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Faculty of Graduate Studies

Department of Legal Sciences

Master Program in International Law and Diplomacy

Criteria for Proving "Special Intent" in the Crime of Genocide

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Thesis Approval

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Declaration

I declare that, except where explicit reference is made to the contribution of others, this thesis is substantially my own work and has not been submitted for any other degree at the Arab American University or any other institution.

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Dedication

To those who illuminated my paths in life... to my family, the support of my soul and the anchor of my heart,

To the land from whose clay my features were formed... to my homeland, the inspiration of words and the dweller of my conscience,

I dedicate this thesis to my family, whose unwavering support, patience, and belief in me have been my greatest source of strength.

To those who walk the path of knowledge with perseverance and courage, may this work stand as a reminder that commitment and integrity give meaning to scholarship, and that truth is always worth pursuing.

Justice may be delayed, but it will never be lost, and the will of peoples endure.

I also dedicate this thesis to my supervisor, Dr. Abdelhalim Attiah in sincere appreciation of his guidance, support, and invaluable academic assistance throughout this research.

My gratitude is likewise extended to the members of the thesis committee for their time, expertise, and constructive evaluation.

Dameer Ahmad Zaid Ghnaim

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Abstract

Genocide is a special case of international criminal law, since it's a special crime due to the necessity of having a unique mental element, namely special intent (dolus specialis), which differentiates it from other international crimes, such as war crimes and crimes against humanity. Though the material acts of genocide are specific entities under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court, the legal problem remains: the necessity to satisfy an intent to destroy, in whole or in part, a protected group of persons. This mental dimension is by far the most difficult, and hotly debated element of genocide cases, and this element continues to develop through contradictory legal interpretations and doctrinal disputes within different tribunals in different judicial settings. This thesis presents a theoretical analysis that studies the legal principles underlying the evidence of special intention in genocide law based on an examination of international legal conventions, judicial jurisprudence, and modern legal scholarship. Using descriptive and analytical methods (hailed from a historical and inferential literature review), it analyzes the development of the construct dolus specialis, the position as it exists today, and its use within international criminal tribunals like the International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Court (ICC), and International Court of Justice (ICJ). The distinction between purpose-based and knowledge-based formulations of intent, as well as the evidentiary importance of circumstantial inferences (e.g., patterns of behaviors, systematic targeting of specific groups, and official policies or statements), is emphasized here. Based on comparative case studies such as those of Rwanda, the former Yugoslavia and recent trial decisions covering the situation in Gaza, it outlines a holistic methodology aimed at analyzing the special intent framework by drawing upon the theory of three interrelated levels of analysis: the material acts (actus reus), its contextual pattern of conduct, and the existence of official policies or directives that embody destructive ends as well. Such a common level of standard is intended to balance the values of legality and the humanitarian concerns in international criminal law while maintaining two inter-related aspects: legal basis and the applicability to practice, in that the legal standard should be founded on a sound body of case law to make it acceptable to law enforcement and applied at a humanitarian level. The thesis finds that a contextual and integrated evidentiary approach is necessary in order to overcome the inadequacies of narrowly construed purpose-specific theories of intent in establishing intent. This research is important as it advances a more coherent judicial practice by establishing a logically structured and legally-grounded standard for proving dolus specialis, and for the capacity of the international courts to hold international violators accountable for the gravest crimes against protected groups.

Keywords: Crime of Genocide, Specific Intent (Dolus Specialis), International Criminal Law, International Court of Justice (ICJ), and State Responsibility for Genocide.

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1. Introduction

The crime of genocide is considered one of the most serious international crimes, it captured the attention of the international community since the mid twentieth century due to its direct assault on the existence of entire human groups. However morally, and in terms of humanity, the gravity of the crime of genocide is well documented but one of the most problematic problems for international courts is that it remains controversial to prove by law. This crime cannot proceed simply through physical acts like killing or deportation or causing serious harm, but the presence of an accurate mental element, which is the special intent (dolus specialis), is necessary that differentiates it from other crimes under international law (Drozdov et al., 2025).

The importance of studying the standards for proving special intent lies in the fact that it constitutes the most controversial and difficult element in genocide cases. International courts, such as the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Court of Justice (ICJ), have repeatedly encountered difficulties in determining whether the accused genuinely intended to destroy a protected group “in whole or in part” (Gunes, 2024).

In addition to this, the ability to attribute such intent by example, by circumstance, and by pattern of conduct has led to considerable controversy in legal studies. As a result, comprehension of such standards has great impact not only on the academic trajectory but also plays an important functional role in providing an avenue of accountability for those responsible for the most heinous of crimes and avoiding impunity (Gunes, 2024).

Genocide is an extreme violation of basic human rights which demands evidence of criminal purpose and includes special intent in the crime itself to establish its commission. According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, “the existence of a specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group” is the core factor that separates genocide from other international crimes. There is also psychological and social intent to destroy a whole or a part of a group in addition to physically harmful acts. Hence, this element of intent is considered one of the

most essential components which needs to be proved and established as the basis of genocide conviction (Pisillo Mazzeschi & Carli, 2024).

In this context it is the mental element of intent in genocide that this research will explore. International judicial practice, however, views the requirement of "intent to destroy, in whole or in part, a national, ethnical, racial or religious group" in Article II of the Genocide Convention as forming a special intent. This classical understanding of intent in genocide has been challenged by much legal research because it imposes such a high requirement of the mental factor for establishing intent. Thus, other methods, grounded in cognitive or knowledge-based methods, as opposed to intent based on purpose alone, have appeared (Gunes, 2024).

However, despite this, the classical understanding of special intent in genocide has not been free from doctrinal critique, where it is deemed to impose a very hard and demanding requirement regarding the mental element and make international accountability difficult; at best, it makes the actual evidence of the crime extremely hard indeed. As a result, a diverse range of emerging trends within international legal scholarship have developed with respect to a cognitive or knowledge basis to the analysis, rather than limiting to the analysis of intent solely based on purpose (Al-Haq, 2025)

In this context, the investigation of determining the threshold for proving special intent in a genocide offense must incorporate a comparison of the traditional purpose-based interpretation of genocide and the contemporary approach of individual and cognitive methods, which has had intensive debate within international criminal law. This examination presents a key question of the sufficiency of the traditional interpretation of special intent, and whether its understanding requires a broader perspective beyond the traditional purpose-based intent as applied by international courts (Al-Haq, 2025).

In light of this, addressing the standards for establishing special intent underlying the criminality of genocide is an essential aspect to grasp the exact legal character of such a mental element, considering that the principle of prohibition in this area requires a particularly strict specification of crime-related intent. In this regard, scholars of the special intent area directly engage with the humanitarian aspect of shielding targeted groups from

such perils as total or partial destruction, making the special intent research a necessary mechanism to understand international law's response to the worst human rights abuses. Thus, it becomes evident that the question of regulating and specifying the notion of special intent arises as a particularly salient one in the interpretation and legal characterization of the crime of genocide (Al-Haq, 2025).

1.1. Research Problem

The research problem is that, since the traditional interpretation of special intent as meaning a specific intent to destroy a protected group was accepted in the crime of genocide, the application of the Genocide Convention and the mental element of genocide have been presented in various international courts that are still less effective. This indicates the fundamental problems of whether an interpretation of this nature is sufficient to fulfill the real purpose of the Convention, which is to achieve the effective protection of human groups from destruction. Thus, this paves the way for more flexible and pragmatic doctrinal alternatives to the application of special intent.

The research problem is first introduced by presenting the crime of genocide and its elements, then examining the challenge of establishing special intent in such a scenario and the vague mental aspect of this mental element. Without a common rules-based methodology for special intent that includes these and other crimes, the core problem lies in the indeterminacy which stems from the general intent that comes along with it, namely war crimes and other crimes against humanity. Additionally, the standards relied upon by various courts to infer this intent differ, which causes some inconsistency in judicial jurisprudence.

The complexity of the issue is further exacerbated when the proof of intent depends on indirect evidence or broad political and security contexts, which opens the door to multiple interpretations. Accordingly, this subject raises a central question: to what extent is it possible to develop a unified legal standard for proving special intent in the crime of genocide?

1.2. Research Questions

2. What is the traditional interpretation of special intent in the crime of genocide according to the jurisprudence of international courts?

3. What are the main doctrinal criticisms directed at this interpretation, particularly with regard to the requirement of the mental element?

4. What are the alternative doctrinal approaches that have proposed cognitive or knowledge-based standards for proving special intent?

5. Can these approaches be adopted in judicial practice without undermining the strict penal nature of the crime of genocide?

6. What are the most appropriate standards that could contribute to regulating special intent and unifying its interpretation in a manner that achieves a balance between the punitive dimension and the humanitarian dimension?

7. What indicators or evidence demonstrate the existence of the mental element in the war waged by Israel on the Gaza Strip, and do statements issued by the Prime Minister, members of the government, and military leaders in Israel regarding the said war contribute to establishing the existence of the mental element of the crime of genocide?

1.3. Significance of Study

The significance of this study lies in that special intent is the most complex mental element in the crime of genocide, since it essentially determines the possibility of holding individuals criminally accountable before international courts. For the trouble with proving a criminal offense arises from understanding special intent too narrowly, but if unbridled its scope continues to expand then the principle of legality in criminal law would come up short. The importance lies in reaching that careful balance between the needs of penal precision and humanitarian protection: this yields both theoretical and practical importance for the development of international criminal law.

The study is of significance also thanks to an analysis of a modern issue also at issue across doctrinal and judicial domains, such as the challenges posed by contemporary cases of armed conflict and the charged nature of genocide. Through studying the concept of special intent within the crime of genocide as one of its fundamental elements, the core requirement for establishing the crime under international law, this research further clarifies the scope with which genocide may be treated in the future.

The study further turns to the humanitarian and political considerations that the case provides in this issue, drawing on numerous cases in which the mental element of special intent can be established, in this particular case of the Israeli war on the Gaza Strip after October 2023, and in particular due to the enormous toll of its operations against the Palestinian population, the humanitarian perspective follows. Based on a comprehensive review of the evidence, this study investigates the legal and political consequences of this war as well as the human rights implications in addition to the responsibilities of the international community. Drawing from some cases in the past, such as South Africa, the former Yugoslavia and Rwanda, it seeks to showcase criteria of international judicial review by international courts to prove special intent.

From this perspective, this research aims to help in elucidating and developing the theoretical interpretation of the crime of genocide and the special intent function more accurately in a more relevant and context-specific way in modern society. This study also shows how the applicability of the law can help in the investigation of international crimes which already persist in modern time, based on a very recent and prominent case. Therefore, this study is of significance in academia, it is very thorough examination of special intent in crime of genocide, especially the Israeli war on the Gaza Strip and is also the basis for international community of obligations to human rights protection and effective exercise of international law.

1.4. Scope of the Study

This study is limited to examining the mental element of the crime of genocide, specifically the issue of special intent and the standards for proving it, without addressing in detail the material elements of the crime or the responsibility of states for its commission.

The scope of the study is further confined to the analysis of international legal texts particularly the 1948 Convention and the judicial jurisprudence of international courts, such as the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Court (ICC), in addition to relevant doctrinal contributions.

1.5. Research Methodology

This research adopts the descriptive analytical approach, which allows for the examination of the mental element of the crime of genocide through the analysis of legal materials and judicial precedents, as well as the derivation of the legal standards and procedures applied in proving special intent. The study also employs the historical approach to understand the evolution of the concept of special intent over time, and the inferential approach to derive legal and logical conclusions related to the application of this element before international courts, based on the legal texts contained in the Rome Statute of the International Criminal Court and prior judicial practice.

1.6. Previous Studies

Gunes (2024), a researcher in international law, examined a case of special intent in the context of genocide focusing on the traditional concept through specific intent, as set out in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide and examined academic critique of this interpretation of special intent, particularly in relation to the demands of the mental element with a view to making genocide hard to establish in an international legal context. An additional focus of Gunes (2024) was also on alternative frameworks of international legal scholarship, such as knowledge or awareness-informed methods, which expand the concept of special intent to refer to cases characterized by an accused's knowledge and acknowledgment of the likely outcome of such behavior without the specific intention to destroy the target as a target (total or partial destruction) (Gunes, 2024).

It highlighted judicial precedents' influence on the definition of special intent, focusing on the legal and humanitarian barriers to establishing such a case, and citing

examples from past international tribunal cases. In addition, differentiated between specific intent and motive under international criminal law, suggesting that applying these new standards would help strengthen international courts in cases of genocide (Gunes, 2024).

Hashnat Kabir (2022), dealt specifically with the mental element, which is by far one of the toughest elements to establish at international tribunals. This element was not adequately taken into account in the Nuremberg and Tokyo trials, and it was also more often cited in the ICTY and ICTR.

The study investigated the legal and humanitarian problems of establishing special intentions and the reasoning by the courts at international criminal tribunals regarding this and highlighted that judges often relied on circumstantial evidence – that is, the magnitude and nature of crimes, or the persecution of a group identity. This article forms a valuable resource to understand the challenges involved in proving special intent, and is important toward developing the legal standards on this topic (Hashnat Kabir, 2022).

Van Santen (2025) in his study "Proving Special Intent in Genocide before the International Court of Justice" presented research on the legal and practical obstacles to proving special intention in genocide before the ICJ. He studied the doctrine of special intention based on the 1948 Genocide Convention and how that was made evident before the ICJ.

