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“GENOCIDE”

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Abstract

The paper explains the meaning, definition and elements of Crime of Genocide by discussing the history of genocide including the examples of countries like Bosnia and Rawanda explaining the factors and reasons which led to the happening of this crime in these countries and failure of international community to prevent it. The paper explains the meaning of different categories of persons falling under the definition of Protected Groups by citing The U.N Convention on Genocide. The paper concludes that how the study of Genocide makes us understand the processes through which millions of people have suffered at the brutal hands of others.

The author has used Descriptive Research Methodology technique in writing this paper.

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Introduction

Definition & Meaning of Genocide

The term ‘genocide’ was coined by a Polish-Jewish lawyer named Raphael Lemkin who formed the word by combining the Greek word for race or tribe (*Geno*) with the Latin word for killing (*cide*). In proposing this new term, Lemkin had in mind "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves."

“The deliberate and systematic destruction of a racial, political, or cultural group”.

After witnessing the horrors of what would later become known as the Holocaust, in which every member of his family except his brother was killed, Dr Lemkin campaigned to have genocide recognized as a crime under international law. However it is important to note at this point, that although the terminology and criminal law of genocide is a product of the Holocaust, genocide has occurred numerous times throughout history.

In 1948, the U.N. approved its Convention on the Prevention and Punishment of the Crime of Genocide (“the Convention”). This Convention establishes "genocide" as an international crime, which signatory nations “undertake to prevent and punish.” It defines genocide as:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

The first draft of the Convention included political killings but these stipulations were subsequently removed in a last-minute political and diplomatic compromise. However, *politicide* is increasingly being recognised by scholars and the international community alike as being a crime against humanity. This is reflective of the constantly evolving nature

of the law of genocide. It is important to consider that the legal framework surrounding genocide is not static and thus one of the purposes of this paper is to provide a platform from which you can develop your own opinion of how genocide should be defined in law.

Protected Groups

According to the Convention, in order for a perpetrator to be guilty of genocide, the people he intends to destroy must belong to one of the following four categories:

A **national group**: a set of individuals whose identity is defined by a common country of nationality or national origin.

An **ethnic group**: a set of individuals whose identity is defined by common cultural traditions, language or heritage.

A **racial group**: a set of individuals whose identity is defined by physical characteristics.

A **religious group**: a set of individuals whose identity is defined by common religious creeds, beliefs, doctrines, practices, or rituals.

Generally, people are born into these groups. Whilst some individuals may change nationality or religion once cannot change their racial, ethnic, or cultural group identity. Group identity is often imposed by the perpetrators. Perpetrators of genocide frequently make group categories more rigid or create new definitions which impose group identity on individuals, without regard to people's individual choices.

Elements Of The Crime Of Genocide

Under Article II of the Convention, the crime of genocide will be considered committed if two distinct elements are simultaneously present: firstly, the intent to destroy in whole or in part a national, ethnic, racial or religious group as such (which is actually comprised of two separate requirements); secondly, the execution of any of the prohibited acts against any (member of the) protected group. In legal terminology, these are the “mens rea” and “actus reus”.

General Intent: The ‘Intent To Destroy’

The offence of genocide has two separate mental elements. The first is the ‘general intent’, and the specific ‘intent to destroy’.

‘General intent’ normally relates to all objective elements of the offence definition and has now been defined in international criminal law by Article 30 of the Statute of the International Criminal Court (ICC) as basically encompassing a volitional (intent) and/or a cognitive or intellectual (knowledge) element. In other words the ‘general intent’ requirement of genocide is satisfied if the perpetrator acts with the knowledge that his actions are targeting a specific group.

This requirement actually distinguishes genocide from other crimes against humanity, such as ethnic cleansing which aims at forcibly expelling a group from a geographic area (by killing, forced deportation and other methods).

Conduct

The second element of the crime of genocide is the conduct itself, as listed in sub-paragraphs

(a) to (e) of Genocide Convention Article II: It may also take the form of an omission. In both cases, the acts must be committed either against the physical or psychological integrity of the members of the targeted group, or against their existence or biological continuity. It is important to observe at this point that members of political, social, economic or cultural groups are excluded from the purview of Article II of the Genocide Convention.

