special 19-member Committee on Non-Governmental Organizations that considers applications from NGOs for consultative status.<sup>71</sup> This consultative status allows the NGOs access to UN documents and public meetings and limited privileges to speak or circulate statements in ECOSOC.<sup>72</sup> Thus, in allowing NGOs to have consultative status with ECOSOC, the U.N. Charter sets a precedent for increasing the role of NGOs in international affairs. It is to these ECOSOC-designated NGOs that I refer to here.

Another precedent for increasing the responsibility and deference given to NGOs came with the role of NGOs at the 1994 International Conference on Population and Development (ICPD) in Cairo. The ICPD was a United Nations conference intended to produce policies related to population growth, women's reproductive rights, and the effects of these two issues on international economic and social development.<sup>73</sup> NGOs played a major role in the preparatory proceedings leading up to the conference and in the conference itself, including instrumental roles in deciding how topics would be handled in the PrepCom and which topics would be covered in the Program of Action.<sup>74</sup> The Cairo Conference signified an important event for NGOs as it saw nations the world defer much decision-making power to NGOs involved in their respective areas of expertise.

NGOs also played a major role in the International Campaign to Ban Landmines (ICBL). ICBL was originally founded in October 1992 by a small

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<sup>70</sup> U.N. Charter, art. 71.

<sup>71</sup> See ECOSOC Resolution 1996/31, 49<sup>th</sup> plenary meeting, 25 July 1996.

<sup>72</sup> *Id.*

<sup>73</sup> C. Alison McIntosh & Jason L. Finkle, *The Cairo Conference on Population and Development: A New Paradigm?*, 21 POPULATION & DEV. REV. 223, 223-260 (June 1995).

<sup>74</sup> See Joakim Lie, *Population, Progress ... and "Peanuts"*, U.N. CHRON., Sept. 22, 1999.

group of NGOs that advocated for a global ban on the use of landmines.<sup>75</sup> After a U.N. conference to address the landmine issue reached an impasse, ICBL, other NGOs, and some mid-size states created an alternative forum which came to be known as the Ottawa Process.<sup>76</sup> Strongly supported by and constituted of NGOs, in just over a year the Ottawa Process produced the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997 Mine Ban Treaty).<sup>77</sup>

As of November 29, 2004, the 1997 Mine Ban Treaty had been ratified or acceded to by 144 states.<sup>78</sup> The treaty, which prohibits the production of and use of landmines and requires parties to destroy stockpiled and buried landmines, represents the first time that an active weapons system has been banned outright since poison gas was outlawed after World War I.<sup>79</sup> In 1997, ICBL received the Nobel Peace Prize.<sup>80</sup> The International Campaign to Ban Landmines was significant in that it is a clear example of NGOs being granted deference in a decision-making process that had a significant effect on the nation-states of the world. Furthermore, as the banning of landmines is often considered a humanitarian or human rights issue, ICBL also stands as an example of such deference being granted to NGOs in the context of a binding human rights agreement. Thus, the deference given to the NGOs that made up ICBL can be seen as a precursor to the deference that would be granted to NGOs in identifying cases of genocide under the frameworks of the Genocide Convention and the International Criminal Court.

### **Practical Concerns for Granting Greater Authority to NGOs in Identifying Cases of Genocide**

While the existing precedents and statutory allowances seem to bode well for the argument in support of granting greater deference to NGOs in identifying cases of genocide, there are also several practical issues that must

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<sup>75</sup> See The Website of the International Campaign to Ban Landmines, Campaign History, available at <http://www.icbl.org/campaign/history?eZSESSIDicbl=143feb7820c22f114b84528dc2b237d5> (last visited Feb. 5, 2006).

<sup>76</sup> See David Davenport, *The New Diplomacy (Alliance of NGOs and Small and Medium Sized Nations)*, POLICY REVIEW, Dec. 1, 2002.

<sup>77</sup> See The Website of the International Campaign to Ban Landmines, *supra* note 89, at Treaty Members, available at <http://www.icbl.org/treaty/members> (last visited Feb. 5, 2006).

<sup>78</sup> *Id.*

<sup>79</sup> *Land-Mine Foes Celebrate Historic Day; Treaty Signing Begins, Without United States*, SEATTLE POST-INTELLIGENCER, Dec. 4, 1997.

