

# **The Genocide the Law Could Not See: Rethinking Intent Through the Intersubjective Destruction Framework**

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## Abstract

This dissertation argues that the destruction inflicted upon the Kosovar Albanian population between 1989 and 2001 exposes a critical structural limitation within international genocide law: its over-reliance on a physicalist understanding of harm. Contemporary jurisprudence continues to privilege kinetic violence and mass killing, rendering cultural, institutional, and relational harms legally peripheral. This "Physicalist Requirement" has produced a structural lacuna and a corresponding normative void, in which the dismantling of a group's intersubjective world falls outside the evidentiary assessment of genocidal intent (*dolus specialis*). To address this gap, the dissertation develops the Intersubjective Destruction Framework (IDF), a multidisciplinary model that synthesizes sociological theories of "Social Death" with emerging scientific evidence on the biological transmission of trauma. Utilizing a Cumulative, Comparative, and Longitudinal Synthesis (CCLS), the study reinterprets the Serbian state project through three audited modalities of harm: Kinship Fragmentation, Cultural-Memory Annihilation, and Social-Cohesion Disabling.

The findings demonstrate that the administrative purges, language bans, and institutional closures of the 1990s were not merely preparatory or discriminatory acts, but constitutive elements of a genocidal process aimed at the group's intersubjective foundation. This continuum of destruction transitioned from bureaucratic violence into wartime atrocities, including gender separations and sexual violence which culminated in post-conflict "concealment operations," such as mass-grave transfers and the strategic non-cooperation regarding the disappearance.

Taken together, these patterns provide a robust evidentiary basis for inferring genocidal intent, challenging dominant counterinsurgency narratives and exposing the limits of current legal paradigms. The dissertation concludes that integrating structural, cultural, and relational harms into the assessment of intent realigns genocide law with Raphael Lemkin's holistic vision. Recognizing intersubjective harm is essential not only for documenting past atrocities like Kosova but for ensuring that future genocides executed through bureaucratic or institutional means do not remain legally invisible.

## Dedication

**For my grandparents, whose enduring memory illuminates my path.**

**To my daughters, whose patience brought me peace.**

**To my husband, whose strength steadied my every step,**

**To my mother, whose unwavering motivation inspired me.**

**Your belief made this work possible.**

## Acknowledgements

The completion of this thesis was made possible through the invaluable guidance, support, and encouragement of many individuals and institutions. Foremost among them, I wish to convey my deepest gratitude to my supervisor, Professor Damien Short of the University of London. His pioneering work on the sociology of genocide and the conceptualization of social and relational destruction provided the theoretical spark for this research. I am profoundly grateful for his insightful guidance, rigorous feedback, and for the intellectual freedom he afforded me to develop the Intersubjective Destruction Framework. I am also grateful to the faculty and staff at the University of London for providing a stimulating intellectual environment and the resources necessary to complete this project. My thanks extend to the archivists, researchers, and human rights organizations whose meticulous documentation of the conflict in Kosova provided the essential evidentiary foundation for this study.

Finally, this work is dedicated to the survivors and victims of the conflict in Kosova. It is my hope that by expanding our legal understanding of destruction, we may contribute, however modestly, to a more robust protection of human *genos*.

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## ABBREVIATIONS

**Purpose:** This list provides the abbreviations used throughout the thesis. It is a technical reference tool to support readability and consistency.

**AI** — Amnesty International

**ASP** — Assembly of States Parties (ICC)

**CCLS** — Critical Comparative Legal Synthesis

**CPPCG** — Convention on the Prevention and Punishment of the Crime of Genocide

**DoS** — United States Department of State

**ECtHR** — European Court of Human Rights

**FKBP5** — Gene associated with trauma-related epigenetic changes

**FRY** — Federal Republic of Yugoslavia

**H3Africa** — Human Heredity and Health in Africa Consortium

**HLC** — Humanitarian Law Center (Fondi për të Drejtën Humanitare)

**HRW** — Human Rights Watch

**HPCC** — Housing and Property Claims Commission

**KLA / UÇK** — Kosovo Liberation Army (Ushtria Çlirimtare e Kosovës)

**ICC** — International Criminal Court

**ICJ** — International Court of Justice

**ICTR** — International Criminal Tribunal for Rwanda

**ICTY** — International Criminal Tribunal for the former Yugoslavia

**IRRC** — International Review of the Red Cross

**NGO** — Non-Governmental Organisation

**OHCHR** — Office of the High Commissioner for Human Rights

**OSCE** — Organization for Security and Co-operation in Europe

**PTSD** — Post-traumatic stress disorder

**SASREC** — School of Advanced Study Research Ethics Committee

**UNESCO** — United Nations Educational, Scientific and Cultural Organization

**UNTS** — United Nations Treaty Series

**YIHR** — Youth Initiative for Human Rights

## Terminology/Key Concepts

### **Purpose:**

This section clarifies the key concepts, theoretical terms, and culturally significant terminology used throughout the thesis. Because the project draws on international criminal law, socio-legal theory, genocide studies, and cultural analysis, several terms require precise definition to ensure conceptual clarity and interpretive consistency.

### **Note on Terminology: Kosova / Kosovo**

Throughout this thesis, I use the terms Kosova and Kosovar to reflect Albanian linguistic, historical, and cultural usage. These terms align with the self-identification of the majority population and the scholarly literature on Albanian cultural and political history. However, direct quotations from ICTY judgments and other international legal documents retain the Tribunal's original terminology (*Kosovo, Kosovan*) to preserve accuracy.

**Genocide:** Defined as a set of acts committed with intent to destroy, in whole or in part, a protected group, as outlined in Article II of the Genocide Convention.

**Accompanying Crimes:** Secondary international crimes (e.g., persecution, apartheid) accompanying genocidal processes.

**Administrative Fragmentation:** Bureaucratic restructuring that obscures responsibility and disperses authority, concealing genocidal policy

**Administrative Terror:** Systematic use of bureaucratic tools to intimidate, destabilize, and weaken a protected group.

**Bare life (Agamben):** A condition in which individuals are stripped of legal personhood and reduced to existence outside the political and juridical order. Within the IDF, this concept is extended to explain how bureaucratic erasure undermines a group's intersubjective continuity.

**Biological Bridge:** The conceptual link between sociological "Social Death" and the "Serious Mental Harm" of Article II(b) via the intergenerational transmission of trauma.

**Bureaucratic Disguise:** Administrative or legal processes concealing destructive intent beneath seemingly neutral state actions.

**CCLS Methodology (Critical Comparative Legal Synthesis):** A three-stage method combining legal analysis, socio-legal theory, and comparative evidence to identify patterns of genocidal destruction

**Cultural Destruction / Cultural Genocide:** Attacks on institutions, practices, and symbols sustaining a group's identity, memory, and continuity.

**Cultural/Memory Annihilation (IDF Pillar 2):** The deliberate destruction of a group's cultural symbols, archives, and sites to erase its collective identity and sever continuity between past and future, enacting "social death."

**Cultural Violence:** Harm targeting cultural expression, language, and identity.

**Cumulative Evidentiary Model:** An interpretive approach that infers intent from patterns of harm rather than requiring explicit documentary proof (the so-called "smoking gun").

**Cumulative Patterns of Destruction:** Aggregated harms supporting the inference of genocidal intent.

**Constitutive elements:** Acts or processes that are not merely preparatory but are essential parts of the destruction of the group itself.

**Deductive Coding Protocol:** A method for applying predefined analytical categories from IDF to evidence.

**De-legalization of Existence:** Bureaucratic measures stripping individuals of legal personhood.

**Disabling of Social Cohesion:** Dismantling of institutions, leadership, and economic capacity that sustain a group.

**Doctrinal Omission:** A gap in legal doctrine that fails to recognize structural, cultural, or relational harms as probative of genocidal intent.

**Dolus Specialis (Special Intent):** The specific mental element required for the crime of genocide, characterized by the "intent to destroy, in whole or in part" a protected group.

**Empirical Record:** Evidence analyzed, including NGO reports, judgments, and archival materials.

**Epigenetics:** The field examining how gene expression can be modified without altering the underlying genetic code; in this thesis, it serves to illustrate the "Biological Bridge" through which trauma is transmitted.

**Genos:** A protected group defined by shared language, culture, history, and identity (from Greek *genos*).

**Group Self-Reproduction:** The ability of a group to sustain itself across generations through cultural, social, and institutional continuity.

**Group Viability:** Necessary conditions for a group's existence as a social entity.

**IDF (Intersubjective Destruction Framework):** The thesis's analytical model for identifying genocidal intent through the destruction of intersubjective, cultural, and relational foundations.

**Intersubjective Harm:** Disruption of shared meanings, social relations, and collective identity.

**Intersubjectivity:** The shared social world created through mutual recognition and communication.

**Interpretivist Methodology:** A research approach that seeks to understand social phenomena through the meanings that participants assign to them, focusing on context and intersubjectivity.

**Kinetic Harms:** Direct, physical violence, as opposed to structural or cultural harm.

**Kinship Fragmentation:** (IDF Pillar 1) The disruption of family continuity, intergenerational transmission, and relational bonds.

**Legal Denial of Victimhood:** Acts aimed at erasing recognition of harm.

**Longitudinal Frame:** Methodological approach examining evidence over time to capture full destruction scope.

**Manual Coding Procedure:** Stepwise process of source selection, coding, and thematic aggregation for evidence analysis.

**Physicalist Bias / Interpretation:** The systemic interpretative tendency within international tribunals to prioritize visible, kinetic violence over structural or relational harm.

**Physicalist Orthodoxy / Physicality Requirement:** The doctrinal insistence that "destruction" must be biological, marginalizing non-physical modalities of group destruction.

**Positivist Approach:** Legal interpretation emphasizing explicit evidence over contextual inference.

**Post-conflict Structural Denial:** Refusal to cooperate on issues like missing people, perpetuating harm after conflict.

**Purposive Sampling:** Non-random selection method identifying high-leverage documents for analysis.

**Relational Destruction:** Erosion of social bonds and cohesion necessary for group life.

**Researcher Positionality and Reflexivity:** Acknowledgment of a researcher's background and ethical responsibilities.

**Serious Mental Harm (Expanded Interpretation):** Psychological injury from structural or cultural destruction.

**Social Cohesion Disabling (IDF Pillar 3):** The dismantling of a group's collective agency through "institutional decapitation", the targeted removal of leadership, professional classes, and social networks. This pillar focuses on rendering the group's social fabric unviable and incapable of self-reconstruction.

**Social Death:** Destruction of relationships and conditions allowing group existence.

**Social Existence:** The relational and institutional life of a group beyond physical survival.

**Social Figuration:** Definition of identity as relational and embedded in social structures.

**Source Credibility and Validation System:** Hierarchical evidence weighing system.

**Structural Harm:** Systemic oppression undermining a group's capacity.

**Structural Lacuna / Normative Void:** A combined conceptual condition in which the Genocide Convention's narrow focus on physical destruction creates a structural omission that produces a normative failure to recognize cultural, relational, and intersubjective harms as constitutive of genocide.

**Structural Violence:** Harm embedded in societal structures.

**Triangulation Protocol:** Process of corroborating findings across independent sources.

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# The Genocide the Law Could Not See: Rethinking Intent Through the Intersubjective Destruction Framework

## Chapter 1-Introduction

### 1.1 The Research Problem: Genocide Beyond the Physicalist Orthodoxy

On the border at Morina in 1999, Serbian forces did not only expel Kosovar Albanians; they systematically confiscated identity documents, birth certificates, and license plates, effectively erasing their legal existence before they even crossed the frontier.<sup>1</sup> While international tribunals acknowledged these practices, along with the wider campaign of killings and violence that marked the spring of 1999, they nevertheless declined to infer genocidal intent, insisting that no plan of physical destruction had been proven.<sup>2</sup> This doctrinal posture reflects what this study terms the Physicalist Orthodoxy: a jurisprudential tendency to equate “destruction” almost exclusively with mass killing.<sup>3</sup>

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<sup>1</sup>OSCE Office for Democratic Institutions and Human Rights, *Kosovo/Kosova: As Seen, As Told – An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999* (1999) <<https://www.osce.org/sites/default/files/f/documents/d/d/17772.pdf>> **Part III and Part V.**

<sup>2</sup> **Prosecutor v Đorđević** (Appeals Judgment) IT-05-87/1-A (ICTY, 27 January 2014) **paras 528, 543–545** <<https://www.icty.org/x/cases/djordjevic/acjug/en/140127.pdf>>; **Bosnia and Herzegovina v Serbia and Montenegro** (Judgment) [2007] ICJ Rep 43 **paras 187–190, 344, 373–374, 430** <<https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>>; **Prosecutor v Krstić** (Appeal Judgment) IT-98-33-A (ICTY, 19 April 2004) **paras 33, 37, 134** <<https://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>>.

<sup>3</sup> **William A Schabas**, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) **154–171**; **Convention on the Prevention and Punishment of the Crime of Genocide** (adopted 9 December 1948, entered into force 12 January 1951) **78 UNTS 277 art II** <[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)>; **Sarah MH Nouwen and Wouter G Werner**, ‘Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity’ (2015) **13 Journal of International Criminal Justice** 157, **160–165** <[https://www.researchgate.net/publication/276835651\\_Monopolizing\\_Global\\_Justice\\_Internat](https://www.researchgate.net/publication/276835651_Monopolizing_Global_Justice_Internat)>

This dissertation does not dispute the fact of the 1999 massacres; instead, it argues that the killings emerged as the final stage of a decade-long pattern of Intersubjective Destruction that took root in 1989.<sup>4</sup> By situating the kinetic violence of 1999 within the broader 1989–1998 period of administrative purges, language bans, and the dismantling of the educational infrastructure, a clear pattern emerges.<sup>5</sup> These measures targeted the relational, cultural, and institutional foundations through which the Kosovar Albanian genos sustained its collective life.<sup>6</sup> A state that destroys civil records, suppresses its intellectual class, and governs through systematic degradation weakens the social foundations that enable a community to endure as a people.<sup>7</sup> The failure of international courts to recognize these cumulative harms exposes a normative void, generated by a deeper structural lacuna, that leaves the erosion of a group’s social, cultural and relational world legally unaccounted for.<sup>8</sup>

## 1.2 Research Questions and Objectives

This study is driven by a central question: ***How can international criminal law move beyond physicalist constraints to recognize the destruction of a group’s intersubjective existence as an indicator of genocidal intent?***

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ional\_Criminal\_Law\_as\_Challenge\_to\_Human\_Diversity/link/642a82aea1b72772e448600f/download>.

<sup>4</sup> **OSCE (n 1) ch 22, 1–15; Amnesty International, *Kosovo: A Decade of Repression*** (May 1999) AI Index: EUR 70/039/1999 <<https://www.amnesty.org/en/documents/eur70/039/1999/en/>> accessed 7 September 2025.

<sup>5</sup> **Amnesty International, *Yugoslavia: Police Violence Against Ethnic Albanians in Kosovo Province*** (April 1994) AI Index: EUR 70/06/94, **12–13** <<https://www.amnesty.org/en/documents/eur70/006/1994/en/>> accessed 7 January 2026.

<sup>6</sup> **Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*** (Carnegie Endowment for International Peace 1944) <<https://www.legal-tools.org/doc/b989dd/pdf>> accessed 7 January 2026; **OSCE (n 1) ch 22, 1–15; Amnesty International (n 5) 12–13.**

<sup>7</sup> **Human Rights Watch, *Under Orders: War Crimes in Kosovo*** (26 October 2001) **chs 3–5** <<https://www.hrw.org/report/2001/10/26/under-orders/war-crimes-kosovo>> accessed 7 October 2025; **OSCE (n 1) ch 22, 7–15; Amnesty International (n 5).**

<sup>8</sup> **Leora Bilsiy and Rachel Klagsbrun, ‘The Return of Cultural Genocide?’** (2018) 29(2) *EJIL* 373 <[https://www.academia.edu/53610070/The\\_Return\\_of\\_Cultural\\_Genocide](https://www.academia.edu/53610070/The_Return_of_Cultural_Genocide)> accessed 20 September 2025; **Bosnia v Serbia (n 2) para 344.**

To answer this, the research pursues three objectives:

1. To deconstruct the physicalist bias within the current CPPCG jurisprudence (Chapter 2).
2. To implement a new analytical model, the Intersubjective Destruction Framework (IDF), as a methodological tool (Chapter 3).
3. To apply the IDF to the Kosova record, demonstrating how cumulative patterns of intersubjective destruction support a renewed inference of intent (Ch 4).

### **1.3 Thesis Statement and Original Contribution**

This dissertation contends that genocidal intent can be established through inferences drawn from the systematic erosion of the intersubjective structures that sustain a group. The IDF offers an original contribution by bridging sociological theories of Social Death with the evidentiary demands of international criminal law. A further contribution is the articulation of the Biological Bridge, which draws on emerging research in epigenetics to argue that “serious mental harm” under Article II(b) can constitute a durable mechanism of group destruction. This aligns legal analysis with contemporary scientific understandings of trauma transmission and strengthens the evidentiary basis for recognizing non-physical modalities of destruction.

