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DEVELOPMENTAL STAGES OF LIABILITY FOR CRIMES AGAINST PEACE AND SECURITY OF MANKIND

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Abstract
It is apparent that any kind of legal norms have undergone a number of stages of development to date in order to become the current condition. Such kind of phenomenon can be observed in the case of the liability for crimes against peace and security of mankind. As is known to all, these crimes are considered as international ones. Despite the fact that these crimes do not have long history, they hold great significance in the international law. This article is dedicated to highlighting the stages of development so far.

Keywords: conventions, tribunals, international courts, aggression, peace, security of mankind, genocide, ecocide, mass destruction weapons, penal code, war crimes, humanitarian laws, war customs, law enforcement agencies.

Introduction

As is pretty comprehensible, relationships evolve persistently between individuals due to the fact that new factors arise in the community. As a consequence, it is required to make certain alterations in the field of legislation and laws in order to keep up with ongoing changes. The discipline of the criminal law is one of them in this line. With a view to reducing as well as deterring a wide range of crimes, we are obliged to optimize the penal code of the Republic of Uzbekistan. There is little doubt that crimes against peace and security of mankind are one of the most pivotal ones for several factors. First of all, these sorts of crimes are directed at peace. Clearly, the numero uno priority of the criminal code is to maintain peace in the country. All the more, these types of crimes target countless individuals in most cases, which escalates the danger of the phenomenon. Therefore, one must work on the above mentioned offences.

Crimes against peace and humanity are serious violations of international law that harm individuals or the global community as a whole. They may include acts of aggression, war crimes, crimes against humanity, and genocide. Crimes against peace refer to the illegal use of force by one state against another, such as starting a war or an armed conflict without sufficient provocation or a legitimate reason. Crimes against humanity refer to any widespread or systematic attack on a civilian population, including murder, enslavement, torture, sexual violence, forced deportation, and other inhumane acts. These crimes are committed with the intent of causing severe physical or mental harm to a particular group of people. Genocide refers to acts committed with intent to destroy, in whole or in part, a

specific ethnic, racial, religious, or national group. This includes killings, causing serious bodily or mental harm, or imposing harsh conditions of life with the intention to destroy a group or its culture. It is necessary to improve punishments for crimes against peace and humanity because these crimes are some of the most egregious violations of human rights and fundamental principles of justice. Such crimes often involve large-scale abuses, such as genocide, war crimes, crimes against humanity, and other atrocities, that cause immense suffering and destruction to individuals, communities, and societies.

The severity of such crimes demands that those responsible are held accountable to the fullest extent of the law. This includes robust prosecution of perpetrators and appropriate sentencing for their crimes, so that justice can be served and the victims can receive redress. Additionally, improving punishments for crimes against peace and humanity helps to establish a strong deterrent effect and sends a message to others that such crimes will not be tolerated. This can contribute to preventing future atrocities from occurring and promoting the maintenance of peace and stability around the world.

Punishments for crimes against peace and humanity are significant for several reasons:

1. Deterrence: Punishments act as a deterrent for future perpetrators of similar crimes, sending a message that such actions will not be tolerated.
2. Accountability: Holding individuals accountable for their actions sends a message that everyone, regardless of their position of power, will be held responsible for their actions.
3. Justice: Punishing those who have committed crimes against peace and humanity serves as a form of justice for the victims and their families. It can also help prevent future conflicts and promote reconciliation.
4. International Order: The punishment of crimes against peace and humanity helps to maintain international order and promotes respect for international law.
5. Prevention: Punishing such crimes can also help prevent future atrocities by showing that accountability is a possible outcome for such actions.

In the subsequent paragraphs, I shall highlight data in terms of crimes against peace and security of humankind along with peddling forth some suggestions to improve our legal system in this field.

The term war crime has been difficult to define with precision, and its usage has evolved constantly, particularly since the end of World War I. The first systematic attempt to define a broad range of war crimes was the Instructions for the Government of Armies of the United States in the Field—also known as the “Lieber Code” after its main author, Francis Lieber—which was issued by U.S. Pres. Abraham Lincoln during the American Civil War and distributed among Union military personnel in 1863. For example, the Lieber Code held that it was a “serious breach of the law of war to force the subjects of the enemy into service for the victorious government” and prohibited “wanton violence committed against persons in the invaded country,” including rape, maiming, and murder, all of which carried the penalty of death. More recently, definitions of war crimes have been codified in international statutes, such as those creating the International Criminal Court and the war crimes tribunals in Yugoslavia and Rwanda, for use in international war crimes tribunals.

