

Forensics of Genocide: From Rwanda to Palestine

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ABSTRACT

This research article offers a thorough investigation of genocide, including a comparative study of the occurrences in Rwanda and Palestine. This text examines the legal development of the term "genocide" after World War II, specifically focusing on how it was understood and applied in international law and the resulting legal actions. The study in Rwanda examines the historical background, unfolding events, and the influence of the Gacaca system in dealing with the consequences of the genocide. Turning attention to Palestine, this analysis examines the historical context of settler-colonialism, the dynamics of conflict, and the intentional targeting of civilians, especially children and women, during military offensives. The essay also emphasizes the recent acknowledgment of genocide in Palestine by the International Court of Justice and subsequent Security Council resolutions aimed at addressing the problem. Ultimately, this highlights the pressing necessity for responsibility, fairness, and enduring harmony in both areas, endorsing the idea of joint efforts, adherence to human rights, and proactive steps to avert future disputes and foster reconciliation.

Keywords: Genocide, Rwanda, Palestine, Judicial proceedings, Settler-colonialism, Conflict, Accountability, Human rights

INTRODUCTION

Going back to the origin when genocide was first coined in a book named Axis Rules in Occupied Europe written by a Polish Lawyer Raphael Lemkin in 1944. The writer named the chapter in his book, Genocide - A New Term and New Conception for Destruction of Nations. The word is a combination of Greek and Latin terminologies. The term 'Genos' is derived from the Greek word 'γένος', which means 'Race or tribe' while the suffix, caedo, was derived from Latin which means 'act of killing'. The verbatim meaning of genocide is the act of killing race people or people belonging to a tribe which is interpreted and defined in international statutes and precedents. The conceptualization of Genocide was emerged after World War II when the formation of International Military Tribunal (IMT) in Nuremberg by Allied forces was made to counteract impunity for Nazi crimes. During this span of the trial, Article 6(a)-(c) of the London Charter only includes crimes against humanity and peace along with war crimes [1]. As not in the law, Genocide was not present in the judgement but it was used in the indictments and closing arguments as an explanatory term. The Judgment of the Nuremberg trials set the stage for the evolution of genocide as it includes the acts which are termed as genocide in updated jurisprudence [2]. The next step was taken by Control Council No. 10, a US military tribunal, as it included the genocide with legal substance and transferred it from

legal terminology to a subset of crime against humanity [3]. It was argued that the prime illustration of crime against humanity can be made through the term Genocide [4]. It was officially established in the convention adopted by the United Nations (UN) on December 9, 1948, and entered into force on January 12, 1951. The Convention was named the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, hereinafter referred to as the Genocide Convention [5]. Article II of the Genocide Convention defined the term enclosing the physical and mental elements of the crime. The first part of the Article, Intent to Destroy; in whole or in part, talks about the mental element of the crime while the second part classifies the physical element into five categories. These categories encompass actions such as killing, inflicting severe bodily harm, intentionally creating conditions that lead to physical destruction, obstructing births, and forcibly relocating children between groups [6]. All these elements have a necessary clause 'member of the group', which clarifies that

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all such actions should target the specific group in whole or in part.

INTERPRETATION OF GENOCIDE

Considering these elements, the most difficult to prove is the intention to destroy a nation, tribe or people from a racial group. Simple cultural destruction or dispersion of a group does not suffice the essential mental element of this crime. Furthermore, the victims should be targeted deliberately rather than randomly and it should be against a group or part of the group which can be identified. There are four types of groups defined in the Genocide Convention. The classification includes national, religious, ethnic, and racial groups and it excludes political groups. However, there is no recognized definition mentioned in the text of convention about these groups. Although the convention only mentioned these groups it can be interpreted that other groups are also protected by the ambit of jus cogens norms which also prohibits genocide [7]. The International Criminal Tribunal for Rwanda (ICTR) Trial Chamber in Akayesu adopted the constructive objective definition for these four groups while interpreting the Article II of the Genocide Convention. ICTR adopt an objective approach to evaluate if a group falls under the umbrella of these groups under the convention [8]. This approach was converted to a subjective approach which primarily focused on the preparator's perspective of the victim group. It is, however, hard to merge this basis with principles of legality. The principle of legality hinges on the ability to clearly predict and define criminal behavior (foreseeability and specificity). It's hard to see how a subjective approach could effectively achieve this. The presence of *dolus specialis* is necessary to fulfill the elements of the crime of Genocide and also it makes the Genocide unique [9]. The judicial proceedings of Genocide further include the presence of the state, a policy, and an organizational plan as essentials for establishing the intention of this crime. The same contributes to establishing the liability of crime at the state level. Genocide is an action that can be possible with the perspective and planned agenda to destroy the specific group and such planning cannot be possible without involving the necessary organs of the state [10]. When the organs of the state, individually or collectively, contribute to the commencement of genocide, the crime becomes a state crime and the international community has the right to engage within the ambit of universal jurisdiction of the matter.

