

THE CRIME OF GENOCIDE

Understanding the Legal Concept Through
Current Threats: The cases of Ukraine and
Armenia.



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MEANING AND HISTORY OF GENOCIDE

- Raphael Lemkin first coined in written the word **GENOCIDE** in his book “Axis Rule in Occupied Europe” (1943).
- *geno-*, from the Greek word for race or tribe, with *-cide*, derived from the Latin word for killing.
- Wide use of the word **GENOCIDE** (mass extermination, destruction of culture, language, national feelings, religion).
- Destruction of the identity of the oppressed, imposition of the identity of the oppressor.



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U.N. FIRST GENOCIDE DEFINITION

96 (I). The Crime of Genocide

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the

¹ See page 187.

96 (I). Le crime de génocide

Le génocide est le refus du droit à l'existence à des groupes humains entiers, de même que l'homicide est le refus du droit à l'existence à un individu; un tel refus bouleverse la conscience hu-

¹ Voir page 187.

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- UN Resolution 96 (I), of 1946, calls for the members to create a new criminal category.

“Genocide is the denial of the right to existence of entire human groups, as homicide is the denial of the right to live of individual human beings... Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed entirely or in part.”

conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices – whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any

maine, inflige de grandes pertes à l'humanité, qui se trouve ainsi privée des apports culturels ou autres de ces groupes, et est contraire à la loi morale ainsi qu'à l'esprit et aux fins des Nations Unies.

On a vu perpétrer des crimes de génocide qui ont entièrement ou partiellement détruit des groupements raciaux, religieux, politiques ou autres.

La répression du crime de génocide est une affaire d'intérêt international.

L'Assemblée générale, en conséquence,

Affirme que le génocide est un crime de droit des gens que le monde civilisé condamne, et pour lequel les auteurs principaux et leurs complices, qu'ils soient des personnes privées, des fonctionnaires ou des hommes d'Etat, doivent être punis, qu'ils aient pour des raisons raciales, reli-



THE GENOCIDE CONVENTION



Copyright: United Nations

- First legal definition in the Genocide Convention (9 December 1948), art. 2:
“...genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...”
- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its
physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.



THE ROME STATUTE OF THE ICC



- Four international crimes: genocides, crimes against humanity, war crimes (1998) and crime of aggression (2018)
- Article 6 Genocide:

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.



ELEMENTS OF THE CRIME

- Special dual intent (*dolus specialis*) to destroy
- Partial or total destruction of protected groups
- Protected groups: national, ethnical, racial or religious
- Conduct: any (or all) of the included acts in art. 2 (a) to (e)



PROBLEMS IN THE LEGAL DEFINITION

PART I

The “group” problem

- Differs from the definition recognized in UN Resolution 96 (I)
- Differs from the formal discussions on the drafting of the Genocide Convention
- Violation of the principle of equality. Discriminatory
- The crime relies mainly on the characteristics of the victim and not on the definition of the practice. Without one of the groups, genocide does not exist
- Groups are social non-permanent constructions



PROBLEMS IN THE LEGAL DEFINITION

PART II

The “evidence” problem:

- Intent
- Genocide as a process and not a unique mass murder act
- Policy or plan? Not part of the definition
- Limited conduct, no mention of sexual violence (for example)



NATIONAL “MORE INCLUSIVE” DEFINITIONS

- Mexico: art. 149 bis criminal code (national groups)
- Colombia: art. 101 criminal code (political group)
- Argentina: art. 64 draft of criminal code (a group of people)



Copyright: UNAM



NATIONAL JUDICIAL INTERPRETATIONS

- Spain
- Colombia
- Argentina
- Bangladesh



Copyright: Centro de Información Judicial (CIJ)



INTERNATIONAL JUDICIAL INTERPRETATIONS

- International Criminal Tribunal for the former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)
- Extraordinary Chambers in the Courts of Cambodia (ECCC)
- International Court of Justice (ICJ)



RUSSIA'S WAR ON UKRAINE 2022

- Russia initiated an aggressive war on Ukraine on 24 February 2022
- Russia announced the annexation of Donetsk, Kherson (almost fully recovered by Ukraine), Luhansk and Zaporizhzhia
- 9,500+ Ukrainian civilians killed
- 17,500+ Ukrainian civilians injured
- 6.2 million Ukrainian refugees globally (UNHCR as of July 2023)
- 5.1 Ukrainian civilians internally displaced (UNHCR as of May 2023)
- From 13,000 to 300,000+ Ukrainian children transferred to Russia / citizenship
- Destruction of cultural heritage / vital infrastructure



