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DETERMINATION OF GENOCIDE IN THE CASE-LAW OF THE INTERNATIONAL COURT OF JUSTICE

Abstract:

Genocide is one of the most serious crimes, recognized in 1948 by the Convention on the Prevention and Punishment of the Crime of Genocide. It is an act committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Genocide consists five basic acts of violence: 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 and e) forcibly transferring children of the group to another group. There are several cases where the individuals were held responsible for the crime of genocide and punished before international criminal courts (e.g. International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda). Beside the question of individual responsibility, 1948 Genocide Convention also contains a provision with regard to the responsibility of the state for the crime itself, and prescribe that disputes between states relating to the interpretation, application or fulfilment of the Genocide Convention, including those relating to the responsibility of a state for genocide or for any of the other acts previously enumerated, shall be submitted to the International Court of Justice (ICJ). There were two cases submitted so far and two Judgments delivered on this issue: first one in 2007 (Bosnia and Herzegovina v. Serbia and Montenegro); the second one in 2015 (Croatia v. Serbia). The essential element that „heave“ genocide beyond other „ordinary“ international crimes is an intention to destroy, in whole or in part, a national, ethnical, racial or religious group. The case-law of international courts indicates the problem of evidence of such genocidal intention. In accordance to the Dissenting opinion of Judge A.A. Cançado Trindade to the 2015 ICJ Judgment (Croatia v. Serbia), the International Court of Justice has pursued and insisted upon pursuing too high a standard of proof for the determination of the occurrence of genocide or complicity in genocide. Undoubtedly Genocide Convention is meant to prevent and punish the crime of genocide, as a mean of liberating humankind from that scourge. But, if the threshold is indeed imposed too high - may the application of the Convention become too difficult task to achieve?

Keywords:

genocide, International court of Justice (ICJ), case-law

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