

GENOCIDE – AN INTERNATIONAL LEGAL ANALYSIS AND ECONOMIC CONSEQUENCES

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Abstracts: This paper examines genocide as one of the most complex international crimes. Starting from the Convention on the Prevention and Punishment of the Crime of Genocide, the paper analyzes the fundamental elements of genocide, emphasizing its specificity in relation to other forms of mass violence, particularly through *dolus specialis*, that is, the existence of a specific genocidal intent aimed at the total or partial destruction of protected groups. In addition to its conceptual definition, the paper analyzes the phases, typology, and normative framework of genocide, both within the national law of the Republic of Serbia and in international law.

Special attention is devoted to the analysis of the theoretical contributions of Raphael Lemkin, the creator of the very concept of genocide, as well as to subsequent legal and sociological critiques of the narrow convention-based definition. The paper also examines the phases of genocide according to George Stanton's model, with particular emphasis on the phase of denial, understood as a permanent and socially harmful continuation of the victimization of affected groups. Furthermore, various types of genocide are analyzed in accordance with theoretical classifications, alongside an examination of the motives and objectives that may underlie its commission.

In addition to the analysis of positive law, the paper examines genocide as an international criminal offense *par excellence*, which constitutes the central focus of this study. This crime transcends the boundaries of national legal systems and represents an obligation of the international community as a whole. In the spirit of protecting fundamental human rights, the paper concludes that the prohibition of genocide constitutes one of the foundations of contemporary international law. The paper also addresses the economic consequences of genocide.

Keywords: Genocide, international law, international crime, economic consequences

Introductory considerations

Genocide represents one of the gravest forms of violations of fundamental human rights and freedoms, as well as the most extreme form of violence directed against entire human communities. As a crime that affects not only its immediate victims but humanity as a whole, genocide occupies a distinctive place in the contemporary legal order and international criminal law. The historical experience of mass atrocities during the Second World War underscored the need for a clear legal definition of this crime. The punishment and prevention of genocide consequently led to the development of specific international legal mechanisms.

The concept of genocide was introduced into legal theory and practice by Raphael Lemkin, who defined it as a coordinated plan aimed at the destruction of a group of people, a notion that will be examined in greater detail in this paper.

In response to the threat that genocide poses to global peace and security, the international community has adopted a number of legal instruments whose purpose is not only to define and sanction this crime but also to serve a significant preventive function. These include the Convention on the Prevention and Punish-

ment of the Crime of Genocide, as the first universal international treaty devoted exclusively to this crime, as well as the statutes of international criminal courts, such as the Statute of the International Criminal Tribunal for the former Yugoslavia and the Rome Statute of the International Criminal Court.

In addition to international mechanisms, national legal systems play a crucial role, as they are obliged to incorporate international standards into their domestic legislation and to ensure the effective punishment of perpetrators. In the criminal legislation of the Republic of Serbia, in accordance with ratified international treaties, genocide is defined as a distinct criminal offense and classified among crimes against humanity and other values protected under international law.

The subject of analysis in this paper is the concept of genocide, its fundamental characteristics and phases of commission, as well as genocide as an international crime within Serbian national legislation and international legal instruments, which constitutes the central focus of the study. Particular attention is devoted to the normative regulation of genocide within the framework of the Convention on the Prevention and Punishment of the Crime of Genocide, the

Statute of the Hague Tribunal, and the Rome Statute of the International Criminal Court, as well as to their significance for the development of international law.

The aim of this paper is to highlight the complexity and specificity of the crime of genocide, as well as the importance of adequate legal definition and sanctioning in order to ensure the prevention of its commission in the future. Methodologically, the paper is based on normative legal analysis of relevant international and domestic regulations, as well as on the theoretical positions of prominent authors in the field of international criminal law. In this regard, the objective is to provide a comprehensive and systematic account of genocide as one of the most serious international crimes.

Conceptual definition of genocide

The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as acts committed with the intent to destroy, in whole or in part, a national, racial, religious, or ethnic group. In the academic literature, this definition has been subject to criticism, notably by the sociologist Helen Fein, who has pointed to the “narrowness” of the

conventional definition, arguing that it lacks a sufficiently detailed description of the violence that characterizes genocide and would render it clearly recognizable to observers. Consequently, a broader definition of genocide has emerged, conceptualizing it as a sustained and purposeful action by the perpetrator aimed at the physical destruction of a collectivity through the prohibition of both social and biological reproduction of group members, regardless of whether the victims pose a threat or have surrendered (Fein, 1993, p. 26). This definition allows for a clearer distinction between genocide and other forms of violence.

