

A STUDY ON THE NEED TO INCLUDE 'POLITICAL GROUPS' WITHIN THE SCOPE OF THE 1948 CONVENTION ON GENOCIDE

AUTHOR – VARADA HAWALDAR, STUDENT AT SCHOOL OF LAW, CHRIST

BEST CITATION – VARADA HAWALDAR, A STUDY ON THE NEED TO INCLUDE 'POLITICAL GROUPS' WITHIN THE SCOPE OF THE 1948 CONVENTION ON GENOCIDE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 421-428, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract:

One major obstacle to the Genocide Convention's effectiveness in resolving modern disputes is the historical reasoning behind the exclusion of certain political groups from it. Political group exclusions hinder the Convention's capacity to fully address cases of genocide in modern conflicts, where non-state players and political connections are crucial.

The exclusion of political groupings is against both more comprehensive human rights standards and the increasing understanding of genocidal activities. To achieve a more equitable legal system, the paper highlights that the Convention must be aligned with the core values of human rights, especially protecting persons from discrimination and persecution based on political convictions. Further, such a measure would ensure that this loophole in the law is not taken advantage of to escape punishment for genocide and that the Convention can better protect such vulnerable groups.

This paper argues that the Convention's recognition of political groups as protected categories is an essential step to be undertaken to ensure that international law complies with the complexity of contemporary conflicts. It studies the various instances of political genocide and the lack of the Convention while adequately dealing with the same. The author has relied on existing research, cases, and available data.

Keywords: Genocide, Political Groups, International Law, Genocide Convention

Introduction:

The exclusion of political groups from the 1948 Convention on Protection and Prohibition of Genocide is proving to cause problems in dealing with contemporary conflicts. There have been multiple cases in global history since the adoption of the convention wherein foremost political leaders have committed acts of genocide but have escaped liability due to such exclusion. The definition of 'genocide' as provided by the Convention is limited to national, religious, and racial groups. There have been ongoing debates about whether such a definition should be expanded to include political groups. The exclusion of such groups provides incentives to political groups and leaders to commit genocide, as they are aware that no liability will fall upon them under this

Convention. This limits the Convention from achieving its objective and aim. It also leads to widespread human rights violations and an international humanitarian crisis.

Though it may be argued that liability for politically incited violence can be imposed through other international laws, these laws do not cover the issue of genocide. It may address politically incited violence against a single individual but not against an entire group. History has shown that in cases of politically incited violence and attacks, it is mainly done against groups or sects of people and very rarely against a single individual. Thus, pressure must be put on the international community to broaden the understanding and interpretation of the scope of the Convention and include political groups.

Research Question:

Why is there a need to increase the scope of the Genocide Convention of 1948 to include political groups within its ambit?

Research Objective:

This research aims to assess the scope of the Genocide Convention and study the need to widen such scope to include political groups.

Research Methodology:

This paper attempts to assess the effectiveness of the 1948 Convention on Genocide in handling contemporary conflict and the need to widen the scope to include political groups. There have been multiple cases in the past, such as the Rwanda Genocide and the Khmer regime, where acts of Genocide have been committed with a political motive. Comprehensive research has been conducted on the scope of the Genocide Convention, its shortcomings, its interpretation, and the manner of implementation. Based on the available literature, the methodology adopted for the present paper is a doctrinal methodology.

The author relies upon both primary and secondary sources of data. An attempt has been made to study various international cases of political genocide. Further, reliance has also been placed on various research studies that have been conducted concerning the same. Therefore, secondary qualitative data has been used, and a grounded theory approach is adopted.

A textual analysis of the data is conducted. The data is assessed in attempt to get a deeper understanding of the Convention, and thereby study its effectiveness in handling contemporary issues.

The Origin of Genocide and the Nuremberg Trials:

The term 'Genocide' did not come into existence till post worldwar 2. It was during the course of the Nuremberg trials that such a charge was added, and thus, the crime of genocide

originated. It was coined by Raphael Lemkin in his book Axis Rule in Occupied Europe.

Originating from the greek prefix *genos*, and latin suffix *cide*, it refers to the crime of destroying national, racial or religious groups.

