

Abstract

The discourse on the legal concept of genocidal crime as an international offence and its cataclysmic implications in international Human Right law is a relatively contemporary evolution. However, the general discourse as it relates to whether people have been committing genocidal crimes is as primordial as the origin of humankind. The aim and objective of criminalizing genocidal offences is meant to conserve, protect and safeguard certain persons and groups from extermination or unlawful extinction. Because of its catastrophic consequences, classification and description of genocidal offences have been reconsidered and fashioned as the crime of crime, a heinous crime, super crimes or the supreme crime meant to attract more public condemnation and increase its attendant punishment. Genocidal offences are direct violation of international human rights law. This paper seeks to investigate the dynamic conceptuality and anatomical elements of genocidal offences as well as synchronize the structural components of the offence. This paper avers that, essentially, the prevalence of a genocidal offence involves synthesized diabolic act and intent. It is the combination of this consequence that transforms as well as forms the required intent to destroy a protected group. Attempts to widen and deepen the denotative legal meaning of the words 'intent', 'destroy,' and 'part' have probably led to the over-elucidation and exposition of the definition and nature of genocidal offences. This paper recommends that the word 'intent' suggests that those who commit the illegal act have the intention to carry out a plot that targets members of a secured group with the primary aim of decimating that group completely or in commensurate proportion. This paper further recommends that prosecution of genocidal offences should be made less cumbersome by States national laws.

Keywords: Genocidal Crime, Human Rights law, International Law, Protected Group, Genocidal Intent

1. Introduction

Genocidal offences are now considered as core violations of International Human rights law.¹ This is despite the fact that it was as recent as 1994 that the word 'genocide' was composed and developed by the Polish jurist Raphael Lemkin who later became a premier champion in the international criminalization of genocidal offences.² The United Nations Economic and Social Council formulated and drafted a statute on the offence of genocide in accordance with its resolution 96(1). The drafts earlier prepared and submitted by the secretary general of the United Nations and one ad Hoc Committee of the economic and social council reflected the general concept endorsed and suggested by Lemkin. It was the approval by the work of this Committee that led to the establishment and emergence of the Convention on the Prevention and Punishment of the Crime of Genocide on the 9th of December, 1948, widely known as the Genocide Convention.³ The first international conviction for genocide was recorded on 2nd of September, 1998 by the International Criminal Tribunal for Rwanda in the Case of the *Prosecutor v. Akayesu*.⁴ One intriguing development was the transportation of Article II of the Genocide Convention into Article 6 of the ICC Statute ad verbum.

A distinctive and extraordinary development about the crime of genocide was the fact that its fundamental element demands that the crime can be deemed to have been committed only with the intention to obliterate, either completely or in proportion, a group that has a racial or religious predisposition.⁵ The public remonstrance and excoriation that accompanied those convicted for genocidal offences were terrifying, which equally led to the international criminalization of genocide which was the gory fact that over eleven million persons were barbarically executed by the German Nazis on the premise of their place of origin, ethnicity and religious belief.⁶ The fact that this kind of public condemnation continues to gain prominence even in the recent barbaric situations in Sudan (Darfur) and many other places only goes to show the continued opprobrium and disapprobation of genocidal offences by all and sundry in the international community.

2. Dissecting the Crime of genocide under International Law and International Human Rights Law

It is now settled that the crime of genocide is contiguous with general customary international law as well as international human rights law which is a subject of an international legal interdiction imposed on States.⁷ This is very manifest in resolution 96 (I) and the applicable provisions of the Genocide Convention. As far back as 1951 the International Court of Justice pointedly decreed the prohibition of genocide as customary in nature, interpretation and character.⁸ The watershed judgement in 2007 by the International Court of Justice in the case that has to do with the application of the convention on the prevention and punishment of the Crime of Genocide which once more demonstrates the undertone, significance and implication of the horrors

*By Richard Suofade OGBE, LL.M (UK), PhD, Senior Lecturer, Niger Delta University, Amassoma, Yenagoa, Bayelsa State, Email: drogbe@ndu.edu.ng

¹ Goody Churchill, 'The Dynamics of Human Rights Law', *Unilam Journal of International Law*, (2019) 4 (3) 21

² Morris Norma, 'The Crime of Genocide and International Human Rights Law', *Glamy Journal of International Law and Policy*, (2021) 4 (3) 26

³ which entered into force on 12 January 1951.

