



UNITED NATIONS OFFICE ON

GENOCIDE PREVENTION AND THE
RESPONSIBILITY TO PROTECT



Identifying and Preventing

Atrocity Crimes

Objectives of this session

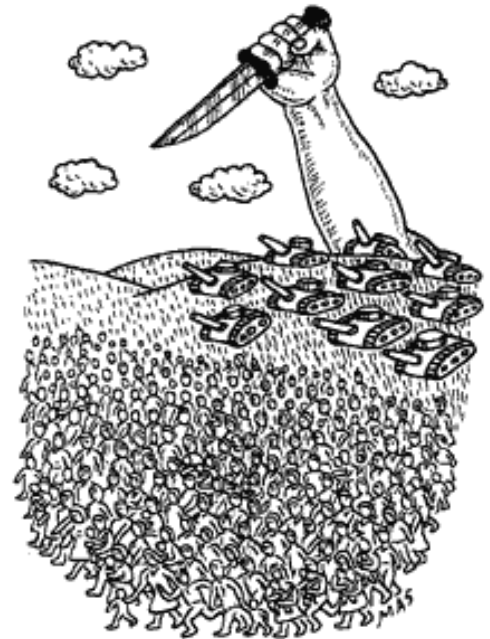
- Understand how **atrocity crimes** are defined and the distinction between them.
- Understand the **main elements of atrocity prevention**
- Reflect on **challenges** in the prevention of atrocity crimes.

Atrocity Crimes

International Criminal Law

- Genocide
- Crimes Against Humanity
- War Crimes

- (Ethnic cleansing)



Atrocity Crimes

Main legal documents

- **Genocide:** Convention on the Prevention and Punishment of the Crime of Genocide
 - **War Crimes:** International Humanitarian Law
 - **Crimes against humanity** - evolved under customary international law + Human Rights treaties
- + Statutes of **ICC**, ICTR, ICTY



Genocide

Legal Framework: Initial steps



- 1944: **Raphael Lemkin** – coined the term in his 1944 book “Axis Rule in Occupied Europe.”
- 1945-46: Mentioned in **indictment at Nuremberg** but not prosecuted separately of crimes against humanity.
- 1946: **UN GA resolution 96(I)** affirms genocide as a separate crime under international law and directs ECOSOC to begin drafting a convention against it.
- 1948: **Convention on the Prevention and Punishment of the Crime of Genocide** (Genocide Convention) is completed.
- 1951: Genocide Convention enters into force.

Genocide

Legal Framework



Art. 1 – Genocide Convention

“...whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish”

ICJ - principles underlying **Genocide Convention** are **customary law** and **erga omnes** obligations.

ICJ - prohibition of **genocide** as example of norm of ***jus cogens***.

Genocide

Legal Framework - Definition



Art. 2 – Genocide 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.”

Crimes Against Humanity

Art.7/1 Rome Statute

For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;



Crimes Against Humanity

Art.7 Rome Statute (cont.)

- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Crimes Against Humanity

Article 7/2 Rome Statute (cont.)

“2 - For the purpose of paragraph 1:

(a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;”

War Crimes

Article 8 – Rome Statute



International armed conflict:

- Grave breaches to the Geneva Conventions & AP I (most serious):
- Other serious violations of the laws and customs applicable in international armed conflict (conduct of hostilities)

Non-international armed conflict:

- Serious violations of common article 3 (see also AP II):
- Victims: persons protected under IHL (includes both combatants and non-combatants)

War Crimes

Essencial Principles

- Distinction;
- Proportionality;
- Protection.

Atrocity Crimes

Main differences:

- **Context**
- **Victims**
- **Intent**
- **Number of acts**
- **Type of acts**



Responsibility for Atrocity Crimes

Obligations:

- Not to commit
- To prevent
- To punish

Ethnic cleansing

Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), U.N. SCOR, U.N. Doc. S/25274 (26 January 1993), at 16

"... rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area,"

Final Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), U.N. SCOR, U.N. Doc. S/1994/674 (27 May 1994), Annex, at 3, 33

"... a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.



