
GENOCIDE AND INTERNATIONAL JUSTICE

Huda Aftab Ansari, University of Lucknow

ABSTRACT

Genocide, one of the crimes committed against humanity, is a result of hatred inside the hearts of people towards a specific group of people, which may be due to their ethnicity, race, or religion. Its purpose is to destroy the group of individuals with no future prospects. It involves actions of mass murder, measures to prevent birth and transfer of their children to another group, thereby completely vanishing their existence and leaving behind no scope for their future either. This hatred has no rational basis and no reason for justification, yet it still seems to have occupied the hearts of many. Sadly, even with widespread education and awareness, we can still find cases of genocide actively happening in the world with little to absolutely no action to curb them. The perpetrators often get away with their heinous crimes due to a lack of proof of their malicious intent to commit genocide. For the establishment of an allegation of genocide, the intent must be proven beyond a reasonable doubt, which in most cases becomes the greatest obstacle and a major drawback on the part of the system delivering justice. The recent case of genocide in Gaza, which has been in much highlight, is still awaiting a decision from the ICJ, while the perpetrator, Israel, actively commits genocide by mass murder, torture of every kind, blocking of humanitarian aid, bombing of hospitals, and making it impossible to survive in Gaza. It is clearly evident from this that the slow process of taking action, speaking up against the perpetrators, and delivering justice makes the concept of “World Peace” and “International Justice” mere words with no real meaning.

INTRODUCTION

The word “Genocide” means the conscious killing of people of a particular group with the intention to destroy wholly or partly a group of individuals based on either ethnicity, race, or religion. The purpose is to completely destroy the group by inflicting serious bodily injuries and rendering them reproductively inactive by preventing future births and forcibly transferring their children to another group. The key elements of a genocide include – specific intention (*dolus specialis*), target group, and mass killing.

Article II of The Genocide Convention¹ discusses what genocide is and what acts constitute genocide -

“Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- 1. Killing members of the group;**
- 2. Causing serious bodily or mental harm to members of the group;**
- 3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- 4. Imposing measures intended to prevent births within the group;**
- 5. Forcibly transferring children from the targeted group to another group.”²**

DISTINCTION BETWEEN WAR CRIMES, CRIMES AGAINST HUMANITY, AND GENOCIDE

War Crimes	Crimes against humanity	Genocide
War crime is the transgression of the laws of war during an armed conflict. ³	Systematic attacks against civilians, whether in times of peace or war. ⁴	The act with specific intent (<i>dolus specialis</i>) to destroy completely a group based on

¹ Convention on the Prevention and Punishment of the Crime of Genocide, art. II, Dec. 9, 1948, 78 U.N.T.S. 277.

² Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 2, art. 2 [1, 5].

³ Rome Statute of the International Criminal Court, art. 8, U.N.T.S. 2187, 90, Jul 1, 2002.

⁴ Rome Statute of the International Criminal Court, art. 7, U.N.T.S. 2187, 90, Jul 1, 2002.

		either nationality, race, ethnicity, or religion.
It includes torture, hostage taking, use of prohibited weapons, etc.	It includes torture (physical, mental, emotional), enslavement, murder, involuntary disappearances, etc.	It involves mass murder, measures to prevent birth, thereby destroying any future prospects of the targeted group, and the shifting of children to another group.

ROLE OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) AND INTERNATIONAL CRIMINAL COURT (ICC)

The crime of genocide is one of the heinous crimes that can occur against humanity. Though we are all humans regardless of our beliefs, many hate groups are prevalent even in today's society. There have been several occurrences of genocide over the years for example, the Cathar genocide in 1209, Dzungar genocide in 1755, Black war in 1825, California genocide in 1846, Greek and Pontic genocide in 1914, Libyan genocide in 1929, Romani Holocaust in 1939, The Holocaust in 1941 when the Nazis targeted Jews, Bangladesh genocide in 1971, Persecution of Uyghurs in China (2016 – present) where Uyghur muslims were targeted and are being actively tortured brutally to wipe out their existence, Rohingya genocide (2016 – present), genocide in Gaza (2023 – present) where Palestinians are being targeted and wrongfully detained and tortured physically, mentally, emotionally, sexually. This clearly shows that over the years, there has been no change in the mindset of the hate groups, and the lack of accountability is what has made it worse over the years. Even now, we continue to observe genocide being carried out by the so-called "Leaders" in the name of defense.

The “special intent” or the “mental element” mentioned in Article II of the Genocide Convention⁵ is the most troubling part. The intention is the most difficult thing to prove, as no one in their right mind would admit that they are committing the crime of genocide. Those committing genocide name their actions as a necessity to establish law and order, or label them as casualties of war.

The section of proving intent is further subdivided into two distinct parts – the first one being

⁵ Convention on the Prevention and Punishment of the Crime of Genocide, art. II, Dec. 9, 1948, 78 U.N.T.S. 277.

the ultimate target of their actions, and the second one being the ultimate fate of the group.⁶ The evidence regarding this can only be investigated by the ICC, whose main role is to try cases of crimes against humanity, war crimes, and genocide. The ICJ cannot try individuals as such and is primarily for resolving disputes between states and giving advisory opinions on legal issues. Furthermore, it does not have any organised body for collecting evidence and investigating crimes, thereby lacking the structure to try criminal cases on its own.

