

THE CRIME OF GENOCIDE IN THEORY AND PRACTICE OF CRIMINAL LAW OF REPUBLIC OF SERBIA

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International criminal law, as a system of legal regulations found in acts of the international community and criminal legislation of individual states, establishes criminal liability and punishments for crimes against international law. These acts represent a breach of the laws and customs of war (international humanitarian law) that violate or threaten peace among nations and the security of mankind. Penalties prescribed for these criminal offences stand for the most severe penalties in contemporary criminal legislation. In some cases, international judiciary (supranational) institutions such as the Nurnberg and the Tokyo Tribunal, the Hague Tribunal, the Rome Court, etc. have primary jurisdiction over perpetrators of these criminal offences.

This criminal offence means the killing of a nation or a tribe. Genocide was proclaimed as “a crime under international law, which is in contradiction to the spirit and the aims of the OUN and condemned by the entire civilized world” by UN General Assembly Resolution 96/I from 11th December 1946. Although it emerged as a “sub-species of crime against humanity”, genocide rapidly obtained an autonomous status and contents as one of the most serious crimes today. As a crime against international law, genocide is determined by three elements: a) the objective component – actus reus b) the subjective component – mens rea c) the subject of the act-the group-the victim. The source of this incrimination is found in Convention on the Prevention and Punishment of the Crime of Genocide from 1948, which, in Paragraph 2, defines the term and the elements of this crime against international law. In legislation, theory and practice, this term can be interpreted in the broader sense, as well. In this paper the author has analyzed theoretical and practical aspects of genocide in international criminal law and criminal law of the Republic of Serbia (former FR Yugoslavia).

Key Words: international law, humanity, crime, genocide, court, responsibility, penalty

Crimes Against International Law

The notion and characteristics of international crimes

In the legal system of the Republic of Serbia, crimes against international law are enumerated in the Chapter Thirty Four of the Criminal Code¹ from 2005 entitled "Criminal Offences against Humanity and Other Rights Guaranteed by International Law". These criminal offences actually represent acts that constitute violations of international treaties, agreements and conventions and they threaten and entrench peace among nations, the security of mankind and other values protected by international law or they are in breach of the rules of war related to the treatment of war prisoners, the wounded, the sick and civilians by the parties to a conflict.

The origination of these criminal offences is related to the establishment of international rules organizing relations between states in time of war and relations between the parties to a conflict in view of commencement and conduct of an armed conflict. The international law of war has emerged as the consequence of cruel and inhumane comportment throughout the long history of wars and armed conflicts between nations and states with the intention to humanize this most inhumane means of resolving international and inter-state disputes.²

The process of gradual limitation of the rights that belong to the parties to a conflict has started with the expansion of the international law of war, as well as the control not only of the acts committed against non-combatants, but those related to the commencement and conduct of war. States' right of absolute freedom to commence and conduct a war will be gradually reduced by prohibiting certain acts that include unnecessary devastation, killing and torture. A breach of the laws and customs of war constitutes crimes under the laws of war. Having accepted international obligations by signing and ratifying numerous international conventions, certain states included several criminal offences against humanity and other rights guaranteed by international law in their criminal legislation. Such criminal offences are committed by violating rules contained in international conventions. Their source lies in the prohibitions proclaimed in international legal documents (acts).³

Subject of protection under international criminal law consists of humanity and other universally recognized and generally accepted values protected by international law. The protection of humanity pertains to the protection of essential human rights such as: life, physical integrity, honor, reputation and personal dignity and other fundamental human rights and freedoms. Additional rights that belong to natural persons, individual states and the entire international community are also of general, universal significance and therefore protected and guaranteed by international law.

The majority of crimes against the international law can be committed only in a certain period of time determined by the law: during war, armed conflict or occupation. These criminal offences are most commonly committed in an organized manner with the

¹ The Official Gazette of the Republic of Serbia No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016. More: D. Jovašević, *Krivični zakonik Republike Srbije sa uvodnim komentarom*, Beograd, 2007.

² D. Jovašević, *Krivično pravo, Posebni deo*, Beograd, 2014. pp. 305-311.

