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Abstracts: International Conference on

The Evolution of Legal Concepts in Light of Evolution of International Criminal Courts/Tribunals

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Abstracts: International Conference on

The Evolution of Legal Concepts in Light of Evolution of International Criminal Courts/Tribunals

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The Evolution of Legal Concepts in the light of Evolution of International Criminal Courts/ Tribunals

Tehran, 20th February 2014, International Studies Journal (ISJ) & United Nations Information Centre (UNIC)

Program

8:00 Registration
8:25 Start of the Program
8:30 Mr. Gary Louise – Coordinator of UN System in Iran: The Message of UN Secretary General and Introduction

9:00 First Panel:

Dr. Davood Hermidas Bavand ـ ISJ Board: Welcoming and the Head of Panel

Dr. Shane Darcy ـ Irish Centre for Human Rights, National University of Ireland Galway School of Law, University of Galaway, Ireland: International Judicial Bodies and the Development of International Humanitarian Law

Dr. Moahmad Ashouri – Faculty of Law & Political Sciences, IAU Sciences & Research Branch: Public Prosecutor of the International Criminal Court and the concept of fair dealing

Dr. Nassrin Mossafa – Faculty of Law & Political Sciences, Tehran University: A Gender Justice and International Criminal Courts/Tribunals

Dr. Mehdi Momeni – Department of Law, Piam Nour University: The Evolution of principle of Legality on Crime against Humanity In the Light of Evolution of International Criminal Courts/Tribunals

Dr. Mohamad Buzbar- University of Kuwait: War Crimes in Libya: War Crimes in Hybrid Conflictions

10:30 Pause

10:45: Second Panel:

Dr. Mohamad Ali Ardebili – Faculty of Law, Shaid Beheshti University: Head of Panel

Dr. Mohamad Sharif –Faculty of Law & Political Sciences, University of Allameh Tabatabaee(Suspended from this position): A Criticism to the concept of "Humanization of International Law" in the Light Globalization of Criminal Law

Dr. Cristina Badescu – Western University, Canada: The Evolution of International Responsibility: from Responsibility to Protect to Responsibility While Protecting
Dr. Heybatollah Najandi-Manesh - Islamic Azad University, Sciences & Research, Isfhan Branch: Evolution of Joint Criminal Enterprise in the Case Law of International Criminal Tribunals
Mrs. Jelena Plamenac - The Office of the Prosecutor International Criminal Court: Preliminary examinations in the Rome Statute System
Dr. Mohammad Hossein Ramazani Ghavamabadi – Faculté de Droits, Université Shahid Beheshti / Hajar Raee Dehaghi - DEA de droit international à l'Université Shahid Beheshti : La contribution du Comité international de la Croix-Rouge dans le cadre du Statut de la Cour pénale internationale (crimes de guerre)
Mrs. Zohreh Moussavi Far – PhD Candidate of International Law: Special Protections for women in International Humanitarian Law: From conventional obligations to criminalization in the statutes of international criminal tribunals
12:15: Lunch
13:30 Third Panel:
Dr. Mohamd Ali Mahdavi Sabet – Faculty of Law & Political Sciences, IAU Sciences & Research Branch: Head of Panel and Presentation
Dr. Flavia Lattanzi – Juge ad litem, TPIY: L'application des droits de l'Homme par les tribunaux pénaux internationaux(TPI)
Ms. Sepideh Tabatabaee – Tilburg University, Netherlands : The Development and Evolution of Victims Rights in the International Criminal Tribunals
Mr. Amir Maghami – Shaid Ashrafi Isfahani Institute: The Evolution of "Legality of the Tribunals" for ICTY
Dr. Amir Hossein Mehrgan – Ex- legal advisor of ICRC in Iran: International Committee of Red Cross and International Criminal Justice: Realities & developments
15:00 Pause
15:15: Fourth Panel:
Dr. Maria Fernanda Loureiro - Centro Universitário Curitiba, Brazil: Head of Panel and presentation
Dr. José Carlos Portella Jr- Centro Universitário Curitiba, Brazil : The Brazilian Draft Law Criminalizing Enforced Disappearance in Light of the Rome Statute Provision and its Impact on the Transitional Justice
Dr. Mehdi Zakerian – International Studies Journal (ISJ)/ Rasi Emadi – PhD Candidate Faculty of Law & Political Sciences IAU, Sciences & Research Branch: Interaction among Transitional Justice and Criminal Courts for prevention of Radicalism in Arab Spring
Flávia Saldanha Kroetz - University of Oxford/ Gustavo Ferreira Bussmann- Federal University of Parana, Brazil: The Universality of Exception, Human Rights, and the Denial of the Otherness as Justification to Mass Atrocities and Crimes against Humanity
16:45 Panel Five:
Dr. Paolo Benevnuti – Faculte de Droits, Universite de Rome 3 : Head of Panel and presentation

