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Genocide, State Responsibility and the Limits of International Courts

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Abstract: *Genocide constitutes one of the most serious violations of international law, engaging obligations that extend beyond the criminal responsibility of individuals to the international responsibility of States. The Genocide Convention establishes a framework for the prevention and punishment of genocide, while simultaneously raising difficult questions concerning State responsibility, attribution, genocidal intent, evidentiary standards, jurisdiction, and compliance with international judicial decisions. The central challenge lies in reconciling the exceptional gravity of genocide with the structural limitations of international adjudication, particularly where evidence of State involvement and specific genocidal intent is fragmented, indirect, or concealed within institutional and governmental structures. Within this framework, the distinction between State responsibility for the commission of genocide and responsibility for failure to prevent genocide assumes particular significance. The obligation to prevent is examined as an independent due-diligence obligation requiring States to take reasonable measures within their knowledge, capacity, influence, proximity, and available means to avert the risk of genocidal destruction. The paper further considers the preventive function of provisional measures, the evidentiary difficulties surrounding attribution and intent, and the limitations of enforcement within a decentralised international legal order founded upon State consent. It argues that the effectiveness of the Genocide Convention depends not solely upon establishing responsibility after genocide has occurred, but upon strengthening legal mechanisms capable of identifying risk, preserving evidence, securing compliance, and facilitating timely preventive action. The paper proposes a more coherent framework of evidentiary assessment, compliance monitoring, third-State engagement, targeted remedies, and institutional follow-up to reinforce prevention, accountability, and the effectiveness of international judicial protection*

Keywords: Genocide Convention; State Responsibility; Specific Intent; Attribution; Provisional Measures; Duty to Prevent; International Court of Justice; Compliance

I. INTRODUCTION

The universal legal definition derives from Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*, as it defines genocide as any of five specified acts committed with the 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, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births; or forcibly transferring children to another group. The *United Nations* first recognized genocide as a crime under international law in *General Assembly Resolution 96 (I)* of 11 December 1946. The General Assembly then adopted the *Genocide Convention* through *Resolution 260 A (III)* on 9 December 1948, and the Convention entered into force on 12 January 1951. The United Nations describes this treaty definition as the internationally codified definition, reproduced in the Rome Statute and the statutes of international and hybrid tribunals. The ICJ has further treated the prohibition as customary international law and a peremptory norm from which no derogation is permitted. The adjudication of genocide is structured by a profound institutional contradiction. The prohibition is among the most fundamental rules of international law, as its judicial application remains dependent on

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institutions that possess neither a general police power nor an independent enforcement service. The *International Court of Justice (ICJ)* decides disputes between States, international criminal courts determine individual guilt, political organs control many coercive responses, and domestic authorities hold much of the evidence. The legal system therefore separates definition, attribution, adjudication, and enforcement at precisely the moment when speed and coordination matter most. The paradox lies not in judicial powerlessness, but in the asymmetry between courts' considerable authority to declare the law and their limited capacity to control the factual and political conditions upon which compliance depends. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide through a protected group, one or more enumerated acts, and the intent to destroy that group, in whole or in substantial part, as such. The five acts include killing, serious bodily or mental harm, destructive conditions of life, measures intended to prevent births, and forcible transfer of children. This exhaustive definition distinguishes genocide from other atrocity crimes. Widespread killing or forced displacement may constitute crimes against humanity or war crimes without satisfying the special intent required for genocide. Intent performs distinct functions at the individual and inter-State levels of responsibility. Individual criminal responsibility asks whether a person possessed the required mens rea and contributed to a prohibited act. State responsibility asks whether conduct is attributable to the State and whether that conduct breaches a primary international obligation as the ICJ has confirmed that the Convention is not confined to punishment of individuals as it also permits responsibility of States for genocide and related Convention breaches and still, a finding that individuals committed genocide does not, without more, establish that their conduct is attributable to a State, while proof of close political or military support does not, without more, prove the State's own genocidal intent. Provisional measures reveal a further dimension of this adjudicative paradox. They are designed to preserve plausible rights and avoid irreparable prejudice before final judgment. *LaGrand (2001)* established that such orders are legally binding. In genocide proceedings however, the merits require a far more developed record than the provisional phase. The Court can therefore order a State to prevent acts within Article II, preserve evidence, control incitement, facilitate assistance, or report on implementation without deciding that genocide has occurred. This preventive jurisdiction is indispensable, but repeated applications and contested compliance show the gap between binding legal obligation and coercive enforcement. Methodologically, the article adopts a doctrinal approach. It reads the Genocide Convention together with the ICJ Statute, the *International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)*, leading ICJ judgments and provisional-measures orders, relevant international criminal jurisprudence, and specialist scholarship. The analysis distinguishes primary from secondary rules, individual from State responsibility, merits standards from provisional thresholds, and legal obligation from institutional enforcement. It does not determine the merits of pending cases. Instead, it evaluates how doctrine distributes risk, proof, and responsibility across the life cycle of genocide adjudication.

