

INTERNATIONAL CRIMES PROVIDED BY THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

The issue which actions are considered international crimes, is part of international criminal law material. Such definitions are part of the customary law or international conventions. The problem with a clear definition of the notion of international crimes is that they do not originate only in one place, but they are part of a large number of international conventions and we lack of an unification of international law. An additional problem is also the lack of an international penal code, which would be a strong pillar in unifying legislation as well as international practice. In theory by different authors are given different definitions regarding the definition of this notion, which is essentially similar, with the difference of certain elements. International crimes are considered those violations of the rules of international law, which affect the goods and values which are protected by international conventions or are part of the common law, with particular emphasis on the protection of fundamental freedoms and human rights. A very important role in determining and defining the actions that are considered international crimes, have the ad hoc Tribunals, which were established after WWII.

INTRODUCTION

During the development of international criminal law, except the problem of raising the level of mandatory rules of the issue of individual criminal responsibility, the additional problem was to define that for which actions should respond individuals who are subject to individual criminal responsibility.

Even in this context has been the dilemma of whether the principle *nullum crimen sine lege* is respected, that no person may be punished for an act which was not previously provided by the law. A problem that during the trial of Tribunal Nurembergut, persons accused of international crimes have attempted to escape criminal liability on the grounds that the acts for which they were accused are not contained in the law. Wilhelm II using such reasoning has escaped criminal liability, and he took refuge in the Netherlands, this country did not extradited him on the grounds that the acts for which he was accused did not present crimes under Dutch law.

Such dilemmas are clarified with the establishment of the international Criminal Court and now no one can escape criminal liability by invoking a violation of the *nullum crimen sine lege*. The Rome Statute of the International Criminal Court expressly enumerated actions which are considered international crimes, in Article 5 of the Statute of the IJP, are counted the most serious crimes that are a concern to the international community, and they are:

- The crime of genocide;
- Crimes against humanity;
- War crimes
- The crime of aggression

With this Constitution is also stated that ICC exercises its powers and functions in the territory of each State Party, and in the territory of any other State, through a separate agreement.

The establishment of the International Criminal Court is a great achievement for international criminal law, which as a court of a permanent nature, through the Statute and other legal instruments which exploits in the exercise of its powers and functions, is a powerful guarantor that anyone who does international crimes will not remain without being prosecuted. With this eventually are dismissed claims and efforts by certain entities not to be subjects of the international criminal responsibility on the grounds of lack of legal rules or certain actions to be considered as international crimes.

THE CRIME OF GENOCIDE

The Rome Statute of the International Criminal Court defines genocide in Article 6 , as follows : Genocide means any of the following acts committed with the intention of destroying in whole or in part a national, ethnical, racial or religious group, such as :

- Killing members of the group
- Causing serious bodily or mental harm to members of the group intended to bring physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group¹

For the first time the term genocide was used by Raphael Lemkin combining the greek word *genos* (tribe or race) and the latin word *cide* (killing).²

The international military tribunal Chart for the trial of war criminals had not foreseen genocide as a crime which comes within the competence of the Tribunal of Nurnberg.

Genocide as an international crime notion took its autonomous meaning respectively as separate crime in 1948 when the General Assembly adopted the UN Genocide Convention.³ Ad Hoc Hague's Tribunal for crimes committed in the territory of the former Yugoslavia and Rwanda Tribunal made a significant contribution to clarifying the objective and subjective elements of the crime of genocide.

Objective elements of the crime of genocide according to Article 2 of the Genocide Convention are:

- The killing of members (more than one member) which could be called "protected group", i.e. national, ethnical, racial or religious
- Causing serious bodily or mental harm to members of the "protected group"
- The creation of such conditions for group life by imposing conditions for life to be in order to cause physical destruction, full or partial,
- The imposition of measures that impede the emergence within the group and
- Forcibly transferring children of the group to another group⁴

Characteristic of the crime of genocide is that the crime of genocide i.e. victims of this crime are victimized for the only reason that the person is a member of a particular group and not because of the possession of certain personal characteristics.

¹ Statuti I Romës për Gjykatën Penale Ndërkombëtare, <http://www.qpz.gov.al/doc.jsp>, neni 1

² International Criminal Law Kriangsak Kittichaisaree Oxford University Press, 2001, fq 65

³ Antonio Cassese, International Criminal Law, Oxford University Press, 2003, fq.127

⁴ Ibid, fq.133

The crime of genocide is addressed only toward certain groups and from here comes the conclusion that this crime is carried out when the incriminated action is directed toward two or more members of a particular group. Another important issue in the definition of the crime of genocide is the definition of the notion, of which group may be subject to the crime of genocide. The Rwanda Tribunal by convicting and sentencing state and military leaders for genocide has defined what is meant by national, ethnic, racial and religious and also it wasn't limited to these four groups because each group also permanent and stable can be qualified as a group for protection.⁵