Dr. Karen Rohani – Department of Law, Islamic Azad University, Ghaemshar Branch: The Analysis of Article 9 of the Islamic Criminal Code and it Adoption with the Rome Statute
Dr. Omar Makkei – Sub-regional Legal Advisor of ICRC, Cairo: The Arab World and ICC
17:30: Dr. Mehdi Zakerian – International Studies Journal (ISJ): Head of Panel for conclusion
Discussion: Dr. Davood Hermidas Bavand, Dr. Pouria Asskary, Dr. Mahdavi Sabet, Dr. Flavia Lattanzi, Dr. José Carlos Portella

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STUDY OF THE LEGAL EFFECTS OF RECOGNITION OF THE ARMENIAN GENOCIDE IN EUROPEAN UNION&CONSEQUENTIAL RESULTS THEREFROM

Maro Ayvazi[1]

Dr. Davood Hermidas Bavand[2]

Genocide is a crime under international law, which its roots are intent to destroy in whole or part national, ethnic, racial or religious groups which correctly has been mentioned in the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations on 9. Dec. 1948.

In committing act of crime of genocide, there is no intention to kill the person, but the main point is the intent to destroy the chain of life of that social group. The purpose of this study is to discuss The Genocide of Armenians occurred in 1915 till 1923,and how should be submitted their claims in int. courts., , an event that during The World War I, over 1/500/000 million Armenians were perished and hundreds

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2. Prof. Superviso

of thousands forcibly deported from their native homeland and exiled to the Arab deserts (Deyreor-Zor) deserts of Syria by Turkish government (Ottoman Empire , Young Turks & Kemalists).

During the genocide of Armenians a chain of social, economic, religious and political factors were impressive to the unprecedented and led in to the first Genocide of 20th century .which is still denied by Turkey State from 1923.

This research has been submitted by using descriptive - documentary and analysis methods. The general conclusion proves the Armenian Genocide and creation of term “Genocide” mentioned in the 1948 UN convention. Also referring to recognition of Armenian Genocide by 20 member countries, council of Europe & Parliamentary Assembly in 1987 and Criminating denial of Armenian genocide by 6 European countries, its predicted that the European union will reach to a whole “Consensus” about Genocides and punishing denial of it. Also it would have its positive effect and pressure on relations between two neighbor countries (Armenia-Turkey), peacefully compromising their disputes against each other, as the two countries are trying to join to European Union .Also both States, Turkey &Armenia have jointed to Con. Of Genocide (1948)and are the members of Council of Europe ,European.Con.of H.R.& European Court of H.R. ,so the State Of Armenia as representative & claimant and all the survivors' ,inherits &children of victims of Armenian Genocide, according to art.n.33 & 34 of European Con (protocol n 9-11) &UN.Con.dd.26.nov.1968,can submit their claims for restitution

of their properties, & their all materially &spiritually lost rights against Turkey State ,to the European Court of Human Rights .