Genocide may be distinguished from ethnically motivated massacres by its permanence and repetitive nature, as opposed to the limited scope characteristic of massacres, which do not aim at the systematic destruction of a particular group (Marjanović, 2019, p. 6).

A broader conceptualization of genocide was articulated by Lemkin, who defined it as a coordinated plan of various actions aimed at the destruction of the “essential foundations of the life of national groups,” with the ultimate objective of destroying the groups themselves. Such actions include the destruction of culture, language, religion, and other defining

characteristics of these groups, as well as severe violations of life, personal security, health, freedom, and other human rights of individual group members. The crime of genocide is directed against the national group as an entity, while actions taken against individuals are not directed at them personally, but at them as members of a specific group (Lemkin, 1944, p. 86).

In his seminal work, Lemkin (1944, p. 87) identified various acts of genocide carried out by Nazi Germany through attacks on specific aspects of life, including:

- the moral aspect, referring to attempts to create an atmosphere of moral degradation by encouraging alcohol abuse;
- the biological aspect, carried out through the depopulation of oppressed peoples and the encouragement of the birth of Germans in occupied territories;
- the cultural aspect, manifested through the prohibition or destruction of cultural activities;
- the social aspect, involving the destruction of social cohesion and, as Lemkin noted, the “elimination or removal of elements that provide spiritual leadership”;
- the political aspect, consisting in the destruction of political institutions;

- the religious aspect, implemented through interference with church activities, which in many countries provide both spiritual and national leadership;
- the physical aspect, carried out through the starvation of non-German populations and the mass killing of oppressed groups.

According to Karović, the elements of genocide include:

- subjective elements, namely the intent to partially or completely destroy a group, that is, genocidal intent;
- objective elements, referring to the acts of commission;
- the object of the crime, namely the victim, i.e., protected groups such as religious or national groups (Karović, 2012, p. 89).

Based on the foregoing, genocide may be defined as a crime of an international character consisting of the commission of one or more acts with the aim of destroying a specific group (Jovanović, 2021, p. 4). Genocide is often described as the “crime of crimes” and is frequently the result of policies involving massive violations of human rights. Due to its broad scope, this criminal offense cannot be regarded as an isolated or individual incident (Fabijanić Gagro & Škorić, 2008, p. 1388).

Phases and Classification of Genocide

The theorist George Stanton presented a genocide prevention model in 1996, according to which genocide is divided into eight stages:

- classification, whereby societies distinguish people into “us” and “them”;
- symbolization, involving the assignment of symbolic names or markers to particular groups;
- dehumanization, through which the natural human aversion to killing is overcome, for example by equating a group with animals or savages;
- organization, as genocide is always a planned and organized action;
- polarization, achieved through the dissemination of polarized propaganda in the media by the perpetrators;
- identification, whereby perpetrators identify individuals based on religious, racial, or national affiliation;
- extermination, a phase in which only urgent armed intervention may assist the victims;
- denial, the final stage, in which perpetrators invariably deny that genocide has been committed (Genocide Watch, accessed 11 December 2025).

Lemkin also emphasized the existence of two phases in the commission of genocide, referring to it as the “crime of crimes.” The first phase involves the destruction of the national symbols of the targeted group, while the second consists in the imposition of the aggressor’s national symbols (Lemkin, 1944, p. 88).

Denial, as a phase, serves multiple purposes. As noted by Karčić, it involves the distortion of history in order to justify perpetrators and portray victims as perpetrators, the undermining of historical truth, and a detrimental impact on the psychological and moral well-being of survivors and descendants of victims, thereby hindering their recovery. Following the Second World War and the mass suffering of entire peoples, many states amended their legislation. Countries such as Austria, Belgium, and France introduced the denial of genocide as a separate criminal offense. In 1992, Austria expanded earlier legislation prohibiting the activities of the National Socialist German Workers’ Party and support for Nazi ideology by also criminalizing the denial, justification, and endorsement of National Socialist genocide and crimes against humanity (Karčić, 2007, p. 291).

According to Smith, genocide may be classified into five types:

- retributive,
- institutional,
- utilitarian,
- monopolistic,
- ideological (Smith, 1987, pp. 21–39).

