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THE HISTORICAL REVIEW OF CRIMINAL AGAINST HUMANITY

Abstract

In today's world, there is a greater need to strengthen international control and improve systems for peaceful conflict settlement. To a certain extent, reforming international justice, including increasing the effectiveness of the International Court of Justice can solve this problem. After the first and Second World Wars, the establishment of the UN International Court of Justice (ICJ) was necessary for providing legal assistance to states in order to ensure peace both, at the national and international levels. The International Court of Justice (ICJ), commonly known as the "World Court," is tasked with resolving international law disputes submitted to it by states. The significance of the International Court of Justice's foundation and its historical need will be addressed in this article.

Key words: *international, criminal, international criminal, International Court of Justice, history of World Court.*

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İNSANLIQ ƏLEYHİNƏ CİNAYƏTLƏRİN FORMALAŞMASINA TARİXİ BAXIŞ

Xülasə

İnsanlığ əleyhinə cinayətlər – qəsdən öldürmə, qəsdən xəsarət yetirmə, işgəncə, əzab və ya əsarət, şəxs azadlığından məhrum etmə, elmi təcrübələrə məruz qalma, cinsi təcavüz, uşaqlara qarşı cinsi istismar, məcburi hamiləlik, məcburi fahişəlik. Bu, cəmiyyətin bir hissəsinə qarşı bir plana uyğun olaraq siyasi, fəlsəfi, irqi və ya dini motivlərin sistematik şəkildə işlənməsidir.

Bu konsepsiya İkinci Dünya Müharibəsindən sonra geniş istifadə olunur. Bu termin ilk olaraq 28 may 1915-də İngiltərə, Fransa və Rusiyanın, Türkiyədəki ermənilərin qətl edildikləri iddiasıyla nəşr etdikləri bəyannamədə yer almışdır. İkinci Dünya Müharibəsindən sonra qəbul edilən Nürnberq Beynəlxalq Hərbi Cinayət Məhkəməsinin yurisdiksiyasında (şəlahiyyətində) bəşəriyyətə (insanlığa) qarşı cinayətlər də sayılmışdır. Tərif və əhatə dairəsi mübahisəli olmasına baxmayaraq, həm beynəlxalq, həm də milli şəkildə cəzalandırılması üçün qaydalar qəbul edilmişdir. İnsanlığ əleyhinə olan cinayətlər quruluş baxımından motivasiya və intensivlik meyarları ilə adi cinayətlərdən fərqlənir, həm də prosedur baxımından fasilələrə məruz qalmırlar.

Roma Statusu 1998-ci ildə Birləşmiş Millətlər Təşkilatının konfransında beynəlxalq səviyyədə kollektiv şəkildə törədilən insanlığa qarşı cinayətləri mühakimə etmək və cəzalandırmaq məqsədi ilə qəbul edilmiş və Beynəlxalq Cinayət Məhkəməsi 2002-ci il iyulun 1-dən vəzifəsinə başlamışdır.

Nürnberq Beynəlxalq Hərbi Cinayət Məhkəməsi, nasistlərin sovet əsirlərinə qarşı etdikləri cinayətlərin insanlığa qarşı cinayətlərə nümunə olmasına dair qərar çıxarıb.

Açar sözlər: *beynəlxalq, cinayət, beynəlxalq məhkəmə, Beynəlxalq Ədalət Məhkəməsi, Dünya Məhkəməsinin tarixi.*

Introduction. As a separate form of international crime, crimes against humanity have their own structure. Different perspectives exist on the essence and components of crimes against humanity. In many circumstances, crimes against humanity are identified with actions under national criminal law (for instance, crimes against the person). While crimes against the individual are committed against a certain person or several, crimes against humanity are committed against a broad mass of people, that is, a civilian population. Alongside with it, crimes against the person can be committed without any state plan or policy, and without providing certain methods and resources, but for committing crimes against

humanity, there must be a state plan and policy in place, as well as the use of any Beynəlxalq hüquqda insanlıq əleyhinə cinayətlər-(Crimes against humanity in the international law)- 24 methods and resources. To qualify an act as a crime against humanity, two essential conditions are required:

1. the action must be committed as a part of a systematic or widespread attack;
2. the action must be committed in the form of a state or government plan or policy.

