

# Characteristics of The Crime of Genocide in An International Criminal Law Perspective

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## Abstract:

The crime of genocide, characterized by the systematic extermination of an ethnic or cultural group, is intrinsically linked to the persecution of political entities, which often complicates the identification of affected groups and poses significant challenges to international relations. Recognized as an extraordinary criminal offense in the realm of international criminal law, genocide has been unequivocally condemned and prohibited, as articulated in important legal frameworks such as the 1948 Genocide Convention, the statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Rwanda (ICTR), as well as Rome Statute 1998. This study uses normative legal research methodology, which draws on primary legal materials, including regulations and related documents, to conduct a comprehensive qualitative analysis. To answer the research questions effectively, we use a combination of conceptual, statutory, and case law approaches, each of which contributes to a comprehensive understanding of the topic at hand. The research results state that the essence of genocide is summarized in several tragic acts: the deliberate taking of the lives of members of a particular group, inflicting severe physical or psychological suffering on them, and deliberately creating conditions that lead to the physical extermination of that group, either in whole or in part. Additionally, genocide includes the implementation of measures designed to prevent births within the group and the forced removal of children from their families to be integrated into other groups.

**Keywords:** Characteristics, Genocide, Law, International Crime

## INTRODUCTION

The concept of international criminal law is well recognized among legal professionals in developed countries, including the United States, Canada, and various European countries. International crimes refer to offenses that have a global dimension, particularly those regulated by international treaties (Lemkin, 1946). Essentially, international criminal law includes a legal framework that delineates the national laws that should be applied to crimes with clear international elements, including individuals, states, or private entities. Essentially, international criminal law is a comprehensive set of rules and principles designed to address the complexity of international violations (Eickhoff et al., 2019).

The International Criminal Court (ICC) exists as a permanent and independent institution authorized to investigate and try individuals responsible for serious violations of international law. The foundation of international criminal law is based on the Rome Statute, which functions as a legal framework for the establishment and operation of the ICC. This landmark statute, adopted on July 17, 1998, was refined over time, particularly during a review conference in Kampala from May 21 to June

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11, 2010. The Rome Statute not only legitimized the ICC but also underscored its commitment to delivering justice on a global scale (Alston & Suseno, 2008).

The regulations governing genocide are based on basic documents such as the Charter of the Nuremberg International Military Tribunal, the 1948 Genocide Convention, the Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the 1998 Rome Statute. Punishing acts of genocide include National Courts, Hybrid Courts, and the International Criminal Court (ICC) (Bassiouni, 1996). The Nuremberg International Military Tribunal, along with the Tokyo International Military Tribunal, laid the foundation for the subsequent creation of international criminal tribunals that have grown to include the ICTY, ICTR, and ICC. This development underscores global commitment to justice and accountability for the most serious crimes (Setiyono, 2020).

Genocide and crimes against humanity constitute two distinct and severe international offenses, although they are not synonymous. Genocide occurs when a group of people, such as a particular nation, tribe, race, or religion, are targeted for harm or even extermination. The genocide focused on harming the entire group. On the other hand, crimes against humanity harm individuals or civilians but do not target specific groups in the same way (Atmasasmita, 2021). Genocide can aim to destroy a group completely, whereas crimes against humanity can happen to anyone and have no clear rules about who is harmed. Article 7 of the Special Law states that genocide is an extremely egregious act that violates human rights. This means doing horrible things such as killing people, causing a lot of suffering, and forcing children to leave their families and join other groups. Therefore, the law clarifies that there will be severe punishment for anyone who does such terrible things (Kaloko et al., 2023).

## METHODS

This study uses a normative legal research methodology, namely a more in-depth approach aimed at analyzing and interpreting legal norms, rules, principles, and doctrines. By emphasizing library sources and secondary information as the primary data sources, this method provides a comprehensive framework for understanding the intricacies of law. As stated by Dimas Mahmud Marzuki, normative legal research involves systematic exploration of legal rules, principles and doctrines that serve as basic elements for overcoming existing legal challenges (Abdul Kadir, 2015).

In this framework, rules are understood as explicit provisions contained in laws and regulations, whereas laws are seen as guiding principles or customary standards that describe acceptable human behavior. Normative legal research is a way to study law that helps researchers examine legal rules and ideas to answer important questions (Mukti, 2010). To do this, researchers need to understand how the law works and its meaning. In this study, we used this method to explain the complex law of the crime of genocide in international law, which is a set of rules that states follow when interacting with each other. Thus, this study aimed to build a strong legal foundation for proposing effective solutions and recommendations for dispute resolution (K. A. Putra et al., 2018).

## RESULTS

Lemkin first proposed the concept of genocide at an international conference in 1933. In his groundbreaking work, Lemkin identified certain heinous acts characterized by the systematic attack and extermination of national, religious, and ethnic groups as part of genocide. The word consists of two parts: “genos”, which is a Greek word meaning a group of people or tribe, and “cide”, which is a Latin word meaning to kill. Thus, if the two are combined, this means killing a group of people. This poignant etymology underscores the serious nature of atrocity, which invites us to reflect on the profound implications of this crime on humanity (Atmasasmita, 2021).