Raphael Lemkin was of the opinion that the gruesome happenings, and crimes committed during the Nazi regime were so harsh, complex and new that they could not efficiently be placed under the ambit of any of the existing crimes, such as nationalization, and mass murder. This led to the coining of the term 'genocide'.

While determining the jurisdiction of such matters, in the Fifth International Conference for the Unification of Criminal Law, Lemkin proposed the adoption of the principle of universal repression. As per this principle, the accused can be tried not only in the courts of the country he has committed the crime in, but also in the courts of the country where he seeks refuge. However, it was rejected.

The recognition of genocide as a crime indirectly gave recognition and protection to the right of these groups to exist within the international community. Any attack upon such a group would be a violation of this right

However, it is to be noted that the judgment of the tribunal in the Nuremberg Trials did not hold the Nazi Government and its people responsible for any crime committed prior to 1939, i.e, prior to the war. Charges were first brought against twenty-four people and six organizations on October 6, 1945. The International Military Tribunal (IMT) Charter created the legal foundation for this international criminal court. This transitory court's charter specifically included crimes against humanity, war crimes, and crimes against peace as categories of offence. Under this specific context, atrocities such as murder, extermination, enslavement, deportation, and other horrifying deeds were included in the expanded definition of crimes

against humanity, along with persecutions driven by political, racial, or religious reasons.⁸³⁶

“With regard to crimes against humanity, there is no doubt that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crimes within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were Crimes against Humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale which were also crimes against humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war and therefore constituted crimes against humanity.”

837

This disappointed Lemkin, who at the time of passing the judgment was in Paris. Following this, Lemkin headed over to New York where the

⁸³⁶ Beth Van Schaack, “The Definition of Crimes Against Humanity: Resolving the Incoherence The Definition of Crimes Against Humanity: Resolving the Incoherence” 37 *Journal of Transnational Law & Policy* 787 (1999)

⁸³⁷ Alexa Stiller, *The Mass Murder of the European Jews and the Concept of ‘Genocide in the Nuremberg Trials: Reassessing Raphaël Lemkin trials*, (Volume 13 Issue 1 Revisiting the Life and Work of Raphaël Lemkin)

United Nations met for the first time in Lake Success.

The UN Convention on Protection and Prohibition of Genocide, 1948.

Raphael Lemkin proposed the draft resolution on genocide. He proposed that the United Nations come up with an international instrument that is specifically concerned with genocide as an international crime, the prevention of such acts, and lay down punishment for the same. This resolution was sponsored in the second half of the first session.

A total of seven recommendations were made:

1. The crime of genocide should be recognized therein as a conspiracy to exterminate national, religious or racial groups. The overt acts of such a conspiracy may consist of attacks against life, liberty or property of members of such groups merely because of their affiliation with such groups. The formulation of the crime may be as follows: “Whoever, while participating in a conspiracy to destroy a national, racial or religious group, undertakes an attack against life, liberty or property of members of such groups is guilty of the crime of genocide.” The crime so formulated should be incorporated in every national criminal code of the signatories.
2. The defendants should be liable not only before the courts of the country where the crime was committed, but in case of escape shall be liable, as well, before the courts of the country where they are apprehended.
3. Persons accused of genocide should not be treated as political criminals for purposes of extradition. Extradition should not be granted except in cases where sufficient evidence exists to indicate that the requesting country will earnestly prosecute the culprits.
4. The liability for genocide should rest on those who gave and executed the orders, as well as on those who incited to the commission of the crime by whatever means, including formulation and teaching of the criminal philosophy of genocide. Members of governments and

political bodies which organized or tolerated genocide will be equally re- sponsible.

5. Independently of the responsibility of individuals for genocide, states in which such a policy obtains should be held accountable before the Security Council of the United Nations Organization. The Council may re- quest the International Court of Justice to deliver an advisory opinion to determine whether a state of genocide exists within a given country before invoking, among other things, sanctions to be leveled against the offending country. The Security Council may act either on its own initiative or on the basis of petitions submitted by members of interested national, religious or racial groups re- siding either within or without the accused country.