In determining criminal responsibility for genocide of a particular individual it is very important the subjective element. The crime of genocide may be committed by an act or inaction and to convict a person for genocide, there must be intent and consciousness of the person that is committing a crime against a particular group with the intention to destroy the group partially or completely.⁶ Subjective elements of intent and awareness to commit the crime of genocide are difficult to prove, but from the summary of all the facts and circumstances that led to the commission of the crime of genocide could conclude whether a person had intentionally and knowingly committed this crime.⁷ With the pronouncement of verdicts are convicted military and state leaders for the crime of genocide, TPNJ and TPNR have contributed much to the clarification of many concepts dealing with objective and subjective elements of the crime of genocide, to describe and explain any act related to the crime of genocide. The Summary and detailed explanation of the elements of the crime of genocide, is to a great relief for the further work of the GJPN, during the establishment of international criminal responsibility for genocide.⁸

CRIMES AGAINST HUMANITY

Under the Rome Statute of the ICC, crime against humanity means any of the following acts when committed as part of a wide and systematic attack directed against any civilian population aware of the attack:

- murder
- extermination
- slavery
- Deportation or transfer of population
- Imprisonment or severe deprivation of physical liberty, in violation of fundamental rules of international law
- torture
- Rape, sexual slavery, forced prostitution, forced sterilization, or any other form of sexual violence of comparable with those
- Persecution of any identifiable group community, on the basis of religious affiliation or gender, or for reasons that are generally recognized as impermissible under international law, related with any act referred to in this paragraph or any crime within the jurisdiction of IJP
- Forced disappearance of persons
- The crime of apartheid

⁵ Principles of International law, Sean D.Marphy, Thomson/West 610/Opperman Drive, 2006, Translation on Macedonian, Ars Lamina, 2011, fq.423

⁶ International Criminal Law Kriangsak Kittichaisaree Oxford University Press, 2001, fq.70-71

⁷ Antonio Cassese, International Criminal Law, Oxford University Press, 2003, fq.142

⁸ International Criminal Law Kriangsak Kittichaisaree Oxford University Press, 2001, fq.81

- Other similar inhumane acts intentionally causing great suffering or serious injury to body, physical or mental health.

Crimes against mankind are crimes against "humanity" which is contrary to the general rules of law and as such it is the concern of the international community. It has repercussions across international borders and to the size and ferocity exceeded all boundaries that tolerate contemporary civilization.⁹ Crime against humanity is a relatively new term and as such in international legal terminology did not exist until the outbreak of the LBD. Although the term crime against humanity is in linked with the war, its pretense is not limited only to war. It can be applied to any inhuman activity conducted before or during the war.¹⁰ The term crimes against humanity has been used since 1915 in the Declaration Day of 9 May 1915 by the governments of France, Britain and Russia, who have judged the massacre of Turkey toward the Armenian population as crime against humanity, for which all the members of Turkish government will take responsibility and its agent who was involved in the massacre.¹¹

After the end of WWII, the Statutes of the Nurnberg and Tokyo Tribunal, were foreseen crimes against humanity and all the actions that make up the image of the crime against humanity were so precisely counted. Within the international law, in general the notion of crimes against humanity includes various actions. Crimes against humanity are terrible crimes, because they pose serious attack on human dignity also humiliation and severe degradation of one or more people. Another feature of crimes against humanity is that they are a particular or flexible, but are a part of a systematic and comprehensive application of inhumane acts that are part of government policy or those as such are tolerated or accepted by the government or any de facto government. Crimes against humanity are prohibited and punishable during the war as well as peace and the victims of these crimes are usually civilians.¹² With incriminated actions as crimes against humanity, are attacked and violated very important goods: as life, health, freedom etc. which represent a fundamental good for the welfare of people, the infringement of which causes considerable damage to all of humanity.

WAR CRIMES

Traditionally war crimes are linked to serious violations committed during an international armed conflict. However, nowadays, most of the legal systems provide that a person can be criminally liable for violations committed during an internal armed conflict.¹³ An attempt to undertake certain actions during combat operations to be prevented, has a long history. Since ancient times it is known that during the war there was a distinction between gunmen and the civilian population.

However, such actions prohibited during the war, were not legally recognized as war crimes until the end of WWII, where Nurnberg Tribunal Charter was anticipated that war crimes are

⁹ Statuti I Romës për Gjykatën Penale Ndërkombëtare, <http://www.qpz.gov.al/doc.jsp>

¹⁰ International Criminal Law Kriangsak Kittichaisaree Oxford University Press, 2001, fq.83

¹¹ International Criminal Law, The Legal and Critical Analysis of International Crimes, Volume I, Fehard Malekian, Borgstroms Tryckeri AB, Motala, Upsala, 1991, fq.263

¹² Antonio Cassese, International Criminal Law, Oxford University Press, 2003, fq.98-99

¹³ Principles of International law, Sean D.Marphy, Thomson/West 610/Opperman Drive, 2006, Translation on Macedonian, Ars Lamina, 2011, fq.420

violations of the right provided by traditional or conventional war.¹⁴ In Rome, Statute of the International Criminal Court, GJPN has jurisdiction over war crimes, especially when committed as part of a plan or policy or committed as part of the high level crimes.

