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Leyla Alizade
Baku State University
master student
leylaelzd3@gmail.com

COMPARISON OF THE CRIME OF GENOCIDE WITH OTHER TYPES OF CRIMES

Abstract

War crimes and genocide crimes are among the most brutal crimes committed throughout world history. War crimes occur as a result of serious violations of the laws and customs of war.

These crimes are sometimes different, less serious in nature, and often unplanned crimes compared to crimes against humanity and the crime of genocide. Although war crimes are considered an inevitable consequence of any armed conflict, they have a more limited and complex structure, both technically and legally.

It should be noted that the crime of genocide is a newer type of crime compared to war crimes. Although the crime of genocide is a type of crime created on the basis of the events that took place during the Second World War, the norms of the law of war have a history that goes back to ancient times.

The article examines the similarities and differences between the crime of genocide and other types of crime.

Keywords: *the crime of genocide, war crimes, crimes against humanity, the similarities and differences between the crime of genocide and other types of crime, International Criminal Court, Rome Statute of the International Criminal Court*

Leyla Əlizadə
Bakı Dövlət Universiteti
magistrant
leylaelzd3@gmail.com

Soyqırım cinayətinin digər cinayət növləri ilə müqayisəsi

Xülasə

Müharibə cinayətləri və soyqırım cinayətləri dünya tarixində törədilən ən amansız cinayətlər sırasındadır. Müharibə cinayətləri müharibə qanunlarının və adətlərinin ciddi şəkildə pozulması nəticəsində baş verir.

Bu cinayətlər bəşəriyyətə qarşı cinayətlər və soyqırım cinayətləri ilə müqayisədə bəzən fərqli, daha az ağır xarakterli və çox vaxt planlaşdırılmamış cinayətlərdir. Müharibə cinayətləri istənilən silahlı münaqişənin qaçılmaz nəticəsi hesab edilsə də, həm texniki, həm də hüquqi baxımdan daha məhdud və mürəkkəb struktura malikdir.

Qeyd edək ki, soyqırım cinayəti hərbi cinayətlərlə müqayisədə daha yeni cinayət növüdür. Soyqırım cinayəti İkinci Dünya Müharibəsi illərində baş vermiş hadisələr əsasında yaradılmış cinayət növü olsa da, müharibə hüquq normalarının qədim dövrlərə gedib çıxan tarixi var.

Məqalədə soyqırım cinayətinin digər cinayət növləri ilə oxşar və fərqli cəhətləri araşdırılır.

Açar sözlər: *soyqırım cinayəti, müharibə cinayətləri, insanlıq əleyhinə olan cinayətlər, soyqırım cinayəti ilə digər cinayət növləri arasında oxşar və fərqli cəhətlər, Beynəlxalq Cinayət Məhkəməsi, Beynəlxalq Cinayət Məhkəməsinin Roma Statutu*

Introduction

Genocide is actions aimed at destroying part or all of a group. In Article 2 of the Convention, Article 2 of the Statute of the International Criminal Tribunal for Rwanda. This purpose of destruction distinguishes the crime of genocide from other crimes against humanity.

Especially crimes against humanity that occur as a result of massacres. It is not a correct approach to characterize these crimes as genocide from the very beginning, without explaining their characteristics and whether they were planned or not .

Genocide is a crime based on political opinion, ethnicity, race or religion. What genocide means in legal terms is stated in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Genocide the knowing and willful, disciplined and orderly elimination of a group FIRST PART process. According to a different definition, genocide is the process of separating a community from its homeland, aiming to break cultural ties and destroy their living spaces. The crime of genocide is the most brutal and violent crime that falls within the jurisdiction of international criminal courts. It can be described as the most serious crime.

Genocide is generally defined as the Prevention and Punishment of the Crime of Genocide, which was approved on December 9, 1948 and entered into force on January 12, 1951.

