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INTERNATIONAL CRIMINAL LAW AND AR (AZERBAIJAN REPUBLIC) LEGISLATION GENOCIDE CRIME AND ITS COMPARATIVE ANALYSIS WITH OTHER INTERNATIONAL CRIMES

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Açar sözlər: *beynəlxalq hüquq, beynəlxalq cinayət hüququ, genosid, müharibə hüququ, transmilli cinayət*
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International Criminal Law (ICL) – It is the system of norms that determine and regulate the mutual relations of states in the crimes against crime. In this sense, international criminal law is essentially independent of the type of crimes committed. It covers the complex norms that regulate the solution of problems related to extradition and jurisdiction, which regulate the relations between law enforcement and judicial authorities of various states on issues such as mutual aid, cooperation, etc.

According to another approach, when it comes to international criminal law, it is understood the system of norms governing the prevention and elimination of criminal activity that is specific to international social dangerousness, as well as the relations between international issues and other issues of states and individuals. Often this type of criminal activity belongs to genocide, rape, anti-human crimes and war crimes, as well as international crimes prohibited by international conventions - for example, piracy, transnational organized crime, illegal circulation of drugs, terrorism and so on [1].

International criminal law in terms of historical formation and development is a relatively new area of international law. He began to establish on the basis of the statutes of the international military tribunals (Nuremberg and Tokyo tribunals) established for the judgment of the main war criminals of Germany and Japan. It is true that the norms of the revised area have existed until then. Especially according to Roman law, sea pirates were considered enemies of all humanity (hostis humanis Generis) [2]. After the Second World War, new compositions of international crimes occurred. These were anti-human crimes and anti-peace crimes. These new crime compositions, including war crimes, have been identified as founders of the international military tribunals of Nuremberg and Tokyo. Like the subcategory of crimes against humanity, genocide which entered the legal circulation, was known as an independent international murder composition as convolution in 1948.

International criminal law has its own characteristics as a field of law. Examples of these are: 1) ICL contains rules that belong to both criminal rights and criminal justice law, as well as court structure. For example, the founding of the Yugoslavia and Rwanda tribunals and the statute of the International Criminal Court, together with the material norms, the court structure and process-related provisions were determined. 2) As is known, in national crime law, the legislature only determines the criminal status of any deed and its punishment within the framework of the same norm. In international criminal law, although the interstate agreements reveal the criminal character of any deed, they expose the issue of concrete sanctions. The absence of the type and size of the penalty in international conventions is based on the concrete penalty measure after the crime or the national courts or international courts. Persons known to be guilty of committing international crime in article 77 of ICC's Statute: indefinite imprisonment, calculated on the number of years, most of which does not exceed 30 years; Penalties such as life imprisonment, fines and property confinement may be applied**[7]**. It should be noted that an international criminal court (tribunal) operating today does not have the power to impose a death sentence. 3) Criminal liability of persons who have committed international crimes can be exercised both by international crime courts and national courts. These criminals can be applied both directly to international law rules and to accepted national law rules for their implementation.

At the same time, it should be noted that the ICL specification is manifested in the specificity of its sources. The important feature of the sources of the International Criminal Law is that there is no single assembly here. It is also stated in the related legal literature that the main criterion for the recognition of modern international crime law as the only field of law is the adoption of the International Criminal Code, which essentially provides for the full content of international crimes and international crimes (transnational crimes).

The main source of ICL is international agreements. Most of these agreements are divided into contracts that determine the concrete content of international crimes (genocide, torture, etc.) and contracts with ICL-related provisions (such as the Law of the Sea, etc.). In addition, the regulations of international tribunals and international organizations are accepted as the source of ICL's international rules of law (Statute of ICC, Nuremberg, Yugoslavia, Rwanda tribunals, Regulations of Interpol etc.), bilateral agreements, national legal minutes in the auxiliary resource section, court decisions.

ICL is still the rudimentar field of law. The gradual expansion of the right to property crime is a complex process. When a new type of international crime was created, its components (objective and subjective aspects of the crime or, in other words, actus reus and mens rea) were not immediately clarified. Furthermore, the concrete type of punishment has not been established in international law. ICL is essentially a hybrid legal area. It is the international general law that has introduced the concepts, principles, and legal structures that take its beginnings into national crime and human rights.

