

Genocide

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الملخص:

تعد جريمة الإبادة الجماعية أخطر الجرائم على الإطلاق لما تحدثه من آثار على الإنسانية وتهدف هذه الدراسة إلى محاولة تسليط الضوء على ممارسات الكيان الصهيوني ومطابقته مع التجريم الدولي للأفعال التي يرتكبها ضد الشعب الفلسطيني وتعريضة عدم الالتزام بالاتفاقيات والمعاهدات والمواثيق الدولية وكذا الوقوف على السكوت الدولي والعربي بالخصوص وعدم تدخل الهيئات المعتمدة للتدخل في حالة تعريض الأمن والسلم الدوليين للتهديد على غرار المحكمة الجنائية الدولية رغم الوسائل القانونية المتاحة. **الكلمات المفتاحية:** فلسطين؛ جريمة الإبادة الجماعية؛ التطهير العرقي؛ الجرائم ضد الإنسانية؛ المحكمة الجنائية الدولية؛ الكيان الصهيوني؛ التطبيع.

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.

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Introduction:

International crimes existing a good sized mission to the world, as they are a core thing of global crook regulation with far-reaching penalties for humanity. These crimes can be influenced with the aid of non secular beliefs, ethnic affiliations, or political aims, all of which are looking for to damage humanity and frequently lead to the extermination of unique groups. Historically, such acts grew to become especially mentioned at some point of World War II, incomes the designation of the "crime of crimes".

The time period "genocide,"¹ corresponding to the French time period "genocide," emerged to describe the Nazi atrocities towards the Jews of Europe in the course of World War II. The United Nations identified this time period in 1946, defining it as "the fee of acts aimed at the complete or partial destruction of a crew based totally on nationality, ethnicity, race, or religion."

Among the most infamous situations of genocide are the ethnic cleaning in Rwanda, the Sabra and Shatila massacre, and the ongoing violence towards Palestinians considering October 7, 2023, perpetrated by way of the occupying Israeli entity.

The United Nations has labeled genocide as an global crime beneath the 1948² Convention, defining it as "a systematic coverage of equipped mass killings Carried out with.

the aid of a authorities or unique team towards a neighborhood primarily based on religious, ethnic, national, or political grounds." However, this conference faces sizable challenges in its implementation, in particular regarding worldwide will.

This paper goals to spotlight these challenges in mild of the modern worldwide panorama involving the warfare on Palestinians and the genocide perpetrated towards them by way of the Israeli entity, alongside the silence of the global neighborhood and the lack of activation of worldwide provisions regardless of the achievement of the requisite factors of these crimes.

¹ (-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.

²- 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.

Chapter One: The Nature of the Crime of Genocide

The crime of genocide is one of the most heinous crimes towards humanity, given the violations it entails in opposition to the lives of individuals, regardless of their number, as nicely as their rights and freedoms.

The global neighborhood may want to no longer stay silent in the face of such atrocities, prompting the institution of global agreements aimed at stopping and punishing acts of genocide, the most sizable of which is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Section One: The Legal Definition of Genocide

Many pupils have addressed the definition of genocide. Among them, Antonio Plonzer, in his e book titled *Le Crime de Genocide*, described it as a violation of necessary human rights. The rights violated by means of genocide consist of the proper to life, the proper to bodily and mental integrity, the proper to non-public freedom, and the proper to structure a family. It embodies a rejection of the collective proper of humanity to exist with the aid of violating person imperative rights¹.

Similarly, prison student Donnedieu de Vabres characterised genocide as "an assault on life, health, and bodily integrity thru acts such as compelled abortions, sterilization of children, and assaults on lifestyle and nationality." This view aligns with that of Swiss student Graven, who summarized genocide as "the denial of the proper of human organizations to exist, countering the act of murder, which denies the proper of the man or woman to survive."

Section Two: The Legal Framework of Genocide

The 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide offers a felony definition in Article 2, describing genocide as unique acts dedicated with the intent to destroy, in complete or in part, a national, ethnic, racial, or non secular group. The acts listed in Article two encompass:²

1. Killing individuals of the group.
2. Causing serious bodily or intellectual damage to contributors of the group.
3. Deliberately inflicting residing stipulations meant to carry about the

¹ - Aouina Samira - The crime of genocide in international jurisprudence - A memorandum submitted to obtain a master's degree - Hajj Lakhdar University - Batna 2012-2013, pp. 25 and 26.

² - The Rome Statute of the International Criminal Court, adopted in Rome, Italy on 07/17/1998

group's bodily destruction, in entire or in part.