³ S. Zadnik, *Kaznena djela protiv vrijednosti zaštićenih međunarodnim pravom i novine u zakonodavstvu u svezi sa tim djelima*, Hrvatska pravna revija, Zagreb, No.12, 2003. pp. 83-86.

aim to implement certain governing of a group's or party's politics. Being considered as an aspect of organized, planned criminality, these offences are most frequently committed by the order of superior military or political leaders. Due to that, it is required to determine individual criminal responsibility of organizer, order-giver and offender.⁴

These criminal offences can be committed only with premeditation. Some of the criminal offences contained in this group are not subject to limitations on criminal prosecution and limitations on enforcement of penalty: genocide, crime against humanity, war crimes and other criminal offences that pursuant to ratified international treaties cannot be subject to limitations.

The system of international crimes

The theory of international criminal law recognizes several sorts of crimes against international law. They are most commonly divided into two categories: a) crimes against international law in the narrow sense (genuine or pure crimes against international law) and b) crimes against international law in the broader sense, or transnational crimes (counterfeit or mixed). This classification was adopted for the first time at the 14th Congress of the International Criminal Law Association, which took place in Vienna in 1989. The criterion of the division is jurisdiction of international criminal courts, which is established only in the case of crimes against international law in the narrow sense.⁵

Crimes against international law in the narrow sense belong to the first group of these criminal acts. These crimes against international law represent violations of laws and customs of war (meaning the rules of the international law of war and the international humanitarian law). They are incorporated in the Judgments of the Nürnberg and the Tokyo Tribunal, and are also known as criminal offences under general international law (or *crimina iuris gentium*).

The following criminal offences can be placed in this category:⁶

- 1) Crime against peace;
- 2) War crimes;
- 3) Genocide; and
- 4) Crime against humanity.

In legal theory, there are opinions suggesting that these criminal offences should be referred to as international crimes *stricto sensu* that are prohibited by cogent rules of international law such as the Hague or the Geneva Conventions. The following features of crimes against humanity in the broader sense (core crimes) are pointed out in legal theory:⁷

1) These international crimes have double-layered nature. Their commission draws the following consequences:⁸

- a) Individual criminal liability either of a perpetrator or of an accomplice or of a superior (on the grounds of superior liability) on the one hand and
- b) Responsibility of a state under international law on the other hand.

⁴ D. Jovašević, *Leksikon krivičnog prava*, Beograd, 2011. p. 345.

⁵ B. Petrović, D. Jovašević, A. Ferhatović, *Krivično pravo II, Posebni dio*, Sarajevo, 2016. pp. 239-240.

⁶ D. Jovašević, *Međunarodna krivična dela – odgovornost i kažnjivost*, Niš, 2010. pp. 251-255.

⁷ D. Radulović, *Međunarodno krivično pravo*, Podgorica, 1999. p. 103.

⁸ D. Jovašević, *Međunarodno krivično pravo*, Niš, 2011. pp. 251-255.

2) International crimes violate essential (fundamental) human rights and they are, therefore, prohibited as repression against the same crimes committed by the opposite party.

3) International crimes are not subject to limitations on criminal prosecution and limitations on enforcement of penalty and

4) General international law imposes as an *erga omnes* obligation on the states not to breach the basic rules that prohibit these acts.⁹

The Genocide According to the Statute of the Hague Tribunal

The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) was adopted upon Security Council Resolution S/RES/827 from 25th May 1993. The Statute (known as the Hague Statute) recognizes four types of crimes against international law.¹⁰ These are:¹¹

1) A grave breach of the Geneva Conventions of 1949;

2) Violations of the laws or customs of war;

3) Genocide; and

4) Crimes against humanity.¹²

Imprisonment is the only penalty that can be imposed by the Tribunal, and in determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia, taking at the same time into consideration the gravity of an offence (objective circumstances) and the individual characteristics of the convicted person (subjective circumstances).

In addition to imprisonment, the following sanctions may be also imposed:

1) Return of any property to the rightful owners (restitution); and

2) Confiscation of any proceeds acquired by criminal acts.

Genocide,¹³ also known as the gravest criminal offence today or the “crime above all crimes” is described in Paragraph 4 of the Hague Statute. This offence is comprised of intentional destruction, in whole or in part, of a national, ethnic, racial or religious group. The practice of the Hague Tribunal has not accepted the extensive interpretation of genocide, which would include the intention to destroy national, linguistic, religious, cultural or any other identity of a group without its physical extermination.

Completion of this crime against international law requires one of the following alternatively numbered acts to be committed with the abovementioned intention:¹⁴

1) Killing members of a certain group;

2) Causing serious bodily or mental harm to members of the group;

⁹ B. Petrović, D. Jovašević, *Međunarodno krivično pravo*, Sarajevo, 2010. pp. 251-255.

