

## **Abstract**

Genocide belongs to the category of crimes under international law. Crime under international law means the act of a natural person acting in an official capacity or with the consent of the State and whose conduct violates important norms of mandatory law. A perpetrator committing the offence has the individual criminal responsibility which follows directly from international law. The term genocide was first used by Polish-Jewish lawyer Raphael Lemkin in 1944. Lemkin's idea of genocide as a crime against international law was widely accepted by the international community and was used as one of the bases of the Nuremberg process. Genocide has not been since the beginning of the traditional division of crimes under international law listed as a separate crime. The criminal act was regarded as a part of other crimes under international law, especially crimes against humanity. Genocide acquired autonomous status as a separate crime under international law only after the 2nd World War in 1948, when the Convention on the Prevention and Punishment of the Crime of Genocide was adopted.

The Genocide Convention of 1948 and the corresponding rule of customary international law require both the objective and subjective elements to meet so as to incur individual criminal responsibility for the crime of Genocide. The objective elements consist of two main characters. The first character describes prohibited conduct, at least one of a set of crimes that may amount to genocide. The second character is then related to a protected group. The criminalization of genocide requires that criminal conduct was directed against one of the protected groups, or against members of the group. Subjective (mental) elements of genocide are: intent to destroy (special intent), in whole or in part, a national, ethnical, racial or religious group. Genocide is a crime where an attack is directed against a victim not because of its individual qualities and characteristics, but because of that person's membership in the group. In legal theory and before the court the existence of genocidal plan is sometimes required for criminal responsibility for Genocide even though the genocidal plan is not an obligatory element required by the Convention on Genocide.

The first application of the definition of genocide was carried out only after more than forty years since the Convention came into effect. An important source for development of the definition of genocide is judicature of international criminal tribunals. They arose in response to conflicts and mass killings of civilians in the former Yugoslavia and Rwanda. In particular, the judicature of the International Criminal Tribunal for Rwanda was a significant source of

decisions, which helped in developing the definition of genocide. The benefits of *ad hoc* tribunals were not only in the prosecution and punishment of genocide, but their activities have also encouraged national courts to deal with this crime.

Genocide is still a living phenomenon that occurs in various parts of the world. Although the offender shows signs of genocide is extremely difficult to prove in court the specific intent. It distinguishes genocide as well as it provides an exclusive position among crimes under international law.