In contrast to earlier definitions, modern definitions are more expansive and criminalize certain behaviours committed by civilians as well as by military personnel.

Immediately following World War I, the victorious Allied powers convened a special Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. The commission's report recommended that war crimes trials be conducted before the victors' national courts and, when appropriate, before an inter-Allied tribunal. The Allies prepared an initial list of about 900 suspected war criminals and submitted the list to Germany. Although heads of state traditionally had enjoyed immunity from prosecution, the commission's main target was Germany's Emperor (Kaiser) William II, whom most of the Allies (though not the United States) wished to hold responsible for numerous violations of the laws of war. William, however, took refuge in the Netherlands, which refused to extradite him, and he was never tried. Most of the remaining suspected war criminals on the list similarly managed to avoid prosecution, because Germany was reluctant to turn them over to the Allies. Instead, a compromise was reached whereby the Allies permitted a small number of suspects to be tried in Germany before the Supreme Court in Leipzig. These prosecutions resulted in few convictions, with most sentences ranging from a few months to four years in prison.

The next major attempt to prosecute war criminals occurred in Europe and Asia after World War II. Throughout the war, the Allies had cited atrocities committed by the Nazi regime of Adolf Hitler and announced their intention to punish those guilty of war crimes. The Moscow Declaration of 1943, issued by the United States, Great Britain, and the Soviet Union, and the Potsdam Declaration of 1945, issued by the United States, Great Britain, and China (and later adhered to by the Soviet Union), addressed the issue of punishing war crimes committed by the German and Japanese governments, respectively.

At the war's conclusion, representatives of the United States, the United Kingdom, the Soviet Union, and the provisional government of France signed the London Agreement, which provided for an international military tribunal to try major Axis war criminals whose offenses did not take place in specific geographic locations. This agreement was supported by 19 other governments and included the Nurnberg Charter, which established the Nurnberg tribunal and categorized the offenses within its jurisdiction. The charter listed three categories of crime: (1) crimes against peace, which involved the preparation and initiation of a war of aggression, (2) war crimes (or "conventional war crimes"), which included murder, ill treatment, and deportation, and (3) crimes against humanity, which included political, racial, and religious persecution of civilians. This last category included what is commonly called genocide.

The term genocide was coined by the Polish American legal scholar Raphael Lemkin and first appeared in print in his work Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress (1944). The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations in 1948, defined genocide as including killing or inflicting serious physical or mental injury on members of a national, ethnic, racial, or religious group with the intention of bringing about the group's destruction, in whole or in part. The convention made

genocide an international crime that could be prosecuted in the court of any country. Because the Nurnberg trials preceded the convention, however, Nazi war criminals were not prosecuted for genocide.

The International Military Tribunal in Nurnberg, Germany, tried 22 Nazi leaders, including one, Martin Bormann, who was tried in absentia. The trial was conducted in four languages and lasted nearly 11 months. All but three of the defendants were convicted; 12 were sentenced to death. The remaining defendants received lengthy prison terms, which they served at Spandau Prison in West Berlin. Subsequent trials were held under the auspices of Control Council Law No. 10, which was used to prosecute accused Nazi war criminals whose crimes took place in specific locales.

Japanese defendants accused of war crimes were tried by the International Military Tribunal for the Far East, which was established by a charter issued by U.S. Army Gen. Douglas MacArthur. The so-called Tokyo Charter closely followed the Nurnberg Charter. The trials were conducted in English and Japanese and lasted nearly two years. Of the 25 Japanese defendants (all of whom were convicted), 7 were sentenced to hang, 16 were given life imprisonment, and 2 were sentenced to lesser terms. Except for those who died early of natural causes in prison, none of the imprisoned Japanese war criminals served a life sentence. Instead, by 1958 the remaining prisoners had been either pardoned or paroled.

From their outset, the war crimes trials were dismissed by critics merely as "victor's justice," because only individuals from defeated countries were prosecuted and because the defendants were charged with acts that allegedly had not been criminal when committed. In support of the trials, the Nurnberg tribunal cited the Kellogg-Briand Pact (1928), which formally outlawed war and made the initiation of war a crime for which individuals could be prosecuted.

