

ESSAY

## The Genocide of Hazaras

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*Distinguishable by their Asiatic appearance, distinct Farsi dialect, and mainly Shi'a faith, Hazaras form one of the major ethnic groups in the predominantly Sunni Muslim country of Afghanistan. Hazaras have endured numerous mass atrocities throughout Afghanistan's history. Emboldened by a longstanding culture of impunity, perpetrators have escalated assaults on this community in recent years. This Article argues that the recent and ongoing attacks on Hazaras constitute genocide pursuant to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide. Hazaras are members of a protected group within the meaning of the Genocide Convention by belonging to a particular ethnic or religious group. Moreover, the available information provides a reasonable basis to believe that the assaults against Hazaras meet the actus reus and mens rea elements of the crime of genocide. The international community has a legal obligation to recognize the genocide of Hazaras and take meaningful actions to end the relentless violence against this group.*

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## INTRODUCTION

Hazaras are one of the major ethnic groups in Afghanistan. Distinguishable by their Asiatic appearance, they speak Farsi and mainly practice Shi'a Islam in a predominantly Sunni Muslim country. Hazaras have endured numerous mass atrocities throughout Afghanistan's history, and, emboldened by a longstanding culture of impunity, perpetrators have escalated assaults on this community in recent years.

This Essay argues that the recent and ongoing attacks on Hazaras constitute genocide pursuant to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention" or "Convention").<sup>1</sup> Hazaras are members of a protected group within the meaning of the Genocide Convention by belonging to a particular ethnic or religious group. Moreover, the available information provides a reasonable basis to believe that the assaults against Hazaras satisfy the *actus reus* and *mens rea* elements of the crime of genocide. The international community has a legal obligation to recognize the genocide of Hazaras and take meaningful actions to end the relentless violence against this group.<sup>2</sup>

The Essay proceeds as follows. Part I provides a brief historical context of the atrocities committed against Hazaras. Part II outlines an overview of the recent and ongoing attacks targeting Hazaras. Part III explains the crime of genocide under the Convention. Part IV shows that the assaults against Hazaras meet the elements of the crime of genocide.

### I. HISTORICAL BACKGROUND

The genocide of Hazaras has historical antecedents.<sup>3</sup> In the late nineteenth century, the Pashtun ruler Abdur Rahman Khan carried out a pogrom against the Hazaras.<sup>4</sup> Under Abdur Rahman Khan's brutal regime, approximately sixty percent of Hazaras were massacred, enslaved, or forced into exile from their lands.<sup>5</sup> Hazara lands were confiscated and given to

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1. Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277 [hereinafter Genocide Convention or Convention].

2. Genocide Convention art. I (stipulating that "[t]he Contracting Parties[] undertake to prevent and to punish [genocide]").

3. For an in-depth examination of the atrocities against Hazaras, see generally Mehdi J. Hakimi, *Relentless Atrocities: The Persecution of Hazaras*, 44 MICHIGAN J. INT'L L. (forthcoming 2023). This Essay, *The Genocide of Hazaras*, relies, in part, on content from the author's other forthcoming article, *Relentless Atrocities: The Persecution of Hazaras*. These two publications are part of the author's larger project investigating the mass atrocities against Hazaras.

4. AUSTRALIAN GOV'T DEP'T OF FOREIGN AFFS. & TRADE, DFAT THEMATIC REPORT: HAZARAS IN AFGHANISTAN 3-4 (Sept. 18, 2017).

5. *Id.* at 4.

Pashtun settlers and nomads from other parts of the country, forcing Hazaras to take shelter in the central mountainous region of the country.<sup>6</sup>

The mass atrocities against Hazaras continued during the twentieth century. For instance, in February 1993, the militias of Ittihad-e Islami and Jamiat-e Islami attacked the Hazara-populated Afshar neighborhood in west Kabul, brutally killing around 1,000 Hazara civilians, including women, children, the disabled, and the elderly.<sup>7</sup> In September 1997, the Taliban deliberately and arbitrarily killed approximately 70 Hazara civilians, including women and children, in Qezelabad village near Mazar-e Sharif, Balkh province.<sup>8</sup>