HISTORICAL FACTS OF RWANDA

To establish the ground reality and present the critical analysis of Genocide, the perspective of Rwanda is sufficient. Rwanda is a landlocked country located in East-Central Africa. The history of Rwanda has these phases pre-colonial, colonial, and independence. There are two groups in the country Hutu in the majority and Tutsi in the minority. The tension between these two groups started from the

beginning and sparked in 1973 when a military coup led by Juvenile Habyarimana overthrew the Hutu-lead government [11]. Afterwards, Habyarimana started his regime and was later on killed in 1994. The event of his death ignited the revolt against Tutsi in the state which converted into Genocide. The early estimate of the death toll was between 500,000 and 800,000 Tutsi Population [12]. The subsequent investigation of the Rwanda genocide shows a graph upward in this perspective. A collective detailed census updated in 2000 shows 951,081 victims of genocide and a death toll of over a million people in Rwanda [13]. All these people were killed because 93.7% of them were Tutsi, 1% were their relatives, 0.8% looked like Tutsi, and 0.8% were opponents to the Hutu [14]. The massive killing, looting, and destruction of property were questioned and the quest for justice was delivered both in national and international forms. The United Nations established the ICTR in Arusha, Tanzania in 1994 with an excessive budget of US\$1.8 Billion [15]. Despite giving all the necessary facilities, the work was very slow as the first case was initiated in 1997. The working of the tribunal only delivered 15 judgments against 21 defendants and 18 convicted of genocide and crime against humanity [16]. During these proceeding the case of Jean-Paul Akayesu brought the progressing development in the statute that systematic rape and sexual violence also fall under the umbrella of genocide in the same manner as another crime against humanity [17]. Also, the three others named Nahimana, a director of radio programmers on RTL, Barayagwiza, a founder of RTL, and Ngeze, a writer at RTL were convicted because they incited the people for genocide through their "hate radio" and newspaper [18].

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

The condition of jails in Rwanda was unpleasant after the genocide as there were 120,000 accused were put there in awaited trial. The shattered legal system of the country was unable to prosecute all these cases so they decided to release over 20,000 people in 2003 [19]. Others were promised that their sentence would be shortened if they confessed to the crimes they committed. Another interesting yet controversial attempt was made to take on these cases, which is the *gacaca* system, a traditional form of tribunal and it was widely accepted by the people. To implement it the *gacaca* system was launched in January 2001. The word *gacaca* means 'on the hilltop' which is a resemblance to open-air justice system, the system started with 260,000 judges consisting of old and young, men and women [20]. These judges were elected by the democratic way of popular vote by the people in 2001 and the judges belong to both Hutu and Tutsi groups. The reason for the *gacaca* system is the slow proceeding of ICTR because it only tried just seventy cases before it shut down in 2008. While on the other hand, 100,000 detainees were in Rwanda jails waiting for their hearings. Most of those have serious allegations and reasons to believe that

their part in genocide is larger than others, some are there because they tried to settle personal score and loot another person along with destruction of property. It was quite clear that the shattered system of Rwanda could not take all these cases and proceed with speedy trials. The only possible way seen was the gacaca system although it faced a lot of criticism from the international community for not being the exact interpretation of justice [21].

GACACA SYSTEM OF JUSTICE

Gacaca tribunals are formed with the view to take all cases on board with this aim they established four different levels of the system. The division is from cell to sector, and district to province in Rwanda. The cases of the property named Category 4 offences were handled by the lowest-level tribunal. While the crime of injury was handled by sector-level tribunals and the cases of killing were handled by district-level tribunals it excludes the organizational and directional killing and it falls in Category-1 offenses. Crimes which fall outside of these tribunals will be tried by the government courts. While the Provincial level tribunal is working as an appeal court for the decision of the gacaca system [22]. In 2005, thousands of Gacaca courts started working with an aim to address 110,000 cases by the end of 2008. The system used restorative justice to rebuild the country and provide the green space to develop again. At the trials, the victims and offenders along with witnesses brought together and sentences were granted through service to the community. The system includes the repairing of buildings, homes, green spaces, agricultural work, and reestablishing schools and hospitals. This approach was adopted to provide justice to the victims along with the rehabilitation opportunity for the offenders along with the restoration of the country to its footing again [23]. While being the restorative justice approach it lacks the proper ingredient of a fair trial which includes absence defense lawyer, low standard of evidence, no presumptions of innocence and only tried Hutu community. It provides a lot more room for malpractice, corruption and manipulation [24]. Despite these factors, the gacaca system proved to be an efficient approach after the genocide and helped address the enormous challenges of administrative justice in the country.