6. The Hague Convention and other pertinent treaties should be changed to the effect that in case of war, an international body (such as the International Red Cross) should have the right to supervise the treatment of civilian populations by occupants in time of war in order to ascertain whether genocide is being practiced by such occupant.

7. A multilateral treaty for the prevention and punishment of genocide should not preclude two or more countries from entering into bilateral or regional treaties for more ex- tensive protection against genocide. In this connection it is well to note that the Allied Governments in accordance with the Mos- cow agreements of December, 1945, have decided to enter into formal treaties of peace with the Axis satellite countries, Hungary, Bulgaria and Rumania, which practiced genocide in this war according to the German pattern. It is of impelling importance that anti-genocide clauses be included in these treaties.⁸³⁸

The world community adopted Resolution 96 (I) on December 11, 1946, stating that genocide is strongly condemned and illegal under

international law.⁸³⁹ Furthermore, it asks that the Economic and Social Council do the research required to draft the treaty. The Secretary General was instructed by the Council to draught a draught convention on genocide, which would then be assessed by the Commission on Development and Codification of International Law.

The report of the Ad Hoc Committee was forwarded to the Assembly's Sixth Committee by the General Assembly during its third session. This committee spent a significant amount of time reviewing and debating the draft convention, holding 51 sessions over the course of two months. Numerous changes were proposed and accepted during this process.

By a vote of 36 in favor, 0 against, and 8 abstentions, the Sixth Committee approved the draft resolution and the amended convention on December 8, 1948. The next day, the General Assembly adopted the resolution, the convention as modified, and two ancillary resolutions, rejecting many changes put up by the Soviet delegation.

Genocide is recognised as an international crime, whether done at the the time of war or otherwise, as per Article 1 of the Convention.

Thus, the legal situation is as follows: under domestic law enacted in order to carry out the Convention, each contracting party is entitled to try its own nationals for the same crimes committed abroad, as well as any private individual, public official, or constitutionally responsible ruler, whether a citizen or an alien, for any of the crimes of Articles II and III in its domestic courts.⁸⁴⁰ For the purposes of extradition, it is well-established that certain offences will not be considered political crimes, and the parties agree to only permit extradition "in accordance with their laws and treaties in force."

⁸³⁸ Lemkin, Raphael, "Genocide." (The American Scholar, vol. 15, no. 2, 1946, pp. 227-30.)

⁸³⁹ William A. Schabas, 'Convention on the Prevention and Punishment of the Crime of Genocide' Paris, 9 December 1948, Audio Visual Library of International Law <https://legal.un.org/avl/faculty/Schabas.html>

⁸⁴⁰ Josef L. Kunz, "The United Nations Convention on Genocide", (The American Journal of International Law, Vol. 43, No. 4, pp. 738-746, Oct 1949)

Instances of Genocide after Nuremberg:

1. The Rwanda Genocide-

The Hutu-dominated government and radical groups deliberately targeted the Tutsi ethnic group during the genocide in Rwanda, which occurred between April and July 1994. Deeply ingrained political conflicts and historical ethnic divisions served as the catalyst for the genocide, which was characterised by unparalleled levels of sexual assault, mass murder, and relocation. This act led to the death of approximately 80,000 people in three months.

On November 8, 1994, the UN Security Council adopted Resolution 955, creating the International Criminal Tribunal for Rwanda, in response to the atrocities of the genocide. The tribunal was established in order to bring cases against those accountable for acts of genocide and other grave transgressions of international humanitarian law during the genocide in Rwanda. As part of its mission, the ICTR was tasked with prosecuting not only the perpetrators of genocide but also those who organised, directed, or provided support for them.

Carla Del Ponte was named Chief Prosecutor by the ICTR in 1999. Del Ponte was instrumental in furthering the tribunal's efforts and obtaining significant convictions. In 2003, Hassan B. Jallow followed her.

In order to effectively wrap up its work, the ICTR developed a "Completion Strategy" in 2009. It involved sending cases to national courts in Rwanda and other nations and pleading with the international community to capture runaways who were still at large.

2. The Bosnian Genocide

Following the breakup of Yugoslavia, the Bosnian War broke out, and Bosnia and Herzegovina declared their independence in 1992. Tension and violence arose from the region's diverse ethnic and religious composition, which includes Bosniaks (Bosnian Muslims), Bosnian Croats, and Bosnian Serbs.

