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# Foundations of the Crime of Genocide under International Law

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## ABSTRACT

*Humans have traveled to many continents and, on countless occasions, have destroyed or attempted to exterminate their own species in the most brutal ways, completely or in groups. Genocide took place in different continents and regions of the world, in different types of civilizations, societies and cultures. It is known that throughout human history, significant mass killings have occurred in Europe, as well as in America, Africa or Asia. There is no particular reason to think that our ancestors differed in the way they confronted and destroyed their enemies. It was almost routine for clans and tribes to carry out "acts of genocide" against their rivals, similar to ancient empires and modern nation-states that waged a genocidal campaign to destroy their imaginary or real enemies. The purpose of this article is to provide a comprehensive understanding of the different interpretations of the crime of genocide, particularly the specific intent component, by international courts and tribunals, and how this may endanger the punishment and prevention of genocide.*

***Keywords:*** *Crime, Genocide, International Law, International Courts, Courts.*

## I. INTRODUCTION

Today, historical events that might fall under the category of genocide have been disappointingly ignored among scholars, lawyers, historians, and politicians, as recognizing a particular genocide in history can have political, economic, and social consequences (such as the obligation to pay compensation, to put pressure on them). States that are alleged to have committed genocide are taking compensatory actions for the historical claims to finally be recognized worldwide.

The use of the word "genocide" is relatively new and it can be said that its definition in international law has only recently been formed. There are, however, many other words previously used in history and literature that underlie the largely destructive character of the act. Examples of these are mass murder, massacre, extermination, extermination, ethnic cleansing (Naimark, 2017).

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Before considering the world history of genocide, it is necessary to understand the special character of genocide that distinguishes it from other crimes such as “war crimes” or “crimes against humanity”. For example, it is routine to mistake "genocide" in the context of a wide variety of "war crimes" that are serious violations of customary international conventions or international humanitarian law conventions. Genocide is also different from "crimes against humanity", which are classified as brutal acts such as the extermination, deportation, deportation or mass killing of civilians and persecution for political, racial or religious reasons (Cassese, 2013).

The Genocide Convention (Convention) states that “genocide has inflicted great losses on humanity in every period of history”. Although the environment and conditions are different, genocide takes place over time. Moreover, when examining genocide in history, these sources first take into account the definition in the Genocide Convention, which states that acts must be committed against four protected groups; namely national, ethnic, racial and religious groups. In addition to these four groups, these resources also include social and cultural groups in United Nations Resolution no. It was also embedded in the draft definition of Article 96(I) and the 1946 Convention that preceded the Genocide Convention, but these parts were removed after political pressure from some states (Schabas, 2013).

## II. EIGHT STAGES OF GENOCIDE

Each of the genocides described above followed the "8 stages" model outlined by Gregory H. Stanton (Stanton, 1996). Therefore, it is important to understand these stages structurally before examining the foundations and components of crime. These are classification, symbolization, dehumanization, organization, polarization, preparation, destruction and denial.

Although classification is necessary for all languages and cultures in the world, it is the first step towards genocide. For example, the Nazis had very detailed laws to classify Jews. In Rwanda, there was also a clear separation between Tutsis and Hutu, as no one was mixed in the society. Although there were mixed marriages, the children born from these marriages were not mixed and their ethnic origins were determined according to their fathers. “Bipolar societies,” as Gregory H. Stanton put it, are places where genocide is most likely to occur. Symbolization is used when referring to a particular classification. In Rwanda, the Hutu was a symbol, as was the Muslim in the former Yugoslavia (Shaw, 2015).

To incite genocide, the target group is symbolized by using the names of animals or diseases that disgust societies. For example, in Rwanda, the Hutu called Tutsi 'inyenzi', meaning cockroach, and therefore dehumanized them and reduced them to animals in people's minds.

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This perception would allow the Hutu to kill the Tutsis. Also, the dismemberment of the bodies of the victims of the genocide is not a coincidence, but an expression of denying the victim's humanity. This is exemplified in Rwanda but also in other genocides such as the Bosnian genocide. Moreover, genocide is always organized and is the result of a collective effort by a part of society that takes its impetus from group identity. The planning and tools used to carry out the killing need not be elaborate. In Rwanda, Tutsis were killed with basic objects such as machetes, clubs, and small axes (Midlarsky, 2005).