<sup>80</sup> 'There's Still Too Many,' NEWSWEEK, March 8, 1999, at 29.

be taken into account if such an idea is to be seriously considered. These practical matters must be considered in order to determine if these NGOs can be an important part of the international system for preventing and suppressing genocide within the framework of the Genocide Convention and the ICC. Among these practical concerns are the geographic location and available manpower of such international human rights NGOs, their established neutrality and credibility, the lack of political constraints on these NGOs, and the accountability of the NGOs to the international community.

While there are several NGOs which could be considered appropriate for this role of reporting to the Prosecutor of the ICC, I have chosen to focus on one: the International Committee of the Red Cross (ICRC). My reasons for this are primarily twofold. First, focusing on just one NGO in a field of several suitable possibilities allows the discussion to be more concrete and focused in terms of real numbers and dates rather than a generic discussion of the capabilities of all international human rights NGOs or a survey of several relevant NGOs on a superficial level. Second, the ICRC is widely considered to be one of the oldest and most respected NGOs in the world. While this is especially relevant in light of the requisite neutrality and credibility that an NGO in this proposed position must possess, the importance of such factors pervades all of the relevant practical considerations.

### **Human Resources and Scope of Deployment**

The first issue which must be addressed is the realistic ability of international human rights NGOs to act as an investigatory agent for the world, and specifically for the Prosecutor of the ICC regarding the existence of genocide. Put more specifically, do these NGOs have the human resources to span the globe while conducting on-site investigations of alleged cases of genocide? In 2003, the ICRC had a total staff of 12,483 persons.<sup>81</sup> Of that number, 11,660 were located in the field.<sup>82</sup> These personnel were distributed throughout the world in such a way that the ICRC maintained a permanent presence in 79 countries throughout the world.<sup>83</sup> Furthermore, as an international aid organization with an exclusively humanitarian mission,<sup>84</sup> the

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<sup>81</sup> The International Committee of the Red Cross Annual Report 2003, at 10, available at [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/628EFL/\\$FILE/ICRC\\_overview\\_2003.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/628EFL/$FILE/ICRC_overview_2003.pdf?OpenElement) (last visited Feb. 5, 2006) [hereinafter ICRC Annual Report 2003].

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *See id* at 39.

tangible presence of the ICRC was primarily in nations experiencing human rights and humanitarian crises.<sup>85</sup>

It would be both naïve and largely inaccurate to claim that acts of genocide can only occur during crisis situations or in times of political instability. However, genocide watchdog groups generally agree that the existence of certain circumstances does correspond to an increased probability that genocidal acts may occur.<sup>86</sup> These include:

- the existence of distinct minority subgroups within a population, and
- a perceived scarcity of resources (of one sort or another), such that the members of these groups believe they are in competition with one another for such resources.

Having such a broad international presence in exactly the same areas which are experiencing crisis situations makes the ICRC an appropriate investigator of the propensity for genocidal acts in these areas. Time need not be wasted by organizing and dispatching an information gathering commission to report on allegations of genocide or related crimes, for oftentimes NGOs such as the ICRC are already on location. For example, consider that at the time the UN Security Council established a Commission of Experts to investigate the allegations of genocide in Rwanda, the ICRC already had a sizable delegation in that country for approximately four years working directly with the population most susceptible to genocidal acts.<sup>87</sup>

### Neutrality and Credibility

The second issue which must be addressed is the extent to which international human rights NGOs already have established reputations for neutrality and credibility both within the distressed populations they are serving and within the international community in general. First, it is instrumental to the success of any organization or commission that is seeking

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<sup>85</sup> See ICRC Annual Report 2003, *supra* note 95.

<sup>86</sup> See The Website of the Campaign to End Genocide, The Need for Effective Early Warning Structures at the UN, *available at* <http://www.endgenocide.org/ceg-ew/index.htm> (last visited Dec. 1, 2004).