In August 1998, the Taliban committed arguably the worst recorded ethnic massacre in Afghanistan's recent history in Mazar-e Sharif by methodically executing between 2,000 to 8,000 Hazara civilians.<sup>9</sup> In May 1999, the Taliban killed and abducted hundreds of Hazara civilians, including women, children, and the elderly, in the Hazara-populated province of Bamiyan.<sup>10</sup> In May 2000, the Taliban massacred Hazara civilians near the Robatak pass on the border between Baghlan and Samangan provinces.<sup>11</sup> In January 2001, the Taliban executed at least 170 Hazara civilians in Yakaolang district, Bamiyan province.<sup>12</sup>

## II. RECENT AND ONGOING ATROCITIES AGAINST HAZARAS

Despite Afghanistan's accession to the Rome Statute of the International Criminal Court in 2003, the atrocities against Hazaras have intensified in recent years.<sup>13</sup> Thousands of Hazara civilians have been killed,

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6. See, e.g., Kenneth J. Cooper, *Taliban Massacre Based on Ethnicity*, WASH. POST (Nov. 28, 1998), <https://www.washingtonpost.com/archive/politics/1998/11/28/taliban-massacre-based-on-ethnicity/efe15f81-abad-4e57-96f1-046cc59d1d48/> (the "Pashtun ruler conducted a pogrom against Hazaras and confiscated their farmlands, handing them to fellow Pashtuns.").

7. See John Sifton, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, HUM. RTS. WATCH, 71, 73 (2005).

8. AMNESTY INT'L, AFGHANISTAN: THE HUMAN RIGHTS OF MINORITIES 4 (Nov. 1, 1999), <https://www.amnesty.org/en/documents/asa11/014/1999/en/>.

9. HUM. RTS. WATCH, AFGHANISTAN: THE MASSACRE IN MAZAR-I SHARIF (Nov. 1998), <https://www.hrw.org/legacy/reports98/afghan/Afreport0.htm>; Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, 3 NW. UNIV. J. INT'L HUM. RTS. 1, 12 (2005) (noting that the "Taliban slaughtered up to 8,000 civilians in a frenzy of killing and rape directly mostly [*sic*] at the Shia Hazara.").

10. See AMNESTY INT'L, *supra* note 8, at 5.

11. See HUM. RTS. WATCH, MASSACRES OF HAZARAS IN AFGHANISTAN (Feb. 1, 2001), <https://www.hrw.org/report/2001/02/01/massacres-hazaras-afghanistan> - 2263.

12. See *id.*

13. *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties> (last visited Feb. 7, 2023). For further background on the ICC investigation in Afghanistan, see Mehdi J. Hakimi, *The International Criminal Court's Afghan Dilemma: Complementarity and the Quest for Justice in Afghanistan*, 60 COLUM. J. TRANSNAT'L L. 315 (2022). See also Mehdi J. Hakimi, *The ICC and*

injured, tortured, kidnapped, and forcibly displaced from their homes and villages across Afghanistan in the past few years alone.<sup>14</sup>

Hazaras have been specifically targeted and killed in numerous incidents, including, but not limited to, attacks on educational centers,<sup>15</sup> health care facilities,<sup>16</sup> places of worship,<sup>17</sup> protests,<sup>18</sup> commemoration ceremonies,<sup>19</sup> sports halls,<sup>20</sup> cultural centers,<sup>21</sup> markets,<sup>22</sup> voter registration centers,<sup>23</sup> passengers and civilian transport vehicles,<sup>24</sup> weddings and celebratory events,<sup>25</sup> workers and work sites,<sup>26</sup> and property.<sup>27</sup>

Hazara neighborhoods, such as the Dasht-e Barchi area of western Kabul, have been repeatedly attacked with impunity.<sup>28</sup> In reference to the

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*Afghanistan – Time to End Impunity?*, YALE J. INT'L L. FORUM (Aug. 31, 2018), <https://www.yjil.yale.edu/forum-the-icc-andafghanistan-time-to-end-impunity>.

14. For an in-depth analysis of the recent attacks against Hazaras, see generally Hakimi, *supra* note 3.

15. Thomas Gibbons-Neff & Najim Rahim, *Bombing Outside Afghan School Kills at Least 90, With Girls as Targets*, N.Y. TIMES (May 8, 2021), <https://www.nytimes.com/2021/05/08/world/asia/bombing-school-afghanistan.html>.

