

The Crime of Genocide Considering International Humanitarian Law

Mohammad Ali Bani-Meqdad¹

Abstract

Obtaining justice for individuals from different groups in the international community is a fundamental human right. Because of this, the United Nations has consistently recognized genocide as an international crime that is denied by everyone and for which those who commit it should be held accountable. Consequently, genocide falls under the purview of international criminal courts; however, its definition, elements of criminal liability, distinction from other international crimes, and standards used by the court to classify genocide crimes must all be defined. Understanding the elements of the crime is essential. These crimes damage humanity and jeopardize global peace and security, which makes it necessary to establish international courts with the authority to prosecute the perpetrators of these crimes. Genocide is not something that typically happens overnight or without warning. It is, in fact, a deliberate strategy. Genocide has a considerable impact on future generations. It has a detrimental effect on the safety and security of the population in neighboring areas because its consequences extend beyond the borders of the devastated country. For instance, the genocide in Rwanda is still being felt today in many ways, both inside the nation and among its neighbors, particularly in the Democratic Republic of the Congo's eastern territories.

Keywords: Crime, gatherings, humanity, genocide, homicide, race, criminal court

Introduction

Relentless efforts are made worldwide to achieve cooperation and solidarity and maintain international peace and security considering the emerging issues that threaten humanity's peace. Nevertheless, gross violations of internationally recognized human rights and international humanitarian law still prevail across the entire world in various forms, such as genocide and attacks on the human right to life.

Historically, collective revenge against a targeted group has been a part of human culture. After 1944, a new concept was used to describe the targeted massacre killing of a specific group, which is "genocide." Polish lawyer Lemkin

¹ The author Dr. Mohammad Ali Bani-Meqdad is an Associate Professor at the Hashemite Kingdom of Jordan Ajloun National University/College of Law. He can be reached at m.meqdad@anu.edu.jo

first coined genocide in his book '*Axis Rule in Occupied Europe*' as a concept describing the destruction of a nation or an ethnic group. He coined it to describe the Nazi policies of "organized murder" that affected Jews in Europe during that period. This new word is derived from the Latin word '*cide*' (killing) and the Greek word '*genos*' (race, tribe). Its formation is like that of words like tyrannicide, murder, infanticide, etc.

Genocide was defined under Article 2 of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of 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: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group."

In 1991, the violent confrontations that occurred in Yugoslavia prompted the international community to demand criminalizing and punishing the perpetrators of those criminal acts before a competent criminal court. This prompted the Security Council to issue Resolution No. 808 on 2/22/1993 to establish an international criminal court prosecuting individuals accused of committing violations of international humanitarian law in the territory of the former Yugoslavia (Qahwaji-Al, 2011, p. 273).

Throughout the turn of the 20th century and up to the present, the issue of the crime of genocide has gotten worse, especially during the First and Second World Wars, when it started to become more of a threat to global peace and security. It is noteworthy that the genocide that befell the Palestinian people has not diminished. The observable rise in genocide episodes that occurred to the Palestinians and other nations, particularly following the Convention on the Prevention of the Commission of Genocides' conclusion, comes to mind. This realization of the Convention's flaws leads one to question its worth, the importance of the research is the multiplicity of aspects of United Nations human rights care and the objectives it seeks to achieve to provide the greatest possible protection of the human person and to ensure the enjoyment of his rights and freedoms (Balas, 2024).

This research is divided into two sections addressing the concept and characteristics of the crime of genocide and the nature of the International Criminal Court and its role in determining the crime of genocide.

Section One

The Concept of The Crime of Genocide and Its Characteristics

The term "genocide" was first coined by Lemkin to refer to the destruction of a nation or ethnic group. The Latin word "cide" (killing) and the ancient Greek word "genos" (race, tribe) are the sources of this new word. Its morphology resembles those of words like infanticide, murder, tyrannicide, and so on.

