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War Crime, Genocide and the International Criminal Court

Bhuvaneswari Subramanian

Assistant Professor, Law, Bharath Institute Of Law

ABSTRACT:
This paper provides a comprehensive overview of the concepts of war crimes, genocide, and the role of the International Criminal Court (ICC) in prosecuting crimes. Serious violations of the laws of war and customs of war, as defined under international customary law and international treaties, are known as War Crimes in international law. It examines the historical development of international criminal law, including its legal definitions, challenges faced by the ICC, and case studies that illustrate its application and limitations.

INTRODUCTION

War crimes and genocide represent heinous violations of international law, often associated with the atrocities committed during systematic acts of violence against civilians and armed conflicts. The international community, remembering the grave nature of these crimes, has sought to establish legal frameworks to prevent and take action against such acts. The creation of the International Criminal Court (ICC) marked a significant milestone in these endeavours, aiming to hold every individual accountable regardless of their political status or nationality.

The importance of effective legal mechanisms to address war crimes and genocide cannot be underrated. These crimes not only cause immense pain and suffering but also threaten international peace and international security. Despite the establishment of the ICC and other tribunals, challenges persist in ensuring justice, peace, including issues related to sovereignty, political interference, and enforcement.[1].

This paper examines the evolution of international law concerning war crimes and genocide, the important function and role of the ICC, and the real challenges faced by the ICC in these crimes. Through an understanding analysis of key legal instruments, judgmental landmark cases, and ongoing developments, it aims to assess the effectiveness of the current system and propose avenues for strengthening the base of international justice.

THE EVOLUTION OF LAWS CONCERNING WAR CRIMES AND GENOCIDE:

1. PRE-20TH-CENTURY REGULATIONS OF WARS:

The first and foremost established guidelines for Union forces regarding the treatment of each civilian and prisoners. Ancient civilizations, including the Greeks, Romans, and Egyptians, codified their rules in war, but these were primarily designed to regulate interactions between soldiers instead of protecting civilians. Even the concept of genocide was virtually non-existent; violence against a group was often justified

[1] . Schabas, William A. *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press, 2016, p. 45.

through divine authority. This document would have a domestic nature, but it would influence the subsequent international effort to create new, innovative wars. War crimes and genocide were not explicitly defined. Military codes, such as medieval chivalry or Roman Laws, provided some norms but lacked comprehensive international oversight. The Enlightenment era, which is from the 17th to the 18th centuries, marked a turning point in ideas about human rights and the conduct of war. Philosopher Hugo Grotius laid the groundwork for modern international law, principles of just war (jus in bello), and the humane treatment of the arrested prisoners. The 1899 and 1907 Hague Conventions set out a set of rules for the procedural process in war, and prisoners should be punished for the range of crimes they commit, and the punishment differs according to the crime. These agreements were helpful, but we needed strong and strict rules to follow the agreement. The definition of the term war crime didn't exist at that time, what we now call "war crimes."

2. RECOGNITION OF WAR CRIMES IN WORLD WAR I:

The unprecedented measure of destruction during World War I prompted renewed calls for accountability for wartime atrocities. The Treaty of Versailles (1919) included provisions for prosecuting Kaiser Wilhelm II for "a supreme offense against international morality and the sanctity of treaties." While this trial never materialized due to the Netherlands granting him asylum, the concept represented an important shift toward personal accountability for violations of the laws of war. The Nuremberg Trials from 1945 to 1946 marked a major milestone, as they sued a high range of ranking officials of the NAZI for crimes against peace, humanity, and war crimes. The Nuremberg rules laid the basic foundations for upgrading the modern international criminal law by recognizing crimes such as genocide and establishing the principle that individuals, not just states, could be held accountable. The Commission on the Responsibility of the Author of the War, established, identified violations that would later inform the basic concept of war crimes, including:

- Murder of civilians
- By torturing
- Making them starve
- Rape of minors
- Labour works
- Deportation

They do not follow; these efforts contributed to developing notions of international criminal law with no respect or responsibility by the emerging concept of "crimes against peace."

3. THE NUREMBERG TRIALS AND WORLD WAR II

World War II, specifically the Holocaust, marked a drastic point in the vast development of international criminal law. The systematic nature of Nazi crime prompted the Allied powers to establish formal mechanisms for suing through the International Military Tribunal (IMT) at Nuremberg.

The Charter of the International Military Tribunal (1945) defined three key categories of crimes:

1. **Crimes against peace**
2. **War crimes**
3. **Crimes against humanity**

The Charter codified "violations of the laws or customs of war," including murder, ill-treatment of civilians, prisoners of war, killing of hostages, plunder of both public or private properties, and destruction not justified by military necessity.

4. POST-WAR AND INTERNATIONAL JUSTICE:

It was a period that was significant in forming the principles established at Nuremberg and Tokyo through a range of international instruments. It represents an important chapter in the evolution of international law concerning war crimes and genocide. These global communities worked a lot to create and align all these into a legal framework, institutions, morals, and ethics aimed at preventing atrocities, punishing perpetrators, and promoting accountability. The basic developments during this period fundamentally transformed the way war crimes and genocide are understood, prosecuted, and prevented.

The Genocide Convention

The Convention on the Prevention and Punishment of the Crime of Genocide **(1948)** defined genocide as acts "committed with the intention to destroy, the whole or a part of, a national, ethnical, racial or religious group." It also represents an extreme form of crime against humanity with the specified intention required by destroying a specific protected group of civilians. The four Geneva Conventions of 1949 extended protection to various kinds of civilians during armed conflict and also established a major "grave breach" – serious violations that would constitute war crimes. The Additional Protocols of 1977 further extended these protections, particularly to victims of non-international armed conflicts. These instruments collectively represented the consolidation of crimes by war as a formal legal category within each jurisdiction, which means any state could sue perpetrators regardless of citizenship or the crime committed.

