

Considerations Regarding Crimes against Humanity

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Abstract: the Second World War offered the opportunity, to the international community, to realize the total lack of international law prohibiting the worst inhumane acts. Particular gravity, the large number of casualties as a result of persecution or extermination of whole groups of people highlights crimes against humanity among offenses punishable by the criminal law, thus requiring additional scientific research and a more elaborate analysis. Effective punishment of crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, such as to encourage promote international peace and security. Crimes against humanity were first regulated by the rules of international criminal law after the Second World War as a response to the atrocities committed by the Nazi and Japanese fighting forces in the occupied territories, against the local population and in the death camps, of broad categories of people based on national, ethnic or racial.

Keywords: systematic attack; civil population; atrocities; extermination

1. Definition of Crimes Against Humanity

The massacre of Armenians by the Turkish government that took place in 1915 was due to launch the charge of “crimes against humanity and civilization” by the Entente Powers. As a result of these abominations, a joint statement by France, Russia and Great Britain was issued, which stated: *“In view of these new crimes of Turkey against humanity and civilization, the Allied Governments announce publicly the Sublime Porte that they consider responsible for committing these crimes all members of the Ottoman Government and its agencies that are involved in such massacres.”*²

The phrase “crimes against humanity” was the French foreign minister's proposal, Théophile Delcassé (March 1st 1852-22 February 1923) as an alternative to the term “crimes against Christianity”, proposed by Russian Foreign Minister, Sergei

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² Papers Relating the Foreign Relations of the United States, 1915, supplement, Washington, US Government Printing Office, 1928, p. 981.

Dmitrievich Sazonov (10 August 1860 – 25 December 1927), as was envisaged colonial domination of France and Great Britain on the Muslim population.

However, only the Second World War gave international community the opportunity to realize the total lack of international law prohibiting the worst inhumane acts committed both by German and Japanese. Legislation to regulate the conduct of war, set only the harmful effects to the adverse population, without including inhuman acts committed for political or racial reasons against their own citizens or other persons (sexual minorities, trade unionists, Jews, Gypsies, Communists etc.).

In 1945, Allied forces proceeded to the trial of war criminals as an alternative to their execution, after urging the U.S., thus the London Agreement of August 8, 1945, containing the Charter of the International Military Tribunal.

The London Agreement is of particular importance since it first covered international crimes in the enumeration which showed the distinction between crimes against peace and security of humanity and war crimes.

The Agreement, the main source still used currently, defined crimes against humanity as follows: *“murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political civil, racial or religious grounds, in execution or in connection with any crime within the jurisdiction of the Tribunal, whether or not they violated the law of the country where they were committed.”*

A notable contribution to regulate this category of offenses had also Sir Hersch Lauterpacht (August 16, 1897 - May 8, 1960), a member of the International Law Commission of the United Nations (1952-1954) and Judge of the International Court of Justice (1955 - 1960), the man who established the term "crimes against humanity".

2. Comparative Aspects

The incrimination contained in art. 439 of the Penal Code. has no counterpart in the last Criminal Code. This article reproduces the text in a form adapted to the provisions of the Statute of the International Criminal Court and uses previous definitions contained in art. 6 letter. c) of the Statute of the International Military Tribunal at Nuremberg art. 11, no. 1c) of the Law. 10 of the Council for Control and art. 5 letter c) of the Statute of the International Criminal Tribunal for the Far East and art. 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia and art. 3 of the Statute of the International Criminal Tribunal for Rwanda.

The 12 hypotheses regulated by art. 439 of the Penal Code resume without substantive changes similar provisions of the Statute of the International Criminal Court. Crimes against humanity constitute a distinct group of criminal offenses that may be committed in time of peace or war. In the text, 12 normative ways were systematized - the German model.

3. Crimes Against Humanity

3.1. Analysis of Crimes Against Humanity

3.1.1. The legal content

Article 439: Committing, within a widespread or systematic attack launched against a civilian population, to one of the following facts:

a) killing people; b) subjecting a population or part thereof in order to destroy in whole or in part, to living conditions designed to determine physical destruction in whole or part thereof; c) slavery or human trafficking, especially women and children; d) deportation or forced transfer in violation of the general rules of international law, of persons legally present in a given territory by expelling them to another state or to another territory or by using other coercive measures; e) torturing a person under perpetrator guard or over which it exercises control in any other way, causing physical or mental harm, or physical suffering, or serious psychiatric exceeding the consequences of sanctions permitted by international law; f) rape or sexual assault, coercion into prostitution, forced sterilization or detention of a forcibly pregnant woman in order to change the ethnic composition of a population; g) physical or mental injury to persons; h) causing forced disappearance of a person in order to circumvent it under the protection of the law for a prolonged period, abduction, arrest or detention by order of a state or political organization, or with the authorization, support or their consent, followed by the refusal to admit that this person is deprived of liberty or provide actual information regarding his reserved fate or his location, as soon as this information was requested; i) imprisonment or other severe deprivation of liberty form in violation of the general rules of international law; j) persecution of a group or a community determined by fundamental human rights deprivation or severe restriction of the exercise of these rights, on the grounds of political, racial, national, ethnic, cultural, religious, sexual or on other grounds recognized as inadmissible under international law; k) other inhumane acts also causing great suffering or injury to the physical or mental, is punishable by life imprisonment or imprisonment for 15 to 25 years and deprivation of certain rights.

