

“THE PLACE OF GENOCIDE IN CONTEMPORARY HISTORY”

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INTRODUCTION

There have been a million victims in the violence which erupted in the 20th century. It led to genocide and the international community failed to prevent it.¹ International law has recognized war crimes, aggression leading to a crime against humanity and genocide as heinous and grave offences under International law. In the world, people never give attention to genocide but once the allegations rise, the world starts interfering and discussing the issue of genocide. Genocide has implications that can last very long in the future. Genocide is not a natural calamity but a mass murder of certain communities intentionally by some individuals.

WHAT IS GENOCIDE?

The term genocide was first given by a Polish- Jewish lawyer called Raphael Lemkin who formed the word by combining a Greek word (Geno) which meant race or tribe with a Latin word (Cide) which meant killing. While making of a 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".² This was later known as the Holocaust. Lemkin gave the concept that genocide doesn't mean the immediate destruction of a nation but clearly meant mass killings of people belonging to a certain group. The concept focused on destructing the political and social institutions, culture, nationality, language, economic existence of national groups and completely destroying their health, security, liberty, health, dignity and the lives of people who belong to such groups. Even though there has been a proper term of genocide and the existence of genocide convention under criminal law still there have been a number of instances of genocide throughout history.³ UN General Assembly passed Resolution 96(1) on 11 December 1946, and for the first time gave the concept of genocide and defined genocide as a crime under International Law. The first draft was made by the UN security council which was later made and presented again to the General Assembly. On 9th December 1948, the general assembly adopted the draft in resolution 260 A(III). The UN

¹The Holocaust and Other Genocides, NIOD Institute for War, Holocaust and Genocide Studies, 2012

²United States Holocaust Memorial Museum, 'What is Genocide?'

³See for example the Armenian Genocide from 1915, the Zulu Kingdoms genocide in the early 1800's, Haiti in 1804 to name but a few.

approved The Convention on the Prevention and Punishment of Crime of Genocide which gave and detailed and technical definition of genocide. *Article 1* of the Convention said that if the crime of genocide is performed during the time of peace or times of war, it will still be considered a crime under international law. It also talked about providing certain limitations on the definition of genocide.⁴ The principal included the specifications which were evacuated in a last-minute political and conciliatory trade off. However, politicide is progressively being perceived by researchers and the global network the same just like wrongdoing against humanity.⁵ This is the reflection of the changing nature of the law of genocide. The legitimate structure encompassing annihilation isn't static and along these lines, one of the reasons for this paper is to give a stage from which you can build up your own assessment of how genocide ought to be characterized in law. *Article 2* of the Convention was adopted by the ICTY Statute into Article 4(2) and Article 2(2) of the ICTR statute. The political and social groups should be added in the definition of genocide after a decision of the ICC, Article 2 of the Convention said that genocide is an international crime where the member nations try to prevent and punish the offenders who commit a crime. The convention defines genocide as any of the following acts which are committed with intent to destroy national, ethical, religious or regions members of the group wholly or partly. It contains the following acts:

- 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.

GROUPS UNDER GENOCIDE PROTECTED GROUPS

There are different types of groups which are protected under this definition. According to the Convention, a person can only be held guilty of genocide if the person he intends to destroy belongs to any of the four categories: *National Groups*: Under this group, a set of individuals are defined by a common country of nationality. The group includes a person who has the nationality of a specific state and other elements like a common language, customs, history and

⁴ United States Holocaust Memorial Museum, Genocide Convention in International Law at <http://www.ushmm.org/confront-genocide/justice-and-accountability/introduction-to-the-definition-of-genocide>

⁵See for example Harff, Barbara, and Gurr, T. R. 1988. "Toward Empirical Theory of Genocides and Politicides: Identification and Measurements of Cases since 1945." *International Studies Quarterly* 32:359-71

culture. *Ethnic Groups*: Under this group, there is an existence of a set of individuals whose identity is defined according to their common cultural traditions, language or heritage. Ethnicity provides a basis according to which people can identify themselves. Ethnic group is a group of individuals are identified according to a common heritage. It is recognized according to the common culture, linguistic and religious, behavioral traits. The group was distinguished according to the particular traditions and a common history. The people belonging to these groups speak a common language, have similar customs and have a common life. *Racial Groups*: Under this group, a set of individuals are known according to their physical characteristics. The group includes individuals who have the same, visible inherited physical traits like skin colour and physical nature. *Religious Groups*: Under this type of group, a set of people are defined according to their common religious practices, rituals, beliefs, etc. Religion is one of the most important ground on which the offence of genocide is committed. There are various religious groups in India like Hinduism, Islam, Sikhism, Christianity etc. They have their own religious traditions, beliefs, spiritual ideas, faith, spiritual paradigm.

