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**INTERNATIONAL EVOLUTION OF THE CRIME OF GENOCIDE**- Malika Jain<sup>1</sup>**ABSTRACT**

Genocide is the killing of an entire race. It is a planned, organized & widespread attack on the members of a particular national, ethnic, racial or religious group with the intent to destroy the group entirely. The crime is called the crime of the crimes because of its ghastly effect. Its evolution as an international crime has taken place gradually and in a phased manner. The incidents of World War II are landmark in the evolution of the crime of Genocide as it led the world to recognize it. Further, the Genocide Convention, 1948 was the culmination of the international efforts to curb and prevent the awful crime from being repeated. However, due to subsequent incidents of Genocide, there was need of further re-establishment of the intent of the international community to discard it completely, which was fulfilled by the penalisation of this crime in the charters created for the hybrid tribunals of Yugoslavia and Rwanda. Unfortunately, even presently, instances of Genocides are reported which question the development of this crime and its outcome. Therefore, this article discusses all the major phases of the development process of Genocide with instances, both historical and present, to explain the concept of genocide and its growth as formalized crime against humanity and the present situation thereof.

**Keywords: Genocide, Genocide Convention 1948, World War**

**1. INTRODUCTION**

War crimes and Genocide are as old as history itself. There have been several instances in the human history where attacks have been launched against a particular group with a distinct racial, religious or national identity. The world history testifies about genocides being committed in different parts of the world time and again. The International Criminal law, as has grown to date, punishes genocide and attaches a specific stigma to it. The present study delves into the evolution of the crime of Genocide and the instances thereof.

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## 2. MEANING OF GENOCIDE

The term “genocide” owes its existence to Raphael Lemkin, a Polish-Jewish lawyer, in 1944 in his book ‘Axis Rule in Occupied Europe’.<sup>2</sup> The term comes from the Greek word ‘genos’ which means ‘race’ and the Latin word ‘cide’ which means ‘killing’. The killing of an entire race is Genocide. It is also called as a crime of the crimes. It is used to describe violence against members of a national, ethnic, racial or religious group with the intent to destroy the entire group. It was recognized as a crime under the international law for the first time in 1946 by the United Nations General Assembly via Resolution No. A/RES/96-I.<sup>3</sup>

The term came into general usage after World War II, i.e. when the infamous genocide of German Jews took place at the hands of the Nazis. When a racial, religious, ethnic or national group is assaulted in a systematic and widespread manner with the intent to destroy that group or exterminate its identity completely, it is Genocide. The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime must be committed with the ‘intention’ of wiping out a national ethnic, racial or religious group, either wholly or partially.<sup>4</sup>

It is pertinent to note that not only killing of the group members is a mode of genocide but also rape, sexual assaults, forced population control measures and other such ways if used to delete a particular group would equally amount to genocide. The underlying principle for criminalizing genocide is that the world must preserve its diverse cultures and intellectual verve created and contributed to by every distinct group. Thus, the destruction of any racial, religious, ethnic or national group would entail the loss of the future creations & contributions to the world heritage.<sup>5</sup> Criminalization of Genocide purports to check both extermination & attempted extermination of the groups.<sup>6</sup>

## 3. INSTANCES & EVOLUTION OF THE CRIME OF GENOCIDE

### 3.1 World War I (1914- 1918):

In World War I, genocide occurred in Turkey which mostly went unnoticed or deliberately overlooked. After Armenia was assimilated into the Ottoman Empire, which was mostly

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<sup>2</sup>Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

<sup>3</sup>Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

<sup>4</sup> Prosecutor v. Kambanda, Judgment and Sentence, ICTR-97-23-S (1998).

<sup>5</sup> CLAUS Kreß, The Crime of Genocide under International Law, International Criminal Law Review (2006), <https://www.legal-tools.org/doc/8799cd/pdf/>.

<sup>6</sup> Prosecutor v. Akayesu, ICTR-96.4.T, Judgment (1998).

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occupied by Muslims, the empire in Turkey became a medley of Muslim-Christian population. During the World War I, Turkey took part in the war in 1918 from the side of Germany. At the same time, the Turkish leaders were skeptical that if the Armenians would come to know about the victorious position of the Allies, which were mostly Christian States, they would rebel against the Turkish regime. Thus, to curb the Armenians' ambitions of independence, the Turkish Government ordered an unrestricted slaughter of the Armenians. They were killed, raped, converted into Islam and robbed of their properties.<sup>7</sup>

This massacre of the Armenians in Turkey amounted to genocide (as it now means) as it was targeted at a particular group on the basis of its religion & nationality. Although this instance did not contribute much to the evolution of the crime, as the Turkish leaders were granted amnesty at the end of the war<sup>8</sup>, it serves as a background of the understanding of the heinous crime. In this case, genocide was called "a crime without name" by Winston Churchill as no formal legal recognition was accorded thereto till that time.<sup>9</sup>

### **3.2 World War II (1939- 1945):**

The Genocide of the World War II is landmark in the evolution of this crime. It is well established that the Nazi regime committed all sorts of atrocities against the German Jews with the sole intent to vanish their identity and existence wholly. In this extermination, about eight million Jews were killed. They were systematically cleansed from the German territory. The very notorious Concentration Camps used to be organized to kill the Jewish population.

