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UN Commission of Inquiry Report on Gaza: Understanding Genocide, Crimes Against Humanity, War Crimes and Their International Legal Framework

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Recent Developments:

- **The United Nations Human Rights Council (UNHRC)'s Independent International Commission of Inquiry** has alleged that **Israel deliberately targeted Palestinian civilians, including children, in Gaza**, and concluded that evidence indicates **genocide, crimes against humanity and war crimes**.
- **The report may strengthen ongoing international legal proceedings**, particularly before the **International Court of Justice (ICJ)** and the **International Criminal Court (ICC)**, although the Commission itself has no judicial or enforcement powers.
- **The Commission's findings add to the growing body of documentary evidence** being examined in international proceedings concerning the Israel–Palestine conflict.

United Nations Commission of Inquiry (COI):

- **The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel** was established by the **United Nations Human Rights Council (UNHRC)** in **May 2021**.
- **The Commission has a standing mandate**, enabling it to investigate alleged violations of international humanitarian law and international human rights law without requiring periodic renewal.
- **The Commission submits annual reports** to the **UN Human Rights Council** and the **UN General Assembly**.
- **Its mandate covers investigation of violations, identification of root causes, preservation of evidence and recommendations for accountability mechanisms**.

Genocide:

- **The term "genocide" was coined by Polish jurist Raphael Lemkin in 1944**, combining the Greek word *genos* (race or tribe) and the Latin word *cide* (killing).
- **The United Nations General Assembly recognized genocide as an international crime in 1946**.
- **The Convention on the Prevention and Punishment of the Crime of Genocide (1948)** established genocide as an independent international crime.
- **India signed the Genocide Convention in 1949 and ratified it in 1959**.
- **More than 150 States are parties to the Convention**, making it one of the most widely accepted international human rights treaties.

Acts Constituting Genocide:

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Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthy Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

- **Genocide requires a specific intent to destroy, wholly or partially, a national, ethnic, racial or religious group.**
- **Acts constituting genocide include:**
- **Killing members of the protected group.**
- **Causing serious bodily or mental harm to members of the group.**
- **Deliberately inflicting living conditions intended to bring about the group's physical destruction.**
- **Imposing measures intended to prevent births within the group.**
- **Forcibly transferring children of the group to another group.**
- **Genocide may occur during armed conflicts or in peacetime, making it distinct from crimes that require an armed conflict.**

Rome Statute of the International Criminal Court:

- **The Rome Statute is the founding treaty of the International Criminal Court (ICC).**
- **It was adopted in Rome in 1998 and entered into force in 2002.**
- **The Statute empowers the ICC to prosecute individuals, rather than States, for the gravest international crimes.**
- **The four core crimes under the Rome Statute are:**
- **Genocide.**
- **Crimes against humanity.**
- **War crimes.**
- **Crime of aggression.**
- **India is not a State Party to the Rome Statute, although the Court may exercise jurisdiction in specific circumstances, including referrals by the United Nations Security Council.**

Crimes Against Humanity:

- **Article 7 of the Rome Statute defines crimes against humanity as specified acts committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack.**
- **Unlike war crimes, crimes against humanity do not necessarily require an armed conflict.**
- **Examples include:**
- **Murder, extermination and enslavement.**
- **Deportation or forcible transfer of populations.**
- **Arbitrary imprisonment and torture.**
- **Rape and other forms of sexual violence.**
- **Persecution based on political, racial, national, ethnic, cultural, religious or gender grounds.**
- **Enforced disappearance, apartheid and other inhumane acts.**

War Crimes:

- **Article 8 of the Rome Statute defines war crimes as serious violations of international humanitarian law committed during armed conflict.**
- **The ICC generally exercises jurisdiction where such crimes are committed as part of a plan, policy or on a large scale.**
- **War crimes include:**
- **Wilful killing, torture and inhuman treatment of protected persons.**
- **Intentionally causing great suffering or serious bodily injury.**
- **Unlawful destruction or seizure of civilian property not justified by military necessity.**
- **Compelling prisoners of war to serve hostile forces.**
- **Denying prisoners of war fair trial guarantees.**
- **Unlawful deportation, unlawful confinement and hostage-taking.**
- **Intentionally directing attacks against civilians, humanitarian personnel, hospitals, schools and protected civilian infrastructure.**

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- **Most war crimes originate from the Geneva Conventions of 1949 and their Additional Protocols**, which constitute the foundation of modern international humanitarian law.

Legal Significance of the UN Commission Report:

- **A Commission of Inquiry is a fact-finding mechanism and does not possess judicial powers**, meaning it cannot impose criminal liability, sanctions or compensation.
- **Its reports may serve as documentary evidence before international judicial bodies**, strengthening investigations and legal proceedings.
- **The findings may be relied upon by:**
- **The International Court of Justice (ICJ)**, which adjudicates legal disputes between sovereign States and provides advisory opinions.
- **The International Criminal Court (ICC)**, which prosecutes individuals responsible for international crimes.
- **The Commission's reports may also assist United Nations bodies, national courts exercising universal jurisdiction and future accountability mechanisms.**

International Court of Justice (ICJ) vs International Criminal Court (ICC):

- **The ICJ settles disputes between States**, while **the ICC prosecutes individual persons** responsible for international crimes.
- **The ICJ is the principal judicial organ of the United Nations**, whereas **the ICC is an independent international court established under the Rome Statute.**
- **The ICJ can issue legally binding judgments between States**, while **the ICC may impose criminal penalties, including imprisonment, upon convicted individuals.**

South Africa's Case Against Israel:

- **South Africa instituted proceedings before the ICJ**, alleging violations of the **Genocide Convention** by Israel in Gaza.
- **The ICJ has held that Palestinians in Gaza possess plausible rights under the Genocide Convention**, warranting provisional protective measures while the merits of the case remain under consideration.
- **The proceedings are ongoing**, and the Court has not yet delivered a final judgment on whether genocide has occurred.

Importance for International Law:

- **The report reinforces the principle of accountability for serious violations of international humanitarian and human rights law.**
- **It highlights the growing role of independent international investigative mechanisms in documenting evidence during ongoing conflicts.**
- **The findings contribute to the development of customary international law and strengthen global efforts to prevent impunity for grave international crimes.**

Value Addition for UPSC:

Important Terms:

- **Genocide:** Intentional destruction, wholly or partly, of a national, ethnic, racial or religious group through acts specified under the Genocide Convention.
- **Crimes Against Humanity:** Widespread or systematic attacks directed against civilians, irrespective of whether an armed conflict exists.
- **War Crimes:** Serious violations of international humanitarian law committed during armed conflict.

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- **International Humanitarian Law (IHL):** The body of law governing conduct during armed conflicts, aimed at protecting civilians and limiting the means and methods of warfare.
- **Universal Jurisdiction:** A legal principle allowing States to prosecute certain grave international crimes regardless of where they were committed or the nationality of the accused.

UPSC Prelims Facts:

- **The UN Human Rights Council established the Independent International Commission of Inquiry in May 2021.**
- **The Genocide Convention was adopted in 1948 and entered into force in 1951.**
- **The Rome Statute was adopted in 1998 and came into force in 2002.**
- **The International Court of Justice (ICJ) deals with disputes between States, whereas the International Criminal Court (ICC) prosecutes individuals.**
- **The Geneva Conventions of 1949 form the cornerstone of modern international humanitarian law governing armed conflicts**