The Nexus Between Genocide and State Responsibility

The Genocide Convention possesses a dual normative character. It criminalises conduct by natural persons and simultaneously binds States to prevent and punish genocide. Articles I, IV, V, and VI focus heavily on suppression through legislation and prosecution, while Article IX gives the ICJ jurisdiction over disputes relating to interpretation, application, or fulfilment of the Convention, expressly including State responsibility for genocide and the other acts enumerated in Article III. In *Bosnia v. Serbia (2007)* the Court treated this language as capable of grounding direct State responsibility as the Convention therefore cannot be reduced to a criminal-law treaty implemented only through prosecution. It is also a regime of interstate obligations. This duality is consequential because individual and State responsibility remain legally independent, even when they arise from the same factual matrix. A criminal conviction may clarify the existence of genocidal acts and individual intent, but State responsibility remains governed by rules on breach and attribution. Conversely, a State can violate its duty to prevent or punish without any judgment that the State itself committed genocide. This independence avoids two errors; treating the State as criminally guilty in the criminal-law sense applicable to an individual, and treating the absence of a criminal conviction as a complete answer to an interstate claim. ARSIWA provides the general framework of secondary rules. An internationally wrongful act exists

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when conduct attributable to a State constitutes a breach of an international obligation. Attribution may arise through State organs, entities exercising governmental authority, persons acting on instructions or under sufficient control, conduct acknowledged and adopted by the State, or other defined connections. Consequences include cessation, assurances where appropriate, and full reparation through restitution, compensation, or satisfaction. Because the prohibition of genocide has a peremptory character, serious breaches also engage duties of cooperation and non-recognition under the general law of State responsibility. The Convention's primary obligations are differentiated. States must not commit genocide, must prevent and punish it, must enact effective legislation, must prosecute through competent mechanisms or cooperate with a competent international penal tribunal where applicable and must not engage in conspiracy, incitement, attempt, or complicity. The *Bosnia v. Serbia (2007)* also recognized the autonomous nature of the duty to prevent. These obligations do not all require the same mental element or causal showing, as direct commission requires the defining genocidal intent. Failure to prevent turns on due diligence and capacity and failure to punish concerns post-event conduct. Noncompliance with binding provisional measures is a distinct breach, this differentiated structure is both doctrinally coherent and normatively significant. It permits responsibility even where the highest allegation, direct commission by the State, cannot be proved, but it also demands disciplined pleading and reasoning as courts should expressly identify the precise obligation, the relevant conduct, the attribution route, the applicable knowledge or intent standard, and the legal consequence. Collapsing these questions into a general accusation of *"State Genocide"* obscures the legal pathways and may make adjudication appear either over broad or artificially narrow. The interstate dimension is reinforced by the Convention's object and purpose and by the character of the protected obligations. In its 1951 Reservations advisory opinion, the ICJ described the Convention as pursuing a common interest rather than reciprocal advantage. That conception helps explain why a breach cannot be analysed as an ordinary bilateral exchange of promises. The protected interest is the continued existence of human groups, and compliance is owed collectively to the treaty community. State responsibility therefore performs a public-order function: it identifies institutional responsibility, supports cessation and reparation, and complements rather than duplicates prosecution of individuals.

