

Genocide and Ethnic Cleansing

Sharanbir Kaur

Student, LL.M, Chandigarh University, Mohali, Punjab (India)

ARTICLE DETAILS

Article History

Published Online: 15 April 2019

Keywords

Genocide, ethnic

ABSTRACT

This paper discusses the concept of both genocide and ethnic cleansing together and how the lack of definition is leading it to confusion. Apart from this historical perspective of both has been discussed in brief. These crimes of genocide and ethnic cleansing are heinous in nature whose responsibility to take action against its perpetrators. Then the similarities and differences among these discussed and concluded.

1. Introduction

The term GENOCIDE was invented by Raphael Lemkin, who combined two terms *genos* Greek term which stands for race, nation or tribe and *cide* Latin term means killing collectively meant killing of a race, tribe. Genocide has taken more lives than war even in the 20th and 21st century. Lemkin stated that genocide is “a coordinated plan of different actions aiming at destruction of annihilating the groups themselves”¹. Lemkin pointed out that, “Genocide is new word, but the evil it describes is old”.² The heritage of crime of genocide is lost in prior to thousands of years, cannot be found unless a proper archaeology of genocide develops. After acrimonious debate got over the definition of genocide, finally the UN General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide (UNCG), in December 1948. In January, 1951 after ratification by 21 states UNCG came into effect. In the 20th century, an age of politically sanctioned mass murder, 60 million children, women and men were brutally killed, who come from distinct races, religious, ethnic groups living in different states and continents of earth. The term ethnic cleansing is a translation of Serbian *etnicko ciscenje* (cleansing of region). The original idea behind this Greek connotation, *ethnos* is associated with shared descent and lineage. Ethnic cleansing is used as euphemism for the genocide. Ethnic cleansing is considered as an attempt to change the different ethnicity of a territory into a single ethnic belief either by deporting them to another place or by forcibly displacing the persons of that ethnic group.

2. Definitions

2.1 GENOCIDE

UNCG states in Article II that term genocide covers all the beneath prescribed acts committed with an intention to vanish, either wholly or partly, a national group, ethnicity, a race or a religious group:

- (a) Killing/mass murders of members of the belonging group;
- (b) Causing grievous hurt or mental injury to members of the group;

- (c) Intentionally imposing stipulations on the group which are life calculative in nature and eventually brought the physical destruction of group wholly or partly;
- (d) Trying to make such conditions with an intention to bar the births inside the targeted group;
- (e) Coercive transportation of the children of the group into the another group.

UNCG Article III provides that below mentioned are punitive in nature under the Genocide convention:

- (a) The act of commission of crime of Genocide;
- (b) Any conspiracy or well-planned plot to commit the act of genocide;
- (c) Provocation of commission of genocide either directly or publicly;
- (d) Pursuit of act of genocide;
- (e) Any kind of involvement in crime of genocide.

Apart from the UNCG the International Criminal Court (ICC) also accepts the genocide as a crime under its jurisdiction. Along with the genocide ICC also prosecute the crimes against humanity, government murder, torture, enslavement, enforced disappearance.

Nehemiah Robinson (1960, while interpreting the UN Convention) defined it as, “Genocide has been committed when acts of homicide are joined with a connecting purpose, i.e. directed against persons with specific characteristics (with intent to destroy the group or a segment thereof).”

Christopher Powell and Julia Peristerakis (2014) “we define genocide as the violent erasure of a collective identity and understand genocide as a multidimensional process that works through the destruction of the social institution that maintain collective identity as well as through the physical destruction of human individuals.”

Firstly, genocide is a planned effort to destroy any group. It is deliberate, large-scale, systematic, sustained extensive violence. Secondly, genocide is class/group selective violence. Individuals are attacked, killed being identified as a member of any specific group, not because of their actions. Lastly, genocide is a group- destructive violence. Actions were taken by perpetrator to prevent a group from surviving and

¹ Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington,DC: Carnegie Endowment for International Peace, 1944), 79.

