

*The crime of genocide in relation to international criminal  
law*

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**Abstract**

Mass murder or genocide refers to criminal acts with intent to destroy, of the national , ethnic, racial or religious groups in whole or in part. The mass murder of Jews during World War II, the killings were carried out by the Khmer Rouge in Cambodia in the late '70s, and Idi Amin in Uganda in the late 60's and 70's that led to the death of thousands, Massacres of Tutsi by Hutu in Rwanda in 1990,s, the Armenian Genocide in Turkey in 1915 and the massacre of Kurds and Shiites in the 80s and 90s by Saddam Hussein, Massacre of Palestinians in Sabra, Shatila and Gaza by the Israeli, massacre of Bosnian Muslims and the recent Shiites massacre in Bahrain by the country's ruling system and Saudi forces and many other cases, are only part of crimes, crimes that have been carried out by criminals according the policy of genocide. The Suggestion of genocide as considering a crime originally founded in 1933 by a Polish lawyer called Raphael Lemkin. He is the originator of the term genocide, who during the Fifth International Conference of integration of criminal law in Madrid suggested that the destruction of racial, religious or social groups is considered as a crime in terms of international law. He beliefs were published in his book entitled “The Role of the Axis powers in occupied Europe” in 1944 and discussed in more details.(Lemkin 1994:63). The United Nations in their first year of activity in 1946, with the stipulation that genocide is a crime under international law, provided the convention on the Prevention and Punishment of genocide in 1948. But this type of crimes continues to rise like the today’s brutal killing of Muslims in Myanmar and etc.( Sadeghi 1377). This paper we will examine Generalities

about the meaning and elements of genocide from the perspective of international criminal law.

**Key words:** Genocide, Racial or religious groups, International criminal law, Crimes against humanity, the International Criminal Court.

## Introduction

Before the Polish jurist Raphael Lemkin in the Fifth International Conference of integration criminal law, combine the term Genos as the generation and race with the cide with the meaning o of killing to make the word genocide, Mass genocide lacked independent attribute and was considered a general crime against humanity. The international community put the genocide at the head of the most severe international crimes and has to Ty opinions issued by the Court, This means that it will be effective on the amount of he punishment the criminal must bear because of this crime.(Lemkin 1994:79). Genocide is a crime that occurs in the case of a group and the criminal offers massacres, destruction and damage with intent to destroy special religious, ethnic, racial or linguistic group. This means that, unlike other crimes against humanity that victim individual is selected according to the identity, the crime of genocide, ethnic belonging is the criteria of the killing and harming it is the means to achieve the goal of removing the ethnic slaughter.

While the crimes of genocide have occurred at different points in history, unfortunately there was not a good situation in the follow-up action at the international level. In many cases, those who commit genocide are eventually able to escape responsibility and it is noteworthy that the only successful example is establishment of two International Criminal Court one in the case of the Balkans and other in the cases of Rwanda. Which in former one the crimes were against humanity and in the latter case, most of them were in genocide type. The so called courts subsequently issued votes condemned criminals to death on charges of genocide. There may have been the most obvious international examples.

This research aims to design the concern that crimes of genocide are still often occur around the world today, find Legal and accurate answers for the following questions:

What are the main elements of crime of genocide? When the mass genocide occurs? Who is the subject of this crime?

## 1-The Legal elements of genocide

According to the general principles of criminal law, only those acts are punishable which considered as crime by law and their punishment had anticipated. Also, the individual cannot be punished based on any legal action which is deemed later. Legal principle of crime and punishment are accepted in international law and many conventions and protocols emphasized such cases. However, unlike the civil rights with a clear legal definition of crime and punishment, there is no such legislation in the international arena. Even after the First World War, despite public pressure to punish the German Emperor Wilhelm II for war crimes, America's government opposed such acts according to the principle of legality of crime and punishment. Over time and with the development of international criminal law and international criminal law customary consistency, genocide became punishable according to certain rules of international law. In 1948, the UN General Assembly formally adopted the Convention on the Prevention and Punishment of Genocide and this document were considered as an element in international law for the punishment of genocide and approved by most governments as well as civil law and became applicable.