Genocide is one of the most horrific crimes recognized in international law, categorized together with crimes against humanity, war crimes, and crimes of aggression. These abhorrent acts are addressed in

many important international legal frameworks, including the Charter of the Nuremberg International Military Tribunal, the 1948 Genocide Convention, the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the 1998 Rome Statute of the International Criminal Court. Furthermore, national legal systems have included provisions to combat these atrocities.

Genocide is defined as deliberate acts aimed at the destruction or extermination, in whole or in part, of a national, racial, ethnic, or religious group. The global community is obligated to uphold these legal commitments and protect humanity from such heinous crimes. These acts include the deliberate extermination of individuals within a group, infliction of severe physical or psychological violence, imposition of harsh citations aimed at weakening the group's existence, implementation of measures to limit births within the group, and forced removal of children from their families to integrate them into other communities (Fikri Dwi Fadillah & Muhammad Zirly Annadziif, 2024).

The concept of genocide surpasses physical annihilation, including the destruction of cultural heritage, which aims to eradicate civilizations by suppressing linguistic traditions, manipulating or obliterating historical narratives, and eliminating the emblematic elements of collective identity. The Rome Statute, established in 1998, authorizes the International Criminal Court to adjudicate egregious offenses, including deliberate harm to individuals, war crimes, and acts of aggression, and defines genocide according to the 1948 Genocide Convention parameters.

The principle of individual criminal responsibility is paramount, asserting that individuals can be held responsible for acts of genocide even when such acts are committed under the direction of government authorities or military superiors. However, this principle is not without nuances; a person can be exempt from punishment if they can show that they are unaware of the illegality of the order they receive (Siswanto & Dewi, 2015).

International criminal law has two important objectives. First, it establishes a framework that considers the laws of all countries to be equal based on international standards, ensuring that every country, regardless of its size, power, or level of development, is on equal footing. Second, this law acts as an important link for countries involved in conflict, making international courts a neutral and impartial place to resolve disputes (Ainuddin, 2015).

## DISCUSSION

### Theories Concerning the Crime of Genocide

In the discourse surrounding genocide within the framework of international law, both human rights theory and the principle of state responsibility play an important role. This is due to the fact that genocide is a very serious violation of human rights, requiring states to uphold their duty to protect their populations from such atrocities (Fikri Dwi Fadillah & Muhammad Zirly Annadziif, 2024):

#### a. Human Rights Theory (HAM)

Human rights are a major responsibility entrusted to the state, which is manifested in its duty to uphold and maintain the principles of equality before law and justice for all people. As stated by Satjipto Raharjo, legal protection functions as a shield for individuals whose rights are violated so that society can fully enjoy the rights granted by law. This vital protection is inherently linked to the recognition of human dignity as enshrined in a country's legal framework. Therefore, legal protection is not just a privilege, but an inalienable right that belongs to every individual, and it is an inviolable obligation of the government to ensure its fulfillment.(Fikri Dwi Fadillah & Muhammad Zirly Annadziif, 2024)

#### b. Theory of State Responsibility

International law on what states are responsible for stems from the old rules that everyone agreed to. This rule states that the state must look after its people wherever they are in the world. This principle of state responsibility is applied universally in cases where a state acts contrary to its obligations, such as ignoring international agreements, violating the sovereignty of another state,

causing harm to the property or territory of another state, engaging in acts of violence against other states, endangering the safety of diplomat foreigners, or mistreat foreign nationals (Rosyadi, 2020).

In the context of human rights violations, the state has a great responsibility, which is primarily realized through the legal prosecution of those who commit these crimes to ensure that justice is served. In addition, the state must provide compensation or restitution to victims who suffer as a result of these violations. Accountability must be extended to all individuals regardless of their position or status. Currently, the principles of state responsibility and individual criminal accountability are deeply embedded in international law, underscoring a commitment to upholding justice and protecting human dignity (I. Putra & Lubis, 2020).

### **Characteristics of the Crime of Genocide in the Perspective of International Criminal Law**

In 1948, a major agreement was made that states that genocide is the act of someone intentionally doing something to harm or kill a group of people because of their nationality, race, or religion. Such heinous acts include, but are not limited to, the intentional killing of individuals belonging to the group, inflicting serious physical and psychological harm on its members, deliberately creating living conditions designed to facilitate the physical destruction of the group, implementing acts intended to prevent births within the group, and forcing the forced transfer of children from one group to another (Miftahuddini Ashar, 2014).

In a compelling statement from the International Human Rights Commission, the definition of genocide expands beyond direct perpetrators to include individuals involved in the conspiracy, incitement, and attempt to commit this heinous crime. These comprehensive provisions underscore that accountability for genocide lies not only with those who directly perpetrated the acts but also with those who, through negligence or complicity, facilitated the atrocities. Furthermore, Article 6 of the 1998 Rome Statute clarifies that genocide is a systematic effort aimed at the complete or partial extermination of a nation, ethnicity, race, or group, such as: (K. A. Putra et al., 2018)

- a. Killing group members;
- b. This makes people in the group feel very bad, both physically and emotionally.
- c. Making the life of a group of people very difficult on purpose, so that they can no longer live or survive, either as a whole or only some of them.
- d. Establish rules to help control how many babies are born to certain groups of people.
- e. Forced transfer of children between different groups.

