

The Distinctive Legal Features of Crimes Against Humanity

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Abstract

This research intends to analyze general features and elements of criminal acts against humanity. Also in this paper, special attention was paid to the distinctive features that are crucial in the legal classification of crimes against humanity as offenses punished with international acts and legal regulations of each state. The term Crime against humanity first appeared in the London Agreement of 8 August 1945 establishing the International Military Tribunal. In the course of the preparatory work, it had become apparent that certain crimes committed during the Second World War were not, strictly speaking, war crimes. These were crimes whose victims were of the same nationality as the perpetrators, or nationals of an allied State and were committed for different motives. As early as March 1944, the representative of the United States of America on the Legal Committee of the United Nations War Crimes Commission proposed that crimes committed against stateless persons or any other person by reason of their race or religion should be declared "Crimes against humanity". It suggests, in at least two distinct ways, the enormity of these offenses of the other criminal offenses. First, the phrase "crimes against humanity" suggests offenses that aggrieve not only the victims and their own communities, but all human beings, regardless of their community. Second, the phrase suggests that these offenses cut deep, violating the core humanity that we all share and that distinguishes us from other natural beings. This double meaning gives the phrase potency, but also an ambiguity we may trace back to the double meaning of the word "humanity". "Humanity" means both the quality of being human-humanness-and the aggregation of all human beings-humankind. Crimes against humanity, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "Are particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of human beings". They are not isolated or sporadic events, but are part either of a government policy or of a wide practice of atrocities tolerated by a government or a de facto authority. The law traditionally distinguishes between crimes against persons, crimes against property, crimes against public order, crimes against morals, and the like. Murder, extermination, torture, rape, political, racial or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice.

Keywords: Crimes against humanity, Persecution, Murder and Victims, etc.

THE DISTINCTIVE LEGAL FEATURES OF CRIMES AGAINST HUMANITY

Background the definition of crimes against humanity and their involvement in positive laws since ancient times any action against the life, health and property rights are calculated as illegal or dishonest and perpetrators of these crimes are being prosecuted and convicted. Further with the

Introduction of state and law, or any act of violence that is inflicted on man and his life are sanctioned by law being separated from their features and elements, damage and consequences that have caused. The phrase "crimes against humanity" has gained great resonance in the legal and moral imagination of post-World War II¹.

¹ See ROBERT CRYER, ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE, 230 – 233 (2010); or COMMENTARY ON THE ROME STATUTE OF THE CRIMINAL COURT, 121 – 122 (Otto Triffterer ed., 1999) for a background to the development of crimes against humanity.

This in international law for the first time were appointed and defined as criminal acts of genocide and crimes against humanity at the Nuremberg trials Regulation. Initially, it has linked the two concepts of war, but the crimes have become distinct from each other and from themselves fighting for their development. The term was selected by the U. S. namely the High Court of Justice, respectively, by Chief U. S. Robert Jackson at Nuremberg and head of the American delegation proposed to do so in the London Conference who are also makers Agreement London, which was signed on 8 August 1945 to the establishment of the Nuremberg International Military Tribunal Regulation. During the preparatory work on this agreement, it had become clear that certain crime committed during World War II in the strict sense does not include war crimes. These were crimes whose victims were of the same nationality as the perpetrators or a citizen of a state and are committed ally for different reasons. In early March 1944, the representative of the United States in the Legal Committee of the United Nations War Crimes Commission proposed that crimes committed against persons without citizenship or any other person because of their race or religion should be declared as "crimes against humanity"¹.

Jackson was consulting with the greatest scholar of international law Hersch Lauterpacht, who decided to leave unrecorded discussions to avoid confrontations with controversy. He further suggests that these crimes from other criminal offenses at least distinguished by two features. First, the phrase "crimes against humanity" suggests including not only the victims and their communities, but all human beings, regardless of their community. Secondly, the very same phrase suggests that these crimes relating to violations of human essential that distinguish it from all other natural beings. Although in 1915, the French, British and Russian governments denounced Turkey's Armenian genocide as "a crime against civilization and humanity"² and are the same phrase appeared in a 1919 proposal in trials against Turkish perpetrators of these crimes. But one thing the U. S. government at that time had rejected the so called "laws of humanity" allegedly had no specific content. This crimes against humanity were defined as separate offenses of war crimes in the Statute of the International Military Tribunal, under Law No 10 of the Council for control Allies Forces, paragraph 1 and finally in the Charter of the International Military Tribunal for the Far East. Must remember that crimes against humanity as defined in the above instruments were associated with bravery condition. For a long period of time, this historical circumstance has prevented crimes against humanity be considered as an autonomous concept and jurisdictions to determine the punishment of crimes against humanity, considering them as works which are connected directly or indirectly with fight.³