### **1.4 Methodology Summary: The CCLS Approach**

Anchored in the Critical Comparative Legal Synthesis (CCLS), this study adopts an interpretivist methodology that prioritizes meaning-making over the search for a single decisive evidentiary document. To implement this approach it employs a Deductive Coding Protocol, drawing on deductive qualitative analysis to identify patterns of harm across three pillars: **Kinship Fragmentation, Cultural/Memory Annihilation, and Social Cohesion Disabling**.<sup>9</sup> Through the synthesis of ICTY/ICJ judgments, NGO archives,

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<sup>9</sup> **Stephen T Fife and Jacob D Gossner**, ‘Deductive Qualitative Analysis: Evaluating, Expanding, and Refining Theory’ (2024) 23 *International Journal of Qualitative Methods* 1 <<https://journals.sagepub.com/doi/pdf/10.1177/16094069241244856>> accessed 7 January 2026.

expert reports, and oral histories, the study shows how a cumulative evidentiary model offers a more precise basis for inferring genocidal purpose.

## **1.5 Dissertation Outline**

Following this introduction:

**Chapter 2** establishes the theoretical framework, critiques the doctrinal limitations of the CPPCG and introduces theories of social and relational destruction.

**Chapter 3** outlines the methodology architecture of the IDF and the deductive coding process.

**Chapter 4** applies the IDF to the Kosova case, demonstrating how structural, cultural, and relational harm collectively supports an inference of genocidal intent.

**Chapter 5** considers the implications for international criminal law, arguing for a redefinition of destruction that protects the social and cultural soul of the *genos*.

## Chapter 2: Theories and Conceptual Framework: The Argument for Intersubjective Destruction

### 2.1 Introduction: Establishing the Argumentative Core

This chapter argues that the genocidal campaign against Kosovar Albanians systematically targeted the group's social existence, its cultural, institutional, and relational foundations in ways that the CPPCG, is poorly equipped to recognize. To address this structural lacuna, the chapter develops the Intersubjective Destruction Framework (IDF), which conceptualizes genocidal intent through patterns of social, cultural, and relational dismantling rather than through kinetic alone. The Kosova case anchors this analysis, demonstrating how cumulative non-physical harms can reveal *dolus specialis* (specific intent to destroy) even in the absence of mass killing.

The chapter proceeds in four parts. First, it defines the Kosovar Albanian group as a protected *genos* and critiques the CPPCG's restrictive physicalist interpretation. Second, it traces the conceptual lineage from Lemkin's original understanding of genocide to contemporary theories of social death and relational destruction.<sup>10</sup> Third, it introduces the psychological and biological mechanisms of harm, framing trauma and epigenetics as constitutive mechanisms of group destruction rather than incidental consequences. Finally, it operationalizes the IDF's three pillars: ***Kinship Fragmentation, Cultural Memory Annihilation, and Social Cohesion Disabling***-establishing the conceptual scaffolding for the evidentiary analysis of the Kosova case in Chapter 4.

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<sup>10</sup> Lemiin (n 6) 79-95; Claudia Card, 'Genocide and Social Death' (2003) 18 *Hypatia* 63, 63–70 <<https://www.jstor.org/stable/3811037>> accessed 7 January 2026; Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (Zed Books 2016) 24–33.

## 2.2 Defining the Protected Group: The Kosovar Albanian *Genos*

Before analyzing the mechanics of destruction, the legal and sociological status of the target must be established. Kosovar Albanians meet the definition of a *genos* under the CPPCG, as they constitute a stable and historically continuous group characterized by shared language, culture, and collective identity.<sup>11</sup> This aligns with the ICTR's reasoning in *Akayesu*, which characterized protected groups as '*stable and permanent*', and is further supported by the ICTY in *Milutinović et al.*, where the Trial Chamber held that the Kosovo Albanian population constituted an ethnic group for the purposes of Article 5(h).<sup>12</sup> Documentations from the OSCE, HRW, and U.S. State Department likewise consistently recognizes Kosovar Albanians as a distinct ethnic and national group.<sup>13</sup>

As Abed argues, genocide often operates by dismantling the structural and cultural bonds that sustain a group's identity; legal protection must therefore extend to these social foundations, not merely to biological survival.<sup>14</sup> In the Kosova context, Serbia's systematic dismantling of Albanian-language institutions, legal personhood, and cultural infrastructure constituted a direct assault on these foundations, aiming to erode the group's capacity to exist as a cohesive and self-reproducing community.<sup>15</sup> Within the IDF, this establishes the Kosovar Albanians as a protected *genos* whose destruction must be

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<sup>11</sup> CPPCG (n 3) art II; OSCE (n 1); *Bosnia v Serbia* (n 2) paras 193–199; *Prosecutor v Radislav Krstić*, Trial Judgment, IT-98-33-T (ICTY, 2 August 2001) paras 556–570 <<https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>>.

<sup>12</sup> *Prosecutor v Jean-Paul Aiyesu*, Case No ICTR-96-4-T, *Judgment* (2 September 1998) para 511 <<https://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20%20JUDGEMENT.pdf>>; *Prosecutor v Milutinović et al* (Judgment, 26 February 2009) IT-05-87-T, vol 1, 70 para 176 <<https://www.refworld.org/jurisprudence/caselaw/icty/2009/en/92016>>

<sup>13</sup> OSCE (n 1); HRW (n 7); US Department of State, *Ethnic Cleansing in Kosovo: An Accounting* (1999) <[https://1997-2001.state.gov/global/human\\_rights/kosovoii/pdf/kosovii.pdf](https://1997-2001.state.gov/global/human_rights/kosovoii/pdf/kosovii.pdf)>.

<sup>14</sup> M Abed, 'Clarifying the Concept of Genocide' (2006) 37(3–4) *Metaphilosophy* 308–330 <<https://www.jstor.org/stable/24439491>>.

<sup>15</sup> OSCE (n 1); US Department of State (n13); HRW (n 7).

understood not only in physical terms but through the intersubjective and relational dimensions that enable the group to endure across generations.

### **2.3 The Physicalist Requirement: Orthodoxy and the Repression of Cultural Existence**

The primary obstacle to recognizing the Kosovar experience within the genocide framework is the Physicalist Requirement, embedded within a broader Physicalist Orthodoxy, that shapes the interpretation of Article II of the CPPCG. <sup>16</sup> The Convention's definition centers destruction on bodily killing, serious bodily or mental harm, and life-threatening conditions, thereby elevating biological annihilation as the paradigmatic form of genocide.<sup>17</sup> Schabas's close reading of Article II reflects this orientation: while attentive to the *travaux préparatoires* and the exclusion of cultural genocide, his account nevertheless locates the core of genocidal destruction in physical and biological attacks on the group.<sup>18</sup>

As Bilsky and Klagsbrun argue, this narrowing of the concept has produced a normative void in which assaults on cultural existence lack a stable place in genocide law, despite their centrality to Lemkin's original intuition.<sup>19</sup> Card's account of genocide as *social death* underscores the consequence of this structural lacuna: once cultural, institutional, and relational forms of destruction are decoupled from physical survival, the law renders the erosion of a group's social existence effectively invisible.<sup>20</sup>

In the Kosova context, this doctrinal bias manifests as both an evidentiary and normative failure. When Serbian authorities revoked identity documents, expelled Albanians from public institutions, and suppressed the Albanian

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<sup>16</sup> **CPPCG** (n 3) art II.

<sup>17</sup> *Ibid.*

<sup>18</sup> **Schabas** (n 3) **51-101, 154-157.**

<sup>19</sup> **Bilsky & Klagsbrun** (n 8) **373, 375-380; Douglas Irvin-Ericson**, 'Raphael Lemkin: culture and cultural genocide' in Jeffrey S Bachman (ed), *Cultural Genocide: Law, Politics, and Global Manifestations* (Routledge 2019) 21-45 <<https://doi.org/10.4324/9781351214100-2>>.

<sup>20</sup> **Card** (n 10) **63-70.**

language, these acts were not only isolated human rights violations but components of a wider project of bureaucratic de-legalization of existence.<sup>21</sup> By stripping Kosovar Albanians of legal personhood and institutional presence, the state excluded them from the universe of obligation well before large-scale physical violence escalated.<sup>22</sup> Such measures targeted the group's capacity to exist as a recognized subject in law and society, yet under a strict physicalist reading of the CPPCG, they appear peripheral, preparatory, or merely discriminatory rather than as integral modalities of genocidal destruction.<sup>23</sup>

## 2.4 Doctrinal Omissions: Group Categories, Intent, and the Limits of Genocide Law

The limitations of the CPPCG extend beyond its physicalist orientation. The Convention's narrow taxonomy of protected groups restricted to national, ethnic, racial, and religious communities, reflects mid-century political compromise rather than sociological reality.<sup>24</sup> This rigidity produces what Mantasha identifies as a legal and ethical gap, leaving culturally or linguistically defined communities to fall outside the Convention's conceptual frame, even though these are often the very dimensions perpetrators target first.<sup>25</sup> At its core, this categorical narrowness reveals an epistemological deficiency: it fails to recognize that group existence is constituted through intersubjective processes, shared meanings, reciprocal relations, and the relational fabric that binds members into a collective.<sup>26</sup>

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<sup>21</sup> **OSCE** (n 1); **HRW** (n 7); **US Department of State** (n 13).

<sup>22</sup> *Ibid*

<sup>23</sup> **Schabas** (n 2) 51–101; **Bilsiy & Klagsbrun** (n 8) 382–390; **Card** (n 12).

<sup>24</sup> **CPPCG** (n 3) art II; **Schabas** (n 3) ch 4.

<sup>25</sup> **Mantasha**, 'Cultural Erasure as Genocide: A Legal and Moral Blind Spot in International Law' (2023) 7(3) *Indian Journal of Law and Legal Research* 1, 3–7 <<https://www.ijllr.com/post/cultural-erasure-as-genocide-a-legal-and-moral-blind-spot-in-international-law>> accessed 7 January 2026.

<sup>26</sup> **Dorota Lachowsia**, 'Alfred Schütz's Theory of Intersubjectivity' (1980) 51 *Polish Sociological Bulletin* 41–50 <<https://www.jstor.org/stable/44816059>>; **Abed**, (n14) 314-320; **Card** (n 10) 63-70; **Irvin-Ericson** (n 19) 30-38.

These structural limitations are compounded by the jurisprudential insistence on *dolus specialis*.<sup>27</sup> While Clark notes the ICTY's attempts to clarify the intent requirement, no coherent framework has emerged for evaluating patterns of conduct.<sup>28</sup> The conceptual divide between intent as purpose and intent as awareness continues to impede courts from recognizing how discriminatory political motives (routinely relegated to persecution) can operate as early indicators of genocidal destruction.<sup>29</sup> Ambo's framework, which emphasizes the organizational structure of genocidal conduct, seeks to bridge this divide, yet it underestimates the evidentiary significance of cumulative, patterned assaults on a group's social existence.<sup>30</sup>

Schabas's restrictive orthodoxy reinforces this evidentiary gap by prioritizing explicit proof of physical extermination.<sup>31</sup> Such an approach marginalizes the structural and cultural forms of destruction that Moses and Irvin-Erickson emphasize as central to understanding genocidal intent.<sup>32</sup> As Bilsky and Klagsbrun argue, this generates a deep normative void: once culture is decoupled from group existence, social death becomes legally imperceptible.<sup>33</sup> The exclusion of cultural genocide from the CPPCG entrenched this structural lacuna, severing Lemkin's holistic conception of destruction and relegating cultural destruction, such as language suppression or institutional erasure, to the margins of international criminal law.<sup>34</sup>

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<sup>27</sup> **Janine Natalya Clari**, 'Elucidating the *Dolus Specialis*: An Analysis of ICTY Jurisprudence on Genocidal Intent' (2015) 26 *Criminal Law Forum* 497, **503–510** <<https://doi.org/10.1007/s10609-015-9260-5>>

<sup>28</sup> *Ibid.*

<sup>29</sup> **Kai Ambos**, 'What Does "Intent to Destroy" Mean?' (2009) 91 *IRRC* 833, **840–845** <<https://doi.org/10.1017/S1816383110000056>>

<sup>30</sup> *Ibid.*

<sup>31</sup> **Schabas** (n 3) **243–250**.

<sup>32</sup> **A. Diri Moses**, 'Fit for Purpose? The Concept of Genocide and Civilian Destruction' in Donald Bloxham and A. Dirk Moses (eds), *Genocide: Key Themes* (Oxford University Press 2022, ISBN 978-0-19-286526-7) **12–43**; **Irvin-Ericson** (n 19) **21-45**.

<sup>33</sup> **Bilsiy & Klagsbrun** (n 8) **382–390**.

<sup>34</sup> **Lemiin** (n 6) **79–95**; **UN Secretariat**, 'Draft Convention on Genocide' (May 1947) **UN Doc E/447 art III**; **UNGA**, 'Draft Convention on the Crime of Genocide' (25 August 1947) **UN Doc A/362**.

These doctrinal shortcomings have produced tangible effects. In *Bosnia v Serbia and Krstić*, the ICJ and ICTY recognized extensive, patterned violence but refused to infer genocidal intent on the basis that physical destruction was not the “only reasonable inference”.<sup>35</sup> The absence of a framework for interpreting cumulative, structural, and relational harms meant that the evidentiary record could not be converted into a finding of genocidal purpose.<sup>36</sup> The same limitations obscure the Kosova case: administrative violence, institutional exclusion, and cultural suppression destabilized the Albanian social fabric, yet under the Convention’s narrow interpretive lens these measures are treated as peripheral rather than constitutive of group destruction.<sup>37</sup> Collectively, these inconsistencies demonstrate the need for a holistic interpretive framework capable of accounting for the cultural, structural, and relational harms that animate genocidal processes. The IDF is designed to fill this analytical gap.

## 2.5 Expanding the Conceptual Scope: Theories of Relational and Social Destruction

The doctrinal limitations identified above reveal that genocide law lacks the conceptual vocabulary to capture how groups are destroyed through the erosion of their social and relational foundations. To address this gap, this section engages sociological and critical genocide scholarship that understands group existence as constituted through social structures, institutional continuity, and intergenerational transmission rather than biological survival alone.

Mark Levene’s account of the modern nation-state provides an important starting point.<sup>38</sup> He argues that homogenizing state projects frequently generate conditions in which minority groups are targeted not only with physical

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<sup>35</sup> *Bosnia v Serbia* (n 2) paras 373–374; *Prosecutor v Krstić* (n 2) paras 134–141.

<sup>36</sup> *Ibid.* See also: *Clari* (n 27) 503-510.

<sup>37</sup> HRW (n 7) chs 3–5; Amnesty International, AI Index: 70/39/99 (n 4).

<sup>38</sup> Mari Levene, ‘Empires, Native Peoples and Genocide’ in A Diri Moses (ed), *Empire, Colony, Genocide* (Berghahn Books 2008) 183–204.

elimination but with the destruction of their autonomous social worlds.<sup>39</sup> This insight aligns with Daniel Feierstein's conception of genocide as a social practice designed to restructure social relations by dismantling the institutions, professions, and communal structures that enable group reproduction.<sup>40</sup> In the Kosova context, this dynamic manifests in the suppression of Albanian-language schooling and the compelled creation of a parallel system, both of which fractured intergenerational continuity and repositioned the community into a condition of imposed dependency.<sup>41</sup>

Claudia Card's notion of *social death* sharpens this analysis by understanding genocide as the destruction of the conditions that sustain collective life.<sup>42</sup> Social death encompasses the loss of cultural memory, moral recognition, and relational meaning, dimensions of existence that genocide law currently treats as peripheral.<sup>43</sup> Damien Short's concept of *relational destruction* further demonstrates how structural violence, resource deprivation, and institutional exclusion erode the social conditions essential for collective agency.<sup>44</sup> His analysis underpins the IDF's emphasis on Social Cohesion Disabling, capturing how the exclusion of Albanians from public institutions, denial of medical care, and destruction of agricultural infrastructure destabilized the group's social environment.<sup>45</sup>

These sociological accounts reveal how cumulative harms, such as economic marginalization, institutional erasure, cultural suppression, function as precursors to genocidal intent.<sup>46</sup> Yet, as Mantasha observes, international law

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<sup>39</sup> Ibid 183–190.

<sup>40</sup> **Daniel Feierstein**, *Genocide as Social Practice: Reorganizing Society under the Nazis and Argentina's Military Juntas* (Rutgers University Press 2014) **27–32**.

<sup>41</sup> **OSCE** (n 1) **ch 22, 1–3, 11–12**.

<sup>42</sup> **Card** (n 10) **63–70**.

<sup>43</sup> Ibid 63–65.

<sup>44</sup> **Short** (n 10) **24–33**.

<sup>45</sup> **OSCE** (n 1) **chs 5 and 22**; **HRW** (n 7) **chs 3–5**; **US Department of State** (n 13); **Food and Agriculture Organization and World Food Programme**, *Crop and Food Supply Assessment Mission to the Kosovo Province of the Federal Republic of Yugoslavia* (30 August 1999) <<https://www.fao.org/4/x2901e/x2901e00.htm>> accessed 4 January 2026.