The study noted specific challenges in demonstrating special intent in states since such a construct plays an essential role in identifying the extent of state responsibility for genocide, it examined international jurisprudence in genocides, and highlighted the reliance on circumstantial evidence as a measure of the scale and systematic nature of genocide, and on targeting of groups on the basis of identity. By focusing on the particular legal and humanitarian hurdles in proving special intent before the ICJ, this work offers a crucial reference as it draws parallels with other international tribunals (Van Santen, 2025).

Al-Haq (2025) specifically examined special intent, which needed to accompany any acts in the text of the Convention for the act to be classified as genocide. Special intent, as noted in this memorandum, is not just a desire to perform a physical act (e.g. killing,

seriously damaging a group) and involves a definite intention to eliminate the protected group at the core or at least part of it. This memorandum is an important reference note for those wanting to better understand the difficulties in proving special intent, but it also helps pave way for legal standards in this sphere through a comparative approach of international tribunal jurisprudence (Al-Haq, 2025).

Essawy (2024) noted the legal obstacles to establishing special intent of actions under the Gaza conflict. The author was clear to point that genocide differentiates itself from other crimes by establishing special intent through the presence of "evidence of a specific aim to destroy a protected group in whole or in part." Emphasized the need for circumstantial evidence like patterns of conduct and statements made by officials particularly where direct evidence is scarce. In addition, examined past ICJ jurisprudence, including Bosnia and Herzegovina v. Serbia and Croatia v. Serbia, and noted that the Court can become ever more dependent on indirect evidence with respect to special intent in its future cases. This study offers an important point of departure to appreciate the legal and humanitarian problems involved in proving special intent in contemporary conflicts and gives insights into establishing legal standards for such an element (Essawy, 2024).

Fyfe (2024), who is an assistant professor of philosophy at George Mason University, examined the concept of genocide as a legal notion and prosecutable crime and outlined charges against Israel for genocide in Gaza drawn from actions taken by the State and officials' messages. She emphasized South Africa's case before the ICJ and its initial rulings, considered the possibility of the ICC investigating the crimes of Palestine, and reflected on the weak influence of international criminal law on the Gaza situation.

She stressed the "expressive value" of international criminal law in condemning genocide as well as Israel's arguments to deny genocidal intent, including military justification. Moreover, Fyfe also mentioned the difference between specific intent and motive under international criminal law and offered an insight into the interpretive process of legal standards in practice (Fyfe, 2024).

Al-Azzi (2024) observed the dissimilarities between cases targeting states and cases targeting individuals and assessed decisions of the ICJ and ICC. She cited in her report the

South African case against Israel for alleged genocide and Nicaragua's case against Germany for providing arms to Israel, with scrutiny on the legal and political consequences. On the other hand, she also discussed the issuance of international arrest warrants against Israeli and Hamas officials and the diplomatic and legal implications involved. Furthermore, she analyzed the ICJ advisory opinion on Israeli occupation, which has validated its violation of international law and noted that enforcement of these decisions remains uncertain given political and legal barriers, especially given that large states have consistently endorsed Israel (Al-Azzi, 2024).

Dar Nasser (2024) focused on international crimes, with specific reference to genocide and how it defines genocide and threatens humanity—it threatens the existence of entire ethnic or religious groups. He revisited international instruments relevant to the case, including the 1948 Genocide Convention and the Rome Statute of the ICC, stating that the application of these laws to Palestine, particularly Gaza, is currently absent and requires further development to ensure that responsibility for these crimes rests on the perpetrators, be they individuals or states. He stressed the need for states to comply with these accords as protection of human rights (Dar Nasser, 2024).

Ismail (2020), looking into genocide in international law, specifically at its definition and development, examined the 1948 Genocide Convention and the ICC Statute. He looked at both the material and mental features of the crime, stressing that a specific group or ethnic group was targeted in order to destroy them wholly or partially; he continued to discuss the developing tools used in carrying out these murders and crimes. Published three years prior to the Gaza conflict, the study affirms the applicability of genocide definitions to contemporary cases, illustrating the relevance of such definitions in explaining recent events (Ismail, 2020).

Belkacem (2020), focused on individual criminal responsibility for genocide and traced the development of genocide and its applicability; from state-centered accountability to individual liability. The study looked at the international community's contribution to ensuring the effective protection of human rights (criminal justice system), crimes committed against specified groups during armed conflicts, and inadequacies of the ICC

Statute, which highlights that perpetrators could evade justice in the face of non-cooperation or political imperatives of states in the Court (Belkacem, 2020).

1.6.1 Commentary on Previous Studies

The study enhances previous research results and facilitates the establishment of systematic researches to create criteria for the establishing of specific intent (Dolus Specialis) for genocide. The majority of previous studies focused on clarifying the ideas of genocide generally, specifically the historical construction of specific intent as defined in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, namely, as the intentional purpose of destruction of a particular group. Such interpretation has been challenged by scholars who pointed out both challenges of specific intent on legal and humanitarian levels and the legal precedents of international criminal tribunals in the context of defining specific intent.

Those precedents show that judges frequently rely on circumstantial evidence to demonstrate intent full action on the part of the defendant to commit atrocities or its severity such as how large, how general, or whether the violence was directed to certain victims on grounds of their membership in (their own) group. Based on and in part building upon these premises and established precedent, in the present study I use a descriptive-analytical method similar to the previous literature in this domain and a historical analysis in an attempt to trace the evolution of specific intent as a legal and logical concept over time and a deductive approach by developing legal and logical arguments in relation to the application of the factor prior to international courts, based on the statutes of the International Criminal Court and prior judicial practices. This methodological mix marks the study as one that differs from other research and places it on track to lead to new standards for demonstrating specific intent.

A detailed commentary on the previous studies reveals several gaps and opportunities for further development:

Gunes (2024), A researcher in the field of international law Gunes (2024) considered the traditional application of specific intent as an argument, yet failed to align this with

current developments in international legal research. Thus, the current research fills an essential gap in treatment of specific intent by integrating traditional methods with the use of cognitive alternatives to identify a rational and efficient criteria for its evidence in the courtrooms.

Hashnat Kabir (2022) also addressed the difficulty of proving specific intent but made only a general reference on these difficulties and never engaged in a deep investigation into how they affect court decisions, the rights of defendants and victims, or other facets of international law. In addition, while the research presented a set of judicial precedents, it failed to provide a systematic examination of the differing principles of proof by various courts an important consideration to form “unifying criteria” for establishing specific intent.

The research of Van Santen (2025), has not done much to discuss the impact of these challenges on victims’ rights or transitional justice. Nor did it analyze the intersectionality of the conventional and more recent trends in international law with a clear definition of international courts standards applicable to practice. The present study aims to fill this gap, providing a broader methodology for interpreting the specific purpose and establishing stronger persuasive methods for international tribunals.

Al-Haq (2025) has a legal letter on special intent as envisaged by Article 2 of the 1948 Genocide Convention. Nevertheless, comparative analysis of various tribunals (ICTY, ICTR, ICJ) and further discussion on humanitarian and political aspects, focusing in particular on negative consequences of failing evidence on protection of victims and accountability for them, would have been useful in the study. Furthermore, the current research lacks a systematic mechanism to connect what was the traditional understanding of the specific intent with modern scholar practice or practical ways of bringing specific intent into the courtroom. To fill this gap, the current studies aims to analyze specific intent in detail, and to introduce clearly effective proof systems regarding this in the international judicial field.

Essawy (2024) did point out the necessity of circumstantial proof in proving the particular intent present, but in doing so did not provide a detailed procedural analysis on how circumstantial evidence could be effectively produced before international tribunals.

Although she highlighted humanitarian considerations, the study did not adequately investigate implications for victims' rights or the conduct of international justice in situations where courts are not able to establish the specific intent of the conduct. It has also failed to combine conventional understandings with contemporary scholarly methods of providing clear, feasible criteria for courts, a lacuna that the present work hopes to fill.

Fyfe (2024), looked at genocide as a legal concept and the charge against Israel for things committed in Gaza, including the South Africa v. Israel case at the ICJ. Her study is focused on providing critical insight into challenges to establishing specific intent, and as there are legal hurdles to proof due to political power struggles, more direct evidence is required as well as bolstering the legal argument with references to Rwanda and Bosnia (to look at how specific intent was proven). It also aims to clarify the proper differentiation between genocide, war crimes and crimes against humanity and to investigate how the international community can push states legally to stop these crimes from prevailing.

Al-Azzi (2024) gave us the broad overview of international legal decisions since October 7, 2023, but did not go into the details of what constitutes criminal liability for genocide. She also failed to consider how media coverage and public perception shape enforcement of judgments at the international level, or to systematically investigate the stances of major powers and the future of sanctions or court action. This article seeks to fill that space by combining conventional and emerging models of specific purpose and by providing a conceptual blueprint for the analysis of these issues.

Dar Nasser (2024) did emphasize the international legal order and state compliance with it in his book of genocide in Palestine but did not systematically analyze specific intent as an essential factor for proving genocide, nor did he provide practical tools for interrogating evidence and balancing between past and present interpretations. The purpose of the current study is to address in an attempt to provide a more complete perspective for demonstrating a specific intent before the international tribunals.

Ismail (2020), in his Genocide Research, studied the definition and change of a crime within the field of international law but, in the context that he wrote his work three years before the Gaza War, it was not possible to comment on the application of genocide

definitions about contemporaneous conflicts in Gaza after October 7. This study modifies this information based on modern developments and judicial methods from ICC mediated interventions.

Belkacem (2020), in her research on individual criminal responsibility, Belkacem examined the passage of criminal liability down from states, to individuals, as the evolving individual offender. This research expands on her research by investigating the notion of individuals' criminal responsibility as it relates to the Israeli conflict in Gaza, specifically the actions and speech of Israeli officials that may give rise to the theory of their specific intent to destroy a specific group of persons and thus establishes criminal liability.

2. Chapter one: The Legal Basis of Specific Intent in the Crime of Genocide

The first section of this chapter will clarify a legal base on which the notion of specific intent is established as a fundamental component of the crime of genocide. This requires examining as a legal guide the definitions of this element found throughout the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the Rome Statute of the International Criminal Court (ICC) in order to identify the position of specific intent in the legal formulation of this criminal offence.

This calls for assessing international case law delivered, e.g., by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which helped to further define and expand the notion of specific intent and the rules of proof concerning courts' discretion on the basis of circumstantial evidence and inference to determine whether this term is present. It is through this that the groundwork may be laid for gaining insight into the significance of specific intent and genocide in terms of its differentiation from other international crimes (e.g., crimes against humanity, war crimes).

This provides also allows for a preliminary examination of the legal and practical challenges of showing specific intent, thus poring over the standards invoked in international judicial practice and assessing their appropriateness in serving justice and curtailing impunity.

To outline the legal evolution of genocide, where specific intent was developed as a cornerstone of genocide, thus establishing the basis of specific intent in law, we will first discuss the legal history that came after the insertion of specific intent. The purpose of this section is to explore how this factor has been used in international judicial precedents, and particularly in the case law including prior to the ICTY, including the ICTR, where specific intent was a core issue raised in many cases.

The difficulties faced by courts in proving specific intention during trials are not limited to one or two primary evidentiary measures, particularly the nature of the alleged crimes committed, their scale, or the deliberate targeting of a particular group of victims.

These challenges confirm that specific intent is not simply intended to perform the physical act, but is intended to specifically wipe out a protected group, whole or in part, so that its proof is a substantial issue of legal and humanitarian consequence.

In this context, Israel's current actions today, from the direct targeting of Palestinian civilians to the imposition of a crushing blockade that deprives an entire population of vital modes of survival, as well as official Israeli statements containing negative, exclusionary implications, are among some of the most notable contemporary representations of things like genocide. They also breathe life back into the international debate about the means by which to demonstrate specific intent in international courts.

2.1. Specific Intent as a Distinguishing Element of the Crime of Genocide

The Meaning of Intent in the 1948 Genocide Convention and the Rome Statute:

Purpose Based vs. Knowledge Based Approaches.

The phrase 'intent to destroy' in Article 6 of the Rome Statute, which originates from the text of Article 2 of the Genocide Convention, is ambiguous in both the French and Spanish versions. The implication of these translations seems to be that a volitional interpretation of intent is being established: in line with the purpose-based paradigm of intention, and the English version is less clear if "intent" means desire, purpose, or knowledge of the probable consequences (Ambos 2009; Kress 2006).

In Common Law systems, intent is broadly understood as cognitive and volitional, with "specific intent" usually linked to, or being related to, purpose or objective. In English law, intent is defined primarily as desire or purpose; however, in the International Criminal Court Act (ICCA) of 2001, the intention is expanded to knowledge that a particular result will occur in the ordinary course of events. Similarly, in the US Model Penal Code, Mens Rea is categorized into three tiers: negligence, knowledge, and purpose, with particular intent generally correlating with purpose (Cheian, 2025).

Civil Law systems also have similar ambiguity. Under French law, while the criminal law does make reference to intent, no direct definition is given, thus the courts will apply a

limited or general definition to intent compatible with its volitional and cognitive facets. In German law, it distinguishes between Dolus Directus (first degree or Dolus Specialis/Absicht) and Dolus Eventualis, meaning strong volitional and weak cognitive elements and an expanded concept of intent. Under Spanish law, intención can be about general intent (dolus) or types of Dolus Directus that include both desire and knowledge. Intent was even broadened in the criminal law of the former Yugoslavia by the inclusion of perpetrators who knew "that their acts might result in criminal consequences" (Gunes 2024).