Key words: Massacre, Minority, Genocide, Crimes against humanity, War crimes, Conviction, Retrospective law, Succession Theory.

The Evolution of International Responsibility: from Responsibility *to* Protect to Responsibility *While* Protecting

Dr. Cristina G. Badescu [1]

This paper examines the evolution of the Responsibility to Protect(R2P) framework in the past twelve years to show the potential of expanded concepts of international responsibility and their role in today's crisis situations. First, a theoretical discussion of the evolution of legal concepts related to responsibility and the use of force outlines a shift in perceptions of sovereignty that translated into a multilayered structure of responsibility. A brief history covering the key milestones along R2P's trajectoryillustratesits tangible conceptual and political advances to date. Second, the paper discusses one of the key misconception related to R2P, namely that it is synonymous with intervention. This section of the paper explains the range of tools available to implement R2P, both coercive and non-coercive. The last section of the paper introduces the "responsibility *while* protecting" (RWP) initiative, which is the latest attempt to improve the R2P

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framework, with respect to its pillar three formulation. RWP emerged as a key interpretation of the legal implications of international responsibility, particularly after the use of force in Libya in the name of R2P. The paper concludes with a discussion of itsmeritstoward clarifying the most contentious aspects of R2P.

Key words: responsibility to protect; sovereignty; use of force; international norms; civilian protection

International Judicial Bodies and the Development of International Humanitarian Law

Dr. Shane Darcy [1]

The recent proliferation of international courts and tribunals with jurisdiction over international humanitarian law has lead to a wealth of jurisprudence addressing the rules and legal principles applicable in wartime. Over the past decades, international courts have contributed significantly to the progressive development of the laws of armed conflict, elaborating on the meaning of substantive norms, clarifying their customary international law status and identifying violations punishable as war crimes. International judicial bodies have proved highly influential for their national counterparts, as well as for the international law-making process more generally. With regard to international law-making, the seemingly unassailable position that judges do not create law is challenged by the experience in the field of international humanitarian law. While the International Court of Justice might declare that it "states the existing law and does not

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legislate", and States themselves would similarly tend to deny any role for such judicial creativity, such a stance is not always observed in practice, and some individual judges have not seen their role in such a limited manner. Antonio Cassese, for example, stated as President of the ICTY that the Tribunal "was not empowered to make new law in the field of international humanitarian law", yet, after his tenure had ended, he admitted that in his experience as a judge at an international criminal tribunal, "you have to create a new law, and you have to say something new".

The proposed paper explores the nature and impact of the contribution international courts to the development of international humanitarian law. It examines how international judicial bodies have developed the law of armed conflict and the rationales underlying this exercise. In assessing the scope of the judicial functionin international law, the paper considers the appropriateness of judicial legislation, its potential usurpation of the role of States in creating international law, and the continuing validity of treating judicial decisions as a subsidiary source of international law. In the context of international criminal trials, the extent to which the rights of the accused and the principle of legality may have hindered judicial development is examined. The proliferation of international courts addressing similar issues creates a risk of differing interpretations of the same rules or principles; the divergence between the ICTYand the ICJon the necessary level of control over non-State actors is a prominent example.Thepaperalso considersthe future role of international courts

and tribunals in the application and development of international humanitarian law and asks whether the detailed codification in the Rome Statute of the International Criminal Court is a conscious effort to curb the possible excesses of judicial creativity.

Key words: IHL, Criminal Courts, Evolution of IHL, International Law.

Le champ victimaire de la Cour pénale internationale: quelles coïncidences entre les intérêts de la victime et ceux de ses représentants?