After the Nurnberg and Tokyo trials, numerous international treaties and conventions attempted to devise a comprehensive and enforceable definition of war crimes. The four separate Geneva conventions, adopted in 1949, in theory made prosecutable certain acts committed in violation of the laws of war. The conventions provided for the protection of wounded, sick, and shipwrecked military personnel, prisoners of war, and civilians. Like the convention on genocide, however, the Geneva conventions specified that trials were to be arranged by individual governments. In 1977 two protocols were adopted to clarify and supplement the Geneva conventions. Recognizing that many conflicts were internal rather than international in scope, the second protocol afforded greater protection to guerrilla combatants in civil wars or wars of "self-determination.

Nearly 50 years passed between the Nurnberg and Tokyo trials and the next formal international prosecution of war crimes. In May 1993, in an attempt to prevent further acts of "ethnic cleansing" in the conflict between states of the former Yugoslavia and to restore peace and security to the Balkan region, the United Nations Security Council established the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former

Yugoslavia since 1991, commonly known as the ICTY[1]. In November 1994 the UN responded to charges of genocide in Rwanda by creating the ICTR, formally known as the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994[2].

Both the ICTY and ICTR were international in composition, and neither tribunal sat in the country where the covered conflict occurred; the ICTY was located in The Hague, and the ICTR was located in Arusha, Tanzania. The tribunals had nearly identical governing statutes and a common appellate chamber. Although the Nurnberg and Tokyo tribunals were empowered to impose capital punishment, the ICTR and ICTY could impose only terms of imprisonment. However, no centralized international prison system was established to house persons convicted of war crimes before the tribunals.

The governing statutes of the ICTY and ICTR defined war crimes broadly. The ICTY was given jurisdiction over four categories of crime: (1) grave breaches of the Geneva conventions, (2) violations of the laws or customs of war, (3) genocide, and (4) crimes against humanity. Recognizing that crimes against humanity do not necessarily involve a "nexus to armed conflict" and taking into account legislation specifically enacted by the Rwandan government, the statute of the ICTR limited the jurisdiction of the tribunal to Rwandan leaders, while lower-level defendants were to be tried in domestic courts. In both tribunals rape, murder, torture, deportation, and enslavement were subject to prosecution. The tribunals thus were among the first international bodies to recognize sexual violence formally as a war crime[3].

Like the statutes of the Nurnberg and Tokyo tribunals, the ICTY and ICTR statutes did not consider the official position of an individual, including his position as head of state, to be a sufficient basis for avoiding or evading criminal culpability. Accordingly, in 1999 the ICTY indicted Slobodan Milosevi, the Serbian (1989–97) and Yugoslav (1997–2000) president, for war crimes, and in 2001 he was arrested and extradited to The Hague. Likewise, military and civilian leaders who knew or should have known that their subordinates were committing war crimes were subject to prosecution under the doctrine of command or superior responsibility. Finally, individuals who committed war crimes pursuant to government or military orders were not thereby relieved of criminal liability, though the existence of the order could be used as a mitigating factor. Thus, the rules adopted for the Nurnberg and Tokyo trials continued to influence later efforts to bring suspected war criminals to justice.

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[1] War crime international law: https://www.britannica.com/topic/crime-against-peace

[2] All Answers ltd, 'Genocide War Crimes and Crimes Against Humanity' (Lawteacher.net, June 2022) <https://www.lawteacher.net/free-law-essays/international-law/genocide-war-crimes-and-crimes-against-humanity-international-law-essay.php?vref=1> accessed 27 June 2022

[3] War crime international law: https://www.britannica.com/topic/crime-against-peace

In 1993 the Belgian legislature passed a controversial law giving its courts the right to try any individual accused of a war crime anywhere in the world. The law, which resulted in lengthy prison sentences for two Rwandan nuns found guilty of genocide and in judicial complaints against many world leaders (including Israeli Prime Minister Ariel Sharon, Cuban Pres. Fidel Castro, and Palestinian leader Yasser Arafat), was invalidated by the International Court of Justice in 2002. The following year the law was repealed by the Belgian government and replaced by a law requiring that either the victim of the war crime or the accused be a Belgian citizen or resident.