It was seen that the prosecution of crimes against humanity and genocide is more effectively conducted at the national level rather than internationally. Although the presence of prosecution, indictment, and judgment are the eminent figures of a modern state. Trial conducted within the jurisdiction has a more general and psychological influence on the general public and also, they have a better approach to cater to evidence, witnesses, victims, and offenders. These features make it a more convenient and effective tribunal as compared to international tribunals conducting trials without having prior sentimental knowledge of the matter.

GENOCIDE OF RWANDA

All these ground figures depict that genocide was propagated by the officials of the state and to put an end to this, the other international factors played their role. Genocide, indeed a brutal crime which is committed against masses of the population. The perspective of Rwanda was overwhelming as there were multiple brutal killings, and the conditions were not able to address properly. The aftermath shows that the international community failed to comply with the pillars of the justice system while the national court put its efforts to adopt some comprehensive approach to the situation. A state is involved through its officials and the commencement of such actions is incited by the leadership of the state. It is a war within the state against some groups which conclude it is a state crime. Genocide is a state crime which not only includes the administrative officials but also includes the non-administrative bodies that took part in preaching or inciting people to genocide. The author highlights the ethical obligation to address genocide, with particular emphasis on its dissemination by government authorities and the influence of global circumstances. Their stance promotes an integrated approach that acknowledges the interdependence of genocide, inequality, and environmental destruction. In essence, they advocate for proactive involvement in addressing genocide and the wider array of challenges confronting human civilization.

GENOCIDE IN PALESTINE

As the world struggles to comprehend the devastating impact of the Rwanda Genocide, another even more extensive and horrific genocide emerges, further traumatizing the population. Palestine has a significant historical presence in the continent within the framework of settler-colonialism. Moreover, these historical eras are constructed by a series of genocidal acts and mass killings. Early academics also interpreted it as the Holocaust, as they believed that Lemkin's term exclusively referred to mass killings. However, in addition to causing mass murder, the events also target the infrastructure, the economy, the children, social devastation, and forced emigration. Several extensive sieges were executed with the specific objective of targeting these particular aspects of the state through warfare.

HISTORICAL CONTEXT OF PALESTINE

Palestine experienced the Nakba throughout the first half of the twentieth century. Nakba is an Arabic term that denotes a catastrophic event. While some people feel that the suffering of Palestinians began in 1948 at certain events, it is important to note that those events were just one aspect of their overall suffering. The author posits that the genesis of the situation can be traced back to the Balfour Declaration of 1917, which granted the Zionist movement the right to claim ownership of the territory of Palestine. Furthermore, it is explained that following the Declaration, there were several endeavors to elevate individuals from their current status and acquire political dominance over the state. These attempts are

exemplified by the Al-Buraq insurrection in 1929 and the Great Revolt in 1936. Both of these endeavors were forcefully suppressed by the British authorities, alongside the Zionist Terror Organizations [25]. Following the violent events of 1948, Egypt assumed control over Gaza and Palestine. During this time, significant advancements were made in education, infrastructure, economy, and other fields. Gamal Abdel Nasser, a prominent Arab leader, is widely recognized for his role in establishing and overseeing a period of prosperity that is sometimes referred to as a golden era. However, the period of stability was short-lived, as a declaration of war in 1967 resulted in the loss of numerous Arab lands, including Gaza. Consequently, the Israeli military assumed control of the government, a situation that persisted until 1993.