Marie-Laurence Hébert-Dolbec [1]

L'adoption en 1998 du *Statut de Rome de la Cour pénale internationale* (CPI) représentait pour l'époque un virage important quant à la considération de la victime comme acteur à part entière au processus pénal international. En rupture avec l'approche utilitaire empruntée par les tribunaux *ad hoc* pour l'ex-Yougoslavie et le Rwanda où elles étaient confinées au rôle de témoin, l'article 68(3) octroie aux victimes le droit de présenter leurs vues et préoccupations lorsque leurs intérêts personnels sont concernés et ce aux stades de la procédure que la Cour estime appropriés (*voyez e.a. Jorda et de Hemptinne*, 2002). C'est donc la promesse d'un espace participatif autonome et substantiel qui est faite aux victimes par les auteurs du *Statut de Rome* aux victimes. Or, la participation au procès pénal international se révèle être une activité judiciaire complexe pour

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laquelle peu de victimes directes peuvent disposer des ressources nécessaires. La représentation légale par un conseil qualifié s'est donc révélée essentielle. Qui plus est, dès les premières décisions relatives aux victimes dans les affaires *Lubanga* ou *Katanga et Ngudjolo* en 2008, la représentation légale commune fut considérée comme la règle plutôt que l'exception (*Règlement de preuve et de procédure*, règle 90(3)). Peu de moyens sont toutefois accordés aux représentants légaux communs qui doivent s'en remettre aux grandes organisations non gouvernementales pour les assister dans leur travail de fond et aux plus petites organisations sur le terrain pour assurer un contact direct avec les victimes (*Haslam*, 2011).

Notre contribution propose d'analyser cette situation avec l'appareil théorique de Bourdieu. Dans *Langage et pouvoir symbolique* (2001), Bourdieu traite du champ politique comme lieu inaccessible aux profanes (les *mandants*) où ceux-ci doivent absolument déléguer la production de leurs actes et opinions politiques à un représentant, professionnel du champ (les *mandataires*). Ainsi, Bourdieu souligne que les intérêts des mandataires ne coïncident pas nécessairement avec les intérêts des mandants qui n'ont pas accès aux instruments de production des intérêts politiques. Notre contribution viser à vérifier dans quelles mesures ces concepts sont applicables à la représentation légale commune des victimes devant la Cour pénale internationale. À travers plusieurs exemples jurisprudentiels, nous envisagerons les contradictions ou les convergences des intérêts des trois acteurs du

champ « victimaire », soit les victimes, les représentants légaux communs et la société civile. Il sera alors possible de vérifier si les intérêts des victimes se retrouvent, dès lors, objectivés, voire confisqués, par les deux autres acteurs (*Haslam*, 2011) et ainsi de contribuer à une compréhension plus fine des enjeux symboliques et politiques que soulève la participation à la répression des crimes internationaux.

L'APPLICATION DROITS DE L'HOMME (DH) LES TRIBUNAUX PENAUX INTERNATIONAUX (TPI)

Dr. Flavia Lattanzi [1]

Les droits de la personne humaine sont désormais pris en considération dans toutes les branches du droit international, en particulier dans la répression des crimes internationaux.

En fait, l'Art. 21(3) du Statut de la CPI sur le droit applicable, en se conformant à la jurisprudence du TPIY et du TPIR, incorpore la normative en matière des DH, en lui reconnaissant une primauté sur toute autre règle applicable.

On analyse ici les différentes modalités dans lesquelles ces droits entrent en considération dans le cadre des TPI.

1. Un important aspect de l'humanisation du DI a été réalisé par le développement, à la fin de la IIème guerre mondiale, de la notion de crime contre l'humanité, ce qui a reçu une définitive consécration par les TPI. En fait, si les crimes de guerre représentent des violations graves du DIH, les crimes contre l'humanité représentent des

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violations graves des DH.

2. Les TPI s'occupent de protéger aussi les DH des individus qui viennent en contact avec leurs organes, judiciaires et administratifs.