16. *Fifteen Mothers Confirmed Killed in Kabul Maternity Wing Attack*, MÉDECINS SANS FRONTIÈRES (June 3, 2020), <https://www.msf.org/fifteen-mothers-confirmed-killed-kabul-maternity-attack-afghanistan>.

17. Hamid Shalizi, *Suicide Bombers Attack Two Afghan Mosques, at Least 72 Dead*, REUTERS (Oct. 20, 2017, 10:05 AM), <https://www.reuters.com/article/usafghanistan-attack-idUSKBN1CPIUF>.

18. *Kabul explosion: IS 'claims attack on Hazara protest'*, BBC NEWS (July 23, 2016), <https://www.bbc.com/news/world-asia-36874570>.

19. *Gunmen Kill At Least 29 People at Ceremony in Afghan Capital*, PBS NEWS HOUR (Mar. 6, 2020, 11:20 AM), <https://www.pbs.org/newshour/world/gunmen-kill-at-least-29-people-at-ceremony-in-afghan-capital>.

20. *Afghanistan Conflict: Bombers Kill 20 at Kabul Sports Club*, BBC NEWS (Sept. 5, 2018), <https://www.bbc.com/news/world-asia-45426467>.

21. *Kabul Blast at Afghan Voice, Tebyan Centre Kills Dozens*, AL JAZEERA (Dec. 28, 2017), <https://www.aljazeera.com/news/2017/12/28/kabul-blast-at-afghan-voice-tebyan-centre-kills-dozens>.

22. Hamid Shalizi, *Twin Blasts in Afghan Province of Bamiyan Kill 14 People, Injure 45 – officials*, REUTERS (Nov. 24, 2020, 10:06 AM), <https://www.reuters.com/article/afghanistan-blast-idUSKBN28429S>.

23. Haroon Janjua, *Dozens Dead in Bombing at Kabul Voter Registration Centre*, THE GUARDIAN (Apr. 22, 2018), <https://www.theguardian.com/world/2018/apr/22/dozens-dead-in-kabul-bombing-at-voter-registration-centre-afghanistan>.

24. Tameem Akhgar & Kathy Gannon, *Bombs in Afghan Capital Kabul Kill At Least 10, Wound 12*, ASSOCIATED PRESS (June 1, 2021), <https://apnews.com/article/islamic-state-group-kabul-ea33674c5db415c9a43d993e02fcfbba>.

25. *Afghanistan: Bomb Kills 63 at Wedding in Kabul*, BBC NEWS (Aug. 18, 2019), <https://www.bbc.com/news/world-asia-49383803>.

26. *Halo Trust: Afghanistan Mine Clearance Workers Shot Dead 'in Cold Blood'*, BBC NEWS (June 9, 2021), <https://www.bbc.com/news/world-asia-57410265>.

27. Fabrizio Foschini, *The Kuchi-Hazara Conflict, Again*, AFG. ANALYSTS NETWORK (May 27, 2010), <https://www.afghanistan-analysts.org/en/reports/war-andpeace/the-kuchi-hazara-conflict-again/>.

28. Ali Yawar Adili, *A Community Under Attack: How Successive Governments Failed West Kabul and the Hazaras Who Live There*, AFG. ANALYSTS NETWORK (Jan. 17, 2022), <https://www.afghanistan-analysts.org/en/reports/war-and-peace/a-community-under-attack-how-successive-governments-failed-west-kabul-and-the-hazaras-who-live-there/>.

impact of these mounting incidents on the Hazara community, the United Nations (“UN”) has observed that, “the wide scope of these attacks[] directly impede their ability to carry out normal lives.”<sup>29</sup>

### III. THE CRIME OF GENOCIDE

The term “genocide” originated from Raphael Lemkin,<sup>30</sup> an international criminal lawyer who played a key role in drafting the Genocide Convention.<sup>31</sup>

Pursuant to 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:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”<sup>32</sup>

The crime of genocide is thus comprised of three broad elements: (1) membership in a particular national, ethnic, racial, or religious group; (2) the *actus reus* of the offense, which consists of one or more acts stipulated under Article II; and (3) the *mens rea* of the offense, which requires the special intent to destroy, in whole or in part, a protected group, as such. We now examine each of these three elements in turn with respect to the situation of Hazaras.