Retribution may constitute a significant factor in the commission of genocide and often stems from prior dehumanization of the victim. Institutional genocide is motivated by the desire to demonstrate power and instill terror, with the aim of preventing future retaliation. Utilitarian genocide is characterized by the notion that for some to live well, others must die, with an emphasis on perceived benefit. Monopolistic genocide serves as a means of shaping the structure of both the state and society. Ideological genocide is constructed around an ideology that aspires to a form of salvation, where the desire to eliminate “impure” elements, such as certain classes, becomes predominant (Smith, 1987, pp. 21–39).

Genocide as an international crime

One widely accepted definition of international crimes holds that international criminal law concerns unlawful conduct by a criminally responsible person that violates or endan-

gers values protected under international law, as well as peace among nations and the security of humankind as a whole; such conduct is prescribed by law as a criminal offense for which an appropriate criminal sanction is provided for the perpetrator (Smith, 1987, pp. 132–135).

One of the most important characteristics of these crimes is that they are not subject to statutes of limitations. Offenses envisaged under international criminal law may be committed only with intent and, as a rule, are perpetrated in an organized manner, most often in order to implement a particular ideology. It is also significant that the perpetrator, even when acting in an official capacity, cannot invoke immunity. Given the high degree of social danger posed by such acts, practice seeks to ensure that their perpetrators do not remain unpunished; therefore, jurisdiction may lie not only with the national courts of the states whose nationals the perpetrators are, but also with international criminal courts (Janković & Radivojević, 2011, p. 291).

International courts are competent only for certain criminal offenses (i.e., international crimes in the narrow sense), whereas for other offenses jurisdiction lies with the national judicial authorities of the states whose nationals the perpetrators are

(international crimes in the broader sense). This division was first adopted at the 14th Congress of the International Association of Penal Law, held in Vienna in 1989.

Genocide under the Statute of the Hague Tribunal

The Statute of the “Hague Tribunal,” i.e., the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed since 1991 in the territory of the former SFRY, was adopted on 25 May 1993 by United Nations Security Council Resolution 827 (https://www.icty.org/x/file/Legal%20Library/Statute/statut_827_1993_bcs.pdf, accessed 24 December 2025). The Security Council expressed grave concern due to increasingly frequent reports of violations of international humanitarian law in the territory of the former SFRY, particularly in Bosnia and Herzegovina, and adopted Resolution 771 (https://sr.wikipedia.org/wiki/Резолуција_Савета_безбедности_У_Х_771, accessed 24 December 2025), which served as the impetus for the adoption of the aforementioned Statute. The reports cited, inter alia, mass forcible expulsions of the population, deportations of civilians, illtreatment, attacks on non-combatants, attacks on health facilities, hospitals

and clinics, destruction of property, and other acts (Vasiljević, 1996, pp. 153–154). Pursuant to the Statute (<https://www.icty.org>, accessed 24 December 2025), the Tribunal in The Hague has jurisdiction over violations of the laws or customs of war, crimes against humanity and genocide (the “crime of crimes”), as well as grave breaches of the Geneva Conventions of 1949.

Under the Statute, genocide consists in the “intentional destruction, in whole or in part, of a national, religious, racial or ethnic group, or the intentional subjection of members of the group to living conditions calculated to bring about its destruction, in whole or in part.” In the practice of the Hague Tribunal, an interpretation of genocide as the destruction of a group without its physical destruction is not accepted (Collection of the Institute for Criminological and Sociological Research, 2016, p. 22).

Individual criminal responsibility constitutes a key element of the Tribunal’s jurisdiction. The international court is competent to prosecute perpetrators of genocide regardless of whether they are officials. Consequently, legal persons do not bear responsibility before the Tribunal (Kostić, 2017, p. 26).

No accused person shall receive a mitigated sentence on the basis of offi-

cial position, except where they acted pursuant to an order of the Government. An order by a superior is treated by the court as a mitigating circumstance, and sentence mitigation is applied only where it is in the interests of justice (Kostić, 2017, p. 26).

The principle that a person shall not be tried twice for the same conduct (*ne bis in idem*) applies before the Hague Tribunal. However, this principle does not prevent the subsequent initiation of proceedings before the Tribunal in two cases: (1) where the conditions of a genuine ability to try the case, impartiality, and independence were not guaranteed in proceedings before national courts; and (2) where the legal qualification of the act before a national court does not correspond to the qualification under the Statute (Jovašević, 2010, pp. 113–116).

The penalties envisaged by the Tribunal include imprisonment, as well as the return of property to the rightful owners (restitution) and the disgorgement/return of profits obtained through criminal conduct (Kostić, 2017, p. 26).