Tout en appliquant des règles sur les DH qui jouissent de leurs propres mécanismes d'interprétation et contrôle, les TPI revendiquent leur spécifié et indépendance dans l'application de certains principes généraux tel que *ne bis in idem*, *nullum crimen sine lege et nulla poena sine lege*, l'égalité devant la loi, la parité des armes. Pour d'autres aspects, la jurisprudence des TPI est débitricesurtout de l'interprétation qui en donne les mécanismes propres aux DH.

Les droits garantis sont aussi ceux de la personne humaine en tant que telle, comme le droit de tout être humain, quelle que soit sa position dans la situation d'espèce, d'être traité avec dignité.

Mais devant les TPI il s'agit surtout des droits dont un individu bénéficie pour son rôle spécifique dans les procédures qui s'y déroulent: que ce soit le suspect, le détenu, l'accusé, le témoin, le témoin-victime.

Ces individus ne viennent pas seulement en contact avec les Chambres d'un TPI, mais aussi avec le Bureau du Procureur et le Greffe. Mais c'est toujours sous le contrôle des Chambres que les droits de ces individus sont protégés.

Le présent article cherche à démontrer que le niveau de protection des DH devant les TPI atteint un niveau bien satisfaisant. Ce qui ne signifie pas qu'on ne puisse encore l'améliorer.

Special Protections for women in International Humanitarian Law: From conventional obligations to criminalization in the statutes of international criminal tribunals

Zohre Mousavifar [1]

Throughout the history, war besides having destructive effects on civilians has exposed women to the bitter experience of sexual violence. Although humankind has progressed, unfortunately, in modern era we have witnessed widespread and systematic commitment of sexual violence against women during armed conflicts as a means of war in order to intimidate, forced abandonment of habitats and ethnic and racial cleansing. This implies that illegality of sexual violence in international humanitarian law instruments –even as an international customary rule- could not prevent commitment of these atrocities with new motivations and modern methods.

This paper, using secondary research method, seeks to study in a

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descriptive-analytical way efforts of international humanitarian law, International Criminal Tribunals for Yugoslavia and Rwanda and International Criminal Court to prohibit sexual violence against women and even men during armed conflicts. It also seeks to study the so far achievements and challenges ahead.

Key wordsInternational Humanitarian Law, International Treaties, Sexual Violence, crimes against humanity, war crimes, International Criminal Tribunal for Yugoslavia, International Criminal Tribunal for Rwanda, International Criminal Court.

Evolution of Joint Criminal Enterprise in the Case Law of International Criminal Tribunals

Heybatollah Najandi-Manesh[1]

The international criminal tribunal for former Yugoslavia (ICTY) regarded Joint Criminal Enterprise (JCE), also known as common purpose doctrine, in Tadic´ case (1999) as a distinct form of criminal liability. This concept deals with a group of people who have committed crimes in a collective manner. According to the ICTY Appeals Chamber, in the same case, participation in a common plan is implicitly recognized as a form of ‘‘committing’’ under Article 7(1) of the ICTY Statute. The Chamber determined that in the light of the object and purpose of the Tribunal Statute jurisdiction over all persons who have in any way participated in crimes within the Tribunal's jurisdiction is permitted.

Since its inception, JCE has come under severe criticism. In the view of some it has been regarded as judge-made concept and not reflective of customary international law. In addition to doctrine, the JCE has been confronted with countless challenges over the years in

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various courts and international tribunals. This article tries to answer questions, *inter alia*: is it a theory of co-perpetration giving rise to principal liability, a notion of accessorial liability or a form of partnership in crime? What is the function of JCE? How it has been interpreted by the *ad hoc* tribunals? What is the legal nature of JCE? Is the JCE justifiable by the logic of criminal law?

Key words: Joint Criminal Enterprise, international criminal tribunal for Yugoslavia, Tadic´ case.