4. Imposing measures aimed at stopping births inside the group.
5. Forcibly transferring teens of the team to some other group.

Notably, the crook regulation framework specifies these acts exhaustively, which can also lead to challenges in prosecuting movements that yield comparable penalties however are no longer explicitly listed. Furthermore, the felony requirement to show intent in genocide complicates matters, as organising the integral intent to commit genocide can be specially challenging.

The International Criminal Court (ICC) adopted the factors of hostilities crimes identified by means of the Assembly of States Parties to the Rome Statute for the duration of its first session held from September three to 10, 2002, in New York, USA. According to Article 6 of the Rome Statute, genocide is described as "any of the following acts dedicated with intent to destroy, in total or in part, a national, ethnical, racial, or spiritual crew as such":

- a) Killing contributors of the group.
- b) Causing serious bodily or intellectual damage to participants of the group.
- c) Deliberately inflicting residing prerequisites meant to convey about the group's destruction.
- d) Imposing measures aimed at stopping births inside the group.
- e) Forcibly transferring youngsters of the crew to every other group.

A criticism of this definition, comparable to that of Article two of the 1948 Convention, lies in its use of the time period "total or partial destruction" and the classification of humanity primarily based on racial, ethnic, and non secular strains¹.

This classification, in our view, stays incomplete and ambiguous.

In mild of these definitions, they can be applied to the movements carried out via Israel towards the Palestinian people, which show up every day in reality. The Israeli entity, below its management and with the complicity of quite a few nations, commits acts of genocide in opposition to the Palestinian human beings in all their forms. The occupying entity targets to get rid of the Palestinian people, encompassing each Muslims and Christians, as this fighting seeks to eradicate their existence. Thus, the battle waged via the Zionists in opposition to the Palestinians can

¹ - Linda Muammar Yashwi - The Permanent International Criminal Court and its jurisdictions, first edition - Dar Al-Thaqafa for Publishing and Distribution - Jordan 2020, p. 185

be categorized as a racially and religiously prompted conflict.

A file posted on ReliefWeb, dated November 18, 2023, labeled the moves of the Israeli occupying forces towards the Palestinians considering the fact that the opening of the "Al-Aqsa Flood" on October 7, 2023, as acts of genocide. The range of Palestinian martyrs has passed 20,000, the majority of whom are youngsters and women, whilst over 7,000 humans have long past missing, and about 52,000 others have been injured.¹

Chapter Two: Characteristics of Genocide

Genocide is characterised by means of a number of elements that differentiate it from different crimes that might also share positive factors of similarity.

Section One: Genocide as an International Crime

One of the most great traits of genocide is its global nature. International crimes are described as illegal human habits bobbing up from a crook intent, dedicated by using an man or woman on behalf of a nation or with its consent, and involving a violation of an worldwide activity blanketed via crook regulation².

The United Nations Convention acknowledges the global nature of genocide in its preamble, declaring that "genocide is a crime beneath global regulation that is opposite to the spirit and ambitions of the United Nations." Article 1 of the identical conference affirms that "genocide, whether or not dedicated in time of peace or in war, is a crime below worldwide law, and that the events undertake to stop and punish it."

The worldwide personality of genocide is derived from the nature of the imperative rights being violated, as one of the foremost goals of the global felony device is to defend humanity and protect it from any shape of aggression. Consequently, the Rome Statute, especially Articles five and 6, considers genocide to be an global crime that poses a serious hazard to the global community.

Article five in particular states, "The jurisdiction of the Court shall be restricted to the most serious crimes of challenge to the global neighborhood as a whole,

¹) Euro-Med Monitor « twenty thousand palestinians believed to be killed in israel's genocide of Gaza « Reliefweb 26/12/2023

² (Ayman Abdel Aziz Salama - Responsibility for committing the crime of genocide - Dar Al-Ulum, Cairo - 2006, p. 26

⁸ (Abdel Fattah Bayoumi Hegazy - International Criminal Court - Dar Al-Fikr University - Alexandria - 2004 - p. 329

and amongst these crimes is genocide." International jurisprudence has additionally diagnosed the global personality of genocide.

The International Court of Justice, in its advisory opinion related to states' reservations to the UN Convention on the Prevention and Punishment of the Crime of Genocide in 1951, affirmed that fundamental humanitarian issues are phase of the everyday ideas of law, and that the ideas enshrined in the Genocide Convention are binding guidelines for states, even barring contractual obligations.

These ideas are imposed on the global community.