¹⁰ D. Jovašević, *Komentar Krivičnog zakona SR Jugoslavije*, Beograd, 2002. pp. 11-17.

¹¹ D. Jovašević, V. Ikanović, *Međunarodno krivično pravo*, Banja Luka, 2015. pp. 251-255.

¹² V. Đurđić, D. Jovašević, *Međunarodno krivično pravo*, Beograd, 2003. pp. 89-93.

¹³ S. Fabijanić Gagro, M. Škorić, *Zločin genocida u praksi međunarodnih ad hoc tribunala*, Zbornik Pravnog fakulteta u Zagrebu, Zagreb, No.6, 2008. pp. 1387-1419.

¹⁴ I. Zvonarek, *Kršenje međunarodnog ratnog i humanitarnog prava od strane agresora tijekom domovinskog rata*, *Pravni vjesnik*, Osijek, No. 3-4, 1997. pp. 151-169.

3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

4) Imposing measures intended to prevent births within the group; and

5) Forcibly transferring children from one group to another.

Genocidal intent is the most characteristic feature of genocide as a crime. It has to refer to the destruction of a significantly large part of the group. The so-called significant part should be important enough to be able to influence the entire group. This quantitative criterion has been supplemented by the possibility that a perpetrator of this act was given, which resulted in the need to prove genocidal intent even when it was demonstrated only towards a group located within the borders of a certain geographical area. To conclude, genocidal intent takes into consideration qualitative characteristics of the attacked part of the group, allowing the option to single out the part that represents the symbol of the group or is crucial for its continued existence.¹⁵

Apart from direct perpetration (direct perpetrator), the following acts are also considered as genocide:¹⁶

1) Taking part in a conspiracy to commit genocide;

2) Direct and public incitement to commit genocide;

3) Attempt to commit genocide; and

4) Complicity in any form of genocide.

However, the Hague Statute is familiar with another grave criminal offence whose characteristics and attributes make it similar to the crime of genocide. It is crime against humanity.¹⁷ This criminal offence is found in Paragraph 5 of the Hague Statute. The description of this crime against international law clearly states that it can be committed only within an armed conflict (either international or internal in character) and directed only against civilian population, if including:¹⁸

1) Murder;

2) Extermination;

3) Enslavement;

4) Deportation;

5) Imprisonment;

6) Torture;

7) Rape;

8) Persecution on political, racial and religious grounds; and

9) Committing other inhumane acts.

The abovementioned acts ought to be committed under the following circumstances in order to constitute crime against humanity:¹⁹

1) An attack has to be committed. An attack can take place even when armed force has not been used as long as it includes maltreatment of the civilian population or preparations for such acts.

¹⁵ V. Đ. Degan, Zločin genocida pred međunarodnim krivičnim sudovima, Zbornik Pravnog fakulteta u Zagrebu, Zagreb, No. 1-2, 2008. pp. 77-95.

¹⁶ D. Jovašević, Međunarodna krivična dela – odgovornost i kažnjivost, Niš, 2010. pp. 229-231.

¹⁷ Dž. Džouns, S. Pauls, Međunarodna sudska praksa, Beograd, 2005. pp. 143-147.

¹⁸ D. Jovašević, Praktikum za krivično pravo, Posebni deo, Niš, 2014. 117-118.

¹⁹ B. Ivanišević, G. Ilić, T. Višnjić, V. Janjić, Vodič kroz Haški tribunal, Beograd, 2007. pp. 83-108.

- 2) Criminal offences committed by the accused have to be a part of that attack.
- 3) The attack has to be directed against any category of the civilian population.
- 4) The attack has to be either extensive or systematic. An attack is considered as extensive when being of a wide-spread nature or directed against a large number of persons. An attack is described as systematic if the violent acts are committed in an organized manner or with slight probability of being committed accidentally.
- 5) The perpetrator has to be familiar with (aware of) the fact that his acts are committed within an extensive or systematic attack against civilian population.

The Genocide According to the Criminal Law of the Republic of Serbia

System of international crimes

Chapter 34 of the Criminal Code of the Republic of Serbia contains the following "genuine" crimes against international law:²⁰

- 1) Genocide (Paragraph 373);
- 2) Crime against humanity (Paragraph 371);
- 3) War crime against civilian population (Paragraph 372);
- 4) War crime against the wounded and sick (Paragraph 373);
- 5) War crime against prisoners of war (Paragraph 374); and
- 6) Organization and incitement to genocide and war crimes (Paragraph 375).