Evolution of new developments in contrasting with the crime of maritime piracy in shadow of SUA1988 convention and Security Council resolutions (with especial view on Somalia's pirates)

MostafaNooralisorkhani&Hadi Nasiri [1]

During centuries states has tried to assign different arrangements to contrast with pirates and maritime piracy and its precedent identification as one of the most important crime has predicated it. UNCLOS has tried to define a framework for repression of piracy in articles 100 to 110. In continuethe convention for the suppression of unlawful acts against the safety of maritime has definedcriminal behavior that included as piracy crime. These are parts of international community efforts to deal with this crime on paper although the conditions in the practice are different. Increasing trend of pirates operations in 2008, especially in the Gulf of Aden has caused to intern Security Council to do repression of pirates more practically by

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defining it under Chapter VII. This study will try to analyze the practical measures that had been done by multiple actors (like as countries and UN) in the field of contrasting with the crime of sea piracy in accordance with the provisions convention and temporary UN resolution.

Key words: Massacre, Minority, Genocide, Crimes against humanity, War crimes, Conviction, Retrospective law, Succession Theory.

Preliminary examinations in the Rome Statute System

Jelena Plamenac [1]

In accordance with the Rome Statute, the Office of the Prosecutor of the International Criminal Court is responsible for determining whether there is a reasonable basis to proceed with an investigation into a situation pursuant to the criteria established by the Rome Statute, subject to judicial authorisation as appropriate. As reflected in the principle of complementarity, national jurisdictions have the primary responsibility to end impunity for the crimes listed under the Rome Statute, namely genocide, crimes against humanity, and war crimes. However, in the absence of genuine national proceedings, the Office will seek to ensure that justice is delivered for crimes within the jurisdiction of the Court.

The Office will conduct, on the basis of its *proprio motu* powers under article 15 of the Statute, a preliminary examination of all situations that are not manifestly outside the jurisdiction of the Court. The goal is to collect all relevant information necessary to reach a

1. The Office of the Prosecutor International Criminal Court

fully informed determination of whether there is a reasonable basis to proceed with an investigation. If the Office is satisfied that all the criteria established by the Statute for this purpose are fulfilled, it has a legal duty to open an investigation into the situation.

This presentation will address the relevant Rome Statute principles, factors, policy objectives and procedures applied by the Office in the conduct of its preliminary examination activities, including the process of initiation, analysis and termination of situations under the preliminary examination. Particular situations under different phases of the preliminary examination analysis will be discussed as well

Key words: ICC, Prosecutor, Preliminary Examinations, Rome Statue.

THE BRAZILIAN DRAFT LAW CRIMINALIZING ENFORCEDDISAPPEARANCE IN LIGHT OF THE ROME STATUTE PROVISIONS AND ITS IMPACT ON THE TRANSITIONAL JUSTICE IN BRAZIL

Dr. José Carlos Portella Jr [1]

Dr. Maria Fernanda Loureiro [2]

In the recent History, Brazilian society witnessed the perpetration of the crime of forced disappearance as part of a systematic attack directed against political opponents. During the 1970´s, in furtherance of the military government policy of "National Security", state agents were ordered to commit such crime. After re-democratization in 1988, Brazil has signed various human rights treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute. However, there is still no provision related to this crime in the Brazilian law and no person

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was ever held responsible for those acts.

The article aims to analyze the draft of the Brazilian New Criminal Code, bringing International Criminal Law into its perspective and the needs of the transitional justice, presenting suggestions and criticism for the new law. The research will emphasize the bibliographic method, based on materials available in both print and electronic media. Concerning the crime of enforced disappearance, the Brazilian law is not yet properly adapted to International Criminal Law, but it can be, mostly whereby the promulgation of the new Code, which may have a positive impact on the transitional justice.

Key words: Massacre, Minority, Genocide, Crimes against humanity, War crimes, Conviction, Retrospective law, Succession Theory.