Furthermore, the International Court of Justice's ruling in the Barcelona Traction case set up that the prohibition of genocide is an responsibility owed erga omnes, which means that all states have a criminal activity in its enforcement due to the magnitude of the violated rights¹.

Section Two: Criminal Responsibility of Individuals for Genocide

Article four of the UN Convention on the Prevention and Punishment of the Crime of Genocide states that all people who commits genocide shall be punished, regardless of their status, whether or not they are a leader, an official, or an everyday person.

Similarly, Article 6 of the equal conference mandates the prosecution of folks charged with genocide. A exceptional instance is the ruling of the International Criminal Tribunal for Rwanda related to Jean Paul Akayesu, who used to be convicted for committing acts of genocide whilst serving as the mayor of a Rwandan commune. The courtroom emphasised that no immunity or professional potential can shield an man or woman accused of committing an global crime².

Section Three: Genocide as a Non-Political Crime

Given the severity of the acts constituting genocide, it is no longer exempt from extradition, not like political crimes.

Political crimes are described as these that threaten the political gadget of a kingdom and may additionally endanger its inside safety³.

Extradition refers to a state's give up of an man or

¹ () Ayman Abdel Aziz Muhammad Salama - previous reference - p. 28

² (Mohamed Hisham - The role of in combating international crime - A thesis submitted to obtain a doctoral degree - Faculty of Law and Political Science, Mohamed Kheidar University - Biskra, Algeria 2013-2014, p. 113

³ (Awaina Samira - previous reference, p. 29

woman determined inside its territory to some other country at the request of that kingdom for prosecution of a legally punishable crime or for the execution of a judgment issued with the aid of its judicial authorities. If genocide had been categorized as a political crime, it would restrict the accountability of perpetrators who would possibly invoke the precept of non-extradition. Hence, global regulation does no longer classify genocide as a political crime, permitting for the extradition of humans charged with it.

Section Four: Specifics of Prosecution and Punishment for Genocide

The prosecution and punishment for genocide fall beneath each home and worldwide jurisdictions. The drafters of the Convention on the Prevention of Genocide emphasised that member states ought to criminalize such acts in their home legal guidelines to stop impunity for perpetrators.

This is specially imperative considering home courts traditionally had jurisdiction over person crook duty for genocide earlier than the institution of the International Criminal Court¹.

Chapter Three: Distinguishing Genocide from Other Similar Crimes

There are crimes that share sure factual and structural similarities with genocide; however, there are essential distinctions that ought to be highlighted as follows:

Section A: Genocide vs. Ethnic Cleansing

Ethnic cleaning refers to tries to create ethnically homogeneous geographic areas thru the compelled elimination or displacement of persons belonging to particular ethnic groups. This frequently entails the systematic destruction of bodily remnants of these groups, together with locations of worship and burial sites, as described through the United Nations².

Professor Mario Bittati defines ethnic cleaning as "the domination of a controlling team over different ethnic agencies in a region." The U.S. Department of State supplied a definition in 1999, describing it as the systematic elimination of participants of an ethnic team from one or greater communities to alter the ethnic composition of a given area. From evaluating the definitions of ethnic cleaning and genocide, it is clear that the big difference lies in the intent in the back of every crime. While genocide encompasses

¹ (Elham Muhammad Al-Aqel - The Principle of Non-Extradition of Criminals in Political Crimes - First Edition 1993, p. 175

² (Awaina Samira - previous reference - p. 30

ethnic cleansing, the acts of genocide are now not restricted to a precise territory, whereas ethnic cleaning is described with the aid of a unique geographic area. A high instance is the moves of the Nazi Germans all through World War II, who focused Jews globally, no longer simply inside Germany. This state of affairs qualifies as genocide in accordance to the 1948 UN Convention¹.

Section B: Genocide vs. Crimes Against Humanity

Crimes towards humanity, in accordance to Article 7 of the Rome Statute, consist of 4 quintessential elements: a felony groundwork that exactly describes the acts and prescribes penalties; an global aspect that requires the acts to be section of a state-sanctioned plan; a cloth issue list movements constituting the crime; and a intellectual element, which requires intent.

The fabric component, as unique in Article 7 of the Rome Statute, consists of moves such as:

1. Intentional killing.
2. Genocide.
3. Enslavement.
4. Forced populace displacement or transfer.
5. Imprisonment and violation of bodily integrity opposite to global law.
6. Torture.
7. Rape, sexual slavery, enforced prostitution, pressured pregnancy, compelled sterilization, or any different shape of sexual violence.
8. Persecution.
9. Enforced disappearance of persons.
10. Apartheid.
11. Other inhumane acts².