ELEMENTS OF THE CRIME OF GENOCIDE

Article 2 of the convention clearly prescribes that the offence of genocide will be considered if the any of the two elements are present: firstly the Mens Rea or intent to destroy a particular national, religious, ethnic or racial group and secondly Actus Reus or proper execution of an act.

MENS REA

It is the mental aspect while committing genocide. It further has two elements under it firstly the 'general intent' and secondly, the 'intent to destroy'. The general intent is defined under Article 30 of the statute of the International Criminal Court. It defines a violent inventor as a cognitive or intellectual element⁶. It basically perceives that the offender is committing an act with his knowledge that his act can target a particular group⁷. It is further contrasted with the intent to destroy which is the second element. The second element separates genocide from crimes against humanity and considers it as the most inhumane form of persecution.⁸ Intent to destroy includes the additional subjective requirement which goes beyond the definition of objective elements.⁹ This prerequisite really recognizes genocide from different violations against

⁶ Art. 30(1) reads: 'Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge'

⁷ Kai Ambos, What does 'intent to destroy' in genocide mean?, International Review of the Red Cross, Vol. 91, Number 876 December 2009

⁸ *Prosecutor v. Zoran Kupres 'kic et al., Trial Judgement*, Case No. IT-95-16-T, 14 January 2000, para. 636

⁹ Kai Ambos, What does 'intent to destroy' in genocide mean?, International Review of the Red Cross, Vol. 91, Number 876 December 2009.

humankind, for example, ethnic purging which focuses on coercively ousting a gathering from a geographic territory (by murdering, constrained expelling and different techniques). The intention of the offender will decide whether it constitutes a genocide or not. It is a system of killing various individuals in a particular group.

ACTUS REA

Article 2 (a) to (e) of the Geneva Convention deals with the second element of genocide. The second element which deals with genocide is the Acts Reus. It defines that in order to constitute the offence of genocide the offender must do an act that may be either be against the physical or psychological nature of the target group or against the biological continuity. This article doesn't include the individuals who are members of a political, social, cultural or an economical group. Genocide will be constituted if any of the following act is committed: *Firstly*, killing individuals belonging to a particular group: It means that the offender deliberately and intentionally kills a person who belongs to any of the protected groups. *Secondly*, Serious bodily injury and mental harm: This means that the offender inflicts some serious and grave injuries on the body of an individual through excessive force by using force or lethal weapons. It also talks about the mental harm which clearly states that the perpetrator causes excessive mental damage to the minds of the individual belonging to a group. The offender must harm at least one member of the specific group in order to constitute genocide. Article 2 (b) of the Genocide Convention includes torture, interrogations which are combined with death threats, rape threats, beatings, sexual violence. *Thirdly*, intentionally inflicting conditions on the lives of the individuals: This paragraph refers to the slow killing of a person. It means that a person belonging to a group is not killed suddenly but rather he is tormented slowly. This includes deportation, forced-long term labour, imprisonment and capturing a person into a camp, intentional deprivation of resources like food, shelter or clothing. *Fourthly*, Restrictions on birth: Under this, the perpetrator provides certain restrictions and measures to threaten and destroy the capability to reproduce and to limit the biological existence of the group. The offender uses certain methods like forced both control, compulsory abortion, sterilization, prohibitions on marriages. There are certain rapes which are committed to change the ethnic composition of the targeted group. It is also included in this category. *Fifthly*, Forceful transmission of children of one group to another group: It includes that the perpetrator is forcefully transferring the children. The intention behind transferring is if the children are transferred they will lose their identity of their original group. However, if there is legally transferring of children from one group to another then it doesn't violate the provisions of the Geneva Convention. Therefore we conclude that if any of the act is

committed with an intention to destroy a particular group then the perpetrator will be considered wholly liable for the offence of genocide. Article 3 of the Genocide Convention outlays punishments for certain categories of acts that are committed in preparation of the genocide.

STAGES OF GENOCIDE

There are various stages for the commencement of the offence of genocide. The perpetrator has to undergo different stages to commit crime.

CLASSIFICATION

This is the first stage of genocide. Under this, all the categories have a distinct personality and people are distinguished according to race, ethnicity, religion or nationality. The primary preventive measure at this beginning phase is to create universalistic foundations that rise above ethnic or racial divisions, that effectively advance resilience and understanding, and that advance arrangement that rises above the divisions. This quest for shared opinion is crucial to early avoidance of destruction. e.g: German and Jew, Hutu and Tutsi

SYMBOLISATION

This is the second stage of genocide. In earlier times, the Germans applied symbols on the Jews and classified them according to the colors and dresses. Classification and symbolization is considered human and doesn't necessarily result in genocide. But once it goes on to the next stage of dehumanization, then it leads to genocide. At the point when joined with contempt, images might be constrained after reluctant individuals from untouchable gatherings: To battle symbolization, abhor images can be legitimately illegal (insignias) the same the despise discourses. Gathering stamping like pack apparel or ancestral scarring can be banned, also. The issue is that legitimate restrictions will fall flat if unsupported by well-known social authorization. eg: the yellow star for Jews under Nazi rule, the blue scarf for people from the Eastern Zone in Khmer Rouge Cambodia.

