

Elements of Crime of Genocide according to International Law

The article highlights the essence of the crime of genocide in accordance with current international law. The elements of the crime of genocide are analyzed in accordance with current international law and international legal practice.

The Convention on the Prevention and Punishment of the Crime of Genocide (further in the text – Convention on Genocide) was among the first United Nations conventions addressing humanitarian issues. It was adopted in 1948 in response to the atrocities committed during World War II and followed G.A. Res. 180(II) of 21 December 1947 in which the UN recognised that "genocide is an international crime, which entails the national and international responsibility of individual persons and states." The Convention has since then been widely accepted by the international community and ratified by the overwhelmingly majority of States [1]. The Convention entered into force in 1951 and is the main source convention in the fight against genocide [2, p. 193-195].

The jurisprudence of the International Court of Justice considers the prohibition of genocide as peremptory norms of international law. Moreover, the International Court of Justice recognises that the principles underlying the Convention are principles which are recognised by civilised nations binding on States, even without any conventional obligation [1].

Noteworthy, the Convention on Genocide provides for a precise definition of the crime of genocide, in particular in terms of the required intent and the prohibited acts (Article II) [1].

Convention on Genocide in Article II provides that in the present Convention, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group" [3]. So, in Article II of the Convention on Genocide lists the acts of genocide and is supposed to be such in the presence of "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". Thus, the international crime of genocide introduces the necessary feature of guilt, which appears in this case in a pronounced form of guilty intent.

The definition of the crime of genocide similar to that set out in Article II of the Convention on Genocide, contained in Article 2 of the Draft Code of Crimes against the Peace and Security of Mankind, 1996. However, this document has not entered into force as an international treaty [2].

In accordance with Article III of the Convention on Genocide the following acts shall be punishable: a) Genocide; b) Conspiracy to commit genocide; c) Direct

and public incitement to commit genocide; d) Attempt to commit genocide; e) Complicity in genocide [3]. It also specifies in Convention on Genocide that the crime of genocide may be committed in time of peace or in time of war [1].

According to the Article 6 of the Rome Statute of the International Criminal Court “‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group” [4].

The official publication of the International Criminal Court (further in the text – ICC), issued in The Hague in 2013 and entitled “Elements of crime” reveals elements of the international crime of genocide and other international crimes, covered by the jurisdiction of the Court. The structure of the elements of the crimes of genocide follows the structure of the corresponding provisions of article 6 of the Rome Statute [5]. The Elements of Crimes are reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010 (International Criminal Court publication, RC/11) [5].

For ascertaining act of genocide by *killing members of the national, ethnical, racial or religious group* (according to the Article 6, paragraph (a) of the Rome Statute of the ICC) the necessary element is killing (the term “kill” is interchangeable with the term “cause death”) by the perpetrator one or more persons, belonged to a particular national, ethnical, racial or religious group.

For ascertaining act of genocide by *causing serious bodily or mental harm* (according to the Article 6, paragraph (b) of the Rome Statute of the ICC) the necessary element is causing by the perpetrator serious bodily or mental harm to one or more persons, belonged to a particular national, ethnical, racial or religious group. This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment [6, p. 2].

For ascertaining act of genocide by *deliberately inflicting conditions of life calculated to bring about physical destruction* (according to the Article 6, paragraph (c) of the Rome Statute of the ICC) the necessary elements are: the perpetrator inflicted certain conditions of life upon one or more persons, belonged to a particular national, ethnical, racial or religious group; the conditions of life were calculated to bring about the physical destruction of that group, in whole or in part. It is also noted that the term “conditions of life” may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes [6, p. 2].

For ascertaining act of genocide by *imposing measures intended to prevent births* (according to the Article 6, paragraph (d) of the Rome Statute of the ICC) the necessary elements are: the perpetrator imposed certain measures upon one or more

persons, belonged to a particular national, ethnical, racial or religious group; the measures imposed were intended to prevent births within that group [6, p. 3].

For ascertaining act of genocide *forcibly transferring children* (according to the Article 6, paragraph (e) of the Rome Statute of the ICC) the necessary elements are: the perpetrator forcibly transferred one or more persons; such person or persons belonged to a particular national, ethnical, racial or religious group; the transfer was from that group to another group; the person or persons were under the age of 18 years; the perpetrator knew, or should have known, that the person or persons were under the age of 18 years. It is also noted that The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment [6, p. 3; 2, p. 193-197].

In addition, for all types of acts of genocide (listed in the Article 6 of the Rome Statute of the ICC) the presence of such elements of the crime is obligatory: 1) the person or persons against whom criminal actions were directed, belonged to a particular national, ethnical, racial or religious group; 2) the perpetrator who committed the acts of genocide intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; 3) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction [6, p. 2-3; 2, p. 193-197].

Conclusions. In accordance with current international law the international crime of genocide introduces the necessary feature of guilt, which appears in this case in a pronounced form of guilty intent. Elements of the international crime of genocide were highlighted by the International Criminal Court (in accordance with the provisions of applicable international law) in 2013 in the official publication of the ICC entitled “Elements of crime”. For all types of acts of genocide (which are listed in the Article 6 of the Rome Statute of the ICC) the presence of such elements of the crime is obligatory: the person or persons against whom criminal actions were directed, belonged to a particular national, ethnical, racial or religious group; the perpetrator who committed the acts of genocide intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

References

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