INTERNATIONAL COURT AND LEGAL AIDS DEALING WITH WAR CRIMES AND GENOCIDE:

"This cause … is the cause of all humanity"

~Former United Nations Secretary-General Kofi Annan[2]

The Court is working worldwide to stop impunity, i.e., ensuring that no one goes unpunished for serious crimes. Its goal is to hold those responsible accountable and prevent future crime. The Court cannot do this all alone. It is a court of last resort, which means it only steps in when national courts will not or cannot act. It is based on an international agreement or contracts called the Rome Statute. The International Criminal Court is the world's first permanent court that deals with serious crimes such as war crimes and crimes against humanity. It is also known as ICC.

It was first established in 1998 by the Rome Statute and started to be organized as a function for the crime of genocide and war crimes on July 1, 2002. By state parties from the nations, when the United Nations Security Council (UNSC) refers a situation to it.

ROLE OF ICTY AND ICTR:

The International Criminal Tribunal for the former Yugoslavia (ICTY), established by the UN Security Council in 1993, was tasked with prosecuting major serious violations committed during the Balkan conflict. It includes breaches of the Geneva Conventions, war crimes, genocide, and crimes against humanity. The ICTY made a landmark judicial contribution to international criminal law, such as recognizing minor rape or rape as a form of torture and a war crime, developed the concept of joint criminal enterprises as a mode of liability, and clarified that war crimes against humanity do not require a nexus to armed conflict. It also affirmed that ethnic cleansing can cause genocide. On the other hand, the International Criminal Tribunal for Rwanda (ICTR)1994 mainly focused on prosecuting genocide, crimes

[2] https://www.icc-cpi.int/about/the-court

against humanity, and violations of Common Article 3 of the Geneva Conventions. The ICTR notably advanced the prosecution of sexual violence as an instrument of genocide and clarified the legal elements of genocide. Both tribunals marked significant progress in ending impunity for mass atrocities, expanding the scope of war crimes to include non-international armed conflicts, and refining the legal framework for crimes against humanity.

JUDICIAL REPRESENTATION AND ASSISTANCE:

In international criminal proceedings, it is crucial to ensure fair trials, especially for accused civilians whose resources are lacking. Later, ICC started to provide legal representations through the **Panel of Defence Counsel (PDC)** and also appointed legal aid as necessary.

Policy: The ICC has a policy designed to facilitate an equal, fair defence for accused persons who are unable to afford legal representation or lawyers.

Victims: It also provides support to victims, including legal aid, to facilitate their participation in proceedings.[3]

CASE LAWS:

THE PROSECUTOR V. THOMAS LUBANGA DYILO(ICC 2012)

FACTS:

In this case of The Prosecutor v. Thomas Lubanga Dyilo, the ICC addressed the war crimes related to conscripting children and enlisting them in the Congo. The court emphasized that, under Article 75 of the Rome Statute, reparations must consider the extent of harm caused to victims, including those who were affected by sexual and gender-based violence. It promoted a gender-inclusive approach to ensure reparations addressing the specific needs of vulnerable victims, like traumatized children and victims requiring ill treatments like plastic surgery or HIV care. Reparations are to be awarded without discrimination on various factors, ensuring justice and addressing injustices.

ISSUE:

Whether these reparations adequately addressed the specific needs of vulnerable victims, including victims of sexual and gender-based violence, and whether the court correctly applied the principles of gender inclusivity, non-discrimination, and comprehensive harm assessment when determining reparations for victims of war crimes in the Lubanga case, in accordance with Article 75 of the Rome Statute.

ARTICLE 75 OF THE ROMO STATUTE:

Article 75 Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation. On this basis, in its decision, the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss, and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79.

[3] https://www.icc-cpi.int/about/victims

3. Before making an order under this article, the Court may invite and shall take into account representations from or on behalf of the convicted person, victims, other interested persons, or interested States.
5. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
6. A State Party shall give effect to a decision under this article as if the provisions of Article 109 were applicable to this article.
7. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.[4]

JUDGMENT:

The Court finds that the ICC clearly adopted a gender-inclusive and victim-sensitive approach in the determination of reparations, consistent with the provisions of the Rome Statute. The reparations awarded consider the full scope of harm, specifically the needs of victims of sexual and gender-based violence and groups of other vulnerable people, ensuring that no discrimination can occur based on gender, age, or other specified protected grounds. The Court orders reparations that aim to redress the injustices suffered by victims, promoting gender equality and safeguarding victims' dignity, in line with international legal standards. It is so ordered**.**

CONCLUSION:

Thus, we can conclude that the International Criminal Court stands as a pivotal institution in the global effort to combat war crimes and genocide, serving as a symbol of justice and accountability for victims worldwide. While ICC has certain challenges, such as political interference, limited jurisdiction, and enforcement issues persist, their existence underscores the international community's commitment to upholding human rights and providing remedies. Addressing war crimes and genocide needs a collective responsibility, strengthened legal frameworks, and unwavering support for international justice mechanisms. Thus, the ICC's ongoing work is vital in deterring future crimes, delivering justice to victims, and fostering a world where such heinous acts should no longer be tolerated. Only through continued human cooperation and dedication can we hope to realize a future free from war crimes and genocide**.**

[4] https://search.archives.un.org/uploads/r/united-nations-archives/2/2/6/2268be79f09c7c5d471d6c63e7bd120a29d8ac5353da17a5be71b05792212a1e/S-1092-0081-05-00010.pdf