² Raphael Lemkin, *Lemkin on Genocide*, ed. Steven Leonard Jacobs, (Lanham, MD: Lexington Books,2012) 20.

reproducing in a territory. Hence genocide is a class destruction, elimination and extermination

2.2 Ethnic Cleansing

Although there is no definition of ethnic cleansing widely accepted and no specific treaty is adopted as preventive measure, although in broader sense it's a forcible deportation of mass population which is also constituted in the definition of Crimes Against Humanity. A Commission established by United Nations in 1993 defines it as, the planned removal of persons from a specific piece of territory, who shares same ethnic values, by way of force or intimidation, so that area becomes ethnically homogenous or belong to one ethnic group only.

The report of expert commission under the command of UN Security Council, a Resolution number 780 provides that which acts constitute the ethnic cleansing, purposeful program designed or well plotted plan by the members of one ethnic or religious group to exterminate by violent measures and terror-inspiring threatening measures against the civilians population of targeted ethnic or religious group from a decided geographical places. Terry Martin says that ethnic cleansing is the determined expulsion of an ethnically defined population of a group from a targeted territory and as acquiring the central part of continuum between the crime of genocide on one end and little milder on the other hand by the means of ethnic emigration of persons of group.³

Andrew Bell Fialkoff, (...) said that the concept of ethnic cleansing can be known as the evacuation of an 'undesirable' population from targeted territory due to their religious or ethnic values and other discriminations like political views, strategic or philosophical consideration, or on basis of all these.

The crime of genocide is specifically defined and identified as a crime under international law but ethnic cleansing is not defined as such, this uncertainty leads to this confusion since previous century. And due to overlapping and accepted similarities it is difficult to separate these two as there is thin line difference between genocide and ethnic cleansing.

3. History

3.1 History Of Genocide

In the twentieth century, International community changed its way to respond on Genocide and mass atrocities. At the start of the twentieth century a little attention was paid towards genocide. State governments had first and foremost responsibility for their population, even the population is massacred by state government itself.

The situation was changed to a great degree after World War II. Particularly, the Holocaust which was a systematic annihilation of the Jews devastated the *carte blanche* national sovereignty. The Allied Powers promised to make human rights a pillar of new world order. The UN Charter laid the foundation for international peace and security and pledged to

promote human rights first. Although these, commitment or promise were weak but still relevant.

Allied Powers decided to establish the International Military Tribunal (IMT) to capture and try Nazi Officials for commitment of conscious and designed genocide that is the evacuation of racial or religious nationalist groups, against the population of targeted group in order to destruct the particular race or class of people. The tribunal found all the defendants guilty but it dropped the term genocide from the judgment. Not much concern to protection of human rights was given by USA and USSR in order to establish their dominance worldwide. Consequentially, in the late 20th century, number of atrocities raged in Burundi, Nigeria, Indonesia, Bangladesh, Cambodia and Guatemala. These events were viewed by these powers through the frame of cold war. Human rights protection was a remote priority.

In the early 1990s, number of atrocities was observed worldwide against the humanity like in Iraq, Somalia, Rwanda and Bosnia. Later in 1994, scenario began to change, when the UN established two ad hoc criminal tribunals to prosecute war crimes, genocide, crime against the community in the Rwanda and former Yugoslavia. In the late 1990s an attempt was made to establish a permanent international court to entertain the crimes like genocide. Then, in 1998, 120 nation states approved the Rome Statute for International Criminal Court (ICC).

Kofi Annan (head of the UN department of Peace keeping during Rwandan Genocide), in his millennium report, called the international community to resolve their conflicts between sovereignty security on one hand and the obligation to protect their citizens from mass violence on the other.⁴

In the year 2005, under Annan's leadership, governments adopted two key provisions at World Summit 2005. First one held that states are under liability to protect population from the crime of genocide and other atrocities. The second stipulation was, if states fail to protect their citizens, the international actors can protect them peacefully or coercively if necessary.

