

FROM THE DEBRIS OF THE HOLOCAUST TO THE GENOCIDE OF TODAY: IMPACT AND ROLE OF INTERNATIONAL LAW

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Abstract

The Holocaust, a genocide that resulted in the murder of nearly six million European Jews by Nazis during the Second World War, this was a calamitous event that shook the scruples of humanity. After this unfortunate event, the international community came together to establish certain Human Rights Laws and to form a new world order, founded on the principles of humanitarian law, and the prevention of genocide with the purpose of never again but even after these laws this inhuman activity is converting into again and again. Why? Why there are still genocides? For this purpose, we must study the effect of holocaust in the formation of laws related to genocide, the role and impact of international law in preventing genocide as well as loopholes those must be overcome to brawl this inhuman activity. In this paper the authors aim to explore how the Holocaust stimulated the development of international laws and institutions with an aim to prevent future genocides, including the Convention on the Prevention and Punishment of the Crime of Genocide 1948, Geneva Conventions 1949, Rome Statute of the International Criminal Court 1998, and various General Assembly Resolutions on Holocaust. It also aims to examine the challenges and limitations of international law in preventing and responding to genocide, including various problems such as lack of ratification of the Genocide Convention, the jurisdiction of international courts, and the need for more effective and preventive measures.

Key Words: Holocaust, Genocides, International law, Inhuman Activity, Humanitarian Law

INTRODUCTION

The Holocaust, one of the darkest chapters in human history, resulted in the systematic murder of six million Jews and millions of others deemed undesirable by the Nazi regime. An

immensity and brutality of the atrocities committed during the Holocaust sent shockwaves around the world, prompting a collective cry of "never again." As a reaction of the Holocaust, the international community came together to establish a new framework for protecting human rights and preventing future atrocities. This framework, anchored in the Genocide Convention, that has evolved over the years to address the changing landscape of international relations and the persistence of genocide.

The Holocaust had a profound impact on the development of international law. The Nuremberg trials, which held Nazi officials accountable for their crimes, marked a significant turning point in the evolution of international criminal law. The trials established the principle of individual responsibility for international crimes and paved the way for the creation of subsequent international tribunals including the Rome Statute of the International Criminal Court, 1998 that entered into force on 1st July, 2002. The Holocaust also highlighted the need for a more robust framework for protecting human rights, leading to the adoption of the Universal Declaration of Human Rights in 1948.

The Genocide Convention, adopted in 1948, was a direct response to the Holocaust. The Convention defines genocide as the intentional destruction, in whole or in part, of a national, ethnical, racial, or religious group. As of June 2024, 153 States have ratified the treaty this held the signatory states obligatory to actively prevent and punish acts of genocide. The Convention also establishes the principle of universal jurisdiction, allowing states to prosecute individuals responsible for genocide, regardless of where the crime was committed. Despite its importance, the Genocide Convention has faced numerous challenges in its implementation, including issues related to jurisdiction, enforcement, and state sovereignty for this purpose to enormously examine the role of international conventions various case studies will be included in this paper such as-

- The Rwandan genocide (1994)
- The Darfur genocide (2003-present)
- The Rohingya genocide (2017-present)

This paper will explore the evolution of international law and the Genocide Convention from the debris of the Holocaust to the genocides of today. It will examine the impact of the Holocaust on the development of international law, the key provisions and limitations of the Genocide Convention, and the challenges and complexities of implementing the Convention in the modern era. Through a critical analysis of the existing literature and case law, this paper aims to contribute to a deeper understanding of the role of international law in preventing and responding to genocide, and to identify potential avenues for strengthening the Genocide Convention and its implementation.

