

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)

Request for the indication of provisional measures

- Russia does not have an article 36(2) declaration accepting the ICJ's compulsory jurisdiction.
- Article IX of the Genocide Convention “disputes between the Contracting Parties relating to the interpretation, application, or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III”.
- Ukraine's argument: falsely claiming genocide to start a war is a violation of the Genocide Convention.
- Russia's response: Russia's formal basis for using force was self-defense under Article 51 of the Charter.
- ICJ: the Court found that numerous statements by Russian officials, including President Putin's infamous speech on the eve of invasion, did expressly refer to stopping genocide as the purpose of the use of force.
- **Reasoning:**
 - At the present stage of the proceedings, it suffices to observe that the Court is not in possession of evidence substantiating the allegation of the Russian Federation that genocide has been committed on Ukrainian territory.
 - Moreover, it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide.
 - Under these circumstances, the Court considers that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation for the purpose of preventing and punishing an alleged genocide in the territory of Ukraine.
 - Granted provisional measures:
 - The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022

that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.

- the Court orders that 'The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above.
- both parties should stop.

International Human Rights Law

- **Normative foundations/ sources:**
 - **International Bill of Rights**
 - Universal Declaration of Human rights
 - International Covenant on Civil and Political rights
 - International Covenant of economic, social and cultural rights.
- **Principles:**
 - **Inalienability:** human rights cannot be taken away from us
 - **Universality:** HR belongs to all human beings universally without any exception and conditions
 - **Indivisibility/and interdependency:** states cannot choose what rights to protection and what rights not to protect, all rights must be respected irrespective of their social, political, cultural, economic nature!
- **Obligations (States)**
 - relationship of individuals via-a-vis the state
 - **Respect** - States must refrain from interfering the enjoyment of human rights (negative obligation)/ negative:
 - Free speech
 - Freedom of movement
 - Assembly
 - Privacy

- Religion
 - Vote/ elected
 - Most of the rights in ICCPR
- **Protect**
 - states must protect individuals and groups against human rights abuses by third parties. (omission)
- **Fulfill**
 - states must take actions (affirmative) to facilitate the enjoyment of fundamental rights of their citizens. (Positive obligation)/ positive rights:
 - • Right to education
 - • Health
 - • Work
 - • Housing
- **Institutions that protect human rights/ Mechanisms of HR protection**
 - **Regional mechanism on HR protection:**
 - **Europe:** European Court of Human Rights (Council of Europe) + European Convention on HR
 - **Africa:** African Court of Human Rights (African Union) + African Charter of HR
 - **North/South America:** Inter-American Court of HR (Organization of American states) American Convention on HR
 - **UN Treaty based mechanisms of Human Rights Protection**
 - ICCPR – human rights committee
 - ICESCR
 - CEDAW – women
 - CRC – children
 - Racial discrimination –
 - CAT – torture
 - CRMW – migrant workers/families
 - CRPD – persons with disabilities
 - Enforced disappearances.

- Subcommittee on prevention of torture
- **International Humanitarian Law**
 - **Normative foundation/sources**
 - **Jus ad bellum**: rules regulating the right to resort to use force.
 - **Jus in bello**: rules governing the actual conduct of force/war/ armed conflict.

Name of the Convention	Scope of protection and regulation	Application in type of armed conflict
1st Geneva Convention	Wounded and sick soldiers on land	IAC
2 nd Geneva convention	Wounded and sick soldiers at sea	IAC
3 rd GC	Prisoners of War	IAC
4 th GC	Protection of civilians (occupied territories)	IAC
Additional protocol 1	Victims of international AC	IAC
Additional protocol 2	Victims of non-international AC	NIAC
Common Article 3 for all GA	Most important principles of IHL/ rights and obligations	IAC + NIAC

- **Principles:**
 - **Distinction** - must distinguish between civilian population and military, between civilian objects and military objects
 - **Necessity** – measures taken by the state must be necessary to achieve their objectives (last resort).
 - **Proportionality** – means used must be proportionate to the objective and to the attack, proportionate to the counterattack!
 - **Humanity** - treatment of soldiers humanely, prohibition of weapons that causes unnecessary suffering.

- **State's obligations:**

- States must not target civilians/ civilian objects
- Treatment of POW: cannot torture, kill, fair trial
- Obligation on non-use of prohibited weapons

International Criminal law

What does ICL regulate?

