



A MODERN APPROACH TO THE DEFINITION OF GENOCIDE IN INTERNATIONAL LAW

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Abstract: the article examines the scientific and theoretical aspects of the definition of genocide as an international criminal offense. The authors examine various documents adopted within the framework of international organizations and the opinions of experts on the definition of the international criminal crime of genocide.

Keywords: United Nations, UN International Law Commission, Statute of the International Criminal Court, genocide, international justice, international criminal offense, responsibility.

Genocide (from Latin. «genus» - means "group", "caedere" means "to kill") [1] it was first proposed as such a term by Raphael Lemkin (Poland//USA, 1900-1959) at the Conference on the Unification of International Law in Madrid (Spain) in 1933. Later, Rafael Lemkin explored this problem in his monograph "The Rule of the Axis States in Occupied Europe", published in the United States in 1944, in which he defines the concept of genocide as a process of destruction of political and social institutions, culture, language, religion, economy of persecuted nations and strata, implemented by depriving personal security, freedom, health, dignity, and finally, the very life of their representatives because of belonging to them [2].

The famous scientist A.N. Trainin, for the first time in the Soviet science of international law, investigated the issue of punishment for crimes of genocide [3]. In the post-war period, the Austrian researcher Gustav Steinbauer, Doctor of Law, one of the lawyers of the Nuremberg trials, coined the term "genocidium" [4].

At the official level, in 1946, the UN General Assembly adopted resolution 96 (I), where genocide was defined as "... the denial of the right to exist of integral groups of people", just as murder is a denial of the right to life of individual human beings [5].

On November 21, 1947, the UN General Assembly, through the adoption of resolutions 177 (II), instructed the UN International Law Commission "... to consider the desirability and possibility of creating an international legal body entrusted with the consideration of cases of persons accused of committing crimes of genocide" [6].

The year 1948 is significant in that the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which defines genocide as "... acts committed with the intent to destroy, in whole or in part, any national, ethnic, racial or religious group as such:

- a) the murder of members of such a group;
- (b) Causing serious bodily injury or mental distress to members of such a group;
- (c) The deliberate creation of living conditions for a group that are designed to completely or partially destroy it;

- (d) Measures designed to prevent childbearing among such a group;
- (e) The forcible transfer of children from one human group to another"[7].

The Convention, in defining the crimes of genocide, assumes the presence of three main elements:

- 1) an identifiable national, ethnic, racial or religious group;
- 2) the intention to destroy partially or completely such a group (*mensrea*) and
- 3) performing any of the listed actions in relation to the identifiable group (*actusreus*).

At the same time, acts of genocide can only be directed against these groups, and the intention to destroy, for example, a political or social group does not fall under the concept of genocide. It is a very difficult task to establish the appropriate mindset (*mensrea*) of the accused, i.e. his specific criminal intention to destroy one of the listed groups.

In the commentary of the UN Security Council to the draft "Code of Crimes against the Peace and Security of Mankind" in this regard, it is stated that "... the general intention to commit one of the listed actions, combined with a general understanding of the possible consequences of such an action in relation to the immediate victim or victims, is still insufficient to qualify the crime of genocide. The definition of this crime requires a specific intention regarding the general consequences of the prohibited act" [8].

S. Bassiouni notes in his research that distinctions are made between the first and second types of murders. In the first case, genocide implies "denial of the right to exist to an entire group of people," in the second, murder implies "denial of the right to life to individuals." The ultimate goal is the group itself. Thus, *actusreus* (prohibited actions) can be limited to one person, but *mensrea*, or intent, must be directed against the existence of the group"[9].

An important component is the prohibition of genocide, which means full recognition and application by the international community of a mandatory norm of conduct regardless of contractual obligations, including for States that have not signed the Convention.

At the same time, the prohibition of genocide has the character of *juscogens*, i.e., it is a mandatory component of international law, and treaties are null and void if, at the time of conclusion, they contradict the peremptory norms of international law [10]. Violation of the prohibition of genocide is considered a crime against the entire world community, and can be sanctioned by any State.

The protected interests in the commission of genocide are the physical, biological, national-cultural, political existence of a certain national, ethnic, racial, religious or specific group as such.

A controversial issue in theory is the protection of individual interests and the interests of members of a national, ethnic, racial or religious group as a subject of protection from genocide, although it is generally recognized that the human honor and dignity of the victim is protected.

A more modern interpretation of genocide is given by the Rome Statute of the International Criminal Court, adopted on July 17, 1998 at the Final Act of the Diplomatic Conference of Plenipotentiaries under the auspices of the United Nations, which defines this crime as "... committed with the intention to destroy, in whole or in part, any national, ethnic, racial or religious group as such:

- a) murder members of such a group;
- (b) Causing serious bodily injury or mental distress to members of such a group;

(c) The deliberate creation of living conditions for a group that are designed to completely or partially destroy it;

(d) Measures designed to prevent childbearing among such a group;

(e) The forcible transfer of children from one human group to another."