Through a campaign of horrific brutality and widespread displacement, the Bosnian Serb leadership, led by Radovan Karadžić and backed by Serbian President Slobodan Milošević, aimed to construct ethnically homogenous areas.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was founded by the United Nations Security Council in 1993 in response to the crimes committed in the Balkans. It is the responsibility of the ICTY to bring cases against those who have committed grave breaches of international humanitarian law, such as crimes against humanity, war crimes, and genocide. Being the first international tribunal since the Nuremberg Trials, the ICTY's founding represented a momentous step forward for international justice.

One of the most infamous incidents of the Bosnian Genocide was the Srebrenica Massacre, which happened in July 1995. Over 8,000 Bosniak men and boys were mass murdered when Bosnian Serb forces led by General Ratko Mladić overran the Srebrenica "safe area" designated by the UN. The Srebrenica Massacre was subsequently declared to be an act of genocide by the ICTY.

The International Court of Justice (ICJ) rendered a significant decision in 2007. Serbia was sued by Bosnia and Herzegovina, who claimed that Serbia was accountable for genocide committed during the conflict. The International Court of Justice (ICJ) determined that Serbia had infringed on the Genocide Convention by neglecting to stop and punish genocide. Still, it did not hold Serbia accountable for the genocide itself. The decision made clear the states' legal duties under the treaty to stop and punish genocide.

An essential part of the prosecution of those responsible for the Bosnian Genocide was performed by the ICTY. Prominent instances are the trials of former Republika Srpska President Radovan Karadžić and former military chief Ratko Mladić. They were found guilty of crimes

against humanity, war crimes, and genocide. The establishment of individual criminal guilt for crimes committed during the conflict was made possible by the efforts of the ICTY.

During the Bosnian War, Ratko Mladić, also referred to as the "Butcher of Bosnia," was charged with planning crimes. Mladić was found guilty by the ICTY in 2017 of many crimes, including crimes against humanity, war crimes, and genocide. His pivotal participation in the Srebrenica Massacre and other severe transgressions of international law was brought to light by the ruling.

Exclusion of Political Groups from the Definition of Genocide:

There were heated discussions throughout the process that resulted in the adoption of the Genocide Convention, mainly over the meaning of the term and whether or not political parties should be included in its purview. After debating whether or not political organizations may be the target of crimes of genocide, the Convention's drafters decided to leave it out.

The Convention's definition of genocide is the central point of contention. The Genocide Convention's Article II describes crimes "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." A variety of actions are included in the definition, including killing group members, seriously hurting one's body or mind, purposefully creating situations that result in physical devastation, enforcing laws to prevent births inside the group, and forcefully moving children to another group.

During the Convention's writing, there was a heated discussion on including political groupings. Supporters of political group inclusion contended that political affiliation was just as important a differentiator as race, country, ethnicity, or religion. They argued that targeted violence and persecution may potentially befall political movements. However, most of those who drafted the Convention, especially the Western nations, were worried

that including political organisations would be seen as a cover for meddling in internal affairs. They maintained that although political persecution is a serious issue, it should be addressed by other international tools and channels since it is not the same as genocide.

Political and legal explanations have been given for the exclusion of political organizations from the Convention's definition of genocide.

For the legal aspect, the drafters stressed that the concept of genocide in the Convention was derived from the historical backdrop of the period and the popular perception of the crime about the Holocaust. They maintained that other international legal procedures should deal with attacks against political parties and that it was critical to keep the focus on the most heinous types of group-based violence. Further, such exclusion was considered a means of preventing undue meddling with state sovereignty.

Impact of Exclusion of Political Groups:

Accountability Gap:

Political group exclusion leaves crimes of genocide against these communities unanswered by the Convention, which results in a gap in responsibility. This can be interpreted as a restriction on the Convention's ability to fulfill its main objective of stopping and punishing genocide.

Restrictions in Global Reactions:

The variety of situations in which the international community can respond to acts of mass violence is limited by the exclusion of political groupings. The capacity of the international community to intervene may be restricted in situations when the actions perpetrated against political groupings do not satisfy the stringent requirements of genocide.