The legal basis of the implementation of international law, especially international crime law, in the legislative system of Azerbaijan Republic(AR) is determined in the Azerbaijan Republic(AR) Constitution. It is stated in the second paragraph of Article 148 of the AR Constitution that the international agreements to which AR is a party are an integral part of the AR legislative system [3, act 148]. This means that the AR has chosen the method of incorporation regarding the national implementation of international agreements. The article shown provides for the overall incorporation of all international conventions, that is, not only between states, but also governments.

It should be noted that the international legal norms are fulfilled by two conditions in order to ensure that they apply directly to a state (as well as AR) legal system - acknowledgment of their obligation to the state (mainly through approval or accession); and 2) It is mandatory to be published in the official press. On the issues of AR approval, the AR Constitution and the "Republic of Azerbaijan on the rules of international agreements, implementation and abolition" are regulated by the Law of 13 June 1995. The ratification is carried out by the Milli Majlis (National Assembly) of the Republic of Azerbaijan by adopting a special law on ratification [3, act 94].

AR Constitution refers to international agreements (also intergovernmental contracts) that set rules different from the rules stipulated in AR laws. These are the contracts that determine the content of international crimes and international crimes, that is, contracts that are included in international criminal law. Moreover, the final provisions of all international agreements it has made in the field of combating AR crimes are designed norms for their ratification.

AR crime legislation consists only of the Criminal Code, amendments to the Code during the enactment of international regulation of criminal legal significance can be done in two ways: 1) Reception, that is, direct inclusion of provisions of the international law into the Criminal Code; 2) transformation, that is, the amendment of the provisions of the Criminal Code in accordance with the rules of the international legal contract.

Thus, according to the demand of the AR Constitution, the crime should include changes in the international act crime law character. I think that such international legal norm should be included in the law of the Republic of Azerbaijan Criminal Code, or otherwise, in approving the international agreement with the same law. Finally, we conclude that national legal systems cannot be effectively implemented, especially in international criminal law norms without the "involvement" of national crime law.

The adoption of the Constitutional Law on the implementation of international crime law norms back in 2006 should be seen as a major success of the integration of ICL and AR crime law. Here, the AR Military Prosecutor's Office based on this Law, in 2007, abolished the lawsuit related to the 1992 Khojaly Genocide by keeping guide 103 of the AR Criminal Code.

The term “genocide” (greek-genocide-lineage, tribal or genesis-origin, noble, derivative and Latin-caedere - kill) is owned by the lawyer-criminologist, professor Rafael Lemkin. He used this term in "Axis Rule in Occupied Europe" in 1944 and "Genocide as Crime Under International Law" published in 1947. Professor Lemkin, who attended the 5th Congress in October 1935, as part of the international crime law, proposed to proclaim the «delicitio juris gentium» for the destruction of ethnic, religious and social associations that existed as "formal anonymous crimes". He divided such actions into two groups: 1) physical and social aggression as members of the same community, and 2) distribution of cultural blessings (vandalism). Professor Lemkin also presented an international contract clerk on responsibility for such crimes at the conference. R.Lemkin wrote in his own work: "Under the name of genocide" we understand the destruction of national or ethnic groups. Generally, it is not compulsory to suddenly destroy the relevant group targeted for genocide. Rather, it undermines the coordinated action plan to demolish the principles of

the existence of national groups in order to root out these groups. The composition of such a plan consists of the political and social institutions, the elimination of the economic foundations of language, culture, religion, national essence, the existence of national groups, as well as the deprivation of the liberties, health, liberty and liberties of the people of these groups [4]. "

Genocide is directed against national groups like a complete whole, and movements against people are treated as members of national groups, not as a separate person.

The genocide crime has evolved and developed a little late in terms of "classical international crimes", in other words from rape, war crimes and crimes against humanity, in terms of its independent components and normative-legal determination. Nevertheless, the mass killing of people with the intention of destroying them completely or partially based on belonging to any fixed group has always been considered by the international community as a rather severe form of crimes against humanity, a separate term for this crime was found only in 1944. Even the crime of genocide was not criminalized in international law during the Nuremberg process [4]. Accordingly, the mass destruction of the Jews and representatives of other ethnic groups was advised by the Tribunal as anti-human crime (subcategory type).

An important step in the field of banning genocide in international legal context as a mode of behavior, its separation in the independent international crime part and also generating international personal criminal responsibility coincides in the late 40s of XX century. The fact that the genocide crime, which is characterized as a refusal to recognize the right of the existence of full groups of people, gives rise to personal criminal responsibility was first determined in the UN resolution 96 (I), adopted on 11 December 1946. Later, noticed that, that genocide is an international crime that carries the national and international responsibility of individuals and states [5].