### IV. THE GENOCIDE OF HAZARAS

#### *A. Membership in a Protected Group*

Hazaras are a distinct ethnic group in Afghanistan. They speak a unique dialect of Farsi known as *Hazaragi*, a term that also refers more broadly to

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29. U.N. Assistance Mission in Afghanistan, *Afghanistan: Protection of Civilians in Armed Conflict Annual Report 2018*, 30 (Feb. 2019) [hereinafter UNAMA Annual Report 2018].

30. Prosecutor v. Krstić, Case No. IT-98-33-A, Appeals Judgment, ¶ 10 (Int’l Crim. Trib. For the Former Yugoslavia Apr. 19, 2004).

31. Genocide Convention.

32. This definition has also been incorporated into the Rome Statute of the International Criminal Court as well as the statutes of ad hoc international criminal tribunals. *See* Rome Statute of the International Criminal Court art. 6, July 1, 2002, 2187 U.N.T.S. 90 [hereinafter Rome Statute]. For a comprehensive discussion on the crime of genocide, see, for example, WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW (2009).

the culture and customs of Hazara people. They are also easily distinguishable from non-Hazaras through their Asiatic physical appearance. Hazaras constitute a majority of the population in the central regions of Afghanistan (*Hazarajat*) and comprise significant numbers in other key provinces such as Kabul and Balkh.<sup>33</sup> In addition, Hazaras are primarily Shi'a Muslims in a predominantly Sunni Muslim country. By belonging to a particular ethnic or religious group, the Hazara people are thus members of a protected group within the meaning of Article II of the Genocide Convention.

B. *Actus Reus*

1. *Genocide by killing members of the group*

As a protected group, Hazaras have been subjected to deliberate, targeted killings that meet the definition of genocide. Genocide includes killing members of a protected group with the intention to destroy, in whole or in part, the group as such.<sup>34</sup> In recent years, ISIS-K/Daesh, the Taliban, and other actors have killed and injured thousands of Hazara civilians in towns and villages in various provinces across Afghanistan.<sup>35</sup>

While many attacks remain undocumented, recorded incidents of civilian casualties in recent years further illustrate the scale of deliberate assaults on Hazaras in Afghanistan. For instance, in 2017, the United Nations documented eight incidents resulting in 418 civilian casualties (161 killed and 257 wounded).<sup>36</sup> In 2018, the U.N. recorded 19 incidents resulting in 747 civilian casualties (223 killed and 524 injured).<sup>37</sup> In 2019, the U.N. documented 10 incidents resulting in 485 civilian casualties (117 killed and 368 wounded).<sup>38</sup> In 2020, the U.N. recorded 10 incidents resulting in 308 civilian casualties (112 killed and 196 injured).<sup>39</sup> In the first six months of 2021, the U.N. documented 20 incidents targeting Hazaras, resulting in 500 civilian casualties (143 killed and 357 wounded).<sup>40</sup> As such, from January 1, 2017, through June 30, 2021, the U.N. documented 67 incidents targeting Hazaras resulting in 2,458 civilian casualties (756 killed and 1,702 injured).

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33. See, e.g., MASSACRES OF HAZARAS IN AFGHANISTAN, *supra* note 11.

34. Genocide Convention art. II(a).

35. See generally Hakimi, *supra* note 3.

36. U.N. Assistance Mission in Afghanistan, *Afghanistan Protection of Civilians in Armed Conflict: Annual Report 2017*, 41 (Feb. 2018) [hereinafter UNAMA Annual Report 2017].

37. UNAMA Annual Report 2018, *supra* note 29, at 29.

38. U.N. Assistance Mission in Afghanistan, *Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2019*, 47 (Feb. 2020) [hereinafter UNAMA Annual Report 2019].

39. U.N. Assistance Mission in Afghanistan, *Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2020*, 55 (Feb. 2021).

40. U.N. Assistance Mission in Afghanistan, *Afghanistan: Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021*, 5 (July 2021).