By early 2015, a prominent Syrian Human Rights group had estimated more than 200,000 total deaths. More than 9 million people had been displaced during the war according to the estimation by the UN High Commissioner for Refugee.

3.2 History Of Ethnic Cleansing

According to Bell Fialkoff and few others ethnic cleansing was practiced by Assyrian Emperor when in millions of his population of conquered the lands to resettle in the 9th and 7th BC centuries.⁵ Even in the middle ages, religion was main source of oppression rather than ethnicity. A large population of Jews and Muslim was expelled from Spain in the year 1492 and 1502 respectively, those who were not expelled forced to convert to Christianity in the beginning of 17th century and converted Muslims called as Moriscos.

⁴ Kofi A. Annan, *we the Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, 2000).

⁵ Andrew Bell-Fialkoff, *ethnic cleansing* (New York: St. Martin's Griffin, 1999), 7

³ Martin Terry, 1998 "The origin of Soviet Ethnic Cleansing", *The Journal of Modern History* 70(4), 813-861.822

Even in the presence of these examples still few scholars considers that in strictest sense the concept of ethnic cleansing is a concept of 20th century. Due to nationalist movement and racist theories number of these incidents of purification of nation by expelling and destroying in few instances specific groups by considering 'alein' is increased.

In the year 1994, members of Tutsis minority was massacred by the Hutu majority in former Yugoslavia and Rwanda from April to July. Another prominent instance of ethnic cleansing was Adolf Hitler's Nazi regime in Germany against the Jews community from 1933 to 1945. It began with cleansing by the way of expulsion and ended with barbarous destruction of approximately 6 million of Jews (apart from this with some 250,000 Gypsies and almost similar number of homosexuals) in the mass killing centers.

The ethnic cleansing was used to address the treatment given to Chechens who fled Grozny and Chechnya by Russian military operations in 1990, and Indonesian militants killing and forcible removal of refugees from East Timor in 1999.

Another example of events occurred in 2003 in Darfur region of Sudan, where in the heinous clashes between the rebel groups and the forces of Sudan killed hundreds of thousands and displaced more than the 2 million of Zaghawa and Masaalit ethnic groups.

4. Responsibility To Protect

In International Law, it's a tricky position when it comes to execute the perpetrators and made them accountable for the violation of human rights. It's always been a topic of discussion on both the international & national level to better and improve the global law enforcement mechanism.

The doctrine of Responsibility to Protect provides that, "if a state is unable to protect its own people from the crimes like genocide, war crimes, ethnic cleansing and crime against humanity" then the international community must take some action to protect the human rights.

The responsibility to protect was adopted in 2005 at the World Summit. Mainly it aims to hold responsible the member nations to protect their people morally and equally and all the population which may be in future can suffer any risk of genocide and other mass atrocity crimes. And discussion related to secure the millions of individuals who have suffered or suffering these atrocities under the name of genocide and ethnic cleansing is increasing in today's world.

5. Genocide V. Ethnic Cleansing

The difference between the genocide and ethnic cleansing is a grey area which befuddles the policy makers, scholars and students. For a better differentiation both can be illustrated with example of each. Genocide is mass killing of a specific group/community. The dark Holocaust which was a systematic obliteration of the Jewish Community at large from Nazi (Germany) in the Second World War under t authority of Adolf Hitler. Another occurrence would be the mass killing of almost 800,000 Tutsi people by Hutus in Rwanda in the year of 1994. The most recent example is of Rohingya Muslim's

ongoing persecution in Myanmar, where the armed forces and police is carrying out the mass murder of people of Rohingya in Rakhine state located at northwestern region of country. In the ethnic cleansing it also involves the intention extermination of population. It is limited to forced deportation or transfer of population. An illustration of ethnic cleansing is conflict in Jammu & Kashmir, in this terrorist forced 50,000 Hindu population to migrate from Jammu & Kashmir under their fear of rape, assault and other destructive measures.