Attribution and State Responsibility in Contemporary Conflicts

The attribution constitutes the juridical bridge between mass violence and State responsibility. Conduct of armed forces, police, ministries, and other de jure organs is ordinarily attributable to the State, even when officials exceed authority or contravene instructions. The more difficult cases concern militias, proxy forces, fragmented administrations, private military actors, and transnational armed networks. Contemporary conflicts are frequently organised to preserve influence while diffusing formal command. Financial support, intelligence sharing, weapons, training, political protection, and operational coordination may be extensive without producing a clear public chain of command. The ICJ's effective-control approach, associated with *Nicaragua (1986)* and applied in *Bosnia v. Serbia (2007)*, requires a demanding connection for attributing particular operations of non-State actors. The ICTY Appeals Chamber in *Tadić (1999)* articulated an *"Overall Control"* test in a different legal context, principally for conflict classification. The *Bosnia v. Serbia (2007)* declined to use that looser test as the general rule for State attribution. The doctrinal caution is justified: material support alone should not automatically convert every act of an armed group into an act of the supporting State. But the operation-specific focus can be difficult to satisfy when command records are secret, destroyed, or controlled by the respondent. Article 8 ARSIWA addresses persons or groups acting on State instructions or under State direction or control. Article 11 addresses conduct later acknowledged and adopted as the State's own. Articles 4 and 5 cover organs and entities exercising governmental authority. These routes must remain analytically distinct. A court may find strong support and influence insufficient for attribution under Article 8, still highly relevant to complicity, failure to prevent, sanctions evasion, or the State's capacity to influence perpetrators. The same facts thus have different legal significance under different obligations. Digital command systems and dual-use infrastructure further complicate attribution. Orders may be transmitted informally, targeting may involve shared databases, armed groups may receive remote intelligence and logistical networks may operate across jurisdictions.

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Legal analysis must remain technology neutral but evidentially realistic as the courts should consider patterns of dependence, appointment powers, discipline, communications, resource control, and the practical capacity to initiate or halt operations. None alone is necessarily decisive, but together they may establish the legally required relationship or at minimum, prove knowledge and capacity for preventive responsibility and a defensible contemporary approach must avoid both automatic attribution and artificial compartmentalisation. If the threshold for direct attribution is not met, the inquiry should not end as the Courts should proceed systematically through aiding or assisting, complicity under the Convention, failure to prevent, and duties concerning peremptory norms. This layered analysis preserves the integrity of attribution doctrine while preventing its strictness from becoming a complete accountability shield for States that consciously enable, sustain, or fail to restrain actors over whom they possess meaningful influence as it is particularly important where territorial control is divided. A formally constituted authority may retain legal powers while another actor exercises coercive control on the ground. Foreign advisers may shape operational planning without issuing traceable orders. Corporate suppliers may provide systems that become essential to surveillance or targeting. Attribution must still follow the recognized legal categories, but courts should assess the entire relationship rather than confining analysis to organizational charts. Evidence of integrated planning, exclusive dependence, disciplinary authority, joint command facilities, and repeated intervention in operations can be probative. Separately, even non-attributable conduct may trigger duties to prevent, punish, cooperate, or cease assistance once the relevant risk or knowledge threshold is met.

Evidentiary Standards in Genocide Adjudication

As a general rule, the applicant bears the burden of establishing the facts upon which its claim rests as in genocide litigation, however, evidence is often asymmetrically held by the respondent, military institutions, allied States, or non-State actors. In *Bosnia v. Serbia (2007)* it recognized the seriousness of allegations and required proof at a high level of certainty for genocide and complicity. In the *Croatia v. Serbia (2015)* case it reaffirmed that genocidal intent inferred from a pattern of conduct must be the only reasonable inference from the acts established as this formulation protects the special character of genocide but has been criticised for making State responsibility nearly unattainable when alternative strategic motives can be hypothesised. The *"Only reasonable inference"* standard should not be treated as a demand for metaphysical certainty. A reasonable inference must be anchored in evidence and account for the pattern as a whole as the courts should articulate why asserted alternatives are genuinely reasonable, not merely imaginable. They should test whether military or displacement objectives explain the choice of methods, treatment of children and the elderly, destruction of survival systems, repeated obstruction of relief, concealment of bodies, prevention of births, or other conduct relevant to group destruction. Fragmenting the record act by act can conceal the cumulative logic of a campaign. Access to evidence also affects burden allocation. Under its Statute and Rules, the ICJ may request documents, appoint experts, conduct enquiries, and draw appropriate conclusions from non-production, although it is not a criminal investigative body. A more effective practice would identify disputed propositions early, require preservation, use neutral experts for technical material, and explain the consequences of exclusive control over evidence. Adverse inferences should not substitute for proof of genocide, but unexplained withholding should not place the entire evidentiary cost on the party denied access. Procedural fairness also requires symmetry. The gravity of genocide cannot justify relaxing reliability requirements against a respondent, but neither should gravity silently create an evidentiary immunity. Contemporaneous official records, authenticated digital material, demographic evidence, satellite analysis, witness testimony, and findings of independent commissions may corroborate one another. Courts should articulate the chain of custody, methodology, and limits attached to each category. Where evidence is disputed, the judgment should expressly identify which proposition the material proves and which proposition it does not. Transparent calibration is especially important because findings in an interstate case may influence criminal investigations, sanctions, diplomatic relations, and public memory without formally determining individual guilt. Findings of international criminal tribunals can be highly probative but must be used carefully. Criminal judgments concern particular accused persons, charges, records, and standards. The *Bosnia v. Serbia (2007)* treated relevant ICTY