<sup>87</sup> ICRC Annual Report 2003, *supra* note 95, at 15. The ICRC opened a delegation in Rwanda in 1990. Prior to that time, the ICRC covered Rwanda from its regional delegation. The U.N. did not establish its Commission of Experts until it adopted Resolution 935 in July 1994.

to gather ascertainable facts of the existence of genocide for its process to be perceived as unbiased and non-threatening by the local population. Such a positive local perception helps to facilitate the information gathering process as it is likely to

- increase the chances of unfettered access to current events,
- increase the chances of an open discourse between the information gatherers and the population at hand, and
- decrease the chances of hostile resistance to the mission or general presence of the information gatherers by the local population.

Second, an organization which is gathering information to report to the world community must be perceived as unbiased and credible by the world community before any credence will be given to their observations and allegations.

One of the primary difficulties of an international NGO in this context would be the tension between these two obligations. If the NGO is seen by locals as focusing too much time and attention on information-gathering in its efforts to serve the goals of the ICC system and the international community at large, the NGO may lose some of its credibility in the eyes of these locals; but, if the NGO is perceived by the international community as being controlled more by ideological attachment to aid the affected community rather than as an unbiased agent of the Prosecutor, the NGO is likely to lose credibility within the international system. While it must be acknowledged that the potential for a certain degree of conflict exists between the obligations to each of these communities, a well established NGO would have the credibility and social capital to achieve a balance. The ICRC seems to fit the bill, having aided millions of victims of wars since its founding in 1863.<sup>88</sup>

In the context of identifying genocidal acts, the roles of humanitarian aid organization and international information-gatherer need not be mutually exclusive. It should be noted that the role of NGOs in this system would not be comparable to the role of the media, that of an unbiased reporter of facts,<sup>89</sup> but rather as an interested party, interested in the preservation of human life and human rights, who is reporting on such acts in order that appropriate

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<sup>88</sup> See The Website of the International Committee of the Red Cross, History of the International Committee of the Red Cross, Volume 1: From Solferino to Tsushima available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList288/7A1390B93A4FE56BC1256DE80055ACD0> (last visited Feb. 5, 2006).

<sup>89</sup> However, this assertion has been challenged even in the media. Journalist Ed Vulliamy has gone on record as saying, "I believe there are times in history – as any good Swiss banker will tell you – that neutrality is not neutral, but complicit in the crime." See Ed Vulliamy, Comment, *An Obligation to the Truth: Journalists should be prepared to risk their safety and testify at the International Criminal Court*. THE [LONDON] OBSERVER, May 19, 2002, at 30.

action may be taken by the UN or the ICC at the international level. It is this very fact that makes international human rights NGOs (such as the ICRC) prime candidates for the role of identifying cases of genocide: their ulterior motives, if they are in fact presumed to have any, are the preservation of human life and the affirmation of human rights.

International human rights NGOs do not pander to corporate or special interest groups as national governments inevitably do and they need not appease the often antithetical interests of national governments as international pseudo-governmental organizations such as the U.N. invariably must. It seems to be a valid presumption that if such an NGO is to err in its identification of genocide, it will be likely to err on the side of identifying too many horrific violations of human rights as genocide. While an over-use of the authority to officially identify or designate acts as genocidal is likely to engender some skepticism by the international community towards future declarations made by the NGO, it certainly seems to be the lesser of two evils. The proposition, taken to its farthest conclusion, that an NGO such as the ICRC will claim too many violent crisis situations are genocide, thus initiating the international processes of the Genocide Convention and the ICC and perhaps overtaxing the resources of the international community to address future acts of genocide, still seems to be a far better option than the alternative. History seems to indicate that this alternative is to allow genocidal acts to go on largely unabated until the various political factions and levels of bureaucracy of the UN decide that the time for action is ripe.<sup>90</sup> If the goal of the Genocide Convention, and moreover human rights and humanitarian law in general, is the preservation of human life, then shouldn't the international community be willing to err on the side of prevention of potential genocide rather than on the side of political expediency? Additionally, if at a later point in time the international community decides that this proposed NGO-watchdog system is not working as well as planned, the UN or ICC can attempt to find a different solution, having lost nothing in the endeavor.