Historical development of International Law on Genocide after Holocaust-

1.1-Nuremberg Trials (1945-1946)- The Nuremberg Trials were a series of trials held in Nuremberg, Germany, between 1945 and 1949. The trials were conducted by the Allied Powers (the United States, Great Britain, France, and the Soviet Union) to prosecute top Nazi officials for war crimes and crimes against humanity committed

during World War II. The First Nuremberg Trial (1945-1946) also known as the Trial of the Major War Criminals, began on November 20, 1945, and lasted for 10 months. The trial involved 24 high-ranking Nazi officials out of whom 21 appeared in the courtroom, Adolf Hitler, Heinrich Himmler, and Joseph Goebbels never stood trial, having committed suicide before the end of the war. The prosecution presented evidence of Nazi atrocities, including the Holocaust, and charged the defendants with Conspiracy to commit crimes against peace, Crimes against peace, War crime, Crimes against humanity. On October 1, 1946 the tribunal delivered its verdicts having 12 defendants were sentenced to death, 7 defendants received prison sentences ranging from 10 years to life, 3 defendants were acquitted and 2 died during the trials.¹

1.2-Genocide Convention (1948)- The Convention on the Prevention and Punishment of the Crime of Genocide, aims to prevent and punish the crime of genocide, which is an international crime and was adopted by the United Nations General Assembly on December 9, 1948 and entered into force on January 12, 1951. It was the first legal instrument to codify genocide as a crime and the first human rights treaty. The Convention defines certain obligations of States such Prevention, States must prevent genocide from occurring on their territory or under their jurisdiction., Punishment States must punish individuals responsible for genocide. Extradition States must extradite individuals accused of genocide to a state willing to prosecute them. Cooperation States must cooperate with each other to prevent and punish genocide.

1.3-International Court of Justice and the Genocide Convention (1950s-1960s)-The question arises whether the International Court of Justice have the jurisdiction over the genocide cases the answer is yes. The International Court of Justice (ICJ) can adjudicate cases related to genocide by interpreting and applying the Genocide Convention, allowing states to bring cases against other states alleging violations of the convention, which could include acts constituting genocide, essentially, the ICJ can determine if a state has breached its legal obligations under the Genocide Convention by failing to prevent or punish acts of genocide within its jurisdiction. In the case of **Gambia v. Myanmar**,² the International Court of Justice decided, by fifteen votes, that it has jurisdiction under the Genocide Convention to hear the application filed by the Gambia against Myanmar in November 2019³. In the case of **South Africa v. Israel**⁴, the ICJ ordered Israel to take all measures within its power to prevent the commission of all acts within the scope of Article II of the Genocide Convention, and to take

¹ The International Military Tribunal, available <https://museums.nuernberg.de/memoriumnuremberg%02trials/the-nuremberg-trials/the-international-military-tribunal/verdicts>. (visited on March 15, 2025)

² ICGJ 540 (ICJ 2020)

³ The Gambia v. Myanmar: An Analysis of the ICJ's Decision on Jurisdiction under the Genocide Convention, <https://www.asil.org/insights/volume/26/issue/9> (Visited on March 16 2025). ⁶ Initiated at ICJ on December 29, 2023.

⁴ Initiated at ICJ on December 29, 2023.

immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.⁵

1.4 Rome Statute and the International Criminal Court (2002)- The International Court of Justice is the primary judicial organ of the United Nations, responsible for settling disputes between states and providing advisory opinions on international law. The Rome Statute is the treaty that established the International Criminal Court. Rome Statute was adopted on July 17, 1998, in Rome, Italy and entered into force on July 1, 2002. As of January 2025, 125 countries are states parties to the Rome Statute. Countries that never signed the treaty China, India Indonesia, Iraq, North Korea, Saudi Arabia, Turkey. Countries that signed but never ratified: United States, Israel, Russia, Sudan, Syria, Egypt, Iran. Countries that were once parties but withdrew Burundi, Philippines. Other countries that are not signatories or have not ratified the Rome Statute Libya, Qatar, Yemen. Key Provisions of the Rome Statute includes- Jurisdiction the ICC has jurisdiction over genocide, crimes against humanity, war crimes, and aggression. The ICC can only exercise jurisdiction if national courts are unable or unwilling to investigate and prosecute. Apart from this it has an Individual criminal responsibility Individuals, not states, are held accountable for international crimes and the States are required to cooperate with the ICC in investigations and prosecutions.

