

The Legal Qualification of Ethnic Cleansing

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Abstract

Though commonly used in public international law, ethnic cleansing is a term which has not, as yet, been formally classified, either by international tribunals or conventions. Consequently, the notion has existed in a grey area since its coinage in the 1990s. With fresh instances of destruction and expulsion of civilian groups continually emerging, it is vital that efforts are made to redress this situation. With this in mind, the present thesis aims to formulate a classification of ethnic cleansing within the public international law order that reflects its specific characteristics and conditions.

Previously, attempts to address the issue of ethnic cleansing (in UN resolutions, scholarly work and jurisprudence) have aligned it against the standards of international humanitarian law, war crimes, genocide and crimes against humanity. A similar methodological principle shall be adopted here, beginning with a detailed assessment of the validity of Security Council resolutions qualifying the practice as a violation of international humanitarian law – a verdict which has not been re-affirmed by the International Criminal Tribunal for the Former Yugoslavia or any other tribunal, and thus lacks binding legal effect. Following this, a theoretical evaluation of all relevant case law will be used to examine ethnic cleansing against other international crimes – war crimes, genocide and crimes against humanity – focussing not only on the parallels but also the crucial disparities between them.

Via close analysis of conditions and limitations, it shall here be shown how the current qualification fails to provide an efficient instrument for identification. Having its own particular characteristics, ethnic cleansing ought to be classified as a specific independent crime: one whose mental element is similar to that of crimes against humanity, and which does not only target human groups, and can, in fact, be perpetrated against populations, both in the context of armed conflict and during peacetime.

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