Genocide, as we mentioned previously, is not a criminal act that strikes suddenly or without any prior introduction. In fact, it is a deliberate strategy targeted at a specific group or nation. The effects of genocide extend to neighboring countries and adversely affect their security. The impact of the crime of genocide on future generations is indisputably enormous as its effects remain tangible and influential on their psychological well-being, economic, and political domain. Therefore, the researcher determined to address the crime of genocide first in terms of its jurisprudential definition and the elements constituting this crime.

Generally, genocide typically signifies a coordinated, planned strategy aimed at the destruction of the vital foundations of the life of the targeted group, intending to eradicate the existence of this group. Its effect extends to the political and social institutions, as well as their language, religion, culture, and economy, in addition to attacking the physical integrity of individuals of the targeted group. Lemkin defines the crime of genocide as a conspiracy to exterminate national, religious, or racial groups in whole or in part (Al-Waleed, 2010, p.17).

According to Hosni (1959, 1960), genocide is "the overt acts of killing, attacks against life, liberty, and property of all persons who affiliated with a religious, racial, or political group."

The Treaty of Sevres, which was signed by the Ottoman Empire and the Allied Powers in 1920, stipulated that the Allied Powers had the right to form courts to prosecute persons who committed murders. The governments of the Allied Powers reserved the right to refer these people to that court. This was the first time that the crime of genocide was officially mentioned; however, such a court has never seen the light (Al-Wleed, 2010, p. 22).

The concept *Le genocide* (genocide) appeared officially for the first time in Recommendation No. 96/41 issued by the United Nations General Assembly on 12/11/1946, where the General Assembly condemned this crime after identifying it as a crime under international law. It defines genocide as "a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural

and other contributions represented by these human groups, and is contrary to moral law and the spirit and aims of the United Nations."

The concept of genocide has developed and taken on an international legal character since the United Nations General Assembly stipulated the resolution of 1948 (Muhammed, 2013, p. 20). Article 1 of the Convention on the Prevention of the Crime of Human Genocide specified that " genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

However, Article 2 of the same Convention states that "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;(d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." This definition was included in the statute of the International Criminal Tribunal for the Former Yugoslavia, which specializes in prosecuting persons committing grave violations of international humanitarian law in the former Yugoslavia, which was established under Security Council Resolution No. 848 of 1993 (Al- Shawani, 2012, p.27).

The Crime of Genocide

The United Nations Convention on the Crimes of Genocide, which was initiated on January 21, 1951, was stipulated per Article 13/2, which worked to put an end to this crime. It has established legal rules binding on all countries, and civilized nations recognize these principles and provisions (Al-Shawani, 2012, p. 35).

The responsibility resulting from the crime of genocide is a dual responsibility that falls on the state and on the natural persons who committed the crime, as it is an international crime in nature. These crimes are compelling if they are committed because of, or related to, a crime against peace or a war crime (Al-Far, 1995, p. 308). Article 5/1 of the Criminal Court Statute considers genocide an international crime; it stipulates that "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction under this Statute concerning the following crimes:(a) The crime of genocide; (b) Crimes against humanity; (c) War crimes;(d) The crime of aggression."

Genocide is one of the international crimes that considerably affect the human right to life. The international legal system's primary objective is to defend

humankind against aggression, and all laws prioritize the lives of persons (Hegazy, 2009, p. 331). A political criminal does not have the right to be extradited to the state that requests it; in contrast, an international criminal is extradited due to the crime's gravity and status as an international criminal (-Abdel Ghani, 2007, p. 102).

It is worth noting that what is stated in the statutes of international criminal courts aligns with the statute of the International Criminal Tribunal for the Former Yugoslavia as Article Twenty-nine, which is the exact text that was confirmed by the statute of the Permanent International Criminal Court, stipulates that those convicted of genocide crime shall not be extradited since it is a political crime in nature. The reason is to make room for the prosecution of the perpetrators of this crime, which is considered one of the most serious crimes because it leads to the elimination of humans, which is the subject of protection in domestic and international laws (Al-Shawani, 2012, p. 39). Some believe that the crime of genocide is political, and therefore, it is permissible to extradite criminals (Fatlawi-Al, 2011, p. 154).