The final registration of the components of the genocide crime and the prohibition on international level was completed with the adoption of the 1948 «Convention on the Prevention and Punishment of the Crime of Genocide». According to Article II of the Convention, genocide means any of the following acts committed to eliminate any national, ethnic, race or religious group as a group, in whole or in part: a) Killing members of this group; b) causing serious bodily injury or mental capacity to members of this group; c) Intentionally creating the living conditions for this group, in part or in part, for physical destruction; d) implementing measures to prevent childbirth within the group; e) Forcing children from one of the group to another group by force [6, art. II].

As can be seen, the concept of genocide consists of two important elements: 1) necessary intent and 2) prohibited ambition. In order for genocide to occur, there must be a manifestation of the intention to completely or partially destroy any concrete group. Like the sympathetic sign of the crime of genocide, intent essentially includes several important aspects: 1) intent should consist of the destruction of the group, not one or more individuals belonging to this or other concrete group by chance. In other words, the individual does not have a personality, his membership in a certain group is the determining criterion for the appointment of the victims of this crime; 2) the intention should consist of destroying the group as a group, as a separate group different from others; 3) the intention should consist of the partial or complete destruction of the group;

The well-known international criminal scientist Antonio Casseze calls the genocide an independent international crime because of its particular composition, primarily its unique subjectivity (dolus specialis-special intention).

In the international legal literature and in the practice of international crime tribunals, genocide is presented as the heaviest international crime, they even call it "crimes of crime".

The UN International Court, and then in Yugoslavia (Krstic case) and Rwanda (Akayesu case), recognized international crime tribunals as part of the international law of law, based on the 1948 Convention, even if there is no contractual obligation, they have examined the prohibition of genocide as the "jus cogens" norm which is binding for all states.

The crime legislation of almost all states in the world repeats the definition of genocide shown above. This definition is reflected in the Statute of the founder and ICC, the Yugoslavia and Rwanda tribunals, without modification. I also understood that genocide takes place not only during the direct processing of one of these works, but also in accordance with Article III of the «Convention on the Prevention and Punishment of the Crime of Genocide»: 2) direct and open incitement to genocide processing; 3) attempting to commit genocide; and 4) taking part in genocide [6, art. III].

In practice, they sometimes refer to the crime of genocide as an anti-human crime, or crimes against humanity as war crime. But no matter how similar these murders are, they differ from each other according to their composition. In the ICC Statute, the components of these murders have been corrected once again,

and the status of the International Criminal Court is judged by being various components of genocide (article 6), crimes against humanity (article 7), war crimes (article 8).

The necessary intent and banned ambitions that characterize the crime of genocide make it different from other relevant international crimes, first of all war crimes and crimes against humanity.

War crimes are the kind of reporting concept that includes all serious violations of the laws of war and customs, killing or injuring people who were not involved in military operations first. It also covers the deportation of civilians to attract slave labor, the destruction or devastation of cities, villages and towns without military obligation.

These actions, of course, may include various genocide arrangements, but only in the context of war. The concept of genocide is very, very broad. Genocide can be committed against its own citizens and foreigners, civilians or combatants. He is limited to the harsh demands of military necessity. That is, crimes against humanity remained, it is not compulsory that this murder should be directed against such groups as a group [9].

In general, the objective aspect of anti-human crimes is quite broad and involves jobs of various qualities. According to ICC Statute, two important conditions are required to recommend any deed as an in human crime: 1) the ambition must be systematic or large-scale; 2) ambition should be encouraged or guided by the government or any institution or group [7, art. 7].

As we mentioned above, genocide has a broader meaning by having different features than war crimes. It can be used against citizens, strangers, civilians or warriors. Genocide is not limited to the strict requirements of military necessity. The main difference concerns the genocide motivation criteria. So much so that genocide should happen in order to completely or partially destroy any concrete group. It is true, this is also possible during military operations. The crime of genocide can cause against both humanity both in peace and war environment. National, ethnic, racial or religious groups are seen as victims of this crime [8].

Although genocide crime reflects all or partly destructive activities of any national, ethnic or religious group without being limited to the war situation, crimes against humanity are considered as part of a systematic attack against the peaceful civilian population as a result of state policy and activities. The judiciary of the International Criminal Court belongs to criminal acts against humanity if they are committed in size or systematically against any national, ethnic or religious groups, but against civilians or persons in general.