The notion and basic characteristics of genocide

The crime of genocide²¹ from Paragraph 370 of the Criminal Code of the Republic of Serbia consists of ordering or committing the following acts: killing or causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group with intent to destroy, in whole or in part, a national, ethnic, racial or religious group of people.

The word "genocide" is a compound created from the Greek word *genos* meaning nation or tribe and the Latin word *caedes*, which means killing or slaughter (massacre). When translated literally this word stands for the extermination of an entire nation or tribe. Genocide was proclaimed as "a crime against international law, which is in contradiction to the spirit and the aims of the OUN and condemned by the entire civilized world" by OUN General Assembly Resolution 96/1 from 11th December 1946.

In spite of the fact that it initially emerged as a "subspecies of crime against humanity", genocide rapidly obtained autonomous status and contents as one of the most seri-

²⁰ D. Jovašević, *Krivično pravo, Posebni deo*, Beograd, 2014. pp. 322-325.

²¹ D. Jovašević, *Karakteristike krivičnog dela genocida*, *Vojno delo*, Beograd, No. 2-3, 2002. pp. 80-92.

ous crimes today. Nowadays, it is also called “the crime above all crimes”. As a crime against international law, genocide is determined by three elements:²²

- 1) The objective component – *actus reus*;
- 2) The subjective component – *mens rea*; and
- 3) The subject of the act – the victim (the group).

The source of this incrimination is found in Convention on the Prevention and Punishment of the Crime of Genocide²³ from 1948, which defines the contents and the elements of this crime against international law.

In legislation, theory and practice this term has a more extensive interpretation. Namely, this expression includes not only killing but also extermination committed in any other way of a particular group that forms a consistent entity based upon national, ethnic, racial or religious foundation. The subject of protection includes humanity and international law.

The subject of attack is a national, ethnic, racial or religious group.²⁴

A national group is comprised of people who have the feeling of sharing the legal bond of the same citizenship accompanied by reciprocal rights and obligations.

An ethnical group consists of the members who are bound by the same language and culture whereas a racial group is a group based upon hereditary physical characteristics, which is often associated to a particular geographical area regardless of linguistic, cultural, national, or religious factors.

A religious group includes members who share the same religious convictions, the same name of the confession or the same means of conducting religious ceremonies.

In fact, the terms such as national, ethnic, racial or religious group are still being studied widely and precise definitions that would be universally and internationally accepted have not been found yet. Thus, each of these terms has to be assessed in the light of an actual political, social and cultural milieu.

Although the act is committed by destructive individuals, it is not intended to eliminate those individuals as separate persons, but as the members of the group. Depending on the actual subject, genocide can appear as national or ethnic genocide or ethnocide if the subject is a national or an ethnic group.

In the case of racial genocide, the criminal act is directed against a particular racial group or against several groups of that kind. Religious genocide is directed against the members of one or more religious groups. The group is not to be determined in accordance with an objective or static criterion. Instead, the way the perpetrator perceives the members of the group is of fundamental importance for the definition of this term, which is also the standpoint of the ad hoc tribunals.²⁵

The lack of definitions of genocide that would include cultural genocide comprised of destroying language or culture of a particular group is often stressed in legal theory.

Therefore, the aim of the act is to destroy a group, in whole or in part, whereas the elimination of an individual simply represents a means of its accomplishment. The size of

²² B. Petrović, D. Jovašević, Krivično (kazнено) pravo II, Posebni dio, Sarajevo, 2005. pp. 39-41.

²³ The Official Gazette of SFR Yugoslavia No.56/1950.

²⁴ B. Lukšić, Genocide and the command responsibility, Zbornik Pravnog fakulteta u Splitu, Split, No. 4, 2001. pp. 283-291.

²⁵ B. Pavišić, V. Grozdanić, P. Veić, Komentar Kaznenog zakona, Zagreb, 2007. p. 419.

the group is of no significance for the completion of the criminal offence. It is essential that the group is present as an entity carrying specific characteristics and that it is intended to be destroyed as such. The objective of the incrimination is to guarantee the right to life, i.e. existence and development for each group carrying specific national, ethnic, racial or religious features, regardless of the spatial cohesion of its members.²⁶

The act consists of several acts that can be classified in a number of groups. These are the following acts:²⁷

- 1) Killing or causing serious bodily or mental harm to members of a specific national ethnic, racial or religious group;
- 2) Inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- 3) Imposing measures intended to prevent births within the group (the so-called biological genocide); and
- 4) Forcible transfer of children from one group to another intended to cause the loss of their group identity.