### **Lack of geopolitical constraints**

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<sup>90</sup> Ambassador Karl Kovanda, the United Nations representative from the Czech Republic in 1994 (at which time the Czech Republic was one of the non-permanent members of the U.N. Security Council), stated that he learned more about the genocide occurring in Rwanda from human rights groups in New York than from sitting in Security Council meetings. According to Kovanda, the U.N. officials whose duty it was to report to the Security Council had failed to describe the systematic slaughter that was occurring. See Briefing by Linda Melvern, March 11, 2002, United States Holocaust Memorial Museum *available at* <http://www.ushmm.org/conscience/analysis/index.php?content=details.php%3Fcontent%3D2002-03-11%26menupage%3DCentral+Africa> (last visited Feb. 5, 2006).

As referenced above, one of the obstacles for national and supra-national organizations is the limitation of geopolitical constraints. These constraints, not present for NGOs, include treaty alliances, state economic interests, and the general milieu of realpolitik, to name a few. While certainly not an all-encompassing example, the atrocities of the Pol Pot massacres illustrate the shortcomings of national and supra-national alliances in this context.

As previously noted, between the years of 1975 and 1979, the Cambodian dictator Pol Pot presided over the murder, overwork, and starvation of approximately 2 million people.<sup>91</sup> The ratio of deaths to population made the Cambodian revolution the most murderous in a century of revolutions.<sup>92</sup> In 1979, a United Nations Special Rapporteur from Tunisia investigated the Pol Pot massacres and came to the conclusion that more than a million people had been killed.<sup>93</sup> But despite the fact that the Pol Pot massacres became one of the best-documented cases in the history of the UN, no country or organization seemed willing to follow up on this report.<sup>94</sup> This lack of UN action has been attributed to the fact that the politics of Southeast Asia at the time were such that the major powers decided it was better to focus on the Vietnamese invasion of Cambodia.<sup>95</sup> In the face of one of the most egregious acts of genocide ever committed, the UN remained politically hamstrung by the individual self-interest of its members, and Pol Pot eluded justice.

The example of UN inaction in the case of the Pol Pot massacres speaks to a significant strength of a system that heavily involves NGOs for identification of genocidal acts. While the potential certainly still exists for political hamstringing and snarls in bureaucratic red tape when an NGO reports to the Prosecutor for the ICC, the involvement of non-political organizations at some level in the overall process is a major step toward a human rights structure than can exist without the inefficiencies and geopolitical exigencies present in the current UN system. The contention is not that granting human rights NGOs greater deference in identifying cases of genocide will be an immediate cure for the ills of the current system, but rather that it would signify a substantial step in the right direction, one

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<sup>91</sup> Talbott, *supra* note 18.

<sup>92</sup> David Chandler, *Pol Pot: Cambodia's Ruthless Dictator Cheated Justice, Dying Before He Could Answer for the Atrocities Committed During His Unrelenting Quest to Create a Rural Utopia*, TIME INTERNATIONAL, Aug. 23, 1999.

<sup>93</sup> Steven R. Ratner, *The Genocide Convention After Fifty Years*, 92 AM. SOC'Y INT'L L. PROC. 1, 5 (1998).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

towards allocating a measure of control and responsibility to the group that is best suited to make determinations of genocide.

As they are for the most part unaffiliated with issues of national interest and other political and economic motivations, human rights NGOs are able to conform their actions solely to the notion of upholding basic human rights. While such actions may not be politically expedient for a nation-state or a collaborative organization of nation-states, they are the very mission of human rights NGOs such as the ICRC.<sup>96</sup> Their status allows such organizations to avoid the geopolitical constraints that have plagued national and U.N. decision-making processes. Additionally, as largely non-deliberative organizations, NGOs are free from the alliances and self-serving politics that plagued the U.N. Security Council throughout the Cold War and to an extent, still do so today.

### **Accountability**

In addition to the possible lack of typical geopolitical constraints on NGOs is the contention that NGOs lack accountability. By lacking the very same deliberative process and responsiveness to various constituencies that hamstring national and UN decision-making, some may argue that NGOs cannot be held accountable for their decisions and are able to run roughshod over the will of the international community or even the populations of individual countries. This argument fails for two reasons. First, the scope of the authority granted to NGOs in this plan is not the type of authority that warrants a fear of tyranny or oppression. NGOs such as the ICRC would only be making direct recommendations to the Prosecutor of the ICC. It would not be making general administrative decisions in terms of mobilizing troops or allocating resources. The aim of including such NGOs in the process is merely one that can make the process become more efficient and better able to respond to the rapid pace with which genocide occurs. This should result in a strict international condemnation of genocide, lower death tolls, and a stronger affirmation of human rights. All of these ideals serve the public good and leave the NGOs little or no room for any sort of manipulation of their duty or any other sort of unchecked power.