The events of Darfur have ignite the longstanding debate about the distinction between the genocide and ethnic cleansing. The ethnic cleansing which is not a legal term but a descriptive one, but genocide is designated an international crime in 1948 by United Nations.

Aim of genocide is to physically destroy entire ethnic, religious and racial communities and ethnic cleansing's main goal is to establish ethnical homogeneity. In the ethnic cleansing mass killing is not necessary but others methods can also be adopted to attain it.

In the *Krstic* Trial chamber it was found that:

[...] by 13 of July, the plan of ethnically cleaning the Srebrenica was increased to a far more dangerous level which includes the mass murder of all of the military-aged Bosnian Muslim men of Srebrenica region [...] this program to kill all the military aged men was directed to guarantee that the Bosnian Muslim people would be permanently expelled from Srebrenica and therefore constituted genocide.⁶

ICTY judges have not equated the genocide and ethnic cleansing but rather they said that the ethnic cleansing policies lead to genocide's perpetration. Further this perspective was reaffirmed in resolution also by saying that:

The deteriorated situation in Bosnia and Herzegovina owing to intensified acts of aggression by Serbian and Montenegrin armed forces to occupy more land by way of force in the systematic way violations of human rights and a prosperity of refugee population resulted from the huge expulsion of civilians from their land in pursuit of offensive policy of "ethnic cleansing", which is actually a form of genocidal acts.⁷

Even though it was generally discussed, that the crimes which were committed in the state of Darfur are actually acts of ethnic cleansing or act of genocide, in the Pre-Trial Chamber I of the International Criminal Court (ICC) actually granted a warrant against the Ai-Bashir (president) for the crime against humanity with the help of assistance by International Commission of Inquiry on Darfur matter.⁸

After all the above stated instance the question arises whether these two practices of genocide and ethnic cleansing might be considered as synonym or they refer to two different

⁶ *Prosecutor v. Radislav Krstic ("Srebrenica-Drena Corps")*, case no. IT-98-33-T, Judgement, Trial Chamber I, 2 August 2001, para.619.

⁷ General Assembly Resolution 47/121(1992), 18 December 1992, UN Doc A/RES/47/121.

⁸ *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, No. ICC-02/05-01/09, Warrant of Arrest, Pre-Trial Chamber I, 4 March 2009.

dynamics. Ethnic cleansing either to be recognized as genocide or it has to be defined and prosecuted separately.

5.1 The Genocidal Acts And Ethnic Cleansing *Actus Reus*

There is no specific requisite and conditions of ethnic cleansing and no exhaustive list of acts covered by it. The only clear picture is that it is much more like the act of genocide- a practice carried out by series of acts, which have margin of peaceful deportation and transfer to rape, murder and extermination. For this the New Zealand's Ambassador aptly declared before UN General Assembly that ethnic cleansing covers a multitude of serious violations of human rights like systematic extermination, forcible transfer, dwelling's destruction, degraded treatment of human beings and rape, mass killings.⁹

There is alternate story also where related to present question Syria made a suggestion to Sixth committee while drafting the Genocide Convention to add an other category of genocidal act i.e. 'inflicting conditions with an intention to threaten the members of a group/community to leave their homes if they want to safe from the consequential or subsequent ill treatment towards them'¹⁰ but the committee turned down the proposal.