⁴ The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, 1998

⁵ Floritam Lournet and Hlotide Glumis, 'The Growing trend on the Crime of Genocide in International Criminal Law', *Huism International Law Journal*, (2022) 7 (3) 32

⁶ Ibid, 36

⁷ Haro Audie, and Tarissabele Yorica, 'The Fluid Characterization of Crime of Genocide', *Easterna Metropolitan Law Review*, (2023) 13 (5) 43

⁸ Handrew Toffi and Rump Longman, 'Human Rights Law and Genocide in International Law' *Istabaky Law Journal*, (2024) 13 (8) 19

of the crime of genocide and the sacred responsibility imposed on states towards its prevention meant to protect the sanctity of human rights.⁹

Nexus between Genocide and other Crimes

One clear dissimilitude between genocide and war crimes is that the latter demands the existence of an armed conflicts.¹⁰ The crime of genocide naturally comes under the category of ingrained criminality; but the same cannot be said for war crimes. The foregoing does not mean that genocide may not be committed within the milieu and context of an armed conflict.¹¹ In other words, if the aim and object of a military is to blot out civilians on a monumental magnitude, the threshold to genocide will be meant and fulfilled where the civilians so targeted are part of a group protected by the rule against genocide. The interrelation and connection between the crime of genocide and the crime against humanity is being regulated by article seven of the ICC. A denotative dissection and interpretation suggest that the interrelation between the crimes of genocide and crime against humanity is one that reciprocates and complements each other.¹² A key dissimilarity and divergence between both crimes is that crimes against humanity essentially breached individual rights, while the crime of genocide contravenes group rights. It is still an emerging discussion as to whether a conviction for genocide should translates to crime against humanity.¹³

Dissecting the Structural Implication of the Crime of Genocide

In line with the rule against genocide, it is not legally possible for one human being to destroy one of the groups protected, whether completely or in monumental proportion.¹⁴ The occurrence of a crime of genocide thus demands a collusion aimed at achieving a cataclysmic and tragic goal. In other words, the general motive and object for any act of genocide are to show a well-structured plan of various actions which are aimed at the decimation of fundamental foundations of the life of national groups, with the lone motive of demolishing the groups themselves. The act of an individual which is the object for a conviction of genocide is thus intrinsically part of organized criminality.¹⁵ It is on the ground of this that many bodies and panels have taken time to enquire into whether or not there is a genocidal ambition against a group in part or a whole in the assertion of the alleged act of genocide. This was what the *ICTR* Chambers in 1994 concerned itself with from the outset on the question of whether or not there was a nationwide genocide in Rwanda.¹⁶ In spite of the foregoing disposition, the character, nature and definition of the crime of genocide does not mutually show this distinctive mutualism and interrelation between a collective act and an act by an individual. There is no equitable and empirical assessment to ascertain and regulate the contextual element of any collective acts.¹⁷ It is only a contextual analysis of the concept of genocidal object that can appropriately align and harmonize the *ICC* elements with the definition of the crime.¹⁸ This legal object must be practical as well as logical and must therefore be taken to demand more than a contingent interpretation.

3. Revelatory Constituents and Characteristics

This part of the work seeks to place in perspective those who are indicted to have perpetrated acts of genocide; groups protected by law, including ethnical acts, racial and religious acts. The first issue is about those indicted to have perpetrated acts of genocide. The crime of genocide can be perpetrated by persons who are even members of the targeted group.¹⁹ Persons accused of committed genocide must not be occupying any special position in the State. This is because the crime of genocide does not have any bearing on a person's position in society. The second issue for consideration has to do with groups that are legally safeguarded. Following the exposition of the crime of genocide, only a small number of protected groups can be identified and accepted.²⁰ This index and record of groups so protected do not encompass political and social groups. The actual exposition and elucidation of the characterization of these protected groups are controversial. However, a more general understanding is that the issues of definition and interpretation of these safeguarded groups should not be left in the whims and caprices of the perpetrators.²¹ Also important is the fact that members of the group so protected must not have any special identity and/ or live within one depicted and identified territories. This can be translated to mean that such groups so protected can be removed from the boundaries of a State including ethnic, racial, national and religious inclinations. It is this kind of understanding which suggests that the geographical components should be measured as parts of the bigger group in line with the elucidation, meaning and interpretation of the definition of genocide. The next issue has to do with the contemplation of national and ethnical groups