The acts that constitute the crime of genocide are the result of conscious and previously thought general plans and policies. Genocide is not held by chance or as a result of needlessness. Referring to the execution of the order in the genocide murder does not save people from responsibility. The guides are responsible according to the fact that they have put the actions into practice to prevent the crime of genocide [10].

Expiration of criminal liability for the crime of genocide also does not apply. Since retroactivation of the law on genocide murder is given way, prosecution and punishment of people who committed genocide crime is inevitable.

Literature

1. "Genocide as crime under international law" (Rafael Lemkin, 1947)
2. “Histories of Transnational Crime”, (Gerben Bruinsma, 2015)
3. “Constitution of Azerbaijan” (“Law” publishing house, 2018)
4. "Axis Rule in Occupied Europe" (Rafael Lemkin, 1944)
5. “The UN General Assembly Resolution 180 (II)” (November 21, 1947)
6. “Convention on the Prevention and Punishment of the Crime of Genocide” (1948)
7. “ICC Statute (ICC “Roma” Statute, 1998)
8. “Handbook of transnational crime and justice” first edition (Philip L. Reichel, 2004)
9. “Handbook of transnational crime and justice” second edition (Jay S.Albanese, Philip L.Reichel, 2014)
10. “Transnational organized crime” (Jay S. Albanese, Philip L. Reichel 2013)

Beynəlxalq cinayət hüququ və AR qanunvericiliyi
Soyqırım cinayəti və onun digər beynəlxalq cinayətlərlə müqayisəli təhlili
Xülasə

Beynəlxalq cinayət hüququ (BCH) – cinayətkarlıqla mübarizə sferasında dövlətlərin qarşılıqlı münasibətlərini müəyyən edən və tənzimləyən normalar sistemidir. Bu mənada beynəlxalq cinayət hüququ özündə törədilmiş cinayətlərin növündən asılı olmayaraq ekstradisiya və yurisdiksiyaya dair münaqişələrin həllini, müxtəlif dövlətlərin hüquq-mühafizə və məhkəmə orqanları arasında qarşılıqlı yardım, qarşılıqlı fəaliyyət və s. məsələlər üzrə münasibətləri nizama salan kompleks normaları əhatə edir.

«Soyqırım» «genocide» termininin (yunanca- genos – soy, tayfa və ya genesis – mənşə, əsil, törəmə və latınca-caedere – öldürmək) müəlliflik hüququ əslən polyak olan hüquqşünas-kriminoloq, professor Rafael Lemkinə məxsusdur. O, bu termini 1944-cü ildə «Axis Rule in Occupied Europe» (İşğal olunmuş Avropada əsas qayda) və 1947-ci ildə nəşr olunmuş «Genocide as Crime Under International Law» əsərlərində istifadə etmişdir. Soyqırım cinayəti özünün müstəqil tərkib ünsürlərinin formalaşması və normativ-hüquqi təsbiti baxımından «klassik beynəlxalq cinayətlər» içərisində, yəni - təcavüz, müharibə cinayətləri və insanlıq əleyhinə cinayətlərdən fərqli olaraq, zaman baxımından bir qədər gec meydana gəlib inkişaf etmişdir.

Международное уголовное право и законодательство АР (Азербайджанская Республика)
Преступление геноцида и его сравнительный анализ с другими международными преступлениями

Резюме

Международное уголовное право (ICL) - это система норм, регулирующих предупреждение и пресечение преступной деятельности, которая специфична для международной социальной опасности, а также отношений между международными проблемами и другими проблемами государств и отдельных лиц. Часто этот вид преступной деятельности относится к геноциду, изнасилованиям, преступлениям против человека и военным преступлениям, а также международным преступлениям, запрещенным международными конвенциями. ICL все еще остается зачаточной областью права. Постепенное расширение права на собственность преступление является сложным процессом. Когда был создан новый тип международного преступления, его компоненты (объективные и субъективные аспекты преступления или, другими словами, actus reus и mens rea) не были немедленно выяснены.

Термин «геноцид» (греческий – геноцид – происхождение, племенной или генезис – происхождение, благородный, производный и латинский caedere – убийство) принадлежит адвокату-криминологу, профессору Рафаэлю Лемкину. Он использовал этот термин в «Правиле оси в оккупированной Европе» в 1944 году и «Геноциде как преступлении по международному праву», опубликованном в 1947 году. Преступление геноцида развивалось и развивалось немного позже в терминах «классических международных преступлений», другими словами, изнасилования, военных преступлений и преступлений против человечности, с точки зрения его независимых компонентов и нормативно-правового определения.

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