It is important to note that a single (individual) act directed against one single member of the selected group, with the requisite intent, may constitute genocide. This is because the intent to destroy a protected group in whole or in part is the driving force behind the perpetration of any of the following acts:

(1) Killing members of the group: this means intentionally causing the death of a person belonging to any of the protected groups on the basis of that membership;¹³

(2) Causing serious bodily and mental harm to members of the group: this means inflicting serious injuries to physical health (e.g. through mutilation and excessive use of force, beating with rifle butts, wounds inflicted with machetes.) The perpetrator must act intentionally, and his acts must be directed to at least one member of the targeted group. In addition, causing ‘serious mental harm’ requires that the impairment of mental

(3) faculties be of the nature that causes “grave and long-term disadvantage to the victim’s ability to lead a normal and constructive life”. This implies that the harm must be permanent or irreversible. Instances of acts that Article II (b) of the Genocide Convention aims at include torture; interrogations combined with beatings and/or threats of death, rape, or inhuman or degrading treatment; sexual violence or sexual crimes (in that they cause both serious bodily and mental injuries);

(4) Deliberately inflicting conditions of life calculated to bring about the physical destruction of the group: this subparagraph mainly criminalizes what is generally referred to as slow death measures imposed on the group (such measures do not immediately kill the victims, but they ultimately seek their physical destruction on a long-term basis). Such measures may include long-term forced labour or physical exertion; deportation; subjecting a group to a subsistence diet; imprisonment in concentration and extermination camps; or deliberate deprivation of resources indispensable for survival of the group (such as food, medical services, clothing and shelter);

(5) Imposing measures intended to prevent births within the group: such measures, which must be forcible, threaten the biological existence of the group by limiting or destroying its capability to reproduce. Relevant incriminated conduct includes enforced sterilization, forced birth control or restriction (e.g., sterilization and/or compulsory abortion), segregation of sexes, prohibition on or erecting obstacles to marriages. Rape committed with the purpose of changing or modifying the ethnic composition of the targeted group is also included in this category of measures. However, public policy measures of general application adopted by densely populated countries (such as China or India) to lower the birth rate for social or economic reasons do not reflect genocidal intent;

(5) Forcibly transferring children of the group to another group: the word ‘forcibly’ may be interpreted to include actual acts of forceful physical transfer or threats of force or coercion. The intention behind such transfer is to destroy the group’s existence. The assumption underlying this prohibition is that when transferred to another group, children lose the cultural identity of the group to which they originally belong. However, legally transferring children for any other reason (social, economic, protection, etc.) would not violate the present provision.

In sum, when any of the acts listed above are committed with the underlying intent to destroy a protected group in whole or in part, the perpetrator thereof is fully liable for the commission of genocide.

Examples Of Genocide

BOSNIA

Background

In the aftermath of the Second World War, the Balkan states of Bosnia-Herzegovina, Serbia, Montenegro, Croatia, Slovenia and Macedonia became part of the Federal People's Republic of Yugoslavia. After the death of long time Yugoslav leader Josip Broz Tito in 1980, economic strife and growing nationalism among the different Yugoslav republics threatened to split their union apart. This process intensified after the mid-1980s with the rise of the Serbian leader Slobodan Milosevic, who realised that stirring nationalist passions amidst the Yugoslav upheavals was the most effective route to personal power.

In 1991-92, Yugoslavia descended to a state of open warfare. In the bloody aftermath of the independence declarations of Croatia and Slovenia, the Muslim-dominated but multi-ethnic Bosnia-Herzegovina found itself on the losing end of a zero-sum game; following the Slovenian and Croatian secession example would inevitably result in further secession by Bosnian Serbs to integrate 'their' zone of influence into Milosevic's vision of a Greater Serbia, whilst remaining within the federation meant conceding to Serb domination.

In February 1992 Bosnia declared its independence from Yugoslavia.

