

GENOCIDE AS A CRIME AGAINST HUMANITY

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Abstract:

Genocide is considered one of the most serious crimes, with devastating effects on humanity. This study aims to shed light on the practices of the Israeli entity and their alignment with international criminal law regarding actions committed against the Palestinian people. It highlights the lack of adherence to international agreements, treaties, and conventions, as well as the silence of the international community, particularly Arab nations, and the failure of relevant bodies to intervene in cases that threaten international peace and security, such as the International Criminal Court, despite the available legal means to address these violations.

Keywords: *Palestine; Genocide; Ethnic Cleansing; Crimes Against Humanity; International Criminal Court; Israeli Entity; Normalization.*

INTRODUCTION

International crimes present a significant challenge to the world, as they are a core aspect of international criminal law with far-reaching consequences for humanity. These crimes can be motivated by religious beliefs, ethnic affiliations, or political aims, all of which seek to harm humanity and often lead to the extermination of specific groups. Historically, such acts became notably pronounced during World War II, earning the designation of the "crime of crimes."

The term "genocide," corresponding to the French term "génocide," emerged to describe the Nazi atrocities against the Jews of Europe during World War II. The United Nations recognized this term in 1946, defining it as "the commission of acts aimed at the total or partial destruction of a group based on nationality, ethnicity, race, or religion."

Among the most notorious instances of genocide are the ethnic cleansing in Rwanda, the Sabra and Shatila massacre, and the ongoing violence against Palestinians since October 7, 2023, perpetrated by the occupying Israeli entity.

The United Nations has classified genocide as an international crime under the 1948 Convention, defining it as "a systematic policy of organized mass killings carried out by a government or specific group against a community based on religious, ethnic, national, or political grounds." However, this convention faces significant challenges in its implementation, particularly concerning international will. This paper aims to highlight these challenges in light of the current international landscape regarding the war on Palestinians and the genocide perpetrated against them by the Israeli entity, alongside the silence of the international community and the lack of activation of international provisions despite the fulfillment of the requisite elements of these crimes.

Chapter One: The Nature of the Crime of Genocide

The crime of genocide is one of the most heinous crimes against humanity, given the violations it entails against the lives of individuals, regardless of their number, as well as their rights and freedoms. The international community could no longer remain silent in the face of such atrocities, prompting the establishment of international agreements aimed at preventing and punishing acts of

*Genocide is a word of Greek origin derived from the word *genos*, which means group, and from the word *caedere*, which means killing, meaning killing a group.

* The Convention on the Prevention and Punishment of the Crime of Genocide was approved and submitted for signature, ratification and accession by General Assembly resolution dated 12/01/1948. The Convention on the Prevention and Punishment of the Crime of Genocide was approved and opened for signature, ratification and accession by General Assembly resolution dated 12/01/1948.

genocide, the most significant of which is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Section One: The Legal Definition of Genocide

Many scholars have addressed the definition of genocide. Among them, Antonio Plonzer, in his book titled *Le Crime de Genocide*, defined it as a violation of fundamental human rights. The rights violated by genocide include the right to life, the right to physical and mental integrity, the right to personal freedom, and the right to form a family. It embodies a rejection of the collective right of humanity to exist by violating individual fundamental rights. (Aouina, 2012-2013, pp. 25-26).

Similarly, legal scholar Donnedieu de Vabres characterized genocide as "an assault on life, health, and physical integrity through acts such as forced abortions, sterilization of children, and attacks on culture and nationality." This view aligns with that of Swiss scholar Graven, who summarized genocide as "the denial of the right of human groups to exist, countering the act of murder, which denies the right of the individual to survive."

Section Two: The Legal Framework of Genocide

The 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide provides a legal definition in Article 2, describing genocide as specific acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. The acts listed in Article 2 encompass:*

1. Killing members of the group.
2. Causing serious bodily or mental harm to members of the group.
3. Deliberately inflicting living conditions intended to bring about the group's physical destruction, in whole or in part.
4. Imposing measures aimed at preventing births within the group.
5. Forcibly transferring children of the group to another group.