RULE OF ISRAELI MILITARY IN PALESTINE

Under Israeli Military control, Palestinians endured a wretched existence, stripped of their fundamental human rights, citizenship, self-determination, and even lacking recognized borders. The initial incident was triggered by an event in which an Israeli truck driver in Gaza caused the death of four Palestinian workers on the site [26]. The worker's violent murder sparked the Intifada, prompting the leadership of Palestine to initiate the Palestinian Liberation Movement. The movement is characterized by tactics such as boycotts, civil disobedience, tax evasion, tire burning, and stone-throwing. During these events, Hamas established as an Islamic Palestinian movement and proclaimed violent struggle against Israel. The situation was resolved in 1993 with the signing of the Oslo Accord by all parties. However, prior to that, the Intifada led to the deaths of 1400 Palestinians and left thousands more injured [27]. The Oslo Accord lasted for barely seven years before it became apparent that it was a mere mirage, and their request for recognition as an independent state would not be accommodated. Keeping everything in consideration, the second Intifada commenced in September 2000 [28]. The second phase of the Intifada was very catastrophic, marked by numerous instances of suicide bombings orchestrated by Hamas. In response, the Israeli Army employed modern warfare tactics to combat the Palestinians. The Israeli military deployed tanks, helicopters, live ammunition, and artillery to disperse the protesters in the Palestinian area. In 2002, the Israeli army initiated a blockade on the headquarters of Yasser Arafat, the Palestinian leader in Ramallah. As an outcome, Arafat became unwell and passed away in 2004. Mahmoud Abbas replaced him in 2005. Abbas played a key role in the creation of the Oslo Accord and took a conciliatory approach to the problem. He favored a peaceful resolution instead of engaging in war or disputes. During this year, the Israeli settlers were evacuated from the Gaza Strip, which was seen as a significant advancement towards the establishment of an independent state. In 2006, Hamas emerged victorious against Fateh and sought to

establish a coalition government with them. However, these efforts were unsuccessful due to opposition from the United States and Israel. They insist that Hamas should cease its armed resistance, nevertheless, Hamas successfully defeated Fateh in a prolonged civil conflict. Israel deemed the coastal enclave a hostile entity and initiated a comprehensive siege by employing air, water, and land forces [29]. These events led to the destruction and closure of several industries and businesses, resulting in increased unemployment rates. The rates exceeded 55%, with women and children being the most marginalized demographic affected [30]. The current unpredictable political situation and economic decline have led to significant social problems, including suicide, domestic violence, and divorce [31].

TARGETING OF CHILDREN AND WOMEN IN PALESTINE

It has been observed that each instance of genocide has specifically targeted the vulnerable group of children. A significant historical event occurred in Gaza, where numerous children were murdered, subjected to torture, imprisoned, and left orphaned [32]. The Gaza Strip, which spans an area of 142 square miles, is home to a population of 2 million people. During various stages, half of this population, including many children, experienced cruel and genocidal events [33]. Max Blumenthal's book presents an interpretation of the hostility graph among children raised during the 2014 war [34]. The population of Gaza has grown to comprise 80% of the Palestinian refugees who were displaced or expelled from their land, homes, and communities as a result of the 1948 conflict [35]. The degree of violence and the extent of damage escalated progressively. The wars mentioned include Operation Cast Lead (2008), Operation Pillar of Defense (2012), Operation Protective Edge (2014), and most recently Operation Guardians of the Walls (2021). This illustrates how Israel has systematically generated severe living conditions that have gradually weakened the fundamental pillars of the Gazan population.

THE OPERATION PROTECTIVE EDGE 2014

The Operation Protective Edge in 2014 was proved more destructive as it targeted the whole population of Palestine and this genocide was continued for 51 days. The battle was triggered when three young settlers were discovered deceased in the occupied West Bank. Israel, who attributed the deaths on Hamas, pledged to respond with force. During the funeral, Shimon Peres urged the Israeli military to respond forcefully to 'terrorists'. Likewise, Netanyahu demanded retribution for their lives and attributed the responsibility for the murder of the three teenagers to Hamas [35]. Conversely, Israeli defense minister Moshe Ya'alon suggested that Israel should counter by constructing further settlements in the West Bank. The use of provocative language resulted in retaliatory actions in Jerusalem, when settlers abducted Muhammed Abu Khdeir, a 16-year-old, and

brutally assaulted him, rendering him unconscious before setting him on fire, causing his death. These two episodes provoked strong responses from both sides and ultimately resulted in an attack on Gaza, as Israel made the decision to forcefully eliminate Hamas. When questioned about the Israeli offensive, each study emphasized Israel's overwhelming and unparalleled utilization of military force, leading to widespread destruction throughout the Strip. The other element of genocide was completed with implication that the Israeli military has a history of targeting schools. During Operation Cast Lead in 2008-2009, 14 out of 15 higher education institutions sustained damage, with six of them being deliberately targeted. A total of three colleges and six university buildings were completely demolished, resulting in an estimated damage cost of \$21 million. During the 2014 attacks, a minimum of three universities, seven UNRWA schools, and around 141 locally operated institutions suffered significant damage. It is important to note that several of these locations were deliberately attacked multiple times [36].