The objective side of committing the crime of genocide is primarily actions directed against the generally recognized norms of international law, as well as the goals and principles of the UN Charter and the Statute of the International Criminal Court.

Based on article 6 of the Statute of the International Criminal Court, the objective side of the crime of genocide is expressed in the commission of any actions aimed at the complete or partial destruction of any national, ethnic, racial or religious group.

Conventionally, genocide can be classified into:

physical, which implies actions aimed at the complete or partial physical destruction of national, ethnic, racial and religious groups;

biological, which implies actions designed to prevent childbearing in the environment of such a group, the forcible transfer of children from one human group to another;

ethnocide (national cultural), which implies actions aimed at destroying the national culture of the persecuted peoples by creating obstacles for representatives to receive education, destroying monuments, planting a foreign language, writing, etc.;

ecological (ecocide), which implies actions aimed at the mass destruction of flora and fauna, poisoning of the atmosphere, water resources, and other actions capable of causing an environmental disaster.

Genocide can be carried out both in peacetime and during an armed international, non-international (internal) or mixed conflict.

It is considered controversial whether the protection of individual interests and the interests of members of a national, ethnic, racial or religious group is the subject of protection from genocide, although it is believed that human honor and dignity are protected.

The objects of the crime of genocide are always social relations, encroachment on human life, health, rights and freedoms, which can also be conditionally classified into:

national groups differing in common citizenship (citizenship), common history, customs, traditions, culture and language;

ethnic groups, which are defined as historically formed, having a certain culture, speaking the same language, having common customs and traditions, and joint forms of existence, sometimes belong to a certain geographical area;

racial groups that differ, usually through inherited biological traits or apparent biological ones, such as skin color or physique;

religious groups that differ mainly through common faith or through comparable forms of religion;

other groups - these usually include social, political, economic and cultural ones, which are also not protected from genocide.

On the subjective side of the crime, a person is individually criminally liable for the crime of genocide, falling under the jurisdiction of article 6 of the Statute of the International Criminal Court, only if it is committed with the intention (intent) "... to destroy, in whole or in part, any national, ethnic, racial or religious group as such."

It follows from this formulation that the subject of the crime is aware of and desires the onset of certain consequences of his actions.

Intent to destroy takes place when a person has an intention (intent) According to article 6 of the Statute of the International Criminal Court, "... completely or partially destroy ... the group as such," which is the main sign of genocide and gives the crime an international character.

The subjects of the crime of genocide, in accordance with paragraph 3 of article 25 of the Statute of the International Criminal Court, are a person who:

"a) commits such a crime individually, jointly with another person or through another person, regardless of whether this other person is subject to criminal liability;

(b) Orders, incites or induces the commission of such an offence, if that offence is being committed or there is an attempt on that offence;

(c) In order to facilitate the commission of such a crime, aides, abets or in any other way facilitates its commission or attempt, including the provision of funds for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such assistance must be provided intentionally and either:

(i) In order to support the criminal activity or criminal purpose of the group in cases where such activity or purpose is related to the commission of a crime within the jurisdiction of the Court; or

(ii) with awareness of the intent of the group to commit a crime;

f) in relation to the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking an action that represents a significant step in its commission, but the crime turns out to be incomplete due to circumstances beyond the control of the person's intentions. However, a person who refuses to attempt to commit a crime or otherwise prevents the completion of the crime shall not be punished in accordance with this Statute for attempted commission of this crime if the person has completely and voluntarily renounced the criminal purpose."

Applicable penalties. The Convention on the Prevention and Punishment of the Crime of Genocide of 1948, in article IX, enshrines the provisions: "... concerning the responsibility of one or another State for committing genocide or one of the other acts listed in article III ...", which are submitted to the UN ICJ at the request of any of the parties to the dispute.

In accordance with article 77 of the Statute, the International Criminal Court "... may impose one of the following penalties on a person found guilty of a crime:

a) deprivation of liberty for a certain period, calculated in the number of years, which does not exceed the maximum number of 30 years, or

(b) Life imprisonment in cases where this is justified by the exceptionally grave nature of the crime and the individual circumstances of the person found guilty of its commission.

In addition, the Court may impose:

a) a fine in accordance with the criteria provided for in the Rules of Procedure and Evidence;

(b) Confiscation of income, property and assets obtained directly or indirectly as a result of a crime, without prejudice to the rights of bonafide third parties."

As can be seen from a small analysis, the definitions of the crime of genocide have undergone great progress in the legal aspect, especially after the end of World War II, and in many ways

the implementation of its position depends on the will of States as the main subjects of international law to make human life safer.

References:

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