



Role of International Criminal Laws in Reducing Global Genocide

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ABSTRACT

The present paper provides the importance of International Criminal Laws in reducing Global Genocide. It lays stress on how the International Criminal Court works to prevent crimes against humanity, war crimes, and genocide in particular. Various International Organisations such as the International Criminal Court, and the Convention on Prevention and Punishment of Crime of Genocide among other things have been working for so long to reduce the cases arising out of such crimes. Under International Law, a national criminal justice system may prosecute crimes committed within the state's territory or by its nationals. However, in the cases of war crimes, crimes against humanity, and genocide, universal jurisdiction is with the courts. National courts may prosecute the offenders of these offenses no matter by whom they are committed.

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The present paper provides the importance of International Criminal Laws in reducing Global Genocide. It lays stress on how the International Criminal Court works to prevent crimes against humanity, war crimes, and genocide in particular. Various International Organisations such as the International Criminal Court, and the Convention on Prevention and Punishment of Crime of Genocide among other things have been working for so long to reduce the cases arising out of such crimes. Under International Law, a national criminal justice system may prosecute crimes committed within the state's territory or by its nationals. However, in the cases of war crimes, crimes against humanity, and genocide, universal jurisdiction is with the courts. National courts may prosecute the offenders of these offenses no matter by whom they are committed.

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WHAT IS GENOCIDE?

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide states that 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:¹

- 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 term 'GENOCIDE' was coined by Raphael Lemkin in response to the Nazi policies of systematic murder of Jewish people during the Holocaust. Raphael was a lawyer who coined the term in 1944 in his book *Axis Rule in Occupied Europe*.²

In the year 1946, Genocide was recognized by the United Nations General Assembly as a crime and it was codified as an independent crime on December 9th, 1948 in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). To constitute genocide, there must be mens rea on the part of perpetrators to physically destroy a national, ethnic, racial, or religious group. It is this special intent, or *dolus specialis*, that makes the crime of genocide so unique. In addition, case law has associated intent with the existence of a State or organizational plan or policy, even if the definition of genocide in international law does not include that element.³

EVENTS OF GENOCIDE

Cathar Genocide (1209) – The Albigensian Crusade was a military campaign started by Pope III to eliminate Catharism, a Christian Sect in Southern France. The Catholic Church recognized them as heretics, one whose beliefs vary with other customs, particularly the religious law of an organization, and ordered that they should be completely eradicated.

Taino Genocide (1492) – It refers to the extermination of the indigenous population of Hispaniola due to forced labor and exploitation by the Spanish. 68% to 96% of the Taino population perished under the Spanish rule.

Dzungar Genocide (1755) – Extermination of the Mongol Dzungar people by the Qing dynasty. The emperor ordered the genocide after the rebellion in 1755 by the Dzungar leader.

Haitian Massacre (1804) – The massacre destroyed the Franco-Haitian population where entire families were tortured and killed.

Massacre of Salsipuedes (1831) – It was an attack by the Uruguan Army to eradicate the Charrua, indigenous and semi-nomadic people who sustained themselves mainly through hunting and gathering.

Queensland Genocide (1840) - Around 3.3% to 50% of the Aboriginal population was killed⁴

¹ https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

² <https://www.un.org/en/genocideprevention/genocide.shtml>

³ <https://www.un.org/en/genocideprevention/genocide.shtml>

⁴ https://en.wikipedia.org/wiki/List_of_genocides

California Genocide (1846) – The Indigenous people of California were murdered and killed by the United States government agents and private citizens. The conquest of California and the California Gold Rush were the main reasons for the massacre. Crimes like Kidnapping, Rape, and forced displacement were widespread.

Circassian Genocide (1864) – It was the Russian Empire's mass murder, ethnic cleansing, and expulsion of the Circassian population which led to millions of deaths. The targeted people were the Muslim Circassians. The methods used during the genocide included tearing the bellies of pregnant women. The Russian Empire even allowed their soldiers to rape women.⁵

Selk'nam Genocide (1880) – It was the extermination of the Selk'nam population.⁶ The genocide declined the population of Selk'nam from 3000 to 500 in number.

Hamidian Massacre (1894) – These killings resulted in casualties ranging from 80,000 to 3,00,000.

Herero and Nama Genocide (1904) – It is considered the first genocide of the 20th century.

Massacres of Albanians in the Balkans Wars (1912) – During the First Balkan War, Serbia and Montenegro committed a number of war crimes against the Albanian Population.

