

On Bloodshed, National Healing and the Rule of Law: The Genocide Convention and its Progress, Problems and Prospects

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This Note starts with a discussion on the legal underpinnings of genocide, starting with its early history, where there was no known prosecutorial mechanism against such a heinous crime, to the prosecution of Adolf Eichmann, to the atrocities in Rwanda and Yugoslavia. Jurisprudential development in cases before the International Court of Justice and the International Criminal Court are also outlined.

Next, the crime of genocide and the prohibited acts which fall under it are defined using the elements provided for by the International Convention on the Prevention and Punishment of the Crime of Genocide (Convention). The Authors then further discuss these elements and notes that there are certain forms of genocide presently being committed which do not fall under this definition by the Convention. The Authors then point their discussion toward a critique of the third element, which is intent to destroy the group, and state that there must be a specific intent (*dolus specialis*) to commit genocidal acts. Questions regarding the weight of the mental state of the perpetrator, a quantitative criterion for the act, and irrelevant motivations are also presented. Finally, the many issues on the question of jurisdiction are also outlined such as: territoriality, nationality, universal jurisdiction, the use of ad-hoc tribunals, concurrent jurisdiction, or resort to United Nations organs.

In conclusion the Authors point out a need to define acts which would constitute genocide, a reconsideration of what special intent would involve, and more criminal accountability and less impunity.