Prevention

Why?



- To avoid the **loss of human life**;
- To avoid physical, psychosocial and psychological **damages** and **trauma**;
- To maintain **peace** and ensure national, regional and international **stability**;
- To maintain the State's **sovereignty**;
- To avoid serious **financial costs** and **economic damages**.



Prevention

Who?

- **State** (conventional and customary law)
- **Other States/International community**
(ICJ Judgment of 26 February 2007 – B&H v. Serbia & Montenegro)
- **National actors**



ALL



Prevention When?

- During stable situations
- During the emergence of crisis
- During crisis

CONSTANTLY!



Prevention - What?

Legal obligation

- Genocide Convention (Art. 1)
- Geneva Conventions (Art.1)
- International human rights law (ex. Art. 2 CAT)
- Customary international law

Prevention - What?

Prevention of Atrocity Crimes



Conflict Prevention

Prevention - How?

UN Special Adviser on the Prevention of Genocide

Origin of the mandate - Failure to prevent

Rwanda (1994)



Srebrenica (1995)



Prevention - How?

Mandate SA Prevention of Genocide (established in 2004)



- To monitor situations of concern;
- To act as a mechanism of early warning;
- To make **recommendations to the SG and SC**;
- To **liaise with the UN system** on prevention activities.
- To support the **development of preventive strategies**

Prevention - How?

Lessons learned

- ✓ **Rare occurrence, but devastating consequences**
- ✓ **Process**
- ✓ **Warning signs**
- ✓ **Signals of trouble ignored, set aside, or minimized**
- ✓ **Failure of the International community**

Prevention - How?

Lessons learned

- ✓ **Takes time but has more advantages;**
- ✓ **Is an on-going process;**
- ✓ **Must be rooted in both national and international efforts (shared responsibility);**
- ✓ **Strategies need to be timely and adapted to the specific situation;**
- ✓ **EW and prevention mechanisms are of no use if not followed by early, strategic and coordinated action.**

Framework of Analysis

Function

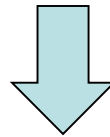
Early Warning tool for the qualitative assessment of the risk of atrocity crimes



Framework of Analysis

Basis

Atrocity Crimes



As **processes**, not as events.



Framework of Analysis

UN Office on Genocide Prevention and RtoP

1. Info
Gathering/
Processing

2. Risk
Assessment

3. Alert

4. Policy
Recommend
/ Response



Framework of Analysis

How it works

1. Understand the **process**



2. Identify **causes** and **precursors** and **possible triggers**



3. Monitor **evolving scenario**



4. Address causes and precursors so as to prevent their **manifestation** or **further development**.



Framework of Analysis

COMMON RISK FACTORS

1. Situations of armed conflict or other forms of instability
2. Record of serious violations of international human rights and humanitarian law
3. Weakness of State structures
4. Motives or incentives
5. Capacity to commit atrocity crimes
6. Absence of mitigating factors
7. Enabling or preparatory action
8. Triggering factors

SPECIFIC RISK FACTORS

Genocide

9. Intergroup tensions or patterns of discrimination against protected groups
10. Signs of an intent to destroy in whole or in part a protected group

Crimes Against Humanity

11. Signs of a widespread or systematic attack against any civilian population
12. Signs of a plan or policy to attack any civilian population

War crimes

13. Serious threats to those protected under international humanitarian law
14. Serious threats to humanitarian or peacekeeping operations

Framework of Analysis



Tips for Analyst/monitor



- Not all risk factors need to be present;
- The more risk factors/indicators present, the greater the risk.
- Early identification of risk factors - greater opportunities for early prevention;
- Risk factors and indicators are not ranked - importance will differ according to particular context;
- Be flexible when considering and weighing all the elements;
- Situate risk factors and indicators within broader political, contextual, historical and cultural analysis;
- Be open to new elements that might surface.

Framework of Analysis



Accuracy



Risk



Inevitability

However, atrocity crimes are rarely committed in the absence of all or most of the risk factors identified.

Challenges?