The next step is "polarization", in which the targeted group is polarized from the target group and moderate figures in society are systematically eliminated. This polarization makes it possible for mass murders to occur. In Rwanda, the Hutu Prime Minister and Supreme Court President was among the first public figures killed for being moderate towards Hutu extremists. Preparing for genocide means identifying the target audience. For example, houses may be marked, the target group may be compelled to wear certain identity symbols or to carry identity cards that show their ethnicity or which religious faction they belong to. Preparation may also include the concentration of the target group. The notorious example of this is when the Nazi regime forced the Jewish community to concentrate in certain ghettos and build extermination camps. When it comes to the stage of destruction, genocide takes place. This is followed by the eighth and final stage; namely the denial of genocide. Mass murders are kept in mass graves and local historical records are altered to allow for a non-genocide scenario (Jones, 2010).

## III. Fundamentals of the Crime of Genocide under International Law

The period after the First World War was the period when some initial efforts were made to criminalize and punish war crimes and crimes against humanity internationally. While these may turn out to be "disasters", they also obviously serve to spark an international movement. Progress in the foundations of international law regarding genocide was embodied in the United Nations Genocide Convention and later institutionalized with the establishment of international ad-hoc criminal courts and the permanent International Criminal Court. After modern atrocities, especially genocidal civil wars in the Former Yugoslavia and Rwanda, foundations were strengthened by ad hoc courts and case law by the International Court of Justice.

### (A) Developments Between the Two World Wars

After the First World War, international criminal law experts such as the Advisory Committee of Jurists (nominated by the League of Nations Council in 1920) and the International Law Society and the International Criminal Law Society came up with specific proposals. His efforts led to the adoption of the "Convention on the Establishment of the International Criminal Court"

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by the League of Nations in 1937, but this convention did not enter into force due to the lack of state ratifications (Kreß, 2006).

While there were failures, there were developments that provided some form of early protection to the minority groups who were aggrieved. For example, in 1919 the United States, the British Empire, France, Italy, and Japan signed a "Peace Treaty" with Poland, establishing a system of protection for national minorities. Full and complete protection of life and liberty is promised to all inhabitants of Poland, without distinction of birth, nationality, language, race or religion.

Although the "Minority Treaties System" between the two world wars did not provide adequate protection for blatant violations, it is considered a precursor to contemporary international human rights law. He protected Jews in Poland and Germany at least until 1937, the expiration date of the bilateral treaty between the two countries. These treaties also contributed to the groundbreaking work on the genocide of Rafael Lemkin, a Holocaust survivor lawyer (Gaeta, 2007).

Raphael Lemkin was already known around the world as a scholar of international criminal law and had attended major summits around the world such as the "Conferences on the Unification of Criminal Law". As a Polish Jew, he first sought refuge in Sweden in 1939 and eventually settled in the United States. Determined to promote the criminalization and punishment of genocide, he launched a global movement to ban this crime. He published his book "Axis Rule in Occupied Europe" in 1944, documenting Nazi German strategies to methodically destroy national and ethnic groups. In this book, he coined the term "genocide" by combining "genos" (a Greek prefix meaning "race", "tribe" or "nation") and "cide" (a Latin suffix meaning "to kill"). Drawing attention to the necessity of new concepts and new terms, he defined the genocide as follows:

“A coordinated plan of different actions aimed at destroying the very foundations of the lives of national groups with the aim of destroying none but the groups themselves. The purpose of such a plan is to disintegrate the political and social institutions of culture, language, national sentiment, religion and economic existence of national groups and to destroy their personal safety, freedom, health, dignity and even life of individuals belonging to such groups. Genocide is directed against the national group as an entity, and the relevant actions are directed against individuals as members of the national group, not in their individual capacity” (Lemkin, 2005).

Raphael Lemkin's definition seems narrow at first glance because he referred to genocide as being directed only at a "national group". But it is also broad to the extent that it sees not just physical fragmentation as genocide when the culture and living conditions of the victimized

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group are destroyed. The definition will prove its importance later in the drafting of the "Genocide Convention", which is the subject of my next chapter.