The actual figure of Hazara civilian casualties even during this four-and-a-half-year period is likely much higher since many incidents go unreported.

Beyond this limited timespan, certain aspects of the killing of Hazaras show that the overall picture is significantly grimmer. First, the deadly attacks are widespread and systematic, targeting virtually every aspect of Hazara society across Afghanistan,<sup>41</sup> from maternity hospitals to schools, places of worship, public transportation, work sites, weddings, sports clubs, markets, cultural events, social gatherings, properties, and beyond.<sup>42</sup> Second, the extremely brutal and shocking nature of the assaults presents another facet of the modus operandi to terrorize Hazaras across the country. The savagery of the assaults is evinced, *inter alia*, by the deliberate selection of highly vulnerable targets such as maternity hospitals<sup>43</sup> and girls' schools.<sup>44</sup>

Third, and related, many killings deploy gruesome tactics—such as beheadings, mutilations, and torture—meant to spread and instill maximum fear among Hazaras.<sup>45</sup> Fourth, the mass killings of Hazara civilians in recent years must be understood within their broader historical context: The attacks in recent years are not new developments or isolated incidents—rather, they signify the continuation of the centuries-long atrocities against and persecution of this ethnic group.<sup>46</sup>

## 2. *Genocide by committing other acts*

As explained in Part III, genocidal conduct is not confined to killing members of the group. Indeed, certain other acts also constitute genocide when committed “with the intent to destroy, in whole or in part, a protected group, as such.” These other acts include “[c]ausing serious bodily or mental

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41. For a thorough discussion of the widespread and systematic nature of the attacks on Hazaras, see Hakimi, *supra* note 3.

42. *See supra* Part II.

43. *See Fifteen Mothers Confirmed Killed, supra* note 16.

44. *See Gibbons-Neff & Rahim supra* note 15.

45. For example, on October 13, 2015, militants linked to Daesh/ISIS-KP abducted seven Hazara civilians—including two women and three children—and later beheaded all seven by slitting their throats with metal wire. *See* U.N. Assistance Mission in Afghanistan, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict*, 49-50 (Feb. 2016). *See also*, Mujib Mashal & Taimoor Shah, *Afghan Fighters Loyal to ISIS Beheaded 7 Hostages, Officials Say*, N.Y. TIMES (Nov. 9, 2015), <https://www.nytimes.com/2015/11/10/world/asia/afghan-fighters-loyal-to-isis-beheaded-7-hostages-officials-say.html>. In June 2010, a police patrol discovered the bodies of 11 Hazara men—with “their heads cut off and placed next to them”—in the Khas Uruzgan district of Uruzgan province. *See Police Find 11 Beheaded Bodies in Afghan South*, REUTERS (June 25, 2010, 8:21 AM), <https://www.reuters.com/article/us-afghanistan-beheading-idUSTRE65O2ML20100625>.

46. *See supra* Parts I-II.



harm to members of the group”<sup>47</sup> and “[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”<sup>48</sup> Examples of specific conduct that may constitute such genocidal acts include, inter alia, forced displacement,<sup>49</sup> deprivation of resources indispensable for survival,<sup>50</sup> persecution,<sup>51</sup> and surviving massacres.<sup>52</sup>

These additional acts of genocide have also been committed against Hazaras. Hazaras have been forcibly displaced from their lands throughout Afghanistan’s history as well as recently in various provinces of the country, including Maidan Wardak,<sup>53</sup> Ghazni,<sup>54</sup> Uruzgan, Daikundi, Helmand, Balkh, and Kabul.<sup>55</sup> Hazaras have also faced regular assaults on their lands and properties, depriving them of resources indispensable for survival. For instance, backed by the Taliban, Kuchis (Pashtun nomads) have repeatedly attacked Hazara villages, destroying and looting their properties, crops, and livestock, and blocking their access to water dams.<sup>56</sup> These assaults have been extremely detrimental to these Hazara villagers who, as subsistence farmers, depend on agriculture as their sole source of income and livelihood.<sup>57</sup>

In addition, Hazaras have been persecuted under various regimes in the country, and their persecution has only intensified in recent years.<sup>58</sup> Moreover, Hazaras have endured numerous pogroms and massacres since at least the late nineteenth century, including mass atrocities committed by

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47. Genocide Convention art. II(b).