Scholars such as Greenawalt argue that the Rome Statute takes a rather vague interpretation of intent, much like the "knowledge" concept in US laws, and its literal meaning does not clearly favor either the purpose-based or knowledge-based view (Greenawalt, 1999). Ambos (2009) and Kress, (2006) also agree, emphasizing the ongoing ambiguity in defining criminal intent to commit genocide among different legal systems.

Given the international character in genocides and numerous states with different legal traditions, the definition of intent is ambiguous. The general form of Article 6 of the Rome Statute does not specifically make a preference for either a purpose approach or knowledge-oriented approach. This confusion is one of the chief obstacles to proving a specific intent (Dolus Specialis) at law, since courts must reconcile divergent standards of intent to demonstrate the distinctive and unique aspect of genocide (Gunes, 2024; and Greenawalt, 1999).

2.1.1 Distinction between General Intent and Specific Intent

Genocide, the criminal offence, has three basic elements: actus reus (acts), general intent (General Mens Rea) and specific intent (Special Mens Rea or Dolus Specialis). However, certain judicial precedents do not specifically mention general intent. In Krstić, for instance, only two elements actus reus and specific intent were recognized in the Trial Chamber, but this does not mean that genocide does not possess general intent (Gunes, 2024).

General intent in legal terms means that you have an intention to commit the criminal act. It reflects awareness of committing the act and experiencing its effects (Gunes, 2024).

Specific intent or dolus specialis in relation to genocide, on the other hand, refers to the specific intention of destroying, in whole or in part, a protected group; this term differentiates genocide from other international crimes (Hashnat Kabir, 2022).

Specific intent has been of particular interest to international law in international criminal systems, which has become one of the more challenging features to establish. Courts are required to prove a concerted intention to destroy a protected group as described in Article 2 of the genocide treaty of 1948 (Al-Haq, 2025). General intent may often be inferred from the act itself, but proving specific intent may have to be proved through a nuanced study on facts and evidence-based factors, such as the nature of the atrocities, the targeting of victims according to their group affiliation, and state or group policies (Essawy, 2024).

Even though specific intention is often difficult to prove, the doctrine of explicit intention the concept of intent may be a legal lens through which to explain international crimes, both in its moral implications and its procedural aspects. While general intent refers to the commission of the act, specific intent refers specifically to achieving the goal in a specific way against the target group. The random killing of members of, say, a particular group represents general intent as did the systematic plan to annihilate the group as a whole or at least in a part, the specific intent, and these cases fall under genocide (Van Santen, 2025). Experience in judicial inquiries demonstrates that while international courts frequently accept circumstantial evidence proving specific intent, they sometimes cannot address the context, scope of the crimes, the statements made by officials, as well as the policies made by the government or an organization (Dar Nasser, 2024; and Fyfe, 2024).

The case of South Africa v. Israel at the International Court of Justice reaffirmed the requirement that acts prove specific intent when they are intended to destroy the group; acts are only the material acts when directed towards achieving their ultimate aim. This illustrates that distinguishing general intent from specific intent is key to understanding genocide: general intent alone is not enough to establish genocide; specific intent aimed at a defined group constitutes the fundamental Mens Rea of the offence (ICJ, 2024).

The 1948 Genocide Convention clearly stipulates that certain acts must involve specific intent, which relates to destruction of a group either wholly or partially, that is the intent to destroy the social and cultural identity of the group (Dar Nasser, 2024; and Ismail, 2020). (ICTR and ICTY) jurisprudence emphasizes the significance of the finding of specific intent for understanding individual responsibility to a crime, categorizing organized and systematic criminal acts targeting one group as substantial evidence (Van Santen, 2025; and Gunes, 2024). ICC also assess the evidence of particular intent by examining circumstantial evidence and official statements to determine such intent (Fyfe, 2024; and Clancy, 2021)).

Courts rely on evidence such as:

Type of crimes: organized criminal acts directed at one group.

Extent of atrocities: the frequency of systematic and frequent violence (Gunes, 2024).

Targeting certain victims: a matter of group membership (Van Santen, 2025).

Modern international law reminds us that the specific intent is what distinguishes genocide from other crimes. Consequently, acts may amount to crimes against humanity or war crimes but not genocide if there is no proof of this intent. Specific intent is, therefore, the bedrock of supporting the crime before international tribunals.

Recent legal reports indicate that Israeli actions in Gaza since October 2023, including:

Systematic attack on Palestinian civilians,

Blockade restricting critical facilities (food, water, health care),

Official statements reflecting destructive intent against the Palestinian population,

May be a practical use of specific intent with respect to genocide, as seen in the case of South Africa v Israel ICJ (ICJ, 2024; Al-Haq, 2025).

Thus, specific intent is the hardest element to prove in genocide cases, requiring both direct evidence and circumstantial evidence showing a clear intent to destroy a protected group. This element needs to become much clearer in the modern field, whether in the

context of the Palestinian conflict or through international law frameworks in general, as it shows that both individuals and states should be held accountable for their actions.

2.1.2 The Development of the Concept of Genocide and Specific Intent in International Law

2.1.2.1 The Criminal Act (Actus Reus)

Perpetrators

Genocide does not require the perpetrator to hold any specific position within the state or any non-governmental organizational structure. However, in this research, a distinction will be made between high, medium, and low-level perpetrators in some analyses. Article 6 of the Rome Statute of the International Criminal Court provides protection only to specific categories, namely: national, racial, ethnic, and religious groups, and this list is exclusive. Membership in these groups is usually determined by birth, and the text covers only stable and permanent groups. Furthermore, protected groups must be defined by positive characteristics, not by their absence (Gunes, 2024).

Acts of Genocide

Acts of genocide include only those committed with the intent to destroy, in whole or in part, a protected group, as stipulated in Article 6 of the Statute. These acts include (Gunes, 2024):

Killing: This is the first act mentioned in Article 6. The French text of the Genocide Convention uses the term “Meurtre”, i.e., unlawful and intentional killing, which is more precise than the simple term “killing.”

Causing serious bodily or mental harm: This includes rape and physical violence, provided the harm is sufficient to threaten the existence of the protected group, either in whole or in part.

Inflicting conditions of life intended to bring about the group’s gradual destruction: Such as depriving the group of food and water, reducing medical services, forced displacement, or imposing hard labor.

Measures intended to prevent births within the group: Such as forced sterilization, forced abortion, gender segregation, or barriers to marriage.

Forced transfer of children from the group to another group: This act aims to achieve effects similar to those associated with birth prevention, i.e., psychological pressure or threat.

All these acts constitute the criminal act (Actus Reus) if committed with the intent to destroy the protected group, meaning that specific intent (Mens Rea) is always linked to these acts.

2.1.2.2 The Mental Element (Mens Rea)

General Intent

Genocide is not a simple crime; it contains two distinct mental elements. The first is general intent (Dolus), which relates to all the material elements of the crime (Actus Reus).

Article 30 of the Rome Statute provides that a person shall only be criminally responsible if they commit the material acts with intent and knowledge (Rome Statute of the International Criminal Court, 1998):

Intent: Relates to the voluntary and individual aspect of the criminal act.

Knowledge: Relates to the cognitive aspect, i.e., the perpetrator's awareness of the circumstances or the natural consequences of their actions.

According to the International Criminal Court, there are three forms of intent:

Dolus Directus First Degree: Direct intent, where the perpetrator knows that their actions will lead to the prohibited result and aims to achieve it voluntarily.

Dolus Directus Second Degree: Oblique intent, where the perpetrator is aware that their actions will most likely lead to the prohibited result, without direct intent.

Dolus Eventualis: Where the perpetrator foresees the possibility of the result occurring but does not intend it, equivalent to criminal negligence in some legal systems.

In the case of genocide, general intent refers to the acts under Article 6 directed against protected groups and must be concurrent with specific intent to destroy the group.

Specific Intent (Specific Intent / Dolus Specialis)

Article 6 of the Rome Statute of the International Criminal Court (ICC Statute) requires that acts be committed with the intent to destroy. This is an additional mental element known as specific intent (Dolus Specialis), representing intent that goes beyond general intent (ICJ, 2024).

This element distinguishes genocide from crimes against humanity such as persecution, where genocide aims to eliminate the protected group, while persecution only aims to protect the group from discrimination.

There is debate regarding the interpretation of "intent to destroy" and the required level of intent which the legal approaches include:

Purpose-Based Approach: Which it considers the intent to destroy as an additional purpose.

Knowledge-Based Approach.

Structure-Based Approach.

This demarcation represents an important challenge in practice across jurisdictions as judges tend to rely on circumstantial evidence, for example, the type of crimes, nature, scale, and targeting of a victim based on group membership, to infer specific intent before trial by international courts (Al-Haq, 2025; and Van Santen, 2025). Indeed, judicial precedents reinforce this idea that mass violent acts do not provide sufficient proof for specific intent; the evidence must be sufficient to demonstrate specific intent to destroy the group being targeted. Official statements, organized plans, or any action indicative of an intent to destroy a specific group can be evidence as shown during the trials in Rwanda and the former Yugoslavia (Essawy, 2024).

The distinction between general and specific intent highlights the legal approach in international law by stating that intent as mental property is vital to demonstrating the seriousness of the offense and allowing accurate attribution of criminal responsibility. Specific intent (Dolus Specialis) is a basic principle that marks the difference between genocide and other international crimes, since it is directly concerned with the objectives of destroying any group (to destroy others completely or in part) of its class. This is to say that it is not only an act related to destruction but even more importantly its ethnic, religious, national or racial identity (Gunes, 2024).

General intent, while, has a direct connection with the intent of this type of crime such intent could also extend to specific intent since this aspect of the intent can serve to impact people as a whole (General Intent) through their individual actions where specific intent is a conscious focus on an intended harm to the national or general identity and continuity of the group as an independent entity (Hashnat Kabir, 2022).

The meaning of genocide and specific intent has developed slowly and markedly in international law over the last several decades from the founding of the International Criminal Tribunals for the former Yugoslavia and Rwanda to the adoption of the Rome Statute of the International Criminal Court to present-day cases that have resurrected the notion in the field of international judicial practice (Gunes, 2024).

The phrase “genocide” came into being in 1944 with the work of legal scholar Raphael Lemkin, who investigated the atrocities committed by the Nazi regime. He interpreted the crime as a series of initiatives and acts committed either to the total or partial destruction of a national, ethnic or religious community and thus laid the foundation for the concept of genocide in international legal research (Gunes, 2024).

After World War II, the United Nations began treating genocide as a crime directed against all humanity. On 11 December 1946, Resolution 96(1) of the General Assembly declared that genocide was a crime under international law and that ordinary individuals and policy-makers alike should be held accountable and punished (United Nations General Assembly, 1946). This was an important step toward creating the system of specific international laws to punish crimes like genocide; it established the platform for the 1948

Convention on the Prevention and Punishment of the Crime of Genocide (United Nations, 1951)

The Genocide Convention was signed into law by the United Nations on 9 December 1948, outlining the exact legal definition of the crime and its key components, but above all the need to invoke particular intent (Dolus Specialis) as the primary mental element of genocide. The Convention came into effect on 12 January 1951 following the ratification of twenty states, giving it binding international authority and it is considered the principal reference for prosecuting perpetrators of this crime (ICJ, 2024).

This development is rooted in Nuremberg and Tokyo tribunals from 1945–1946. While these tribunals never stated that "genocide" is a term for atrocities of genocide, the concept of genocide and that certain crimes targeted specific human groups, and paved the way for later recognition of such crimes via international law (ICJ, 2024).

In 1973 the United Nations set up a special committee to investigate international responsibility for genocide, to compile legal principles that establish the liability of individuals and states, and marked an additional step towards the further legal establishment of the crime and the strengthening of the mechanisms of international accountability (ICJ, 2024).

The 1990s saw a qualitative evolution of the international judicial framework concerning genocide. The Security Council created the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 pursuant to Resolution 827 designed to prosecute the crimes committed throughout the conflict. The Tribunal was integral for the development of judicial standards for proving specific intent based on applications of theory and practice that defined the mental dimension of this crime (ICJ, 2024).

In the following year, the International Criminal Tribunal for Rwanda (ICTR) was formed to review the genocide's legacy; its substantial work contributed to the establishment of more specific standards for establishing an intent to destroy, in whole or in part, a protected group. Its decisions became a primary reference for international legal scholarship and practice (ICJ, 2024).

This was followed by the adoption of the Rome Statute in 1998. This set up a permanent International Criminal Court and included genocide as an offence under ICC jurisdiction. On 1 July 2002, after ratification by seventy states, the Statute, in force as it stands now, provided the most comprehensive global legal basis for prosecuting mass crime (ICJ, 202).

In the contemporary context, the International Court of Justice had to make reference to some of the most important cases concerning genocide when South Africa brought a claim against Israel under the title "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip" regarding the elements of the crime and specific intent in the context of ongoing military operations on 26 January 2024. This case pointed out, of course, that this mental component continues to hold an important role, as does the challenge of using international protection mechanisms (ICJ, 2024).

2.2. Specific Intent in Judicial Jurisprudence

It is apparent from the study of the jurisprudence on the ground in few intergovernmental courts including International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), that the enforcement of specific intent (Dolus Specialis) in the genocide crime is difficult, and the standards that govern its enforcement must be as detailed as they are flexible (Gunes, 2024; ICJ, 2024).