Under the Rome Statute, the GJPN has jurisdiction over these war crimes:
- serious breaches of the Geneva Convention of 12 August 1949, namely, any of the following acts against persons or property protected under the dispositions of the relevant Geneva Convention.

- Deliberate murder
- Torture or inhuman treatment, including biological experiments
- Intentional infliction of great suffering, or serious injury to body or health
- Massive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and merciless
- The obligation of prisoners of war or persons held to serve in the forces of a hostile party
- Intentional deprivation of prisoners of war or other protected person of the right to a fair trial and due
- Deportation or transfer or unlawful punishment
- The taking of hostages
- Other serious violations of the laws and customs applicable in international armed conflict, within the establishment of the international law, namely any of the following acts:
 - Carrying out deliberate attacks against civilian objects, ie objects which are not military objectives
 - Carrying out deliberate attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance or peacekeeping mission in accordance with the UN Charter, when they have the right to protect civilians or civilian objects under the international law, during armed conflicts.

The beginning of intentional attack knowing that such attack will cause incidental loss of life or injuries or damage to civilians or civilian objects, or damage to the mass, long-term and serious natural environment which would be clearly available with concrete expected advantages.

- Attack or bombardment, no matter by what means, of towns, villages, dwellings or buildings which are undefended and which are not military objectives
- Killing or wounding a combatant who has laid down his arms or having no means of protection who is surrendered in trust,
- Improper use of the flag of peace, flag or military symbols and uniforms of the enemy, or the United Nations as well as the hallmarks of the Geneva Conventions, which cause death and bodily injury.
- The direct or indirect transfer by the occupying forces of the parts of its population into the territory it conquered, or the deportation or transfer of all, or part of the population of the occupied territory within or outside this territory
- Carrying out deliberate attacks or for humanitarian purposes, historic monuments, hospitals and places where the sick gather wounded who are not military objectives

¹⁴ International Criminal Law, The Legal and Critical Analysis of International Crimes, Volume I, Fehard Malekian, Borgstroms Tryckeri AB, Motala, Upsala, 1991, fq.101

- Subjecting persons who are in the power of the opposing party, executing physical mutilation, human or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the person concerned, nor carried out in the interest of his or her personal and which cause death or seriously risk the health of such person or people.
- Killing or wounding treacherously individuals belonging to the hostile nation or army
- Statement that offered no shelter
- Destruction or seizing the property of the enemy, only if such destruction or seizure of property, required because of the necessity of war
- Disclosure in court of rights and actions hostile party members to participate in combat operations forced against their own country, even if they have been in service combat before the war
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- Pillaging a town or place, even when it is taken with assault
- The use of poison or poisoned weapons
- Use of stifling gases, poisonous or other liquids, material or equipment similar to them
- The use of bullets which expand or easily scatter in the human body, such as bullets with strong coils, which do not cover the whole inner part or who are cutting
- Use of weapons, projectiles, material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering, who are negligent peculiarity, violating international law of armed conflict, provided that such weapons, shells, material, and fighting methods are banned completely and be included in a supplement to this statute
- Exercise of violence upon personal dignity, in particular humiliating and degrading treatment
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also represent a serious breach of the Geneva Conventions
- Utilizing the presence of civilian staff or other protected person to submit items, regions or military forces, military operations inviolable.
- Carrying out direct attacks against buildings, material, medical units and transport, and personnel using the distinctive signs of the Geneva Conventions in conformity with international law
- Deliberate use of civilians suffering from starvation as a method of war, by depriving them of objects indispensable to their survival, including willfully impeding supplies as shown in the Geneva Convention
- Recruitment and enrollment of children under the age of 15 at the national armed forces or using them to participate actively in conflicts
- In case of armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, whichever of the following acts committed against persons who do not participate directly in the conflict, including members of armed forces who have laid down their arms and are located outside the battlefield due to sickness, wounds, detention or any other cause
- Violence against life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
- Committing abuses upon personal dignity, in particular humiliating and degrading treatment
- The taking of hostages
- Provision of sentences and the carrying out of executions without a court decision announced by the court established on a regular basis, that provides all the judicial guarantees

generally recognized as indispensable

- Actions such as violence against life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, enforced in armed conflicts not of an international character, and therefore does not apply to situations of internal disturbances and tensions, such as rebellions, isolated and sporadic acts of violence or other acts of a similar nature. Other serious violations of the laws and customs applicable in armed conflict, which do not have an international character, within the established international law, namely any of the following acts:

- Carrying out deliberate attacks against buildings, material, medical units and transport, and personnel using the distinctive signs of the Geneva Conventions in conformity with international law

- Carrying out deliberate attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are in defense of civilians or civilian objects under international law of armed conflict

- Intentional conduct attacks against buildings dedicated to religion, education, art, science or humanitarian needs, historic monuments, hospitals and places where the sick and wounded, who are not military objectives

- Pillaging a town or place, even when taken by assault

- Committing rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, which also represent a serious breach of Article 3 common to the four Geneva Conventions.

- Recruitment and enrollment of children under 15 in the armed forces, or using them to participate actively in conflict

- Direction of displacement of the civilian population for reasons of connection with the conflict, unless when this is required by the security of the concerned civilians or of very important military reasons

- Killing or wounding treacherously a combatant adversary

- Statement that offered no shelter

- Submission of persons who are under the control of the opposing party to physical mutilation or medical or scientific experiments of any kind which are not justified by medical treatment, dental or hospital treatment of such persons nor carried out in the interest of his or her personal, and which cause death or seriously endangering the health of this or these persons

- Destruction or seizure of enemy's property, unless such destruction or seizure of property definitely required because of war needs

- Carrying out deliberate attacks against buildings, material, medical units and transport, and personnel using the distinctive signs of the Geneva Convention in accordance with international law applicable in armed conflicts not of an international character, but does not apply in situations of unrest internal riots and tensions, such as insurrection, isolated sporadic violence or other acts of this nature.

It applies to armed conflicts in the territory of the state, when it comes to protracted armed conflict between governmental authorities and organized armed groups, or between the groups themselves.¹⁵

The inability of the international community to prevent wars and armed conflicts, it was necessary that at least the humanitarian actions be taken during their development. Humanitarian process of wars, intensified particularly after WWII

¹⁵ Statuti I Romës për Gjykatën Penale Ndërkombëtare, <http://www.gpz.gov.al/doc.jsp>

brought to the codification of war crimes in the four Geneva Conventions in 1949.¹⁶ So through various Conventions that were adopted in the process of humanism war and through the Statutes of the International Criminal Tribunals and the Rome Statute of the GJPN, the provisions relating to the incrimination of international crimes are up at supranational and as such are obligatory for most countries in international law and with an impossibility that they can be modified or amended.

THE CRIME OF AGGRESION

The crime of aggression, ie the beginning and development of aggressive war as an international crime has gone through an evolutionary process. After WWII, the Statute of the International Military Tribunal in 1945, the Nurnberg Tribunal developed the activity in the tripartite classification in international crime, which classifies the crime as essential work against peace, treatment which has left this crime in all subsequent regulations in international criminal law.¹⁷

General Assembly of the United Nations accepted the definition, in defining the crime of aggression as a crime against peace and its application of the international military courts who judged war criminals, while in 1974 the General Assembly accepted the UN resolution which contained the definition of the crime of aggression.¹⁸ Rome Statute of the International Criminal Court, in the Article 5 foresees the crime of aggression as a crime under its jurisdiction, but conditions with the approval of an additional amendment that would define the notion of the crime of aggression and establish the conditions under which the Court shall exercise jurisdiction according to that crime.¹⁹ Mostly in literature, the notion crime of aggression is defined based on the common international law or the so-called general principles of law recognized by civilized nations in the international community.

In literature are known objective and subjective elements of the crime of aggression. Under international common law objective elements count to be organization, preparation and participation in the use of violence on the initiative of a state or organization outside the state, or even by any other ethnicity organized against the territorial integrity or political independence of another state, and contrary to UN Charter, certain actions of aggression should be to a large size and cause serious consequences. Also to calculate an act a crime of aggression, as a subjective element of the crime of aggression, there must necessarily be the criminal purpose, as a subjective element of the crime of aggression. It must be proven that the perpetrator had intended to be participator of the planning and carrying out the aggression. He was aware of the involvement, significance and consequences of the taken actions, and significantly contributed to shaping or influencing the plan or the leadership of aggression.²⁰

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¹⁶ Vlado Kambovski, E drejta penale ndërkombëtare, Prosvetno delo, Shkup, 1998, fq.264-265

¹⁷ Ibid, 267

¹⁸ Antonio Cassese, International Criminal Law, Oxford University Press, 2003, fq.152

¹⁹ Statuti I Romës për Gjykatën Penale Ndërkombëtare, <http://www.gpz.gov.al/doc.jsp>

²⁰ Antonio Cassese, International Criminal Law, Oxford University Press, 2003, fq.158-159

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