According to the definition of genocide established by the Rome Statute, an essential component of this grave crime is the systematic and comprehensive eradication of individuals belonging to a particular nation, ethnicity, race, or religion. This framework underscores the gravity of the act, emphasizing the deliberate intent to wipe out the entire community. If we decipher the meaning of the word “genocide” from the Rome Statute, we can find that there are several important passages that tell us what it actually means. that is (Setiyono, 2020)

- a. The act of taking the life of someone in a group is an act of intentional and premeditated murder, in which the perpetrator tries to cause mortal danger to one or more people.
- b. Infliction of deep physical and psychological distress is an important component of this element. This underscores that the perpetrator not only caused visible physical injury to the limbs, but also significant psychological trauma to one or more individuals. The Rwandan court clarified that the requirement for serious physical and mental suffering does not require suffering to be permanent; thus, threats made during interrogation may also fall under this provision.
- c. By showing physical destruction, this aspect highlights the perpetrator's role in worsening an individual's living conditions. Every action that causes gradual death falls under this category. Illustrative examples include acts of sexual violence, starvation, deprivation of adequate housing, coercion to perform hard physical and mental labor, deliberate reduction of health services to substandard levels, and forced removal from one's home.

- d. Implementing measures to control reproduction through abortion, promoting separation of the sexes, advocating sterilization, and preventing marriage
- e. Involuntary transfer of children from one community to another.

This element signifies the forced transfer of one or more children from one group to another, a serious act that endangers their future and wellbeing. In Rwanda the Tribunal explained that acts of coercion that caused trauma, ultimately resulting in the involuntary transfer of children, constituted the grave crime of genocide. The differences between genocide and crimes against humanity are significant. First, genocide targets specific groups defined by their race, ethnicity, nationality, or religion, whereas crimes against humanity include acts committed against individuals who are citizens or civilians. Furthermore, the nature of genocide is characterized by a deliberate intent to “destroy, exterminate, or eliminate” these groups, either in whole or in part. By contrast, crimes against humanity do not require such intent; rather, they manifest as widespread and systematic violations committed against civilians. Throughout history, many events have been recognized as acts of genocide. Mass massacres were carried out by ancient Israelites against the inhabitants of Canaan during the first millennium BC (Hatta, 2019).

This horrific legacy is echoed in subsequent atrocities, which have been similarly classified by the global community. In particular, there was a very bad time when King Leopold II in Belgium was in power. He made people work hard and hurt many of them. Consequently, approximately 30 million people lost their lives between 1885 and the early 1900s. The number of people living in the place called Congo decreased from approximately 30 million to less than 9 million because of this terrible event. To help prevent such horrific things from happening again, the United Nations created a set of rules on December 9, 1948, to stop genocide and punish those responsible for it. This important document was signed by 45 countries and ratified 85 times. It officially came into force on January 12, 1961, and consisted of 19 articles dedicated specifically to the issue of genocide. Furthermore, on July 17, 1998, the Rome Statute was introduced to improve the legal landscape surrounding genocide crimes (Alston & Suseno, 2008).

The Rome Statute has emerged from various attempts to establish a global judicial body. Its initial aim was to harmonize the laws governing warfare and impose restrictions on the use of advanced weaponry, which increased after the First and Second World Wars. The core of its mission is to prosecute individuals responsible for crimes against humanity. Under the framework of the Rome Statute, those who committed such grave offenses would not be publicly executed or sent to torturous confinement; instead, they would afford the dignity of a fair trial, complete with the right to self-defense and the presumption of innocence. The Rome Statute, which came into force on July 1, 2002, laid the basic framework for the creation of the International Criminal Court (ICC) that year. This venerable institution serves as a permanent court dedicated to trying individuals who violate the provisions outlined in the Rome Statute, thus complementing and supporting the existing national justice system. As a cornerstone of the ICC's authority, the Rome Statute ensures that all crimes described in its text will be tried by the court, reinforcing its commitment to justice and accountability on a global scale (Setiyono, 2020).

## CONCLUSION

Genocide is a serious international crime characterized by the deliberate intent to exterminate, in whole or in part, a national, racial, ethnic or religious group. This heinous act was dealt with within the framework of the Rome Statute, which provides for its prosecution on an international scale among its signatory states. Article 77 of the Rome Statute outlines penalties for those found guilty of genocide, including imprisonment, financial restitution, and confiscation of assets. The legal framework surrounding genocide in international law is laudable, as the International Court of Justice does not discriminate based on the ethnicity, nationality or status of perpetrators when determining sanctions. The resolution of the genocide can be pursued through peaceful negotiations or, if necessary, through legal or military intervention, with the International Criminal Court as the authorized venue for such proceedings.



## Conflict of Interest

All the authors declare that there are no conflicts of interest.

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