



REMEMBER THE VICTIMS
PREVENT GENOCIDE

THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1948)

ABOUT THE GENOCIDE CONVENTION

What is the Genocide Convention?

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) is an instrument of international law that codified for the first time the crime of

DATE OF ADOPTION: 9 December 1948

DATE OF ENTRY INTO FORCE: 12 January 1951

NUMBER OF STATES PARTY: 150 States¹

genocide. Its preamble recognizes that “at all periods of history genocide has inflicted great losses on humanity” and that international cooperation is required to “liberate humankind from such an odious scourge”.

According to the Convention, genocide is a crime that can take place both in time of war as well as in time of peace. The definition contained in Article II of the Convention describes genocide as a crime committed with the intent to destroy a national, ethnic, racial or religious group, in whole or in part. It does not include political groups or so called “cultural genocide”. This definition was the result of a negotiating process and reflects the compromise reached among United Nations Member States while drafting the Convention in 1948.

Importantly, the Convention establishes a duty on State Parties to take measures to prevent and to punish the crime of genocide, including by enacting relevant legislation and punishing perpetrators, “whether they are constitutionally responsible rulers, public officials or private individuals” (Article IV).

Why is the Genocide Convention important?

The adoption of the Genocide Convention marked a crucial step towards the development of international human rights and international criminal law as we know it today. It was the first human rights treaty to be adopted by the General Assembly of the United Nations and signified the international community’s commitment to ‘never again’ after the atrocities committed during the Second World War.

¹ As of January 2019





The definition of the crime of genocide, as set out in the Convention, has been widely adopted at both national and international levels. For example, the verbatim definition has been included in the statute of several international and hybrid tribunals, such as in the respective statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and the Extraordinary Chambers in Cambodia. The same definition was also included in the 1998 Rome Statute of the International Criminal Court (ICC), making genocide one of the international crimes over which the ICC has jurisdiction. In fact, already in 1948, the Genocide Convention had predicted the establishment of such an institution, by determining that accountability for genocide was the jurisdiction not only of the State in whose territory the crime was committed, but also of an “international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction” (Article VI).

The International Court of Justice (ICJ)² has repeatedly stated that the Convention embodies principles that are part of general customary international law. Among those are the prohibition of genocide, as well as the obligation to prevent and punish genocide. As customary international law, such obligations are binding on all States, whether or not they have ratified the Genocide Convention.

The ICJ has also concluded that the obligation to prevent genocide contained in Article I of the Genocide Convention has an extraterritorial scope. As such, States that have the capacity to influence others have a duty to employ all means reasonably available to them to prevent genocide, including in relation to acts committed outside their own borders.

A CALL FOR UNIVERSAL RATIFICATION

The Genocide Convention has been ratified or acceded to by 150 States. The Special Advisor on the Prevention of Genocide calls upon all Member States that are not yet party to the Genocide Convention, to ratify or accede to it as a matter of priority, so that the Genocide Convention becomes an instrument of universal membership.

Why ratify the Genocide Convention?

The drafting of the Genocide Convention represented the international community’s pledge to work together to prevent and punish the crime of genocide. Ratifying the Convention is an affirmation of this commitment. In addition, considering the impact that the commission of the crime of genocide has on victims, society, nations and on international peace and security overall, ratifying the Genocide Convention demonstrates a commitment to the most fundamental principles of the United Nations.

Ratifying and domesticating the Genocide Convention also provides the basis for action by States to prevent genocide. For example, it can prompt States to set up mechanisms at

² According to Article IX of the Genocide Convention, the International Court of Justice is the organ responsible for addressing disputes related to the interpretation, application or fulfillment of the Genocide Convention.



the national level to identify and address risk factors for genocide. History has shown time and again that genocide is a process and that throughout this process there are warning signs that mark the road to genocide. The establishment of national legal and policy tools as well as structures that can identify and address these early warning signs is the first step of prevention.

Ratifying the Genocide Convention is also a moral obligation towards humanity. It represents a recognition of the responsibility of States towards their populations and shows respect for those who have perished as a result of this crime.