1.5 Recent Developments- The International Criminal Court has continued to develop its jurisprudence on genocide, including the recent case of the **Prosecutor v. Laurent Gbagbo and Charles Blé Goudé**.⁶ Laurent Gbagbo, the former President of Côte d'Ivoire, and Charles Blé Goudé, a former youth leader, were accused of crimes against humanity, including murder, rape, and persecution, allegedly committed during the 2010-2011 postelectoral violence in Côte d'Ivoire. On January 15, 2019, Trial Chamber I of the International Criminal Court (ICC) acquitted Gbagbo and BléGoudé of all charges by majority decision, with Judge Herrera Carbuccion dissenting. The Trial Chamber found that the Prosecutor had failed to demonstrate several core elements of the crimes, including the existence of a "common plan" and a "policy to attack a civilian population" The Prosecutor appealed the decision, but on March 31, 2021, the Appeals Chamber upheld the acquittal, affirming that the prosecution had not presented sufficient evidence to prove the charges beyond a reasonable doubt. This judgement though establishing the elements essentials to get a person charged under the crime of genocide but was highly criticized such as Disappointment and frustration among victim and families, criticism from international organizations including UN Human Rights Council and European

⁵ The significance of the ICJ South Africa v. Israel case

<https://www.eui.eu/events?id=567397#:~:text=The%20ICJ%20ordered%20Israel%20to,assistance%20to%20ad>
(Visited on March 15 2025)

⁶ ICC-02/11-01/15-1

Union.⁷ Apart from this, recent UN General Assembly resolutions focus on preventing and punishing genocide, including establishing International Days of Reflection and Commemoration, as well as condemning genocide denial and glorifying those convicted of genocide.⁸

2- An ongoing genocide despite the international laws- An alarming concern-

2.1- **Rwanda Genocide**-Rwanda genocide of 1994, also known as the genocide against the Tutsi was planned campaign of mass murder in Rwanda that continued over the course of some 100 days from April 1994 to July 1994. The genocide in which the Rwanda's majority Hutu population planned to kill the minority Tutsi population and anyone who opposed those genocidal intentions. More than 800,000 civilians primarily Tutsi, but also moderate Hutu-were killed during the campaign⁹. As many as 2,000,000 Rwandans fled the country during or immediately after the genocide.¹²International law took several steps to stop the atrocities such as, the UN Security Council passed several resolutions, including Resolution 918 adopted on May 17, 1994 and Resolution 925 (1994) adopted on 8 June, 1994, which condemned the violence and authorized the deployment of a peacekeeping force United Nations Assistance Mission for Rwanda (UNAMIR).The Geneva Conventions and their Additional Protocols applied to the conflict, providing rules for the protection of civilians and prisoners of war. The ICTR was established by the UN Security Council in 1994 to prosecute individuals responsible Genocide and other Serious violations of international humanitarian law. The tribunal was not empowered to impose capital punishment; and could only impose punishment in terms of imprisonment. The statute of the ICTR limited the jurisdiction of the tribunal to Rwandan leaders, while lower-level defendants were to be tried in domestic courts. After extensive administrative and logistic delays, the ICTR completed its first cases in 1998. In May former Rwandan prime minister Jean Kambanda pleaded guilty to six charges of genocide and was sentenced to life imprisonment on September 4. In October 2000 Kambanda tried to revoke his guilty plea, but his motion was rejected by the ICTR. The ICTR completed its last trial on December 20, 2012, and closed on December 31, 2015. By that time, it had indicted 93 suspects, 62 of whom were found guilty.¹⁰ National courts were charged with trying lowerlevel genocide suspects. Rwandan courts were initially able to sentence those found guilty to capital punishment. The first death sentences were carried out on April 24, 1998, when 22 people convicted of genocide were publicly executed by police firing squads, despite serious procedural inadequacies in

⁷ Cote d'Ivoire: UN Human Rights Council strongly condemns post-electoral abuses

<https://news.un.org/en/story/2010/12/362932>. (Visited on March 17 2025).

⁸ General Assembly Adopts Resolution on Srebrenica Genocide, Designating International Day of Reflection, Commemoration <https://press.un.org/en/2024/ga12601.doc.html>. (Visited on March 17 2025).

⁹ Rwanda Genocide of 1994, <https://www.britannica.com/event/Rwanda-genocide-of-1994>. ,(Visited on March 17 2025 ¹²*Ibid*.