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findings as persuasive and, in some respects, highly authoritative evidence, while retaining responsibility for its own legal determinations. The ICJ should transparently distinguish adjudicated facts, prosecutorial allegations, United Nations reports, commission findings, open-source material, and party submissions. Each source has a different method and reliability profile. The appropriate response is not to dilute the legal definition of genocide, but to strengthen evidentiary reasoning. A court should publish a structured matrix connecting alleged acts, protected group, substantial part, perpetrators, attribution, contextual indicators, statements, alternative explanations, and the applicable standard. Such reasoning would make visible where a claim fails and where uncertainty remains. It would also reduce the tendency to treat a finding of "not proved as genocide" as a finding that the underlying conduct was lawful or factually insignificant.

The Judicial Architecture of Genocide and State Responsibility

International adjudication of genocide operates between two competing imperatives, immediate protection when grave harm is unfolding and rigorous proof before State responsibility is finally determined as the provisional measures under Article 41 of the ICJ Statute address the first imperative by preserving rights pending judgments where the Court generally considers prima facie jurisdiction, plausibility of the rights invoked, the relationship between those rights and the measures requested, and a real and imminent risk of irreparable prejudice, with urgency assessed according to circumstances prevailing when the Court decides. This preventive jurisdiction is indispensable where delay may produce irreversible harm, still its effectiveness depends upon implementation. *LaGrand (2001)* confirmed that provisional-measures orders are legally binding. In genocide proceedings, the Court may require a respondent to prevent acts under Article II, restrain persons or entities under its influence from committing them, prevent and punish direct and public incitement, preserve evidence, facilitate humanitarian assistance, and report on measures undertaken. Reporting is particularly valuable because it transforms prevention into an ongoing process of transparency and judicial scrutiny. The formulation of orders nevertheless presents a delicate institutional challenge: excessive generality may make compliance difficult to evaluate, while excessive specificity may risk prejudging the merits or intruding into matters beyond judicial competence. Effective orders should therefore distinguish prohibitions, safeguards, evidence preservation, humanitarian facilitation, and reporting duties, enabling assessment through objectively verifiable conduct. *Bosnia v. Yugoslavia* demonstrates the limits of this framework. Although the Court issued provisional measures in 1993, the 2007 merits judgment found that Serbia had failed to comply. The episode demonstrates that legal binding force does not automatically produce operational protection. Similarly, *Gambia v. Myanmar (2020)* required measures to protect the Rohingya from genocidal acts, preserve evidence, and provide reports, while affirming erga omnes partes standing, under which a State party may invoke compliance with common Convention obligations without proving special injury, and in the *South Africa v. Israel (2024)* likewise illustrates the Court's capacity to modify or supplement interim measures as circumstances evolve as provisional protection therefore has legal and political significance, but its authority is strengthened when compliance is systematically monitored through continuous judicial and institutional scrutiny. At the merits stage, emergency protection gives way to definitive adjudication of jurisdiction, protected obligations, facts, genocide, attribution, prevention, and punishment. *Bosnia v. Serbia (2007)* remains foundational, the Court found genocide at Srebrenica but did not attribute the Bosnian Serb acts to Serbia under the applicable test or establish Serbian complicity as it nevertheless found Serbia responsible for failing to prevent genocide and for failing fully to cooperate with the ICTY and the judgment established direct State obligations under the Convention while showing how attribution, evidence, and intent requirements constrain findings of commission. *Croatia v. Serbia (2015)* further refined the specific-intent inquiry, applying the *"only reasonable inference"* approach and holding that, although genocidal acts had occurred, intent to destroy the protected group was not established. The decision clarified that forced displacement, however grave, cannot alone establish genocidal intent. These judgments demonstrate that genocide litigation should not be reduced to a binary determination. A court must distinguish responsibility for commission, complicity, prevention, punishment, and compliance with provisional measures, while defining the temporal and territorial scope of each finding. Such precision prevents a narrow holding