They are clear that it is possible to prove the accused 'conscience' through circumstantial evidence especially where a confession of the defendant is impossible to obtain. The use of circumstantial evidence can be used to identify specific purpose, referring to acts taken in carrying out a genocide, as in the systematic scope of particular atrocities against certain groups based on ethnic or religious affiliations, or the purposeful commission of organized acts against those to be killed, expressing a concerted determination to eliminate the accused group (Gunes, 2024; ICJ, 2024).

He further explained that the judiciary had applied the "only reasonable inference" standard whereby specific intention would be inferred from similar patterns of conduct and

acts taken if that inference is the only one that is logically drawn from the evidence and facts that can inform the law. It encompasses assessing the scale of atrocities, the nature of the attacks, the systematic organization of the offensive campaigns, and the inciting of speech directed against the targeted group (ICJ, 2024).

Further, courts drew a distinction between destructive intent and other motives of the perpetrator, including pursuing military or political objectives or revenge, demanding that destructive intent that is specific to the destruction of the group, either whole or in part (Al-Haq, 2025; Van Santen, 2025).

The significance of such jurisprudential analysis in this way is to offer a normative framework for holding to account individual and state actors for organized attacks on protected communities, without specific evidence or direct admissions as the basis for a finding. This is jurisprudence that indicates that the flexibility of IL-C in responding to current realities of violence from a complex conflict landscape, and as seen in the case of the Palestinians and their armed conflict in Gaza in particular, is evident, as the question of specific intent can be used to judge systematic attacks against nonmembers of the population and to secure that impunity is absent (ICC, 2025; Fyfe, 2024).

In this manner, courts show us that intent is no matter the mere theoretical dimension of intention, an operational standard to be measured and validated (Fyfe, 2024), yet a measure of success by which, whilst at the same time, the level of accuracy of international justice and the effectiveness of courts of criminal law when tasked with large crime cases is still not lost (Fyfe 2024).

2.2.1 Special International Criminal Tribunals (Rwanda and Yugoslavia)

The special international criminal tribunals for Rwanda and the former Yugoslavia were created to bring perpetrators of fundamental international crimes including genocide before them. They also aimed at determining whether or not the specific intent of the perpetrators for genocide (dolus specialis) was a decisive factor distinguishing genocide from other crimes (Hashnat Kabir, 2022).

Special international criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) also formed an important basis in shaping the judicial appreciation of specific intent as a key factor in the crime of genocide. These tribunals provided a pragmatic and detailed interpretation of dolus specialis, thus formalizing a judicial standard that we base our assessment of this precise mental element on. As such, they held, specific intent should be oriented towards the destruction of a selected entity, whether part or whole. The rulings reinforced the notion that specific intent does not merely come into play through the commission of serious criminal acts, but through the object of destruction of a protected group either wholly or partially. Such measures necessitate proof of an intention that is independent of what occurs in the natural course of violent actions, as the offender must have aimed expressly at the existence of the group itself (ICJ, 2024).

One of the cases the ICTR has decided that brought forward this provision is the case of Kayishema and Ruzindana and it is perhaps the most important. The trial concluded that continued physical assault, such as mass killings, coordinated bodily assaults, or targeting of members of a group, could amount to evidence of specific intent, provided circumstantial evidence of the aims of the acts had been to eradicate the group as a social or ethnic entity. There, the tribunal concluded that intent can be established even without direct killing, as certain acts enumerated in Article 2 Genocide Convention, such as preventing births within the group, forcibly transferring children or inflicting serious physical or mental harm on individuals are effective means for achieving the destruction objective. Therefore, the tribunal has strengthened understanding of the fact that genocide is not necessarily immediate or only killing; rather, it comes in policy and practice that systematically leads to the destruction of the group through a variety of intricate and sophisticated means (ICJ, 2024).

In Rwanda and Yugoslavia, the tribunals solidified this idea in landmark cases that became relevant international benchmarks for interpreting explicit intent, such as the Akayesu case (ICTR). It was a landmark decision, being the first international judicial ruling to acknowledge genocide and the direct implementation of Convention provisions. Stressed that specific intention is detectable by the general circumstances in which the actions

occurred, their systematic tendency, and explicit supervision or incitement that the actor intends to attack the group "as a collective entity." Reiterated that harm including physical or mental harm (widespread sexual violence) can be part of "specific intent," if the purpose is "to destroy the organization – not just the individual's relationship, but its social and psychological structure." Here rape constituted not only a conflict-related crime but a key mechanism by which genocide could be performed (ICJ, 2024).

Similarly, the Krstić case (ICTY) presented the most technically accurate legal analysis of specific intent, recognizing the Srebrenica massacre (1995), for example, as a genocide act. The tribunal held that there could be specific intent derived from the method of mass killings, which can be understood in accordance with the systematic, widespread, and methodical manner used. Acts of excessive violence, organization and continuity showed clear intent to annihilate members of the group. Internationally, tribunals found that killings conducted quickly, as part of a larger group, in a systematic fashion, tend to indicate premeditated intent, rather than random or individual acts. And the focus on a certain part of the community, like men and boys, is another good signal of specific intent (ICJ, 2024).

In Krstić, the tribunal wrote that targeting Bosnian men and boys — who were the backbone of the community and so essential to its survival and continuity — showed an intent to erase the group altogether or at least its central pillars. A policy choice of disabling the demographic and social viability of the group was not coincidental; it reflected the policy and decision-maker behind the decision. (ICJ, 2024).

Moreover, the systemic arrangement of military operations suggests that the acts were carried out according to high-level command rather than individual efforts. The coordination of the various forces, the division of roles, and the determination of the detention and killing sites, the transfer of the victims all of these points to a premeditated design to achieve a specific objective: the wholesale or partial destruction of the group that was to be targeted. Explicit or implicit declarations from political or martial heads also provide important clues to particular intent; can disclose the real aims of a campaign, whether in hate speech, outright incitement or rationale for group extinction. International tribunals have employed that

evidence to substantiate a specific intent when a clear policy to annihilate the targeted group takes shape (ICJ, 2024)).

For example, to include the ongoing Gaza conflict, Israeli Defense Minister Yisrael Katz responded that preventing humanitarian assistance from entering the ground was part of a "pressure tool;" former Defense Minister Moshe Ya'alon went so far as to say that a military operation may involve "war crimes," calling the attack "ethnic cleansing," and referring to a targeting of a Palestinian group on national or ethnic grounds. In the broader context of the conflict, the systematic use of military operation and direct geographical and population targeting, further buttresses the inference of intention to annihilate a group either in a limited dimension or on the whole basis of the other conflict types. These statements combined with field evidence and contextual evidence are a very powerful indicators of specific intent; they were previously used by international tribunals as circumstantial evidence to help understand intent in the context of mass crimes (ICJ, 2024).

The tribunal ruled that partial destruction didn't mean wiping out all, but that the wanted victim had to be integral to its continued existence and continuity in the region. This created the "substantial part" standard and served as a bedrock of international criminal jurisprudence. Recent developments similarly demonstrate how this is necessary in the context of modern warfare, the necessity of the presence of explicit intent remains prominent in contemporary international jurisprudence, as seen in South Africa v Israel 26 January 2024 when there was an emphasis on proving genocide and specific intent in the Gaza war and it further confirms that the factor remains important as evidence for determining individual and state responsibility for crimes brought to an international judicial hearing by States (ICJ, 2024).

From these recent developments, it is evident that specific intent is the main characteristic of genocide that distinguishes it from other crimes, and international judicial jurisprudence has created practical mechanisms to deduce it from facts and specific context ensuring the effectiveness of international courts in prosecuting perpetrators.

In the South Africa v. Israel matter, South Africa issued an extensive legal memorandum on 28 October 2024 containing 750 pages in total and more than 4,000 pages

of attachments and supporting documents, and included primary evidence (photographs, testimonies, documents, field reports) required to establish specific criminal intent instead of random acts or conventional warfare. The memo, seeks to demonstrate genocide from Gaza and dolus specialis which aimed at a particular group of Palestinians by acts including mass killings, withholding assistance, the destruction of infrastructure, and population displacement. In addition, arguments in the memorandum are derived from the 1948 Genocide Convention and based on the practical interpretation of the material acts, systematic conduct, and specific intent (South Africa v. Israel, 2024; Government of South Africa, 2024). It also depends on context in a campaign and on public acts, such as statements made by Israeli leaders on circumstantial evidence of specific intent including Katz on the fact that help should be avoided as a "pressure tool" and Ya'alon's citations of potential "war crimes" and "ethnic cleansing" (ICJ, 2024).

These statements suggest that political and military behaviour which has been declared is significant in the analysis of the mental aspect of genocide, in light of tribunal principles in Akayesu and Krstić. The memorandum also encouraged provisional measures to protect alleged rights under the Genocide Convention, on 26 January 2024, the ICJ granted an interim order to take protective measures from the standpoint of the potential victims of acts before final judgment (United Nations, 2024). The action signifies that the court has come to the conclusion that the claims have a sufficient legal foundation for the investigation of specific intent and notes the importance of providing such a wide variety of relevant documentary evidence that can aid in the analysis of specific intent.

Thus, South Africa's memorandum provides a showcase for how legal, factual, and contextual evidence can be brought together to demonstrate specific intent, and how international law researchers may draw upon large judicial archives to establish a nuanced understanding of the mental elements associated with genocide and that this will improve scholarly and jurisprudential approaches to such questions (South Africa v. Israel, 2024; Government of South Africa, 2024; United Nations, 2024). The memorandum is not just a recitation of the events or humanitarian violations, but one with a robust legal argument under the 1948 Genocide Convention, asking the court to recognize specific intent that

targets the Palestinian group in Gaza, in the form of acts of killing, withholding humanitarian aid, starvation, destruction of infrastructure or forced displacement (ICJ, 2024).

Previous special criminal tribunals, such as ICTR and ICTY, provide practical interpretations of specific intent which confirms that intent must be directed toward destroying a specific group wholly or partially. In Kayishema and Ruzindana (ICTR), repeated same physical acts, such as mass killings or bodily assaults which were considered evidence of specific intent that aimed at eliminating the group, while acts such as preventing births or forcibly transferring children could achieve specific intent even without direct killings (Akayesu, ICTR, 1998; Kayishema & Ruzindana, ICTR, 1999). Similarly, in Krstić (ICTY), targeting Bosnian men and boys was an indicator of intent to destroy a core part of the group (Krstić, ICTY, 2001).

Specifically in terms of how specific intent is used today/when no evidence has been found in relation to the alleged plan being applied in practice, precedent from former special international criminal tribunals has established that the evidence of specific intent appears to be circumstantial (i.e. if no direct evidence exists of the systematic pattern of atrocities, i.e., mass killings, attacks on civilians) (Gunes, 2024), targeting a specific group because of ethnic, religious or national affiliation, and/or official statements/ directives indicating that there is an intent to destroy the identity of the group (Essawy, 2024).

In Rwanda, the tribunal based on circumstantial evidence, ruled that repeated attacks on Tutsis were intended to completely annihilate the group, whereas in the former Yugoslavia, tribunals have found that systematic attacks against Bosnian Muslims met specific intent criteria (Al-Haq, 2025).

These developments in jurisprudence have contributed to enhancing the understanding of specific intent in international law and opened the door for a broader acceptance of the use of circumstantial evidence alongside direct evidence, thereby boosting the courts' powers to determine the guilt of individuals in cases where there are no confessions provided or hard evidence available (Al-Haq, 2025).

2.2.2 The Permanent International Criminal Court (ICC)

The International Criminal Court (ICC) was created under the Rome Statute of 1998 as an organ of justice for international crimes such as genocide. The Court has stressed the need for proving specific intent (dolus specialis) in establishing genocide as a crime according to Articles 6 and 30 of the Rome Statute. These decisions strengthen the Court's ability to separate genocide from other atrocities, such as war crimes and crimes against humanity (ICC, 1999).

The ICC applies a wide array of evidence to establish the need for dolus specialis for genocide cases and this covers the official statements and military orders which declare the destruction of groups or indicate the extent and manner of the crimes (which are systematic and continuous and have patterns indicative of intent). Public utterances from government officials (such as incitement or collective threats) are also included in this, indicating a clear bias against those who have not engaged in the use of genocidal force. The ICC is at the forefront in the context of the formation of a concept of specific intent, drawing upon the ICTR and ICTY jurisprudence in its interpretation and application to the reality of the modern day, and is also establishing standards for the proof of specific intent, the very element that differentiates genocide from other acts of crime (ICC, 1999).

The Court is able to consider circumstantial evidence as well, when there is no direct evidence, for example by way of nature of the crimes, extent, targeting of particular groups, state or administrative policies of states or entities (ICC, Article 6; Clancy, 2021). The organized aspects to such crimes, in the form of sustained attacks on civilian populations and ethnic/religious/national groupings and by targeting them, is an indication of calculated intent to erase the identity of the targeted community. These measures might be carried out through the forced movement of children, by establishing or controlling conditions of residence for phased destruction, or by preventing births within the community. The ICC has decided that systematic and recurrent attacks on civilians are sufficient evidence of specific intent (Clancy, 2021).

The Court uses experiences such as Rwanda and previous Yugoslavia tribunals for establishing if such actions could correlate with purposeful destruction, noting that the mere

performance of mass violence is insufficient to establish actualized intent in its application; it is necessary to establish the intention of specifically aiming to destroy the identity of the organization (Gunes, 2024; Al-Haq, 2025).