<sup>46</sup> **Bilsiy and Klagsbrun** (n 8) **373–380**; **Card** (n 10) **63–70**; **Moses** (n 32) **12–20**.

remains constrained by a conceptual and normative void that fails to recognize these culturicidal processes as components of *dolus specialis*.<sup>47</sup> This gap between sociological theories of destruction and the evidentiary demands of genocide law underscores the need for a framework capable of translating structural and relational harms into indicators of intent.

ICTR jurisprudence in *Akayesu* reinforces this broader understanding by recognizing that genocide often develops from structural oppression, in which cultural suppression and systemic violence precede mass killing.<sup>48</sup> This precedent supports the IDF's emphasis on relational destruction and situates the Kosova case within a wider continuum in which cultural, structural, and social harms are integral to genocidal processes.

## 2.6 Intersubjectivity as the Foundation of Group Existence

Protected groups exist not only through material structures but through intersubjective worlds sustained by shared meanings, communicative practices, and mutual recognition.<sup>49</sup> Intersubjectivity captures the processes through which individuals generate a cohesive social reality rooted in common narratives, expectations and reciprocal understanding.<sup>50</sup> These shared horizons constitute the background through which members recognize one another, transmit cultural memory, and maintain continuity across generations. As Lachowska explains, Schütz phenomenology shows that social reality is constituted through reciprocal typifications and shared assumptions that enable individuals to inhabit a common world.<sup>51</sup> Similarly, Habermas, as interpreted by Grady and Wells, emphasizes that collective identity depends on communicative spaces in which meaning is produced, negotiated and

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<sup>47</sup> **Mantasha** (n 25) 5788–5794.

<sup>48</sup> **Akayesu** (n 12) paras 507–508, 521–523.

<sup>49</sup> **Lachowsia** (n 26) 41-45.

<sup>50</sup> *Ibid.*

<sup>51</sup> **Lachowsia** (n 26) 41-45.

reproduced.<sup>52</sup> When these intersubjective structures are eroded through institutional dismantling, language suppression, or the disruption of cultural memory, a group's ability to exist as a coherent social entity is fundamentally undermined.<sup>53</sup>

In Kosova, the suppression of Albanian-language education and the systematic targeting of religious and cultural institutions weakened the intersubjective foundations of collective life.<sup>54</sup> The erasure of Kosova's civil and property registers instituted an administrative exclusion that severed the group's legal and mnemonic continuity.<sup>55</sup> Collectively, these measures destabilized the symbolic universe through which Kosovar Albanians recognized themselves as a collective, rupturing communicative continuity across generations and institutions.

Framing genocide as the destruction of intersubjective foundations links directly to the IDF, which treats ruptures in kinship continuity, cultural memory, and social cohesion as indicators of genocidal intent.

## 2.7 The Biological Bridge: Epigenetics and "Serious Mental Harm"

Article II (b) of the Genocide Convention recognizes "serious bodily or mental harm" as a modality of destruction, yet jurisprudence has tended to interpret this provision narrowly, limiting its scope to immediate or individually

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<sup>52</sup> **Hugh H Grady and Susan Wells**, 'Toward a Rhetoric of Intersubjectivity: Introducing Jürgen Habermas' (1985/1986) 6 *Journal of Advanced Composition* 33.

<sup>53</sup> **Short** (n 10) 25–32.

<sup>54</sup> **Gjylbehare Llapi and Claudette M Peterson**, 'Education Interrupted: Kosovo 1980–1999' (2017); **A Riedlmayer**, 'Introduction' in Sabri Bajgora, *Destruction of Islamic Heritage in the Kosovo War, 1998–1999*, eds Robert Elsie and Petrit Selimi (Interfaith Kosovo, Ministry of Foreign Affairs of the Republic of Kosovo 2014) 15–19 <<http://heritage.sensecentar.org/assets/kosovo/sg-6-06-riedlmayer-foreword-interfaith-eng.pdf>>.

<sup>55</sup> **Balian Insight**, 'Lost Property: Kosovo's Missing Records Prolong Post War Legal Battles' (3 April 2019) <<https://balkaninsight.com/2019/04/03/lost-property-kosovos-missing-records-prolong-post-war-legal-battles/>>; **OSCE**, *The Impending Property Crisis in Kosovo* (2000) <<https://www.osce.org/files/f/documents/f/e/13065.pdf>>.

experienced injury. <sup>56</sup> The IDF broadens this understanding by incorporating scientific evidence showing that systematic psychological trauma can inflict lasting, group-level injury. <sup>57</sup> Studies on Kosovar Albanian civilians document persistent PTSD, social anxiety, and depression long after the cessation of direct violence, indicating that psychological harm functions as a durable mechanism of group destabilization. <sup>58</sup> Similar long-term patterns among Rwandan survivors reinforce that trauma is neither incidental nor transient but a structural consequence of targeted violence.<sup>59</sup>

Crucially, the IDF extends beyond psychological trauma to encompass biological harm. Intergenerational studies on Holocaust descendants by Yehuda and others, identify methylation changes in stress-related genes, demonstrating that genocidal trauma can imprint itself biologically across generations. <sup>60</sup> Parallel findings in Rwandan families by Mutesa and colleagues confirm that extreme violence produces heritable epigenetic effects, linking collective trauma to measurable biological alteration.<sup>61</sup>

By framing psychological and structural harms as biologically transmissible injuries, the IDF challenges the assumption that destruction must be immediate, visible, or kinetic. Instead, it demonstrates that genocidal violence can operate through mechanisms that erode a group's long-term viability, reproductive continuity, and intergenerational stability. This scientific evidence strengthens

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<sup>56</sup> **CPPCG** (n 3), **art 2** (b); **Aiayesu** (n12) **506-508**; **Krstic** (n 11) **513-515**.

<sup>57</sup> **Judith Lewis Herman**, *Trauma and Recovery* (Basic Books 1992) **ch 3**.

<sup>58</sup> **Todd B Kashdan, Nexhmedin Morina and Stefan Priebe**, 'Post traumatic stress disorder, social anxiety disorder, and depression in survivors of the Kosovo War: Experiential avoidance as a contributor to distress and quality of life' (2009) 23 *Journal of Anxiety Disorders* **185–194** <<https://www.sciencedirect.com/science/article/pii/S0887618508001308>>.

<sup>59</sup> **Clarisse Musanabaganwa and others**, 'Burden of post traumatic stress disorder in post genocide Rwandan population following exposure to 1994 genocide against the Tutsi: A meta analysis' (2020) 275 *Journal of Affective Disorders* **7–14**.

<sup>60</sup> **Rachel Yehuda and others**, 'Holocaust Exposure Induced Intergenerational Effects on FKBP5 Methylation' (2016) 80 *Biological Psychiatry* **372, 377–379** <<https://www.biologicalpsychiatryjournal.com/action/showPdf?pii=S0006-3223%2815%2900652-6>> accessed 7 January 2026.

<sup>61</sup> **Leon Mutesa and others**, *Intergenerational Epigenomics of Trauma and PTSD in Rwanda* (H3Africa Communication Document 2020) <[https://h3africa.org/wp-content/uploads/2020/10/Mutesa\\_H3ACommDoc.pdf](https://h3africa.org/wp-content/uploads/2020/10/Mutesa_H3ACommDoc.pdf)> accessed 8 January 2026.

the inference of genocidal intent by showing that the harms inflicted could undermine the group's future existence, precisely the threshold contemplated by Article II(b).<sup>62</sup> These biological and psychological findings therefore reinforce the IDF's first pillar, Kinship Fragmentation, rather than constituting a separate pillar.

## 2.8 The Intersubjective Destruction Framework (IDF)

The preceding sections show that genocide law remains constrained by a physicalist conception of destruction and an evidentiary model that treats genocidal intent as the sole plausible inference.<sup>63</sup> This generates what Essawy terms an "attainability crisis", because intent is an internal state typically inferred from patterns of conduct rather than explicit declarations.<sup>64</sup> The IDF operates as a methodological solvent for this paradox by reconceptualizing intent through the systematic erosion of the intersubjective structures that sustain collective existence.

The IDF synthesizes three strands of scholarship: Lemkin's account of institutional and cultural destruction, structural analyses of administrative violence, and theories linking genocide to the erosion of social bonds.<sup>65</sup> These insights are operationalized through three interrelated pillars:

- **Kinship Fragmentation**, which captures disruptions to family continuity, psychological stability, and intergenerational viability.
- **Cultural-Memory Annihilation**, which encompasses assaults on language, archives, education, and symbolic life that sever the transmission of shared narratives.<sup>66</sup>

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<sup>62</sup> **CPPCG** (n 3) art II(b).

<sup>63</sup> **Bosnia v Serbia** (n 2) para 373; **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)** (Judgment) [2015] ICJ Rep 3 para 148 <<https://www.icj-cij.org/case/118>>.

<sup>64</sup> **Rana M Essawy**, 'The Attainability of the Evidentiary Standard for Genocidal Intent in Gaza' (EJIL:Talk!, 3 May 2024) <<https://www.ejiltalk.org/the-attainability-of-the-evidentiary-standard-for-genocidal-intent-in-gaza/>> accessed 7 January 2026.

<sup>65</sup> **Lemiin** (n 6) 79–95; **Moses** (n 32) 40–43; **Card** (n 10) 63–66; **Short** (n 10) 25–32.

<sup>66</sup> **Jeffrey S Bachman**, 'An Historical Perspective: The Exclusion of Cultural Genocide from the Genocide Convention' in Jeffrey S Bachman (ed), *Cultural Genocide: Law, Politics, and Global*

- **Social-Cohesion Disabling**, which addresses the dismantling of institutions, exclusion from public life, and the destruction of communicative infrastructures essential for group agency.<sup>67</sup>

By emphasizing intersubjective destruction, the IDF establishes a coherent method for inferring intent from cumulative harm. This aligns with sociological accounts of social death and with scientific evidence showing how trauma undermines a group's long-term continuity.<sup>68</sup> It also provides a doctrinally coherent basis for understanding harms that destabilize a group's future existence. The IDF thus integrates doctrinal, sociological, and empirical analysis into a unified interpretive framework.

The framework is essential in the Kosova case, where the dismantling of kinship structures, cultural memory, and social cohesion both preceded and shaped the subsequent physical violence. These measures formed a deliberate and coordinated state policy, not incidental excesses. Chapter 4 operationalizes the IDF by applying the CCLS methodology developed in Chapter 3 to the cumulative evidentiary record.

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Manifestations (Routledge 2019) 45–62  
 <<https://library.oapen.org/bitstream/handle/20.500.12657/102827/9781351214094.pdf>>  
 accessed 29 December 2025; **Card** (n 10); **Short** (n 10); **OSCE** (n 1); **Amnesty International** (n 5).

<sup>67</sup> **Short** (n 10) 45–52; **Card** (n 10) 63–70; **Amnesty International** (n 5); **OSCE** (n 1).

<sup>68</sup> **Card** (n 10); **Yehuda and others** (n 60) 372–380; **Kashdan and others** (n 58) 23.

## Chapter 3: Methodology and Analytical Framework

### 4. Introduction

Building on the theoretical foundations established in Chapter 2, this chapter outlines the methodological framework for applying the Intersubjective Destruction Framework (IDF). While the concept of intersubjectivity has been previously explored,<sup>69</sup> the IDF represents a novel analytical architecture that incorporates this concept while introducing an original, structured method for evidentiary assessment. This methodology critically examines the Serbian state project against Kosovar Albanians by tracing the evidentiary path across the IDF's three pillars: Kinship Fragmentation, Cultural-Memory Annihilation, and Social-Cohesion Disabling, and demonstrating how these cumulative harms culminated in large scale atrocities.<sup>70</sup>

The framework seeks to reinterpret existing evidence and challenge the evidential rigidity associated with genocide determinations, particularly the over-reliance on documented planning to establish *dolus specialis*.<sup>71</sup> By foregrounding intersubjective harm and the destruction of a group's social existence, the IDF provides a critical lens for assessing genocidal intent beyond the constraints of the Physicalist Requirement and its accompanying orthodoxy.<sup>72</sup>

The chapter proceeds outlining the research design, operationalizing the IDF pillars, and setting out the deductive coding protocol. It then addresses ethical considerations, including researcher positionality and methodological limitations, before justifying the 1989–2001 timeframe. Through this structure, the chapter establishes the methodological foundations necessary for the evidentiary analysis in Chapter 4.

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<sup>69</sup> **Lachowsia**, (n 26); **Grady and Wells**, (n 52).

<sup>70</sup> **OSCE** (n 1).

<sup>71</sup> **Clari** (n 27); **Ambos** (n 29); **Bosnia v Serbia** (n 2) **paras 373–74**; **Al-Haq**, 'Special Intent (Dolus Specialis): Legal Brief I – The Genocide Series' (12 May 2025) <[https://www.alhaq.org/cached\\_uploads/download/2025/05/12/legal-brief-1-genocide-series-1747067173.pdf](https://www.alhaq.org/cached_uploads/download/2025/05/12/legal-brief-1-genocide-series-1747067173.pdf)> accessed 9 January 2026.

<sup>72</sup> **Lemiin** (n 6) **79-95**; **Card** (n 10) **63-70**; **Short** (n 10) **Ch. 2-3**.

### 3.1 Research Design and Epistemological Foundations

This study employs a desk-based methodology, Critical Comparative Legal Synthesis (CCLS), grounded in interpretivist jurisprudence and constructivist socio-legal approaches.<sup>73</sup> The method is chosen for its capacity to reinterpret existing evidence through a lens that emphasizes intersubjective harm, thereby providing deeper insights into relational dynamics underpinning genocidal processes.<sup>74</sup>

The analysis involves systematically examining relevant legal materials, including ICTY and ICJ judgements, domestic legislation, NGO archives, and contemporaneous reports, and integrating qualitative insights to uncover the nuances embedded within the evidentiary record.<sup>75</sup> By synthesizing doctrinal, sociological, and empirical sources, the CCLS approach enables a holistic reconstruction of the patterns of harm that constitute intersubjective destruction.

### 3.2 Interpretivism and Constructivism

The interpretivist approach emphasizes how individuals and groups attach meaning to legal texts, institutions, and actions.<sup>76</sup> It enables a nuanced reading of legal narratives surrounding genocidal practices, moving beyond doctrinal positivism to examine how law operates in practice and is experienced by those subjected to it.<sup>77</sup> As Webley notes, socio-legal inquiry must attend to law's

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<sup>73</sup> **Ronald Dworiin**, 'Law as Interpretation' (1982) 9(1) *Critical Inquiry: The Politics of Interpretation* 179–200 (The University of Chicago Press) <<https://www.jstor.org/stable/1343279>>; **Lisa Webley**, 'The Why and How to of Conducting a Socio Legal Empirical Research Project' in Naomi Creutzfeldt, Marc Mason and Kirsty DH Stewart (eds), *Routledge Handbook of Socio Legal Theory and Methods* (Routledge 2019) 58–60; **Naomi Creutzfeldt, Agnieszka Kubal and Fernanda Pirie**, 'Introduction: Exploring the Comparative in Socio Legal Studies' (2016) 12 *International Journal of Law in Context* 377.

<sup>74</sup> **Short** (n 10) 25-32; **Card** (n 10) 63-70; **Lemiin** (n 6) 79-95.

<sup>75</sup> **Webley** (n 73); **Coomans, F Grünfeld and MT Kamminga**, 'Methods of Human Rights Research: A Primer' (2010) 32 *Human Rights Quarterly* 179, 184.

<sup>76</sup> **Dworiin** (n 73) 179–183; **Webley** (n 73) 58–60.

<sup>77</sup> **Webley** (n 73) 58-60.

effects in contested contexts, foregrounding lived experiences of harm rather than limiting analysis to textual formulations.<sup>78</sup>

Complementing this, the constructivist perspective holds that legal knowledge is socially produced through interaction, institutional practice, and historical context.<sup>79</sup> Creutzfeldt, Kubal, and Pirie show that laws acquire different meanings across cultural settings, with even basic legal categories shaped by social norms and interpretive communities, rather than existing as fixed universals.<sup>80</sup>

Applied to this study, these perspectives underscore the need to analyze intersubjective forms of harm, informing the methodological choice to focus on indicators such as Targeted Humiliation and De-legalization of Existence. This theoretical grounding directly shapes the deductive coding protocol (3.7) by guiding how evidence is interpreted, categorized and situated within broader patterns of intersubjective destruction.

### **3.3 Critical Comparative Legal Synthesis (CCLS)**

The CCLC methodology reinterprets legal texts and jurisprudence across jurisdictions through comparative analysis.<sup>81</sup> Its purpose is to identify normative patterns, evidentiary gaps, and socio-legal implications that doctrinal approaches may overlook.<sup>82</sup> Aligned with Webley's socio-legal emphasis on law's operation within lived contexts, CCLS adopts an interpretive approach that moves beyond doctrinal boundaries.<sup>83</sup>

CCLS integrates the rigor of legal comparison with the contextual depth of socio-legal interpretation, enabling evidence to be examined relationally and

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<sup>78</sup> *Ibid.*

<sup>79</sup> **Creutzfeldt, Kubal and Pirie** (n 73) 377–389.