## 2- The “actus reus”<sup>1</sup> of genocide

Genocide is subject to the intention of killing members of the group, bringing severe damage to physical or mental health of members of the group and generates action to prevent births within a group and forcibly transferring children of the group to another one. In Article 2 of the Convention on the Prevention and Punishment of Genocide, Article 4 of the Statute of the Tribunal for the former Yugoslavia, Article 2 of the Statute of the International Criminal Tribunal for Rwanda and Article 6 of the Statute of the International Criminal Court in this matter is clear. (Azizi 1386:17). According to Article 2 of the Convention on the Prevention and Punishment of Genocide, crimes of genocide are described in five criminal actions,<sup>2</sup> which they will come in the following detailed description.

These crimes can be done by public authorities and by non-governmental, both in peacetime and during an international or non-international armed conflict arises.

- Killing members of the group.
- Bring serious harm to the physical or mental integrity of members.

<sup>1</sup> . Material element

<sup>2</sup> . "Convention on the Prevention and Punishment of the Crime of Genocide", Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

- Insert the deliberate exposure on critical conditions that can lead to deterioration of the material in whole or in part.
- Generate action to prevent births within a group.
- Forcibly transferring children of the group to another one.

Before addressing the main issue it is needed to know what is the meaning of group as a crime subject and what is called group?

In the above-mentioned documents, the group has not been determined. Inevitably, in the case of people like Akayesu, the jurisprudence emanating from the international criminal tribunals for Rwanda, tried to fix this arises defects and described group in having a stable and durable nature. So that membership in it, voluntary or involuntary, is through birth, and irreversible. Accordingly, fragile and weak groups, such as political and economic groups, were excluded from the coverage of this crime.(Shariiat Bagheri 1387:45).

Therefore, an undeniable impact on the evolution of the political groups, dynamics and evolution of human societies and their tangible role in enlightening the minds of their rulers in the process of self-determination and outlining the policy governing the country, especially in the popular and growing trend which has been more stable, Requires that, in addition to other support groups are listed under protection. Also it is needed to pay attention to other groups as well as social and cultural ones, Because of lack of attention to them is equivalent to ignore the destruction of fifteen to twenty million Soviet Union citizens called “Class enemies” and “the enemies of the nation” between 1920 and 1939 and the massacre of about three hundred mad people by the Nazis as "those who do not value living" .(Mir Mohammad Sadeghi 1377: 131).

Recognition of specific national, ethnic, racial and religious groups in this respect is essential as they are the only purpose of this crime and other groups are outside of this area and defined among other topics, such as crimes against humanity.

**Ethnic groups:** The expression of Peoples taken from the Greek word “Ethnos” meaning people or nation.(Birow 1375: 233). Ethnic group refers to people who, due to having same language and culture, determined a distinct place for themselves or the criminals know them by this title.

(Mir Mohammad Sadeghi 1377: 90).

**National groups:** Convention in its statutes did not define this group and had not an attempt to clarify its meaning. Nevertheless, international jurisprudence in cases such as Notebam considered nationality and citizenship features as detection a national group. (Shariiat Bagheri 1388:46).

**Ethnic groups:** Ethnic group is a series of people with common characteristics, such as physical and mental development. In the 1948 Convention, the word race is used only in Biological the sense and the meaning of the expression is a number of different physical similarities between humans which are inherited from generation to generation(Ardabili, 1387:69). Rwanda Tribunal believes that the classic definition of a racial group is based on hereditary physical traits often identified in a particular geographic area and are independent of the cultural, linguistic, ethnic or religious feature.<sup>3</sup>

**Religious groups:** Religious is attributed to religion. Provided that the common elements of the various definitions of religion is its and metaphysics and immaterial aspect. Religious group refers to a group of spiritual who obey a common goal. Religions groups usually are recognized by placing a special ritual that represents the unity of opinion among them, and are separated from the followers of other religions. (Ardabili, 1387:78). Criminal Tribunal for Rwanda define religious group as whose members have shared methods of religion or belief or worship.<sup>4</sup>

### 2-1- Killing members of the group

One general principle is to protect the lives which will be emphasized in a number of international documents and treaties. Disclaiming life of a human group, is the strongest evidence of mass destruction. Because all human rights disappears by depriving him of the right to life. Despite referring to the murder in the Fourth Geneva Convention and Protocol I, its definition in international law had been passed. To define murder in international law usually civil rights was used which is the intentional deprivation of life of a living person without authorization and illegally. In the French text of the Statute, the word **meurte** means murder and overlooks the English text the word **killing** is used to mean killing. The International Criminal Tribunals for Rwanda dated September 1998 in case of Akayesu, find the French word “meurte” more accurate and better to describe the deliberate clan massacred of Hutu tribe by Toots and adds that in the negotiations on the Convention on the Prevention and Punishment of Genocide (1948), also suggested that "thought the previous plan" to be added as an essential attribute to the definition of genocide; However, because of opposition from some countries, this requirement was not included in the definition.( Mir Abbasi and Nazari 1384: 61).