All these acts contribute to physical and biological completion of genocide. To complete this act, it is enough to commit any of the acts precisely pointed out in the law with the intent to exterminate (destroy), in whole or in part, a group as a social entity. Genocide represents a typical example of criminal offences that rest upon the „depersonalization of the victim“, which means that the victim does not represent the objective (aim) of the act due to its individual qualities or features, but solemnly for being a member of a certain group.²⁸

The perpetration can be completed in two ways:

- 1) By ordering and
- 2) By directly conducting certain acts.²⁹

Giving orders to commit the abovementioned acts represents a special and autonomous act of genocide. In fact, ordering is a form of incitement. However, in this case ordering is not characterized as complicity, but as a special way to perpetrate this criminal offence. The crime of genocide is usually committed in an organized manner and in accordance with a previously arranged plan giving particular authority to the order of a superior, which causes the autonomous nature of his responsibility. Therefore, the superior will be responsible only for having given the order to commit genocide, even if the subordinate refuses to obey it or in any other way manages to avoid executing such order if the consequence of the act is manifested as threatening the survival of a certain national, ethnic, racial or religious group. It can be accomplished through causing a smaller or a larger number of individual consequences comprising of injuries (of life, physical integrity, a fetus) and threats (by inflicting on the group unbearable living conditions). The number of individual acts committed is of no significance for the completion of this criminal offence. This means that only an act of genocide will be committed when one, as well

²⁶ A. Kaseze, *Međunarodno krivično pravo*, Beograd, 2005. pp. 115-117.

²⁷ D. Jovašević, *Pojam i karakteristike krivičnog dela genocida*, *Sudska praksa*, Beograd, No. 9-10, 2001. pp. 59-65.

²⁸ S. Horović, *Genocid, ratni zločini i zločin protiv čovečnosti*, *Zbornik Pravnog fakulteta u Mostaru*, Mostar, 2004. pp. 99-113.

²⁹ A. Schonke, H. Schroder, *Strafgesetzbuch, Kommentar*, Munchen, 1997. pp. 1597-1601.

as several relevant acts, has been conducted. The fact that a larger number of acts causing various individual consequences were committed has an impact on the determination of sentence. This indicates that planned and systematic extermination of human groups constitutes the essence of the crime of genocide.³⁰

Any person can be the perpetrator of this act, and, when guilt is concerned, direct premeditation (*dolus coloratus*) including genocidal intent is required. Instead of applying the theory of intent, the assessment of such intent is based upon experience. The punishment prescribed for this act is minimum five years' imprisonment or thirty to forty years' imprisonment. The Criminal Code explicitly points out that this criminal act cannot be subject to limitation for criminal prosecution and enforcement of penalty.

The genocide and other related criminal offences

The definition of this term under international, as well as national criminal law, has generated a request to draw distinction in legal theory between the crime of genocide and other similar (related) criminal acts, primarily acts such as:³¹

- 1) Persecution;
- 2) Extermination;
- 3) Ethnic cleansing; and
- 4) Crime against humanity.

The persecution

Resemblance between genocide and persecution is based on the presence of discriminatory intent of the perpetrator in the moment of perpetration. Namely, both of these punishable acts are committed against members of other national, racial, religious or ethnic groups.³²

There are two major differences between these criminal acts. These are:

- 1) Persecution covers persecution based upon political, racial or religious grounds and
- 2) The ultimate victim of genocide is the entire group-national, racial, religious and ethnic one whereas the victims of prosecution are individuals themselves, as members of certain "prosecuted" groups.

The extermination

Similarity between genocide and extermination consists of the fact that in both cases the criminal act is intended to cause massive killing. The differences between these two punishable acts consist of the following:

- 1) The act of genocide is committed with the intent to destroy, in whole or in part, the group itself whereas the same intent (giving the quality of *dolus coloratus* to perpetrator's premeditation) is not present in case of extermination.

³⁰ Lj. Lazarević, B. Vučković, V. Vučković, Komentar Krivičnog zakonika Crne Gore, Cetinje, 2004. pp. 1021-1024.

³¹ D. Jovašević, Međunarodna krivična dela – odgovornost i kažnjivost, Niš, 2010. pp. 260-262.