### (B) Genocide Convention (Convention)

#### 1. Draft Process

By 1945, top Nazis were found guilty by the Nuremberg International Military Tribunal for crimes against humanity. Raphael Lemkin traveled to Nuremberg to present his ideas, motivated by his own personal life experience. However, Lemkin Court was dissatisfied with the outcome as it did not understand the new word "genocide" for which it was campaigning.

The term "genocide" did not play a significant role, as it was not one of the crimes prescribed in the rules and was not yet perceived as an international crime. The Statute of the International Military Court referred to "crimes against humanity", which was limited only to acts committed after the Second World War, to hear allegations of persecution and physical destruction of victim groups. Nazi extermination policy was not the main concern. Rather, the Nuremberg Trials focused on war crimes and crimes against humanity, while dealing with the persecution and physical destruction of national, ethnic, racial and religious groups (Schabas, 2008).

Although the term was used only as an explanation and not as a legal term, it was only included under the headings of "war crimes" and "crimes against humanity" in the indictment. Regarding war crimes, the indictment charged the defendants with "deliberate and systematic genocide, that is, the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy certain races and classes of people and national peoples. By racial or religious groups were meant specifically Jews, Poles and Gypsies and others". Moreover, accusations of crimes against humanity included, among others, systematic persecution of Jews "who were deprived of their liberty, thrown into concentration camps where they were killed and mistreated". But the term genocide was not mentioned in the final resolution of the autumn of 1946 (Van der Vyver, 1999).

Raphael Lemkin then focused on lobbying by the recently established United Nations and pushing for the adoption of the term genocide in an international, legal instrument that would define and prohibit the act. Some countries also raised their voices as the Nuremberg Trials failed to punish the acts that fell within the scope of "genocide". In late 1946, during the first session of the United Nations General Assembly, some countries (Cuba, Panama, and India) submitted a draft resolution that had a dual purpose: genocide should be declared a crime in both peacetime and wartime, and states should be universal. The authority to prosecute and

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punish perpetrators of genocide should be shared. This led to discussions between member states about whether genocide should be criminalized under the international legal system.

In December 1946, the General Assembly adopted resolution 96(I) and stated that "Genocide is a crime condemned by the civilized world, and whether by private individuals, public officials or states, and regardless of whether the crime is committed on religious, racial, political or other grounds, partners, it is a crime under international law and is punishable." The issue was then forwarded to the Economic and Social Council for the drafting of a contract (UN Resolution 96(I), 2019).

The draft of the text was carried out in several basic steps. Initially, the United Nations Secretariat prepared a basic draft with the support of legal experts. These experts were Raphael Lemkin (the father of the term "genocide"), Vespasian Pella (a Romanian legal expert who advocated the establishment of an international criminal court and the initiation of international criminal proceedings against heads of state who committed crimes against humanity), and Henri Donnedieu de Vabres (to the primary French judge during the Nuremberg Trials). They were famous names such as a French jurist who served in The Ad Hoc Committee, established within the United Nations Economic and Social Council, published a draft that was later submitted to the Sixth Committee of the General Assembly for deliberations. When the final text of the agreement was accepted, it was submitted to the General Assembly for official acceptance.

Finally, on December 9, 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"), which stipulates that states should prevent and punish genocide, and which recognizes genocide as an "international crime". Thus, genocide was recognized as an international independent crime for the first time (UN Resolution 96(I), 2019).

**2. Important Judicial Measures**

The preamble of the Convention refers to Resolution 96(I) of the United Nations General Assembly, stating that "genocide is a crime under international law, contrary to the spirit and purposes of the United Nations and condemned by the civilized world" and that it has caused great losses throughout human history. It emphasizes the need for cooperation between states to "save humanity from such a terrible scourge".

Initially, the main idea behind the Convention was "prevention", as evidenced by the title "Convention on the Prevention and Punishment of the Crime of Genocide". However, apart from two explicit references to "prevention" in the text (Articles 1 and 8), the rest of the provisions mostly focus on "punishment" (Mayroz, 2017).

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Under Article 1, genocide is a crime "whether committed in time of peace or in time of war" under international law, and the Contracting States have a "commitment to prevent and punish the crime". It has been determined that the crime of genocide can be committed in the context of an armed conflict, international or non-international, but also peaceful. The latter is of course less common, but still possible (Tams et al., 2014).