Notably, the criminal law framework specifies these acts exhaustively, which may lead to challenges in prosecuting actions that yield similar consequences but are not explicitly listed. Furthermore, the legal requirement to prove intent in genocide complicates matters, as establishing the necessary intent to commit genocide can be particularly challenging.

The International Criminal Court (ICC) adopted the elements of war crimes recognized by the Assembly of States Parties to the Rome Statute during its first session held from September 3 to 10, 2002, in New York, USA. According to Article 6 of the Rome Statute, genocide is defined 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 living conditions intended to bring about the group's destruction.
- d) Imposing measures aimed at preventing births within the group.
- e) Forcibly transferring children of the group to another group.

A criticism of this definition, similar to that of Article 2 of the 1948 Convention, lies in its use of the term "total or partial destruction" and the classification of humanity based on racial, ethnic, and religious lines. (Yashwi, 2020, p. 185) This classification, in our view, remains incomplete and ambiguous.

In light of these definitions, they can be applied to the actions carried out by Israel against the Palestinian people, which manifest daily in reality. The Israeli entity, under its leadership and with the complicity of several nations, commits acts of genocide against the Palestinian people in all their forms. The occupying entity aims to eliminate the Palestinian people, encompassing both Muslims and Christians, as this war seeks to eradicate their existence. Thus, the war waged by the Zionists against the Palestinians can be classified as a racially and religiously motivated conflict.

A report published on ReliefWeb, dated November 18, 2023, classified the actions of the Israeli occupying forces against the Palestinians since the beginning of the "Al-Aqsa Flood" on October 7,

*The Rome Statute of the International Criminal Court, adopted in Rome, Italy on 07/17/1998

2023, as acts of genocide. The number of Palestinian martyrs has exceeded 20,000, the majority of whom are children and women, while over 7,000 individuals have gone missing, and approximately 52,000 others have been injured. **(Twenty thousand palestinians believed to be killed in israel's genocide of Gaza, 2023).**

Chapter Two: Characteristics of Genocide

Genocide is characterized by several features that differentiate it from other crimes that may share certain points of similarity.

Section One: Genocide as an International Crime

One of the most significant characteristics of genocide is its international nature. International crimes are defined as unlawful human conduct arising from a criminal intent, committed by an individual on behalf of a state or with its consent, and involving a violation of an international interest protected by criminal law. (Salama, 2006, p. 26).

The United Nations Convention recognizes the international nature of genocide in its preamble, stating that "genocide is a crime under international law that is contrary to the spirit and aims of the United Nations." Article 1 of the same convention affirms that "genocide, whether committed in time of peace or in war, is a crime under international law, and that the parties undertake to prevent and punish it."

The international character of genocide is derived from the nature of the fundamental rights being violated, as one of the primary objectives of the international legal system is to protect humanity and safeguard it from any form of aggression. Consequently, the Rome Statute, particularly Articles 5 and 6, considers genocide to be an international crime that poses a serious threat to the international community. Article 5 specifically states, "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole, and among these crimes is genocide."

International jurisprudence has also recognized the international character of genocide. The International Court of Justice, in its advisory opinion regarding states' reservations to the UN Convention on the Prevention and Punishment of the Crime of Genocide in 1951, affirmed that basic humanitarian considerations are part of the general principles of law, and that the principles enshrined in the Genocide Convention are binding rules for states, even without contractual obligations. These principles are imposed on the international community. (Hegazy, 2004, p. 329).

Furthermore, the International Court of Justice's ruling in the Barcelona Traction case established that the prohibition of genocide is an obligation owed erga omnes, meaning that all states have a legal interest in its enforcement due to the significance of the violated rights. (Salama, 2006, p. 28).

Section Two: Criminal Responsibility of Individuals for Genocide

Article 4 of the UN Convention on the Prevention and Punishment of the Crime of Genocide states that anyone who commits genocide shall be punished, regardless of their status, whether they are a leader, an official, or an ordinary person.

Similarly, Article 6 of the same convention mandates the prosecution of individuals charged with genocide. A notable example is the ruling of the International Criminal Tribunal for Rwanda regarding Jean Paul Akayesu, who was convicted for committing acts of genocide while serving as the mayor of a Rwandan commune. The court emphasized that no immunity or official capacity can protect an individual accused of committing an international crime. (Fareeja, 2013-2014, p. 113).