¹ (Awaina Samira - previous reference, p. 36

² (Sadara Muhammad - Distinguishing between the crime of genocide and crimes against humanity in international law - Article - Algerian Journal of Legal, Economic and Political Sciences - Part 45, Issue 1, dated 01/15/2008, pp. 254-255

To set up a crime in opposition to humanity, it suffices to show commonplace crook intent, which includes information and willingness. A easy examination of these factors exhibits that Israel has perpetrated every of these acts in opposition to Palestinians, each traditionally given that the commencing of its occupation and presently via killings, displacements, imprisonment, and torture.

The big difference between genocide and crimes in opposition to humanity lies in the center of attention of every crime. Genocide pursues the entire or partial destruction of national, ethnic, racial, or spiritual groups, whilst crimes towards humanity purpose at civilian populations extra broadly. This difference highlights the ongoing Israeli-Palestinian conflict, the place the Israeli occupation pursues to remove resistance through committing provocative crimes that violate worldwide norms.

Additionally, the distinction is additionally located in the intellectual component required for every crime.

Genocide necessitates precise intent to damage a precise group, whilst proving that victims are civilians is ample for a crime in opposition to humanity.

Chapter four: Mechanisms for Prevention and Prosecution of Genocide

The crook accountability that arises from committing an act legally described as a crime respects the precept of legality, a precept that applies to each global and home crimes. However, the distinction lies in the supply of criminalization; in global law, this is especially based totally on typical regulation due to the absence of a typical legislative authority. The adoption of the Rome Statute for the International Criminal Court (ICC) in 1998, which got here into pressure in 2002, has clarified and described crimes and their respective penalties¹.

International accountability can be categorised primarily based on the man or woman or entity that commits the worldwide crime, main to civil or crook worldwide responsibility. The focal point right here is on crook worldwide responsibility, which arises when an character violates global law, necessitating accountability and splendid punishment.

Given that genocide is an global crime, these responsible, whether or not humans or states, have to be held accountable. Therefore, it is imperative to

¹ (Hisham Abbas Al-Saadi: The individual's criminal responsibility for international crime - University Press House - Alexandria 2002, p. 44

distinguish between the crook accountability of states and that of individuals, as properly as conditions the place each may additionally be involved. To forestall genocide, positive measures and mechanisms should be hooked up to curb its unfold and guard human rights.

This includes worldwide intervention to halt the crime, promote justice, fight impunity, and make sure accountability for these worried in genocidal acts.

The position of media, non-governmental organizations, and civil society is integral in revealing violations and stopping genocide and different heinous crimes. The concentrated on of Palestinian journalists and NGO participants by using Israeli forces exemplifies the vast position of media in exposing perpetrators of genocide and human rights abuses.

International cooperation is additionally critical, necessitating agreements and treaties centered on stopping genocide and making sure the safety of human rights, alongside with the dedication to uphold these obligations. However, the contemporary reality—especially concerning the blatant violations taking place in occupied Palestine—demonstrates a lack of motion from the worldwide community. Some countries have even exercised veto strength or voted towards resolutions to halt the violence in Gaza, together with some Arab and Islamic states¹.

Furthermore, normalizing family members with Israel and acknowledging its existence as a prison and political entity has confined responses to the war and undermined global regulation and agreements.

The lack of binding nature in treaties affords a big impediment to preserving perpetrators of genocide guilty earlier than the ICC, whose predominant position is to prosecute these responsible of genocide, hostilities crimes, and crimes towards humanity.

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

The ICC goals to uphold human rights, promote global justice, deter worldwide crimes, and enhance global governance via prosecuting and punishing states and humans worried in genocide. Thus, it serves as a key instrument

¹ (Mr. Mustafa Ahmed Abu Al-Khair - General Principles in Contemporary International Law - First Edition - Etrak Publishing and Distribution - Cairo 2006, p. 342

in accomplishing global justice and defending human rights¹.

Section 2: Procedures for Accessing the International Criminal Court

Accessing the ICC entails more than one ranges ruled by way of procedural regulations accredited by way of a two-thirds majority of the Assembly of States Parties, as outlined in Articles fifty one and fifty two of the ICC's Statute. The procédures Can be divided into pre-trial strategies and these relevant all through the trial².

Pre-trial techniques start with Article five of the ICC Statute, which approves the prosecutor to check out records concerning plausible genocide or different crimes inside the court's jurisdiction, whether or not thru referrals from nation events as per Article 14, via the UN Security Council when global peace and safety are threatened, or at the prosecutor's very own initiative upon turning into conscious of such crimes.