Furthermore, Article 8 states that "Any of the Contracting Parties may call competent bodies for the prevention and suppression of acts of genocide". It is commonly interpreted that this provision only gives a contracting party the right to refer a case to one of the competent organs of the United Nations, but does not stipulate what measures should be taken when referred to by that competent body.

Articles 2 and 3 are at the "heart" of the Convention. For now, we will only briefly explain the scope of Articles 2 and 3 of the chapter titled “structure” of the crime of genocide: Article 2 genocide is “acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group”. ”, while Article 3 lists five punishable acts. During the deliberations in the Sixth Committee, the core of the debate was the definition of the mental element of crime and whether cultural genocide should be considered an act of genocide. In this context, the Sixth Committee made four important changes to the draft submitted by the Ad Hoc Committee. First, it removed the word "deliberate" before "actions". Secondly, he added that the destruction of the group must not necessarily be total, but also "partial". Third, the “ethnic group” was added and removed the “political group” from the area of protected groups. Finally, he replaced it with the words "as is" that the genocide was committed on the basis of "the national or racial origin, religious beliefs or political views of its members" (Schabas, 2008).

Article 4 states that perpetrators will be punished regardless of whether they are "constitutionally responsible administrators, public officials or private individuals" and thus does not allow heads of state or other officials to benefit from the defense of "official title". The Convention is not self-executing, meaning that states party to the Convention penalize the crime of genocide under Article 5 in their national criminal law systems. It is interesting that most of the Contracting Parties (Belgium, Brazil, Denmark, Israel, etc.) restate the concept as envisaged in the Convention, although States do not have to take the genocide provision verbatim. Moreover, some states (such as France and Finland) have expanded the definition by enlarging protected groups (Kreß, 2007).

Moreover, the Convention does not recognize universal jurisdiction, but only the territorial jurisdiction of an international criminal court. Article 6 of the Convention states that “Persons

accused of genocide or any of the other acts enumerated in article 3 shall be tried by a competent court of the State in the territory where the act was committed, or, to the extent possible, by such an international criminal court". It is worth adding that it initiated an "occasional work" that led to the adoption of the Rome Statute establishing the International Criminal Court, Article 7 affirming that the Contracting States "will grant extradition in accordance with their applicable laws and treaties".

Article 8 provides that any Contracting State may require the competent organs of the United Nations to bring an action under the United Nations Charter to prevent and suppress acts listed as crimes in the Convention. As William A. Schabas points out, this is a very unnecessary provision because member states already have the right to appeal to United Nations bodies. There is an important provision in Article 9 as it empowers the International Court of Justice to "see disputes between Contracting States regarding the interpretation, application or performance of this Convention, including those relating to a State's responsibility for genocide" (Akhavan, 2005). The rest of the provisions are mostly technical, such as the language of the texts and the entry into force of the Convention.

### 3. Feature, Role and Flow

When the United Nations General Assembly adopted the Genocide Convention in 1948, as Antonio Cassese put it, "Genocide acquired autonomous significance as a particular crime". As a human rights treaty, the Convention's primary purpose is to protect the four minority groups (national, racial, ethnic and religious) from the crime of attempted, conspiracy, incitement, complicity and completed genocide. This means that the Convention preserves the existence of these groups. The contract has many virtues. It stipulates the "careful" definition of the crime of genocide, recognizes that genocide is a crime regardless of whether in war or peacetime, and ensures that states are held accountable for the crime (Kreß, 2007).

Moreover, its norms can largely be regarded as a statement of existing customary international law on genocide. This is set out in the International Court of Justice's Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951. "The origins of the Convention show that genocide is a denial that shocks the conscience of humanity and includes the denial of the right of existence of all human groups." (General Assembly Decision 96 (1), 11 December 1946) (Kress, 2009).

The first consequence of this understanding is that the principles underlying the Convention are those accepted by civilized nations as binding on States, even without any conventional obligations. A second consequence is the universal character of both the condemnation of the

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genocide and the cooperation needed "to save humanity from such a terrible scourge" (Preface to the Convention). The Genocide Convention is therefore intended to be absolutely universal in scope by the General Assembly and its parties.