La contribution du Comité international de la Croix-Rouge dans le cadre du Statut de la Cour pénale internationale (crimes de guerre)

Prof. Mohammad Hossein Ramazani Ghavamabadi [1]

Hajar Raee Dehaghi [2]

Le Comité international de la Croix-Rouge (CICR) a participé à la Conférence de Rome le 17 Juillet 1988 pour la création de la Cour pénale internationale (CPI). Le CICR a joué un rôle important dans la création de cette Cour. Les représentants du CICR ont participé activement dans les traveaux préparatoirs de la Cour. Le rôle de Comité dans ces traveaux demeur dans l'élaboration des éléments constitutifs de crimes de guerre. Le CICR, depuis longtemps travaille dans la création d'une Cour pénale internationale. Il insiste sur le fait que, les règles du droit international humanitaire concernant les conflits non-internationaux doivent être insérées dans le statut de cette

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instance. Le Comité préparatoire a retenu les propositions du CICR en apportent quelques modifications en la matière. Cette étude tente à examiner la contribution du CICR aussi bien avant la Conférence de Rome (1998) qu'après de celle-ci pour la création de la CPI.

Key words: Comité international de la Croix-Rouge, Cour pénale internationale, Conflits armés non internationaux, Droit international humanitaire, Crime de guerre.

THE UNIVERSALITY OF EXCEPTION, HUMAN RIGHTS, AND THE DENIAL OF THE OTHERNESS AS JUSTIFICATION TO MASS ATROCITIES AND CRIMES AGAINST HUMANITY

Flávia Saldanha Kroetz [1]

Gustavo Ferreira Bussmann [2]

In his trilogy "Homo Sacer", "State of Exception" and "What remains of Auschwitz", Giorgio Agamben analyzes important aspects of the human condition and the ways in which human rights were perceived over the centuries. Through an internationalist perspective, and based on the concepts brought about by Agamben's Homo Sacer, this paper argues that the State of Exception is constantly in force, alongside the universality of human rights – thus the coexistence of the universality of the *exception* and the universality of *human rights*, not ignoring the debates on universalism versus relativism, and the hazard of imposing

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a ‘one-size-fits-all’ approach to every situation. Furthermore, this research explores the denial of the otherness as a means to justify, both internally and externally, mass atrocities grounded on speeches and policies that reject any kind of diversity. Additionally, taking into consideration the boundaries between the human and the Homo Sacer, this study questions the possibility of an international vindication of human rights, and the legitimacy of external interferences in States that are lenient towards violations of human rights. This analysis will be guided by the concept of *jus cogens* and the role of the International Criminal Court as a mechanism of deterrence of further abuses and of reinforcement of human rights standards.

Key words: Massacre, Minority, Genocide, Crimes against humanity, War crimes, Conviction, Retrospective law, Succession Theory.

Compensationpracticesof enforceddisappearances intheAmerican systemof humanrights protection

Marzieh Shafieihanjani [1]

Zahra Ebrahimi [2]

Enforced disappearance is not a new type of human rights violation. This phenomenon is taking place all over the world however; this article particularly focuses on the most important cases which are in American system of human rights protection.

Generally, the definitions of enforced disappearance contained in the recently adopted International Convention for the Protection of all Persons against Enforced Disappearances, as well as in the Inter-American Convention on Forced Disappearance of Persons are substantially similar. However, the definition contained in the Rome Statute differs from those contained in the international instruments on human rights indicated above, inasmuch as the definition of enforced disappearance provided by the Rome Statute includes (i) political groups as potential perpetrators of the crime, even if they do not act on

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behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, and (ii) the intention of removing the victim from the protection of the law for a prolonged period of time, as an element of the crime.

International human rights law obliges States to provide victims with an effective remedy, including a prompt, independent and effective investigation to end continuing violations and a right to the truth and to provide victims with full and effective reparation beyond compensation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition.