Consequently, it can be stated that crimes against the person that are covered by state domestic legislation can in no way be considered crimes against humanity. There are certain cases when the component elements of crimes against humanity, genocide, and war crimes are not distinguishable. However, if there is some similarity between them, each of them is an international crime with a certain structure. Unlike crimes against humanity, genocides and war crimes have been examined at different times and substantial results have been yielded in regard to them. In comparison with them, crimes against humanity have been studied far less, and today their investigation is very relevant. Crimes against humanity have a number of characteristics. This type of international crime [Akar, Y. 2007, s.16]

- has a fairly wide composition;
- can be done both in the peace period and during armed conflicts;
- previously did not have a universal contractual basis, and basically relied on the norms of customary international law or on the statutes and regulations of the international tribunals;
- has very rarely been a subject of the national prosecutions;
- is occasionally linked to crimes against humanity.

İnsanlıq əleyhinə cinayətlər Beynəlxalq hüquqda insanlıq əleyhinə cinayətlər 25 (For example, before the modifications in 2001, crimes against humanity in Azerbaijan's Criminal Code were referred to as "crimes against mankind"); on the other hand, crimes against humanity should be discerned from genocide and war crimes with which they have, to some extent, similar components. To underline, the Nuremberg trial itself was characterized as a crime against mankind. After the World War II, the definition of "crimes against humanity" was reflected in the Article 6 of the Charter of the Nuremberg Tribunal. According to the Article 6 of the Charter, crimes against humanity include murder, extermination, enslavement, deportation, rape, torture, persecution for political, racial or religious reasons committed against the civilians prior to start of the war or during the war. Subsequently, crimes against humanity were widely specified in the statute of the international criminal tribunals for Yugoslavia and Rwanda, which were created in *ad hoc* form. In the Rome Statute of the permanent International Criminal Court, the scope of crimes against humanity was expanded in a wider format, covering 15 criminal offenses. Accordingly, the states have also expressed the norms relating to crimes against humanity in their national legislation and intensified their struggle against them. (ROSENNE, S 1985, 25) Before the adoption of the Statute of the International Criminal Court, the numerous acts constituting crimes against humanity were not formulated with specific names, and were expressed in terms of "other inhuman acts". As noted above, the generally recognized components of crimes against humanity were first published in the Statute of the Beynəlxalq hüquqda insanlıq əleyhinə cinayətlər 26 ICC. In accordance with the Statute, a number of certain acts, sometimes very distinct from an objective point of view, are classified under the name 'crimes against humanity'. Any of the following actions, when done as part of a widespread or systematic attack intended at any person, are considered "crimes against humanity" for the purposes of this Statute.

1. (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Agony; (g) Ravishment, sexual slavery, compelled prostitution, enforced pregnancy, imposed sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any entire demographic or collectivity in connection with any act referred to in this paragraph or any crime within the Court's jurisdiction on political, racial, ethno-cultural, national, gender, religious, or other bases universally acknowledged as impermissible under international law, as defined in paragraph 3; (i) Forced disappearances of persons; (j) Apartheid crime; (k) Other cruel actions of a similar nature that purposefully cause considerable suffering or serious impairment to the body, to mental or physical health.

2. A course of conduct involving the multiple commission of acts remarked in paragraph 1 against any civilian population, according to or in furtherance of a State or organizational policy to commit such attack, is defined as an "attack directed against any civilian population" for the purposes of this paragraph. (b) "Extermination" refers to the deliberate infliction of adverse living circumstances, such as denying

access to food and medication, in order to kill a portion of a population; (c) The use of any or all of the powers connected with the right of ownership over a person, including through the use of such authority in the process of human trafficking, notably of women and children, is referred to as "enslavement." d) "Deportation or forcible transfer of population" is the compelled removal of the individuals involved from the territory in which they are lawfully present by expulsion or other coercive acts, without grounds authorized under international law; (e) "Torture" implies the purposeful infliction of severe pain or suffering, whether physical or mental, on a person in the accused's custody or control; however, torture does not include pain or suffering originating solely from, inherent in, or incidental to legitimate punishment. f) "Forced pregnancy" refers to the illegal confinement of a woman who has been forcibly forced pregnant with the purpose of changing a community's ethnic composition or committing other serious international law violations; (g) "Persecution" refers to the deliberate and serious denial of fundamental rights in violation of international law based on the group or collectivity's identity; (h) "The crime of apartheid" are inhumane acts of a similar nature to those described in paragraph 1, but committed in the context of an institutionalized regime of systematic oppression and domination by one racial group or groups over any other racial group or groups with the intent of maintaining that regime; (i) "Enforced disappearance of persons" refers to the arrest, detention, or abduction of individuals by, or with the authorization, support, or cooperation of, a State or political organization, followed by a refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of those persons, with the intent of removing them from the protection of the law for an extended period of time [Gill T. 1989, s. 52]