Since then, the International Court of Justice has often declared that the Convention contains principles that are part of "general customary international law". Regardless of whether a state has ratified the Genocide Convention or not, it is (legal) required to abide by the rule that genocide is a crime under international law. As the United Nations Secretary-General reminded in his Report on the Establishment of the International Criminal Tribunal for the former Yugoslavia, criminalization of the crime of genocide has the status of “jus cogens” since no exceptions are allowed under international law. The importance of the convention is not only in the “jus cogens” statute, but also in allowing the states party to the convention to put forward a case before the United Nations International Court of Justice, which has the power to see the disputes between the states parties regarding the interpretation and application of the convention (Gaeta, 2009).

It is a fact that the contract has both merits and faults. In this sense, the Convention has been criticized on a number of points since its adoption, the most obvious of which are:

(i) Genocide intent, which is vital for the amount of act towards genocide, is not clear and unambiguous. The effect of this deficiency will be detailed in the following sections.

(ii) Also, "cultural genocide" and "political genocide" are excluded from the scope of Article 2. The second exclusion was a deliberate choice of the drafters of the Convention.

(iii) The four groups protected under the definition (ie “national, ethnic, racial and religious”) are not defined.

(iv) Moreover, the enforcement mechanism remains ineffective mostly due to political debate.

It is true that there is no effective enforcement mechanism to impose on states to punish and prosecute offenders, or a monitoring mechanism to prevent crime from being committed. In addition, since the prosecutors of the countries where the genocide allegations are revealed will not want to open an investigation, the “regional jurisdiction” specified in the Convention may prevent the prosecution of the crime. Finally, despite Article 8, the United Nations General Assembly has only declared mass murder “an act of genocide” once (Hartigan, 2013).

The promise of "saving humanity from such a terrible scourge in order to prevent such great losses of humanity" given in the preface of the Genocide Convention unfortunately failed in the

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period following the adoption of the Genocide Convention and proved that humanity did not learn from the genocidal violence committed in the 1940s.

After coming into force in 1951, the Convention has not been effective in preventing genocide or prosecuting those accused of committing genocide. This has changed in the early 1990s, when humanity witnessed several instances of different forms of genocidal persecution, labeling the 20th century as the "genocide century". Besides Rwanda or the Former Yugoslavia, there are many other countries labeled with the genocide label, such as the Democratic Republic of China, Bangladesh, Brazil, East Timor, Cambodia, Indonesia, Sudan, and Iraq (May, 2010).

Despite the extent of the atrocities committed after its adoption, the Genocide Convention is still a milestone in the advancement of international genocide law. This is both at the national and international level. Several national courts have begun to exercise universal jurisdiction in the prosecution of the crime of genocide. In addition, there have been various subsequent developments to further develop the Convention through international institutions, applying the same definition introduced by genocide, from the establishment of international ad hoc criminal courts to the first cases heard by the International Court of Justice.

### (C) International developments after the genocide convention.

The next two sections will review international efforts to build on the norms of the Genocide Convention. The establishment of the International Criminal Tribunal and the ad hoc tribunals of the former Yugoslavia and Rwanda deserve special attention because their statutes are important legal documents that can assist in the interpretation of the Genocide Convention.

#### 1. Establishment of a Permanent International Criminal Court: The International Criminal Court

When the Genocide Convention was adopted in 1946, the United Nations General Assembly adopted a resolution that same day addressing the drafting of a statute for an international criminal court, as set out in Article 6 of the Convention. That decision stated that the adoption of the Convention "raises the question of the desirability and possibility of the prosecution of persons accused of genocide by a competent international court" and that "there is a growing need for an international judicial body to prosecute certain individuals". The International Law Commission, later on, in Article VI of the Convention. He has been appointed to work under the authority of Art.

Following this first step, it took forty years for the United Nations to embody its actions. It seems that this is largely due to the Cold War conditions and the obstruction of the world's "great powers" such as the Soviet Union. Finally, the International Law Commission published

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a draft for the establishment of a permanent international criminal court in 1994. Article 20 of the draft states that the Court has jurisdiction over a group of crimes, one of which is genocide. No details were provided after the sequencing of the crime, only reference was made to the "authoritarian definition" of the Genocide Convention (Koursami, 2018).