Second, the belief that NGOs in this proposed system would operate without basic checks and balances is unfounded. Again, if a given NGO proves to over-apply the term “genocide” in describing international atrocities, the UN or ICC will have the option to designate a different NGO to investigate or even to try a different system altogether. Thus, there exists an incentive for NGOs to be cautious in their designation of acts as genocide so

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<sup>96</sup> ICRC Annual Report 2003, *supra* note 95, at 39.

that they are not stripped of their new deference under the proposed system. Additionally, as part of a market structure, the NGOs being given authority in this proposed system may still have to compete with other human rights NGOs. While NGOs are not lucrative businesses and not as susceptible to financial motivations and other market forces as the average corporate entity, they still rely heavily on human resources and social capital. Thus, if a particular NGO is not being responsive to the collective will of the people (presumably to appropriately label genocidal acts as such), then the people will cede this NGO less credibility. Hence the NGOs remain largely accountable to the people and the common good, though not controlled by the individual economic interests and political red tape that undermine concerted action of the national or supra-national level. Finally, it should be noted that national delegations to the U.N. are not elected, but are appointed by their respective governments, thereby also inhibiting their accountability to the general populace.

### **What if the Time Lag is Intentional?**

The time lag problem apparent in the current system appears to be a byproduct of systemic deficiencies rather than the purposeful result of intentional foot-dragging by the international actors involved. If the time lag problem in the current system is in fact an intended result of the international community, then one must consider whether that very same community would find ways to cause a similar delay in action in any sort of international response. In addressing this issue, the fundamental undertaking must be an inquiry into the rationales that may lead current actors to desire such a time lag. Assuming for a moment that the time lag problem is an intended result of the current system, the two most evident rationales for such an intention seem to be:

- the existence of countervailing geopolitical constraints and state interests among the actors, and
- the desire of the international community to weigh the facts and evidence carefully before initiating any sort of concerted action.

While the former is an inherent aspect of current international relations and the latter is certainly an admirable means of meting out justice under most circumstances, neither is appropriate when dealing with impending or existing cases of genocide. As previously noted, the system I propose seeks to involve NGOs at such a fundamental level of the decision-making process precisely because of their general exclusion from international politics and their typical mandate to preserve human rights above all else. Thus, these NGOs would be more likely to serve the goals of the Genocide Convention, those of suppressing and preventing incidents of genocide, rather than the other motivations that weigh on the decisions of political leaders at both national and supranational levels.

But if the time lag in responding to cases of genocide is intentional, then wouldn't these members of the international community find a new way to impede the swift response of a new system? While the aim of seeking some sort of international democracy is certainly an admirable goal, the price of involving the entire world community in international affairs is that many of these nation-states will inevitably seek to act in furtherance of their own individual interests rather than those of the collective majority. In many aspects of international affairs and supranational politics this price is not too steep. It maintains some semblance of balance and reciprocity among nation-states and as such serves the goals of the international geopolitical structure. But addressing ongoing cases of genocide is no place for slow, deliberate diplomacy. Addressing the scourge of genocide requires its prompt identification and response so that it can be stopped before the human toll becomes too great. While the system I propose may not be without flaws, by involving NGOs at the initial – and perhaps most important – stage of such a process, the wheels of international action will be set in motion much sooner.

### **Erosion of State Sovereignty**

It is likely that some states will contest granting greater deference to NGOs to identify cases of genocide as an action that comes at the expense of their own state sovereignty. This contention seems to have two prongs:

- under the current system, the UN appointed Commission of Experts is more representative of state interests because it is part of the United Nations, and thus is at least somewhat accountable to the states that compose the UN, and
- allowing NGOs to declare that genocidal acts are occurring within the territorial boundaries of a nation-state deprives that nation-state of some of the sovereignty it is generally granted within its own borders.