The necessity of specific intent being a purposeful objective to destroy the group entirely or in part, and the necessity of being a mental element of the murder as the sole requirement for conviction of genocide cannot be overemphasized. The valid evidence shall be in the form of organized plans, formal or unofficial statements, coordinated preoccupation towards particular groups and categories, or the deprivation of basic life resources belonging to the group (Fyfe, 2024). From this case law, the Court reinforces that explicit and concrete intention is not a theoretical notion, but is an indispensable ingredient that can be found to exist in current conflicts such as that of the Palestinians, thus establishing culpability for parties and states.

The ICC has taken a practical approach to international law in contemporary wars, including investigations into Palestine. In this way, the South Africa v. Israel case before the ICJ concerned acts of genocide in Gaza since late October 2023, as a result of the analysis of other circumstantial evidence inferring the specific intent to destroy a particular group of Palestinians (Al-Haq, 2025; and ICJ, 2024).

As these jurisprudential developments have consolidated international legal standards on specific intent, they have highlighted the courts' ability to punish individual and national perpetrators in similar cases, whether traditional or modern. They are a reflection of the developing field of international criminal law in the framework of major international crimes (Al-Haq, 2025; and ICJ, 2024).

Through the work of exceptional international criminal tribunals like the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY)—notably through the ICTY and the permanent ICC—we have received key jurisprudence on the development of international criminal law; for example, focusing on and interpreting the conceptualization (and application) of dolus specialis as a fundamental factor in genocide. Prior to the creation of these tribunals, the definition of genocide was mostly a theory, confined to legal texts like the 1948 Genocide Convention,

emphasizing textual legal aspects with little relevance to actual offenses. For the case of Rwanda and former Yugoslavia, first the tribunals followed and then the ICC provided practical ways of proving specific intent; by connecting targeted acts such as mass killings or forced transfers to the concept of the specific intent and its applicability to reality: the concept then became a standard in the real world, not just a theoretical text, that can be applied by the courts in real cases (ICC, 2025; Van Santen, 2025; and Gunes, 2024).

Jurisprudence also set up practical standards for demonstrating specific intent which have covered the application of non-exhaustive circumstantial evidence, scrutiny of the scope and method of the crimes, the targeting of groups based on ethnicity, religion or nationality, and the examination of official pronouncements and government policies with evidence of determination to crush the targeted group. That made legal norms of application international standard to apply to the prosecution of people of genocide, providing the legal texts of the world with more applicability in fact, not just the textual and theoretical aspects and underlining the relationship between mental substance and physical events (Al-Haq, 2025; Fyfe, 2024).

Moreover, international jurisprudence has increased accountability for persons or states for systematic attacks of various types on safeguarded groups and enabled the law to prosecute senior officials or organizations, thus facilitating international accountability in preventing impunity that are a core goal of contemporary international criminal law. These courts also enriched terms of the law by distinguishing general intent from specific intent, injecting historical political and social contexts into the assessment of evidence; thus, making the law more flexible and realistic in applying to major international crimes (ICC, 2025; and Clancy, 2021).

International jurisprudence has also become a reference for interpreting contemporary conflicts, including the Palestinian conflict in Gaza where concepts of specific intent can be applied to assess systematic offenses against civilians under international law, as seen in South Africa v. Israel before the ICJ in 2024 (ICJ, 2024).

This jurisprudence not only interprets the law itself yet further in the development of new regulations and practical standards for proving major international crimes, particularly

genocide. It emphasizes the importance of particular intent while determining who is responsible for them and, lastly, increases our international community's capacity to solve systematic violations so as prevent them from repeating themselves. For example, in this day and age current conflicts such as the Israeli invasion of Gaza are showing how this might well happen (ICC, 2025).

Official ICC sources indicate that specific intent is not merely a theoretical concept but a practical element that can be proven in modern conflicts to ensure accountability for both individuals and states, reflecting the central role of courts in developing international criminal law and establishing practical standards for protecting targeted groups from systematic violations (ICC, 2025).

3. Chapter Two: Formulation of a Unified Standard for Proving Specific Intent (Dolus Specialis)

Chapter Two will examine the evidence and indicators that are employed to establish the element of specific intent (Dolus Specialis) in past international conflicts focusing around case studies such as Rwanda, the former Yugoslavia, South Africa, and the Israeli war on the Gaza Strip. Chapter Two will examine both direct evidence and circumstantial evidence based on which international courts have determined the existence of specific intent referring to the judicial practice of the ICTR, ICTY, and ICC.

This chapter also points out the contribution of this study to the construction of legally sound specific intent standards and brings forth the researcher's view of the research through the presentation of suggestions and recommendations by analyzing and finding out from the case history of previous international conflict events. Finally, it examines international institutions such as the ICC and the United Nations, where they can help make sure that there is justice in order to set an appropriate standard by which individuals and states can be prosecuted for collective crimes committed against vulnerable populations.

This chapter deals with such materials as evidence and indicators on which international courts including the ICTR and ICTY as well as the contributions of the International Court of Justice in the South Africa v. Israel case; and investigates the Israeli war in Gaza during 2023–2024. The aim of this analysis is to learn the means of proving specific intent concretely and develop a legal standard applicable today. It is accordingly an in-depth examination of direct evidence and circumstantial evidence, a review of international judicial practice, and underscores the findings of this research to create a composite legal standard for demonstrating specific intent. Its goal is also to offer a methodical scientific foundation for international courts to adopt in modern conflicts, harmonizing the analytical nature of law from judicial theory with the concrete reality of the events in hand, ultimately promoting the effective use of international criminal law, improving international accountability, diminishing impunity, and elevating international criminal justice.

3.1. Judicial Approaches to Proving Specific Intent

Judicial practice has established that direct evidence is that which shows the actor's intent explicitly and clearly, without the need to infer it from other facts. Such evidence is considered the strongest in proving specific intent before international courts. Examples include statements and personal confessions; the court has used the accused's personal statements and confessions as direct evidence to confirm the existence of destructive intent (Van Santen, 2025; and Gunes, 2024).

On the other hand, official and political statements issued publicly by politicians or military officials are considered direct evidence of genocide, and official documents and military plans, including military orders, official directives, and documents showing the organization and coordination of attacks against a specific group, have been relied upon. For example, documents used in previous conflicts indicate the identification of detention and killing sites or the allocation of military roles to achieve the destructive objective (Van Santen, 2025; and Gunes, 2024).

However, in many international criminal cases in the past, the direct evidence of specific intent is often unavailable to found which make circumstantial evidence an essential tool for inferring the systematic intent to destroy a protected group. In international courts, courts should always consider the overall context of events with systematic patterns of acts and the targeting of core elements within the group as evidence that specific intent was present. Inevitably, the patterns of systematic acts, selective targeting, repetition, and continuity act as indirect evidence, emphasizing the importance of proving an act through judicial inferences and circumstantial evidence (first requirement), and the need for the existence of reports from international bodies in the absence of direct evidence (second requirement).

3.1.1 Evidence through Judicial Presumptions and Circumstantial Evidence.

Evidence through Judicial Presumptions and Circumstantial Evidence. The sections that follow are derived from analyzing direct evidence, including personal statements and confessions and official statements indicating plans and military actions which show an overt

intention to eradicate a particular group (ICJ, 2024; Kayishema and Ruzindana, 1999; and United Nations, 1998a). At the same time, circumstantial evidence of organized procedures within the conduct patterns, selective targeting of core segments, and pattern and continuation of attacks and how it fits into the larger context of the conflict is investigated.

In the absence of explicit confessions by perpetrators, evidence like this is vital; because it allows courts to infer the existence of specific intention scientifically and legally. For instance, the systematic and repeated attacks on the Tutsi in Rwanda, the targeting and prosecution of men and youth in Srebrenica, the deprivation of the general population of essential resources in the Gaza Strip, and the targeted burning of significant infrastructure would be strong indicators of specific destructiveness intention (Al-Haq, 2025; Fyfe, 2024; Clancy, 2021; and United Nations, 2001).

International conflicts research shows the use of circumstantial evidence to strengthen evidence of specific intent for the more serious crimes of genocide through studying patterns of crime as well as relevant behaviours and patterns of behaviour characteristic of the crime.

In Rwanda (ICTR), circumstantial evidence determined the existence of specific intention against Tutsi, as investigations revealed systematic, planned attacks of killings, rape, and physical assaults against the group and requests issued by political and military officials that the group was planned to be targeted whole or in part (Kayishema & Ruzindana, 1999; and United Nations, 1998a).

Direct evidence to implicate destructive intent against Tutsi has been used in the Rwanda Tribunal (ICTR), as was demonstrated by the Akayesu and Kayishema & Ruzindana cases, where personal confessions as well as official orders were presented (Kayishema & Ruzindana, 1999; and United Nations, 1998a).

This helped make explicit that specific intent does not derive in and of itself from the violent act itself, but requires context and organization to indicate that there was a particular destructive objective. The use of circumstantial evidence in this way is essential for determining whether purposeful, measurable, and relevant intent exists regarding Tutsi's

political life a view underscored by legal scholarship and international legal law (United Nations, 2001).

A major case in the former Yugoslavia (ICTY) that has provided such a major example was the Krstić case, which used circumstantial evidence to deduce specific intent. That circumstantial evidence of military organization, selective choice of detention and killing sites, and direct command from commanders showed a systematic intent to destroy the "substantial part" of a community was what the Tribunal demonstrated (United Nations, 2001). In Srebrenica, the intention to destroy the "substantial part" of the community was expressed men and youth as evidenced by a targeted approach (United Nations, 2001), indicating a desire to destroy the community's structural foundation.

In South Africa (ICJ, 2024), the legal case brought against Israel in relation to the Gaza Strip used the use of a mix of direct and circumstantial evidence to prove the existence of particular intent, including official documents, firsthand testimony in the field, and statements made by officials in both political and military contexts (ICJ, 2024). The analysis of South Africa's application against Israel shows the juxtaposition of formal documents, field testimonies and political declarations in establishing that the accused harbored specific intent in current wars, specifically the denial of basic supplies to the population and the deliberate destruction of infrastructure (ICJ, 2024).

The 2023–2024 Israeli war on Gaza illustrates these criteria in full in a contemporary war using circumstantial evidence and a plan to systematically target a target population that is a clear sign of deliberate targeting with a view to developing a more appropriate standard for establishing specific intent for contemporary wars (Al-Haq, 2025; Fyfe, 2024).

The application explained how such types of evidence could be synthesized to provide a more complete picture of the destructive intent such as the denial of crucial supplies, destruction of physical and social infrastructure, and also shows a purposeful and calculated intention to accomplish a certain destructive goal. Analysis of circumstantial evidence points to certain specific intent indicators which show sustained access to food and water, deprivation of resources, systematic destruction of infrastructure, and attack on certain locations and people because of their national or demographic affiliations. Meanwhile,

official statements from military and political figures also confirm the strategic and political goals of these operations reflecting the calculated targeting of certain population (Al-Haq, 2025; Fyfe, 2024).

It could be seen from the past conflicts in Rwanda, former Yugoslavia, South Africa and in Israeli war on Gaza that some link exists between material acts and the destructive objective. Material acts or mass killings, physical or mental injuries, the deprived possession of primary resources or forced migration of children - need to indicate an intention to "destroy" the group in part or, at a minimum, in whole, differing that particular intention from random acts of violence or other crimes against humanity. The criterion also depends on circumstantial evidence like organized and repetitive patterns and actions such as recurring, systemic attacks on certain groups or a delegation of military and political authorities to effect structural policies, which are strong indicators of a specific purposeful and destructive conduct (Al-Haq, 2025; Fyfe, 2024).

Moreover, official policies and public discourse represent a primary level where specific intent is evaluated, as official orders, political and military pronouncements, and public speeches that include any keywords like “pressure tools” or “ethnic cleansing” serve as direct indicators of a known destructive goal of an individual group. It also focuses on a “substantial part” of the targeted group destruction of the group is not necessary, so long as the targeted part is considered essential to the group’s survival and continuity, as in the case of the targeting of men and youth in Bosnia or the prevention of births in Rwanda (Al-Haq, 2025; Fyfe, 2024).

3.1.2 The Importance of Reports Issued by International Bodies in Proof

In the process of creating a uniform standard to establish specific intention (Dolus Specialis) in genocide, there is no way of isolating material evidence from related mental evidence without recognizing the role of the international bodies charged with investigation and documentation. It can be argued that both the International Criminal Court (ICC) and United Nations investigative and documentary bodies have important lessons to offer for understanding the way that intent is inferred from the facts, especially given that numerous crimes took place during the era of wars and these were widely reported facts related to the

genocide. The ICC itself serves a dual function in this scenario. It investigates and prosecutes international criminal acts (genocide is one and there are others as well) by means of evidence relating to facts and organized conduct with an objective destructive intent towards a protected group through the examination of said facts with Articles 6 and 30 of the Rome Statute (International Criminal Court, Office of the Prosecutor, 2023).

Direct and circumstantial evidence, namely documents and official plans, as well as a specific focus on patterns of behavior consistent with destruction of life or property accompanying destructive intent, will be available to the Court – as evidenced by the further scrutiny of crimes committed in Palestine since 2021, including war crimes and crimes against humanity. The Office of the Prosecutor has since broadened the situation in Palestine to include these crime cases within its criminal jurisdiction as part of a more focused attention directed towards the mental components of the offences (International Criminal Court, Office of the Prosecutor, 2023).

