

International Criminal Justice

The Crime of Genocide

LLM in International Studies

ipervou@law.duth.gr

Komotini, Thrace

The Crime of Genocide (I)

- The crime of ALL crimes
- 1945 UN General Assembly: Resolution 96(I) – 1951: Convention on the Prevention and Punishment of the Crime of Genocide (definition in art. 2)
- During the 20th century, humanity was greatly preoccupied with → genocide of Armenians and Pontians by Turkey, genocide of Jews and Gypsies by the Nazi regime, genocide of Tutsi in Rwanda by the Hutus

The Crime of Genocide (II)

- Genocide in the ICC Statute
- Art. 6 ICC Statute – initial proposal for a broader definition following a relevant proposal by the competent Working Group, to cover more social & political groups
- ≠ intense confrontation between the negotiating states regarding the required degree of intent depending on the perpetrator
- ≠ differentiation from Art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (?)
- customary law
- Different definitions of the crime could lead to the issuance of different decisions regarding the same situation

The Crime of Genocide (III)

- Finally, Art. 6 reflects the definition exactly as the model of the Genocide Convention
- Therefore, the jurisprudence of the ICC is bound by previous jurisprudence & references
- Article 3 of the Convention on the Prevention and Punishment of Genocide provides “The following acts shall be punishable:
 - (a) Genocide;
 - (b) Conspiracy to commit genocide;
 - (c) Direct and public incitement to commit genocide;
 - (d) Attempt to commit genocide;
 - (e) Complicity in genocide.
- NOT included in the ICC Statute

The Crime of Genocide (IV)

- Art. 6 ICC Statute: *For the purpose of this Statute, “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.*

The Crime of Genocide (V)

- To establish that the acts in question constitute a crime of genocide, all the elements of the objective & subjective part of Art. 6 ICC Statute must be established
- Special attention: Art. 21 ICC Statute – subsidiary role of other contractual texts ≠ Genocide Convention
- Elements of the objective part of the crime: 1. the perpetrator killed one or more persons, 2) the person or persons belonged to a specific national, ethnic, racial or religious group, 3) the perpetrator aimed to destroy, in whole or in part, that national, ethnic, racial or religious group as such, 4) the conduct took place as part of a manifest plan of similar conduct against that group or was conduct that could in itself cause such destruction.

The Crime of Genocide (VI)

- Subjective element of the crime: the intentional destruction, in whole or in part, of a national, ethnical, racial or religious group
- A person must have done the above with intent and knowledge
- Genocide: involves intent to destroy – indicates the existence of direct intent in the first degree
- Sudan's President (Omar Al-Bashir) case: the ICC ruled by majority that "the crime of genocide consists of two elements of subjective character: i) a general element that must cover every act of genocide and ii) an additional element of subjective character referred to as "dolus specialis" or intent in effect, according to which every act of genocide must be carried out with the intent to destroy, in whole or in part, the target group"

The Crime of Genocide (VII)

- Result: victims must be members of a specific group & must have been targeted for that reason
- Crimes must be part of a larger plan to destroy the group
- Both elements must be met cumulatively
- Difficult to clarify when a group is “racial”, “ethnic”, “national” or “religious”
- e.g. ICTY: Bosnian Muslims were a predominantly a national group – this assumption was never challenged
- e.g. ICTR: preferred a subjective approach: an ethnic group could be one that self-identifies as such or that is recognized by others, including the perpetrators

The Crime of Genocide (VIII)

- The terms national, ethnic, racial, religious should be evaluated based on the political, social and cultural context to which the crime is related each time.
- Political and economic groups are excluded from the definition.
- It is judged *ad hoc* taking into account the relevant evidentiary material.
- It is irrelevant whether the perpetrators consider that they are acting within the democratic framework with the power of an elected or socially recognized majority against a minority group.
- It is not legally crucial whether the target group is a minority or a majority.

The Crime of Genocide (IX)

- The four terms overlap and help to define each other by working together.
- A separate interpretation of each term could weaken their interpretation.
- ICJ Nottebohm decision: a national group is defined as a collectivity of people who are considered to be linked by a legal bond based on common nationality, accompanied by reciprocity of rights and obligations.
- Ethnic group: a group whose members share a common language or culture.
- Racial group: the conventional definition of a racial group is based on inherited physical characteristics that are often identified with a geographical area regardless of linguistic, cultural, national or religious factors.
- Religious group: a group whose members share the same religion, doctrine or way of worship.

ICJ and the Crime of Genocide in the Gaza strip

- The ICJ has issued several binding interim orders in the case brought by South Africa alleging that Israel is committing genocide in the Gaza Strip.
- Plausible Risk of Genocide: "plausible" that Palestinians in Gaza have rights under the Genocide Convention that are at risk of "irreparable prejudice" and that some actions by Israel could fall within the terms of the convention.
- Binding Provisional Measures: ordered Israel to take all measures within its power to prevent genocide, punish incitement to genocide, and improve the humanitarian situation.
- No Immediate Ceasefire: In its initial January 2024 ruling, the ICJ did not order a ceasefire, which was a key request from South Africa.

ICJ and the Crime of Genocide in the Gaza strip

- Order to Halt Rafah Offensive (May 2024): Following an escalation in Rafah, the court modified its measures, ordering Israel to immediately halt its military offensive in the Rafah Governorate.
- Humanitarian Aid Obligations: ordered Israel to take immediate, effective measures to allow the provision of urgently needed basic services and humanitarian aid to address the "disastrous" conditions and famine in Gaza.
- Preservation of Evidence: Israel was ordered to prevent the destruction of evidence related to allegations of genocide.
- Call for Hostage Release: The court stated it was "gravely concerned" about the fate of hostages held by Hamas, calling for their immediate and unconditional release.
- Reporting Obligations: Israel was ordered to submit reports to the court on its compliance with these measure.
- Genocide Convention Art. IX: *For disputes between Contracting Parties regarding the interpretation, application, or fulfillment of the Convention (including state responsibility for genocide), the **International Court of Justice (ICJ)** has jurisdiction. Any party to a dispute can submit the case to the ICJ.*