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from becoming an expansive historical judgment and avoids treating failure to prove genocide as a finding that no unlawful conduct occurred. Judicial adjudication is therefore most valuable when its strict definition of genocide is accompanied by careful recognition of other breaches within the Court's jurisdiction. The central challenge is to ensure that interim protection and final responsibility operate as connected stages of a credible legal process: provisional measures must provide meaningful, monitorable safeguards before irreversible harm occurs, while merits judgments must deliver precise findings clarifying responsibility and strengthening prevention.

The Evolution of Jurisprudence under the Genocide Convention

The case law further establishes that Article IX is jurisdictional in character rather than a comprehensive substantive code as the Convention supplies the primary obligations, while general international law assists with attribution, consequences, evidence, and treaty interpretation. Jurisdiction does not, without more, extend to every violation of international humanitarian law occurring in the same conflict and the applicants must connect claims to a genuine dispute concerning interpretation, application, or fulfilment of the Convention. This discipline protects consent, but it can fragment accountability where the same facts engage several legal regimes. Coordination with criminal tribunals, fact-finding bodies, and domestic proceedings can reduce duplication, provided that each institution preserves its own standard of proof and procedural safeguards. The ICJ's genocide docket has moved from territorially connected applicants toward claims based on a common treaty interest. The preliminary-objections judgment in the *Gambia v. Myanmar (2020)* accepted that obligations under the Convention are owed to all States parties and that each has an interest in compliance as this erga omnes partes structure reduces the dependence of litigation on an injured neighbouring State and it also gives Article IX a collective-enforcement function, subject to reservations and other jurisdictional limits and the provisional phase of the *Gambia v. Myanmar (2020)* has influenced practice in three ways; First, it confirmed that protection can be ordered for a vulnerable group while factual disputes remain unresolved then second, preservation-of-evidence measures recognise that future merits adjudication depends on records that may disappear and finally third, periodic reporting creates a form of continuing supervision, although reports may remain confidential or contested. The ultimate merits determination will have major significance for inference of intent, treatment of fact-finding materials, and remedies, but no final merits conclusion should be presumed while proceedings remain pending. In the *South Africa v. Israel (2024)* has further tested the provisional-measures framework during an ongoing armed conflict, the Court's orders addressed claimed rights under the Genocide Convention, urgency, humanitarian conditions, prevention of prohibited acts, incitement, assistance, evidence, and reporting as they did not adjudicate the merits and should not be represented as a final finding of genocide and the proceedings nevertheless demonstrate the Court's capacity to revisit interim protection when factual circumstances change and the limits of legal language when parties dispute the operational meaning of general commands. The *Ukraine v. Russian Federation (2022),* brought under the Genocide Convention, raised a different interpretative problem; whether allegations and claimed prevention of genocide could lawfully justify military action, and the case illustrates that the Convention can be invoked not only to allege genocide but also to challenge misuse of the genocide label. Jurisdictional rulings in Convention cases remain tightly linked to the existence and scope of a dispute under the treaty as the Court is not a general court of armed conflict merely because genocide is mentioned. Taken together, these cases disclose an evolving conception of the judicial role. Bosnia and Croatia concentrated on retrospective responsibility and a high merits threshold. The Gambia and South Africa foreground collective standing, prevention, reporting, and evidentiary preservation as the movement is not a doctrinal abandonment of intent and it is a procedural recognition that the Convention's preventive object would be defeated if judicial protection were available only after the applicant could prove a completed genocide. The central challenge is to maintain the distinction between plausible risk and final responsibility while giving interim orders practical content and the knowledge should be evaluated institutionally as public warnings, diplomatic reporting, intelligence, refugee flows, patterns of atrocity, inciting speech, and prior judicial findings may cumulatively establish awareness of serious risk and a State cannot avoid due diligence by isolating decision-makers from available information or by demanding final proof of special intent before considering

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preventive measures. At the same time, allegations must be assessed critically, particularly in armed conflict where information is contested and a documented process should record sources, confidence, dissenting assessments, available leverage, expected humanitarian effects, and legal constraints. Such a record disciplines decision-making and permits later review without requiring disclosure of legitimately protected operational information.