Concerning the prevention of genocide and the punishment of whoever commits it, Article 4 of the United Nations Convention confirmed that: "Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Article Five stipulates that "The Contracting Parties undertake to enact, by their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide." As many member states did not include language on the crime of genocide and its penalty in their national legislation, this article required them to pass specialized legislation to execute the Convention's purposes (Al-Abadi, 2011, p. 402).

Elements of Genocide Crime

The criminal liability for genocide crime is established on two main elements, which are:

1. Physical element:

The physical element of a crime is the criminal act (*actus reus*), which, in essence, is "carrying out an act prohibited by the law, or abstaining from an act required by the law, the formation of the crime, and the causal relationship between the act and the criminal result. The physical element of the crime of genocide includes performing one of the acts stipulated in Article 2 of the Convention on the Prevention and Punishment of Genocide, which is any acts committed with intent

to destroy, in whole or in part, a national, ethnical, racial or religious group (-Al Raoud, 2009).

2. The mental element

It is inconceivable that the crime of genocide could be committed by mistake. It must be one of the crimes intended to be committed, and the intent and knowledge of the criminal must be directed toward killing members of a specific group (Safyan, 2011, p. 168). ^{In the crime of genocide, the perpetrator's knowledge and intent to exterminate must be present} (Jaafar, 2013, p. 331). When the criminal's knowledge and intent are not available, the requirements of the mass crime are not met because what distinguishes the crime of genocide is the criminal intent. It requires the presence of the intention to eliminate the existence of a species (Shibl, 2012, p. 127).

Section Two

The Role of The International Criminal Court In Determining The Crime Of Genocide

The International Criminal Court (ICC) is an intergovernmental organization and international tribunal established by the United Nations to prosecute war crimes committed in (the former Yugoslavia). The court performs its duties independently and is headquartered in The Hague, Netherlands. It was established by Security Council Resolution No. 827 on May 25, 1993. It has jurisdiction to prosecute individuals, organizations, and governments for violations of the Geneva Conventions, violating laws, committing international crimes of genocide, crimes against humanity, war crimes, and crimes of aggression. The maximum penalty that can be imposed is life imprisonment. The International Criminal Court is composed of four organs: the Presidency, the Chambers (the Pre-Trial Division, the Trial Division, and the Appeals Division), the Office of the Prosecutor, and the Registry (Qahwaji-Al, 2001, p. 274).

Article 2 of the International Tribunal on violations of the laws or customs of war specifies that "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- a. willful killing.
- b. torture or inhuman treatment, including biological experiments.
- c. willfully causing great suffering or serious injury to the body or health.
- d. extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.
- e. compelling a prisoner of war or a civilian to serve in the forces of a hostile power.

- f. willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial.
- g. unlawful deportation or transfer or unlawful confinement of a civilian.
- h. taking civilians as hostages."

However, violations of the laws or customs of war, as stated in Article 3, ^{include} (Al-Bakhit, 2004, p. 75):

- a. employment of poisonous weapons or other weapons calculated to cause unnecessary suffering.
- b. wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.
- c. attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings.
- d. seizure of, destruction, or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historical monuments, and works of art and science.
- e. plunder of public or private property. Arti

Statute of the Tribunal for the Former Yugoslavia Custom defines genocide in Article 4 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.
- e. forcibly transferring children of the group to another group.

Crimes against humanity are also one of the violations addressed under the provisions of the International Tribunal. They are typically directed toward the civilian population and are prohibited. Article 5 addressed crimes against humanity. It stipulates that The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts.