In this article by investigating in several sources such as different cases and articles, with an analytical-descriptive method, we finally conclude that the American systemof humanrights protection, to a large extent expand the protection of victims in compensation formoral and materialdamages of enforceddisappearances in this continent. Definitely, this progressive jurisprudence can be cited in criminal courts/tribunals. For example, the IACtHR, has held that direct next-of-kin, namely mothers, fathers, children, siblings, spouses and permanent companions should automatically be presumed to be victims of violations of the prohibition.That Court has stated that “the absence of effective domestic remedies must be considered per se as a source of insecurity, frustration and powerlessness for victims of gross human rights violations and their relatives, amounting to inhuman and degrading treatment”.

Consequently, as there was not any complete source about

compensation of enforced disappearance in American system of human rights protection this article attempt, by using a large number of sources, provide an integrated source for researchers.

Key words: Keywords: compensation, American court, enforced disappearance, human rights, victim.

Democracy, Ethnic Conflict, and the Jurisdiction of the International Criminal Court: The Case of Kenya

Paper Abstract Submitted for the International Conference on The Evolution of Legal Concepts in Light of Evolution of International Criminal Courts/Tribunals February 2014

Dr. Karl Schonberg [1]

In the weeks following national elections in Kenya in late 1997, widespread violence broke out as supporters of various political parties took to the streets attempting to influence the disputed election results. In the months afterward, six leading political figures (the "Ocampo Six") would be indicted by the International Criminal Court for crimes against humanity for having spurred this violence, which had resulted in significant loss of life. While the ICC process moved forward in subsequent years, political reform in Kenya was also embraced by parties across the national landscape, with the common purpose of assuring that Kenyan democracy would never again fall

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victim to partisan and ethnic violence. The result of this reform was a dramatically different national election in 2013. The same presidential candidate whose loss in 2007 had sparked post-election violence, Raila Odinga, lost again by a narrow margin in 2013, but this time a close result and disputed outcome was addressed in the national courts with very minimal violence in the streets. The ultimate result of the 2013 vote and review process were seen by most Kenyans and international observers as free, fair, and legitimate. At the same time, the winning presidential candidate Uhuru Kenyatta was one of those indicted by the ICC for his role in the 1997-1998 violence (along with a number of other officials in the new government). Kenyatta and his party have now taken office with the shadow of this indictment creating uncertainty in an already politically delicate and challenging time.

For the International Criminal Court, this case raises questions about the intersection of national compliance with the Statute of Rome and the need to protect and support political democracy. This paper will argue that the Kenya case should prompt a reexamination of the international community's standards initiating prosecutions by the International Criminal Court, to include a reevaluation of expectations for the competency of domestic judicial processes, as well as the interests of democratic stability and likelihood of political reform to decrease prospects of future political violence.

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Arab World the ICC: an Opportunity or a Challenge?

Omar Makey [1]

Arab states have been actively involved in the establishment of the International Criminal Court (ICC) and the Rome Statute since negotiations for the court began more than 20 years ago. Nevertheless, with only four states' parties to the Rome statute, namely Jordan, Djibouti, Comoros and Tunisia, the Arab World is definitely underrepresented at the court. Bearing in mind that four out of the seven states that voted against the Rome Statute were Arab states. The reasons behind this reality varies from one country to another; some of them are legal obstacles related to the Arabs' Legal systems (constitutions and laws) and other are politically motivated ones related to the Arabs' Systems of Governance (Semi Presidential Systems, Monarchies and authoritarianism).

Pouring salt on the wounds, the ICC recent adventures in the Arab World, specifically in Sudan and Libya, have furthered criticisms about its alleged biased political tendencies. Especially that

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the ICC's involvement in the Arab World has occurred through the most political of all mechanisms- UN Security Council referral. Additionally, the Court's recent decision to withhold membership from the Palestinian Authority has further undermined its reputation as a neutral arbiter of Justice in this part of the world- not to mention the situation of Syria.

Hence, for the purpose of this conference, this presentation will discuss concisely the historical, contemporary and future challenges affecting the relationship between the ICC and the Arab World.

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