48. Genocide Convention art. II(c).

49. Prosecutor v. Karadžić, Case No. IT-95-5/18-T, Trial Judgment, ¶ 545 (Mar. 24, 2016) (noting that forcible transfer “may cause such serious bodily or mental harm as to constitute an act of genocide.”). See also Preparatory Comm’n for the Int’l Criminal Court, *Report of the Preparatory Commission for the International Criminal Court: Addendum, Part II, Finalized Draft Text of the Elements of Crimes*, U.N. Doc. PCNICC/2000/1/Add.2, art. 6(c)(4), n. 4 (Nov. 2, 2000) (stating that “systematic expulsion from homes” may be deemed genocidal conduct).

50. See *Report of the Preparatory Commission for the International Criminal Court*, *supra* note 49.

51. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Judgment, ¶¶ 503-04 (Sept. 2, 1998).

52. Prosecutor v. Krstić, Case No. IT-98-33-T, Trial Judgment, ¶ 635 (Aug. 2, 2001) (determining that “the ordeal inflicted on the men who survived the massacres may appropriately be characterised as a genocidal act.”).

53. See Foschini, *supra* note 27.

54. See, e.g., AFG. INDEP. HUM. RTS. COMM’N, GOZARESH MONAZE’EH KOOCHI HA VA MARDOME MAHAL DAR WOLOSALI NAHOOR VELAYAT GHAZNI (1390/3/31 ELA 1390/4/4) [THE REPORT ON THE CONFLICT BETWEEN KUCHIS AND LOCAL PEOPLE IN THE NAHOOR DISTRICT OF GHAZNI PROVINCE (JUNE 21, 2011 TILL JUNE 25, 2011)] 4-6 (2011), [https://www.aihrc.org.af/media/files/Reports/Daily report Dari/Nahorreport.pdf](https://www.aihrc.org.af/media/files/Reports/Daily%20report%20Dari/Nahorreport.pdf) [hereinafter AIHRC Nahoor Report].

55. *Afghanistan: Taliban Forcibly Evict Minority Shia*, HUM. RTS. WATCH (Oct. 22, 2021, 8:00 AM), <https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia>.

56. See generally AIHRC Nahoor Report, *supra* note 54.

57. See *id.*

58. See generally Hakimi, *supra* note 3 (examining the persecution of Hazaras).

the Taliban.<sup>59</sup> The recent widespread attacks on Hazaras across Afghanistan signify the continuation of this centuries-long campaign of systematic violence against this group.<sup>60</sup> Besides causing substantial civilian casualties, these relentless massacres have inflicted enormous ordeals on the survivors of these atrocities.

### C. *Mens Rea*

#### 1. *Dolus specialis*

Another critical element of the crime of genocide concerns the mens rea requirement of *dolus specialis* (special intent). This element mandates that the act be committed with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>61</sup> In other words, genocide “requires the[] specific intent to exterminate a protected group,” in whole or in part.<sup>62</sup>

Under Article II of the Genocide Convention, the term “in whole or in part” refers to the intent rather than the actual destruction.<sup>63</sup> As such, any of the enumerated acts under Article II with the intent to destroy part of a protected group constitutes genocidal conduct.<sup>64</sup> The intention behind genocidal acts, however, does not require long-term premeditation.<sup>65</sup> Indeed, the *dolus specialis* to destroy a protected group may well arise in the later stages of an operation rather than at the outset of the attack.<sup>66</sup>

The intent to destroy can be proven through direct evidence or factual circumstances. Direct evidence includes the existence of a plan or policy to attack a protected group.<sup>67</sup> In the absence of direct evidence of genocidal intent (such as express statements), *dolus specialis* “may still be inferred from the factual circumstances of the crime.”<sup>68</sup> Such factual circumstances include “attacks on cultural or religious property or symbols of the group.”<sup>69</sup> Indeed, physical destruction is often accompanied with premeditated assaults on the cultural and religious properties of the targeted group.<sup>70</sup> For

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59. See *supra* Part I.

60. See *supra* Part II.

61. Genocide Convention art. II; Krstić Trial Judgment, *supra* note 52, ¶ 571.

62. *Id.*

63. *Id.* ¶ 584.