³² M. Marković, Međunarodna krivična dela, Jugoslovenska revija za međunarodno pravo, Beograd, No.1, 1965. pp. 39-44.

2) In case of genocide, members of the target group share the same national, racial, religious or ethnic characteristics whereas the victims of extermination are identified by political preferences, physical characteristics or by the very fact that they found themselves in a particular geographical area.

3) The act of extermination is committed within an expansive or a systematic attack, which the perpetrator is aware of whereas in case of genocide such attack is not required and

4) Only civilians can appear as victims of extermination, while genocide can be committed against the non-civilian population, as well (such as captured combatants who have the status of the prisoners of war).

The ethnic cleansing

Although the UN General Assembly Resolution on the situation in Bosnia and Herzegovina from 1992 treats genocide and ethnic cleansing as two equal terms, a qualitative distinction can be drawn between these two criminal offences. Namely, forced displacement itself does not represent a genocidal act, but, together with killing a larger number of certain group's members, it can result in ethnic cleansing of the pointed group of people. That is when persecution, in the sense of "cleansing", can be considered as a proof (an indicator) of the presence of the intention to exterminate the entire group.

The crime against humanity

At last, genocide and crime against humanity (that are often treated as equal by legal theory, as well as by certain international legal acts such as the Statute of the International Military Tribunal in Nürnberg) have several similar features including the following.³³

1) In both cases, the acts are aimed to cause massive killing of other persons.

2) Both acts include severe violations that insult humanity.

3) Neither of the acts represents an isolated case, but they are usually a part of a broader conception.

However, one can perceive evident dissimilarities between them including the following:³⁴

1) Genocide contains genocidal intent whereas crime against humanity does not.

2) The target population of genocide is a group that has to possess shared group characteristics, while the victims of crime against humanity are determined by political preferences, physical characteristics or by the very fact that they found themselves in a certain area in a certain period of time.

3) Crime against humanity represents a broader term since it is committed within an extensive and systematic attack that the perpetrator is aware of, which is not requested as an essential and constitutive element of the crime of genocide and

4) Crime against humanity can be committed by conducting a wider range of diverse acts, not all of which are covered by the term genocide.

³³ Z. Pajić, Tumačenje zločina protiv čovečnosti u nirnberškom procesu, Godišnjak Pravnog fakulteta u Sarajevu, 1991, pp. 123-133.

³⁴ M. Simović, M. Blagojević, V. Simović, Međunarodno krivično pravo, Banja Luka, 2013. pp.130-135.

Conclusion

International criminal law, as a system of legal regulations found in acts of the international community and criminal legislation of individual states, establishes criminal liability and punishments for crimes against international law. These acts represent a breach of the laws and customs of war (international humanitarian law) that violate or threaten peace among nations and the security of mankind. Penalties prescribed for these criminal offences stand for the most severe penalties in contemporary criminal legislation. In some cases, international judiciary (supranational) institutions such as the Nurnberg and the Tokyo Tribunal, the Hague Tribunal, the Rome Court, etc. have primary jurisdiction over perpetrators of these criminal offences.

Due to its significance, nature and character, the crime above all crimes stands out among all the crimes against international law. It is the crime of genocide. The act of genocide consists of ordering or committing killing, causing serious bodily or mental harm to members of a human group or deliberately inflicting on the group conditions of life calculated to bring about its extinction in whole or in part or imposing measures intended to prevent births within the group or forcibly transferring children to another group with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group of people.

This criminal offence means the killing of a nation or a tribe. Genocide was proclaimed as "a crime under international law, which is in contradiction to the spirit and the aims of the OUN and condemned by the entire civilized world" by UN General Assembly Resolution 96/I from 11th December 1946. Although it emerged as a "subspecies of crime against humanity", genocide rapidly obtained an autonomous status and contents as one of the most serious crimes today.

As a crime against international law, genocide is determined by three elements: a) the objective component – *actus reus* b) the subjective component – *mens rea* c) the subject of the act-the group-the victim. The source of this incrimination is found in Convention on the Prevention and Punishment of the Crime of Genocide from 1948, which, in Paragraph 2, defines the term and the elements of this crime against international law. In legislation, theory and practice, this term can be interpreted in the broader sense, as well. Namely, this term does not include only killing but also destruction committed in any other way of a particular group that forms a consistent entity on national, ethnic, racial or religious grounds.

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