<sup>80</sup>*Ibid.*

<sup>81</sup> **Creutzfeldt, Kubal and Pirie** (n 73) 377–389.

<sup>82</sup> **Coomans, Grünfeld and Kamminga** (n 75) 180–181.

<sup>83</sup> **Webley** (n 73) 58-60.

symbolically rather than confined to formal legal indicators.<sup>84</sup> The methodology is operationalized through comparative case analysis. This comparative dimension is illustrated by contrasting the treatment of sexual violence and cultural destruction in ICTY and ICJ jurisprudence with the more expansive recognition in ICTR cases such as *Akayesu*.<sup>85</sup> The reasoning in ICTY's *Furundžija* judgment further demonstrates the variable recognition of relational harm across tribunals.<sup>86</sup>

CCLS does not aim for causal estimation or statistical generalization; instead it serves as a normative and interpretive synthesis within adjudicative evidentiary limits, maintaining a focused analytical scope. Its purpose is to reveal how patterns of intersubjective and structural harm can be understood as indicators of genocidal intent when viewed through a comparative and relational lens.

### 3.4 Methodological Stages of CCLS

This methodology comprises three interconnected analytical stages that move from theoretical critique to practical application, enabling the operationalization of the IDF.

#### 1. Doctrinal Deconstruction (Legal Limit)

This initial stage reviews the legal framework of *dolus specialis* in genocide, by analyzing international jurisprudence.<sup>87</sup> The main task is to dissect legal reasoning to identify evidentiary limitations that prioritize physical destruction over relational and intersubjective harm.<sup>88</sup> Contrasting these judgements reveal how traditional frameworks often overlook the social dimensions of

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<sup>84</sup> **Creutzfeldt, Kubal and Pirie** (n 73) 377–389.

<sup>85</sup> **Prosecutor v Jean Paul Aiyesu** (n 12) section 6; **Bosnia v Serbia** (n 2) Rep 43; **Prosecutor v Krstić** (n 2) paras 134–141.

<sup>86</sup> **Prosecutor v Anto Furundžija** (Appeals Judgment) IT-95-17/1-A (ICTY AC, 21 July 2000) <<https://www.icty.org/x/cases/furundzija/acjug/en/fur-aj000721e.pdf>>.

<sup>87</sup> **Krstić** (n 2); **Aiyesu** (n 12); **Bosnia v Serbia** (n 2) Rep 43.

<sup>88</sup> **Schabas** (n 3) 206–230; **Krstić** (n 2); **Aiyesu** (n 12); **Bosnia v Serbia** (n 2) Rep 43.

violence intrinsic to genocidal intent and reinforce the Physicalist Requirement embedded within a broader Physicalist Orthodoxy.<sup>89</sup>

## 2. Socio-Legal Synthesis (Conceptual Expansion)

Building on doctrinal deconstruction, this stage integrates the legal framework with theories of social and cultural destruction. It draws specifically on Short's account of relational harm, Lemkin's emphasis on cultural annihilation, and Card's conception of social death.<sup>90</sup> This synthesis establishes the theoretical architecture of the IDF. Using Coomans' guidance, the framework operationalizes these abstract harms into measurable analytical categories, enabling their application within genocide analysis and bridging the structural lacuna between sociological theory and legal doctrine.<sup>91</sup>

## 3. Comparative Case Study: Kosova

The final stage applies the IDF to documented patterns of harm against Kosovar Albanians, focusing on Kinship Fragmentation, Cultural Memory Annihilation, and Social Cohesion Disabling. Comparative jurisprudence, particularly the gender-based reasoning in *Furundžija* regarding rape as both physical and relational harm, serves as a legal benchmark to expose inconsistencies in prosecutorial framing.<sup>92</sup> This application demonstrates the uneven conceptualization of social violence within genocide law and highlights how cumulative, patterned harms can reveal genocidal intent when viewed through an intersubjective and relational lens.<sup>93</sup>

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<sup>89</sup> **Prosecutor v Omar Hassan Ahmad Al Bashir** (Decision on the Prosecution's Application for a Warrant of Arrest) ICC-02/05-01/09 (ICC Pre-Trial Chamber I, 4 March 2009) <https://www.icc-cpi.int/court-record/icc-02/05-01/09-3>; **Furundžija** (n 91); **Akayesu** (n 18); **Krstić** (n 2); **Bosnia v Serbia** (n 2) Rep 43.

<sup>90</sup> **Short** (n 10); **Lemiin** (n 6) 79-94; **Card** (n 10).

<sup>91</sup> **Coomans, Grünfeld and Kamminga** (n 75) 184.

<sup>92</sup> **Furundžija** (n 86) paras 163–186, 172–186; **Aiayesu** (n 12) paras 731–734, 736–737; **Krstić** (n 2) 134–141; **Bosnia v Serbia** (n 2) 373–374.

<sup>93</sup> *Ibid.*

### 3.5 Analytical Framework: The IDF and Its Pillars

The IDF is an original analytical model that synthesizes Lemkin’s broad conception of genocide with contemporary theories of social and cultural annihilation.<sup>94</sup> It translates the abstract notion of intersubjective harms, such as the destruction of social bonds, cultural memory, and relational meaning, into three measurable pillars.<sup>95</sup> These pillars provide structured categories for assessing legal evidence and counter the prevailing bias in international law toward physical destruction.<sup>96</sup>

Adhering to established methodological criteria, the framework minimizes subjectivity and avoids the “wishful thinking” often cautioned against in human rights research.<sup>97</sup> It establishes a direct link between structural exclusion, cultural erasure, and the evidentiary threshold for *dolus specialis*.<sup>98</sup> By treating these acts cumulatively across the three pillars, the framework ensures that the intent to destroy a group’s social existence is captured alongside kinetic violence.<sup>99</sup>

Accordingly, the pillars operate as predefined, non- exclusive categories through which evidence is systematically coded, forming the foundation of the Deductive Coding Protocol.

### 3.6 Indicator Definitions

To ensure clarity and consistency in applying the Deductive Coding Protocol, each indicator functions as a discrete evidentiary category.

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<sup>94</sup> **Lemiin (n 6) 79–95; Short (n 10) chs 2–3; Card (n 10) 63–70.**

<sup>95</sup> *Ibid.*

<sup>96</sup> **Schabas (n 3) 206–230; Bosnia v Serbia (n 2) paras 373–374; Krstić (n 2).**

<sup>97</sup> **Coomans, Grünfeld and Kamminga (n 75) 180–181.**

<sup>98</sup> **Bosnia v Serbia (n 2) paras 373–374; Al Haq (n 71) 9–10; Ambos (n 29).**

<sup>99</sup> **Lemiin (n 6); Card (n 10); Short (n 10).**

**Targeted Humiliation** refers to deliberate acts of degradation, such as sexual violence or public shaming, intended to erode dignity and relational identity.<sup>100</sup>

**Intentional Severing of Familial Ties** involves the forcible separation of immediate family units, including displacement or the prevention of reunification, aimed at fracturing kinship and social continuity.<sup>101</sup>

**De-legalization of Existence** captures bureaucratic measures that strip individuals of legal personhood, such as identity-document revocation or exclusion from civil registries.<sup>102</sup>

**Psychological trauma and relational breakdown** refer to documented harms affecting emotional integrity, trust networks, and the capacity for social functioning.<sup>103</sup>

**Systematic Elimination of Historical Presence** denotes the destruction, removal, or concealment of archives, monuments, and cultural markers that embody collective memory.<sup>104</sup>

**Language Suppression and the Erasure of Cultural Expression** encompass measures that restrict linguistic use, artistic practices, and symbolic identity, thereby severing the intergenerational transmission of collective memory.<sup>105</sup>

**Suppression of intersubjective meanings** refers to the manipulation, distortion, or erasure of shared narratives and collective understandings through which a group interprets its past, present, and social identity.<sup>106</sup>

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<sup>100</sup> *Furundžija* (n 86) paras 172–186; *Akayesu* (n 12) paras 731–734, 736–737; Short (n 10) ch 1; Card (n 10) 63-70.

<sup>101</sup> Card (n 10) 63-70; Short (n 10) ch1; Lemiin (n 6) 79-95.

<sup>102</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181; Lemiin (n 6) 79–95; OSCE (n 1).

<sup>103</sup> Short (n 10); Card (n 10); *Aiayesu* (n 12) para 731-734, 736-737.

<sup>104</sup> Lemkin (n 6); Short (n 10); OSCE (n 1); Humanitarian Law Center, *Kosovo Memory Book 1998–2000* (HLC, ongoing project) <<http://www.kosovomemorybook.org/>> accessed 30 November 2025; Humanitarian Law Center, *The Cover Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation* (Belgrade 2017) <<https://www.hlc-rdc.org/en/publications/dossier-the-cover-up-of-evidence-of-crimes-during-the-war-in-kosovo-the-concealment-of-bodies-operation/>>.

<sup>105</sup> Lemiin (n 6); Short (n 10); OSCE (n 1); Amnesty International (n 5).

<sup>106</sup> Short (n 10) chs 2–3; Lemiin (n 6) 79–95; Creutzfeldt, Kubal and Pirie (n 73) 377–389.

**Legal Denial of Victimhood** encompasses the manipulation or suppression of evidence, such as the concealment of mass graves, intended to erase recognition of harm. <sup>107</sup>

**Disabling of Social Cohesion** refers to the targeted dismantling of institutions, leadership structures, or socio-economic capacities that sustain the group's collective existence, including restrictions on return, non-cooperation on missing persons and the targeting of community leaders. <sup>108</sup>

**Post-conflict structural denial** captures state practices that obstruct truth-seeking, return, or institutional restoration, including non-cooperation on missing persons, archival access, or the blocking of reparative processes essential to rebuilding social cohesion. <sup>109</sup>

These definitions provide operational precision, ensuring that coding decisions remain transparent, consistent and replicable. <sup>110</sup>

### 3.7 Deductive Coding Protocol

The Deductive Coding Protocol systematically applies the three IDF pillars to the evidentiary corpus. Deductive coding is used because it enables the application of pre-defined categories and indicators, derived directly from the framework to secondary data, ensuring coherence with the research objectives. <sup>111</sup> Consistent with Saldaña's understanding of coding as a cyclical and heuristic process, the protocol remains iterative and interpretive, identifying patterns of harm and organizing them into categories and themes. <sup>112</sup> The three

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<sup>107</sup> HLC (n 104); OSCE (n 1); HRW (n 7); Coomans, Grünfeld and Kamminga (n 75) 184.

<sup>108</sup> Short (n 10); Card (n 10); OSCE (n 1) chs 5 and 22; HLC (n 104).

<sup>109</sup> OSCE (n 1); HLC (n 10); Short (n 10); Card (n 10).

<sup>110</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181.

<sup>111</sup> Fife and Gossner, (n 9).

<sup>112</sup> Johnny Saldaña, *The Coding Manual for Qualitative Research: Introduction to Codes and Coding* (PDF, Simon Fraser University) <<https://www.sfu.ca/~palys/Saldana-CodingManualForQualResearch-IntroToCodes&Coding.pdf>>; Matthew B Miles, A Michael Huberman and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook* (3rd edn, SAGE Publications 2014) 81–83 <<https://books.google.nl/books?id=3CNrUbTu6CsC>> accessed 29 November 2025.

IDF pillars are operationalized through specific, standardized indicators applied uniformly across all evidence, ensuring methodological consistency between the framework and the analysis.

Pillar	Focus of Destruction	Key Indicators (Evidence sought)
<b>Pillar 1: Kinship Fragmentation</b>	Family continuity; biological and relational identity	<ul style="list-style-type: none"> <li>-Targeted humiliation (e.g., sexual violence as degradation of relational identity)</li> <li>-Intentional severing of familial ties (separations, disappearances, prevention of reunifications)</li> <li>- Bureaucratic de-legalisation of existence (ID revocation, civil registry exclusion)</li> <li>-Psychological trauma and relational breakdown (where documented as group level harm)</li> </ul>
<b>Pillar 2: Cultural/Memory Annihilation</b>	Collective history, language, symbolic and intergenerational presence	<ul style="list-style-type: none"> <li>-Systematic elimination of historical presence (archives, monuments, cultural sites)</li> <li>-Language suppression and erasure of cultural expression</li> <li>-Suppression of intersubjective meanings (rewriting history, narrative erasure, symbolic distortion)</li> <li>- Legal denial of victimhood (e.g., concealment of mass graves, obstruction of recognition)</li> </ul>
<b>Pillar 3: Social Cohesion Disabling</b>	Institutional capacity and group agency	<ul style="list-style-type: none"> <li>-Disabling of return and socio-economic reconstruction</li> <li>- Decapitation of social structure (targeting leaders, educators, clergy)</li> <li>- Post-conflict structural denial (e.g., non-cooperation on archives/missing persons, institutional restoration)</li> </ul>

### 3.8 Manual Coding Procedure

To manage the volume of evidence, this study employs purposive sampling, selecting sources most relevant to identifying patterns of intersubjective harm.

<sup>113</sup> The coding process follows four manual steps:

**1. Source Selection:** Identifying documents with significant evidentiary value, including key ICTY judgments, major HRW reports, and core oral histories.

**2. Coding Matrix Construction:** Developing a digital spreadsheet to log selected documents against the IDF indicators.

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<sup>113</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181.

**3. Annotation and Recording:** Reviewing documents to highlight relevant segments and recording citations, page numbers, and indicator classifications within the matrix.<sup>114</sup>

**4. Thematic Aggregation:** Consolidating coded entries into thematic clusters to generate findings for Chapter 4, ensuring alignment with the triangulation protocol.<sup>115</sup>

This systematic process ensures rigor, transparency, and full traceability between the primary evidence and the analytical categories.

### **3.9 Data Sources and Coding Protocol**

The evidentiary base comprises four categories selected for their relevance in identifying patterns of intersubjective harm. Following the Deductive Coding Protocol, these categories are analyzed to ensure that the IDF's theoretical pillars are systematically applied across diverse data forms. This section details the protocol's application, illustrating how various source types contribute to a triangulated evidentiary base while accounting for their respective methodological strengths and limitations.<sup>116</sup>

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<sup>114</sup> **Saldana (n 112) 8–10.**

<sup>115</sup> *Ibid.*

<sup>116</sup> **Miles, Huberman and Saldaña (n 112); Coomans, Grünfeld and Kamminga (n 75) 180–181.**

### 3.10 Categories of Evidence and Function

Category	Function
<b>Primary Legal Materials</b> (ICTY Judgments, UN Reports)	<b>Factual Baseline &amp; Legal Parameters.</b> Establish legally verified facts and identify patterns of recognition, omission, and framing of intersubjective harm, consistent with methodological cautions in human rights research. <sup>117</sup>
<b>Secondary Literature</b> (Peer-Reviewed Scholarship)	<b>Theoretical Grounding.</b> Situate the analysis within Genocide Studies and socio-legal theory, justifying the IDF's pillars and ensuring academic defensibility.
<b>Testimonies and Oral Histories</b> (Ethically Sourced)	<b>Contextual Depth.</b> These accounts link abstract policies, such as ID confiscation, to lived intersubjective harm. <sup>118</sup> This connection is essential for interpreting <i>dolus specialis</i> because it reveals how perpetrators targeted the group's social fabric. <sup>119</sup>
<b>Media and NGO Archives</b> (HRW, Amnesty, HLC)	<b>Systemic Pattern Verification.</b> Demonstrate the widespread, coordinated, and non-isolated nature of the acts across Kosova, evidencing state-level orchestration. <sup>120</sup>
<b>Serbian Counter-Narratives</b> (Official Reports, Defense Submissions)	<b>Dialectical Testing &amp; Bias Detection.</b> Not used for factual truth, but to expose intent to conceal and identify patterns of legal denial of victimhood (IDF Pillar 2) and post-conflict structural denial. <sup>121</sup>

<sup>117</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181.

<sup>118</sup> Saldana (n 112); HRW (n 7).

<sup>119</sup> Saldana (n 112); OSCE (n 1).

<sup>120</sup> Miles, Huberman and Saldaña (n 112).

<sup>121</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181.

### 3.11 Access and Repositories

Sources were obtained from institutional repositories and open-access archives. Tribunal judgments were retrieved via the ICTY database; NGO documentation through Human Rights Watch, Amnesty International, and the Humanitarian Law Center; and institutional reports via the OSCE and the Kosovo Memory Book project. Selected for their reliability and independence, these repositories ensure a verifiable and transparent evidentiary base.<sup>122</sup> Within the IDF framework, these materials function as complementary perspectives rather than exhaustive accounts. Collectively, they provide sufficient depth to identify patterns of intersubjective harm, while acknowledging the selectivity inherent in institutional records.<sup>123</sup>

### 3.12 Triangulation Protocol

Triangulation involves corroborating evidence across independent sources.<sup>124</sup> This study cross-checks ICTY judgments, institutional reports, and survivor testimony, ensuring that no single act is treated as proof of genocidal intent without confirmation from at least two authoritative sources. This protocol enhances validity and reduces bias by maintaining safeguards against unverified conclusions.<sup>125</sup>

### 3.13 Source Credibility and Validation System

To ensure source credibility, a hierarchical validation system is employed:

- **Legal Authority:** Primary evidentiary weight is accorded to factual findings established in ICTY Appeal Judgments, which meet strict adversarial proof standards.