3. The term "gender" refers to the two sexes, male and female, within the context of society for the purposes of this Statute. The term "gender" does not indicate any other meaning than what is stated above.

As a separate type of international crime, crimes against humanity have their own structure. Different perspectives exist on the essence and component elements of crimes against humanity. In many circumstances, crimes against humanity are linked to activities that are criminal under national law (for example, crimes against the person). While crimes against the individual are committed against a single person or a group of individuals, crimes against humanity are committed against a large group of people, such as a civilian population. Along with it, crimes against the person can be committed without the use of a state plan or policy, or the provision of specific methods and resources, but crimes against humanity necessitate the implementation of a state policy as well as the application of any international law techniques and resources. Two important elements must be provided in order for an act to be classified as a crime against humanity: First, the action must be committed as a part of a systematic or widespread attack; Secondly, the action must be committed in the form of a state or government plan or policy [Walter F. 1952, s.78] Consequently, it can be concluded that crimes against the person provided for in the domestic legislation of states can in no way be considered crimes against humanity. In certain cases, the component elements of crimes against humanity and crimes of genocide and war crimes are not distinguished. However, if there is some similarity between them, each of them is an international crime with a certain structure. Genocides and war crimes have been studied at different times, unlike crimes against humanity, and significant results have been achieved in connection with them. Compared with them, crimes against humanity were studied much less, and today his research is very relevant. Crimes against humanity have a number of characteristics. This type of international crime: • has a fairly wide composition; • can be done both during the peace period and during armed conflicts; • previously did not have a universal contractual basis, and basically relied on the norms of customary international law or on the statutes and regulations of the international tribunals; • has very rarely been a subject of the national prosecutions; • sometimes is identified with crimes against mankind. International law techniques and resources 25 (for example, before the amendments were introduced in 2001, crimes against humanity in the Criminal Code of Azerbaijan were called "crimes against mankind"); on the other hand, crimes against humanity should be distinguished from genocide and war crimes, with which they have, to some extent, the similar components. By the way, the Nuremberg trial itself was characterized as a crime against mankind. After the World War II, the definition of "crimes against humanity" was reflected in the Article 6 of the Charter of the Nuremberg Tribunal. According to the Article 6 of the Charter, crimes