<sup>3</sup> . ICTR, Akayesu Case, 1998: para514.

<sup>4</sup> . Ibid, para515.

## **2-2- Delivering Serious harm to the Integrity of body or mental of members of the group**

The concept of severe damage somewhat seems questionable. It is said that the purpose of the genocide in Rwanda International Criminal Court, is severe damage to the physical integrity of person, or any action, such as rape, disconnected members, torture and biological experiments which deeply hurt person physically. International Tribunal for the former Yugoslavia and Rwanda cases, such as various forms of sexual violence, persecution and expulsion of members of the House have increased in the past.

every psychological damage may be using drugs or psychotropic substances, so that psychic powers and talents Stolen groups to undermine the long-lasting lead to fall or a decline in ethical. Any damage that impairs a person's mental state, including any kind of psychological torture, murder of family members in front of other family members Did they rape, threats, coercion or rape and inhuman treatment causing psychological damage to the person.

## **2-3- Insert the deliberate exposure of critical conditions that can lead to deterioration of the material in whole or in part**

This can be the immediate cause of death is not the group members But over time, reducing the physical powers of the group and thereby causes loss group. Examples of such actions include: Deprivation of food or prevent proper nutrition, deprivation of housing, health care and long-term care Imposing harsh living conditions, forced to do the chore.

## **2-4- Take measures to prevent generation**

This is a physiological action. Impose conditions that are intended to prevent births within the group to collapse and destruction of the group is done, many different forms. Preparatory Commission for the preparation of the 1948 Genocide Convention, genocide is known to perform the following actions:

- 1- Frustration
- 2- Abortion
- 3- separating gave prevent generation

The Court, in the case of Rwanda Akayesue measures such as genital mutilation, sterilization, forced birth control, separation of men and women in marriage ban announced genocide.

## 2-5- Forcibly transferring children of the group to another one

Forcibly transferring children of the group to another, either migration and either kidnap, can have different effects on the group instead. One of its adverse effects is handling children with cultural destination. The reason which for its reliability, Forcibly transferring children of one group to another one, is best known of mass destruction. Putting children at risk of inadequate living conditions, threatens both life and the survival of their physical and cultural heritage, linguistic, religious and social identity and leads to gradual destruction. It should be noted that the child refers to a person less than 18 years and knowing the age of the victim is mentally be established.(Beigzadeh; 1376:97).

Physical delivery or disperse adults intentionally as placing members in inappropriate living conditions are as ongoing genocide or persecution or inhumane acts as crimes against human beings like those mentioned in the second paragraph of Article 7 of the Rome Statute be considered.

## 3- “Mens rea”<sup>5</sup> of genocide

For the realization of the crime of genocide, it should be appeared one of the five measures in Article 2 of the Genocide Convention and are above-mentioned. These measures are considered as material element or genocide. But this kind of action is happening in other crimes. So it's something that most recognizes this crime, is its psychological element. In genocide, the targets of criminals, are not one or more persons, but the man actually committed these acts against the victim because he/she belongs to an ethnic, nation, race or religion group is special.

In the mental element of the offense, it should be distinguished between the “intentions” and” motives”. Intention is immediate thought of committing a crime while motivation points to next goals. What is needed to prove the charge of genocide as a crime under the Convention, is the criminals intentionally and consciously committing taking action against a national, ethnic, racial or religious group . Such actions that should potentially have the effect of causing the destruction of the group. Motive to commit the acts of international criminal law as well as domestic criminal law in obtaining or failure to obtain criminal liability is not affected his real intent. Therefore, although it is likely that the massacre of Muslims by Serbs, Armenians by Turks, Kurds by Saddam and etc is motivated security, economically and ... , But this lack of motivation does not means

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<sup>5</sup> . Mental element

lack of intent to commit the crime of genocide as defined in the Convention, and Therefore, these actions can be prosecuted as genocide.( Mir Mohammad Sadeghi 1390).