The Enforceability and Limits of International Court Judgments

The enforceability of judgments and the limits of international courts are closely connected dimensions of international adjudication. Under Article 94 of the United Nations Charter, each UN Member undertakes to comply with an International Court of Justice (ICJ) decision in a case to which it is a party, while non-compliance permits recourse to the Security Council, still enforcement is broader than coercion: compliance may require legislative amendment, administrative action, cessation of unlawful conduct, reporting, cooperation, or other measures prescribed by the judgment. Effective assessment should distinguish legal measures from operational implementation, independent verification, and tangible effects. Clear operative provisions are essential. They should identify the responsible State, required conduct or result, applicable temporal requirements, and, where appropriate, monitoring arrangements, thereby reducing ambiguity. Enforcement also extends beyond the Court. Article VIII of the Genocide Convention permits States Parties to call upon competent United Nations organs to take appropriate action under the Charter. UN bodies, regional organisations, and domestic authorities may contribute within their respective mandates. Domestic institutions may give practical effect to international obligations through regulatory and judicial decisions, although such consequences do not automatically follow from every ICJ judgment. The Court's authority is constrained by jurisdiction. The ICJ depends upon State consent through compromissory clauses, declarations, or special agreements, and reservations may restrict particular claims. Recognition of obligations owed erga omnes partes does not eliminate the requirement that a dispute and necessary jurisdictional conditions exist. International criminal courts face distinct limitations concerning territory, nationality, temporal jurisdiction, complementarity, and State cooperation. No institution exercises universal authority over every State, individual, territory, or atrocity. International justice consequently depends upon coordinated functions: fact-finding bodies may preserve evidence, criminal institutions may investigate individuals, the ICJ may determine State responsibility, political organs may organise collective responses, and domestic authorities may prosecute offences and implement remedies. Judicial effectiveness is also limited by evidentiary and temporal constraints. Courts decide disputes on an adversarial record that may emerge after relevant events. A judicial record may be narrower than information available to investigators, humanitarian organisations, journalists, or affected communities; failure to prove a proposition judicially does not establish that the underlying event did not occur. Time presents a further difficulty. Provisional measures can address urgent risks, but merits proceedings may continue while genocide prevention requires immediate action amid uncertainty. Courts can establish legal thresholds, assess State conduct, and order measures within jurisdiction, but cannot replace diplomacy, humanitarian protection, investigation, or collective security mechanisms. Their remedial authority is bounded by jurisdiction, and contentious judgments do not directly bind non-parties. Judicial authority must also be distinguished from political interpretation. Genocide litigation occurs amid conflict, exposing judgments to selective quotation and competing narratives. Courts cannot control political use of their decisions, but they can limit distortion by separating allegations, provisional assessments, established facts, and final conclusions. Apparent selectivity may reflect jurisdictional consent and case availability rather than judicial preference, still its institutional effects remain consequential. Reasoned judgments should explain what the Court has determined and why other questions fall beyond its authority. Such candour strengthens judicial legitimacy. Ultimately, effective compliance requires sustained institutional engagement, credible monitoring, lawful information sharing, and structured follow-up. The central challenge is not the absence of international law but fragmentation among institutions responsible for applying and implementing it. International justice is strongest when courts exercise their jurisdiction firmly while acknowledging its boundaries, and when political, investigative, humanitarian, and domestic institutions translate judicial determinations into effective compliance and accountability.

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Reparation and the Implementation of State Responsibility