CAUSALITIES OF GENOCIDE

The genocidal nature of the event can be inferred from the testimonial of the population of Gaza. He stated that the incident occurred one day after his university graduation ceremony, when the university was subjected to a bombing. Numerous families, including parents, grandparents, and children, were targeted and killed in their homes. The destruction was so severe that residential buildings and apartment complexes were completely obliterated. Even markets were bombed while people were shopping, creating an atmosphere reminiscent of the day of judgement. The situation was extremely cruel since individuals were unable to leave due to the absence of any secure locations. Furthermore, the authorities did not permit the opening of the border for those wishing to flee and then return [37]. In addition to targeting higher education institutions and schools, Israel deliberately attacked a densely populated commercial district during the war, resulting in the deaths of 17 Palestinians and the injury of over 200 individuals, despite the supposed humanitarian pause. The neighborhood was subjected to multiple Israeli aircraft and artillery attacks. Individuals and emergency medical personnel who were attempting to save the wounded were also struck, resulting in casualties among them. Israel prohibited the evacuation of residents from areas of conflict and their relocation to safer regions. On the contrary, it pursued them to their shelters at UNRWA schools and specifically aimed at them [38]. Israel deployed a disproportionate amount of military force in the vicinity following the loss of 13 soldiers and the kidnapping of one by Hamas's armed forces [40]. As to a high-ranking US military official, Israel positioned 11 battalions of powerful artillery, consisting of a minimum of 258 units, which bombarded the neighborhood with about 7000 high explosive shells over a duration of seven hours. That is an

immense quantity of power, and it is unquestionably lethal. These all elements depict the ground-breaking genocide in Gaza and Palestine. As war is directed towards another armed entity, whereas genocide specifically targets a civilian group or community [41]. In the 2014 offensive, Israel caused the deaths of around 2200 Palestinians, including 550 children and 300 women. Additionally, they injured 11,000 individuals, with ten percent of them sustaining permanent disabilities [42]. A total of 18,000 dwelling units were completely or partially destroyed, along with 56 primary healthcare facilities and 45 ambulances that suffered damage [43]. Following the 2014 Israeli assaults on Gaza, around 350 factories have been either partially or completely demolished. The Israeli airstrikes and shelling resulted in a colossal fire, causing significant damages estimated at \$30 million. Due to the conflict, the private sector suffered losses amounting to \$869 million [44]. The recent incident in Gaza involves the occurrence of multiple events that collectively constitute the ingredients of genocide. The entire city has been subjected to extensive bombing, resulting in numerous casualties, including children and women. The assault was specifically targeted on the inhabitants of Gaza, resulting in the complete annihilation of the city of Gaza. The latest actions taken by the International Court of Justice (ICJ) regarding the Israel and Palestine dispute confirm that acts of genocide have taken place in the region on 26th January, 2024. The ICJ has issued a clear directive for both parties to immediately cease any further armed confrontation. The Security Council on March 25, 2024 has also adopted a resolution to declare a ceasefire in Gaza and guarantee the safety of the civilian population and those who have been harmed in the region.

CONCLUSION

In conclusion, the atrocities witnessed in Gaza and Palestine, particularly in the aftermath of the 2014 offensive and the recent events, underscore the urgent need for accountability and justice. The immense human and physical damages depict a distressing image of the outcomes of uncontrolled violence and conflict. The International Court of Justice's recognition of acts of genocide on January 26, 2024, signifies a significant milestone in acknowledging the severity of the situation and seeking accountability from the individuals involved. The successive resolutions passed by the Security Council to enforce a cessation of hostilities and safeguard the well-being of non-combatants exhibit a shared dedication to avert more distress and facilitate substantive discussions and settlement of the protracted dispute. In the future, it is crucial for the global community to maintain the ideals of human rights and justice, and strive for a lasting peace that honors the dignity and rights of all citizens in the area. Furthermore, it is crucial to establish connections between the catastrophes in Rwanda and Palestine, emphasizing shared elements such as deliberate attacks on civilians, intricate historical circumstances, and the necessity for international

responsibility. Both instances serve as clear reminders of the disastrous outcomes of uncontrolled violence and the necessity of maintaining human rights and justice. The response from the international community, while differing in efficacy, highlights the significance of collective action in the prevention and resolution of genocide. In the future, the knowledge gained from these terrible acts should guide our actions to prevent future conflicts and promote lasting peace by engaging in discussion, healing, and showing respect for the rights and dignity of all people involved.

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