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<sup>122</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181.

<sup>123</sup> Coomans, Grünfeld and Kamminga (n 75) 180–181; HLC (n 104).

<sup>124</sup> Ibid.

<sup>125</sup> Coomans, Grünfeld and Kamminga (n 75).

- **Institutional Independence:** High evidentiary weight is assigned to data from independent NGOs and international bodies (e.g. HRW, OSCE, HLC). These sources complement tribunal findings and prevent international justice from becoming detached from broader narratives of harm.
- **Cross-Cultural Corroboration:** Accounts from Kosovar Albanians are essential for understanding intersubjective destruction.<sup>126</sup> These are corroborated with independent legal or institutional sources before coding against the IDF Pillars.<sup>127</sup>

This dual-layered approach grounds interpretation in verified evidence, mitigates researcher bias, and reinforces methodological integrity.<sup>128</sup>

### 3.14 Time Frame and Selection Criteria

Documents are selected based on their relevance to the Kosova genocidal project (1989–2001). This period captures initial structural violence, such as job evictions and language bans (1989); mass violence (1998–1999); and post-conflict concealment operations (through 2001).<sup>129</sup> This longitudinal frame is essential for illustrating *dolus specialis* by revealing sustained intent across all three IDF pillars. It also addresses post-conflict structural denial, including missing persons and archival suppression, within Pillar 3: Social Cohesion Disabling.<sup>130</sup>

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<sup>126</sup> **Webley** (n 73); **Short** (n 10) **24-33**; **Card** (n 10) **63-70**.

<sup>127</sup> **Miles, Huberman & Saldaña** (n 112) 81-83; **OSCE** (n 1).

<sup>128</sup> **Coomans, Grünfeld & Kamminga** (n 75) **183**.

<sup>129</sup> **HRW** (n 7) **15–25**; **Amnesty International** Ai Index: 70/06/94 (n 5); **OSCE** (n 1); **HLC** (n 104) **7-15**; **Independent International Commission on Kosovo**, *The Kosovo Report: Conflict, International Response, Lessons Learned, Part 1* (Oxford University Press 2000) <[https://academic.oup.com/book/26245?utm\\_source=copilot.com&login=false#login-purchase](https://academic.oup.com/book/26245?utm_source=copilot.com&login=false#login-purchase)>

<sup>130</sup> **Bosnia v Serbia** (n 2) paras **373–374**; **Al Haq** (n 71) **1–13**; **Aiayesu** (n 12) paras **731–734**; **Jyoti Bala**, 'An Overview of Longitudinal Research Designs in Social Sciences' (2020) 8(1) *Studies in Indian Politics* **105**, **113** <https://doi.org/10.1177/2321023020918068>

A longitudinal approach aligns with scholarship on structural violence and cultural erasure as indicators of genocidal intent, as well as ICTY jurisprudence on *dolus specialis*.<sup>131</sup> Evidence of body concealment and repression in Kosova further underpins this timeframe.<sup>132</sup>

### 3.15 Ethical Adherence

This study utilizes de-identified secondary data in the public domain, qualifying for ethics self-certification. This approach minimizes re-traumatization risks while ensuring compliance with data-protection standards.<sup>133</sup> Guided by a trauma-informed perspective, the analysis prioritizes survivor dignity and avoids exploitative representations.<sup>134</sup> The framework maintains methodological integrity by adhering to established ethical standards regarding confidentiality and research conduct.<sup>135</sup>

### 3.16 Researcher Positionality and Reflexivity

As a researcher of Kosovar Albanian heritage who experienced the conflict, I acknowledge the ethical responsibility this positionality entails. This background provides linguistic sensitivity and insights into intersubjective harms yet requires reflexivity to mitigate confirmation bias. Following Holmes, positionality is approached as an ongoing reflective practice rather than a fixed insider–outsider designation.<sup>136</sup>

To put this reflexive approach into practice, the following safeguards have been established:

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<sup>131</sup> **Short** (n 10) 24-33; **Lemiin** (n 6) 79-95; **Card** (n 10) 63-70; **Clari** (n 10).

<sup>132</sup> **HLC** (n 112) 7–15; **OSCE** (n1); **HRW** (n 7).

<sup>133</sup> **E Pittaway, L Bartolomei and R Hugman**, ‘Stop Stealing Our Stories: The Ethics of Research with Vulnerable Groups’ (2010) 2 *Journal of Human Rights Practice* **229, 231–232, 234–235**.

<sup>134</sup> **Pittaway et al.** (n 133) **231–232, 234–235**; **Clari** (n 27) **827–829**.

<sup>135</sup> **Marlies Glasius, Meta de Lange, Jos Bartman, Emanuela Dalmaso and others**, *Research, Ethics and Risk in the Authoritarian Field* (Springer 2018) **9–13, 17–19**.

<sup>136</sup> **Andrew Gary Darwin Holmes**, ‘Researcher Positionality – A Consideration of Its Influence and Place in Qualitative Research – A New Researcher Guide’ (2020) 8(4) *Shanlax International Journal of Education* **1, 3–5, 7–8** <<https://doi.org/10.34293/education.v8i4.3232>>.

- **Triangulation:** Corroborating findings across at least two independent sources.
- **Source Diversity:** Including international, NGO, and Serbian counter-narratives for evidentiary balance.
- **Deductive Application:** Utilizing the IDF as a structured tool to separate personal experience from legal interpretation.
- **External Feedback:** Reviewing coding decisions with academic supervisors unaffiliated with the region.

These measures embed reflexivity into the design, ensuring responsiveness to social fragmentation while mitigating bias.

### 3.17 Limitations

This study offers a focused analysis rather than an exhaustive history or definitive legal conclusion. The evidentiary record is shaped by institutional priorities; ICTY materials, for instance, reflect specific prosecutorial strategies and admissibility rules rather than comprehensive accounts of violence.<sup>137</sup> NGO reports are likewise influenced by advocacy aims and resource constraints.<sup>138</sup>

A central limitation is the risk of theoretical contamination, as primary legal sources originate from the same positivist system the IDF critiques. This is mitigated by prioritizing the IDF's conceptual indicators as the primary analytical filter, identifying patterns of harm before engaging with the tribunals' legal framing. Ultimately, while reflexivity reduces bias, it cannot eliminate it; the findings remain shaped by both researcher positionality and the institutional contexts of the evidence.

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<sup>137</sup> **Sara Kendall and Sarah MH Nouwen**, 'Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda' (2014) 110 *American Journal of International Law* **212**, 220–223.

<sup>138</sup> **Nouwen and Werner** (n 3); **Mari David Nieman and Jonathan J Ring**, 'The Construction of Human Rights: Accounting for Systematic Bias in Common Human Rights Measures' (2015) 14 *European Political Science* **473**, 475–80.

## Chapter 4: Analysis: Applying the IDF to the Kosova Case (1989–2001)

### 4.1 Introduction

This chapter applies IDF to the Kosova case (1989–2001) through the CCLS developed in Chapter 3. Challenging the Physicality Requirement (the doctrinal insistence on biological destruction), this analysis examines how administrative violence, cultural erasure, and kinship rupture operated as coordinated modalities of group destruction. Using the Deductive Coding Protocol (DCP), the chapter evaluates the evidentiary record across three domains: Kinship fragmentation, Cultural/Memory Annihilation, and Social Cohesion Disabling. Each domain is assessed for its probative value regarding genocidal intent, focusing on how these measures systematically targeted the group's capacity to exist as a coherent social entity. By synthesizing legal findings with primary documentation, the chapter demonstrates that the destruction of social vitality was central to the Serbian state project. When viewed through this lens, these modalities reveal a pattern of intersubjective destruction in which *dolus specialis* emerges as the most reasonable inference.

### 4.2 Pillar 1: Kinship Fragmentation and the Biological Legacy of Trauma

Pillar 1 analyses the systematic fracturing of the family unit and the relational identity of the group. Applying the interpretivist lens, this section argues that targeting the social figuration of the family functioned as a primary mechanism for inducing social death and undermining the group's long-term viability.

## 4.2.1 Targeted Humiliation: Sexual Violence as a Relational Weapon

### I. Methodological Anchor

This subsection applies deductive coding to the factual findings in *Prosecutor v Milutinović et al.* triangulated with qualitative testimonies from HRW and the OSCE conflict reporting.<sup>139</sup> Through the CCLS method, these sources are read comparatively to identify patterns of relational harm that remain obscured when sexual violence is treated solely as an individualized physical violation.

### II. Evidentiary Weight

The evidentiary record establishes that sexual violence during the 1999 conflict was neither opportunistic nor incidental.<sup>140</sup> HRW documented a consistent pattern of ninety-six cases of rape across three controlled settings, private homes, displacement columns, and temporary detention sites, indicating operational regularity.<sup>141</sup> Crucially, many assaults occurred in the presence of family or community members and were accompanied by ethnic slurs.<sup>142</sup> This configuration demonstrates that the harm was designed to reverberate beyond the immediate victim, targeting the relational architecture of the kinship unit.

### III. Intersubjective Interpretation

Within the IDF, these acts constitute a cataclysmic assault on the group's basic social fabric. Public, ethnic-targeted sexual violence collapses the protective bonds of kinship, creating a crisis of identity that shatters the communicative space through which the group recognizes itself.<sup>143</sup> Beyond the physical harm,

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<sup>139</sup> **Prosecutor v Milutinović and others** (Judgment) IT 05 87 T (ICTY, 26 February 2009) <<https://ucr.irmct.org/scasedocs/case/IT-05-87>>; **HRW** (n 7) 130; **OSCE** (n 1).

<sup>140</sup> **OSCE** (n 1) ch 7, 'Rape and Other Forms of Sexual Violence'.

<sup>141</sup> **HRW** (n 7) 130-134.

<sup>142</sup> **HRW** (n 7) 130-134; **OSCE** (n 1) ch 7.

<sup>143</sup> **Gilad Hirschberger**, 'Collective Trauma and the Social Construction of Meaning' (2018) 9 *Frontiers in Psychology* 1441 <<https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2018.01441/pdf>>; **J Galtung**, 'Violence, Peace, and Peace Research' (1969) 6 *Journal of Peace Research* 167

this breakdown of relationships manifests as a collapse of internal trust, undermining the family unit's ability to fulfil its generative and protective functions. The forced witnessing of sexual violation produces social death: the family's moral universe is destabilized, and the relational trust sustaining group continuity is fractured.<sup>144</sup> The resulting harm under Article II(b) generates a biological link of trauma: genetic research indicates that such early-life trauma causes lasting epigenetic alterations to stress-hormone systems. These changes ensure that the harm incurred is both psychologically collective and biologically transmitted to subsequent generations, thereby fundamentally undermining the group's long-term viability.<sup>145</sup>

#### **IV. Legal Synthesis**

ICTY jurisprudence, exemplified by *Furundžija*, conceptualizes sexual violence primarily through the lens of individual dignity and bodily integrity.<sup>146</sup> This reflects the Physicalist Requirement: it isolates the act from its relational context and therefore fails to capture its destructive function at the group level.<sup>147</sup> When analyzed through the IDF, the systematic use of public, ethnic-targeted sexual violence emerges as a modality of destruction targeting the transgenerational collective self. Its probative value lies in demonstrating an intent to dismantle the social fabric of the Kosovar Albanian genos by attacking the kinship structures through which the group reproduces itself. This relational harm addresses the judicial gap left by kinetic-centered interpretations of

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<<https://www.pressenza.com/wp-content/uploads/2023/01/Galtung-1969-Violence-Peace-and-Peace-Research.pdf>>; **OSCE** (n 1) **ch 7**.

<sup>144</sup> **Card** (n 10) **63-70**.

<sup>145</sup> *Ibid.*

<sup>146</sup> **Prosecutor v Furundžija** (n 86) **paras 183–186, 264–272**; **Miriam Specia**, 'Sexual Violence Cases at the ICTY: The Tribunal's Legacy in Domestic and International Law' (Balkan Diskurs, 2 June 2024) <<https://balkandiskurs.com/en/2024/06/02/tribunals-legacy-in-domestic-and-international-law/>>.

<sup>147</sup> **Short** (n 10) **ch 1.**; **Clari** (n27).

genocide<sup>148</sup> and serves as a strong indicator of genocidal intent when viewed alongside other forms of intersubjective destruction.<sup>149</sup>

## 4.2.2 Bureaucratic De-legalization: The Erasure of Lineage at the Border

### I. Methodological Anchor

This subsection applies the CCLS methodology by triangulating OSCE documentation of administrative practices with ICTY evidence and sociological analyses of state-led identity erasure.<sup>150</sup> Deductive coding identifies how bureaucratic measures operated as instruments of relational destruction targeting the group's legal and intergenerational continuity.

### II. Evidentiary Weight

The record establishes that Serbian forces systematically confiscated and destroyed identity documents, birth/marriage certificates, and civil registries during the 1999 expulsions.<sup>151</sup> ICTY evidence corroborates this pattern, noting the routine seizure of personal documents at border crossings.<sup>152</sup> The consistency of these practices across Morina, Kukës, and Prizren demonstrates a coordinated policy aimed at erasing the group's legal existence.<sup>153</sup> In Prizren, the destruction of registries functioned as a totalizing bureaucratic act, rendering the fleeing population legally non-existent.<sup>154</sup>

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<sup>148</sup> Ibid.

<sup>149</sup> *Bosnia v Serbia* (n 2), paras 373–374; *Krstić* (n 11) para 580.

<sup>150</sup> OSCE (n 1) part III ch 14 p 22; International Criminal Tribunal for the former Yugoslavia (ICTY), 'Prosecution Case – Kosovo' <<https://www.icty.org/en/content/prosecution-case-kosovo>> accessed 3 January 2026 1, 4; *Bilsiy and Klagsbrun* (n 8).

<sup>151</sup> OSCE (n 1) 112–115 part III & V; HRW (n 7) chs 3–5; US Department of State (n 13); OSCE (n 60) 8.

<sup>152</sup> *Prosecution Kosovo* (n 150) 1, 4; *Prosecutor v Vlastimir Đorđević* (Trial Judgment) IT 05 87/1 T (ICTY, 23 February 2011) paras 467, 700, 981.

<sup>153</sup> OSCE (n 1) part III & V; HRW (n 7) chs 3–5.

<sup>154</sup> OSCE (n 1) part V.

### III. Intersubjective Interpretation

Within the IDF, bureaucratic erasure constitutes a direct attack on intersubjective continuity. Identity documents are the institutional memory through which a *genos* recognizes itself across generations.<sup>155</sup> Their destruction produces a bureaucratic de-legalization of existence: individuals are stripped of legal personhood and transformed into what Agamben terms bare life,<sup>156</sup> entities excluded from the realm of social responsibility.<sup>157</sup> This severing of legal connections undermines the group's social vitality, hindering its ability to maintain itself as a coherent social entity.<sup>158</sup>

### IV. Legal Synthesis

Tribunals have typically classified document confiscation as Persecution under Crimes Against Humanity, limiting its legal significance to discriminatory intent.<sup>159</sup> This reflects the Physicalist Requirement, where administrative violence is detached from its destructive function at the group level.<sup>160</sup> Through the IDF, systematic identity erasure, especially when paired with mass expulsion, emerges as a structural modality of group destruction. Its probative value lies in demonstrating a state purpose to extinguish the group's legal and intergenerational existence.<sup>161</sup> By addressing this structural lacuna within genocide law, identity erasure becomes a strong indicator of genocidal intent.<sup>162</sup>

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<sup>155</sup> **Card** (n 10) **63-70**; **Lemiin** (n 6) **79-95**.

<sup>156</sup> **Giorgio Agamben**, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen tr, Werner Hamacher and David E Wellbery eds, Stanford University Press 1998) **ch 2**.

<sup>157</sup> **Card** (n 10) **63-70**; **Galtung** (n 143).

<sup>158</sup> **Short** (n 10) **24-33**; **Feierstein** (n 40).

<sup>159</sup> **Prosecution -Kosovo** (n 150) **1, 4**.

<sup>160</sup> **Short** (n 10); **Nouwen & Wener** (n 3); **Ambos** (n 29) **840-45**.

<sup>161</sup> **Lemiin** (n 6) **79-95**; **Card** (n 10) **63-70**; **Short** (n 10) **24-33**.

<sup>162</sup> **Bosnia v Serbia** (n 2) para **373–374**; **Krstić** (n 11) para **580**.

## 4.2.3 The Intentional Severing of Familial Ties: Fracturing Social Vitality

### I. Methodological Anchor

This subsection applies deductive coding to the *Dorđević* ICTY judgment, triangulated with the HRW and OSCE's reports.<sup>163</sup> Through the CCLS method, these sources are compared to distinguish spontaneous displacement from patterned, administratively organized separations, revealing the relational function of these practices within the broader architecture of state violence.