All of these crimes were inflicted on natural persons. It is evident from the text of Article 6 of the Statute of the Tribunal for the Former Yugoslavia, stating, "The International Tribunal shall have jurisdiction over natural persons under the

provisions of the present Statute," that it is competent to try natural persons only (Al-Bakhit, 2004, p. 74). Its jurisdiction does not extend to legal persons who planned the crime or intervened in its commission by any means. Criminal liability for actions related to an individual Shawani-Al(, 2012,p. 142)as stated in Article 7/1: "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime."

The statute clarifies in Article 8 that the territorial jurisdiction of the International Tribunal extends to the territory of the former Socialist Federal Republic of Yugoslavia for a period beginning on 1 January 1991 -Al (Shawani, 2012, p. 141).The court's duty ends after security and peace are restored in the former Yugoslavia.

It is worth noting that in 1993, Radovan Karadžić, the former leader of Republika Srpska during the Bosnian Civil War (1992-1995), was sentenced by the International Court for war crimes and crimes against humanity for the Srebrenica massacre in July 1995, and was sentenced to life imprisonment in 2019.

Conclusion

Genocide prosecution and punishment are under the purview of the International Criminal Court. Therefore, in this research, we tend to define the nature of the crime of genocide as one of the international crimes, clarify its elements (physical& mental), and shed light on the crimes constituting the crime of genocide. The International Criminal Court determines how the court establishes its jurisdiction and creates its statute. The rulings issued by the court have contributed to defining the crime of genocide and punished the perpetrator of this crime by imprisonment.

References

- Abadi, S. (2011). Legal Guarantees for the Protection of the Human Community, *Basra Literature Journal*, Issue (58).
- Balas, H. (2024). The Guarantees Adopted for the Protection of Human Rights, *Pakistan Journal of Criminology*, 16(1), 247-264.
- Abdel-Ghani, A. (2007). *International Crimes (study)*. New University House Alexandria, first edition.
- Bakhit, A. (2004). *The Permanent Criminal Court*, master's thesis, Amman Arab University, supervised by Dr. Karima Al-Ta'i, Amman, p. 75.
- Far, M. (1995). *Crimes*, Dar Al-Nahda Al-Arabiya, Cairo, first edition
- Fatlawi, H. (2011). *International Judiciary*, House of Culture, Amman, first edition
- Hegazy, A. (2009). *The Criminal Court*, (a sterile study in criminal law) Cairo, 1st edition.
- Hosni, M. (1959, 1960). *Lessons in International Criminal Law*, Dar Al Nahda Al Arabiya, Cairo.
- Jaafar, M. (2013). Elements of the Crime of Genocide in the Rulings of the International Court of Justice and Special Criminal Courts, a Comparative Study, *the Journal of Legal Sciences*, University of Baghdad, Issue Twenty-Eight,
- Muhammad, M. (2013). *Provisions of International Criminal Liability*, Dar Al-Raya Publishing and Distribution, Amman, first edition.
- Muhammad, Y. (2011). *Trial of War Criminals before International Criminal Courts*, Dar Al-Kutub Al-Qaniya, Cairo, first edition.
- Qahwaji, A. (2001). *International Law*, Al-Halabi Legal Publications, Beirut, first edition
- Raoud, S. (2009). *Genocide in International Law*, Master's thesis supervised by Dr Karima Al-Taie, Alas International University, Jordan.
- ResolutionNo. (808). UN Security Council Resolution 1993. The International Criminal Tribunal for the Former Yugoslavia.
- Safyan, B. (2011). *The Role of the International Criminal Court in Combating International Crimes*, a thesis for obtaining a master's degree in law, under the supervision of Dr. Al-Quli, Muhammad, Faculty of Law, Mouloud Mammary University.
- Shawani, N. (2012). *Judicial Jurisdiction for the Crime of Genocide*, Modern Books Foundation, Beirut.
- Shibl, M. (2011). *International Criminal Law*, Dar Al-Thaqafa, first edition
- Wleed, A. (2010). *Preventing the Crime of Human Genocide in International Criminal Law*, Dar Al-Nahda Al-Arabiya, Cairo, first edition.