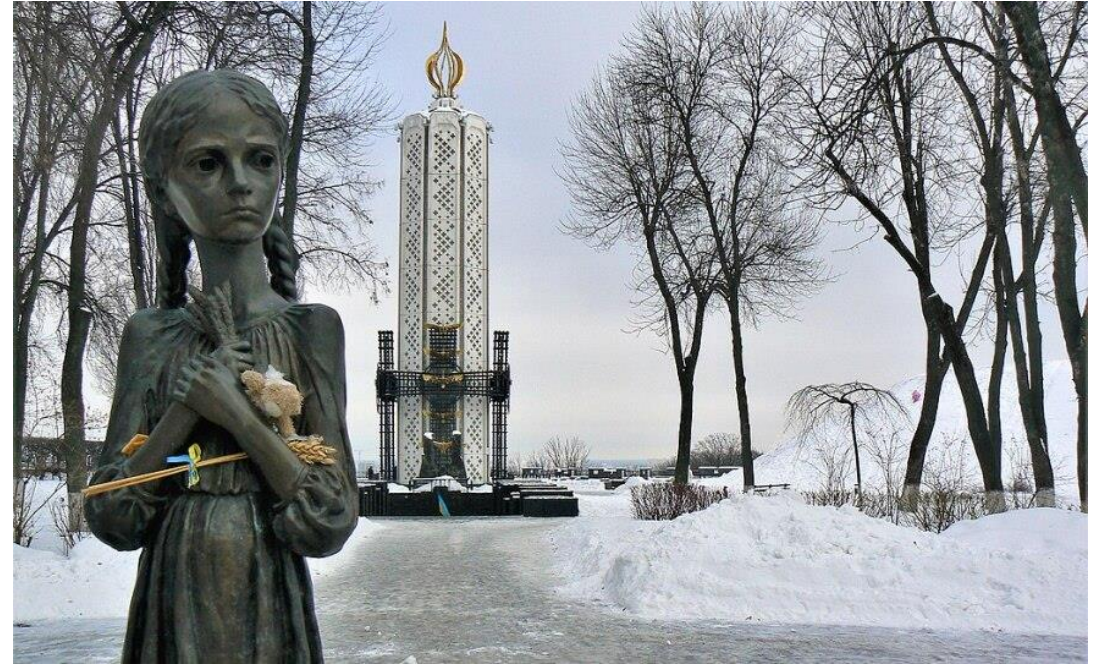
CRIMES DURING THE AGGRESSIVE WAR

- War crimes
- Crimes against humanity
- Crimes of aggression
- Genocide (?)



WHY GENOCIDE?

- Historical background
- Holodomor (1932-1933)
- Annexation of Crimea (2014)



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CURRENT CONFLICT & GENOCIDE

- Genocidal discourse:

- Vladimir Putin

- Maria Lvova-Beloba

- Genocidal actions:

- Tranferring of children from one group to the other

- Siege of cities

- Preventing humanitarian aid distribution / corridors

- Bombing of civilian shelters

- Destruction of vital infrastructure



ARMENIA & ARTSAKH (NAGORNO-KARABAKH): 2020 WAR ONWARDS

- Azerbaijan attacked the contested territory of Artsakh on 27 September 2020
- Conflict known as 44 days war or Second Nagorno-Karabakh War
- Armenian, Azerbaijan and Russia signed a Tripartite Ceasefire Agreement on 9 November 2020
- Azerbaijan consistently breached the agreement
- 13 September 2022 largest azeri attack with incursion in Armenian sovereign territory after the Ceasefire Agreement
- On 12 December 2022 Azerbaijani pseudo-environmentalists blocked the Lachin Corridor
- 19 September 2023 takeover of Artsakh by Azerbaijan



CRIMES DURING THE 44 DAYS WAR & SEPTEMBER 2022 AGGRESSION



- War crimes
- Crimes Against Humanity
- Crime of Aggression
- Genocide (?)



WHY GENOCIDE?

- The Armenian Genocide of 1915
- The Soviet Era
- First Nagorno-Karabakh war
- Nagorno-Karabakh's right to self-determination



CURRENT CONFLICT & GENOCIDE

- Genocidal Discourse:
 - Ilham Aliyev
 - Recept Tayyip Erdoğan
 - Military Trophy Park in Baku
- Genocidal Actions:
 - Military aggression
 - Persecution
 - Blockade/siege
 - Armed attack 2023
 - Destruction of Cultural Heritage



Office of the President of the Republic of Azerbaijan



GENOCIDE AS A PROCESS. CONCLUSIONS.

- Genocide is a process, not one mass murder isolated event
- Historical elements
- Hate speech
- Laws, decrees and public policies
- Propaganda (based on identity hate)



THANK YOU!

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