### II. Evidentiary Weight

Across multiple municipalities, most notably Meja, Bela Crkva, and the Reka Valley, the evidence demonstrates a consistent operational pattern. Serbian forces intercepted convoys and systematically separated military-aged men (typically 14–60) from women, children, and the elderly.<sup>164</sup> At Meja alone, Serbian forces separated between 100-300 men from convoys, their remains were later discovered in Batajnica mass graves.<sup>165</sup> The administrative precision of these separations at checkpoints indicates a deliberate state practice aimed at the gendered fragmentation of the collective *genos*.<sup>166</sup>

### III. Intersubjective Interpretation

Within the IDF, these separations constitute a direct assault on the group's collective life-continuity. The Kosovar Albanian *genos* is sustained through a patriarchal kinship structure that functions as the primary site of cultural reproduction.<sup>167</sup> By intentionally removing protective and generative male

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<sup>163</sup> *Dorđević* (n152) para 467; OSCE (n 1) Part III & V; HRW (n 7).

<sup>163</sup> *Dorđević* (n 152) para 467-755; OSCE (n 1) part III; HRW (n 7) ch 5.

<sup>164</sup> *Dorđević* (n 152) para 467 755, 372-399; HRW (n 7) ch 6 227-235; OSCE (n 1) Part III.

<sup>165</sup> HRW (n 7) 227-235; *Dorđević* (n 152) para 372–399, 1325–1337; HLC (n 104) 7–15; OSCE (n 1) part V para 95-100 (Meja).

<sup>166</sup> *Dorđević* (n 152) para 467-755; OSCE (n 1) Part V para 96; HRW (n 7) 227-235.

<sup>167</sup> Feierstein (n 40) 27-32; Short (n 10).

figures, the perpetrator produces a condition of unresolved absence, leaving families unable to grieve or restore relational continuity. This is not only a precursor to killing; it is the relational destruction of the kinship unit.<sup>168</sup> The resulting trauma impairs the group's ability to reconstitute a cohesive social life, ensuring a form of social death that persists across generations.<sup>169</sup>

#### **IV. Legal Synthesis**

ICTY jurisprudence, as seen in *Krstić*, often classifies these separations as Persecution, focusing on the kinetic end-result.<sup>170</sup> This reflects the Physicalist Requirement: it captures individual killings but fails to register the systematic dismantling of kinship as a modality of group destruction.<sup>171</sup> When analyzed through the IDF, these acts have high probative value in demonstrating an intent to dismantle the group's social and biological continuity.<sup>172</sup> By addressing this structural lacuna within genocide law, the indicator shows that the underlying purpose was to destroy the group by eroding its relational foundations, a hallmark of *dolus specialis*.

#### **Pillar 1 Synthesis**

Viewed cumulatively, Targeted Humiliation, Bureaucratic De-legalization, and the Intentional Severing of Familial Ties reveal a systematic attack on the social figuration of the Kosovar Albanian group. Far from being incidental to conflict, these acts formed a deliberate strategy to dismantle the relational architecture through which the *genos* reproduces and sustains itself. Targeting the family - the foundation of the group's future, systematically dismantles the community's ability to sustain itself as a connected whole.<sup>173</sup> Seen in this light, the conduct

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<sup>168</sup> **Card** (n 10) **63-70**.

<sup>169</sup> *Ibid.*

<sup>170</sup> **Krstić** (n 11) para **135-137, 616-634**.

<sup>171</sup> **Nouwen & Werner** (n 3) **157-165**; **Krstić** (n 11) para **617-618,621**.

<sup>172</sup> **Bosnia v Serbia** (n 2) para **297, 373-374**; **Krstić** (n 11) para **617-621**; **Card** (n 10) **63-70**.

<sup>173</sup> **Card** (n 10) **63-70**.

reflects a purpose to eliminate the group's social existence by unravelling the relationships through which it endures.

### **4.3 Pillar 2: Cultural/Memory Annihilation and Identity Erasure**

Pillar 2 examines the systematic destruction of the Kosovar Albanian group's symbolic universe. Through a constructivist lens, it argues that the erasure of cultural markers and historical archives was a deliberate strategy to dismantle the intersubjective meanings that sustain the group's collective identity.

#### **4.3.1 Systematic Elimination of Historical Presence: The Destruction of Memory-Storage**

##### **I. Methodological Anchor**

This subsection applies the CCLS method by triangulating András Riedlmayer's expert documentation of cultural destruction with the ICTY's factual findings in *Đorđević*.<sup>174</sup> Deductive coding is used to identify patterns of targeted attacks on non-military cultural sites, distinguishing deliberate memory erasure from incidental wartime damage.

##### **II. Evidentiary Weight**

Riedlmayer's findings establish that the destruction of Kosovar Albanian cultural heritage in 1999 formed a coordinated campaign.<sup>175</sup> Beyond the destruction of 225 mosques, Serbian forces targeted secular repositories of collective memory: the Archive of the Islamic Community in Prishtina was burned, and the 19th-century League of Prizren museum, a cornerstone of Albanian national identity, was razed using rocket launchers.<sup>176</sup> At the Hadum Mosque library in Gjakova, centuries-old manuscripts were manually removed from shelves and set alight, demonstrating a specific intentionality rather than

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<sup>174</sup> Riedlmayer (n 54)15-19; Đorđević (n 152) para 800, 808, 814,820.

<sup>175</sup> Riedlmayer (n 54)15-19

<sup>176</sup> Riedlmayer (n 54) 15-19; Đorđević (n 152) para 794-822; OSCE (n 1) Part III, ch 12.5-12.6.

collateral proximity to combat.<sup>177</sup> These acts reveal a systematic effort to eliminate the material anchors of the group's historical presence.<sup>178</sup>

### III. Intersubjective Interpretation

Within the IDF, archives and monuments constitute the memory-storage through which a *genos* sustains its intersubjective continuity.<sup>179</sup> Their destruction operates as an Annihilation of Collective History, producing a blank slate in which the group's presence is rendered unrecordable.<sup>180</sup> By erasing the physical repositories of narrative and tradition, the perpetrator severs the communicative link between generations.<sup>181</sup> This constitutes a modality of social death, as the group's ability to inhabit a shared social reality is undermined.<sup>182</sup> Although Đorđević recognized the destruction of Albanian cultural sites, it did not read intent into these acts.<sup>183</sup> Under the Intersubjective Destruction Framework, the destruction of the League of Prizren constitutes an assault on the symbolic universe that anchors the *genos*' continuity.

### IV. Legal Synthesis

The Physicalist Requirement is most visible in the jurisprudence on cultural destruction. In *Bosnia v Serbia*, the ICJ held that such destruction does not, in itself, satisfy the *actus reus* of genocide, creating a structural lacuna, in which the law recognizes the acts but fails to register their destructive function at the group level.<sup>184</sup> Yet the Court simultaneously affirmed that these attacks may serve as evidence of genocidal intent, a position that aligns with the IDF's

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<sup>177</sup> *Ibid.*

<sup>178</sup> See also Đorđević (n 152) paras 794–802, 803–809, 810–815, 816–822.

<sup>179</sup> Card (n 12) 63-70.

<sup>180</sup> Lemiin (n 6) 79-95; Short (n 10). Ch 1.

<sup>181</sup> Card (n 10) 63-70; Lemiin (n 6) 79-95.

<sup>182</sup> Card (n 10) 63-75.

<sup>183</sup> Đorđević (n 152) para 810–815, 816–822.

<sup>184</sup> *Bosnia v Serbia* (n 2) para 344; Đorđević (n 152) para 791; 794–822.

recognition of memory-annihilation as a modality of group destruction.<sup>185</sup> The ICTY adopted the same reasoning in *Krstić*, observing that assaults on cultural and religious symbols can be treated as indicative of an intent to physically annihilate the group.<sup>186</sup> Within the IDF, systematic memory-annihilation therefore becomes an evidentiary link to *dolus specialis*. The deliberate targeting of the group's collective memory reveals a purpose not only to displace a population, but to extinguish its capacity to persist as a distinct cultural entity, thereby meeting the threshold of intent to destroy the group as such.<sup>187</sup>

### 4.3.2 Legal Denial of Victimhood: The Erasure of the Dead

#### I. Methodological Anchor

This subsection applies deductive coding to ICTY findings on concealment operations, triangulated with HLC, Amnesty International, ICMP and OIK documentation on enforced disappearances and the treatment of human remains.<sup>188</sup> Through the CCLS method, these sources are triangulated to identify how post-killing practices functioned as a deliberate strategy of relational destruction.<sup>189</sup> The analysis distinguishes routine evidentiary tampering from coordinated state operations designed to erase the existence of victims at both the physical and legal levels.<sup>190</sup>

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<sup>185</sup> *Bosnia v Serbia* (n 2) para 344.

<sup>186</sup> *Krstić* (n 11) para 580.

<sup>187</sup> *Lemiin* (n 6) 79-95; *Đorđević* (n 156) para 791;794–822.

<sup>188</sup> *Dordevic* (n 152) para 1325-1337; *HLC* (n 104); **International Commission on Missing Persons**, 'Kosovo Stocktaking Report'(ICMP 2017) <<https://www.icmp.int/wp-content/uploads/2017/05/Kosovo-stocktaking-ENG.pdf>> accessed 12 January 2026; **Amnesty International**, 'Yugoslavia: A Human Rights Crisis in Kosovo Province' (EUR 70/57/98, Amnesty International 1998) <<https://www.amnesty.org/en/documents/eur70/057/1998/en/>> accessed 12 January 2026; **Ombudsperson Institution of Kosovo, (OIK)**'Report on the Issue of Missing Persons in Kosovo: Submission to the UN Working Group on Enforced or Involuntary Disappearances' (1 February 2019) <[https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/effective-investigation/United\\_Nations\\_Mission\\_in\\_Kosovo\\_.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/effective-investigation/United_Nations_Mission_in_Kosovo_.pdf)> accessed 12 January 2026.

<sup>189</sup> *Short* (n 10) 24-33; *Lemiin* (n 6) 79-95; *Card* (n 10) 63-70.

<sup>190</sup> *Dordevic* (n 152); *HLC* (n 104); **Amnesty International** (n 188); **ICMP** (n 188); **OIK** (n 188).

## II. Evidentiary Weight

A hallmark of the Serbian state project was the Operations of Concealment.<sup>191</sup> Bodies from massacre sites such as Suva Reka and Izbica were exhumed, transported in trucks and reburied in clandestine mass graves in Serbia, including the Batajnica police training compound, as established in *Dorđević*.<sup>192</sup> These transfers were accompanied by the systematic sanitization of crime scenes, removal of shell casings and the destruction of forensic traces, corroborated by the HLC dossier.<sup>193</sup> Serbia's persistent non-cooperation regarding the location of missing persons, documented by OIK and the ICMP, indicates an ongoing administrative pattern that has prolonged the absence of information about the dead.<sup>194</sup>

## III. Intersubjective Interpretation

Within the IDF, the concealment of bodies constitutes a form of Secondary Destruction of the Group. The ability to bury, name, and mourn the dead is foundational to the *genos*'s intersubjective continuity. By erasing the dead, the state denies survivors the right to victimhood and memory, resulting in a lasting sense of unresolved loss, as reflected in OIK's acknowledgment of prolonged informational silence.<sup>195</sup> This approximates the pursuit of a perfect genocide, where victims are not only physically removed but their memory is suppressed through administrative non-disclosure. Such legal and physical denial prevents the reconstitution of the social fabric, ensuring the group remains destabilized in the post-conflict phase.

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<sup>191</sup> HLC (n 104) 7-15; *Dorđević* (n 152) para 1290-1380.

<sup>192</sup> *Dorđević* (n 152) para 1290-1293, 1325-1337; HLC (n 104).

<sup>192</sup> *Dorđević* (n 152) paras 1327, 1290-1380.

<sup>193</sup> HLC (n104). See also *Dorđević* (n 152) paras 1327.

<sup>194</sup> OIK (n 188); ICMP (n188)

<sup>195</sup> OIK (n 188).

## **IV. Legal Synthesis**

In the existing jurisprudence, body concealment is typically treated as evidentiary support for murder or cover-up, rather than as proof of genocidal destruction, as reflected in *Dorđević*.<sup>196</sup> This reflects the Physicalist Requirement: the focus on individual killings obscures the relational destruction inflicted by erasing the dead. Within the IDF, concealment operates as an indicator of an intention to eliminate the group's social existence, its evidentiary weight stemming from the demonstration of state-level coordination directed toward the totalising erasure of the Albanian presence. When synthesized with the destruction of archives (4.3.1), these practices reveal a coherent strategy to extinguish both the physical victims and the narrative through which the group understands itself, thereby meeting the IDF's threshold for inferring *dolus specialis*.

### **4.4 Pillar 3: Social Cohesion Disabling and Institutional Decapitation**

Pillar 3 examines the systematic dismantling of the Kosovar Albanian group's capacity for collective agency. Moving beyond the 1999 kinetic phase, this section applies a constructivist lens to the decade of administrative violence (1989–1998), arguing that the destruction of institutions constituted the foundational phase of a genocidal process designed to render the group socially dead and structurally dependent.

#### **4.4.1 Institutional Decapitation: The Purge of the Intelligentsia**

##### **I. Methodological Anchor**

This subsection applies the CCLS method to the administrative measures introduced after the revocation of Kosovo's autonomy, triangulating their effects through Human Rights Watch and Amnesty International documentation to show how mass dismissals functioned as a deliberate strategy of Institutional

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<sup>196</sup> *Dorđević* (n 152) para 1290-1293, 1325-1337.

Decapitation, removing the professional strata essential for sustaining the group's collective agency.<sup>197</sup>

## II. Evidentiary Weight

Following the revocation of Kosova's autonomy in 1989, the Serbian state initiated a systematic purge of Albanian professionals.<sup>198</sup> Human Rights Watch documents that vast numbers of ethnic Albanians were dismissed from state institutions under discriminatory measures, including teachers, doctors, and civil servants.<sup>199</sup> Amnesty International similarly reports that by 1991 over 6,000 secondary-schoolteachers and 95 percent of University of Prishtina staff had been removed, and Albanian-language classes were closed across the province.<sup>200</sup> The closure of the University of Prishtina to Albanian students transformed the educational system into an exclusionary apparatus.<sup>201</sup> These measures dismantled the group's intelligentsia, whose expertise and institutional roles were central to maintaining social cohesion.<sup>202</sup> The scale and sectoral breadth of these purges demonstrate a coordinated effort to disable the group's internal governance.<sup>203</sup>

## III. Intersubjective Interpretation

Within the IDF, institutions constitute the nervous system of a group's intersubjective life. As established in Chapter 2, group agency depends on

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<sup>197</sup> **HRW (n 7) ch 2; Amnesty International, *Yugoslavia: Ethnic Albanians – Victims of Torture and Ill-Treatment by Police in Kosovo Province* (June 1992) AI Index: EUR 48/18/92, 4; OHCHR, *Report by the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo* (2009) <<https://www.ohchr.org/en/statements-and-speeches/2009/10/report-high-commissioner-human-rights-situation-human-rights-kosovo>>.**

<sup>198</sup> **HRW (n 7), ch 2; Amnesty International (n 197) background section on post-1989 repression.**

<sup>199</sup> **HRW (n 7) ch.2.**

<sup>200</sup> **Amnesty International (n 197) 4.**

<sup>201</sup> **HRW (n 7) ch.2; Amnesty International (n 197) 4.**

<sup>202</sup> **HRW (n 7); Amnesty International (n 197); OSCE (n 1) Part IV, Ch 22.**

<sup>203</sup> **Ibid.**

communicative structures (Habermas) and professional networks.<sup>204</sup> By disabling these institutions, the state enacted a Social Cohesion Disabling, stripping the *genos* of its internal governance. The emergence of the Parallel System was a defensive response to this structural destruction, yet the Human Rights Watch and Amnesty International document that informal schools and clinics were routinely harassed, raided, and obstructed by police.<sup>205</sup> This institutional erasure is a modality of Relational Destruction, reducing the group to a fragmented collection of individuals.

#### **IV. Legal Synthesis**

ICTY jurisprudence typically categorizes mass dismissals as Persecution, limiting their legal significance to discriminatory treatment.<sup>206</sup> This reflects the Physicalist Requirement: a doctrinal focus on individual rights violations that obscures the structural destruction of the group's capacity for collective life.<sup>207</sup> Through the IDF, institutional purges emerge as a primary indicator of intent. Their probative value lies in demonstrating a state purpose to de-organize the group before the onset of kinetic violence, ensuring it cannot resist or reproduce its social existence.<sup>208</sup> Pillar 3 therefore provides the structural context necessary to infer *dolus specialis* when viewed cumulatively with the relational and cultural destruction established in the preceding pillars.<sup>209</sup>

#### **4.4.2 Disabling of Socio-Economic Reconstruction and Return**

##### **I. Methodological Anchor**

This subsection applies deductive coding to OSCE documentation of agricultural destruction and post 1999 administrative barriers to return.<sup>210</sup>

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<sup>204</sup> **Habermas (via Grady & Wells)** (n 52).

<sup>205</sup> **HRW** (n 7) **Ch. 2**; **Amnesty International** (n 197) **4-6**.