Genocide under the Rome Statute

The treaty establishing the International Criminal Court is the Rome Statute, adopted at the Diplomatic

Conference held in Rome in 1998, which has the character of an international treaty. It entered into force in 2002, defining the jurisdiction, functions, and structure of the ICC, and has been ratified by the Republic of Serbia. Under the Rome Statute, the International Criminal Court is a supranational, permanent, and universal judicial body.

Criminal proceedings before the Court are conducted against persons who commit crimes recognized by the international community, with the determination of individual criminal responsibility and the imposition of appropriate sanctions. Accordingly, the Court has jurisdiction over the crime of genocide (Article 6 of the Statute), war crimes, the crime of aggression, and crimes against humanity (Kostić, 2017, p. 26).

The principles of *ne bis in idem*, the exclusion of criminal responsibility of minors, the prohibition of retroactivity, and the principle of legality of crimes and penalties are among the fundamental principles upon which the Court's operation is based (Jovašević, 2010, pp. 114–116).

Pursuant to the Statute, the crime of genocide consists in the intent to destroy, in whole or in part, an ethnic, national, or religious group, through the following acts:

- causing serious bodily or mental harm to members of the group;
- forcibly transferring children of the group to another group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction;
- imposing measures intended to prevent births within the group; and
- killing members of the group (Kostić, 2017, p. 29).

The Court has jurisdiction over adult natural persons who are nationals of a State Party to the Rome Statute or of a state that has accepted the Court's jurisdiction *ad hoc*. The Court may also exercise jurisdiction over superiors or commanders who issue orders for the commission of genocide, pursuant to the principle of command responsibility (Janković & Radivojević, 2011, pp. 289–290).

Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide

In 1946, the United Nations General Assembly adopted Resolution 96 on the crime of genocide. The Resolution called upon all Member States to condemn this heinous crime and to incorporate provisions for its prevention and suppression into their do-

mestic legislation. The Economic and Social Council was tasked with drafting the Convention on the Prevention and Punishment of the Crime of Genocide, which was subsequently adopted by General Assembly Resolution 260. The Convention entered into force in 1951 and was ratified by the then Socialist Federal Republic of Yugoslavia.

This Convention represents a landmark instrument in the development of international law. It strengthens the international legal subjectivity of individuals independently of domestic law, based solely on their personal responsibility (Kostić, 2017, p. 23).

In addition to the commission of genocide itself, the Convention provides for the punishability of conspiracy to commit genocide, direct and public incitement, attempt, and complicity in genocide. Notwithstanding the fact that this crime is directed against a group of persons, the Convention stipulates that genocide exists regardless of the number of victims (Kostić, 2017, p. 23).

Economic consequences

In the analysis of genocide as a social and economic-political phenomenon, Ferrero (2013, p. 333) raises a key question that goes beyond moral condemnation and introduces a rational

dimension of choice: whether rulers who kill a larger number of people represent greater criminals than those who kill fewer, or whether their decisions are primarily conditioned by an assessment of the costs of different courses of action. In this context, the question arises as to whether genocide constitutes an end in itself or rather the outcome of a calculation in which the cost of genocidal action is lower compared to other means of removing a particular population group (Brauer & Anderton, 2014, p. 1).

When the problem is observed from the perspective of a dictatorial regime, that is, an authoritarian ruler who possesses real or perceived legitimacy to remove members of an external group from the territory he controls or to which his internal group lays claim, the issue becomes one of identifying the most efficient means of achieving that objective. In such circumstances, genocidal killing does not necessarily represent the most obvious choice, since the act of mass killing itself generates significant costs not only for the victims but also for the perpetrators, including political, economic, and social consequences. It is precisely in the fact that genocide entails costs for the perpetrators that potential opportunities for its prevention may

be identified. Historical examples, including the genocide perpetrated by the Nazi regime, the Khmer Rouge, or the genocide in Rwanda, demonstrate that genocide does not arise spontaneously or “by itself,” but rather constitutes the result of conscious choices shaped by assessments of the relative costs of different strategies for eliminating an external group (Brauer & Anderton, 2014, p. 1).

