

Genocide - Its Definition and the Scope of Research

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As is well-known, the word “genocide” is made up of the Greek word “genos”, meaning “race” or “people”, and the Latin “cide”, “to kill”. Raphael Lemkin, a Polish expert on international law of Jewish origin is credited as having coined the word, but it is now an established concept within international law, given a clear definition in the Genocide Convention adopted by the General Assembly of the United Nations in 1948 and in the Rome Statute of the International Criminal Court (hereafter ICC) of 1998.

In this research project, we will prioritize this definition. However, it would be undesirable to overly privilege this definition to the extent that our field of research is narrowed. Which is to say, that this definition is a very narrow one - obviously so, since it is a criminal legal concept - and can seem very restricting to us researchers, who are neither judges nor public prosecutors, in that when we come to think about events in terms of the relationships between their historical backgrounds, their processes and their outcomes, and link these to various causes, we may find that it becomes difficult to develop an argument under this definition. I will touch on this point in a subsequent paragraph, but firstly, I would like, in this research project, to explore from an empirical research point of view the issue of whether the concept of genocide as defined by international law appropriately accounts for actual historical realities.

1. The distinction between genocide and “crimes against humanity”

As defined by the Rome Statute of the ICC finally published in 2002, genocide ranks alongside “crimes against humanity”, “war crimes”, “crimes of aggression” as one of the major criminal categories in international law. In fact, the Rome Statute definition of genocide followed the line established in the 1948 “Genocide Convention”. From this statement alone, one might assume that the concept had not developed in that period of time, but it is important to note that in the Rome Statute, in exchange for not altering the definition of genocide, the concept of “crimes against humanity” which had hereto been insufficiently defined in international law was clarified, enabling genocide to be clearly distinguished from the category of crimes containing “crimes against humanity”, and granted a new and unique position. The definition of genocide in Article 6 of the Rome Statute of the ICC is as follows.

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.

When one compares this to the Rome Statute's new definition of "crimes against humanity", one appreciates many points they have in common in terms of punishable acts. So, what are the differences between these terms? The first difference is that while the victims of genocide are defined as belonging to one of four types of group (national, ethnical, racial or religious), the victims of "crimes against humanity" are ordinary citizens, civilians. The second difference is that while genocide requires "intent to destroy, in whole or in part" one of the four types of group mentioned above, there is no such stipulation for "crimes against humanity". To summarize, while genocide appears to double up with "crimes against humanity" on the surface, in fact it differs from the latter in that its victims must be members of one of four fixed categories of groups, and must aim at the destruction "in whole or in part" of the group.

2. Concerning punishable acts

Let us now examine each of the above-mentioned punishable acts (a) to (e) in concrete terms.

- (a) "Killing members of the group" includes killing one or more persons who belong to a particular national, ethnical, racial or religious group.
- (b) "Causing serious bodily or mental harm to members of the group" includes torture, rape and sexual violence, enforced drug usage, amputation and also the mental trauma inflicted upon group members by such acts.
- (c) "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" includes intentionally depriving the group of resources such as drinking water, clothing, food, housing and medical services, which are essential to its physical survival. Other acts which also fall into the category of the deprivation of the opportunity for maintaining quality of life are the confiscation of harvests, the blocking of food supply lines, incarceration, forced migration and exile into the desert.
- (d) "Imposing measures intended to prevent births within the group" includes such acts as forced castration or sterilization, forced abortion, prohibition of marriage and male-female segregation to prevent reproduction.
- (e) "Forcibly transferring children of the group to another group" includes not only migration forced by direct violence, but also that forced by fear and the psychological pressure of the threat of violence.

Viewed in this manner, punishable acts of genocide are not merely restricted to killing or creating conditions leading to the death of members of the group, but can also form part of a political plan designed to destroy a group in whole or in part by inflicting physical or psychological damage, preventing reproduction, enforced child migration and the like.

I would like to add five further points:

- (1) Planning or abetting genocide is a crime, regardless of whether such acts occur before the actual genocide. Further, incitement or support of genocide is likewise a criminal offence.
- (2) The determination of whether or not an act constitutes genocide depends upon the existence or otherwise of “intent to destroy, in whole or in part, a ... group”. To prove this intent, statements (words) and commands (documents) may be used as direct evidence, but intent may also be inferred from the systematic patterns of behaviour of the perpetrators.
- (3) An act will be considered genocide if it is conducted with intent to destroy in whole or in part any one of the four above-mentioned categories of groups, regardless of the political, economic, cultural, social or military motivation behind it or aim in mind; be that aim the stabilization of authority, the suppression of opposition factions, the exploitation of human or material resources, land development, cultural unification, maintenance of territorial integrity, the securing of public order or the conduction of war. Indeed cases in which genocide is carried out for its own sake are rare; it is almost always carried out with some other motivation or towards some other goal. When one decides whether or not an act constitutes genocide, its motive is never in question.
- (4) As indicated by the phrase “the destruction in whole or in part of a ... group”, it is not necessary to destroy all of a group in order to constitute genocide; the partial destruction of a group – for example, the killing of a political or religious leadership or of intellectuals, or of the residents of a fixed region – is sufficient. Even if only one person is killed, if this killing is part of a conscious plan for the destruction of a group, then the killer becomes a perpetrator of genocide.
- (5) There is no set definition of the perpetrator. Nation states, organizations, groups or even individuals can be perpetrators of genocide.