Currently, there are five cases related to genocide at the ICJ -

1. The Gambia v Myanmar⁷ - The Gambia alleged that Myanmar's military forces carried out man slaughter and rape by systematically planning against Rohingya villagers in Myanmar. Here is the [Application](#).
2. Ukraine v Russian Federation⁸ - Ukraine alleged that Russia was falsely justifying its military invasion of Ukraine as a response to Ukraine having committed genocide and also alleged that Russia is violating The Genocide Convention. Here is the [Application](#).
3. South Africa v Israel⁹ – South Africa alleged Israel of committing genocide in Gaza. Many countries with similar views have submitted applications to intervene in the case.
4. Nicaragua v Germany¹⁰ - Nicaragua alleges that Germany is culpably involved in the genocide of Palestinians by aiding Israel with its military.
5. Sudan v UAE¹¹ - Sudan alleged that the UAE provided logistical, financial and military support to the Rapid Support Forces (RSF) that was involved with the genocide of the Masalit community. The case was dismissed due to a lack of solid grounds for its

⁶ Mettraux, Guénaél, 'Establishing Genocidal Intent', *International Crimes: Law and Practice: Volume I: Genocide* (2019; online edn, Oxford Law Pro), <https://doi.org/10.1093/law/9780198843115.003.0009>, accessed 10 Aug. 2025.

⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar), Provisional Measures, Order, 2020 ICJ 3 (Jan. 23), according to Cour Internationale de Justice.

⁸ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, Ukraine v. Russian Federation, Provisional measures, ICJ GL No 182, ICGJ 559 (ICJ 2022), 16th March 2022, United Nations [UN]; International Court of Justice [ICJ].

⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order, 2024 I.C.J. 1 (Jan. 26).

¹⁰ Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany), Provisional Measures Order, Apr. 30, 2024, I.C.J. (2024).

¹¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Sudan v. United Arab Emirates), ICJ, Order on Provisional Measures, 5 May 2025.

jurisdiction.

These cases are still awaiting final decision and relief. Even the provisional relief given by the decision also lacks the force to stop the perpetrators from further committing atrocities, as was observed when Russia did not abide by the court's decision and went on with its attacks. The ICJ in the case of genocide of Palestinians extended its judgement delivery date to 2027 at the earliest, while countless Palestinian children are dying of malnutrition and hunger. The question arises - Is the current methodology of serving international justice efficient? If not, then why is the structure of the system not being made so that relief is granted immediately? How many countless deaths are required before the world finally understands that its justice delivery system is not doing enough? We need to emphasize the statement that justice delayed is justice denied.

WHAT NEEDS TO BE DONE?

The current system for securing justice lacks in many areas; reform is, however, essential and indisputable now. Some of the reforms that can be brought about are -

- Accountability – The perpetrating State must be held accountable. States must not shield their leaders from being held accountable, and action must be taken if States fail to prosecute the one responsible for committing genocide.
- Pressurizing – The States must pressurize the perpetrator to immediately halt its actions relating to genocide. Sanctions must be used. One of the effective ways to deal with States committing international crimes is through diplomatic isolation.
- Reforming the Veto power – The UN Security Council fails to take action due to veto power. This must be reformed in cases of crimes against humanity being committed, which require urgent action and failure to act is against the very reason for which the UN was created i.e., World Peace and Harmony.
- Use of AI to detect potential genocide – Better methods of investigating and, data collection, and analysis can be used with the help of AI to quickly assess potential cases of genocide.
- Support the ICC – The non – signatory countries like Russia must be encouraged to

support the ICC, and its enforcement powers should be expanded.

- Quick Action – The States must take quick diplomatic and political action before the violence escalates.
- Humanitarian aid – Humanitarian Aid must be allowed to the victims of genocide, and safe area zones must be created in or near the targeted area to make it accessible.
- Resettlement – The States must collectively make an effort to help the survivors of genocide resettle. They should be provided with educational and career benefits along with counselling.
- Reparations – The survivors must be provided full reparations for what they had to endure.

CONCLUSION

Genocide, no doubt, is the peak level of hatred in action. It demands immediate action and justice. The world needs to take the lessons from the prevailing situations into account and make reforms to prevent such situations from escalating in the future and immediate action must be taken in cases of crimes against humanity. The current definition of genocide under The Genocide Convention does not take into account the political angle of genocide. Most of the time, it is the political leader of a State that is responsible for mass killing to fulfill its political agendas. Thus the definition also requires some addition to be made. To summarise it all, genocide is the worst of crimes and every single human being must raise his or her voice against the perpetrators of crime even if it is their own political leader, and it is the collective duty of the States to take diplomatic and political actions against the perpetrator and to prosecute him for the same to secure the ends of justice and curb hatred.