against humanity include murder, extermination, enslavement, deportation, rape, torture, persecution for political, racial or religious reasons committed against the civilians prior to the commencement of war or during the war. Subsequently, crimes against humanity were widely specified in the statute of the international criminal tribunals for Yugoslavia and Rwanda, which were created in an ad hoc form. The scope of crimes against humanity was broadened in a larger manner in the Rome Statute of the permanent International Criminal Court, comprising 15 criminal offenses. . Accordingly, the states have also expressed the norms relating to crimes against humanity in their national legislation and intensified their struggle against them. (SPCİJ 1920, 25) Prior to the formation of the International Criminal Court's Statute, the numerous acts that constitute crimes against humanity were referred to together as "other cruel acts." As previously stated, the general components of crimes against humanity were first published in the ICC's Beynəlxalq hüquqda insanlıq əleyhinə cinayətlər 26 Statute. According to the Statute, a variety of specific acts, sometimes very different from an objective point of view, are classified as "crimes against humanity". "Crime against humanity" is defined as any of the following offenses committed as part of a widespread or systematic attack intended against any civilian population with knowledge of the attack: a) Murder; b) Extermination; c) Enslavement; d) Deportation or forcible population transfer; e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; f) Torture; g) Rape, sexual slavery, forced prostitution, compelled pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; h) Persecution against any identifiable group or collectivity on political, [Manley.H, p. 25]. In connection with any act mentioned in this paragraph or any criminal within the Court's jurisdiction; (i) Coerced disappearances; (j) Apartheid crimes; (k) Other cruel actions of a similar character that are intended to cause considerable pain or grievous injury to body, as well as mental or physical harm. 2. "Attack directed at any civilian population," for the purposes of paragraph (a), means a course of conduct involving the multiple commission of acts referred to in paragraph 1 pursuant to or in furtherance of a State or organizational policy to carry out such an assault against any civilian population; (b) "Extermination" refers to the deliberate infliction of adverse living conditions, such as denial of access to food and medicine, with the intent of causing the extinction of a population; (c) "Enslavement" refers to the exercise of any or all of the powers attached to the right of ownership over a person, including the exercise of such power in the course of human trafficking, particularly of women and children; (d) "Deportation or forcible transfer of persons"; (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; [Briely, J.L, 1949, 45] except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; f) "Forced pregnancy" means the illegal confinement of a woman who has been forcibly made pregnant with the intent of changing the ethnic composition of a community or committing other grave international law violations. This definition shall not be construed to have any effect on national legislation related to pregnancy; (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international Beynəlxalq hüquqda insanlıq əleyhinə cinayətlər 28 law by reason of the identity of the group or collectivity; (h) "Apartheid crimes" are inhumane actions of a similar kind to those mentioned in paragraph 1, but committed as part of an institutionalized regime of systematic oppression and supremacy by one racial group over any other racial group or groups with the goal of maintaining such regime; (i) "Enforced disappearance of persons" means the arrest, imprisonment, or abduction of persons by, or with the authorization, support, or concession of, a State or a political organization, followed by a refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of those persons, with the intent of removing them from the protection of the law for an extended period of time. (8) The term "gender" is understood to refer to the two sexes, male and female, within the context of society for the purposes of this Statute. The term "gender" does not indicate any other meaning than what is mentioned above. Crimes against humanity are intentional crimes perpetrated by a state or on its behalf as part of a widespread or systematic policy, usually intended against people, in times of war or peace. The name comes from the fact that such activities are regarded as a serious violation of human rights. They are distinct from war crimes in that they are not one-off acts committed by individual troops, but rather acts carried out in support of a governmental or organizational strategy. [1] The Nuremberg trials saw the first prosecution for crimes against humanity. Following the Holocaust, a

universal standard of human rights was established in the Universal Declaration of Human Rights, which was extensively used in international law (1948). Political parties or states that violate or provoke violations of the Declaration's human rights norms are expressions of the political pathologies linked to crimes against humanity [Hudson M. 1957, 115]

The Republican Platform for the 1860 election for President of the u. s. used the phrase in its ninth article:

9. We declare the recent reopening of the slave traffic, which was done under cover of our allegory and with the help of perversions of the judicatory, to be a criminal offense against humanity and a source of shame for our nation and age; which we urge Congress to require prompt and effective measures to place an end to the present heinous trade. He term "crimes against humanity" was employed by United States President Williams [8] an American minister, politician and historian, in an exceedingly letter he wrote to the u. s. Secretary of State describing the atrocities committed by Leopold II of Belgium's administration within the Congo Free State in 1890. This was an early, but not the primary, usage of the phrase in its contemporary sense within the English language, contrary to popular belief. In his first annual message in December 1889, U.S. President Harrison spoke about the slave traffic in Africa as a "crime against humanity". Already in 1883, President Williams used the identical term in his reflections about slavery within the United States [Tornaritis C, 1971, s. 63]

Conclusion. The contextual component determines whether crimes against humanity entail large-scale violence in terms of the number of victims or its dispersion across a vast geographic region (widespread) or methodical violence (systematic). Random, unintentional, or isolated acts of violence are not included. Furthermore, according to Article 7(2)(a) of the Rome Statute, crimes against humanity must be committed in pursuance of a State or organizational policy to carry out an assault. The plan or policy does not need to be explicitly stipulated or formally adopted and can, therefore, be deduced from the circumstances as a whole.

Crimes against humanity, unlike genocide, do not need to target a specific group. Instead, any civilian population, regardless of allegiance or identification, might be the target of an assault. Another crucial distinction is that in the case of crimes against humanity, no proof of general specific purpose is required. With the exception of the act of persecution, which needs extra discriminatory purpose, a mere desire to perform any of the aforementioned crimes is sufficient. The culprit must also act knowing that the assault is against civilians and that his or her actions are part of that attack.

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