In the introduction, I noted the narrowness of the concept of genocide in international law, but there may be readers who feel that it is in fact quite broad from the explanation given up to this point. Therefore, I would now like to explain why I claimed it was narrow, by considering the problem of genocide in international law. Here, I would like to focus on two aspects: the groups subjected to genocide and punishable acts, and propose a “broad definition of the concept of genocide”.

3. The broad sense of genocide - the arbitrariness of decisions made by the perpetrators

First, let us consider the victimized groups in genocide. From the time of the establishment of the Genocide Convention to the present day, a major point of dissent has been whether or not to include political groups in the category of victims of genocide; that is, groups who have been harmed because of their political creed or political party affiliation. These groups were included in this category in the draft stage of the Genocide Convention drawn up after World

War II, but were eventually removed at the objection of the Soviet Union. Neither was this omission corrected in the Rome Statute of the ICC. In my own opinion, while the perpetrators of genocide appear at first glance to be destroying a given group of human beings, in fact they are often “creating” the group to be destroyed themselves. For example, in the case of Nazi Germany’s Holocaust, it appears as if Jewish people were eradicated simply because they were Jewish, but in fact the Jews to be killed were determined by the Nazis’ arbitrary definition. Such terms as “pure Jews” and “one quarter Jews” eloquently speak for this position. Further, under the Nazi regime, the category of “anti-social elements” was created, and groups which were defined as belonging to this category were eliminated. In other words, there are cases in which prior to the act of genocide, the perpetrators arbitrarily define the object of genocide.

One legal system which recognizes this arbitrary selection on the part of the perpetrators is the new French Penal Code, established in 1994. At present, most of the 135 countries which have ratified the Genocide Convention have made it part of their national law, but among these the new French Penal Code is groundbreaking. Incidentally, Japan has not even signed, let alone ratified the Convention. I would like to quote Article 211-1 from the French Penal Code.

[1] Genocide is committing or causing to be committed, in the execution of a prearranged plan leading to the total or partial destruction of a national, ethnic, racial or religious group, or of a group established by reference to by other arbitrary criteria, one of the following acts against members of the group:

1. willful infringement on life;
2. serious infringement on physical or mental integrity;
3. infliction of conditions of existence likely to involve the total or partial destruction of the group;
4. measures aimed at blocking births;
5. forced transfer of children.

[2] Genocide is punishable by imprisonment for life.

I would like to utilize this new French Penal Code, which incorporates this element of arbitrariness on the part of the perpetrator in genocide, as the fundamental premise of this research project. Based upon this arbitrary nature of the decision-making of the perpetrators, it becomes possible to posit genocide targeted against those outside the four categories of group mentioned above. For example, as well as political groups, social classes such as the “kulak” which were victimized under Stalin’s regime, the “anti-social elements” of the Nazi regime (repeat offenders, homosexuals, labour evaders and so on), and “resistant elements” and “partisans” in times of international and civil war, will all be subjects for research.

4. The broad definition of genocide - “cultural genocide”

In the process of the drawing up of the Genocide Convention, an objection was raised to limiting the definition of genocide to the five punishable offences listed above as (a) - (e), and in a draft of the Genocide Convention, the following proposal was made with regard to punishable offences: that alongside “physical genocide” (homicide, mass murder, imposition of lifestyle conditions designed to make existence impossible, biological experimentation on the human body, etc), “biological genocide” (enforced castration/ sterilization, enforced abortion, segregation of the sexes, prohibition of marriage, etc), “cultural genocide” should be recognized. Ultimately, the first two types were reorganized and ratified as the five punishable acts (a) - (e), but “cultural genocide” was not adopted. This was because countries involved feared that their conduct during colonial rule would come in question.

Incidentally, what did those who proposed the inclusion of “cultural genocide” have in mind? They stipulated that forced migration of children, exile of the intelligentsia, the prohibition of native languages, the systematic destruction of religious and secular publications in native languages, the destruction of historical or religious monuments and the destruction of cultural properties and historical texts, would constitute “cultural genocide”. “Cultural genocide” was also excluded in the Rome Statute of the ICC, but I propose to include it as a research object for the purposes of this project.

In this research project, we would like to position the definition of genocide recognized by international law as the “narrow sense of genocide”, and position “cultural genocide” and “ethnic cleansing”, unrecognized by international law, and cases in which the perpetrators arbitrarily establish the groups to be victimized as the “broad sense of genocide”, and study both types. (See chart 1.) In this way this research aims to broaden the scope of genocide studies, and at the same time shed some light upon the boundary lines between genocide under international law and other criminal acts.

5. Genocide in war

As an example of a boundary line research topic, “war and genocide” is one possibility. Until now, there has been a tendency to view war and genocide as separate entities. For example, for a long time in Holocaust research, the relationship between the genocide of the Jews and the war was rejected, with the former seen as an unrelated independent crime. Indeed, to separate genocide from war was in itself one of the aims of those who established the Genocide Convention. In research of recent years, however, the inseparable relationship between World War II and the Holocaust has become clear, and the actions on the Eastern Front against the Soviet Union have come to be seen in terms of genocide in war. The arbitrary designation of a group to be partially or fully destroyed with the aim of assisting progression of the war has been frequently seen in World War II Europe and Asia, and in the Vietnam and Gulf Wars.

Chart 1

		Act	
		The five punishable acts (physical/ biological genocide)	Cultural genocide
Victim	The four categories of group (national, ethnical, racial, religious)	Narrow definition of genocide	Broad definition of genocide
	Groups arbitrarily determined by the perpetrators	Broad definition of genocide	Broad definition of genocide

For reference

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