<sup>206</sup> **Krstic** (n 11) para **516-520**.

<sup>207</sup> **Nouwen & Werner** (n 3) **160-165**.

<sup>208</sup> **OSCE** (n 1) **Part IV, Ch. 22**; **HRW** (n 7) **Ch 2**.

<sup>209</sup> **Bosnia v Serbia** (n 3) para **373-374**.

<sup>210</sup> **OSCE** (n 1) **Part III, Ch 12**.

Through the CCLS method, these materials are triangulated with FAO assessments to demonstrate how material devastation and bureaucratic obstruction operated jointly as a strategy of Socio-Economic Disabling.<sup>211</sup>

## II. Evidentiary Weight

The 1998–1999 campaign featured a systematic scorched earth strategy directed at the economic foundations of Kosovar Albanian rural life.<sup>212</sup> OSCE and Human Rights Watch document widespread poisoning of wells, the slaughter of livestock, and the destruction of homes, shops, mosques, and communal infrastructure.<sup>213</sup> FAO assessments further confirm that cattle stocks were reduced to roughly 50 per cent of pre-war levels and that agricultural production collapsed due to the loss or inoperability of machinery.<sup>214</sup> Of the approximately 60,000–70,000 tractors in Kosova, the majority were rendered unusable or removed, severely limiting the group’s capacity for self-sufficiency.<sup>215</sup> These acts were not incidental to combat; they eliminated the material basis for local autonomy and subsistence.<sup>216</sup>

In the post-conflict phase, the state’s continued refusal to provide access to civil registries constituted a Post-Conflict Structural Denial.<sup>217</sup> This prevented families from reclaiming property or legally reconstructing their households, effectively obstructing the group’s return to its pre-war social vitality.<sup>218</sup>

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<sup>211</sup> **FAO/WFP** (n 45).

<sup>212</sup> **OSCE** (n 1) **Part III, Ch 12.1-12.4**; **HRW** (n 7) **300-301**; **FAO/WFP** (n 45) **Part 1, 3**.

<sup>213</sup> **OSCE** (n 1) **Part III, Ch 12.6**; **HRW** (n 7) **143**.

<sup>214</sup> **FAO/WFP** (n 45) **Mission Highlights, 3.3**.

<sup>215</sup> **OSCE** (n 1) **Part III, Ch 12.3-12.4**; **FAO/WFP** (n 45) **Mission Highlights, 3.1**

<sup>216</sup> **OSCE** (n 1) **Part III, Ch 12.1-12.4**; **FAO/WFP** (n 45) **Mission Highlights, also section 1, 3, 4**. **HRW** (n 7) **300-301**.

<sup>217</sup> **OSCE** (n 1) **Part V**.

<sup>218</sup> **Balian Insights** (n 55); **OSCE** (n 55).

### III. Intersubjective Interpretation

Within the IDF, the destruction of the means of survival constitutes an attack on both the material and relational continuity of the *genos*.<sup>219</sup> By poisoning land, destroying livestock, and eliminating tools of labor, the perpetrator disrupts the group's ability to inhabit its ancestral space, producing a durable displacement of meaning in which home becomes symbolically uninhabitable.<sup>220</sup> Post-conflict administrative obstruction compounds this harm, ensuring that the group's social fabric remains in a state of terminal exhaustion.<sup>221</sup> Even after kinetic violence ends, the group remains unable to regenerate its social vitality, fulfilling the IDF's criteria for Social Death.<sup>222</sup>

### IV. Legal Synthesis

Traditional jurisprudence tends to treat agricultural devastation and the looting or slaughter of livestock as property crimes or “wanton destruction not justified by military necessity”, thereby confining their legal significance to violations of individual and proprietary rights.<sup>223</sup> This reflects the Physicalist Requirement: by focusing on discrete acts against objects or people, it fails to register the long-term destruction of the group's capacity for collective life.<sup>224</sup>

Within the IDF, however the scorched-earth campaign documented by OSCE and Human Rights Watch, together with FAO's findings of a 65 per cent collapse in wheat production and a 50 per cent reduction in cattle relative to pre-war levels, is reinterpreted as Socio-Economic Disabling: a modality of group destruction that dismantles the material preconditions for autonomous

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<sup>219</sup> OSCE (n 1) Part III, Ch 12.3–12.6; HRW (n 7) 300-301; FAO/WFP (n 45) Mission Highlights, 1, 3.

<sup>220</sup> OSCE (n 1) Part III, Ch 12.4-12.6; HRW (n 7) 300-301.

<sup>221</sup> Balian Insights (n 55); OSCE (n 1) Part V; OSCE (n 55).

<sup>222</sup> OSCE (n 55); HRW (n7); FAO/WFP (n 45) Mission Highlights. 3.1, 3.3, 4.

<sup>223</sup> OSCE (n 1) Ch 12.1-12. 4; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (**Protocol II**) (adopted 8 June 1977, entered into force 7 December 1978) arts 4(2)(g), 14.; OSCE (n 1), Part III, Ch 12.

<sup>224</sup> Card (n 10) 63-70.

existence.<sup>225</sup> Its probative value lies in evidencing a state purpose to ensure that the group cannot re-establish subsistence, return to its rural localities, or regenerate its socio-economic networks.<sup>226</sup> When read cumulatively with the relational and cultural destruction established in the preceding pillars, these patterns provide a primary indicator of *dolus specialis*, supporting an inference of intent to destroy the group's social existence as such.<sup>227</sup>

#### **4.4.3 Dialectical Testing: The "Security Measures" Counterargument**

To meet the methodological safeguard of source diversity, this analysis evaluates the Serbian state's defense that its actions were "security measures" necessitated by KLA intimidation and NATO intervention.

Serbia's assertion that the 1998–1999 campaign constituted legitimate "security measures" cannot withstand evidentiary scrutiny. HRW shows that throughout the 1980s and 1990s, Belgrade constructed Albanians as a demographic and political threat, using this narrative to justify militarization, mass dismissals, and the dismantling of autonomy under the guise of protecting minorities and containing "secessionism".<sup>228</sup> This framing is incompatible with the empirical record. PHR's population-based study found that not a single refugee cited NATO bombing as the cause of flight, and only 0.4% attributed displacement to the KLA.<sup>229</sup>

The systematic execution of physicians, the destruction of over one hundred medical facilities, civil registers, archives, and cultural monuments, and the targeted dismantling of the parallel health and education system cannot plausibly be reconciled with any counter-insurgency rationale. As PHR observed, it had "*never before seen such an extensive, organized,*

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<sup>225</sup> OSCE (n 1) Part III, Ch. 12; HRW (n 7) 143-147, 300-301; FAO/WFP (n 45).

<sup>226</sup> OSCE (n 1) Part III, Ch. 12.6; HRW (n 7) 300-301; FAO/WFP (n 45).

<sup>227</sup> OSCE (n 1) Part III, Ch. 12.6; HRW (n 7) 300-301; FAO/WFP (n 45).

<sup>228</sup> HRW (n 7) 19-31.

<sup>229</sup> **Physicians for Human Rights**, *War Crimes in Kosovo: A Population-Based Assessment of Human Rights Violations* (PHR 1999) <[https://s3.amazonaws.com/PHR\\_Reports/kosovo-war-crimes-1999.pdf](https://s3.amazonaws.com/PHR_Reports/kosovo-war-crimes-1999.pdf)> accessed [20 Nov 2025]. **22–23.**

*comprehensive, or violent program to destroy a health system and its practitioners.”* <sup>230</sup> These practices reveal a deliberate effort to disable the group’s social viability, consistent with the IDF’s modality of Social Cohesion Disabling.

Sexual violence further exposes the incoherence of the security claim. HRW documents the systematic use of rape to terrorize families, including along displacement routes, acts that served no tactical purpose but directly targeted the kinship structure. <sup>231</sup> Mojzes’ characterization of the conflict as a “*religious war fought by irreligious people*” is similarly untenable: <sup>232</sup> Serbian forces made no distinction between Catholic and Muslim Albanians, including in massacres such as Meja. <sup>233</sup> Instead, the pattern aligns with Moses’ theory of permanent security, in which states recast group-destructive policies as anticipatory defense. <sup>234</sup>

Taken together the findings of Pillars 1–3 and the dialectical testing in this section demonstrate that the Serbian state’s “security measures” narrative cannot account for the coordinated pattern of relational, cultural, and structural destruction documented across the decade. Once the counter-argument is eliminated, the cumulative evidence reveals a coherent state project directed not at neutralizing an insurgency but at dismantling the Kosovar Albanian group’s capacity for social existence. It is against this evidentiary backdrop that the Chapter 4 synthesis draws its final inference of intent.

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<sup>230</sup> Ibid 45

<sup>231</sup> **Human Rights Watch**, ‘Kosovo: Rape as a Weapon of “Ethnic Cleansing”’ (UNHCR Refworld, 2000) <<https://www.refworld.org/reference/countryrep/hrw/2000/en/17379>> accessed [20 Nov 2025].8.

<sup>232</sup> **Paul Mojzes**, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century* (Rowman & Littlefield 2011) 146–149.

<sup>233</sup> **OSCE** (n 1) **Chapter III and V (Meja)**.

<sup>234</sup> **A Diri Moses**, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge University Press 2021) ch 8.

## 4.5 Chapter 4 Synthesis: The Cumulative Inference of Intent

The application of the Intersubjective Destruction Framework (IDF) to the Kosovo case exposes the profound limitations of the physicalist orthodoxy that shaped ICTY and ICJ reasoning.<sup>235</sup> When the evidence is filtered through the Deductive Coding protocol, a pattern emerges that doctrinal approaches could not register: the Serbian state project did not merely harm individuals but systematically targeted the intergenerational, symbolic, and structural foundations of the Kosovar Albanian genos.

Through the CCLS, this chapter demonstrated that the modalities of destruction were coordinated across three domains:

- **Pillar 1**, the fracturing of kinship through relational violence and bureaucratic de-legalisation;
- **Pillar 2**, the annihilation of collective memory-storage and historical presence;
- **Pillar 3**, the disabling of group agency through institutional decapitation and socio-economic obstruction.

The dialectical testing in Section 4.4.3 further confirmed that Serbia’s “security measures” narrative is incompatible with the evidentiary record. The systematic execution of physicians; the destruction of medical facilities, archives, civil registers, and cultural monuments; the dismantling of the parallel health and education systems; and the use of sexual violence to terrorize families cannot plausibly be reconciled with counter-insurgency logic.<sup>236</sup> These practices reveal a coordinated effort to dismantle the group’s social viability—precisely the forms of Relational Destruction and Social Cohesion Disabling that the IDF is designed to detect.

International tribunals struggled to identify direct evidence for genocidal intent because the very acts that constituted the destructive project were misclassified as preparatory, discriminatory, or collateral.<sup>237</sup> This reflects the Physicalist Requirement: the law recognized the acts but failed to perceive their destructive

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<sup>235</sup> **Nouwen & Werner** (n 3).

<sup>236</sup> **PHR** (n 229); **HRW** (n 7); **OSCE** (n 1); **HRW** (n 231).

<sup>237</sup> **Clari** (n 27); **Bosnia v Serbia** (n 2) para **344; 373-376, 430-438**; **Schabas** (n 3) **154-171**.

function at the group level. Once integrated with the biological link of intergenerational trauma, the cumulative pattern satisfies the evidentiary threshold for *dolus specialis*.<sup>238</sup> The Serbian state did not merely seek displacement; it sought to eliminate the group's capacity to exist as a distinct, autonomous, intersubjective entity.

By addressing the structural lacuna left by physicalist interpretations of the Convention, the IDF reveals that the destruction of social existence was not ancillary to the violence, it was the objective toward which the entire process was directed. Kinetic violence thus appears not as the core of the genocidal project, but as its final, facilitating instrument.

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<sup>238</sup> Yehuda et al. (n 60).

## Chapter 5 Discussion and Conclusion

### 5.1 The Kosova Case as a Challenge to the Structural Lacuna in Genocide Law

The application of the Intersubjective Destruction Framework (IDF) to the Kosova case exposes the structural limitations of the Physicalist Orthodoxy that continues to shape genocide jurisprudence. As established in Chapter 2, this orthodoxy narrows the legal imagination to bodily injury and mass killing, relegating cultural, institutional, and relational harms to the periphery of legal relevance. The Kosova findings demonstrate the consequences of this doctrinal reductionism. The Serbian state project was not reducible to ethnic cleansing or episodic massacres; it constituted a coordinated assault on the intersubjective foundations of the Kosovar Albanian *genos*.

The synthesis of Pillars 1–3 demonstrates that the structural lacuna identified earlier, where non-physical modalities of destruction are treated as ancillary, operated as a doctrinal omission that shielded genocidal intent from recognition. The fracturing of kinship networks, the incineration of collective memory, and the disabling of social institutions were not preparatory acts but modalities of destruction in their own right. This pattern aligns with Lemkin's original taxonomy of genocide, which identified the destruction of institutions, culture, legal personhood, and social vitality as core modalities of group annihilation.<sup>239</sup> Through the lens of "security-driven destruction," the dismissal of the security-measures defense becomes untenable:<sup>240</sup> even actions framed as reactive necessity were strategically calibrated to dismantle leadership structures, sever relational bonds, and erode the group's capacity for autonomous existence.

A full assessment of the Kosova case also requires engagement with the counter-narratives advanced by Serbian officials and sympathetic commentators. These narratives typically frame the state's actions as a

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<sup>239</sup> Lemiin (n 6) 79-95.

<sup>240</sup> Moses (n 234).1-49.

response to insurgency, a restoration of constitutional order, or a necessary security operation against the KLA.<sup>241</sup> At face value, such claims appear to challenge the inference of genocidal intent by recasting the violence as reactive, proportionate, or territorially defensive.

However, when examined through the IDF's dialectical method, these counter-narratives collapse under the weight of the evidentiary pattern. First, the scale and selectivity of the measures deployed—targeting teachers, doctors, cultural workers, students, and community leaders—cannot be reconciled with counterinsurgency logic.<sup>242</sup> These groups did not constitute combatants, nor did they pose operational threats.<sup>243</sup> Their removal is intelligible only as an attempt to dismantle the relational and institutional foundations of the *genos*. Second, the bureaucratic dimension of violence, mass dismissals, document confiscation, the erasure of civil registers, and the disabling of parallel institutions, exceeds any plausible security rationale.<sup>244</sup> Administrative destruction of this kind is not a by-product of conflict but a deliberate strategy of de-legalization and social incapacitation. Damien Short's account of relational destruction reinforces this interpretation, demonstrating how structural violence and institutional exclusion function as mechanisms for reorganizing social relations in ways that undermine a group's capacity for autonomous existence.<sup>245</sup> Even if one accepted the premise of a security threat, the measures adopted were neither necessary nor proportionate; they were structurally oriented toward the erosion of group continuity.

Third, the temporal sequencing of the violence undermines the counterinsurgency narrative. Many of the most consequential acts of intersubjective destruction, curricular purges, institutional closures,

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<sup>241</sup> **Prosecutor v Šainović et al** (Judgment) IT-05-87-T (ICTY, 26 February 2009) <[https://www.worldcourts.com/icty/eng/decisions/2009.02.26\\_Prosecutor\\_v\\_Sainovic\\_4.pdf](https://www.worldcourts.com/icty/eng/decisions/2009.02.26_Prosecutor_v_Sainovic_4.pdf)> para 847.; HRW (n 7) 19-31.

<sup>242</sup> OSCE (n 1) Part III; HRW (n 7)109-151; Šainović (n 241) para 372-380; 764-770; 847-850.

<sup>243</sup> Ibid.

<sup>244</sup> OSCE (n 1) Part III; HRW (n 7)109-151.

<sup>245</sup> Short (n 10) Ch. 1.

professional expulsions, and cultural erasure, occurred years before the escalation of armed confrontation.<sup>246</sup> This chronology reveals that the dismantling of Kosovar Albanian social existence was not a wartime contingency but a long-term state project.

Finally, the invocation of “security” functions as a justificatory veneer rather than an explanatory framework. As the IDF demonstrates, the pattern of harm aligns not with the logic of battlefield necessity but with the logic of group destruction. The counter-narratives therefore fail the dialectical test: they cannot account for the systematic, multi-pillar dismantling of the intersubjective world that sustained the Kosovar Albanian community.

Comparative jurisprudence further underscores this inconsistency. The systematic confiscation of identity documents in Kosova mirrors the bureaucratic manipulation of passports, civil status, and legal identity that the Nuremberg “Justice Case” recognized as integral to the genocidal persecution of Jews and Poles.<sup>247</sup> Yet in *Milutinović*, although the Trial Chamber recorded these practices in its factual findings,<sup>248</sup> it did not classify them as underlying acts of persecution in its legal analysis, which recognized only murder, sexual assault, and destruction of cultural or religious property as forms of persecution.<sup>249</sup> In effect, the ICTY treated identity-document confiscation as merely discriminatory rather than as an attack on legal personhood.

Likewise, the gendered separation of men at checkpoints in the Reka Valley followed the same operational logic as Srebrenica, where such separations were legally recognized as precursors to annihilation.<sup>250</sup> Both practices functioned as mechanisms of selection, one targeting legal personhood, the other targeting physical survival. The divergent treatment of these analogous

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<sup>246</sup> OSCE (n 1) Part III; HRW (n 7) 109-151.