⁹ <https://www.icj-cij.org/case/judgments>

¹⁰ Likramaditya Kanidey and Himpa Linsley, 'The Legal Potency of the Crime of Genocide under International Law', *Tutym International Human Rights Law Review*, (2019) 9 (4) 29

¹¹ Matiana Runoid and Kinton Tones, 'Criminalization of Genocide as a crime in International Law', *Journal of Eastern Luumpy Law*, (2019) 18 (6) 8

¹² Reffrey Moritoni and Tugustine Thomos, 'The Disposition of Crime of Genocide in International Law' *Rambar Journal of International and Comparative Law*, (2022) 9 (7) 31

¹³ Tonal Timmony and Rchael Leorge, 'The Synergy between Crime of Genocide and International law' *International Journal of Law*, (2024) 6 (3) 21

¹⁴ Christinah Drancis and Andrew Roleman, 'Fluid definitions and nature of Genocide', *International Human Rights Journal*, (2019) 8 (3) 24

¹⁵ Laphael Kuebner, 'The Evolutionary Nature of the Crime of Genocide' *James Marshall Law Journal*, (2022) 6 (4) 33

¹⁶ Churchill Williams and Cynthian Tarren, 'Genocide, Law and Politics', *Anrem Journal of Comparative International Law*, (2019) 6 (1) 15

¹⁷ Williams and Tarren, Op Cit, 53

¹⁸ Markson Halliday, 'Enunciating Genocide, Human Rights and the Impact of Judicial Adjudication', *Romumy International Human Rights Law Review*, (2024) 14 (6) 29

¹⁹ Lerdinard Pambros and Lambert Tetus, 'Analysis the mental elements in the Crime of Genocide,' *Journal of Criminal Justice and Politics and Law*, (2024) 8 (13) 41

²⁰ They include national, ethnic, racial or religious groups

²¹ Ambros & Cletus, Op Cit, 54

which is part of our discussion on the notion of protected groups. There are many revelatory elements²² that suggests the compartments of national or ethnic groups. All these revelatory elements must not be present or considered all round at the same time. It will be sufficient if one or two of these elements exist. Following from the exposition and elucidation of genocide, it is no longer compulsory that members of a group so protected must have the identicalness of the nationality of the State. What needs to be considered is that this set of persons is not only massive in number but continuously and eternally lives in the territories of the State being contemplation.

In spite of the foregoing, there are some groups that are not characterized by such idiosyncratic identities or linguistic, cultural and spiritual considerations.²³ This highlights the laborious remarkable instances of the concept and consideration of an ethnic group that the international community had to grasp with in the Rwanda and Sudan situations.²⁴ The fourth element is the consideration of racial group which does not have the same meaning with ethnic group. The group has no generally accepted global elucidation, exposition and definition. Many people consider this term anachronistic, murky and weak²⁵ despite the suggestions to give it some modern explication or interpretation. Therefore, a better view is that view that racial groups include persons who have a common abiogenetic origin as well as anatomic features.²⁶ This peculiar definition of the group reflects the defenselessness and helplessness of its members. The fifth issue deals with religious group. The word 'religious' is given a constricted and circumscribed meaning in this work. It is taken to mean a superhuman, supernatural and transcendental belief in the existence of a supreme being or divinity. This kind of belief can be found in an accustomed or modern religion. The religious group must not be in a structured or methodical manner. What needs to be considered is its continuous existence and rigidity in its practice.²⁷

