

Some Aspects regarding the Crime against Humanity

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ABSTRACT: The crime against humanity is also part of the category of international crimes. The paper briefly presents the evolution of these illicit deeds, as well as the transition from the theory of international law to the practical approach. Serious deeds define this category of crimes that affect both people's life and physical and mental integrity. One of the conditions of crime against humanity is the civilian population, against which the attack is directed. An important role was played by the International Military Tribunal at Nuremberg, which tried the Trial of the Main War Criminals, paving the way for establishing an International Criminal Court with unlimited jurisdiction in The Hague.

KEYWORDS: massacre, illicit deeds, criminal offence, International Military Tribunal, persecution

Introduction

The international crime has been classified in the category of illicit acts committed by states through their authorized representatives or by private persons in their own name, but imputable in all cases, under the aspect of criminal sanction, to natural persons, so it can be defined as a deed consisting of in an act or omission committed with guilt, by a person as an agent of the State or in his own name and interest, in violation of the law and interests protected by international law and sanctioned by his incrimination by international law (Barbu 2015, 13-14).

The phrase “crime against humanity” is first mentioned during the Armenian massacre, but will be precisely defined in international law during the Nuremberg trials. The use of the term genocide, invented by the Polish Jew Raphael Lemkin, will also be introduced, which will then be adopted by international organizations.

This crime, defined as “the systematic destruction of a national, ethnic, racial or religious group”, will be codified by the United Nations General Assembly in the 1948 Convention on the Prevention and Suppression of Crimes of Genocide.

As early as 1915, the Allied governments of France, Britain, and Russia spoke of “crimes against civilization” and “crimes against humanity”, terms used in the Treaty of Sevres about the massacre of the Armenian population by the Turks. This legal wording will be adopted in the trials of the Martial Court of the Turkish court against those responsible for the crimes. But after the Second World War and the tragedy in the Holocaust, there is a need to identify and define precisely, in international law, crimes against humanity.

The term genocide, coined by Raphael Lemkin, defined as “the systematic destruction of a national or ethnic group” is beginning to be used in legal language.

The agreement, signed in London on August 8, 1945, between the United States, France, Great Britain and the USSR, includes genocide in “crimes against humanity,” which in turn are included in the broader category of “international crimes”. Between November 20, 1945, and October 1, 1946, the - International Military Tribunal at Nuremberg judged Nazi leaders.

The charges under the jurisdiction of the Court are: crimes against peace against those responsible for the war of aggression, war crimes based on the principle of individual criminal responsibility and crimes against humanity or crimes, extermination, enslavement, deportation and any inhuman act committed against civilians, before or during the war, persecutions that violated the law of the country in which they were committed (it.gariwo.net).

The evolution of crimes against humanity and crime-fighting institutions themselves

The history of crimes against humanity is even older than that of rights. These range from the massacre of the Ilots by the Spartans, which took place during the Peloponnesian War, to that of 388 AD, which took place at Callinico on the Euphrates and was carried out by Christians against the Jewish community; to the cruel repression of the Thessalonica rebellion, which cost Theodosius a year of “fasting” in the sacraments, imposed by Bishop Ambrose.

In 1474, Peter Von Hagenbach, the Grand Executor of Alsace, was brought to trial by Sigismund of Hamburg for exercising power in a tyrannical and cruel manner, provoking the rebellion of the city of Breisach. He was charged with murder, rape, perjury, and other offenses “in violation of God’s laws”, and was sentenced to death for such evils.

On October 20, 1827, the Turkish-Egyptian fleet was attacked without warning and destroyed by the Anglo-French-Russian naval team, as on August 16 of the same year, the sultan had rejected the ultimatum of France, the United Kingdom and Russia to end the persecution of the Greeks. The persecution of the Jews, whose history coincides with that of the people themselves, must be taken into account. In the twentieth century, the subject of human rights was the privileged object of attention not only of philosophers, political scientists and utopians, but also of statesmen.

At the end of the Great War, a “Commission on the Responsibilities of Warlords and the Application of Sanctions” was set up, and clauses on punishment were inserted in the Treaties of Versailles and Sevres: the Emperor of Germany, William II, guilty of “a very serious crime of international morality and the sacredness of the treaties”; Turkish leaders responsible for the extermination of Armenians and, in general, anyone responsible for a serious crime.

With the end of World War II, human rights justice will move from the theory of international law to the practical level. In fact, immediately after the war, the “Nuremberg Trials” took place, a fundamental event in the history of human rights and in the punishment of crimes against humanity (www.rassegnapenitenziaria.it).

Conditions for withholding the crime

The category of crimes against humanity includes serious, concerted acts that harm the life, physical and mental integrity of people (Paşca 2020, 112). A special achievement in international criminal law was, on the one hand, the full implementation of the principle of legality, and on the other hand, the creation of a permanent international criminal jurisdiction. In this sense, in Rome, in 1998, the establishment of the Permanent International Criminal Court was approved (www.studiperlapace.it).

Article 7 of the Statute of the International Criminal Court defines crime against humanity including acts committed intentionally in the context of a large or systematic attack on the civilian population, such as: murder, extermination, slavery, deportation or forced transfer of population, imprisonment or other form of serious deprivation of personal liberty, in violation of the fundamental provisions of international law, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence, persecution of any identifiable group or community for political reasons, racial, national, ethnic, cultural, religious, sexual, enforced disappearances, the crime of apartheid, other inhumane acts of an analogous nature intentionally causing great suffering or serious harm to physical integrity or physical or mental health (<http://www.iustitiaetpax.va/>).