64. *Id.*

65. *Id.* ¶ 572.

66. *Id.*

67. See, e.g., Prosecutor v. Jelisić, Case No. IT-95-10-A, Appeal Judgment, ¶ 48 (July 5, 2001); Krstić Appeal Judgment, *supra* note 30, ¶ 225.

68. Krstić Appeal Judgment, *supra* note 30, ¶ 34.

69. Karadžić Trial Judgment, *supra* note 49, ¶ 553.

70. Krstić Trial Judgment, *supra* note 52, ¶ 580.

instance, premeditated attacks on places of worship and houses belonging to a protected group may evince the intent to destroy the group.<sup>71</sup>

In addition, intent may be inferred from forced displacement or transfer of members of the targeted group.<sup>72</sup> *Dolus specialis* may also be deduced from “other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”<sup>73</sup>

## 2. Evidence of special intent

There is a reasonable basis to believe that the attacks on Hazaras have been perpetrated with the requisite mens rea to destroy, in part, this ethnic group. Various factors indicate the existence of a *dolus specialis* to target this protected group.

First, numerous attacks against Hazaras—on purely civilian targets such as hospitals, schools, and mosques—have been expressly claimed by extremist militant organizations including ISIS-K/Daesh.<sup>74</sup> The Taliban have also explicitly declared their intent to kill Hazaras on prior occasions.<sup>75</sup> The express, voluntary act of accepting responsibility for attacking numerous blatantly Hazara civilian targets, wherein many of the victims have been women and children, suggests a plan or policy to deliberately target Hazaras.

Second, many attacks on Hazara civilians have been accompanied by the perpetrators’ calculated use of disparaging terms in reference to Hazaras while calling for further violence against this group. For instance, in justifying a deadly attack on a peaceful demonstration by Hazaras in 2016 in Kabul, ISIS-K/Daesh stated that the victims “were undisputed infidels and ... whoever doubts this or the right to kill them are, in turn, apostates.”<sup>76</sup> A U.N. special report on this incident found that “[t]he attack appears to have deliberately targeted persons belonging to a specific ethnic and religious

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71. *Id.*

72. *See, e.g.,* Krstić Appeal Judgment, *supra* note 30, ¶ 33.

73. Jelisić Appeal Judgment, *supra* note 67, ¶ 47.

74. *See, e.g., supra* Part II.

75. *See, e.g.,* MASSACRES OF HAZARAS IN AFGHANISTAN, *supra* note 11 (noting that, after massacring thousands of Hazara civilians in Mazar-i Sharif in 1998, the Taliban’s governor for Balkh province, Mullah Manan Niazi, “delivered public speeches in which he termed the Hazaras infidels and threatened them with death if they did not convert to Sunni Islam or leave Afghanistan.”).

76. *See Afghanistan: Surge in Islamic State Attacks on Shia*, HUM. RTS. WATCH (Oct. 25, 2021, 8:00 AM), <https://www.hrw.org/news/2021/10/25/afghanistan-surge-islamic-state-attacks-shia> [hereinafter *Afghanistan: Surge*].

community and the claim of responsibility used language that advocates religious hatred and incitement to violence.”<sup>77</sup>

Third, in many incidents the perpetrators have methodically sought out, specifically identified, and exclusively attacked Hazaras by separating Hazaras from non-Hazaras before killings or abductions. For example, on July 25, 2014, the Taliban stopped two public buses in the Bad Gah area, Chagcharan district, Ghor province, overnight and began examining the passengers and checking their identification cards.<sup>78</sup> The insurgents then separated 14 Hazaras from 32 others, tied their hands, and shot them dead.<sup>79</sup> Among the 14 Hazara victims were three women and one child.<sup>80</sup>

Fourth, *dolus specialis* can be inferred from attacks on cultural or religious property or symbols of the group.<sup>81</sup> Hazaras have been frequently targeted, inter alia, at their educational centers, places of worship, commemoration ceremonies, cultural centers, and celebratory events.<sup>82</sup>

Fifth, the requisite special intent may also be deduced from forced displacement or transfer of members of the targeted group.<sup>83</sup> As discussed earlier, Hazaras have been unlawfully and forcibly displaced from their lands and homes in various provinces across Afghanistan.<sup>84</sup>