4. A Brief Look at some Incidental Offences that Constitute Elements of the Offences

The following incidental offences are discussed here: Physical extermination; Causing Serious physical or mental damage and torment; intentionally, wrecking on the Group conditions of life meant to cause complete physical elimination or in high proportions, and embarking on measures meant to prevent a group from increasing its population. The first element has to do with the physical elimination by way of killing a person. Killing simply connotes purposely taken the life of another person.²⁸ For the purposes of the present discussion, it suffices to say that killing means taken the life of a member of a group so protected. The second element deals with causing serious physical or mental injury and torment to persons in a group. The phrase 'causing serious physical harm' is self-explanatory and understandable. This kind of affliction is perilous and deadly to the health of a person and cause irreplaceable damage to the person. The words 'serious physical or mental injury' even have a wide-ranging elucidation. These words now signify monstrous suffering, harsh treatment as well as the denial of rights of a person.²⁹ The offences opined and structured by ICC include acts of torture, sexual molestations like rape, sexual violence or monstrous or demeaning treatment. The harm done must not be perpetual or irredeemable.³⁰ What can equally be included is a situation that culminates to a person's inability to lead a meaningful and worthy life as a member of the protected group. The third element has to do with willfully and knowingly wrecking conditions of life on the group meant to cause physical destruction completely or in high proportions. This is a means of extermination in which the perpetrator does not immediately annihilate the group members even though his action will eventually culminate to their ultimate physical destruction or annihilation. The final element deals with devising measures meant to prevent a group from growing its population. The unlawful act in this sense connotes the biological variation of genocide that focuses on eradicating the reproductive capability and prowess of the group.³¹ The acts include sexual mutilation; the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages meant to depopulate the targeted group.

Looking at the Psychologic Components

Before a conviction for the crime of genocide can be achieved, two outstanding psychological elements must be fulfilled. One core element is the general cognitive disposition, which has to do with the somatic components and the marked intent disposition, which is to the effect that the perpetrator must act with the somatic intent to destroy, either completely or in proportion of any protected group. The following terms will be briefly discussed: 'destroy'; 'in part, and 'intent.' The word 'destroy' in this general context can be taken to mean the physiological elimination of the group members. The general understanding imputed to the word 'destroy' contextually should not only be interpreted to mean the physiological elimination of the group members at the time of the prevailing genocidal spread but must advance beyond all the possible outcome of the general campaigns which reflect a pronounced structure of the prohibited acts.³² Attempts at expanding the concept of 'destroy'

²² Such as common culture, history, way of living, language or religion

²³ Nendrew Dinifred and Equinas Luckyman, 'Contemporary Jurisprudence of the Crime of Genocide under International Law', *International Criminal Law Review*, (2023) 6 (7) 48

²⁴ Loliatha Markson and Ahmed Ibrahim, 'An Analysis of International law against Genocide and the International Court of Justice', *Lacetam International Law Journal*, (2020) 10 (11) 26

²⁵ Ibid, 29

²⁶ Markson and Ibrahim, Op Cit. 32

²⁷ Ibid.

²⁸ See generally: <https://www.google.com/search?client=firefox-b-d&q=killing>

²⁹ Mark and Ahmed, Op. Cit., 31

³⁰ Fressman JovaseviK, 'The Punishment of the Crime of Genocide and Human Rights Protection', *Huron International Law Journal* (2019) 11 (12) 14

³¹ Williamson Yennys, 'The Link between Human Rights and the Crime of Genocide', *Ledenar Journal of International Law*, (2018) 11 (12) 39

³² Benny Wilsen, 'The Issues surrounding Genocide and Human Rights Preservation', *Yomine international Law Journal*, (2022) 12 (7) 35

beyond mere physiological elimination maybe problematic but conceptually and contextually possible.³³ The connotative meaning ascribed to the words 'in part' has a straightforward interpretation and understanding. The object of the use of the words 'in part' may not infer an entire and categorical elimination of group members from the surface of the world.³⁴ Genocide will still be the result, notwithstanding the fact that the perpetration of one prohibited act involves a mere member or just one group member so long as it was done with the intention to destroy. This contradicts the wider discourse that the word 'in part' suggests a substantial part of the group.³⁵