Crimes against humanity, constituting an attack on life, bodily integrity, liberty, honor and human dignity, are provided in the criminal law of all countries as common law crimes (Barbu 2015, 91). The generalized and systematic attack consists in committing multiple acts, a single act not being sufficient for the retention of the crime, but it can be classified as such, insofar as it consists in several of the conducts described in art.7 par.1 of the Statute (for example, murder, torture).

Civilian population

Another condition for the existence of the attack is to target the civilian population, an element that will make it easier to distinguish in relation to most war crimes targeting combatants. According to the *Introduction* from art. 7 of the *Elements of Crimes*, “the attack against a civilian population” designates the conduct that involves several acts from those provided in art. 7 par. 1 of the Statute, committed against civilians in applying or supporting the policy of a state or an organization, aiming at such an attack (Nițu 2020, 177-178).

The civilian population consists of a group of people, located on a well-defined geographical and political territory (Trunchici 2009, 209).

The specific **material element** of this category of crimes against humanity consists in committing acts that have a special characteristic, related to the contextual circumstance (Jarka 2006, 64) in which they are committed, namely, widespread or systematic attack directed against the civilian population (Barbu 2015, 46). The systematic attack can also be the periodic, regular attack, repeated at different intervals, in the realization of a plan to liquidate the civilian population.

Crimes against humanity are characterized by the scale and systematic nature of the attack. The attack takes the form of human acts, being the result of a policy of terror, are preconstituted and are directed against a significant number of people (Pașca 2020, 116).

Crimes against humanity are distinguished by the action that constitutes the material element, being provided in the incrimination text in the form of alternative modalities, as follows:

a) Murder

“Murder is a crime against humanity when it is committed in a widespread or systematic attack on a civilian population and in the knowledge of such an attack” (Art. 7 para. (1) letter a) of the Statute of the International Criminal Court)

In order to prove the guilt of a person, the International Criminal Court has held that it is not necessary to prove the existence of a corpse, but it is sufficient to accurately describe the deceased person (Pașca 2020, 119).

b) *Extermination* differs from the crime of murder, as it aims to kill a significant number of people, without specifying their minimum number.

The victims of the attack must be from the civilian population.

c) *Deportation or forced transfer of population*

The crime is defined in the “Elements of Crimes” as the act of deportation or forced transfer, without a legal basis, to another state or another place, by expulsion or other coercive means. The transfer action does not have to be accompanied by physical aggression, the general coercive context being sufficient to determine a person to accept the move.

The person's decision to leave the home or city of residence may be the consequence of another coercive act of a psychic nature, such as the threat or fear caused by the destruction of civilian property by bombing or arson.

Moving a person away from his/her residence aims at depriving him/her of the prerogatives of the property right over the owned property.

d) *Rape. Sexual slavery*

The Criminal Tribunal for the Former Yugoslavia was the first international criminal tribunal to include rape as a crime against humanity.

The crime of rape, according to the International Criminal Court, is a form of physical aggression in order to intimidate, sanction or ridicule a person.

Rape is considered a form of dishonoring and terrorizing a defenseless woman.

Rape must take place during a widespread or systematic attack on the civilian population.

Sexual slavery involves the exercise of one of the prerogatives of property rights, namely the purchase, sale, loan or exchange of persons for the purpose of subjecting them to acts of a sexual nature (Pașca 2020, 119-122).

e) Persecution of any identifiable group or community for political, racial, national, ethnic, cultural, religious or sexual reasons or in accordance with other criteria universally recognized as inadmissible under international law

The persecution of any identifiable group or community for political, racial, national, ethnic, cultural, religious or sexual reasons constitutes a crime against humanity (Article 7 (1) (h) of the Statute of the International Criminal Court).

Persecution can take various forms: extermination, imprisonment, forced transfer, destruction of homes, destruction of places of worship or any other property identifiable with the persons concerned in order to lose their identity. Persecution cannot take the form of an isolated act. These must be translated into orchestrated and systematic acts (Pașca 2020, 123).

Subjects of the crime

The active subject of the crime is not qualified, and can be any natural person, criminally responsible. Leaders, organizers, provocateurs or accomplices who took part in the elaboration or execution of a concrete plan or a plot to commit the crime against humanity, are responsible for the acts committed by all persons involved in the execution of this plan (Pașca 2020, 91-92).

At the same time, the international community (Fuerea 2002, 203) has adopted procedural tools to punish those guilty of crimes against humanity (Barbu 2015, 92). The active subject of the crime must act in full knowledge against the civilian population. The knowledge of the deed can be deduced from objective factual circumstances.

The motive for crimes against humanity is a policy of persecution or extermination of a hostile population on ethnic, racial, political or religious grounds. The motive for the crime can also be pecuniary in nature, in order to punish the enemies or their sympathizers, in the context of committing other crimes (Pașca 2020, 124).

The plurality of criminals is possible in all aspects, because we are dealing with a generalized or systematic attack.

The main passive subject is plural, because it is made up of all the people who make up the civilian population against whom the crime against humanity is directed.

The crime can also have a **secondary passive subject**, in the person of the one who is the direct victim of the generalized or systematic attack (Barbu 2015, 92).

Conclusions

After the Second World War, there were also crimes against humanity, defined as particularly serious acts of violence, committed by terrorist organizations, separatist movements of other types, acting for political, racial, national, ethnic or religious purposes.

If we analyze each type of crime separately, we can see that the provisions of the Statute must be corroborated with the Constitutive Elements of Crimes. Crimes such as murder, slavery, deportation, extermination are the most serious crimes against an individual or a human group. These crimes are provided in the criminal law of each country as actions of common law, constituting an attack on life, bodily integrity, freedom and human dignity.

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