(2) The same punishment is applicable for acts in para. (1) committed in an institutionalized regime of systematic oppression and domination of a racial group over another, with the intention of maintaining that regime.

3.1.2. *Preexisting conditions*

A. The object of the crime

a) The special juridical object is the social relations concerning the existence and security of the civilian population.

b) The material object is the body of people who are part of the civilian population affected by the attack.

B. Subjects of the crime

a) active subject of this crime can be anyone. The law does not request a special quality. Criminal participation is possible in all its forms.

b) passive subject is always collective, namely the civilian population under attack. Expression of the civilian population can be defined as all inhabitants of a country, a region, a city, except for the combatants, as acts committed against them constitute war crimes against persons.

3.1.3. *Constituent content*

A. The objective side, a) the material element is presented as specified activities in the incriminating text. To complete material element of the actus reus, the offense is required to meet two essential requirements.

First, it is required that the act takes place in a widespread or systematic attack, which involves an action of aggression against a community, region having a general nature and unfolding repeatedly, earnestly. Secondly, it requires the attack to be launched against the civilian population. The material element aspects covers the following facts:

a) *killing people;*

We believe that it is the crime of murder, sending for explanations to the analysis of this particular crime.

b) *subjecting a population or part of it in order to destroy in whole or in part, to living conditions designed to determine physical destruction in whole or part thereof;*

Apparently this method overlaps the offenses of genocide, but between the two indictments there is still a difference. Although, in terms of the objective side these two offenses are similar, the genocide impugned conduct concerns only certain groups, individualized on the basis of explicitly provided (racial, ethnic, religious

etc.), While in the case of crimes against humanity, group or groups will usually be individualized on the basis of political or social.

c) *slavery or human trafficking, especially women and children;*

Art 209-211 NCP criminalize the act of putting or keeping a person in a state of slavery and slave trade, and that the recruitment, transportation, transfer, harboring or receipt of persons for the purpose of exploitation.

In accordance with the Statute of the International Criminal Court, slavery is “*the exercise of any or all attributes of ownership over a person and includes the exercise of such an attribute in the trafficking of persons, particularly women and children.*”¹ For further study refer to the definition of slavery given by the judges of the International Criminal Tribunal for the former Yugoslavia (ICTY) – Kunarac case. In this case the judges determine that slavery indicators should include controls and ownership or control that restrict individual autonomy, freedom of choice or freedom of movement and often getting a win for the one who commits the crime. The consent or free will of the victim is absent. (Candea, 2008, p. 67)

d) *deportation or forced transfer in violation of the general rules of international law, of persons legally present in a given territory by expelling them to another state or to another territory, or by using other coercive measures;*

Deportation or forced transfer of population is defined by the Statute of the International Criminal Court art. 7 (2) (d) as “*forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.*”

The deportation action involves forced moving of persons in a state on the territory of adverse state or another state. It refers to sending a person in a remote region as a repressive measure. In this way, the material element is in one of the alternative deportation actions or forced transfer by expulsion or using other coercive measures. For the existence of the material element in this way, it is needed some essential requirements. The deportation or transfer must be forced, against the will of the people that are subject to these actions and to be made with the violations of general rules of international law. Another essential requirement is that the persons to be legally on the territory. (Boroi, 2011)

In the forced transfer variant it was not provided the condition for the transfer to cover a population. Therefore, the offense will be retained in the case of individuals, thus respecting the elements of crimes, which provide that retaining the offense even if it is about a single person. In assessing whether the person is legally in question will not be considered contrary to the norm of law rules of international law.

¹ Statute of the International Criminal Court, art. 7 (2)(c).

e) *torturing a person under guard perpetrator or over which it exercises control in any other way, causing physical or mental harm or physical suffering or serious psychiatric exceeding the consequences of sanctions permitted by international law;*

In terms of the material element, the crime of torture is achieved by the action of causing someone pain or suffering severe physical and psychological varied acts of violence. Statute of the International Criminal Court defines torture, in art. 7 (2) (e) as “*intentional production of severe pain or suffering, whether physical or mental, upon a person in the custody or control of the defendant.*”

Note that, unlike the crime of torture, crimes against humanity it is not required as the active subject to mandatory public official or other person acting at the instigation of or with the consent or acquiescence of it.

That can be committed in order to intimidate, punish, discriminate, or obtain information by a public authority or representative of an organization that triggers widespread or systematic attack on a civilian population, but may be committed by any person participating in the mentioned attack and acting for reasons other than those mentioned.

f) *rape or sexual assault, coercion into prostitution, forced sterilization or detention of a forcibly pregnant woman in order to change the ethnic composition of a population;*

Given that rape involves sexual intercourse, oral or anal intercourse without the consent of the person consuming the sexual relationship, to deepen the ways of committing crime in this manner, the analysis refer to art. 218 and art. 219 NCP criminalizing offenses of rape and sexual assault.