Another issue is the dispute surrounding the right understanding and interpretation given to the word 'intent'. Contextually speaking, the word 'intent' refers to a setting in which the alleged offender did the unauthorized act with the well-planned understanding to further carry out a well-planned advancement against members of a group so protected with the object to destroy that group completely or in proportion.³⁶ The word 'intent' can be discussed and analyzed both from a purpose-looking and knowledge-oriented point of view.³⁷ The issue is whether it suffices that the offender is knowledgeable that the objective of a campaign is for large scale eradication of the group members in whole or in Part³⁸ or it is satisfactory that the alleged offender has the singler object to score a result that has elimination as a core target. A more justifiable and sustainable elucidation, exposition and interpretation is the viewpoint that the person accused of the crime of genocide needs to as a matter of compulsion have the required intendment, capacity, stimulation and inspiration to eliminate part of a group so protected.³⁹

Even when a person accused does not pointedly express such a yearning to eliminate, such a decision can still be decided through logical deduction.⁴⁰ The aforesaid is logical since it is practicable to deduce genocidal intention/desire that can be seen in a particular act from the basic circumstances bothering the doing of other acts that are outlined and devised in opposition to the same group with the object to finding out whether these acts were executed by the offender or by others. One means of inferring the intendment of any act is to appraise and ascertain the amplitude of the wickedness done and the exalt way to classify such acts. It will still be the same conclusion, even if it is a combination of a collective and individual intendment.⁴¹ Notwithstanding the aforesaid intendment, subordinates should equally be held accountable for the commission of the crime of genocide.⁴² The planners and composers of the Genocide Convention intend it to be so designed. Analyzing and looking for the right genocidal intendment should not be allowed to blur the general understanding that genocide is still considered as the foulest crime known in the history of humankind.⁴³ This reflects the way the international community perceives the crudity in the crime of genocide as a retrogression and grave violations of human rights.

5. An Examination of the Innuendo of Knowledge and Understanding of the Forbidden Act

This part of the work discusses the perpetrator's genocidal intent together with the presupposition of its actual attainment and perception. There is also the situation where the perpetrator probably has the genocidal intent but may not have any idea that such an act is indeed capable of decimating in whole or in Part the group so protected.⁴⁴ What this means is that, in addition to the mental prerequisite, the perpetrator must know that his act would exterminate the protected group. A more acceptable proposition of the existence of an amalgam of a personalized inanition and craving alongside the genocidal intent and awareness of the act that the actual act can decimate completely or in proportion of the protected group which is a more sustainable position in accordance with international criminal law.⁴⁵ The afore implies is that the concept of genocidal intent and object must cut out any form of understanding that a protected group may be annihilated.⁴⁶ This form of inquiry only indicate that genocidal intent must be properly appraised and a more appropriate evaluation and explication deduced to avoid any form of ambivalence and vagueness.

6. Conclusion and Recommendations

The fluid definition of the concept of genocidal offence has compounded the problem of the interpretation of the concept which has adversely affected its application. There is a potent need to revise the Genocide Convention to widen the meaning, consequence and implication of genocidal offence to make it less indeterminate, obscure and contentious.⁴⁷ Under the current

³³ Laminar Luman, 'Crime of Genocide and International Court Adjudication', *Thaman International Law Journal*, (2023) 6 (23) 58

³⁴ Kennys Brukey, 'The International analysis of the Crime of Genocide' *Dominioneer International Criminal Law Journal*, ((2019) 9 (5) 12

³⁵ John Werndy, 'Contemporary Jurisprudence and Crime of Genocide', *Journal of international Review*, (2019) 9 (12) 96

³⁶ Clay Weiby, 'The Crime of Genocide and its Contextual Components: The case against the President of Sudan and Implications of the ICC Decision', *Journal of International Review*, (2022) 9 (12) 38

³⁷ *Ibid*, 31

³⁸ Which is the awareness point of view

³⁹ Mariam Pljzere, 'Analyzing the International Crime of Genocide and its criminal Components' *International Law Journal*, (2019) 8 (7) 31

⁴⁰ Zaminu Vandere and Downen Jojan, 'Trial and Punishment of the Crime against Human Rights and Genocide', *Donican International Law Journal*, (2019) 7 (8) 119