¹⁰ Rwanda Genocide of 1994, <https://www.britannica.com/event/Rwanda-genocide-of-1994>. ,(Visited on March 17 2025)

the hearings: war crimes trials often suffered from procedural deficiencies indicative of ethnic biases.¹¹

- **Despite these efforts, international law in certain points failed to prevent it, the reasons can be-**

1. The UN Security Council's resolutions were not enforced effectively, the peacekeeping force (UNAMIR), made unsuccessful attempts to mediate a cease fire. On April 21, as the crisis deepened, the UN voted to reduce UNAMIR's presence in the country from 2,500 troops to 270. That was completely incoherent troop reduction at a time when assistance was sorely needed. However, on May 17, the UN reversed its decision and voted to establish a force of 5,500, composed of soldiers mainly from African countries, but those additional troops could not be immediately deployed.¹²
2. The international community's response to the genocide was slow and inadequate, with many countries failing to provide sufficient support or intervention.
3. The ICTR's jurisdiction was limited to crimes committed in Rwanda and neighbouring countries, which meant that some perpetrators who fled to other countries were not held accountable. The ICTR did not have the jurisdiction to impose capital punishment as a result having a power to give imprisonment punishment only, that can be considered a minute punishment in response of such a big crime against humanity.

2.2- **Darfur Genocide**-The Darfur genocide was the systematic killing of ethnic Darfuri people during the War in Darfur. The conflict began in 2003, when two rebel groups, the Justice and Equality Movement and the Sudan Liberation Movement launched an insurgency against the Sudanese government, in response, the Sudanese government armed and trained local inhabitants in the area to create violent, semi-professional militias known as the Janjaweed, who were instructed to carry out a series of attacks against Fur, Zaghawa, and Masalit villages. The genocide, which was carried out against the Fur, Masalit and Zaghawa ethnic groups, led the International Criminal Court (ICC) to charge several people for crimes against humanity, rape, forced transfer and torture. An estimated 200,000 people were killed between 2003 and 2005. Other sources estimate that between 2003 and 2008, the conflict resulted in about 300,000 civilian deaths and about 2.7 million displaced civilians. As a response to the atrocities, the UN Security Council passed several resolutions, including Resolution 1556 (2004) adopted on 30 July 2004, and Resolution 1564 (2004), adopted on September 18, 2004, which condemned the violence and imposed sanctions on Sudan. United Nations Security Council Resolution 1564, established an international Commission of inquiry to investigate violations of human rights and international humanitarian law in Darfur, Sudan.

¹¹*Ibid.*

¹²*Ibid*

- **Role of International Criminal Court and African Union United Nations Hybrid Operation in Darfur (UNAMID)**

1. The International Criminal Court investigation in Darfur or the situation in Darfur is an ongoing investigation by the International Criminal Court (ICC) into criminal acts committed during the War in Darfur. Although Sudan is not a state party to the Rome Statute, the treaty which created the ICC, the situation in Darfur was referred to the ICC's Prosecutor by the United Nations Security Council in 2005. The ICC issued arrest warrants for several high-ranking Sudanese officials, including President Omar al-Bashir, for war crime against humanity and genocide. African Union United Nations Hybrid Operation in Darfur (UNAMID) was a joint peacekeeping operation between the United Nations and African Union; the mission was established in 2007 to protect civilians and bring stability to the Darfur region of Sudan.

Despite these efforts, international law cannot halt the genocide, the situation in Darfur is still not favourable, Darfur continue to became a humanitarian calamity and catastrophic human rights crisis. According to a report¹³. The Rapid Support Forces killed hundreds of civilians in West Darfur in early November 2023. The Rapid Support Forces' latest episode of ethnically targeted killings in West Darfur, has the hallmarks of an organized campaign of atrocities against Massalit civilians. The United Nations Security Council should urgently strengthen the UN's presence in Sudan to prevent further atrocities and better protect civilians in Darfur.

Showing the inefficiency and weakness of international law to take corrective measures and actions to halt such a severe crime.