The law of remedies is grounded in the principle of full reparation, but genocide litigation places exceptional demands on conventional remedial forms. Restitution may be impossible where lives, communities, archives, cultural institutions, or reproductive capacity have been destroyed as the compensation can address measurable material and moral injury, still valuation cannot restore a group. Satisfaction, including a declaration of breach, acknowledgment, memorialisation, disclosure, and guarantees of non-repetition, may therefore carry unusual importance. Remedies should be tailored to the specific breach rather than reduced to symbolic language. For direct commission or complicity, remedies may include cessation, dismantling of unlawful structures, release and return measures where safe and lawful, restoration of civil status and property systems, compensation, rehabilitation, evidence disclosure, and cooperation with criminal accountability. For failure to prevent, the remedy should reflect the causal record and the omission. For failure to punish, measures may include investigation, prosecution or extradition consistent with applicable law, access to archives, and cooperation with competent tribunals. Bosnia v. Serbia (2007) treated the declaration of breach as appropriate satisfaction for failure to prevent in the circumstances and ordered compliance concerning punishment obligations. Critics regard the result as remedially thin given the scale of harm. The difficulty arose partly from causation; the Court was not satisfied that Serbia's use of available means would necessarily have prevented the genocide. Future cases should separate certainty of prevention from the value of lost preventive opportunity and should invite detailed submissions on forms of reparation before final judgment. A structured follow-up mechanism need not compromise judicial finality. The Court could require time-limited reports when the operative clause contains continuing obligations, while political organs could maintain a public implementation record. Reports should clearly distinguish completed measures, ongoing measures, obstacles, and disputed interpretations. Independent verification may come from institutions already possessing an appropriate mandate rather than from a new judicial bureaucracy. Where disagreement concerns the meaning or scope of a judgment, the Statute provides procedures for interpretation under defined conditions. The aim is to prevent compliance from disappearing into diplomatic assertion after the judgment has attracted public attention. Provisional-measures violations also require consequences. A final judgment should expressly identify each binding measure, the conduct required, evidence of implementation, and any breach. Remedies may include renewed cessation, disclosure of compliance records, preservation or reconstruction of evidence, and satisfaction. Treating interim non-compliance as a footnote weakens Article 41. The Court's authority depends on a visible connection between binding orders and final legal consequence. Remedies must also advance the Convention's preventive object. Guarantees of non-repetition may require training, command reform, independent monitoring, domestic criminal law, protection of witnesses, controls on incitement, transparent detention registries, and safeguards for humanitarian access. Courts must avoid administering States indefinitely, but they can specify outcomes, reporting periods, and verification mechanisms. A remedy that declares the past without reducing future risk only partially serves the Convention's object and purpose. Remedial design must also account for the collective character of the protected interest. Measures directed only to inter-State loss may overlook harm to the group whose existence the Convention protects. Without converting individuals into formal parties, a court can recognise affected communities when defining restitution, satisfaction, rehabilitation, and guarantees of non-repetition. Transparent administration, non-discrimination, and access to information are essential where a fund or programme is established. Any monitoring arrangement should have a defined mandate, reporting period, and endpoint so that implementation remains connected to the judgment rather than becoming open-ended governance.

Palestine and Israel: A Developing Case Study in Prevention, Proof and Institutional Limits

The proceedings instituted by South Africa against Israel under the Genocide Convention provide one of the most current and contested illustrations of the preventive, evidentiary, and institutional framework examined in this article. South Africa instituted proceedings on 29 December 2023, alleging violations of the Convention in relation to Palestinians in the Gaza Strip, while Israel has rejected the allegations and maintained that its military operations are directed against Hamas and undertaken in the context of its claimed right of self-defence and applicable international

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humanitarian law. The *International Court of Justice (ICJ)* indicated provisional measures on 26 January 2024 and subsequently issued further orders on 28 March and 24 May 2024. These orders must be understood within their proper procedural limits: the Court assessed the plausibility of the rights invoked, the existence of urgency, and the risk of irreparable prejudice, and directed measures concerning prevention, humanitarian assistance, preservation of evidence, prevention of incitement, and reporting. It did not determine at the provisional-measures stage that Israel had committed genocide. At the same time, the absence of a final merits judgment cannot be understood as removing the legal significance or binding character of the provisional measures. The proceedings therefore demonstrate the importance of maintaining a clear distinction between preliminary judicial protection and final determination of responsibility. From a prevention perspective, the case raises particularly serious questions concerning the protection of Palestinians from acts falling within Article II of the Convention, including the infliction of conditions of life calculated to bring about the physical destruction of a protected group in whole or in part. The extensive record concerning civilian deaths, displacement, destruction of homes and essential infrastructure, restrictions affecting humanitarian assistance, and the humanitarian conditions in Gaza makes the assessment of Article II (c), as well as the specific intent required for genocide, a central and highly contested issue. The Court must also distinguish the conduct of State organs from that of other actors and evaluate official statements with regard to their authorship, authority, context, consistency, and relationship to conduct and policy and the proceedings further illuminate the responsibilities of third States under Article I. States providing military, financial, technological, intelligence, or other forms of support cannot simply assume that the ultimate merits will determine the relevance of their own obligations; they must independently consider the risk of genocide, their knowledge of circumstances, their capacity to influence events, and the means reasonably available to them for prevention. The case also exposes the institutional limits of international adjudication. Although ICJ orders are legally binding, their practical effectiveness depends substantially upon implementation by the respondent State and upon the willingness of other States and international institutions to employ diplomatic, political, economic, and legal mechanisms to reinforce compliance. As of 4 September 2026, the proceedings remain unresolved on the merits, with the Court's case record recording an order of 21 May 2026 fixing time-limits for the filing of a Reply and Rejoinder. The numerous declarations of intervention under Article 63 further demonstrate that the proceedings concern not merely the interests of the immediate parties but the interpretation and application of obligations owed within the wider treaty community. The *South Africa v. Israel* proceedings therefore stand as a significant case study of the tension between the imperative of preventing genocide, the demanding evidentiary threshold for establishing genocidal intent, and the institutional limitations of international courts in securing effective compliance with judicial protection.