In 1995, the General Assembly established the Ad hoc Committee on the Establishment of the International Criminal Court to revise the first draft of the International Law Commission. The Ad Hoc Committee, which disagreed with the Commission's approach to exclude the definition of genocide, chose to include the Genocide definition of genocide in its revised draft, and after discussion, the Preparatory Committee adopted the same approach. II of the Convention. Article orally and III. By enclosing the item in "square brackets", it shows that there is no consensus yet on these points. When a revised draft was ready, in July 1998 the United Nations General Assembly convened a diplomatic conference in Rome. The purpose of the conference was to "conclude and adopt a convention on the establishment of an international criminal court". The Statute of the International Criminal Court, also known as the "Roma Statute" after the city where the conference was held, was adopted with 120 votes in favor, 7 against and 21 abstentions (U.N. Doc., 1998).

It is worth noting that the writing process of the genocide clause was not discussed "in essence" at the conference in Rome, and it is an easy task due to the "authoritarian nature" of the definition set out in the Genocide Convention. However, there were discussions on the forms of participation as stipulated in Article 3 of the Genocide Convention. Finally, this is transferred to Article 25 of the Statute, with some differences that will be discussed further in the study.

### 2. International Special Purpose (Ad Hoc) Criminal Courts

The great violence that devastated the former Yugoslavia in the 1990s helped usher in a new era in international genocide law. Although it is criticized for being passive and ineffective against oppression; Western powers finally launched concrete actions through the United Nations, which led to the establishment of the first ad hoc international criminal tribunal to try crimes committed in the former Yugoslavia. A few years later, in 1994, the massive extermination campaign of nearly one million Tutsi in Rwanda prompted the establishment of the second international criminal court.

It is difficult to say that representatives of permanent seat states such as the United States, China, France, Russia or the United Kingdom, or non-permanent members elected by the General Assembly, do not have a political agenda in terms of deciding to establish an international criminal court. It is noteworthy that the Council established a tribunal for the former Yugoslavia

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or Rwanda, but not for war crimes or crimes against humanity committed in Palestine, for example. It is impossible to disagree with William Schabas' comment on this subject: "The Security Council does not constitute a court when it conflicts with the agendas of its permanent members" (Mundis, 2005).

Still, the establishment of these courts is an improvement because it is the international community that seeks to impose legal accountability for crimes in the former Yugoslavia or Rwanda, unlike Nuremberg, where the vanquished judges the vanquished. Moreover, these courts have proven effective in respecting human rights through the prosecution of the most serious crimes and have introduced international criminal law to a wide audience. For this reason, they have made important contributions to the development of international law and procedure, but more importantly, it is obvious that they have made a great contribution to the interpretation of the Genocide Convention in terms of this study.

- **International Criminal Tribunal for the former Yugoslavia**

While the International Law Commission was working on its draft to establish a permanent international criminal tribunal, tragic events forced the establishment of an ad hoc criminal tribunal to combat the massacres that have occurred in the former Yugoslavia since 1991. In late 1992, the United Nations Security Council established a Commission of Experts that recognized a number of war crimes in Bosnia. Following its recommendations on the establishment of an international criminal tribunal, the Security Council adopted a resolution that it expressed in light of "continuing reports of widespread violations of international humanitarian law occurring on the territory of the former Yugoslavia, including mass reports". "An international tribunal will be established to continue the practice of "ethnic cleansing" committed on the territory of the former Yugoslavia since 1991 and to try those responsible for serious violations of international humanitarian law" (Schlütter, 2010).

VII of the United Nations Charter. Acting within the scope of the Division ("Threats to peace, violation of the peace, and acts of aggression), the Security Council established the International Criminal Tribunal for the Former Yugoslavia. Committed between 1 January and a date to be determined by the Security Council upon the restoration of peace in the territory of the former Yugoslavia. The draft statute prepared by the Secretary-General in May 1993 to prosecute persons and perpetrators responsible for serious violations of international humanitarian law entered into force unchanged (UN Doc. S/RES/827, 1993).