Section Three: Genocide as a Non-Political Crime

Given the severity of the acts constituting genocide, it is not exempt from extradition, unlike political crimes. Political crimes are defined as those that threaten the political system of a state and may endanger its internal security. (Aouina, 2012-2013, p. 29).

Extradition refers to a state's surrender of an individual found within its territory to another state at the request of that state for prosecution of a legally punishable crime or for the execution of a judgment issued by its judicial authorities. If genocide were classified as a political crime, it would hinder the accountability of perpetrators who might invoke the principle of non-extradition. Hence,

international law does not classify genocide as a political crime, allowing for the extradition of individuals charged with it.

Section Four: Specifics of Prosecution and Punishment for Genocide

The prosecution and punishment for genocide fall under both domestic and international jurisdictions. The drafters of the Convention on the Prevention of Genocide emphasized that member states must criminalize such acts in their domestic laws to prevent impunity for perpetrators. This is especially crucial since domestic courts historically had jurisdiction over individual criminal responsibility for genocide before the establishment of the International Criminal Court. (Al-Aqel, 1993, p. 175).

Chapter Three: Distinguishing Genocide from Other Similar Crimes

There are crimes that share certain factual and structural similarities with genocide; however, there are important distinctions that should be highlighted as follows:

Section A: Genocide vs. Ethnic Cleansing

Ethnic cleansing refers to attempts to create ethnically homogeneous geographic areas through the forced removal or displacement of individuals belonging to specific ethnic groups. This often involves the systematic destruction of physical remnants of these groups, including places of worship and burial sites, as defined by the United Nations. (Aouina, 2012-2013, p. 30).

Professor Mario Bittati defines ethnic cleansing as "the domination of a controlling group over other ethnic groups in a region." The U.S. Department of State provided a definition in 1999, describing it as the systematic removal of members of an ethnic group from one or more communities to alter the ethnic composition of a given area.

From comparing the definitions of ethnic cleansing and genocide, it is clear that the distinction lies in the intent behind each crime. While genocide encompasses ethnic cleansing, the acts of genocide are not confined to a specific territory, whereas ethnic cleansing is defined by a particular geographic area. A prime example is the actions of the Nazi Germans during World War II, who targeted Jews globally, not just within Germany. This situation qualifies as genocide according to the 1948 UN Convention. (Aouina, 2012-2013, p. 36).

Section B: Genocide vs. Crimes Against Humanity

Crimes against humanity, according to Article 7 of the Rome Statute, consist of four essential elements: a legal basis that precisely describes the acts and prescribes penalties; an international element that requires the acts to be part of a state-sanctioned plan; a material element listing actions constituting the crime; and a mental element, which requires intent.

The material component, as specified in Article 7 of the Rome Statute, includes actions such as:

- Intentional killing
- Genocide
- Enslavement
- Forced population displacement or transfer
- Imprisonment and violation of physical integrity contrary to international law
- Torture
- Rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence
- Persecution
- Enforced disappearance of persons
- Apartheid
- Other inhumane acts. (Sadara, 2008, pp. 254-255).

To establish a crime against humanity, it suffices to demonstrate general criminal intent, which involves knowledge and willingness.

A simple examination of these elements reveals that Israel has perpetrated each of these acts against Palestinians, both historically since the beginning of its occupation and currently through killings, displacements, imprisonment, and torture.

The distinction between genocide and crimes against humanity lies in the focus of each crime. Genocide targets the complete or partial destruction of national, ethnic, racial, or religious groups, while crimes against humanity aim at civilian populations more broadly. This distinction highlights the ongoing Israeli-Palestinian conflict, where the Israeli occupation aims to eliminate resistance by committing provocative crimes that violate international norms.

Additionally, the difference is also found in the mental element required for each crime. Genocide necessitates specific intent to destroy a particular group, while proving that victims are civilians is sufficient for a crime against humanity.