In Article 2 of the Convention, Article 2 of the Statute of the International Criminal Tribunal for Rwanda. Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia. It is defined in the same way in Article 6 of the Rome Statute (1).

What genocide means in legal terms is stated in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).

According to Article 2 of the Convention; "Genocide is the destruction of a national, ethnic, racial or religious group simply by due to this nature, the following acts are committed with the intention of destroying partially or completely is the processing:

- a) Killing group members;
- b) Causing serious physical or mental harm to members of the group;
- c) Deliberately destroying members of a group, partially or completely, physically to subject the person to living conditions calculated in advance to result in his/her death;
- d) Imposing measures to deliberately prevent births within the group;
- e) Forcibly transferring children belonging to the group to another group."

As it can be seen, not only taking real steps to commit genocide as a component of international crimes, but also the intention to do so is an important condition. It is in this regard that two elements of the crime of genocide should be particularly emphasized: mens rea and actus reus.

Mens rea (or dolus specialis or special intent) refers to the mental or subjective element of the act of genocide committed, while actus reus refers to the material or objective element of the act, i.e. the actual act or omission of the perpetrator(s). In the commission of the crime of genocide, the intention (ie, mens rea) did not consist in the accidental or careless destruction of one or more members of the people belonging to any other specific group but is aimed at the destruction of the group as a whole. The decisive feature for identifying the victims of genocide is not their individuality, but rather their belonging to the group envisaged by the 1948 Convention.

Undoubtedly, the term group here does not mean a mere gathering of individuals or forming a group of people, but a permanent and it is necessary to consider it as a community related to fixed bonds.

On the other hand, committing the crime of genocide should also be considered as a violation of human rights, more precisely, a violation of the right to life. This results in the destruction of members belonging to a special group, as it has been repeatedly stated in the decisions of international criminal tribunals, and since that group is considered the target.

Regarding both elements, it is possible to find sufficient provisions in the international judicial practice. Thus, in paragraph 59 of the ruling of the International Criminal Tribunal for Rwanda in the "Rutaganda" case (1999), it is directly stated that if a person commits one of the acts manifested

with the specific intention of destroying a specific group in whole or in part, then he is charged with genocide. can be judged (Beşiri, 2016: 7).

The decision of the Tribunal in the case of "Kaishema and Ruzindana" (1999) indicated that mens rea must be formed before committing acts of genocide. The Appellate Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case of Popovic et al (2015) stated that the crimes of genocide and collusion to commit genocide require genocidal intent as part of the mens rea element. As for the interaction of these two elements, it should be noted that since the intent for the crime of genocide has not yet occurred, its trial is also impossible and unthinkable.

That is, in order to bring any person or persons to criminal responsibility for the commission of the crime of genocide, the presence of actus reus is mandatory, along with mens rea. The provision "intent of the perpetrator (i.e. mens rea - ed.) manifests itself in his actions (i.e. actus reus - ed.)" provided in the decision of the International Criminal Tribunal for Rwanda on the "Semanza" case (2003) should be considered a clear example of this.

The framework of the regulations governing war crimes differs from that of the regulations governing crimes against humanity and genocide. International law regulates crimes against humanity and genocide as distinct categories of crimes. However, the standards of international humanitarian law provide the foundation for war crimes. Sanctions will be applied for war crimes in the event of a breach of an international agreement or customary international law (Köprülü, 2008: 340)

It should be noted that while war crimes and genocide differ from one another, there are also commonalities between the two categories of crimes.

War crimes and genocide are both regarded as serious transgressions of international humanitarian law. Similar to the crime of genocide, both military and civilians are capable of committing war crimes, and both groups may be the victims of these crimes (4).

In terms of aspects of the crime and protected values, war crimes and genocide differ from one another fundamentally.

While war crimes, such as looting cultural or artistic property, abstaining from the use of particular types of weapons, or avoiding striking vehicles with specific signs, safeguard a wider range of values than genocide, which only protects the lives and physical and spiritual integrity of a small number of groups.