Meanwhile, the United Nations, through its specialized committees and external investigations, for example the independent investigation commissions brought into place by the Human Rights Council, has documented significant violations and has studied them under international law. In the latest conflict against the occupied Gaza by the Israeli government, a United Nations independent investigation commission issued an analysis that showed that the evidence available, which includes witness statements and NGO reports and satellite imagery and official statements, demonstrates the fact that the Israeli authorities had an intent to destroy a particular group of Palestinians, and constitutes both direct and circumstantial evidence of intent that may rise to that level of genocide. Explicitly stated through a statement of the commission, the statements of leaders and adopted policies support this conclusion, as it offers direct evidence of destructive intent (United Nations Human Rights Council, 2025).

These mechanisms are significant in connecting the theoretical analysis of law with applicability of the notion of specific intent. Although the wording of the Genocide Convention and the Rome Statute emphasize definition of this mental element in the abstract within law, the reality of such international investigations proves international bodies'

capacity to gather and structure evidence in a manner upon which it will be possible for international criminal courts to use when enough data is gathered (Clancy, 2021; Gunes, 2024).

Accordingly, UN investigations are not simply useful, informative or of benefit, but potentially of use as admissible evidence in front of ICC courts and the International Court of Justice when the file is formally referred and UN statements become a source of evidence as to whether the determination of the presence of an intentional conduct is feasible, if and through repeated and predictable patterns of conduct, and if any. This follows the legal principle that genocide intent can be assessed from the totality of facts and circumstances where alternative inferences are unreasonable. With this in mind, the unity between the ICC and all relevant UN mechanisms is clearly decisive in developing a practical understanding of the standard for specific intent (Clancy, 2021; Gunes, 2024).

Whereas the UN investigates and publishes primary documentation detailing behavior trends and gathering violations, the Court follows a specific, multisource judicial process to transpose that into legal evidence that can enter international courts. This integration is not confined to recent cases, but represents an opportunity to create flexible integrated legal standards for presenting the most complex mental element in genocide – overcoming the absence of clear legality, and thereby the core of this thesis. The role of international institutions, most notably the International Criminal Court and the United Nations, is important in the development of investigative mechanisms and in defining specific intent of genocide. Constructing such a factor is not based purely on law texts or subsequent judicial judgement but starts on the ground as the steps are at the time of evidence collection or fact acclimation or analysis of broader conflict tasks by these authorities with different levels of authority (Clancy, 2021; Gunes, 2024).

The ICC's investigative methodology connecting the legal texts of Articles 6 and 30 of the Rome Statute with field facts and perpetrators' systematic acts has made it key in developing a pragmatic understanding of specific intent. The Court has stressed that specific intent should not be assumed based on acts' magnitude but rather to be inferred from detailed examination of the nature, scope and repetition of acts, together with official policies, public

statements and military decisions that show a destructive intention to the acts committed (Clancy, 2021; Gunes, 2024).

The ICC uses more and more composite circumstantial evidence without explicit confessions, rather than considering one piece in isolation from all the pieces that are integrated under the same context. By integrating acts of significance with the political and military context, such approach represents qualitative progress in the understanding of specific intent, which no longer takes the form of the intellectual act but serves as a legal conclusion due to the convergence of the acts, aligned with existing jurisprudence of the ICTR and ICTY (Al-Haq, 2025; and Van Santen, 2025).

At the UN level, it most typically contributed to the pre-judicial stage in part establishing factual information and legal files used in court cases. Fact finding committees, special rapporteurs, and Secretary General Reports act as evidence and they provide a valuable service to the case in proving intention, particularly when they report a systematic pattern of violations or general policies in the destruction of a protected group, whether it is complete or partial. The relevance of this role has been most vividly indicated by the modern-day context of Gaza, whereby South Africa's ICJ application depended on UN reports, witness reports and documents furnished by United Nations agencies, not isolated military acts to support allegations of specific intent (Government of South Africa, 2024; and ICJ, 2024).

This has demonstrated an institutional shift of responsibilities of the UN from being exclusively a documentary humanitarian entity to some indirect legal function in shaping the specific intent aspect. This institutional nature of this function is crucial in allowing the international courts due process to do more than simply establish the absence of direct evidence by providing evidence on how individual or collective acts were connected to higher policies or official orders. This is a prerequisite of the imposition of the theoretical concept in the present thesis which includes material acts, a general context, and the destructive purpose. Thus, the ICC and the UN do not merely apply international criminal law, but play an instrumental role in shaping international criminal law, both in the drafting and actual application of and in particular in the practice of international criminal law with

regard to specific intent. This perspective complements judicial jurisprudence and provides a crucial basis of scientific efforts in order to create a more accurate and more efficient legal standard for proving such an element.

3.2. Judicial Foundations for Inferring Specific Intent in International Jurisprudence

The element of specific intent (Dolus Specialis) is found to be an essential distinction between genocide and other crimes against humanity or war crimes. In other words, the specific intent involves the intended destruction of a specific group, there has been considerable difficulty in developing precise standards for proving it under international law. That has been the role played by judicial precedents set out in international courts, specifically, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), which helped foster the judges' understanding of specific intent. Furthermore, international jurisprudence, which goes from the ad hoc tribunals to the ICC and the United Nations, shows that systematic assessment of evidence and its connections to the ultimate destructive objective are used to determine the level of intent and differentiate between general and specific intent, and further supports the use of circumstantial evidence as a legally valid tool for international courts (Van Santen, 2025; and Gunes, 2024).

This jurisprudence serves as a strong model for creating a practical, multi-tiered yardstick for establishing specific intent, which integrates direct and circumstantial elements of evidence, considering the political and social background of the conflict, thereby enabling courts to hold individuals and states more effectively accountable. This entails a review of the existing judicial practice and the South African case against Israel as the latest judicial application required to reach a unified standard based on all the aforementioned (second requirement).

3.2.1 Analysis of Judicial Practice and South Africa's Arguments in Proving Specific Intent

South Africa v. Israel – Legal Memorandum before the ICJ (2024)

The legal memorandum by South Africa about Gaza serves as a powerful example to show how applicable the principles of modern judicial precedent are to the specific conflicts of our own time, with respect to direct evidence. That could be remarks by Israeli leaders about "pressure tools," references to "ethnic cleansing," and systematic policies aimed at blocking humanitarian assistance. Circumstantial evidence encompasses food blockade, damage to infrastructure, targeting of particular neighborhoods and populations, forced population transfers, and denial of key resources. Thus, it may be argued that the mixture of direct and circumstantial evidence permits the courts to conclude in a legally powerful manner upon the facts upon which specific intent is inferred even in these convoluted present conflicts (Government of South Africa, 2024; ICJ, 2024).

The study of this memorandum reflects its emphasis on the intricacies of political and military organization and heterogeneity of actors (Government of South Africa, 2024). The case concentrated on demonstrating that Israeli policies towards Palestinians in Gaza between 2023 and 2024 constitute a systematic application of the aims of destroying a sizeable fraction of the Palestinian group (total or partial) with a bias towards the selective persecution of major population groups, disruption of essential infrastructure, denial of essential resources, and forced population transfers (ICJ, 2024).

This ruling underscores why at the provisional measures level of the court there is a much less stringent legal requirement than in the merits level: The threshold that the Court finds the ability "reasonable" to be found to be a likely intention of "genocidal intent as enumerated in the Convention texts," as opposed to "proving the end of the commission," is, itself, a more important threshold to answer for the request for the protection of "for immediate safety among the people" of the threatened groups. The memorandum relies upon the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which imposes positive obligations on states to prevent or punish acts that constitute genocide (ICJ, 2024).

South Africa presented the Court with multiple allegations that Israel, since the start of the war, committed acts involving (ICJ, 2024):

The killing of Palestinian civilians on a large scale, especially women and children.

Causing severe physical and psychological harm to the Palestinian population.

Challenging unsustainable living conditions such as starvation, deprivation of basic services and humanitarian aid

Helping to fuel the mass exodus of Gaza's population

Official policy or no policy to stave off or punish incitement to genocide

South Africa believes that such acts are connected to a specific intention to annihilate part of the Palestinian people as a national or ethnic group. And its detailed interpretation regarding "genocidal intent" under Article 2 of the Genocide Convention comprised:

Referring to the organized pattern of hostile behavior in Gaza, which includes the routine murder of civilians and the devastation of essential infrastructure.

A lot of remarks made by Israeli military and political figures that it could be seen as suggesting a desire to eradicate the Palestinian people as certain group including disparaging or inflammatory rhetoric.

Engaging that the obligation to avoid genocide is violated by nonintervention or failing to punish those who encourage or carry out such atrocities, which will suggest an implicit or indirect contribution to the destructive intent.

In addition to the acts themselves, we can say that specific intent can be deduced from state behavior and the overall context, such as:

Systematic killings.

Serious psychological and physical damage.

Establishing living conditions with the intention of undermining or eliminating the group.

Actions taken to stop births or the group's continuation.

Focusing on systematic acts within a comprehensive context is a welcome addition to addressing state specific intent issues, because much previous judicial practice had sought to merely analyze individual acts and had not incorporated them across policy and context. Hence the Court decided the petition of South Africa for provisional measures to protect alleged rights under the Genocide Convention. The main points of the ruling are:

The Court acknowledged that submissions of South Africa might infer that some of the alleged acts could fall within the provisions of the Genocide Convention. The Court concluded that there is plausible evidence that the destruction of Gaza and the wider conduct of the acts can possibly amount to acts which constitute genocide, in relation to causes of serious harm and creation of living conditions in which the group is at risk of destruction (ICJ, 2024).

The Court did not take the step of making an order to terminate military operations but ordered a process to protect the Palestinian population and requested routine reports from Israel on the operationalization of such measures. The case also involved other countries, including Belgium, Brazil, Colombia, Ireland, and Mexico, and the fact that various countries have been involved shows more evidence for the case and the need for interpreting (and applying) Article 2 of the Genocide Convention, including specific intent. The Court's reliance on the establishment of direct and circumstantial precedents was based on international cases from Rwanda and the former Yugoslavia, in which the International Criminal Tribunal for Rwanda (ICTR) in Akayesu stated that the presence of repeated acts and official policies pointed towards a clear destructive intent toward a specific group (United Nations, 1998a).

Likewise, since the issue of Krstić was heard before the International Criminal Tribunal for the former Yugoslavia, it showed how circumstantial evidence is pivotal in the determination of specific intent against a substantial part of the community (United Nations, 2001).

The same exercise was used in South Africa's memorandum where investigators fused repetitive physical acts, official policies, and statements made publicly, giving insight into their ability to infer destructive intent in a legally defensible way (Gunes, 2024; Clancy, 2021).

Thus, the South African case offers an advanced way to apply the triple standard for specific intent, which includes physical act, general context, and official policies to demonstrate how direct and circumstantial evidence can be joined from a practical and legal perspective in order to ensure inference of destructive intent even in contemporary conflicts with complex methods and multi-level threats. The construction of this model is a qualitative contribution to international judicial precedent and aims at standardizing the method of determining specific intent in contemporary international litigation, as well as the development of international investigative and prosecutorial instruments (Gunes, 2024; Clancy, 2021).

Akayesu Case (ICTR-96-4-T, 1998)

The Jean-Paul Akayesu case is a decisive development in world judicial theory in international policy of proof of specific intent in genocide. The Court looked to a body of direct and circumstantial evidence. Direct evidence was the defendant's confessions, and municipal and security officials' statements, which conclusively manifested a specific purpose to eliminate the Tutsi as an ethnic group. Circumstantial evidence comprised organized, repeated attacks, killings, and rapes as part of a systematic policy, deprivation of women's reproductive means, forced transfer of children (United Nations, 1998a).

The Court ruled that specific intent can be implied since systematic acts and the political and social context of the conflict are repeated and specific intent can be inferred even in the absence of direct confession from all defendants (United Nations, 1998a). This case highlights the importance of connecting physical acts with the destructive intent and of combining directly with circumstantial evidence to establish specific intention with accuracy.

Kayishema & Ruzindana Case (ICTR-95-1-T, 1999)

In that case, the Court turned its attention to demonstrating specific intent through material and behavioral evidence, in particular the commission of organized attacks against Tutsi civilians, violent assaults of the kind seen in the case of the sexual assault and rape, and targeting of specific areas as part of the overall plan to wipe out the entire, or part, of the population. Use of official statements and directives as evidence of intent also reflected premeditation (United Nations, 1999).

The Court also noted the possibility of inferring specific intent from the overall context of organized operations rather than individual acts. The combination of circumstantial and official evidence can have an impact on determining the significant component of the targeted group that would ensure that practical standards applied for specific intent would be unified (United Nations, 1999).

Krstić Case (IT-98-33-T, 2001)

The Krstić Case is the starkest case of establishing intentional use of circumstantial evidence in armed clashes and selective targeting, such as the targeting of men and youth in Srebrenica when it was claimed to be necessary to obliterate the "essential part" of the Bosnian Muslim community. Circumstantial evidence encompassed specific military organization, location and specification of places of detention and of killing, coordination among members of the military forces and a direct command from above (United Nations, 2001).

So, the Court connected the repetition, practice and level of planning with the destructive purpose and found that mass coordinated attacks can be explained by clear or demonstrated intent to cause destruction rather than by random acts of violence. This affirms the significance of identifying trends and institutional behavior and relating them to the goal to be destroyed under a single, coherent, standard framework (United Nations, 2001).

