

The Crime of Genocide before the International Criminal Institutions

Abstract

The crime of genocide constitutes one of the fundamental institutes of international criminal law that is directed against human rights violations perpetrated on a scale that affects the whole international community. It differs from other crimes under international law in its emphasis laid on the protection of selected groups of persons, the specific intent aimed at the destruction of those protected groups, as well as other aspects contained in its definition. As a response to the Holocaust the crime of genocide was defined for the first time by the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. It was this very definition that was adopted to the statutes of international criminal institutions and is currently recognised as a peremptory rule.

This thesis is dedicated to the crime of genocide in its form determined by the case law of UN *ad hoc* international criminal tribunals along with other international judicial authorities. The corpus of decisions taken by these authorities represents the preeminent source of matter concerned that provides the means to present a conceivably thorough perspective of the institute in question within the given scope. Furthermore, the author employs findings of the contemporary jurisprudence to furnish the analysis of the judicial practice of the aforementioned institutions.

Departing from the concise exposition of development, the initial part of the thesis is followed by the description of genocide as a distinctive constituent of the concept of crimes under international law, limited to the individual liability of natural person. With respect to the structure of the crime, a thorough examination of the *mens rea* is exposed in the first place. Besides particular elements of the *chapeau* of the definition special attention is paid to the conception of the protected groups as comprising the object of the crime. An analysis concerning possible extension of the protected groups is submitted.

The second part of the thesis focuses on particular modalities of acts amounting to genocide, that constitute the *actus reus* of the crime. For a further clarification of the issue concerned, the acts coming under the second part of the definition are illustrated by the example of sexual and gender-based crimes. Moreover, specific forms punishable under the crime of genocide including inchoate crimes are described with an outline of their future before the ICC.

At the end of the thesis, the performed research is recapitulated and inferences connected to the main hypothesis are evaluated. Considering the findings presented in previous sections, the author is inclined to think that the definition of the crime of genocide in the form shaped by

the judicial practice of international criminal institutions, does not entirely fulfil the requirements of the 21st century. In the author's judgement, an aggregate of problematic aspects with the conception of protected groups leading the list as well as unclarified matter of the contextual element represent cogent arguments for this attitude. Additionally, the decision of the International Criminal Court in the al-Bashir case indicates an approach that the author in the view of his analysis considers incompatible with the challenges of proceeding 21st century.

Key words: the crime of genocide; crimes under international law; international criminal institutions.