Prostitution implies coercion of a person to compel or force another person to maintain sexual acts with different people to obtain economic benefit for oneself or for another.

Forced Sterilization is the act of making a person become unable to procreate, without his consent. Unlawful detention of a woman getting pregnant forcibly, depriving its supposed freedom against the laws, after she became pregnant against her will, naturally or by artificial insemination. (Boroi, 2011)

Remember to note that the new Penal Code has not taken from the text of the Statute of the International Criminal Court phrase “sexual slavery”, as there is a clear sense in the context of our legislation.

Also, we mention that for retaining offense in this manner, is necessary for the purpose of these actions to be changing the ethnic composition of the population.

g) *physical or mental injury to persons;*

This means any intentional actions that cause physical or mental injury to persons.

This approach was inspired by the model of the German legislation, which cannot be found enumerated in the Statute, in order to avoid controversy relating to determining whether the destruction of the group include simple injury to individuals members, the definition provided by the state (art. 7 par. 2 letter b) not being sufficiently clear.

h) *causing forced disappearance of a person in order to circumvent it under the protection of the law for a prolonged period, abduction, arrest or detention by order of a state or political organization, or with the authorization, support or their consent, followed by the refusal to admit that this person is deprived of liberty or provide actual information regarding his reserved fate or his location, as soon as this information was requested;*

For retaining the crime in this way, the essential requirements are needed, as follows:

- act to be committed in order to evade person under the protection of the law for a prolonged period, which puts the full power of the perpetrator;
- act to be committed by abduction, arrest or detention;
- the perpetrator must act on the order of a State or a political organization or with the authorization, support or their consent;
- any of these actions to be followed by a refusal to admit that the person is confined or to provide factual information on his reserved fate or whereabouts;
- refusal or remaining in passivity have the meaning indicated in art. 349 of the Penal Code, but only if they occur as soon as this information was requested; (Dobrinoiu et al., 2012)

i) *imprisonment or other severe deprivation of liberty form in violation of the general rules of international law;*

International law governing that nobody can be deposited or held in a prison, as a prisoner, without a valid order of incarceration issued in accordance with national law. At the same time guaranteeing treating prisoners with respect for human rights. International Criminal Tribunal for the former Yugoslavia (ICTY) was the first instance that defined imprisonment as a crime against humanity, “Kordic and Cerkez” case - “*arbitrary imprisonment, which means the imprisonment of individuals without due process of law, as practice of a systematic attack directed against the civilian population.*” (Cassese, 2003)

j) *persecution of a group or a community determined by fundamental human rights deprivation or severe restriction of the exercise of these rights, on the grounds of political, racial, national, ethnic, cultural, religious, sexual or on other grounds recognized as inadmissible under international law;*

Persecution against any identifiable group or collectivity on political grounds, racial, ethnic, cultural, religious, gender or other grounds universally recognized as impermissible under international law. ICC Statute provides that persecution means “*the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.*”¹

We are in the presence of discrimination action on a particular group based on one of the motives listed in the text of the law.

k) *other inhumane acts also causing great suffering or injury to the physical or mental*, is punishable by life imprisonment or imprisonment for 15 to 25 years and deprivation of certain rights. This wording reveals the illustrative character of legislature and not limiting of the variants of the text of the law, of course, with certain conditions related to the severity of inhumane acts committed. (Boroi, 2011, p. 723)

Therefore, we can allege that the crimes against humanity of the author in any circumstance produce great suffering or physical or mental injuries under a general or systematic attack.

B) The immediate result is to create a state of danger for the civilian population. Also, there can track results such as death, injury etc. of different people.

C) Causation. Between the perpetrator and the following immediate action must be a causal link.

3.1.4. The subjective side. Form of guilt with which commits this offense is direct or indirect intention

Forms. The attempt is punishable. Consuming offense occurs when taking any means provided by law text. The text of the law provided a total of 11 legal ways to commit this crime. Their common assimilated variant in paragraph (2) of art. 439 NCP, consisting of committing acts of paragraph (1) in an institutionalized regime of systematic oppression and domination of a racial group over another, with the intention of maintaining that regime. The penalty for this offense is life imprisonment or imprisonment from 15 to 25 years and deprivation of certain rights.

¹ Statute of the International Criminal Court, art. 7 (2)(g).

4. Conclusions

Criminalization of analyzed offenses categories in this paper represents a real breakthrough in the recognition and protection of fundamental social values that constitute sine qua non for the development of life in a normal manner.

In conclusion, we can say that the significant difference between crimes against humanity and traditional categories of international law: war crimes and crimes against peace lies in the fact that while the latter general category deals with states as subjects of law and respect the principle of national sovereignty, crimes against humanity treats people as subjects of law and affect national sovereignty.

We can say that the safety of human groups, providing life and physical integrity of members of these groups as well as maintaining peace between states should be protected directly proportional to the particular seriousness of crimes against humanity.

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