In the *Nikolic case* Trial Chamber considered that in Yugoslavia, 'the policy of ethnic cleansing has become the form of unfair act of extreme level which is more of genocidal character'.¹¹

In the year 1993, it was considered the acts of genocide were not limited to:

Torture, murder, rape, summary execution, mayhem, so called ethnic cleansing, the deliberate devastations of towns, villages, districts and cities, the starvation of civilians, the siege of villages, cities and towns, harassment of refugees sent by international community under the name of humanitarian law, detention of civilians in camps and bombardment on civilians;¹²

The ethnic cleansing could possibly be included in genocidal acts if it can be placed within the parameters of genocide convention, ICJ also provided that ethnic cleansing can be treated as genocide, if it is classified as a genocidal act:

This cannot be said that the ethnic cleansing may never constitute genocide, for instance, "deliberately inflicting on the group conditions of calculation of life to bring about its physical destruction in part or wholly", in the contrast to Article 2, para (c) of the convention, provides such actions is committed only with special intention (*dolus specialis*) i.e. with a special intention to destroy the group, being different from the regional groups. [...] In another words, the ethnic cleansing whether considered as genocidal act or not, it can be found on the

⁹UN Doc. A/C.3/48/SR.6, PARA.29.

¹⁰ UN GAOR, 3rd Session, Part 1, *Summary Records of Meetings 21 September-10 December 1948*, UN Doc A/C.6/SR/234 (1948), P. 176.

¹¹*Prosecutor v. Dragon Nikolic (Susica Camp)*, Case No.IT-94-2-R61, Review of the Indictment Pursuant to Rule 61 of Rules of Procedure and Evidence, Trial Chamber I, 20 October 1995, para 34.

¹²*Case concerning Application of the Convention on the Prevention and Punishment of Crime of Genocide (Bosnia Herzegovina and Others v. Yugoslavia)*, ICJ, Provisional Measures, Order, 8 April 1993 ICJ Reports 1993 p.3 pp 7-8 para.

presence or absence of certain acts mentioned in the Article of the genocide convention, apart from this on the intent to destruction of the group also. And in the purview of genocide convention, the "ethnic cleansing" has no legal importance or provision specially dealing with it. [...] ¹³

5.2 Genocide And Ethnic Cleansing *Mens Rea*

Mens rea is the intention behind any action and in the case of genocidal acts and ethnic cleansing, both the crimes requisite intention as mental element. The biggest difference and acceptable contention of distinction is the different intent behind genocide and ethnic cleansing. The intent of the perpetrator behind initially in ethnic cleansing may be just displacement which later lead to harsh manner of establishing homogeneity in the territory.

In the *Akayesu* Trial Chamber considers that;

A huge number of barbarous acts committed against the Tutsi community, not only in the Taba but all over in Rwanda. The victims against whom crimes were committed, were deliberately and knowingly selected for execution because they belongs to Tutsi group whereas the members of others groups were excluded and exempted. The chamber also inferred beyond the reasonable doubt that there was an element of intention of genocidal acts on the part of accused in the commission of these atrocities.¹⁴

Hence the genocidal intention can be deducted from the actions of ethnic cleansing and how these could require the intention as mental element.

5.3 Similarities Between Genocide And Ethnic Cleansing

The acts of commission genocide and ethnic cleansing have number of similarities which could not be overlooked. Because of these similarities its a matter of debate and discussion among the scholars. If there would be no overlapping then there is no point of discussion. These similarities are mentioned below:

- In both genocide and ethnic cleansing the population in minority is being targeted by the majority population on the basis of their ethnic, religious and social groups.
- The members of minority groups during these two crimes were subject to gross human right violations which may include enforced disappearance, forced displacement, torture, rape, arbitrary detention and summary executions.
- Consequentially majority group may end by elimination or destruction of minority groups in both the genocide and ethnic cleansing.
- Another similarity is that in both cases groups are targeted not the individuals. Individuals are killed because they belong to those minority groups which were targeted.

¹³*Case concerning Application of the Convention on the Prevention and Punishment of Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ, judgment, 26 February 2007, ICJ Reports 2007, p 1, pp 70-71 para 190.

¹⁴*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, Trial Chamber 1, 2 September 1998, para. 730.