It is also clear that the war provides the best opportunity and the most appropriate conditions for committing crimes against humanity. War crimes and crimes against humanity rightly calculated two circles of the same chain. As we know from the history of humanity that war crimes are also simultaneously crimes against humanity. Although the term "crime against humanity" appeared only recently, refers to a phenomenon which has a history full of precedent. It is as old as war. At the entrance of the International Criminal Code, the author states that treaties Cherif Bassiouni first among Egyptians and Sumerians to regulate the war were signed before 1000 BC Also the ancient Greeks and Romans with their adopted laws recognizing the right of asylum, treating the wounded and prisoners of war. While Muslims since 623, behavior and regulate the rules of war by the Koran's provisions. Later, the problem is addressed by the Catholic Church, especially in the Lateran Councils and Boards of Lyon in the twelfth century and thirteen.

Doctrinal Basis for regulating armed conflicts were defined in the books "Theology Summa" of St. Thomas Aquinas and "De Jure Belli ac Pads" to Grotius it. In Asia, namely in China's first written sources for the regulation of war that occurs in the fourth century BC The so-called "Art of War" Sun Tzu and the Laws of Manu's Hindu people also had pocketed protection measures wounded and elderly persons. Humanitarian laws are developed significantly in modern times, so in 1856 we have the Paris Declaration, the Red Cross Convention signed in Geneva in 1864, the Declaration of St. Petersburg of 1868, the Brussels Declaration 1874, the Hague Conventions of 1899 and the 1907 Protocol to the 1925 Geneva, "Prohibition of the Use in War of toxic materials and other noxious gases and bacteriological methods of warfare". Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977. It is true that these instruments were mainly related to war crimes. However, war crimes are often undefined and closely related to crimes against humanity, and the

¹ Yale Law School, Charter of the International Military Tribunal, Constitution, available at <http://avalon.law.yale.edu/imt/imtconst.asp> (accessed 24 June 2011).

² 3 Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal, G.A. Res. 95(I), UN Doc A/64/Add.1 (Dec. 11, 1946).

³ Except at the ICTY, where crimes against humanity must be committed "in armed conflict, whether international or internal in character". ICTY Statute, Art. 5. This requirement was abandoned in the ICTR and ICC Statutes.

difference between them is not always clear. In drafting the Nuremberg Principles Regulation in 1950, the International Law Commission arranged the theme about war crimes arising from it in Principle VI¹.

Autonomy of crimes against humanity was relatively simple, as long as such crimes repression depended on the existence of a state of war. However, this relative autonomy is now made absolute. Today, crimes against humanity can be encountered such as their features not only within the context of an armed conflict, but also independent of any such conflict. The definition of the word "be human" and "Crimes against humanity" The first question to be examined for proper elaboration of crimes against humanity and their distinguishing features is the meaning of the word "humanity"².

Henri Meyrowitz noted that if this term is quite unclear what invites us as we care lawyers in his

Introduction as a concept in the definition and criminalization of these offenses. He refers to three meanings given to the term humanism or even be human: by the same term includes culture (humanism, human), meaning philanthropic and human dignity. According to these meanings, a crime against humanity can be understood in the sense of three biased of cruelty directed against human existence, degradation of human dignity and the destruction of human culture. Seen in the light of these three meanings, crimes against humanity can be converted quite simply "a crime against the entire human race." In English, this phenomenon is referred to as "Crime against human-kind or crimes against human kind". Some writers prefer the term "crimes against human" than the term "crimes against humanity". Uncertainty and dilemmas in naming these acts during their incrimination definitely come out of it that man is a part of humanity and any violence perpetrated against humanity as a whole definitely affects certain individuals. But since these incriminating acts do not affect man as an individual separate from society and only his personal rights, but exercised in time, place and the same authors directed against a group of individuals, I think that the most appropriate term for the appointment of these offenses offense would be "crimes against humanity".

Crimes against humanity are considered as such by national and international courts in implementing legislations of states or international law must necessarily be massive in nature, which means that any serious attack on an individual, life, health or his property is not a crime against humanity. However, if an individual is seen as the "Guardian" and oversight of human dignity, respectively, "Guardian of fundamental ethical values" of human society, an attack on a single individual can be considered a crime against humanity, provided that such work is specific character that will stir the conscience of man. This phenomenon is, as it were, a natural link between the human race and the individual: each is the other's expression. To summarize, the term "crime against humanity" word "humanism" means the human race as a whole in different manifestations of individual and collective. The distinction between crimes against humanity and genocide.