These mass killings of the Jews led the world to recognize the crime of Genocide; thanks to the efforts of Raphael Lemkin, who himself was the survivor of the Nazi atrocities & also largely impacted by the Armenian genocide.<sup>10</sup>

### **3.3 Charter of International Military Tribunal (1945):**

The Charter of International Military Tribunal ("Nuremberg Charter") was formulated by the London Agreement in 1945 to prosecute the war criminals of the Nazi Party who were responsible for several horrendous crimes during the war. The Nuremberg Charter, in its Article 6, clearly prescribes the categories of crimes that it dealt with, i.e. Crimes against Peace, War

<sup>7</sup> Ronald GrigorSuny, Armenian Genocide, Britannica, <https://www.britannica.com/event/Armenian-Genocide>.

<sup>8</sup> Ronald GrigorSuny, Armenian Genocide, Britannica, <https://www.britannica.com/event/Armenian-Genocide>.

<sup>9</sup> CLAUS Kreß, The Crime of Genocide under International Law, International Criminal Law Review (2006), <https://www.legal-tools.org/doc/8799cd/pdf/>.

<sup>10</sup> Facing History and Ourselves, Raphael Lemkin and the Genocide Convention, Facing History and Ourselves, <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-11/raphael-lemkin-and-genocide-convention>.

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crimes and Crimes against Humanity. Genocide was not included as a category of crime under the Nuremberg Charter. The reason for the same is that there was no codification of the crime of genocide as an independent crime at the time of the Nuremberg Charter, in 1945.

Nevertheless, the term was used in the indictments, but only as a descriptive and not legal term. Also, the Nuremberg Charter included in Article 6, Crimes against Humanity, which included killing on racial, religious or political grounds and also inhumane & brutal acts committed against civilians (which covered genocide in essence).<sup>11</sup>

However, the judgments delivered by the International Military Tribunal, Nuremberg, drew flak as they were only concerned with the wartime genocide and excluded the peacetime genocide-like atrocities committed against the Jews in Germany (like the recent peacetime mistreatment of Uyghur Muslims in China) and, it was this drawback of the International Military Tribunal that prompted the initial initiatives to codify the crime of genocide in the form of a separate & dedicated convention.<sup>12</sup>

### **3.4 Genocide Convention of 1948:**

It was only by the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (“Genocide Convention”) that the term formally came into being. It came into force on January 12, 1951. This Convention is the culmination of the international efforts to curb and prevent the awful crime from being repeated. As per the International Court of Justice, the principles of the Genocide Convention are part of the customary international law and so, irrespective of the ratification of the Convention by the States, they are bound by its principle that genocide is proscribed by the international law.<sup>13</sup>

The Genocide Convention effectively covers up the pitfalls of the Nuremberg Charter. The Convention, under Article I, contains that the crime of genocide may not only take place in an armed conflict, international or non-international, but also in peaceful situations. It obligates the State parties to prevent and to punish the crime of genocide.

The Convention defines Genocide in its Article II. On the basis of the said definition, there can be following elements of the crime of Genocide:

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<sup>11</sup>Genocide, History (Aug. 21, 2018), <https://www.history.com/topics/holocaust/what-is-genocide>.

<sup>12</sup> William A. Schabas, Origins of the Genocide Convention: From Nuremberg to Paris, Case Western Reserve Journal of International Law (2007), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1273&context=jil>.

<sup>13</sup>Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

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1. **Intent:** The definition has a main element of intent, like the domestic criminal laws. It states that there should be the intent to eliminate a distinct group either wholly or partially. It requires a specific intent. This intent refers to the existence of a systematic plan or policy to exterminate a group.<sup>14</sup> The fact that the act of genocide is executed 'systematically', 'orderly' and in an 'organized manner' speaks of the intent to destroy a national, ethnical, racial or religious group.
2. **Physical act:** Next is the physical element or the act of genocide which can be any one of the five acts as mentioned-above in the definition. However, some other acts like rape or sexual assaults have also been accepted as the modes of committing Genocide as in the case of Rwandan Genocide.<sup>15</sup>
3. **Planned Target:** The target of the genocide is not selected randomly but carefully in a planned manner so that it is launched specifically against the group of any particular race, religion, nationality etc. It has to be an identifiable group. Genocide is a crime against a particular race, religion, nationality or ethnicity, so the target or victims thereof are deliberately selected.<sup>16</sup>
4. **Extent and impact:** It is a widespread crime which is so severe and traumatic so as to exterminate a particular group from a region altogether. Merely killing a number of people from the same background will not constitute genocide. It has to be large scale and massive.