Blagojević & Jokić Case (IT-02-60-A, 2005)

In 2005, the International Criminal Tribunal for the former Yugoslavia took account of the Blagojević & Jokić case, based on accusations of committing crimes against humanity and war crimes in the Bosnian conflict context. Although it was not directly assessed for genocide, in analyzing the multiple circumstantial evidence, we learn much about the specificity of the intent. Within a certain framework, the Court emphasized organized patterns of targeted and violent attacks against civilians, ranging from wide-ranging arrests, to forcible transfers, and to systematic killings at certain sites. The Court focused on organized conduct involving a continuous systematic pattern of acts indicating strong inferences that intent extended beyond isolated or particular acts of violence. And the court's use of evidence that is relevant for the above process, namely evidence of coordination among two and three military units and identification of certain detention and killing sites also was evidence of the execution of a systematic policy against part of the community in accordance with Dolus Specialis, where circumstantial evidence suggests a systematic intention to the group to harm its existence within a specific geographical area (United Nations, 2007).

The overall lesson here is not the conviction of genocide per se, but the affirmation that organized processes and systematic actions such as inter-unit coordination can serve as a powerful indication when considered collectively with a more general context of evil intent. It echoes the triple standard that is being employed in this study; that is, in contemporary conflicts, the amount of circumstantial evidence is no less strong than the amount of direct evidence to evaluate specific intent (United Nations, 2007).

Furundžija Case (IT-95-17/1-T, 1998)

The Furundžija case is also among the first cases in the ICTY series to investigate rape and sexual violence as conduct that can constitute war crimes and crimes against humanity, and that reveals how coordinated and structured sexual behavior can be part of the context to suggest specific intent in genocide. In an earlier ruling, the Court emphasized that rape was not seen in the conflict context as an isolated act but rather a methodical method of taking down the social and psychological organization of the group which conflicted with

the group carrying on. The Court narrowed in on the systematic pattern of the repeated acts of rape and sexual torture, recognizing it as well as the fact that this act had a broader meaning than just harm, which had a systematic process of undermining the social fabric of the group being targeted. A key feature found in the final judgement was its emphasis on how the ICTY framework would "look at more subtle and significant factors" in the genocide to determine which specific actions are motivated by specific systemic needs – such as sexual violence, intimidation, abduction and coercion (United Nations, 1998b).

For applying this model in a plain law-based analysis, it is logical to conclude that these acts that were systematically aimed at the destruction of the social and psychological continuity in a group are indicative of a wider destructive intent that we have an intimate acquaintance with and it's in our study an explicit expression of specific intent in genocide. This systematic pattern of rape illustrates the extent to which circumstantial evidence is used not only to establish the physical act but also to infer the destructive intent of a perpetrator, especially when the act is the result of general policy or coordinated implementation (United Nations, 1998b).

Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, & Hassan Ngeze (Media Case) Case (ICTR-99-52-T, 2003)

This case epitomizes the application of media incitement as circumstantial evidence to ascertain particular intent, especially in situations where media serve to promote hatred toward a particular group. The accused were found guilty in such circumstances as they published incitement to violence and ethnic divisions on local media which led to violent and widespread clashes between Tutsi and others in the area. The Court has reaffirmed that media incitement may be part of a tactic to advance policies that may be aimed at a group and that official or semiofficial speech that contributes to the reinforcement of stereotypes and the provision of a legal or moral justification as to violence can support an aspect of the circumstantial evidence to show the existence of destructive intent (United Nations, 2003).

Crucially, the Court did not restrict its analysis to physical acts and murders but rather extended the definition of circumstantial evidence to speech that encourages and creates the necessary conditions for violence to occur. This makes the thresholds of inference for

specific intent more robust, in that proof is not solely to a mere material act but it can also apply to conditions of incitement and moral justification for destructive policies, and this would fully reflect the concept of a triple standard for specific intent, combining act, general context and policy/statement intent (United Nations, 2003).

Consequently, judicial precedent is crucial in establishing a conceptual framework of specific intent, with the construction of a working rule for use in current disputes. Research of the cases of Rwanda, former Yugoslavia, South Africa, and Gaza demonstrates that international courts have developed fine-grained systems of establishing specific intent (dolus specialis) through applying direct and circumstantial evidence to operational context and documenting official policy and public statements (United Nations, 2003).

Thus, judicial precedent; evidence synthesis; and practical practices can be intertwined to build a strong basis for developing a practical and unified standard for establishing specific intent in international conflicts. The importance of judicial precedent points to the need to differentiate concrete intent from theoretical concepts that cannot be demonstrated through technical investigation alone. It's a theory that also allows courts and researchers to establish specific intent based on the integration of the direct and circumstantial evidence in a case involving acts that are harmful to the self-defense and is applicable to policymakers and the general context of a crime so that they are able to prosecute the major criminals involved in modern conflicts intent (United Nations, 2003).

Critical analysis of international judicial case law, such as of special criminal tribunals, the ICC, or ICJ, demonstrates that the evidence for the specific intent in genocide continues to be based upon widely varying judicial assessments and largely based on inferring intent from direct, circumstantial, and contextual evidence (not in the context necessarily common law). Despite significant advances in judicial inference criteria – particularly reliance on systematic patterns of acts, conflict in the broader context of violence, and official statements and policy-making – these precedents indicate a persistent conceptual and practical vacillation over the threshold of intent required to commit genocide in relation to other forms of offense that involve serious international crimes intent (United Nations, 2003).

This discrepancy leads to a primary gap in the law, such that there is no overarching general standard for the assessment of concrete intent, in terms of which specific intent can be objectively measured under different conditions and across the conditions of war, undermining legal certainty and international accountability. In that sense, the objectives of this research are not confined to a mere presentation and study of relevant judicial precedents but to seeking to use the same precedents, with their pros and cons, to contribute to the achievement of clearer and more well-rounded legal standards for the proving of specific intent (United Nations, 2003).

3.2.2 Adoption a Unified Standard for Proving Specific Intent (The Tripartite Standard)

Overall, this study seeks to create a consolidated standard for demonstrating specific intent in genocide, rather than the conventional standard that limited this element to merely looking for direct evidence or explicit confessions. It has also previously been noted whether through case law or empirical case studies that this approach is neither sufficient nor realistic in modern conflicts, wherein policies of destruction are more likely to take complex and mostly covert forms. It is also based on the hypothesis that specific intent which is no longer an isolated psychological element but rather a legal construct which can be inferred objectively directly through the convergence of a set of repeated and consistent indicators. Studies of the Rwandan and former Yugoslav cases have shown that international courts practically relied on a comprehensive behavioral pattern from which specific intent was inferred, even in the absence or weakness of direct evidence, which constitutes an important judicial precedent that has been built upon without being formulated as a clear legal standard (United Nations, 1998; and United Nations, 2001).

The contribution of this research lies in reorganizing this scattered judicial practice within an integrated normative framework, based on the methodical connection between three main elements: the material act, the general context of the conflict, and the expected or actual destructive outcome. This linkage is not just used to establish the crime's commission, it is used to interpret the destructive intent as the logical consequence of

organized and repeated behavior, not simply as a moral or political presumption (Gunes, 2024; and Clancy, 2021).

Specific intent is defined in international criminal law as dolus specialis which is an essential requirement which clearly differentiates genocide from other international crimes (Kress, 2006). Under the provisions of the 1948 Genocide Convention and the Rome Statute of the International Criminal Court, the intention to totally or partially destroy the group which is protected is not simply a general intent to commit a harmful act, but a particular intent to destroy the group's existence as a social, economic or demographic unit. This mental element gives rise to challenges that international courts have to prove, especially in modern conflicts where suspects often refrain from making clear confessions. Thus, international judicial law and academic theory, in doing so, have created an inferential methodology to analyze this element, and relate material evidence to the overall environment of war and the laws and policies of the state which were used to sanction that crime (Ambos, 2009.

The legal analysis starts by taking into consideration the original texts dealing with the crime of genocide. Article 2 of the 1948 Genocide Convention contains "intent to destroy, in whole or in part, a national, ethnical, racial or religious group." The principle is also reiterated in Article 6 of the Rome Statute. These texts suggest that specific intent is not an addendum but a basic precondition dividing genocide from other crimes. As scholars observe, genocidal intent includes a "clear aim toward the destructive result," distinct from general intent characteristic of most other varieties of international crime, in which the mere presence of a general intent to commit a harmful act is sufficient (Mettraux, 2019).

If international law had included intention merely to cause temporary harm it would not add the specific intent for genocide as a distinct criterion, but the texts set out requirements for the international judge to draw inferences concerning this intention from the general composition of the facts in conflict, as they do in international jurisprudence of many cases (Ambos, 2009).

Specific intent is more difficult to prove as it is quite a mental crime and often not captured with direct confessions in this modern conflict. Based on an appraisal provided by

international criminal jurisprudence, circumstantial and contextual inferential approaches to interpretation of material evidence are evident, linking them to its broader context, in particular to the relevant policies or orientations expressed by their respective governments. Circumstantial evidence, which includes systematic repetition of the acts and military organization (or targeting by any means in the absence of other such acts), targeting any specific group, or specific policies, provides strong indications on the part of the court, beyond the mere existence of general intent, that destructive intent is present to produce harm (Fabijanić Gagro, 2021).

In modern law, the "only reasonable inference" standard becomes an important legal device in determining the extent to which the evidence has the potential to establish that specific intent does occur. Under this standard, when a source of evidence can be interpreted in more than one way, judges must decide whether the inference of destructive intent is logically superior to the non-destructive intention (Schabas, 2016).

This standard enhances the judiciary ability to punish offenders without direct confession, and obligates perpetrators to provide credible supplementary explanations that refute other allegations something that is rarely required in consideration of the composite evidence that points to a systemic mode of destructive conduct. This rule has also been employed in modern contexts: legal memoranda presented to the International Court of Justice have drawn parallels between forms of such evidence as official statements, operational plans, and field policies and patterns of indiscriminate acts in war and shown that the only inference to confirm the totality of evidence is the presence of destructive intent (ICJ, 2024).

When integrating direct and circumstantial evidence within a comprehensive inferential standard, judicial experience shows that the optimal approach to proving specific intent does not rely on a single type of evidence but on the integration of direct, circumstantial, and contextual evidence. Official statements by political or military officials are direct evidence if they clearly demonstrate destructive intent, while circumstantial evidence, e.g., systematic sieges, selective targeting of key groups within the population, or organized military planning, are indications that acts are connected to the destructive aim.

This integration follows the academic perspective on specific intent that, being not simply a psychological factor, but a coherent legal consequence of an act, which could be deduced from its setting (Mettraux, 2019).

This proposed standard relies on the fundamental idea that specific intent in genocide is not a mere or hypothetical psychological element but a logical result that can be legally inferred from the convergence of three interconnected levels: first, the nature of the acts committed and the degree to which they target a protected group; second, the systematic pattern, repetition, and selective targeting revealing a purpose beyond mere military or security operations; and third, the official or quasi-official framework expressing adoption of policies or statements institutionalizing this destruction. Comparative analysis of the Rwandan and former Yugoslav cases, as well as the case presented before the International Court of Justice regarding Gaza, shows that the courts implicitly relied on this interrelation between the three levels, even if it was not formulated as a formally recognized legal standard (ICJ, 2024).

4. Conclusion

In light of the difficulties faced by most studies and cases before international courts, which dealt with proving the element of specific intent (Dolus Specialis) in the crime of genocide, and in light of what this study revealed regarding the complexities of the practical problems accompanying the issue of proving the element of specific intent (Dolus Specialis) in the crime of genocide, this element remains the most controversial and resistant to standardization within international criminal law. The absence of a comprehensive and clear normative framework, together with the indirect nature of evidence related to destructive intent, has led to evident divergence in most judicial precedents and to a weakened level of legal certainty in cases presented before international courts. This study corroborates that the problem with proof is not so much that it is hard to find facts but rather that there are problems with the methodology that people use when taking cases and situating them within the context and policies of the crime.

On the basis of this line of thinking, the study concluded that the "formal concept of specific intent which depended on presenting evidence of direct and explicit destructive intent was no longer appropriate to the modern context of mass crimes that were systematically and characteristically committed gradually and by complex patterns of behavior, like sieges and starvation, through destruction of buildings and selective targeting rather than through immediate and comprehensive genocide. Such international courts reliance on circumstantial/contextual evidence to deduce intent, in the absence of direct confessions/orders, has been evident in judicial applications. Yet, this strategy has not yet received normative consolidation, making judgments inconsistent and impeding the adoption of international criminal liability (Gunes, 2024; Al-Haq, 2025).

Therefore, this study stresses the importance of a unified normative matrix as the basis for establishing the element of specific intent and linking the individual act and the general context with the official policies in such a way that this factor cannot be unconnected in the consideration of destructive intent. The interpretation of this approach should not be regarded as an illegal furthering of criminal intent but rather an accurate simulation of how genocide is committed in practice.

As a result, the aim of this study is that the establishment of an integrated normative criteria for how to prove specific intent is not a matter of an academic interest but a legal necessity that has become a priority, so that perpetrators of the gravest international crimes are no longer able to go unpunished, so that the court system of international law is able to protect these protected groups, and to solidify international criminal justice principles to address the latest manifestation of genocide.