Inadequate Security

The fact that the Convention only offers partial protection against acts of genocide is one of the main repercussions. Political organizations are excluded, which implies that some groups

who are targeted because of their political connections or views would not have the same level of international legal protection as groups that are targeted because of their nationality, ethnicity, race, or religion.

Difficulties in Implementing the Convention

The Convention's implementation is made more difficult in situations when violence against political groups coexists with violence against other protected groups since political parties are not included in the Convention's definition. Determining the proper legal reaction and how to characterize such circumstances legally might be difficult.

Cases of Political Genocide:

1. Cambodia during the Khmer Rouge Regime (1975–1979):

During the Khmer Rouge administration led by Pol Pot in Cambodia, one of the most heinous acts of political genocide took place. An estimated 1.7 million Cambodians, including professionals, intellectuals, and those deemed to be political dissidents, were singled out and methodically murdered when the Khmer Rouge took control of the country in 1975. The hardline communist ideology of the administration aimed to eradicate urban influences and perceived challenges to its vision of an agricultural utopia. Mass executions, forced labor, torture, and killing fields came to characterize the Khmer Rouge's ruthless assault against political opponents.

2. Stalin's Soviet Union Great Purge (1936–1938):

The Soviet Union saw the Great Purge of Joseph Stalin, popularly referred to as the Great Terror, take place in the late 1930s. Millions of inhabitants of the Soviet Union were arrested, imprisoned, and executed as a result of the purge, which targeted intellectuals, political competitors, and anyone else seen to be hostile to the Communist Party. During

this time, show trials, coerced confessions, and generalized dread were commonplace as Stalin worked to solidify his hold on power and crush any possible resistance. The NKVD, in particular, was a key player in coordinating the large-scale detentions and killings that characterized this terrible period in Soviet history.

3. Guatemalan Civil War (1960–1996):

With the help of the armed forces, the Guatemalan government waged a campaign of genocide and bloodshed against indigenous Mayan villages thought to be assisting Marxist rebels. Motivated by an anti-communist ideology, the military administration targeted not only armed rebels but also academics, community leaders, and citizens. Massacres, enforced disappearances, and the uprooting of entire towns marked this horrific time. The military frequently led the scorched-earth campaign, which sought to crush political dissent and execute those thought to be leftist opposition sympathizers.

Need for Inclusion of Political Groups within the Scope of the Convention:

How violence is committed against specific populations and the shifting character of conflict are not taken into consideration when political groupings are excluded. Political ideas are frequently the driving force behind contemporary wars, which results in vast atrocities committed against people based solely on their political connections. Bringing political groupings inside the Convention's jurisdiction recognizes this fact and ensures that the legal system changes to reflect the complexity of modern conflicts.

Political group inclusion is consistent with more general human rights concepts, which emphasize the defense of people against violence, persecution, and discrimination based

on their affiliations or views. Acknowledging political factions as plausible targets of genocide upholds the dedication to universal human rights and guarantees equitable safeguarding under the law.

Political group exclusion presents the potential for deliberate differentiation between various group identities. The goal of the Convention, which is to provide equal protection to all populations threatened with extinction, is undermined by this discrimination. Adopting a thorough strategy ensures that the targeted group is not subjected to selective application of justice.

The preventive aspect is increased when political groupings are included in the concept of genocide. Mass murderers frequently take advantage of legal gaps, and leaving out political parties gives them a way to get away with murder. By reaffirming responsibility for all genocidal crimes, inclusion sends a strong message that those who target others because of their political ideas will be held accountable by the law.

Conclusion:

Though it has history, the exclusion of political groupings from the Genocide Convention poses a severe threat to the Convention's obligation to address modern issues effectively. A critical first step in bringing international law up to date with the realities of contemporary conflicts is the recognition of political groupings as protected categories under the Convention. The practical and legal reasons for inclusion emphasize the need to close the current gap in the Convention's scope. By doing this, the international community can demonstrate once again that it is committed to stopping and prosecuting genocide in all of its manifestations and to establishing a more thorough and just legal framework that will safeguard vulnerable populations.