- During the commission of both the genocide and ethnic cleansing the ethnic, social and cultural balance may totally overturn.
- The international community has both rights and duties to intervene wherever these genocidal act and ethnic cleansing occurs to condemn the perpetrators.
- After commission of both genocidal act and ethnic cleansing, it is the duty of international community should set up reparation and reconstruction mechanism to assure justice and accountability for victims and related thereto.

5.4 Distinction B/W Genocide And Ethnic Cleansing

First difference between genocide and ethnic cleansing lies in their definition. In spite of similar kind of occurrences there is number of the differences which distinguish the both from each other. Few of differences are mentioned below:

- Conceptual difference: The genocide is defined under the Genocide Convention 1948, still it is difficult to clarify and halt when it is occurring. For example the large scale migration of Rohingya Muslims from Myanmar to Burma is considered as ethnic cleansing, and few of the non-governmental agencies are urging to identify these events as "genocide".
- Difference in magnitude: In the genocide mass killing is always there on the other hand even without having high number of deaths ethnic cleansing can be executed out by perpetrators. Magnitude of both crimes are different from each other, ethnic cleansing is less is milder than the genocide.
- Intention : Another difference is that aim of genocide is the total or partial extinction of the targeted minority group but in the ethnic cleansing the goal is something else. Here in ethnic cleansing the aim is to displace the targeted group from particular territory. The intent in the genocide is to destroy the group who is in minority by the way of murders and means and in the ethnic cleansing the intent to destroy is missing. The intention behind the ethnic cleansing is create homogeneity in the territory by displacing or transferring of deporting the members of others group from specific territory.
- One more difference is that genocide is punishable under specific convention i.e. the Convention on the Prevention and Punishment of Crime of Genocide but the ethnic cleansing can be tried under the name of Crime Against Humanity.

targeted on the basis of their ethnicity, religion and different culture. The degree of violence and nature of brutality is almost similar in both cases of genocide and ethnic cleansing. Only the international community collectively can prevent these kind of incidents to ensure the safety and prosperity of multicultural society.

The discussion over the ethnic cleansing often depends on the intent of the perpetrator. Likewise removal of civilians in wartime would fall under the category of war crimes. And ethnic cleansing when due to grave risk of harm refugees fled away from warzone. Both the ethnic cleansing and genocide contains an element of ethnic and religious hatred for the group. Forced migrations on the basis of religious and ethnicity is ethnic cleansing and when there is mass murder of community in a brutal manner for the absolute elimination.

During the categorization of ethnic cleansing as a delicacy for genocide or as genocidal act might be provided a desirable solution of matter with the development of legal division of crime with in the purview of international law. With the number of similarities with genocide, ethnic cleansing remains distinct from genocide in terms of intention behind the commission of crime.

References

1. Clotilde Pegroire, "The Legal Qualification of Ethnic Cleansing" (Ph.D Thesis), University of Exeter, 2010.
2. Daniele Conversi, Genocide, Ethnic Cleansing and Nationalism, "The Sage Handbook of Nations and Nationalism" 320-333, Sage Publications 2006.
3. Adam Jones, "GENOCIDE: A Comprehensive Introduction", Routledge Taylor and Francis group 2006.
4. Ervin Staub, "The Origins and Prevention of Genocide, Mass Killing and Other Collective Violence", *PEACE AND CONFLICT: Journal of Peace Psychology*, 5(4), 303-336, 1999.
5. James Hughes, "Genocide and Ethnic Conflict", *Routledge handbook of ethnic conflict*, Routledge, Abingdon, 2010. ISBN 9780415476256.

6. Conclusion

In the end of the paper it could be concluded that this debate between the similarities and differences can only be settled if ethnic cleansing is being defined aptly under any specific convention and certain measures can be imposed against the perpetrators of ethnic cleansing. Although this ethnic cleansing when is in its exaggerated form and motive of perpetrators changes to destruction rather than displacement in such circumstance it turns into genocide.

The terms genocide and ethnic cleansing are the catastrophic events that may bring with it destruction and annihilation of whole communities and groups which are