Trial techniques begin after the prosecutor has accomplished investigations and refers suspects to the court's Trial Chamber, which is accountable for conducting the trial and issuing judgments, with an Appeals Chamber handy for appeals in opposition to the Trial Chamber's selections³.

However, the actuality does no longer wholly align with the standards documented in treaties and the ICC Statute. A top instance is the lack of prosecution towards Israel and its leaders for egregious violations towards the unarmed Palestinian population, notwithstanding proof of acts constituting genocide. The prosecutor has been made conscious of these violations via great media coverage, but the ICC has now not acted, regardless of calls for accountability from more than a few countries, together with South Africa and Algeria. It is essential that the referral comes from states that declare to uphold democracy and human rights or from the prosecutor themselves, as the regulation lets in motion upon gaining understanding of human rights violations threatening worldwide peace and security.

¹ (Muhammad Aziz Shukri - International Humanitarian Law and the International Criminal Court - research published in the book "International Humanitarian Law - Horizons and Challenges -" Part Three - Al-Halabi Legal Publications - Beirut, Lebanon 2005, p. 134

² (Louay Muhammad Hussein Al-Nayef - The complementary relationship between the International Criminal Court and the criminal justice - Damascus University Journal of Economic and Legal Sciences - Volume 27 - Issue Three - Damascus University, Department of International Law, Faculty of Law, 2011, p. 534

³ (Mukhallat Belkacem - Trial of war crimes perpetrators before the International Criminal Court - Doctoral dissertation - Faculty of Law and Political Science, Abi Bakr Belkaid University - Tlemcen 2014-2015, p. 260

Conclusion:

In conclusion, the existence of treaties, agreements, and establishments aimed at retaining worldwide peace and protection and defending human rights frequently applies selectively, penalizing.

the susceptible whilst permitting the effective to get away accountability.

The lack of binding enforcement undermines the criminal fee of these agreements. Furthermore, the diplomatic normalization with Israel by means of some Arab and Islamic international locations has silenced their leaders, rendering them blind to the day by day horrific human rights violations inflicted upon Palestinians.

References :

- 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.
- Algeria ratified the Convention on the Prevention and Punishment of the Crime of Genocide on 12/09/1948 and it entered into force on 07/26/1987.
- - The Rome Statute of the International Criminal Court, adopted in Rome, Italy on 07/17/1998
- Linda Muammar Yashwi - The Permanent International Criminal Court and its jurisdictions, first edition - Dar Al-Thaqafa for Publishing and Distribution - Jordan 2020
- Ayman Abdel Aziz Salama - Responsibility for committing the crime of genocide - Dar Al-Ulum, Cairo - 2006
- Abdel Fattah Bayoumi Hegazy - International Criminal Court - Dar Al-Fikr University - Alexandria - 2004
- Fareeja Muhammad Hisham - The role of the international criminal judiciary in combating international crime - A thesis submitted to obtain a doctoral degree - Faculty of Law and Political Science, Mohamed Kheidar University - Biskra, Algeria 2013-2014

- Elham Muhammad Al-Aqel - The principle of non-extradition of criminals in political crimes - first edition 1993

- Sadara Muhammad - The distinction between the crime of genocide and crimes against humanity in international law - Article - Algerian Journal of Legal, Economic and Political Sciences - Part 45, Issue 1, issued on 01/15/2008

- Hisham Abbas Al-Saadi: The individual's criminal responsibility for international crime - University Press House - Alexandria 2002

- Mr. Mustafa Ahmed Abu Al-Khair - General Principles in Contemporary International Law - First Edition - Etrak Publishing and Distribution - Cairo 2006

- Muhammad Aziz Shukri - International Humanitarian Law and the International Criminal Court - research published in the book "International Humanitarian Law - Prospects and Challenges -" Part Three - Al-Halabi Legal Publications - Beirut, Lebanon 2005

- Louay Muhammad Hussein Al-Nayef - The complementary relationship between the International Criminal Court and the criminal justice - Damascus University Journal of Economic and Legal Sciences - Volume 27 - Third Issue - Damascus University, Department of International Law, Faculty of Law 2011

- Mukhallat Belkacem - Trial of perpetrators of war crimes before the International Criminal Court - Doctoral thesis - Faculty of Law and Political Science, Abi Bakr Belkaid University - Tlemcen 2014-2015

- Euro-Med Monitor « twenty thousand palestinians believed to be killed in israel's genocide of Gaza » Reliefweb 26/12/2023