Chapter four: Mechanisms for Prevention and Prosecution of Genocide

The criminal responsibility that arises from committing an act legally defined as a crime respects the principle of legality, a principle that applies to both international and domestic crimes. However, the difference lies in the source of criminalization; in international law, this is primarily based on customary law due to the absence of a universal legislative authority. The adoption of the Rome Statute for the International Criminal Court (ICC) in 1998, which came into force in 2002, has clarified and defined crimes and their respective penalties. (Al-Saadi, 2002, p. 44).

International responsibility can be classified based on the individual or entity that commits the international crime, leading to civil or criminal international responsibility. The focus here is on criminal international responsibility, which arises when an individual violates international law, necessitating accountability and appropriate punishment.

Given that genocide is an international crime, those responsible, whether individuals or states, must be held accountable. Therefore, it is crucial to distinguish between the criminal responsibility of states and that of individuals, as well as situations where both may be involved.

To prevent genocide, certain measures and mechanisms must be established to curb its spread and protect human rights. This involves international intervention to halt the crime, promote justice, combat impunity, and ensure accountability for those involved in genocidal acts.

The role of media, non-governmental organizations, and civil society is vital in revealing violations and preventing genocide and other heinous crimes. The targeting of Palestinian journalists and NGO members by Israeli forces exemplifies the significant role of media in exposing perpetrators of genocide and human rights abuses.

International cooperation is also critical, necessitating agreements and treaties focused on preventing genocide and ensuring the protection of human rights, along with the commitment to uphold these obligations. However, the current reality- especially regarding the blatant violations occurring in occupied Palestine - demonstrates a lack of action from the international community. Some nations have even exercised veto power or voted against resolutions to halt the violence in Gaza, including some Arab and Islamic states. (AbuAl-Khair, 2006, p. 342).

Furthermore, normalizing relations with Israel and acknowledging its existence as a legal and political entity has constrained responses to the conflict and undermined international law and agreements.

The lack of binding nature in treaties presents a significant obstacle to holding perpetrators of genocide accountable before the ICC, whose primary role is to prosecute those guilty of genocide, war crimes, and crimes against humanity.

Section 1: The Role of the International Criminal Court in Combatting Genocide

The ICC aims to uphold human rights, promote international justice, deter international crimes, and improve international governance by prosecuting and punishing states and individuals involved in genocide. Thus, it serves as a key instrument in achieving international justice and protecting human rights. (Shukri, 2005, p. 134).

Section 2: Procedures for Accessing the International Criminal Court

Accessing the ICC involves multiple stages governed by procedural rules approved by a two-thirds majority of the Assembly of States Parties, as outlined in Articles 51 and 52 of the ICC's Statute. The procedures can be divided into pre-trial procedures and those applicable during the trial. (Al-Nayef, 2011, p. 534).

Pre-trial procedures begin with Article 5 of the ICC Statute, which allows the prosecutor to investigate information regarding potential genocide or other crimes within the court's jurisdiction, whether through referrals from state parties as per Article 14, through the UN Security Council when international peace and security are threatened, or at the prosecutor's own initiative upon becoming aware of such crimes.

Trial procedures commence after the prosecutor has completed investigations and refers suspects to the court's Trial Chamber, which is responsible for conducting the trial and issuing judgments, with an Appeals Chamber available for appeals against the Trial Chamber's decisions. (Mukhallat, 2014-2015, p. 260).

However, the reality does not fully align with the principles documented in treaties and the ICC Statute. A prime example is the lack of prosecution against Israel and its leaders for egregious violations against the unarmed Palestinian population, despite evidence of acts constituting genocide. The prosecutor has been made aware of these violations through extensive media coverage, yet the ICC has not acted, despite calls for accountability from various countries, including South Africa and Algeria. It is crucial that the referral comes from states that claim to uphold democracy and human rights or from the prosecutor themselves, as the law permits action upon gaining knowledge of human rights violations threatening international peace and security.

Conclusion

In conclusion, the existence of treaties, agreements, and institutions aimed at preserving international peace and security and protecting human rights often applies selectively, penalizing the vulnerable while allowing the powerful to escape accountability. The lack of binding enforcement undermines the legal value of these agreements. Furthermore, the diplomatic normalization with Israel by some Arab and Islamic countries has silenced their leaders, rendering them blind to the daily horrific human rights violations inflicted upon Palestinians.

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