Thus, the crime of genocide could be formalized in the form of a convention. The definition is not exhaustive and scope is left for the courts or tribunals to extend the meaning thereof and bring to justice the perpetrators of the crime.

However, the sad part is that even after a Convention prohibiting genocide is brought, there has not been much change and genocides continue to be perpetrated even after it from time to time in diverse forms.

#### 4. POST GENOCIDE CONVENTION

The Genocide Convention of 1948 inspired the definition of Genocide in the Rome Statute of the International Criminal Court (Article 6), as well as in the statutes of other international and

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<sup>14</sup>Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

<sup>15</sup>Outreach Programme on the 1994 Genocide Against the Tutsi in Rwanda and the United Nations, United Nations, <https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml>.

<sup>16</sup>Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml>.

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hybrid jurisdictions like that of International Criminal Tribunal for the Former Yugoslavia (“ICTY”) (Article 4) & International Criminal Tribunal for Rwanda (“ICTR”) (Article 2). The statutes of ICTY & ICTR are important regarding the criminalization of Genocide as they not only penalized it in books but also applied the prohibition in reality to penalize its perpetrators in Yugoslavia and Rwanda respectively.

#### **4.1 Genocide under ICTY Statute (1993) :**

Article 4 of the ICTY Statute contains which acts will constitute and will be punishable as Genocide. It incorporates Articles 2 and 3 of the Genocide Convention 1948.<sup>17</sup> Article 4(2) of the ICTY Statute employs the same language as the Genocide Convention to specify different modes by which genocide can be committed, which were in fact adopted by the Serbs against the other groups in the Yugoslavian war. The ICTY statute also prohibits the conspiracy to commit genocide, incitement thereof, complicity in & attempt to commit genocide.<sup>18</sup>

In the case of the Yugoslavian war, it was the Serbs who committed genocide against the other ethnic groups. The Bosnian Muslims and Bosnian Croats were persecuted on national, political and religious grounds.

#### **4.2 Genocide under ICTR Statute (1995):**

Article 2 of the ICTR Statute contains the crime of Genocide exactly in the same manner as is contained in ICTY Statute. The war in Rwanda was between the Hutus, the majority population, and the Tutsis, the minority population and was so intensive and heinous that around 8,00,000 people were murdered by one majority community of the other in 100 days<sup>19</sup>, which clearly amounted to Genocide.

In 1998, the ICTR convicted Jean-Paul Akayesu, former mayor of Taba, of genocide - the first ever genocide conviction by an international court.<sup>20</sup> The role of the UN was highly criticized in the Rwandan Genocide as it remained a helpless and silent spectator thereof.

## **5. CURRENT SCENARIO**

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<sup>17</sup> Mandate and Crimes under ICTY Jurisdiction, United Nations International Criminal Tribunal for the former Yugoslavia, <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>.

<sup>18</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia, § 4(3) (1993).

<sup>19</sup> Rwandan Genocide, History (Sep 30, 2019), <https://www.history.com/topics/africa/rwandan-genocide>.

<sup>20</sup> Outreach Programme on the 1994 Genocide Against the Tutsi in Rwanda and the United Nations, United Nations, <https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml>.

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After these landmark cases of Genocide in Yugoslavia and Rwanda, there has not been a case of Genocide in the present times as violent, typical and apparent. However, time and again, allegations have been leveled against certain states of committing Genocide surreptitiously. Like the very recent instance of alleged atrocities against Uyghur Muslims in China.

### **Apprehension of Genocide in China:**

Recently in 2021, there were apprehensions and accusations that China was committing Genocide-like activities against the Uyghur Muslim community in Xinjiang. Reportedly, China was suppressing this community through illegal detentions, forced labour and coercive population control measures in this community. The ground of this oppression was alleged to be that this community is not of the 'Chinese orientation'.<sup>21</sup>

Presently, the matter has subsided and is not in much limelight; however it represents a major flaw of the international law that it is not effective regarding the enforcement of its instruments. Despite the prohibition on Genocide being a part of certain immutable principles of International law (Jus Cogens), it stands powerless in front of State sovereignty which is a major roadblock in its enforcement. This is the reason that though several countries criticized China on this matter, nothing substantial could be done to verify the claims and check the atrocities if they so prevailed.

## **6. CONCLUSION**

Therefore, it can be concluded that Genocide is a dreadful crime which is instigated by political aims and baseless sense of superiority over the others. Although, the crime is formalized and has been included as a part of the International Criminal Law, it only remains as a punitive measure for what has already happened and does not prevent its repetition. The present legal framework for the same lacks efficiency in preventing the crime and the drawbacks of the weak enforceability of the international law continue to pose hurdles in its way. The evolution of Genocide as a separate crime has, nevertheless, made the process easier as the principles are already well established and they are simply being refined and evolved with time.

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<sup>21</sup>Who are the Uyghurs and why is China being accused of genocide?, BBC (June 21, 2021), <https://www.bbc.com/news/world-asia-china-22278037>.

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