Struggle for Control in Bosnia

Amidst the upheaval populations sought safety and stability in ethnic exclusivity. Bosnia quickly became the most brutal battlefield of the Balkan wars. In early May 1992, two days after the US and the European Community recognized Bosnia's independence Serb forces launched the bombardment and siege of Bosnia's capital, Sarajevo. The global condemnation of the attack on Sarajevo and its cultural landmarks distracted attention from the far greater scale of killing taking place in Bosnia's industrialized east.

In August 1992 the first stories of Serb-run concentration camps in Bosnia broke in the Western Press. The harrowing images of the Muslim (mostly male) victims, reminiscent of the Nazi concentration camps, sparked the first mainstream application of the term 'genocide' to the Balkans. The strategy was to ensure military victory and establish the borders of the envisioned post-genocide, ethnically-pure Greater Serbia. The strategy of

gender-selective killing of Muslim male civilians was systematically implemented throughout the Bosnian war, primarily though not solely, by Serb military and paramilitary forces. The sexual assaults of women were central to the broader campaign of 'cleansing', and it was in the Bosnian context that the term 'genocidal rape' was introduced to the vocabulary of international criminal law, although Bosnia was not the first instance of rape as part of a broader genocidal strategy.

RWANDA

From April to July 1994 approximately one million people were murdered, primarily by machetes, clubs and small arms, in the 'most concentrated mass killing ever seen'. Sparked by the shooting down of President Habyarimana's plane as it approached the landing strip at Kigali airport on 6th April the genocide spread throughout the country with staggering speed and brutality as ordinary Hutu civilians raped and hacked their neighbours to death. The international community had received numerous warnings of impending genocide, and the UN 'assistance mission' (UNAMIR) had been in-country since October 1993 to monitor the implementation of the Arusha Accords that had ended the Habyarimana government's civil war with the Rwandan Patriotic Front, Rwandan Tutsi exiles in Uganda. When genocide broke out well-armed international forces arrived, to evacuate whites. UNAMIR's commander, General Dallaire, illegally defied the Security Council order to withdraw all but 270 UNAMIR personnel and managed to keep 470 peacekeepers in country. Despite the weakness of their mandate, which prevented them from using force to protect civilians, even these few managed to save thousands of lives from the genocidal frenzy over the next few weeks.

Background to Genocide

The issues behind genocide in Rwanda in 1994 include:

- The country's colonial and post-colonial history, particularly the politicisation of Hutu and Tutsi ethnic identities, institutionalised through the introduction of ethnically-defined identity cards, under Belgian rule beginning in 1959.
- The authoritarian political system installed by Rwanda's post-independence rulers and the second-class status it assigned to Tutsis, which motivated the formation of a rebel movement led by Tutsi exiles based in Uganda, the Rwandan Patriotic Front (RPF).
- The role of international actors, especially France, in financing, arming and nurturing

- Rwanda's Hutu extremist elite.
- The pervasive economic crisis facing one of the world's poorest and most density populated countries.
 - The international factors governing humanitarian interventions in the 1990s, and the impact that the Bosnian and Somalian interventions had on thwarting international will to intervene in Rwanda.

Conclusion

Whenever one engages with the study of genocide there is a sense of confrontation with the greatest scourge of human history. Genocide is integral to our historical inheritance: all stages of human existence, in almost all parts of the world, have experienced genocide at one time or another and it is as prevalent today as at any other time in history. Yet understanding and confronting genocide is a means of empowerment: in doing so one is coming face to face with the processes through which hundreds of millions of people have suffered at the brutal hands of others, the blind rush to hatred which countless others have bravely resisted. Taking in account all the reasons for this crime- The U.N has declared Genocide as a crime under its various declarations and protocols. Many countries have also declared Genocide as a criminal act which is punishable under their respective laws.

“To remain silent and indifferent is the greatest sin of all.”
- Elie Wiesel

References

1. Jones Adam : Genocide : A comprehensive introduction
2. Power Samantha : “A Problem from Hell” – America and the age of Genocide
3. Quigley John : The Genocide Convention – An International Law analysis
4. Prunier Gerard : The Rwanda Crisis – History of a Genocide
5. Melvern Linda : Conspiracy to Murder , The Rwanda
6. www.renecassin.org/advocacy/current-campaigns/genocide.html
7. www.ushmm.org/confront-genocide/