In 1998 in Rome some 150 countries attempted to establish a permanent international criminal court. The negotiations eventually resulted in the adoption by 120 countries of the Rome Statute, a treaty establishing an International Criminal Court (ICC) to be located permanently at The Hague. The statute provided the ICC with jurisdiction for the crimes of aggression, genocide, crimes against humanity, and war crimes. The court came into existence on July 1, 2002, and by 2019 the statute had been ratified by more than 120 countries; three of the permanent members of the UN Security Council (China, Russia, and the United States), however, had not approved it[4].

A U.S. soldier observing victims of the Malmedy massacre (17 December 1944), where 84 U.S. prisoners of war were murdered by the Waffen-SS in Belgium

A war crime is a violation of the laws of war that gives rise to individual criminal responsibility for actions by combatants in action, such as intentionally killing civilians or intentionally killing prisoners of war, torture, taking hostages, unnecessarily destroying civilian property, deception by perfidy, wartime sexual violence, pillaging, and for any individual that is part of the command structure who orders any attempt to committing mass killings including genocide or ethnic cleansing, the granting of no quarter despite surrender, the conscription of children in the military and flouting the legal distinctions of proportionality and military necessity.

The formal concept of war crimes emerged from the codification of the customary international law that applied to warfare between sovereign states, such as the Lieber Code (1863) of the Union Army in the American Civil War and the Hague Conventions of 1899 and 1907 for international war. In the aftermath of the Second World War, the war-crime trials of the leaders of the Axis powers established the Nuremberg principles of law, such as that international criminal law defines what is a war crime. In 1949, the Geneva Conventions legally defined new war crimes and established that states could exercise universal jurisdiction over war criminals. In the late 20th century and early 21st century, international courts extrapolated and defined additional categories of war crimes applicable to a civil war[5].

[4] Ariel Zemach, 'National Security Evidence: Enhancing Fairness in View of the Non-Disclosure Regime of the Rome Statute' (2014) 3 ILR 331.

[5] Penrose, Mary Margaret. "war crime". Encyclopedia Britannica, 23 May. 2022, https://www.britannica.com/topic/war-crime. Accessed 27 June 2022.

In 1474, the first trial for a war crime was that of Peter von Hagenbach, realised by an ad hoc tribunal of the Holy Roman Empire, for his command responsibility for the actions of his soldiers, because "he, as a knight, was deemed to have a duty to prevent" criminal behaviour by a military force. Despite having argued that he had obeyed superior orders, von Hagenbach was convicted, condemned to death, and beheaded.

The Hague Conventions were international treaties negotiated at the First and Second Peace Conferences at The Hague, Netherlands, in 1899 and 1907, respectively, and were, along with the Geneva Conventions, among the first formal statements of the laws of war and war crimes in the nascent body of secular international law.

The Lieber Code was written early in the American Civil War and President Abraham Lincoln issued as General Order 100 on April 24, 1863 just months after the military executions at Mankato, Minnesota. General Order 100, Instructions for the Government of the Armies of the United States in the Field (Lieber Code) were written by Franz Lieber, a German lawyer, political philosopher, and Napoleonic Wars veteran. Lincoln made the Code military law for all wartime conduct of the Union Army. It defined command responsibility for war crimes and crimes against humanity as well as stated the military responsibilities of the Union soldier fighting the Confederate States of America.

Just after WWI, world governments started to try and systematically create a code for how war crimes would be defined. Their first outline of a law was "Instructions for the Government of Armies of the United States in the Field"—also known as the "Lieber Code."[9] A small number of German military personnel of the First World War were tried in 1921 by the German Supreme Court for alleged war crimes.

Also known as the Tokyo Trial, the Tokyo War Crimes Tribunal or simply as the Tribunal, it was convened on May 3, 1946, to try the leaders of the Empire of Japan for three types of crimes: "Class A" (crimes against peace), "Class B" (war crimes), and "Class C" (crimes against humanity), committed during World War II.

On July 1, 2002, the International Criminal Court, a treaty-based court located in The Hague, came into being for the prosecution of war crimes committed on or after that date. Several nations, most notably the United States, China, Russia, and Israel, have criticized the court. The United States still participates as an observer. Article 12 of the Rome Statute provides jurisdiction over the citizens of non-contracting states if they are accused of committing crimes in the territory of one of the state parties[6].

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[6] Arieh J. Kochavi, “Britain and the Establishment of the United Nations War Crimes Commission”, in English Historical Review, 1992, vol. 107, no. 423, p. 325.

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