4.1. Results

This study concluded that specific intent cannot be understood or proven in isolation from the relationships between the material acts of criminal behavior, the general context of the conflict, and the official policies guiding the parties' conduct. In other words, serious crimes, like mass murders or severe physical harm, do not prove the existence of destructive intent unless they are connected to the specific intent through a more thorough analysis.

The existence of direct evidence is inadequate because, in a modern conflict, explicit confessions or written orders that express intent are rare, making it difficult to establish intent. Therefore, relying only on direct evidence will leave a gap in proof, which requires further examination that should integrate circumstantial and contextual evidence.

In this study, international courts relied increasingly on patterns of systematic behavior, selective targeting, repetition and continuity, and policies of starvation and deprivation as central inputs for inferring specific intent. This was reflected in the jurisprudence of the Rwanda and Yugoslavia tribunals, and also in the case submitted by South Africa before the International Court of Justice against Israel and its war on Gaza.

This study is showing that the International Criminal Court enables systematic judicial mechanisms in the evidence analysis and their alignment with legal texts, while United Nations reports and international investigation committees provide documentary oversight which strengthens the circumstantial evidence to which judicial bodies draw upon when formally referring cases.

The problem for the lack of a coherent normative framework. Although judges are now able to infer specific intent more than before, the lack of unified legal regulation has

meant that judicial precedents are inconsistent and thus influence the question of the legal certainty and the courts' ability to exercise consistency in their decision making.

4.2. Recommendations

The importance of a common uniform normative framework for implementing the "Triple Standard for Proving Specific Intent": This ought to be a common normative structure for use at international criminal courts and national courts when bringing a case of this crime under universal jurisdiction and act as a normative standard to ensure consistency in verdicts and uniform measures in adjudicating conflicts.

That standard has three interrelated levels:

Actus Reus (Material Act): To establish the seriousness of the acts and how far they are carried out to destroy a protected group.

Contextual Patterns: Case studies of repeated acts, selective targeting, and connections to understand how particular behaviors' are tied to larger patterns in a conflict.

Review of official policies and discourse which entails checking official writings, government directives, and public policies, which are intended to be destructive in nature.

Direct evidence (material acts), circumstantial and contextual evidence (contextual patterns), and institutional and political evidence (policies and discourses) are aggregated by the triple standard to constitute a coherent methodological tool for drawing reliable and consistent inferences of specific intent in all relevant cases. It is an appropriate compromise between a need for legal exactness and a need for pragmatism that allows the international criminal justice system to better hold mass crime offenders responsible.

Assess the threshold "substantial part" element of the group in a more general meaning so that it is not narrowly interpreted and this protection is not stripped away. The targeting in these categories, which constitute the crux of a group's continuity, whether of its materiality of biological capacity or social or economic organization of the group, may constitute a strong presumption of special intent even if the act does not include everyone in the protected group. In this context, although international jurisprudence has implicitly

endorsed this approach in several judgments, there remains a need to codify it within an explicit legal standard that limits judicial hesitation and enhances the effectiveness of international accountability for the crime of genocide.

Strengthening the capacity of international criminal justice to use circumstantial and contextual evidence: international courts should develop internal judicial mechanisms and guidelines to ensure a systematic analysis of circumstantial evidence, to standardize the criteria for its admissibility, and to link it to genocidal intent.

The study recommends employing United Nations reports and fact-finding commissions as part of the traditional evidentiary methodology, not merely as informational materials, but as reliable sources that may be used as a legal basis to support the inference of special intent, provided that the procedures governing legal evidentiary foundation are duly observed.

Training investigation teams, judges, and field experts in the integrated analysis of direct and circumstantial evidence, so as to enable them to apply the tripartite standard with a high level of efficiency and to reduce reliance on direct evidence, which is scarce in contemporary conflicts.

The study recommends the establishment of multidisciplinary teams comprising legal experts, political analysts, and specialists in international crimes, in order to ensure the comprehensive collection and analysis of material and circumstantial evidence in a manner that effectively supports the application of the tripartite standard, particularly in ongoing conflicts where access to field evidence is difficult.

References

Legal Sources

International Court of Justice (2024). Application instituting proceedings and request for provisional measures (South Africa v. Israel). https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf

International Criminal Court, Office of the Prosecutor. (2023). Office of the Prosecutor Strategic Plan 2023–2025. https://www.icc-cpi.int/about/otp/otp-policies

Rome Statute of the International Criminal Court. (1998, July 17). U.N. Doc. A/CONF.183/9, 2187 U.N.T.S. 90. https://treaties.un.org/doc/treaties/1998/07/19980717 06-33 pm/english.pdf

United Nations (1951). Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December 9). 78 U.N.T.S. 277, entered into force January 12, 1951.

United Nations (1998a). International Criminal Tribunal for Rwanda. (1998). *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I Judgment (2 September 1998). https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf

United Nations (1998b). International Criminal Tribunal for the former Yugoslavia. (1998). *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Trial Chamber II Judgment (10 December 1998). https://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf

United Nations (1999). International Criminal Tribunal for Rwanda. (1999). Prosecutor v. Clément Kayishema & Obed Ruzindana, Case No. ICTR-95-1-T, Trial Chamber II Judgment (21 May 1999). https://www.worldcourts.com/ictr/eng/decisions/1999.05.21_Prosecutor_v_Kayishema_1.pdf

United Nations (2001). International Criminal Tribunal for the former Yugoslavia. (2001). *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Chamber Judgment (2 August 2001). https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf

United Nations (2003). International Criminal Tribunal for Rwanda. (2003). Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, & Hassan Ngeze (Media Case), Case No. ICTR-99-52-T, Trial Chamber I Judgment (3 December 2003). https://derechodelacultura.org/wp-content/uploads/2015/03/j_2_9_3_cpi_1_12_2003.pdf

United Nations (2007). International Criminal Tribunal for the former Yugoslavia. (2007, May 9). Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Appeals Chamber, Judgement. https://www.icty.org/x/cases/blagojevic_jokic/acjug/en/blajok-jud070509.pdf

United Nations General Assembly. (1946). Resolution 96 (I): The crime of genocide.

Scientific Research and Journals

Ambos, Kai. (2009). What Does 'Intent to Destroy' in Genocide Mean? International Review of the Red Cross 91, no. 876 (December 2009): 833–858. https://doi.org/10.1017/S1816383110000056

Belkacem, M. (2020) International Criminal Responsibility for the Crime of Genocide. Master's thesis. Ziane Achour University of Djelfa, Algeria.

Cheian, D. (2025). Solving general and specific intent: A mapping on the MPC and applications to the categorical approach. George Mason Law Review, 32(1), 13–59. https://lawreview.gmu.edu/wp-content/uploads/2025/02/32-Geo.-Mason-L.-Rev.-13-2025-Cheian-v2.pdf

Drozdov, O., Drozdova, O., & Basysta, I. (2025). Genocide Trials in the International Criminal Court: Challenges of Fact-finding, the Ukrainian Case and ECHR Standards. Kyiv-Mohyla Law & Politics Journal, 11, 64-90. https://ekmair.ukma.edu.ua/bitstreams/bea9419d-d9ac-44a7-8fed-997cadfe535f/download

Essawy, R. M. (2024). The attainability of the evidentiary standard for genocidal intent in Gaza. EJIL: Talk! (The Official Blog of the European Journal of International Law), May 3, 2024. https://www.ejiltalk.org/the-attainability-of-the-evidentiary-standard-for-genocidal-intent-in-gaza/

Fabijanić Gagro, S. (2021). Mental and material elements of genocide. The Lawyer Quarterly, 11(1), 1–18. https://tlq.ilaw.cas.cz/index.php/tlq/article/view/440

Fyfe, S. (2024). "The Question of Genocidal Intent in Gaza." DAWN. **https://dawnmena.org/the-question-of-genocidal-intent-in-gaza/.**

Greenawalt, A. K. A. (1999). Rethinking genocidal intent: The case for a knowledge-based interpretation. Columbia Law Review, 99(8), 2259–2294.

Gunes, E. (2024). Rethinking genocidal intent: An interpretation under international law and the jurisprudence of international criminal tribunals. Journal of International Criminal Law. https://www.researchgate.net

Hashnat Kabir, M. (2022). Judicial practice on proving genocidal intent in international criminal tribunals. International Criminal Law Review. https://nyujilp.org/wp-content/uploads/2025/03/Van-Santen_571-155-194.pdf

Kress, C. (2006). The crime of genocide under international law. International Criminal Law Review, 6(4), 461–502. https://doi.org/10.1163/157181206778992287

Pisillo Mazzeschi, R., & Carli, E. (2024). Proving Specific Intent in Genocide: The Plan and the Pattern of Conduct. *Diritti umani e diritto internazionale*, 18(2). https://www.academia.edu/download/119204581/RPM_e_Carli_Plan_and_pattern_of_conduct_in_DUDI_2024.pdf

Van Santen, B. (2025). Searching for a plan: Demonstrating genocidal intent before the ICJ. NYU Journal of International Law and Politics, 57(1), 155-194.

Books

Dar Nasser, M. (2024). Genocide in Palestine from the perspective of international law. Palestine.

Mettraux, G. (2019). International crimes: Law and practice (Vol. 1: Genocide). Oxford University Press.

Schabas, W. A. (2016). The International Criminal Court: A commentary on the Rome Statute (2nd ed.). Oxford University Press.

Reports

Al-Azzi, M. (2024). What are the most prominent legal decisions issued since October 7th? And are they enforceable? https://www.bbc.com/arabic/articles/c77xz48xm47o

Al-Haq. (2025). Legal brief No. 1: Special intent (dolus specialis) required to classify acts as genocide.

Clancy, P. (2021). Putting the International Criminal Court's Palestine investigation into context. Irish Centre for Human Rights, University of Galway.

Institute for Palestine Studies. (n.d.). International Court of Justice and the illegality of occupation.

Ismail, O. M. M. (2020). Genocide in international law. Refaad Legal Platform.

Joint written statement submitted to the Secretary-General by international NGOs to the Human Rights Council. (2021, June 25).

United Nations Human Rights Council, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. (2025, September 16). Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, A/HRC/60/CRP.3. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf

معايير إثبات النية الخاصة في جريمة الإبادة الجماعية

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ملخص

تتناول هذه الرسالة إحدى أكثر الإشكاليات تعقيدًا في القانون الدولي الجنائي، والمتمثلة في إثبات القصد الخاص (Dolus Specialis) في جريمة الإبادة الجماعية، باعتباره الركن الذهني الذي يميّز هذه الجريمة عن غيرها من الجرائم الدولية الخطيرة. وتنطلق الدراسة من فرضية أساسية مفادها أن المعايير القضائية التقليدية لإثبات النية الخاصة ما تزال تعاني من التباين وعدم الاتساق، الأمر الذي ينعكس على اختلاف نتائج الأحكام وتباين تقييم الوقائع في النزاعات المختلفة.

تعتمد الدراسة على المنهج التحليلي والوصفي المقارن من خلال تحليل النصوص القانونية ذات الصلة، وفي مقدمتها اتفاقية منع جريمة الإبادة الجماعية لعام 1948، ونظام روما الأساسي للمحكمة الجنائية الدولية، إلى جانب دراسة معمّقة لاجتهادات القضاء الدولي، ولا سيما المحكمة الجنائية الدولية لرواندا (ICTR)، والمحكمة الجنائية الدولية ليوغوسلافيا السابقة (ICTY)، ومحكمة العدل الدولية (ICJ). كما تستند الدراسة إلى تحليل الأدلة المباشرة والقرائن المستخلصة من السياق العام للأفعال الإجرامية وأنماط السلوك المنهجي والسياسات الرسمية.

وتقترح الرسالة معيارًا تحليليًا متكاملًا لإثبات القصد الخاص يقوم على ثلاثة مستويات مترابطة، تشمل: أولًا، الأفعال المادية المكوّنة للجريمة (actus reus) من حيث طبيعتها ونطاقها واستهدافها لجماعة محمية؛ ثانيًا، الأنماط السياقية والسلوك المنهجي الذي يكشف عن وجود سياسة تدميرية موجّهة؛ وثالثًا، المؤشرات المرتبطة بالسياسات الرسمية والخطاب العام والقرارات القيادية التي تعكس توجّهًا مقصودًا نحو تدمير الجماعة كليًا أو جزئيًا. وتهدف هذه المقاربة إلى تحقيق توازن بين متطلبات الإثبات الصارمة وحماية الطابع الوقائي لاتفاقية الإبادة الجماعية.

كما تطبّق الدراسة هذا المعيار المقترح على حالات معاصرة، بما في ذلك النزاع في غزة خلال عامي 2023–2024، من خلال تحليل الوقائع الميدانية والتصريحات الرسمية وأنماط الاستهداف، في ضوء المعايير التي أرستها محكمة العدل الدولية في أوامرها المتعلقة بالتدابير المؤقتة. وتخلص الرسالة إلى أن اعتماد معيار موحّد ومتعدد المستويات من شأنه تعزيز اتساق الاجتهاد القضائي، وتسهيل عملية الإثبات، وتحقيق حماية فعّالة للجماعات المحمية، بما يسهم في تعزيز المساءلة الدولية ومنع إفلات مرتكبي جريمة الإبادة الجماعية من العقاب.

الكلمات المفتاحية: جريمة الإبادة الجماعية، والنية الخاصة، والقانون الجنائي الدولي، ومحكمة العدل الدولية، ومسؤولية الدولة عن الإبادة الجماعية.