The Secretary-General's report states that the court must apply the rules of international humanitarian law, which are part of customary law. In the report, it is stated that “The

Convention on the Prevention and Punishment of the Crime of Genocide of 09 December 1948 is part of traditional international humanitarian law, which has undoubtedly become a part of customary international law, and is applicable in armed conflicts as it is included". In the report, under the heading of "genocide", it was also emphasized that the Convention was "considered as part of customary international law, as evidenced in the Advisory Opinion of the International Court of Justice" (UN Doc. S/25704, 1993).

Despite the explicit references to the Genocide Convention, it was the Security Council that established the tribunal by not following a "deal approach". The court provided for in the system of Article 6 of the Genocide Convention is a court where the States parties consent to their jurisdiction. As Schabas said, the court is not a court designed by the states that drafted the Convention. First of all, its jurisdiction was not recognized by Yugoslavia, the region in which the court's jurisdiction would be exercised. Article 2 of the ICTY statute titled "Genocide" consists of three parts. The first section sets out the jurisdiction of the courts; the second section provides a literal definition of genocide from the Genocide Convention; the third part stipulates the specific forms of the crime as well as the verbatim production from the Genocide Convention (Jodoin, 2010).

- **Rwanda International Criminal Court**

Receiving a request from the Rwandan government in 1994 to establish an international tribunal to try crimes committed in Rwanda, the United Nations Security Council decided to take action. In Rwanda, "acts of genocide and other systematic, widespread and overt violations of international humanitarian law have been identified, following various reports of the Secretary-General and the Commission of Experts on the perpetration of genocide and other systematic, widespread and overt violations of international humanitarian law". Security Council, the situation in Rwanda United Nations Charter VII. It concluded that there was a threat to international peace and security within the meaning of the Division. By a decision of November 1994, the International Criminal Tribunal for Rwanda ("ICTR") was established "for the sole purpose of prosecuting persons and Rwandan citizens responsible for genocide and other serious violations of international humanitarian law committed on Rwandan soil". This includes genocide and other such violations committed on the territory of neighboring states between 1 January 1994 and 31 December 1994 (UN Doc. S/RES/955, 1994).

The ICTR's status appears to be very similar to that of the ICTY, except for the war crimes provisions that ensure that the genocide in Rwanda was committed within a civil war.

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Otherwise, we can say that the genocide provisions are the same in both ICTR and ICTY statutes (UN Doc. S/RES/955, 1994).

## IV. CONCLUSION

Although genocide has been a crime plaguing the world for centuries, it was only in the 20th century that it was labeled as genocide and entered the literature. Although the process after the Holocaust was halted by the Cold War, positive changes were seen in the punishment of crime. The UN's Genocide Convention is recognized as a milestone for the development of international law in the context of genocide. However, it would be difficult to deny the narrow and vague definition that stipulates the crime of genocide. Considering the conditions in the 1940s and considering that the text had to be negotiated by many states with different legal traditions, political views and perspectives, it can be said that agreement on an improved text would not be possible. However, this does not hide the fact that the definition of the crime of genocide lacks substantive explanations and leaves many components of such an important crime to the interpretation of international courts. In this sense, there are really many question marks. What is a racial or ethnic group? What do the additional words "as is" mean? How can a group be defined? What is the threshold level required for genocidal intent? Other questions have had to be answered by international courts, at the expense of differing interpretations for certain important components of the crime. Undoubtedly, the Convention could have been a better guide for the international community had it contained clearer provisions.

The Convention was first implemented internationally through the ad hoc courts of Rwanda and the Former Yugoslavia, after which cases began to be heard by the ICJ. The first case before the ICC is now about to be heard, provided that the arrest warrant for Al Bashir can be enforced. It is clear that there is no real consistency between the interpretation of genocidal intent by the ad hoc tribunals and the ICJ, among others. Still, the few decisions made so far show a clear trend for a "purpose-based approach". It should not be overlooked that the high standard of genocidal intent has negative effects on the prevention of genocide. It is important to remember that the Genocide Convention has two aims: “prevention” and “punishment”, both as stated in its very title. There appears to be little of note in international law regarding the prevention of genocide. The Rwanda and Darfur genocides are all examples of the UN failing to issue adequate reports and take timely action to prevent crime. If the risk cannot be assessed because the necessary genocidal intent is too high, timely preventive action cannot be taken. Consequently, the interpretation of intent must respond to this challenge in such a way that one of the main objectives of the Genocide Convention must be met.

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