Furthermore, genocide may also be understood as an outcome of constraints that affect the ability of victims to avoid removal. The position of victims may be defined by the degree of effectiveness of the constraints imposed by perpetrators on the external group, as well as by the inability of victims to remove the structural and institutional “shackles” that prevent escape or resistance. Consequently, victimization should not be viewed exclusively as a moral category, but also as the result of asymmetric power relations and limited opportunities for action (Brauer & Anderton, 2014, p. 1). Genocide is likewise influenced by the choices of third parties, who, although neither direct perpetrators nor immediate victims, may through their actions facilitate, prevent, or indirectly support genocidal policies. Decisions by third states to close bor-

ders and prevent the escape of victims, or alternatively to open them at high economic and political costs associated with accepting refugees, represent a significant factor in the dynamics of genocide. As Ferrero emphasizes, when the problem of genocide is framed as a matter of choice under constraints, economics emerges as a natural analytical tool, since it examines individual and collective decision-making under conditions of limited resources, as well as the political, economic, and cultural consequences of such decisions (Ferrero, 2013, p. 333).

Concluding remarks

Genocide represents the most extreme international crime and one of the gravest violations of fundamental human rights and values protected by international law. Its essence lies not only in the physical destruction of members of protected groups but also in the systematic annihilation of their identity, culture, and biological survival. The permanence of its consequences and the comprehensive nature of genocide distinguish it from other international crimes and justify its special status within national criminal legislations.

Through the analysis of the conceptual definition of genocide, it has

been established that genocide constitutes a legal concept of complex structure, the elements of which are precisely defined in positive law. Genocidal intent, as a subjective element, is of particular importance, and without it the existence of this criminal offense cannot be established. The proof of such specific intent represents one of the greatest challenges in judicial practice.

By examining the phases and typologies of genocide, it has been demonstrated that this crime does not emerge suddenly, but rather as a gradual process involving dehumanization, the institutionalization of violence, and the systematic exclusion of victims from the social and legal order. This fact is of particular importance for prevention, as it enables the timely identification of genocidal policies. From this perspective, genocide should not be viewed solely as the final phase of mass violence, but as a process requiring a continuous social and legal response.

The analysis of the international legal framework, through the prism of the Statute of the Hague Tribunal, the Rome Statute of the International Criminal Court, and the Convention on the Prevention and Punishment of the Crime of Genocide, demonstrates that the international community has established a relative

vely coherent system of legal accountability for this crime. However, practice indicates the existence of numerous challenges, particularly with regard to political influence, selective application of the law, and evidentiary difficulties. This paper highlights the importance of a phased approach to genocide as an analytical tool for its early identification, as well as the necessity of strengthening both international and national accountability mechanisms.

In conclusion, the fight against genocide represents a permanent task of the international community as well as individual states, requiring the continuous improvement of legal norms, institutions, and enforcement mechanisms. Only through the consistent application of international law and the strengthening of a culture of human rights can the recurrence of this crime be prevented and the protection of human dignity ensured.

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GENOCID – MEĐUNARODNA PRAVNA ANALIZA I EKONOMSKE POSLEDICE

Sažetak: Ovaj rad ispituje genocid kao jedan od najsloženijih međunarodnih zločina. Polazeći od Konvencije o sprečavanju i kažnjavanju zločina genocida, rad analizira fundamentalne elemente genocida, naglašavajući njegovu specifičnost u odnosu na druge oblike masovnog nasilja, posebno kroz *dolus specialis*, odnosno postojanje specifične genocidne namere usmerene na potpuno ili delimično uništenje zaštićenih grupa. Pored konceptualne definicije, rad analizira faze, tipologiju i normativni okvir genocida, kako u okviru nacionalnog prava Republike Srbije, tako i u međunarodnom pravu.

Posebna pažnja posvećena je analizi teorijskih doprinosa Rafaela Lemkina, tvorca samog koncepta genocida, kao i kasnijim pravnim i sociološkim kritikama uske konvencijske definicije. Rad takođe ispituje faze genocida prema modelu Džordža Stentona, sa posebnim akcentom na fazu poricanja, shvaćenu kao trajni i društveno štetni nastavak viktimizacije pogođenih grupa. Štaviše, različiti oblici genocida analiziraju se u skladu sa teorijskim klasiifikacijama, uz ispitivanje motiva i ciljeva koji mogu biti u osnovi njegovog izvršenja.

Pored analize pozitivnog prava, rad ispituje genocid kao međunarodno krivično delo *par excellence*, što čini centralni fokus ove studije. Ovaj zločin prevazilazi granice nacionalnih pravnih sistema i predstavlja obavezu međunarodne zajednice u celini. U duhu zaštite osnovnih ljudskih prava, rad zaključuje da zabrana genocida predstavlja jedan od temelja savremenog međunarodnog prava. Rad se takođe bavi ekonomskim posledicama genocida.

Ključne reči: Genocid, međunarodno pravo, međunarodni kriminal, ekonomske posledice