- ICL is the field of IPL that regulates individual criminal responsibility of individuals who committed international crimes.
- Fight against impunity
- Defines what constitutes international crime (genocide, war crimes, crimes against humanity, crime of aggression)
- Elements of these international crimes
- Regulates the work of international courts and tribunals
- Brief historical framework
 - WWII, Holocaust, war crimes committed by Japan in China
 - **Ad hoc tribunals:**
 - IMT (International Military Tribunal) Nuremberg Tribunal
 - IMT Tokyo Tribunal
 - Early 1990s: UN established another ad hoc tribunal
 - ICTY: International Criminal Tribunal for former Yugoslavia
 - ICTR: International Criminal Tribunal for Rwanda (genocide against tutsi)
 - Permanent Court:
 - International Criminal Court (ICC) 2002
 - Rome Statute
- Main sources
 - Rome State of the ICC (2002)
 - Genocide: Genocide Convention
 - War crimes: Geneva Conventions
 - Aggression: UN Charter

- Ad hoc tribunal: Statutes
- Besides treaties, customary international law, general principles + judicial decisions!
- Principles
 - Principle of individual criminal liability – no one may be held liable for the actions of another person, entity. Only the individual who personally committed the crime can be held accountable.
 - Nullum Crimen Sine Lege
 - non retroactivity of criminal rules
 - legality
 - Presumption of innocence - no one can be held accountable until he is proven to be guilty by the court. Everyone is presumed to be innocent until he is proven to be guilty by the court.
 - Principle of the favoring the accused - if there are certain misunderstandings in the law, the law must always be interpreted in favor of the accused.
 - Principle of legality of punishment - no death penalty is allowed. Life imprisonment is the highest form of punishment under ICL.
- Crimes/ elements
 - Genocide: specific intent to destroy in whole or in part a national, ethnic, religious or racial group!
 - Certain prohibited acts, that amounts to genocide:
 - Killing
 - Causing serious bodily and mental harm
 - Imposing conditions that prevent birth
 - Imposing conditions that might lead to physical destruction
 - Forcible transfer of children
 - Mens rea: specific intent
 - Actus reus: Destruction

- Protected group (Objects): nationality, ethnicity, religion and race
 - Subject: Anyone above 18 (mental capacity)
- CAH
 - certain prohibited acts (murder, torture, rape....) committed as part of the widespread **or** systematic attack against civilian population.
 - Widespread attack (quantitative element): o massive, frequent, large-scale action carried out collectively. Can arise either from number of victims or from extension over a broad geographic area.
 - Systematic attack (qualitative element): o organized action following a regular pattern based on common policy + involves substantial public or private resources.
 - Actus Reus: existence of W and S attack
 - Mens Rea: Awareness and knowledge of W and S attack
 - Objects (protected group): any civilian population
 - Subjects: Anyone above 18 (mental capacity)
- War Crimes
 - most serious violations of IHL (existence of armed conflict: either international or non-international).
 - Willful killing civilian
 - Use of prohibited weapons
 - Torture of POWs
 - Actus Reus: existence of armed conflict
 - Mens rea: Intention
 - Protected groups:
 - Civilians/ civilian objects
 - POWs
 - Wounded and sick combatants
 - Subjects: Combatants/commanders/ state officials
- Aggression

- It was adopted in Article 8 (bis) of the Rome statute (2010).
 - **Act of aggression** - Act of aggression (illegal use of force) – Article 2(4) UN Charter (responsibility of state)
 - Crime of aggression - high state officials plan, order, executes the act of aggression (individual criminal responsibility).
- International Criminal Court (2002)
- Jurisdiction:
 - Subject-matter jurisdiction:
 - Over 4 international crimes
 - CAH, War crimes, aggression + Genocide
 - Ratione temporis (time)
 - ICC has jurisdiction only over crimes committed only after 2002 (Rome statute)
 - + after the state has ratified the Rome statute.
 - Territorial jurisdiction
 - If the crime was committed on the territory of the state party
 - Personal jurisdiction
 - Crimes committed by State Party Nationals
 - Triggering mechanism:
 - State party referral
 - Proprio Motu power of the Prosecutor
 - Security Council referral
 - Jurisdiction
 - Reasonable ground to believe that elements of any of the 4 crimes are present.
 - Admissibility:
 - Complementarity
 - The ICC is intended to complement, not to replace, national criminal systems; it prosecutes cases only when States are unwilling or unable to do so genuinely.

- Gravity
- Interest of justice