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Oana GĂLĂȚEANU

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THE INTERNATIONAL CRIME AND ITS CHARACTERISTICS

Oana GĂLĂȚEANU[1]

Abstract:

The international crime is broadly regarded as being represented only by those facts that contradict the international law and they are prohibited and sanctioned by the states, by common agreement. More closely, there are seen as international crimes only the facts that infringe the norms of the international law, that bring serious injuries to the fundamental values for the international society and they enter into the competency area of the international jurisdictions. Making a parallel between the international crimes and the crimes sanctioned nationally, we can observe that they are not different through the constitutive content, but through the presence within the first categories of crimes of an internationality element not met at the secondary ones, at minimum.

The international crimes present a series of proper characteristics and the author's purpose of this study is to make the presentation of the above mentioned characteristics, as well as to underline the fact that for the sanctioning of those that perpetrate them, it is required to create and to turn to an international jurisdiction procedure, fact that is achieved following to the concern of the entire international community to this extent and to the cooperation of national and sovereign states for it.

Keywords:

International crime, characteristics, criminal liability, natural person, international community, international jurisdiction.

[1] Ph.D. Lecturer, Faculty of Juridical, Social and Political Sciences, „Dunărea de Jos" University of Galati, member of Legal, Administrative, Social and Political Research Centre of „Dunărea de Jos" University of Galati.

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I. The concept of international crime

The notion of "international crime" had appeared at the beginning of XX century, when the specialists considered the "international crimes" as the manifestations of a state infringing the international unwritten law or the war rules, as well as the individual actions of a person that injured certain values that are defended on international level. In time, the concepts have evolved, so that at present the international crime has two meanings: it is broadly considered as being represented only by those facts that contradict the international law and they are prohibited and sanctioned by states, by common agreement (Pella, 1926,:175). There are more closely seen as international crimes only the facts that infringe the norms of international right, bringing serious injury to the fundamental values for the international society and which enter in the area of competence of international jurisdictions (Onica-Jarka, 2008,:9). It is about those facts expressly provided in treaties and in international law norms, for which international criminal courts of law are set up, facts which are of their competence (Lascu, 2013,:11).

Actually, the international crimes are considered in the doctrine (Lascu, 2013,:16) legal methods of defending the social values protected by the humanitarian law. In our opinion, they could be appreciated more as being determining cases of multiplying the interstate collaborations and finding international legal ways to protect values considered important for the entire international company.

II. Distinctions between international crimes and the crimes sanctioned at state level, nationally

Making a parallel between the international crimes and the crimes sanctioned nationally, we can observe that they are not different through the constitutive content, but through the presence of at least one international element, which the first have and which can be given by one of the following circumstances:

- From the territory point of view, the existence of an international characteristic, respectively the activity or inactivity which is sanctioned internationally, through the way it is done, bringing harm to the legal order of many more states, as it involves the participation of some persons with different citizenship and it is done or produces the consequences on the territory of many states – such as human trafficking, for example.

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- The existence of an international cooperation agreement that has as object a series of actions / inactions whose effects are damaging in a great measure, the contribution of the international society as a whole being necessary for fighting against it, as it is the case for international terrorism.
- It is assessed that the respective actions / inactions contradict those values protected by the international society, as it is the case with the crimes against humanity or when they are done on grounds of an armed conflict.

In other words, we can conclude that the difference between the international crimes and the crimes recognised and sanctioned by the national criminal legislations is given by including in the content of the first ones of at least an element of internationality and by the existence of an international criminal court of law, for their sanctioning. This internationality element is deduced from the legal text of sanctioning each crime which is given to the criminal international courts for being solved competently and it might deal with, as case maybe:

- One of the subjects of the crime, respectively:

- Active - as it is the case, for example, with the armed aggression crime, when the person acted on account of and in the name of the state,
- Passive subject – when it is a part of an ethnic group, for example.

- The legal object of the inculpatory fact – when it is constituted from a social value which is defended at international level, such as, for example, international security.
- The material object of the fact – when it is protected at international level.
- The time of committing the acts that made up the material element of the objective part of a crime, such as, for example, the period of a war.

III. The characteristics proper to the international crimes

An important aspect for characterising a crime as having an international nature is represented by the nature of the conflict that lead to committing the respective crime. Both the international treaties and the international unwritten law have highlighted the reality that these international crimes are dependent on the presence of an armed conflict, having as legal

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object these social relations protected through provisions proper to the international humanitarian law[2].

A distinction is made between the conflicts with international character and the ones without this character, in relation to the provisions of the Geneva Conventions from 1949[3] which refer in art.2, which is common to them, to conflicts with international character and in art. 3 to conflicts with national character. At present, following to the development of the communication means, of technology and indirectly to the development of the ways of destruction, it is extremely difficult to establish the type of conflict.

The most important characteristics of the international crimes, which differentiate them from the ones of common law, have in view:

1. Their legal object – which is represented by a social value which at international level is defended by the law, by sanctioning such a crime. In the project of the United Nations Organization (U.N.O.) International Law Commission, the international crime was considered as being an aggression of the humanity dominant values, defined as jus cogens, constituting a summary of those values which all world states recognise. For their protection, the states and the international society are compelled to be diligent in order to sanction those facts that endanger them.

At international level we cannot talk about a norm that exhaustively presents facts which infringe jus cogens, but from the international unwritten law it results that there are considered such facts: the war crimes, armed aggression, crimes against humanity, genocide, apartheid, maritime piracy, enslaving and torture.