International Criminal Tribunal for Yugoslavia in the case of Jelisić said the fact that the mental element of genocide has its main characteristics which converts it from a common crime, to a crime against international humanitarian law. German Federal Court in the case of Jorgić in 1990, provides that: in genocide, crime victims, is not a person but as a member of a group that attacked. To condemn a person to genocide, it must be proved that he has specific intent that is the link between the results of physical and mental state of mind to destroy at least part of a national, ethnic, racial, and so on groups. (Hosseini 1391).

The main distinction of crimes against humanity and genocide is mental element. However, Also difference between the mass of other material element exist. But the key element that makes these to crimes different ones, is ill intent of destroying all or part of an ethnic, racial, national or religious groups.

#### 4- Conclusion

The importance of genocide can be determined by an overview of the history of it. These words not only mentioned explicitly in the criminal indictment against Nazi Germany in October 18, 1945 as an international crime was, But with the Convention on the Prevention and Punishment of Genocide in 1948 and its entering into force in 1951, the world was recognized it as an international crime. The drafters of the Convention had intended to commit prosecution and punishment to genocide doers by any means, For this reason, Article 10 of the Treaty has created obligation to prevent genocide and punish the parties of it. The Convention is in fact is an adopted law element to punish perpetrators of the crime. Article 2 of the Convention, in fact, focused on the material elements of the offense and actions. Despite these developments in international law if we have a quick look at the world, Will realize that after World War II, more than a hundred battles occurred which mostly are domestic and the great majority of atrocities carried out against civilians. To stop such crimes, there seems a good security system to be needed.



## References

"Convention on the Prevention and Punishment of the Crime of Genocide", Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

"The International Court of Justice and the International Criminal Court and court procedures" Legal Journal, Journal of the International Center for Law, Justice and Parliamentary Affairs Vice Presidency. No. 36, p. 17.

Alexander K. A. Greenawalt,(1999). Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation, Columbia Law Journal, vol 99, pp 2259 – 2294.

Ardabili; Mohammad Ali(1387), International criminal law, Tehran, Fourth Edition Mizan publication.

Azizi Sattar (1386), elements of the crime of genocide vote on February 26, 2007.

Beygzadeh, E. (1376), Evaluation of genocide and crimes against humanity in the Statute of the International Criminal Court, the Journal of Legal Studies, No21-22, pp. 97.

Biru Allen (Be ta) cultural, social sciences dictionary, translation: sarookhani B. (1375) , Third Edition, Tehran, keyhan Publication.

Christine Lee Philip. Overview of the International Criminal Court, translation: Ali Ghasemi (1383). Journal of the Faculty of Law of Judicial and Administrative Services. No. 22 and 23.

Claus Krieb. *The International Court of Justice and the Elements of the Crime of Genocide: The European Journal of International Law Vol. 18 no. 4. (2007).P624.*

Hans H. Jescheck.(2004).The General Principles of International Criminal Law as Mirrored in the ICC Statute, Journal of International Criminal Justice, vol 2, pp 38 – 55.

Hosseini, Seyed Jafar (1391), with special attention to the study of genocide, crimes taking place in Bahrain, in the Persian date Esfand 92 available in <http://www.hvm.ir/print.asp?id=34314>.

Mir Mohammad Sadeghi, Hossein (1377), International Criminal Law "Proceedings" First edition, Tehran: Mizan publication.

Mir Mohammad Sadeghi, Hossein (1390), the genocide has universal jurisdiction but genocide denial not. Tehran, Shahid Beheshti University.

Nersessian, David.(2002). The Contours of Genocidal Intent: Troubling Jurisprudence from the International Criminal Tribunals, Texas International Law Journal,vol 37, pp 231 – 298.

Prosecutor v. Krstic , s upra note 10, at para. 26.

Prosecutor V. Akayesu Jean-Paul, ICTR (Trial Chamber) Judgment of 2 September 1998.

Prosecutor v. Krstic , s upra note 10, at para. 15.

Prosecutor v. Krstic , supra note 13, at para. 580.

Rafael Lemkin, Axis rule in occupied Europe: laws of occupation, analysis of government, proposals for redress, Washington: Carnegie Endowment for World Peace, 1944.(available at <http://www.mehrnameh.ir/article/31101> ) Esfand 1393.

Shariat Bagheri, MJ (1387), "genocide and crimes against humanity", a study, 2, Tehran: Center for Strategic Research.

Shariat Bagheri, MJ (1387), "International Criminal Law", Tehran, ninth edition, Jangal publication p. 46.