The first prong of this argument is fallacious by way of its underlying assumption. As noted above, NGOs can still be held accountable to the international community, though perhaps in a less direct way than the United Nations itself. However, it is more likely that NGOs will act in much the same capacity of reporting information to the ICC or the UN that the Commissions of Experts did in Rwanda and Bosnia. Thus, as accountable actors in a modified international system, the NGOs will tread no more on the sovereignty of individual states than the Commissions of Experts have done under the current system.

The second prong of the argument, while an inherent and understandable contention in any issue of supranational regulation, pales in comparison to the preservation of human life that the Genocide Convention seeks to affirm. The affirmation of international human rights, the goal of the

Genocide Convention and numerous other international conventions, must inevitably come at the expense of the sovereignty of the nation-state. This is an inherent aspect of recognizing the rights of individuals vis-à-vis those of the state itself. But I find it unlikely that granting NGOs greater deference in identifying cases of genocide will infringe more heavily on the sovereignty of nation-states than the current system. In fact, since they will often already have a presence in the nation-state where the crisis situation is occurring, the use of NGOs in the international decision-making process will probably require less of an abrogation of the territorial sovereignty of a particular nation-state than that required by the current system.

Nation-states may also contend that granting such authority to NGOs creates a dubious precedent for granting additional powers to NGOs in the future. But the authority that I suggest be granted to NGOs is not an absolute power free from checks and regulations. What I suggest is simply that international human rights NGOs such as the ICRC be given authority to identify exactly those gross human rights abuses, such as genocide, that is their mandate to avert. Granting NGOs authority to identify cases of genocide does not in itself set a precedent for granting future powers to all NGOs. A decision to grant NGOs more authority in any other context must inevitably involve a consideration of the statutory provisions and practical concerns relevant to such a decision. While granting international human rights NGOs authority to identify cases of genocide may set some a precedent for ceding even greater authority to such NGOs, the fact that such a grant is made only in an effort to stop genocide, the most horrific of all crimes, sets the bar for any subsequent grants of authority very high indeed.

## Conclusion

Simply put, genocide is the most heinous of all crimes. It is methodical. It is brutal. It is irreversible. It is final. The international community sought to address this issue by adopting the Genocide Convention in 1948. But the Convention has not ended the killing and other genocidal atrocities. While the world may have tried to deny the existence of genocide in the past, the interconnected world of on-demand information we live in today makes denial facile and unrealistic. As rational, moral beings we can no longer look the other way. But even now, in the wake of the Holocaust, Bosnia, and Rwanda, the international community sits idly by as tens of thousands are slaughtered in Darfur, Sudan.<sup>97</sup> According to the United States

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<sup>97</sup> See The Website of the United States Holocaust Memorial Museum, Committee on Conscience, Sudan: Darfur Overview *available at* <http://www.ushmm.org/conscience/alert/darfur/> (last visited Feb. 5, 2006).

Agency for International Development (USAID), 350,000 or more civilians may die in the coming months.<sup>98</sup> Something must be done.

Despite the fact that national governments and the U.N. have done little to stop the atrocities in Darfur, there have been calls to action. International human rights NGOs have stepped in and tried to aid the victims of Sudan. These NGOs have workers on the ground right now assisting communities in crisis, while the rest of the world sits by and debates what to do. It is these NGOs that should be reporting to the ICC, the UN, or any other responsible body. It is these NGOs that are dealing with the realities of the conflict on a daily basis. It is these NGOs that are in the best position to report on the existence of genocidal situations during crisis situations or periods of political instability. It is these NGOs that can best alert the world to the atrocities being committed and make the proclamation, "Never again," into something more than an empty promise.

Giving international human rights NGOs greater authority to identify cases of genocide will not significantly alter the world power structure. It will simply put the official control over designating an act as genocide in the hands of those who know all too well the ramifications of such a designation. It is my sincere hope that granting these NGOs such authority will speed up the international response in dealing with cases of genocide. Of course, the realities of international politics may still render these efforts futile. But we owe it to the tens of millions of people that have already been slaughtered because of their race, religion, nationality, or ethnicity, to give it a good faith try.

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<sup>98</sup> *Id.*