<sup>247</sup> **United States v Altstoetter et al** (The Justice Case), Judgment, NMT, 4 December 1947, in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, vol III (US Government Printing Office 1951) 1062–1063, 1071, 1076.

<sup>248</sup> ICTY, *Prosecutor v Milutinović et al*, Judgment, IT-05-87-T (26 February 2009) Vol 2, paras 184, 275, 72(h), 514–515.

<sup>249</sup> ICTY, *Prosecutor v Milutinović et al*, Judgment, IT-05-87-T (26 February 2009) Vol 1, paras 180–210.

<sup>250</sup> *Krstić* (n 11) paras 84–87, 595–599.

practices reveals that the failure to recognize social death in Kosova is not an evidentiary failure, but a conceptual one.<sup>251</sup> Claudia Card's account of social death clarifies this dynamic: genocide annihilates the social conditions that make collective life possible, even when physical survival remains intact.<sup>252</sup> Kosova therefore functions not as an anomaly but as a diagnostic case that exposes the Genocide Convention's structural bias toward physical harms.<sup>253</sup> When the law refuses to see the destruction of the intersubjective world, it renders itself incapable of protecting groups targeted through structural, administrative, and relational modalities of violence.<sup>254</sup> The IDF shows that group destruction is affected not only through killing but through the systematic dismantling of the social conditions that sustain collective life.<sup>255</sup>

## **5.2 Implications for International Criminal Law Reform: Beyond the Physicalist Requirement**

The findings of this study call for a fundamental reorientation of how *dolus specialis* is conceptualized and adjudicated.<sup>256</sup> To resolve the evidentiary impasse surrounding genocidal intent, international criminal law must adopt a relational and sociological interpretation of Article II of the CPPCG.<sup>257</sup>

Three reforms emerge from the IDF analysis.

First, the definition of destruction must be expanded to include the systematic dismantling of intersubjective structures. As demonstrated throughout this study, the destruction of a group is inseparable from the destruction of the communicative, cultural, and institutional spaces that sustain collective life.<sup>258</sup> Such an expansion would realign the Convention with Lemkin's holistic

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<sup>251</sup> **Card** (n 10) **63-70**.

<sup>252</sup> **Card** (n 10) **63-70**.

<sup>253</sup> **Schabas** (n 3) **133-140; 154-171**.

<sup>254</sup> **Lachowsia** (n 26); **Grady and Wells** (n 52).

<sup>255</sup> **Lemiin** (n 6) **79-95**.

<sup>256</sup> **Ambos** (n 9) **840-845**.

<sup>257</sup> *Ibid.*

<sup>258</sup> **Lemiin** (n 6) **79-95**.

conception of genocide, which encompassed cultural, institutional, and social destruction alongside physical annihilation.<sup>259</sup>

Second, Article II(b)'s "*serious mental harm*" provision requires jurisprudential modernization. The biological link of intergenerational trauma shows that psychological injury is not ephemeral but biologically transmissible, producing durable group impairment.<sup>260</sup> As scientific evidence on epigenetics matures, courts must integrate these insights into their evidentiary frameworks.

Third, courts must adopt a cumulative evidentiary model capable of piercing the 'security pretext' often used by states to justify the destruction of a group's social vitality.<sup>261</sup> As demonstrated by the targeting of the Kosovar Albanian health and education systems, what is labelled as 'counterinsurgency' can constitute the structural foundation of a genocidal process.<sup>262</sup> The expectation of a single, explicit directive ordering physical extermination is incompatible with the realities of modern state violence.<sup>263</sup> Intent must instead be inferred from the patterned dismantling of a group's relational and social existence.<sup>264</sup> Seen through this lens, the targeted removal of Albanian professionals is not an isolated administrative measure but part of the same cumulative pattern of destruction.<sup>265</sup> It parallels the elimination of Tutsi community leaders in Rwanda (*Akayesu*), which international courts accepted as evidence of intent; the failure to apply this logic in Kosova must be corrected to restore the Convention's holistic integrity.<sup>266</sup> Similarly, the ICTY's narrow reading of sexual violence in

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<sup>259</sup> *Lemiin* (n 6) 79-95.

<sup>260</sup> *Yehuda et al.* (n 60) 377-379; *Mutesa et al* (n 61).

<sup>261</sup> *Milutinovic* (n 139) vol 1-4; *Dorđević* (n 152).

<sup>262</sup> *OSCE* (n 1) Part III; *HRW* (n 7) Ch. 4 109; *Milutinovic* (n 139) vol 1-4; *Dorđević* (n 152) *Judgement*.

<sup>263</sup> *Ambos* (n 29); *NY Barigye, M Hendricise and V Todeschini*, 'Genocidal Intent in Armed Conflict: Unpacking the ICJ's "Only Reasonable Inference" Standard' (Opinio Juris, 26 May 2025) <<https://opiniojuris.org/2025/05/26/genocidal-intent-in-armed-conflict-unpacking-the-icjs-only-reasonable-inference-standard/>>.

<sup>264</sup> *Card* (n 10) 63-70; *Short* (n 10) 24-33.

<sup>265</sup> *OSCE* (n 1) Part III; *Milutinovic* (n 139). Vol 1-4.

<sup>266</sup> *Akayesu* (n 12).

*Furundžija* contrasts with its broader recognition of rape as a genocidal instrument in the Bosnia cases, revealing doctrinal inconsistency that the IDF helps resolve.<sup>267</sup>

Reforming the Convention's interpretation in this manner would realign genocide jurisprudence with Lemkin's original holistic vision, restoring its capacity to capture cultural and structural modalities of group destruction.<sup>268</sup>

### 5.3 Limitations and Directions for Future Research

While the IDF provides a robust methodology for capturing intersubjective harm, this study acknowledges certain limitations. The reliance on desk-based CCLS and secondary evidentiary corpuses, while necessary for the scope of this study, limits the direct integration of contemporary survivor voices who may further illuminate the nuances of social death.

Future research should seek to operationalize the IDF through primary ethnographic fieldwork in post-conflict zones to measure long-term relational breakdown and the reconstruction of social vitality.

Comparative applications of the IDF to Rwanda and Bosnia would test its explanatory power across different genocidal contexts and assess whether intersubjective destruction offers a more coherent analytical framework than existing doctrinal categories. As international law begins to grapple with Ecocide,<sup>269</sup> there is significant scope to examine how environmental destruction intersects with intersubjective survival. Further exploration of the epigenetic markers of genocidal trauma in descendant populations will also be vital in providing the scientific data required to bridge the gap between sociological theory and legal evidence.

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<sup>267</sup> *Furundžija* ((n 86) *Krstić* (n 11).

<sup>268</sup> *Lemiin* (n 6) **79**.

<sup>269</sup> *Short* (n 10) **38**.

## 5.4 Final Conclusion: Redefining Destruction

The Genocide Convention was born from the promise of "Never Again," yet its potential has been consistently stifled by a physicalist narrowness that privileges the death of the body over the death of the social world. This dissertation has argued that the Kosovar Albanian experience represents a paradigmatic case of intersubjective destruction, a process where the state sought to dismantle a community by erasing its past, fracturing its present, and imprinting trauma upon its future. Card's account of social death captures this dynamic precisely: genocide annihilates the social world that sustains collective identity, even when physical survival remains possible.<sup>270</sup>

By moving beyond the Physicalist Requirement, the IDF offers a new analytical vocabulary for international law. It provides the tools to distinguish between legitimate state security and the 'security-driven' annihilation of a people's social soul. It demands recognition that genocide is not only a crime of mass killing, but a crime against the intersubjective world that makes human life meaningful. Short's analysis of relational destruction underscores this point, illustrating how the erosion of institutional, cultural, and social infrastructures constitutes a direct assault on a group's capacity for collective agency.<sup>271</sup>

Redefining destruction in this way does not dilute the "crime of crimes"; rather, it restores its conceptual and moral integrity. Only by acknowledging the social, cultural, and relational dimensions of group existence can the international community fulfil its mandate to protect the diversity of human *genos*. The tragedy of Kosova reminds us that while the body may survive the bullet, a group cannot survive the silence of its history or the fragmentation of its social soul. The future of genocide law depends on recognizing that destruction is not only physical, but also intersubjective.

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<sup>270</sup> Card (n 10) 63-70.

<sup>271</sup> Short (n 10) 13-20.

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## Appendices

### Appendix A: Researcher Positionality & Ethical Framework

This appendix outlines the researcher's positionality and ethical commitments, consistent with qualitative research standards in conflict and atrocity studies.

#### 1. Personal Positionality

The researcher is a survivor of the 1989–1999 state project of intersubjective destruction in Kosovo. This positionality informs the analytical sensitivity to non-physical modalities of harm. Relevant experiential domains include:

- **Educational Erasure:** Removal from state schools by armed forces and completion of secondary and university education within the “Parallel System” (private homes, volunteer teachers).
- **Institutional Purges:** Direct family impact of the 1990 mass dismissals, including the removal of staff from Radio Television Prishtina.
- **Administrative Erasure:** Personal experience of “identity cleansing” and ongoing legal limbo due to the non-return of communal registries and property contracts.
- **Witnessing Kinetic and Symbolic Violence:** First-hand observation of forced evictions, gendered selection at checkpoints, and systematic destruction of Albanian-owned businesses.

#### 2. Scholarly and Clinical Influence

The holistic analytical approach and deductive coding strategy are informed by the researcher's background in psychology and clinical work with Kosovar refugees in the UK, particularly survivors of conflict-related sexual violence. This background supports a nuanced understanding of “social death” beyond physicalist legal interpretations.

Reflexive safeguards were implemented to ensure that personal experience informed analytical sensitivity without determining findings; all claims were grounded in triangulated evidence rather than autobiographical inference.

## Appendix B: The Intersubjective Destruction Framework (IDF) Coding Protocol

A deductive coding strategy was selected to test the IDF's theoretical categories against empirical evidence from the Kosova case, ensuring consistency and analytical coherence.

This appendix outlines the deductive coding criteria used to classify evidence under the three pillars of the Intersubjective Destruction Framework (IDF).

Pillar	Sub-Category	Empirical Indicators (Kosova Case)	Inclusion Rules
<b>P1: Relational</b>	Kinship Cleaving	Gendered separation at checkpoints; family separation during evictions	Acts disrupting the family unit as the primary social cell.
	Targeted Humiliation	Sexual violence; ethnic slurs; degradation rituals	Acts signaling communal worthlessness
<b>P2: Institutional</b>	Pedagogical Death	Banning of Albanian language; dismissal of teachers; move to the "Parallel System."	Exclusion from state education infrastructure
	Administrative Erasure	Confiscation of IDs; seizure of registries. deregistration	Acts rendering individuals legally "invisible"
	Economic Dispossession	Mass dismissals under "Special Measures"	Removal of the group's ability to sustain itself economically.
<b>P3: Cultural</b>	Architectural Amnesia	Destruction of Kullas; League of Prizren building	Targeting sites embodying group continuity
	Social Atrophy	Criminalization of gatherings; destruction of Albanian businesses	Dismantling of the group's intersubjective world

## **Appendix C: Integrated Chronology of Destruction (1989–1999)**

This chronology was constructed through cross-referencing ICTY factual findings, OSCE field reports, and NGO documentation, and is organized to reflect the escalation of intersubjective destruction across the three IDF pillars.

### **1989**

- Revocation of Kosova's autonomy; imposition of a State of Emergency.
- Beginning of administrative purges in public institutions.

### **1990**

- *June: "Special Measures" law enacted.*
- *July: Closure of Albanian-language media.*
- *September: Mass dismissals (~100,000).*
- *October–December: Confiscation of IDs begins; civil registry interference.*

### **1991**

- January: Albanian teachers expelled.
- February–June: Parallel Education System established.
- September: Removal of Albanian curricula from all state institutions.

### **1992–1997**

- Forced "loyalty oaths" for employment.
- Parallel health system emerges.
- Intensified police surveillance of Albanian gatherings.

### **1995–1997**

- Systematic looting of Albanian commerce.
- Confiscation of property contracts.
- Criminalisation of cultural events and community meetings.

### **1998**

- February: Likoshan/Qirez massacres.
- March–June: Targeting of intellectuals and community leaders.
- July–December: Gendered separation at checkpoints; mass evictions.

**1999**

- January–March: Operation Horseshoe planning and execution.
- April–June: Mass “identity cleansing”; destruction of registries.
- June: Large-scale forced displacement; destruction of cultural heritage sites.

## **Appendix D: Methodological Notes & Source Justification**

### **1. Counter-Narrative Analysis**

Unlike standard analyses focusing solely on Prosecution evidence, this study examined ICTY Defence Exhibits and Serbian State Reports. Coding focused on how “Special Measures” were framed as neutral security protocols, masking their destructive orientation toward the group’s intersubjective world.

### **2. Source Integration Logic**

ICTY trial exhibits were treated as a “living archive.” Triangulation involved:

- State decrees (P2) cross-referenced with
- Victim testimonies (P1) to identify intersubjective impacts, and
- NGO/OSCE documentation to verify operationalisation.

### **3. Institutional Destruction (P2) -Access Constraints**

Where Serbian state archives (e.g., *Službeni Glasnik*) were inaccessible due to paywalls or security restrictions, triangulation relied on:

- ICTY transcripts (cross-checking Defence and Prosecution claims)
- OSCE field reports
- Researcher witness testimony

### **4. Researcher Ethics and Security**

Consistent with conflict research protocols, the researcher declined to provide personal identification to state-controlled archives, avoiding entanglement with the structures under examination. These methodological decisions ensured that each IDF pillar was supported by multi-source verification, reducing bias and strengthening the evidentiary foundation of the analysis.

## **Appendix E: Glossary of Terms**

- Dolus Specialis (Expanded): The intent to destroy the group's capacity to exist as a social entity.
- Intersubjective World: The shared social, cultural, and institutional reality of the group.
- Ontological Security: The sense of order and continuity in a group's environment.
- Parallel System: The resilient social structure (education/health) created by Albanians following their 1990-1991 exclusion from state institutions.
- Social Death: The loss of social vitality and the ability to exist as a distinct collective.

## **Appendix F -Ethics Approval**

University of London, School of Advanced Study Research Ethics Committee (SASREC) Approval Reference: **SASREC\_2526\_1760 MA**

## APPENDIX G -Matrix 2: Source → Finding Map

This matrix demonstrates how each empirical finding was derived through triangulation of one primary legal source with at least two independent secondary sources, ensuring evidentiary robustness.

Finding	Primary Source	Secondary Sources	How Triangulated	Conclusion
<b>Mass dismissals were discriminatory, not security-driven</b>	<i>Milutinović</i> ICTY Judgment	OSCE reports; HRW <i>Under Orders</i>	Compared Defence claims with NGO documentation	Dismissals targeted group continuity, not insurgency
<b>Identity document confiscation constituted legal erasure</b>	ICTY factual findings	US State Dept; OSCE Civil Registry Reports	Cross-verified patterns of deregistration	Administrative destruction aimed at legal invisibility
<b>Parallel Education System emerged due to state exclusion</b>	ICTY education findings	Academic literature; NGO education reports	Mapped chronology of closures and home-schooling	Pedagogical death was deliberate and systematic
<b>Cultural sites targeted to erase memory</b>	ICTY cultural property findings	Cultural heritage NGOs; local archives	Verified destruction patterns	Cultural destruction aimed at severing historical continuity
<b>Gendered separation functioned as kinship cleaving</b>	ICTY testimonies	MSF reports; survivor accounts	Cross-checked checkpoint practices	Relational destruction targeted family cohesion

## APPENDIX H - IDF Methodology Flowchart

**Start**



**Define** Research Question



Identify IDF Pillars (Relational, Institutional, Cultural)



**Deductive Coding Framework Developed**



**Source Collection:**

- ICTY Judgments (Primary)
- NGO/OSCE Reports (Secondary)
- Academic Literature (Theoretical)
- Researcher Testimony (Contextual)



**Triangulation Process:**

- Cross-check legal findings with field documentation
- Compare Defense vs Prosecution narratives
- Map evidence to IDF sub-categories



**Pattern Recognition:**

- Identify cumulative, multi-pillar destruction



**Interpretation:**

- Evaluate whether patterns align with intersubjective destruction



**Conclusion:**

- Assess genocidal intent through IDF lens

**End**

## APPENDIX J -Coding Sheet

This coding sheet summarizes the deductive codes applied during analysis and their alignment with the three IDF pillars.

Code	Definition	Example (Kosova)	Pillar	
KC	Kinship Cleaving	Family separation at checkpoints	P1	
TH	Targeted Humiliation	Sexual violence; ethnic slurs	P1	
PD	Pedagogical Death	Banning Albanian language	P2	
AE	Administrative Erasure	ID confiscation; registry seizure	P2	
ED	Economic Dispossession	Mass dismissals	P2	
AA	Architectural Amnesia	Destruction of cultural sites	P3	
SA	Social Atrophy	Criminalization of gatherings	P3	