Greek Genocide (1914) – It was the systematic killing of the Christian Ottoman Greek population of Turkey, carried out mainly during World War I and its aftermath based on their religion and ethnicity. At least 25% of Greeks in Anatolia (Turkey) were killed.

Assyrian Genocide (1915) – The killings and slaughtering of Assyrian Christians in southeastern Anatolia by Ottoman forces.

Osage Indian Murders (1918) – The killings took place to kill Osage to gain reservation rights.

Libyan Genocide (1929) – The Genocide of Libyan Arabs by Italian colonial authorities under Benito Mussolini.

Romani Holocaust (1939) – Extermination of the European Roma and Sinti peoples by Nazi Germany and its World War II allies to commit ethnic cleansing and genocide. 25%- 80% of the Romani people in Europe were killed.

Nazi crimes against the Polish nation (1939) – Committed by Nazi Germany, these killings included mainly Jewish Poles. 90% of the Jewish Poles were killed.

Genocide of Serbs and Holocaust in the Independent State of Croatia (1941) – The Ustase regime, an organization that occupied the area of Yugoslavia laid down the murder of Serbs and other ethnic groups.

The Holocaust (1941) – It was the genocide of the European Jews during World War II. The Nazi Germany killed millions of Jews across German-occupied Europe.

Gautemalan Genocide (1962) – 40% of the Maya population of Gautemala's Ixil and Rabinal region were killed.

Zanzibar Genocide (1964) – The Arab residents of Zanzibar were made target by the Black African population. 25% or more of the Arab population were killed.

Bangladesh Genocide (1971) – It was the ethnic cleansing of Bengali Hindus, residing in East Pakistan during the Bangladesh Liberation War by Pakistan Armed Forces.

Rwandan Genocide (1994) – It was the genocide against Tutsi during the Rwandan Civil War. 60%-70% of the Tutsis were killed.

⁵ https://en.wikipedia.org/wiki/List_of_genocides

⁶ https://en.wikipedia.org/wiki/Selk%27nam_people

Hutu Massacre (1996) – Around 8000 refugees were killed and 7,00,000 were repatriated back to Rwanda by the AFDL (Rwanda-backed Alliance des Forces Democratiques pour la Liberation du Congo-Zaire).

Darfur Genocide (2003) – The killing of ethnic Darfuri people which included rape, ethnic cleansing, and crimes against humanity.

Rohingya Genocide (2016) – The killing of Muslim Rohingya People by the military of Myanmar. The Rohingyas are denied citizenship under the 1982 Myanmar nationality law.

Gaza Genocide (2023) – Israel was accused of carrying out genocide against the Palestinian population during its invasion and bombing of Gaza during the ongoing Israel-Hamas war.

FACTORS THAT CAN PREVENT GENOCIDE

Three pillars for Genocide Prevention are:

- Early warning
- Human Rights Protection
- Public campaign of education and awareness

Impunity destroys the social fabric of societies and perpetuates mistrust among communities or towards the State undermining the peace.⁷ As States have the primary responsibility to protect their population from atrocity crimes, they also have the obligation under international conventional and customary law to see that those responsible for acts of genocide, crimes against humanity, or war crimes are made accountable and that victims have a right to an effective remedy.⁸

Prosecutions give recognition to the sufferings of the victims and their families and contribute to the restoration of some of the dignity or integrity that was lost or which severely damaged them.⁹

The International Criminal Court is the court of the last resort for the prosecution of serious international crimes including genocide, war crimes, and crimes against humanity.¹⁰ Though the ICC has made great efforts in bringing global attention to the need for accountability in prosecuting cases arising out of investigations in the Central African Republic, Darfur, Rwanda, and Sudan, it faced intense political attacks and judicial setbacks like lack of support in making arrests.¹¹

The ad-hoc international tribunals and the hybrid courts have been instrumental in creating a culture of accountability throughout the world, and in educating societies, impacting future generations on the importance of respect for human rights, norms, and principles.¹²

⁷ <https://www.un.org/en/genocideprevention/accountability.shtml#>

⁸ <https://www.un.org/en/genocideprevention/accountability.shtml#>

⁹ <https://www.un.org/en/genocideprevention/accountability.shtml#>

¹⁰ <https://www.hrw.org/topic/international-justice/international-criminal-court>

¹¹ <https://www.hrw.org/topic/international-justice/international-criminal-court>

¹² <https://www.un.org/en/genocideprevention/accountability.shtml#>