2.3-Rohingya Genocide- The success of international law in solving the Rohingya genocide is a matter of debate. Despite certain level of success there are certain ongoing concerns that are still left untouched by the International Law. Though the International law has helped bring attention to the Rohingya crisis, with various UN bodies, international courts, and human rights organizations condemning the atrocities and by establishment of Accountability mechanisms, the International Criminal Court (ICC) has authorized an investigation into crimes committed against the Rohingya, and the UN Human Rights Council established a Fact-Finding Mission on Myanmar. Apart from this International law has facilitated the provision of humanitarian aid to Rohingya refugees, with organizations like the UN High Commissioner for Refugees (UNHCR) and nongovernmental organizations (NGOs) providing critical assistance to the victims. However, the reports of ongoing violence, displacement, and human rights abuses against the Rohingya continue to emerge. The Rohingya refugee crisis remains unresolved, with thousands of refugees living in precarious conditions in

¹³Sudan: New Mass Ethnic Killings, Pillage in Darfur, <https://www.hrw.org/news/2023/11/27/sudan-newmassethnic-killings-pillage-darfur>, (Visited on March 19 2025).

Bangladesh and other countries. According to UNICEF Report¹⁴ “Seven years after hundreds of thousands of Rohingya fled attacks and violence in Myanmar, joining refugees already in Bangladesh from previous waves of displacement, about half a million Rohingya refugee children are growing up in the world’s largest refugee camp. Many of them have been born there as refugees. “Despite international efforts, many perpetrators of atrocities against the Rohingya remain unpunished, and the Myanmar military continues to enjoy impunity. According to a report.¹⁸ The Rohingya have faced decades of discrimination and repression under successive Myanmar authorities. Effectively denied citizenship under the 1982 Citizenship Law, they are one of the largest stateless populations in the world.

About one million Rohingya are currently living in overcrowded camps in Bangladesh, most of whom fled Myanmar in 2017 to escape the military’s crimes against humanity and possible genocide. The estimated 600,000 Rohingya who remain in Rakhine State are subject to persecution and violence, confined to camps and villages without freedom of movement, and cut off from access to adequate food, health care, education, and livelihoods.

3- These Genocide depicts certain loopholes of international law to prevent genocide. To overcome these loopholes several steps can be taken-

1. Development of mechanisms to detect early signs of potential genocide, such as hate speech, discrimination, and violence.
2. Regularly monitor human rights situations in countries which are at risk of genocide, the centres can be formed in the suspected areas of conflicts to take early preventive actions.
3. Timely training programs can be conducted so that the officials can take preventive measures before international interruptions.
4. Diplomatic pressure can be applied on the government to take timely actions to prevent or stop genocide and heavy sanctions can be imposed on the government that fails to prevent genocide.
5. Strengthen the ICC's role in investigating and prosecuting genocide, war crimes, and crimes against humanity, and allowing ICC to pass certain strict punishments as to develop deterrence.
6. Various human rights agencies such as Amnesty International, Human Rights Watch and Montreal Institute for Genocide and Human Rights Studies (MIGS) should be easily accessible to the victims of genocide, as to protect their human rights from getting infringed. The peacekeeping forces must timely deploy in the suspected areas rather than unnecessary delays.

¹⁴Rohingya Crisis, <https://www.unicef.org/emergencies/rohingya-crisis>, (Visited on March 19 2025). ¹⁸ Rohingya Refugee Crisis Explained, <https://www.unrefugees.org/news/rohingya-refugee-crisisexplained/>, (Visited on March 20 2025).

Conclusion-

Unfortunately, the lessons of the Holocaust have not been fully learned yet. Genocides and mass atrocities continue to blight humanity, from Rwanda, Darfur, and Myanmar are the true proof to the notion. The debris of the Holocaust has not been fully cleared, and the world continues to tussle with the same forces of hatred, intolerance, and prejudice that led to the Shoah.

This research paper has examined the evolution of genocide studies, from the Holocaust to the present day. The paper has also explored the role of international law, institutions, and civil society in preventing and responding to genocide as well as loopholes to prevent the same.

Despite the progress made in understanding and addressing genocide, significant challenges remain. It is necessary that international community must continue to work towards creating a world where genocide is prevented, not just punished. This requires sustained efforts to promote tolerance, understanding, and respect for diversity, cultures as well as robust mechanisms for early warning, prevention, and response. Ultimately, the fight against genocide is a fight for humanity itself that requires the immediate response.