Which States have not yet ratified or acceded to the Genocide Convention?

The following 44 United Nations Member States have not yet ratified the Genocide Convention:³

AMERICAS	AFRICA	ASIA
Dominica	Angola	Bhutan
Dominican Republic (signed)	Botswana	Brunei Darussalam
Grenada	Cameroon	Indonesia
Guyana	Central African Republic	Japan
Saint Lucia	Chad	Kiribati
Saint Kitts and Nevis	Congo	Marshall Islands
Suriname	Djibouti	Micronesia (Federated States of)
	Equatorial Guinea	Nauru
	Eritrea	Oman
	Kenya	Palau
	Madagascar	Qatar
	Mauritania	Samoa
	Mauritius	Solomon Islands
	Niger	Thailand
	Sao Tome and Principe	Timor-Leste
	Sierra Leone	Tuvalu
	Somalia	Vanuatu
	South Sudan	
	Swaziland	
	Zambia	

³ As of January 2019



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What can be done to support the call?

BY MEMBER STATES:

- For States that are not party to the Genocide Convention, take steps to ratify or accede to it;
- For States that have ratified the Convention, ensure that the provisions of the Convention are domesticated as part of national legislation and that relevant policies and structures are developed for its implementation;
- Encourage other Member States at the United Nations, through human rights mechanisms such as the Universal Periodic Review of the Human Rights Council, regional organisations and other inter-governmental cooperation, to ratify the Convention.

BY CIVIL SOCIETY:

- Raise awareness and disseminate information about the call for universal ratification, the Genocide Convention and the importance of its ratification;
- Advocate with States at the national, regional and international level to take steps to ratify the Convention;
- Advocate with States that have ratified the Convention to domesticate and implement it, including through developing mechanisms and structures for the prevention of genocide.
- Use relevant human rights mechanisms, such as the Universal Periodic Review mechanism, to encourage States to ratify the Convention and to develop policies and structures to prevent genocide.

KEY FACTS ABOUT THE GENOCIDE CONVENTION

DEFINITION OF GENOCIDE IN THE CONVENTION:

The current definition of Genocide is set out in Article II of the Genocide Convention:

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.*



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THE SPECIFIC “INTENT” REQUIREMENT OF THE CRIME OF GENOCIDE:

The definition of Genocide is made up of two elements, the physical element — the acts committed; and the mental element — the intent. Intent is the most difficult element to determine. To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group. Cultural destruction does not suffice, nor does an intention to simply disperse a group, though this may constitute a crime against humanity as set out in the Rome Statute. It is this special intent, or *dolus specialis*, that makes the crime of genocide so unique.

To constitute genocide, it also needs to be established that the victims are deliberately targeted — not randomly — because of their real or perceived membership of one of the four groups protected under the Convention. This means that the target of destruction must be the group, as such, or even a part of it, but not its members as individuals.

STATES’ OBLIGATIONS UNDER THE GENOCIDE CONVENTION

- Obligation not to commit genocide (Article I as interpreted by the ICJ)⁴;
- Obligation to prevent genocide (Article I) which, according to the ICJ, has an extraterritorial scope⁵;
- Obligation to punish genocide (Article I);
- Obligation to enact the necessary legislation to give effect to the provisions of the Convention (Article V);
- Obligation to ensure that effective penalties are provided for persons found guilty of criminal conduct according to the Convention (Article V);
- Obligation to try persons charged with genocide in a competent tribunal of the State in the territory of which the act was committed, or by an international penal tribunal with accepted jurisdiction (Article VI);
- Obligation to grant extradition when genocide charges are involved, in accordance with laws and treaties in force (Article VII), particularly related to protection granted by international human rights law prohibiting refoulment where there is a real risk of flagrant human rights violations in the receiving State.

⁴ 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), pp. 113, para. 166.

⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), I.C.J. Reports 1996 (II), pp. 616, para. 31.

For more information about the Genocide Convention please contact osapg@un.org