II. CONCLUSION

The Genocide Convention transformed the destruction of protected human groups from a matter shielded by sovereignty into one governed by international law, establishing obligations that operate before, during, and after genocidal destruction. Its significance lies not merely in defining genocide, but in creating a framework through which States may be held responsible for commission, complicity, failure to prevent, failure to punish, and non-compliance with judicial orders. The jurisprudence of the International Court of Justice (ICJ) has confirmed that State responsibility under the Convention is distinct from individual criminal responsibility, that provisional measures are legally binding, that States may invoke the Convention on the basis of erga omnes partes obligations, and that the duty to prevent constitutes an autonomous obligation of due diligence. Still these developments also reveal the structural limits of international adjudication. Bosnia v. Serbia demonstrated that a court may find genocide occurred, reject attribution of the underlying acts to the respondent State, identify failure to prevent and punish, and address non-compliance with provisional measures within a single judgment. Croatia v. Serbia further demonstrated that grave and systematic prohibited acts may nevertheless fail the specific-intent requirement. The Gambia v. Myanmar and South Africa v. Israel illustrate the importance of provisional measures, evidence preservation, reporting, and preventive judicial protection, while their merits must remain distinct from interim findings. These cases collectively establish that

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doctrinal precision and preventive effectiveness are not competing objectives. Serious risk may activate a State's duty to prevent before genocide is conclusively established, whereas responsibility for commission requires proof of the Convention's elements, including specific intent and legally sufficient attribution. Maintaining this distinction is essential to prevent genocide from becoming synonymous with every atrocity while avoiding institutional paralysis until irreversible harm has occurred. Attribution must therefore remain disciplined, but it should not prevent courts from examining assistance, influence, complicity, omission, and other independent obligations where legally relevant. Likewise, evidentiary standards must remain demanding without becoming detached from the realities of asymmetric access, destroyed records, concealed operations, and contested information. Courts should assess evidence cumulatively, distinguish reliable findings from allegations, confront alternative explanations, and explain transparently why particular inferences are or are not reasonable. The duty to prevent provides the important juridical bridge between uncertainty and action. Because it is calibrated to knowledge, capacity, influence, proximity, and available means, it can guide diplomatic pressure, humanitarian access, evidence preservation, domestic investigation, cooperation with international institutions, and decisions concerning assistance or transfers. International courts cannot, acting alone, halt genocide; their authority is principally juridical rather than coercive. Their contribution nevertheless remains indispensable because they can identify legal risk, preserve rights, clarify obligations, allocate responsibility, establish authoritative records, and provide a basis for institutional and political action. The effectiveness of the Convention therefore depends upon connecting judicial determinations with monitored compliance, third-State due diligence, reliable evidence systems, political follow-up, and remedies directed toward both reparation and non-repetition. The limits of international courts should consequently be treated not as grounds for legal resignation, but as the starting point for institutional design. A credible architecture must integrate prevention, accountability, preservation, punishment, compliance, and remedy while respecting jurisdictional limits, procedural fairness, and the distinction between allegations, provisional findings, and final judgments. Ultimately, the Convention's promise will be fulfilled not by expanding the meaning of genocide beyond its legal boundaries, nor by accepting judicial limitations as inevitable, but by ensuring that precise law produces timely preventive action, credible accountability, and durable protection for threatened groups.

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