Sixth, *dolus specialis* may also be inferred from “other culpable acts systematically directed against the same group”<sup>85</sup> and “the scale of atrocities committed.”<sup>86</sup> The widespread and systematic attacks on Hazaras in recent years alone—which have targeted virtually every aspect of Hazara life—demonstrate a clear pattern of deliberate, acute, and large-scale violence against this specific group.<sup>87</sup> This pattern becomes all the more evident in the context of the longstanding historical atrocities against Hazaras.<sup>88</sup>

Seventh, the targeting of Hazaras on the basis of their ethnic and religious identity has been underscored by various key organizations. For example, the United Nations has acknowledged the “increasing pattern of

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77. U.N. Assistance Mission in Afghanistan, *Afghanistan Human Rights and Protection of Civilians in Armed Conflict Special Report: Attack on a Peaceful Demonstration in Kabul*, 23 July 2016, ¶ 39 (Oct. 2016) (emphasis added).

78. See, e.g., *Fourteen Civilians Shot Dead in Afghanistan*, AL JAZEERA (July 26, 2014), <https://www.aljazeera.com/news/asia/2014/07/afghanistan-attack-201472553221541767.html>.

79. *Id.*

80. *Afghan Conflict: 15 Killed in 'Taliban Attack' on Buses*, BBC NEWS (July 25, 2014), <https://www.bbc.com/news/world-asia-28481282>.

81. Karadžić Trial Judgment, *supra* note 49, ¶ 553.

82. See *supra* Part II.

83. Krstić Appeal Judgment, *supra* note 30, ¶ 33.

84. See *supra* Part IV.B.2 (discussing various genocidal acts against Hazaras including forced displacement).

85. Jelisić Appeal Judgment, *supra* note 76, ¶ 47.

86. *Id.*

87. See generally Hakimi, *supra* note 3.

88. See *supra* Part I.

deliberate” attacks against the Hazara ethnic group in Afghanistan.<sup>89</sup> According to findings by the United Nations Assistance Mission in Afghanistan (“UNAMA”), the pattern of targeted attacks against Hazaras “marks a continuation of extreme harm to civilians from this community documented by UNAMA. UNAMA remains gravely concerned about the safety and security of this minority group and the negative impact of these attacks on their freedoms of religion and movement and quality of life.”<sup>90</sup> Similar statements and expressions of concern have been issued by other organizations including Human Rights Watch,<sup>91</sup> Amnesty International,<sup>92</sup> and the U.S. Holocaust Memorial Museum.<sup>93</sup>

## V. CONCLUSION

There is a reasonable basis to believe that the atrocities against Hazaras meet the elements of the crime of genocide under Article II of the Genocide Convention. The signatories of the Convention have a legal obligation “to prevent and to punish” genocide.<sup>94</sup> The ongoing attacks on this ethnic group, fueled by an enduring climate of impunity, serve as constant reminders of the catastrophic consequences of inaction in the face of relentless atrocities. It is long past time for the international community to acknowledge the genocide of Hazaras and take swift and decisive actions to heed the Convention’s *raison d’être*.

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89. UNAMA Annual Report 2017, *supra* note 36, at 41.

90. UNAMA Annual Report 2019, *supra* note 38, at 7-8 (emphasis added).

91. See *Afghanistan: Surge*, *supra* note 76 (observing that ISIS-K/Daesh “has repeatedly carried out devastating attacks that appear designed to spread terror and inflict maximum suffering particularly on Afghanistan’s Hazara community.”).

92. See e.g., *Afghanistan: Student Massacre is a War Crime*, AMNESTY INT’L (Aug. 16, 2018), <https://www.amnestyusa.org/press-releases/afghanistan-student-massacre-is-a-war-crime/> (noting the ethnic and sectarian “hatred” motivating the targeting of Hazaras).

93. *Museum Statement on the Hazara*, U.S. Holocaust Memorial Museum (Aug. 23, 2021), <https://www.ushmm.org/information/press/press-releases/museum-statement-on-the-hazara>.

94. Genocide Convention, *supra* note 1, art. I.

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