At the end of World War II, there was no legal basis in international law for the prosecution of atrocities committed by the Nazis against European Jews. Genocide was not a crime under the Nuremberg International Military Tribunal Regulation. "Crimes against humanity" formed the basis for the prosecutions of these atrocities are. But, even though there were only crimes against humanity crimes of international law, they were held in connection with the fight. It was questionable the issue of state sovereignty and the fact that the Nazis had no monopoly on racial crimes directed (even if the Nazi goal of complete annihilation was to the extreme). Powers was faced with a difficult situation. Nazi atrocities should be punished. The U. S. had been the residence of prosecution of Nazi crimes committed within the borders of Germany. As a jurist Robert Jackson, head of the U. S. delegation at the London Conference in 1945 stated: "It is a general principle of the foreign policy of our Government since ancient times that the internal affairs of another government are not right or duty of ours, much less not allow other governments to intervene or mediate to our problems. reason that this program extermination of Jews and the destruction of the rights of minorities becomes an international concern, as is developing an

¹ Geneva Conventions 1949 (adopted 12 Aug. 1949, entered into force 21 Oct. 1950) (GC I-IV), Common Art. 3, and Additional Protocol I (adopted 8 June 1977, entered into force 7 Dec. 1978) (AP I) Arts. 43 and 50; Situation in the Republic of Kenya, Case No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ¶ 82 (fn 74), citing Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, 15 June 2009, 78; Kunarac et al., T.J., 425.

² International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), Art., 4., 12 August 1949, 75 UNTS 135, available at <http://www.unhcr.org/refworld/docid/3ae6b36c8.html> (accessed 27 June 2011).

illegal war. "Separation of war crimes against humanity Even though they have had ample opportunity, states have not shown any interest in changing the definition of genocide, as defined in the Convention. At the Rome Conference in 1998, only Cuba has argued an amendment to the Genocide Convention expanded the definition to include social and political groups. Just as genocide, crimes against humanity entered into international law by entering the fight. Unlike the genocide that remained associated with war crimes, crimes against humanity to stand on its own is necessary to distinguish clearly from genocide and not limited to war situations. In 1945, Law No. 10 of the Council of Forces Allies control was adopted by the Allies to prosecute crimes within Germany. In this case, the atrocities committed should not be linked to the war in order to be prosecuted. But, allies can make sharing of crimes against humanity by the war, because they were enacting national law applicable in Germany rather than international law at the time¹.

In 1950, Principles of International Law recognized in the Charter of the Nuremberg Court Regulation and Court Decision adopted by the International Committee of the UN recognize that crimes against humanity can be developed even in times of peace, but only insofar as they occurred "before the war, concerning crimes against peace". In 1951 the International Legal Commission in the first chapter of the Code of offenses against the peace and security of mankind includes genocide and crimes against humanity, but differentiating them as two different offenses NKA their features. Crimes against humanity were related to the war or crimes against peace, but were not limited to groups defined in the Genocide Convention. In 1995 the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia has stated that crimes against humanity should not be related to the armed conflict. In fact, the court said that such a connection would be contrary to common law².

CONCLUSION

This paper provides an interpretation of crimes against humanity that presents the human being as a political animal to double our character as a social anti-social individuals, who combine self-awareness and personal interests with a natural need for companionship with others. This dual character as I argued aspect of humanity that the law seeks to protect, since its universal importance is the reason that all mankind has an interest in criminalizing violence and cruel persecution of the perpetrators of these crimes are organized groups against populations civil. This interpretation explains the terms under which crimes against humanity are crimes against human beings-Man.

These are crimes committed by politically organized groups against other groups in the same society or the state, which represent the most barbaric atrocities against depreciating and human being. In a world composed largely of pluralistic societies where distinct groups of nation, religion, race, political views live in a "same roof", respectively in a territory or country, every human being has an interest in ensuring that society itself and such policies do not exceed the limits set by state laws and positive laws pertaining to international jurisdiction, namely "Supervisory Jurisdiction". Anyone who violates these legal norms is the enemy of society at the same time the legitimate objective of all humanity. However, the supervising justice to his character essentially violates the principles of natural justice; therefore "supervisory jurisdiction" should always be delegated to the courts, provided they comply with the standards of natural justice.

The purpose of this paper is that the courts are trying to prosecute and punish crimes against humanity not to retaliate based on national interests, but the judge in favor of human interests, to ensure that it satisfies the vindication of natural justice. Regarding the appointment of crimes against human beings and humanity in general, if there is no national or international law that assigns a common notion of technical understanding. Thus, the various statutes of the Charter of the Nuremberg International Regulation, Law No. 10 of Allies Forces Council to control and the Rome Statute of the International Criminal Court, national statutes define these works with different concepts. The term "crimes against humanity" includes a great rhetoric and this does is that lawyers treat it as a technical term, but because all of us as human beings with the term "Humanity" means something universal and extremely important.

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with Art. 27 (1). Available at: <http://www2.ohchr.org/english/law/cat.htm>.

² European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/C (2002) 1, Strasbourg, 26.XI.1987 (Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002). Available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>.

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