This means that many acts that qualify as war crimes can also qualify as crimes of genocide, but it is not always true that all war crimes will qualify as crimes of genocide.

Furthermore, groups are not protected by laws against war crimes, instead, individuals who comprise the groups, combatants, or specific items are (Köprülü, 2008: 346).

A closer examination of the Genocide Convention reveals even another distinction between the two categories of crimes.

As a result, whether it is perpetrated during a period of peace or conflict, genocide is an international crime. Crimes involving hostilities between sizable or small organized armed formations are classified as war crimes. (Prosecutor v. Akayesu, ICTR Appeal Chamber, para. 120)

The moral component of the crime is another factor that sets war crimes apart from genocide. While the goal of attaining the partial or whole annihilation of particular people is required for the commission of genocide, this goal is not required for war crimes.

The protected values show yet another distinction between the two categories of criminal activity. The right to life and the members of the group's physical and spiritual purity are the ideals that the crime of genocide defends. Any assault on fundamental principles that qualifies as a genocide must be taken very seriously.

Nonetheless, there is a broad spectrum of the gravity of harm inflicted upon protected values in war crimes. There are somewhat less serious crimes on one end of this scale, like stealing from the public, and highly serious crimes, such as using poisonous weapons or murder, on the other (Köprülü, 2008: 348).

Article 7 of the International Criminal Court Statute, in its first paragraph that the following acts shall be regarded as crimes against humanity if they constitute a part of persistent or deliberate attacks against any civilian population.

Certain terms and categories of crimes are specified or clarified in Article 7's second paragraph.

This article defines persecution of any identifiable group or group on political, racial, religious, or other grounds universally prohibited by international law as follows:

- intentional killing, enslavement, deportation or forcible transfer of a population, imprisonment or other severe deprivation of physical freedom in violation of fundamental rules of international law;

- torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any form of sexual violence of comparable severity;

- in connection with any of the acts specified in this paragraph or any crime within the jurisdiction of the Court disappearance of individuals the crime of discrimination, intentionally causing great pain or other similar inhuman acts that cause serious harm to the body, mental, or.

The general distinction between crimes against humanity and genocide will be covered under this subject.

Genocide and crimes against humanity are crimes with distinct legal characteristics, despite the fact that they include similar conduct. It wouldn't be incorrect to describe crimes against humanity as being more serious than genocidal crimes.

It is not totally accurate to classify genocide as a kind of crime against humanity, though, because the definitions of the two categories of crimes differ and are defined independently of one another.

First off, the moral components of crimes against humanity and genocide are different.

In contrast to crimes against humanity, where the perpetrator just needs to be aware of his role in the attack and that he is targeting a civilian population, genocide crimes require the offender to act with the intent to entirely or partially destroy the protected group.

According to the Convention, there is a further distinction between crimes against humanity and crimes of genocide: crimes against humanity have a broader definition of crime than crimes of genocide.

Genocide can be perpetrated against either civilians or combatants, although crimes against humanity can only affect civilians. As to the Convention, the victim's membership in a restricted group possessing specific attributes is crucial in cases of genocide. Regarding crimes against humanity, the group's membership need not be based on racial or religious affiliation.

As a result, the Convention states that the definition of a group in a genocide has more specific characteristics than the definition of a civilian population in a crime against humanity (5).

As to the Convention, another distinction between the two categories of crimes is that, in contrast to crimes against humanity, the crime of genocide does not necessitate systematic or widespread attacks.

For an act to qualify as a crime against humanity, it must be carried out in an area where frequent and organized attacks occur, and the perpetrator must be aware of this. The act of genocide requires the perpetrator to directly target the group with the goal of eradicating it whole or in part. (Köprülü, 2008: 355)

Following the Kampala Conference, the International Criminal Court decided to include assault as a new crime in its Statute. The definition of assault was included in the Statute's newly added article along with Decision No. 6.