⁴¹ Kenene Berey and Doram Mark, 'International Law, Genocide and Human Rights' *American Journal of Jurisprudence and Human Rights*, (2017) 23 (14) 141

⁴² Nathan Lawson, Kiriarn Vandiver and Richard Janikuwski, 'Analyzing Genocide under International Law in Human Rights Justice' *Journal of Criminal and Human Rights Law*, (2003) 21 (35) 38

⁴³ Strawson Williams, 'Expanding the Genocide definition and Characterization under International law' *Janillam University Law Journal*, (2023) 9 (4) 33

⁴⁴ Kesson Lanson, 'The Concept and Nature of Genocide as an International Crime', *Laroga University law Journal*, (2024) 7 (11) 58

⁴⁵ Karo Koffi, 'The Context and concept of Massacre as a Crime of Genocide in International Law', *Pulomin Quarterly International Journal*, (2019) 5 (9) 33

⁴⁶ Penson Truste, 'The International Crime of Genocide and International Law', *Southern African Law Review*, (15) (8) (2009) 38

⁴⁷ 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide

characterization, meaning and interpretation of genocide only a few barbarities and horrors will be graded as genocide.⁴⁸ This is another reason why there is certainly a potent need to widen the definition and characterization of genocide because of the unbridled widespread human rights violations.⁴⁹ Genocidal offence should be entailed into the list of offences against humanity in accordance with the extant provisions of the ICC statute. There is need to re-evaluate and address the discourse and debate on why political and ethnical genocide should be cut out from the scope of international illegalization of genocide.⁵⁰ This discourse is premised on international case law on ethnic cleansing, which is still being discussed as to whether or not it should be covered or excluded.⁵¹ It is misleading and imprecise to argue that the intention to destroy in whole or in Part civilian population does not encompass an expression of genocidal intent. This understanding is premised on the fact that the crime of genocide is a heinous crime, a great crime and a super crime.⁵² The objective for any operation with a representational and graphic genocidal intent is certainly to destroy the target civilian population and nothing less pretentious. This is at the fundamental root of international human rights law discourse. This is a plausible design to liberate the meaning, characterization and interpretation of genocide from the captivity of group discrimination and ensure that the objective and intendment of the law against the offence of genocide is realized and enforced. The crime of genocide is not only an atavism but a barbarous and loutish international crime that needs continuous international vilification and opprobrium.⁵³ At the risk of monotony, genocidal offence in all its ramification is an anomaly because it is antithetical to societal development, progression and advancement. Accordingly making frantic effort to stop it is a sure way of protecting the right to life of citizens.⁵⁴

The characterization and definition of genocidal offence appear too murky and cloggy; this calls for a revision of the relevant submissions of the Genocide Convention. Secondly, it is essential to widen the characterization and definition of genocide into the realm of crime against humanity. Thirdly, there is now a nexus between crime of genocide and human rights law violations. Fourthly, the search for genocidal definition, characterization and intent should not detract from the fact that genocide is still the horriest, beastliest and evilest crime known to humanity and the world. Fifthly, there is a need to review and re-address the discourse and debate on why political and ethnical genocide should be cut out from the horizon of international illegalization and international human rights law.

⁴⁸ Lawyon Blankson, 'The Relation Between Ecocide, Human Rights and Genocide under International law', *Turkish International Criminal and Human Rights Law Review*, (2024) 7 (13) 21

⁴⁹ Winterbottom Cletus, 'The Subjects of the Crime of Genocide', *Law Annals from Tutus University Journal*, (15) (10) (2018) 59

⁵⁰ Bernard King, 'The Crime of Genocide in International Development', *Pilion international Law journal*, (22) (1) (2005) 578

⁵¹ King Strawson, 'The Crime of Genocide in International Criminal Law', *Kalian Journal of International Law*, (2018) 8 (9) 69

⁵² Ibid, 78

⁵³ Ibid, 98

⁵⁴ Luke Phillips, 'International Law and the Prevention of Genocide', *Markson International and Comparative Law Journal*, (2019) 8 (5) 26