DEHUMANISATION

This is the third stage of genocide. Under this one group totally demeans the existence of the other group. One group equates the other group with insects, animals, worms, vermin. It beats the ordinary human repugnance against murder. The loathe publicity and despise radios are utilized for criticizing the casualty gathering. Destructive social orders need sacred assurance for countervailing discourse, and ought to be dealt with uniquely in contrast to vote based systems. Neighborhood and global pioneers should ensure the utilization of detest discourse and make it socially inadmissible. Pioneers who prompt genocide ought to be restricted from worldwide

travel and have their unfamiliar accounts solidified. Despise radio broadcasts ought to be closed down, and loathe purposeful publicity prohibited. Loathe violations and abominations ought to be immediately rebuffed.

ORGANISATION

This is fourth stage of genocide. Under this, there are various organizations who are responsible for conducting genocide. Some of the organizations are informal in nature (Hindu mobs led by local RSS militants) or decentralized (terrorist groups.) Genocide is usually committed by some military who provide deniability of state responsibility (Janjaweed in Darfur). Exceptional armed force units or civilian armies are regularly prepared and furnished. Plans are made for destructive killings. To battle this stage, enrolment in these local armies ought to be prohibited. Their pioneers ought to be denied visas for unfamiliar travel. The U.N should force arms bans on governments and residents of nations engaged with genocidal slaughters, and make commissions to research infringement, as was done in post-massacre Rwanda.

POLARISATION

This is the fifth stage which leads to the commencement of genocide. Extremists play a major role in this. The groups with hated spread propaganda. There are also laws which prohibit inter religion marriages or any type of social communication. The people belonging to the extremists groups start targeting the moderates in the nation whereas the moderates try to stop the genocide.

PREPARATION

This is the sixth stage of genocide. Victims are recognised and isolated out as a result of their ethnic or strict character. Individuals from casualty bunches are compelled to wear recognising images. The people belonging to the groups, their houses and properties is seized. They are frequently isolated into ghettos, extradited into death camps, or restricted to starvation. A Genocide Emergency must be pronounced. If the political will of the incredible forces, provincial coalitions, or the U.N. Security Council can be assembled, equipped universal intercession ought to be readied, or overwhelming help gave to the casualty gathering to get ready for its self-preservation.

EXTERMINATION

This is the seventh stage of genocide. It is eradication to the executioners since they don't accept their victims to be completely human. When it is supported by the state, the military frequently works with volunteer armies to do the slaughtering. The genocide brings about vengeance killings by bunches against one another, making the descending whirlpool-like pattern of two-

sided destruction (as in Burundi). At this stage, just quick and overpowering outfitted intercession can stop genocide. Genuine safe regions or refugee get away from passageways should be set up with vigorously furnished worldwide assurance. The U.N. Standing High Readiness Brigade, EU Rapid Response Force, or provincial powers should be approved by the U.N. Security Council if the genocide is little. For bigger intercessions, a multilateral power approved by the U.N. ought to intercede. In the event that the U.N. is incapacitated, local collusions must act. It should be perceived that the worldwide duty to secure rises above the restricted interests of individual country states.

DENIAL

This is the last stage that leads to genocide. Under this the culprits of genocide uncover the mass graves, consume the bodies, attempt to conceal the proof and scare the observers. The offenders and perpetrators deny that they carried out any wrongdoings. They usually block the investigations and examinations of the crime and keep on administering until driven from force and power. The reaction to disavowal is punishment by a global council or national courts.

CONCLUSION

Whenever one studies genocide, there is a feeling of encounter with the best scourge of mankind's history. Genocide is fundamental to our verifiable legacy in all phases of human presence, in practically all pieces of the world. Exploring it well may be profoundly scary and can leave you with a feeling of frailty and detail despite unlimited anguish. However, massacre is a method for strengthening: in doing so one is encountering the procedures through which a huge number of individuals have endured at the merciless hands of others, the visually impaired race to scorn which incalculable others have fearlessly resisted. Genocide is one of the deplorable wrongdoing against a person. Genocide is wrongdoing on an alternate scale to every other unspeakable atrocity and suggests an expectation to totally kill a particular group. Endeavors to take out such gatherings disregard this option to exist and to create inside the universal community. Genocide is a proper conspiracy focused on the absolute destruction and cleansing of a particular community which requires a coordinated strategy. The intensity of genocide doesn't emerge from the degree of the killings or any type of brutalities or coming about notoriety, but exclusively from the mental aspect and intention and the annihilation of a group. Therefore, there should be an implementation of rigid laws and strict action should be taken against genocide. The punishment should be an impediment.