A state's occupation or annexation of another state's territory, a state's use of force against another state, a state's blockade of another state's coast, the use of military forces in another state in violation of an agreement between them, the state to which the territory of another state has been allocated permits the use of that territory for the act of attack and the use of armed groups not associated with the states listed in the article are all considered acts of aggression according to the Statute of the International Criminal Court.

The article's text makes it clear that an individual cannot commit an act of aggression on their own. The relevant Statute provision states that although the act of attack must be carried out by a state, legal entities are not the ones who carry it out, instead, individuals acting on behalf of the legal entity and members of the armed forces taking part in the execution of act may commit the act. As a result, assault is a multi-perpetration felony (Əmir, 2015).

It is acknowledged that because there is less use of force during the attack, a war situation does not occur. As a result, the relationships between the parties to the peace order will remain unchanged, and since each state will determine whether or not their interests are compromised, they will also determine how best to combat this.

If foreign governments directly enter an internal armed conflict by deploying their armed troops in support of the forces opposing the legitimate government, the internal conflict transforms into an international armed conflict since it is now between two states (Aslan, 2014: 88-89)

When comparing the crimes of aggression and genocide, the following should be mentioned as the main points: First and foremost, the primary intent behind the crime of genocide is to entirely or partially exterminate a national, ethnic, racial, or religious group.

Such a special motive is not required for the commission of an assault crime. The act of attack will also be carried out as a result of the acts mentioned in the Statute.

While only state organs, representatives, and personnel of the state's armed forces may carry out an attack, there is no such requirement for those who commit genocide. As demonstrated by historical evidence, state leaders and certain non-state groups are capable of committing the crime of genocide (Əmir, 2015: 118).

Furthermore, there are significant distinctions between the behaviors necessary to commit the crimes of aggression and genocide.

Genocide is defined as when one or more of the following are done to members of a group of people simply because they are members of that group: killing them on purpose, mutilating their bodies or minds, making them live in unlivable conditions, stopping births, and moving group members' children to another group. As a result, efforts are made to eradicate the entire group or a significant portion of it.

In an attack, victims are not singled out for elimination because they are members of a certain group. States violate other states' sovereignty in a variety of ways when they commit the crime of aggression. The culprit, act, victim, and moral components of these two crimes are therefore very distinct from one another (Arzumanlı, Mustafa, 1998).

Conclusion

It is evident that attempts have been made in the past and in the present to dismantle different groups in particular II. Different methods of murdering surfaced during and after World War II, posing a threat to enormous populations.

A new category of crime known as "genocide" has emerged in the literature on international law as various murdering techniques intended to destroy groups have grown to pose a serious threat to the international community. To discuss the crime of genocide—a topic examined and researched by various disciplines — it is necessary that the offenses listed in the law be deliberate acts intended to wipe out a particular community.

The crime of genocide has not received much attention in the international legal community, despite the 1951 entry into force of the Convention on the Prevention and Punishment of the Crime of Genocide. Subsequently, despite the world community's loud condemnation of such a heinous crime and the general opinion that it should be punished, the crime could not be stopped from happening again (Berberer, 2007: 99).

Because of this, it was decided to establish an international criminal court that would act impartially and permanently, within the bounds of the natural judge principle and the principle of legality, and in accordance with the interests of the international community in order to prevent and deter the crime of genocide (Şen, 2009: 29).

The Rome Statute is the foundational document of the International Criminal Court. Turkey is not a signatory to the Rome Statute. Crimes of aggression, war crimes, and crimes against humanity must be recognized as universal crimes under customary law in order for the governments that are not parties to the Statute to activate universal jurisdiction.

In actuality, the Rome Statute recognizes that genocide is a crime that needs to be punished severely wherever. Furthermore, it is now a required rule that can be used against any individual. Agreements made in contravention of this provision are therefore null and void (Halatçı, 2005: 64-65; 9)

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