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Genocide

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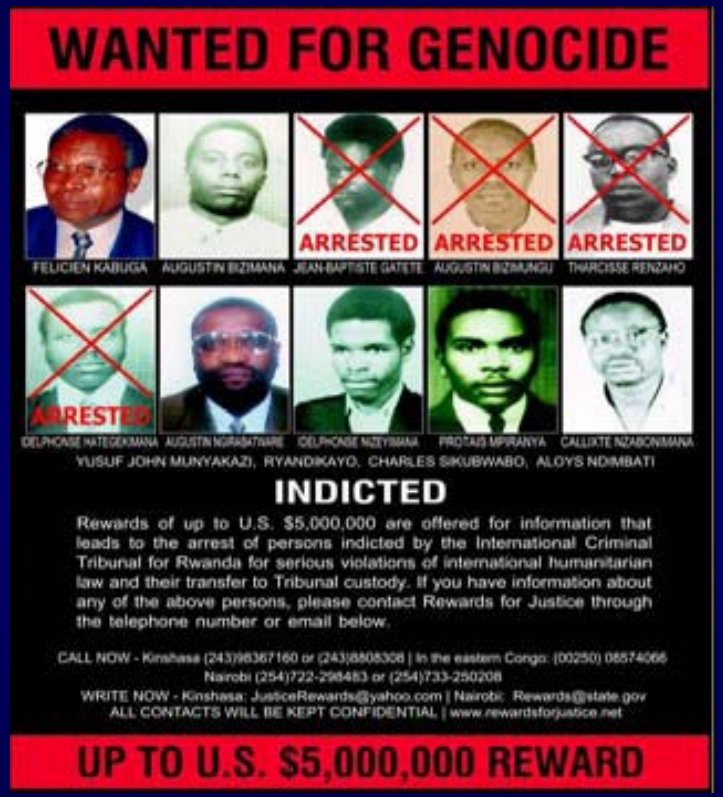
International Courts and Tribunals
Genocide

- No overarching definition available
- corresponding with the preconditions of the rule of legality.



interpretation by analogy

Acts committed with intent to destroy,

- in whole or
- in part,
  - a national,
  - ethnical,
  - racial or
  - religious group.

Example

- Killing members of the group
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

ICTY Prosecutor versus Krstíc Case NO IT-95-10-T

"genocide is one of the worst crimes known to mankind and its gravity is reflected in the stringent requirement of specific intent.

Convictions for genocide can only be entered where that intent has been unequivocally established."

- A witness giving giving evidence

Prosecutor versus Akayesu, Case No IT-97-24-T, Judgment ICTR Trial Chamber 31 July 2003.

- SPECIFIC INTENT:

– "the specific intention, required as an onstitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged.

– Thus, the specific intent in the crime of genocide lies 'in the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such".

- There is no need of premeditation.
- Acts of complicity do not need this specific intent.
- Genocide can be committed as part of a joint criminal enterprise.
- Genocide do not extend to isolated acts of racially-motivated violence.

Holocaust = genocide ?

- The genocidicus needs to have the intent to destroy a “substantial part” in relation to the overall size of the entire group.
- What is “substantial”?
  Hitler destroyed six millions of Jews:
  wás THAT “substantial”?
- JEWS: a group?
  The Nuremberg legislator was not capable of defining “Jews”.
- Hitler:
  it is only with me to define who is a jew or not.
- So: the Dutch secretary-general Hirschfeld was NOT a jew.

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Reichsbürgergesetz.

Vom 15. September 1935.

Der Reichstag hat einstimmig das folgende Gesetz beschlossen, das hiermit verkündet wird:

§ 1

PROTECTED GROUPS

- No linguistic groups
- No economic groups
- No social groups
- No political groups
- "stable groups"
  constituted in a permanent fashion and membership of which is determined by birth."

Prosecutor versus Akayesu.

- Physical and biological genocide:

  not CULTURAL genocide.

Ethnic cleansing?
Srcebenica massacre.