[2] The international humanitarian law, respectively the Geneva Law, defends both the military personnel which participate or not to fights and the persons that have no active involvement in the armed conflict and especially the civilians. The war law or The Hague law provides the rights and obligations of the belligerents during the development of the military operations and imposes limits in what concerns the means of hurting the adversary. Please see http://www.crucearosie.ro/activitati/drept-umanitar-international.html.

[3] Which had as object establishing and defining the international crimes, considered the most important from resonance and spread point of view and to which most states of the world have adhered.

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2. At the same time, it is considered the way the international crimes are committed, involving a plurality of perpetrators.

The crimes that require participation from many persons and performing many different material acts are included in the competency of the international criminal courts.

The specialists have recognised three ways of author plurality in committing the crimes in the Romanian criminal law system and not only, respectively: the natural, constituted and occasional way, being established also the individual criminal liability of the participants on trial in relation to it.

In the case of international crimes, from analysing some facts like war crimes, crimes against humanity, genocide, it can be seen that in their case it appears a natural plurality, necessary for their perpetration. The war crimes are presented in paragraph 2 of Art. 8 of the Charter of the International Criminal Court which, in paragraph (1), provides that they are in its line "especially when they are committed as being part of a plan or a policy or as a part of committing such crimes at a larger scale".

According to the Charter of the International Criminal Court, the crimes against humanity are represented through any of the acts presented to paragraph (1) of Art. 7, letter a-i Charter, "when they are perpetrated as a part of an attack spread or systematically directed against a civil population, having knowledge on the attack". We believe it is obvious that when we talk about "an attack (...) spread or systematic", it involves pulling an increased number of persons in the respective action.

Genocide, as it is defined in Art.6 of the same Statute, as being any of the actions presented in this legal text (like killing the members of a group, causing serious body or mental injury to the group members, the deterioration of the life conditions of the group with the purpose of total or partial physical destruction etc.), makes us think to the necessity of exercising a wide action, at a large scale, that cannot be achieved but with the participation of many persons, in a necessary, natural way. As a matter of fact, the "group" notion is interpreted in the same legal text as referring to a numerous group constituted on fundaments that belong to ethnicity, religion, race or nationality.

3. The complex character of the international crimes

This character can be deduced from the texts that sanction them. They provide, in the typical form as crimes – means for committing the crimes – scope. For example, in case of genocide crime, it is defined as being represented by one of the actions presented in the legal text, for example the one of killing the group members, with the intent of destroying totally or partially that group

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("ethnic, national, racial or religious"). Or, according to Art. 7, paragraph (1) of the same Charter, the crime against humanity is defined as being any of the acts presented at letter a-1 of the same article - crime or slavery, for example – committed as part of an attack (...) directed against a civil population.

Conclusions

As a conclusion, all these facts that reflect on the social values considered as important for the entire international community and sanctioned by it, they are considered crimes of a special severity, being a preoccupation at international level, as it is provided in Art.1 of the Charter of the International Criminal Court. Comprising this element of internationality, the international crimes fall under the sanctioning incidence of some international criminal courts[4].

Also in the case of international crimes, the criminal liability is obviously personal and in art. 25 from the Charter of the International Criminal Court it is provided that "a person that commits an offence / a crime that is of Court competence will be individually liable and submitted to punishment according to this Charter".

These international crimes, as I mentioned, are committed with the participation of many persons. From the provisions of these three international criminal courts of law – respectively Art.6 from T.I.P.F.I. Charter, Art.5 from T.I.P.R Charter and Art.25, point 1 from the Charter of the International Criminal Court – we conclude that only the criminal liability is expressly provided for natural persons. At the same time, by analysing art. 25 from the Charter of the International Criminal Court, it is concluded that the persons that commit directly such crimes, that is in capacity of authors / co-authors, as well as those who help, hide or support the perpetration or the tentative to perpetrate such crimes, as well as those who determine perpetrating such facts – order, request them or, in case of genocide, directly and publicly incite other persons to perpetrate it, will be drawn to criminal liability based on it. At the same time, as the same Charter provides at Art. 27, paragraph 1 and 2, there

[4] Respectively the international tribunals set up ad-hoc, such as the International Tribunal for the Prosecution of the Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Federative Republic of Yugoslavia -T.I.P.F.I-set up in 1991, the International Tribunal for the Prosecution of the Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Ruanda-T.I.P.R-in 1994 and the International Criminal Court, with permanent character, set up through the Rome Treaty from July 17th, 1997, which has the large support of 14 signatory states from all continents.

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will not be exonerated from responsibility the persons on grounds of the existence of an official capacity of the type: chief of state or of government, member of a government of parliament, representative chosen or official of the government. Also, the existence of any official capacity will not lead to any reduction of the sentence, the Court not being restricted to exercise its competencies towards a person on grounds of having an official capacity.

All these war crimes, crimes against humanity, genocide and crimes of aggression are characterised by an extreme dangerousness, putting to danger important values for the international community as a whole and this is the reason this community, as well as United Nation Organization and their leaders, as well as the leaders of the national states, appreciated they have to be stopped. Consequently, they resorted to their sanctioning at international level, being organised international criminal courts of law with this competence, solving thus the situation of the states found in the impossibility to decide at national level, taking some measures through internal authorities or through those who do not propose to achieve these acts of justice which require to be done.

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