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The Crime of Forced Displacement in the International Criminal Court Charter

Abstract

The crime of forced displacement is an international crime in all charters and laws, due to the effects it has on human rights, the dispersion of the unity of families, and the separation of homelands. The courts of Nuremberg, Tokyo, Yugoslavia and Rwanda did not hesitate to criminalize this act. The International Criminal Court considered forced displacement a crime of genocide, a crime against humanity, and a war crime.

Keywords: forced displacement, International Criminal Court, genocide, crime against humanity, war crime

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Beynəlxalq cinayətdə məcburi köçürmə cinayəti məhkəmə nizamnaməsi

Xülasə

Məcburi köçkünlük cinayəti insan hüquqlarına, ailə birliyinin dağılmasına, vətənlərin ayrılmasına təsirinə görə bütün nizamnamə və qanunlarda beynəlxalq cinayət sayılır. Nürnberq, Tokio, Yuqoslaviya və Ruanda məhkəmələri bu əməli cinayət hesab etməkdən çəkinmədilər. Beynəlxalq Cinayət Məhkəməsi məcburi köçürməni soyqırım cinayəti, insanlığa qarşı cinayət və müharibə cinayəti hesab edib.

Açar sözlər: məcburi köçürmə, Beynəlxalq Cinayət Məhkəməsi, soyqırım, insanlığa qarşı cinayət, müharibə cinayəti

Introduction

Stability, in all its forms, enables the individual to live and advance in his life, regardless of his specialization or interest. Spatial stability is emphasized by international conventions, most notably human rights. Whoever wants to displace humans from their homeland is committing a crime of forced displacement. Unlike migration, it may be due to many reasons, including natural causes such as disasters and drought, and criminal causes such as the spread of crime and gangs, but the displacement of political causes is the focus of this paper with Gaza displacement as a case study. It should be noted that all of the crimes that will be stated are committed by the Israeli occupation as the perpetrator. The crime of forced displacement has the subject-matter jurisdiction of the International Criminal Court, except the crime of aggression. Thus, if the perpetrator escapes punishment for the first crime, he will fall into the second one.

The problem statement:

What is meant by the crime of forced displacement? How does the International Criminal Court system manage it?

To discuss this topic, we followed it historically to monitor the developments in its definition in international conventions successively, and the rulings issued by the courts that ruled on this crime. We used a comparative approach as a tool to see the similarities and differences between them in various aspects, and we used a descriptive approach to convey the facts and definitions.

Chapter One: Definition of Forced Displacement Crime

The definitions of the term forced displacement varied, so we discussed its linguistic definition (section one), then the jurisprudential definition (section two), and then the legal definition (section three).

Section One: The linguistic definition of forced displacement:

The linguistic definition appeared in many dictionaries. Its definition came as the involuntary or forced movement of a person or people away from their homeland or original region. It was also known as the displacement of a population, i.e. their expulsion and deportation. In Arabic, it derives from "qasr", which means to compel and force. Forced displacement means leaving the place where a person lives under duress or because he wants to change where he lives for material or spiritual conditions to guarantee his safety (Al-Maany Al-Jami' on the website).

Section Two: The jurisprudential definition of forced displacement:

Displacement has taken several names, including deportation, expulsion, displacement, transfer and evacuation, and despite their differences, they share the fact that they are a crime unless they are for valid reasons or dictated by necessity.

Some define it as the process that occurs during crises, as it primarily aims to empty cities or residential areas of their residents or replace them with new ones to spread ethnic, national or religious homogeneity. Usually, it occurred by an armed group that undertakes the displacement process based on the conflict between the beliefs of the first party (the armed group) and the beliefs of the second party (the targeted group), and sometimes the official authority undertakes the displacement process in an attempt to achieve political stability (Ibrahim Abdullah Al-Hamdani, 2013).

Research

Another defines it as the transfer of civilians to places other than their original land or the expulsion of civilians from an occupied area to another area. It is considered internal if the displaced persons are transferred to another location in the same country.

In a third definition, its proponents believe that forced displacement is a practice carried out by governments, paramilitary forces, or fanatical groups against ethnic, religious, or sectarian groups to evacuate certain lands and replace them with other population.

A fourth definition explains it as forcing a group of people residing legally on their land to move to another area within the same state or outside it under the supervision of the state or groups affiliated with it or other groups to cleanse based on racial, ethnic, national, religious or even political orientation discrimination. Others distinguish between the concept of forced displacement in the case of international armed conflicts and the case of internal armed conflicts. In the first case, they define it as individual or collective forced transfers and deportations of people residing in the occupied areas to the lands of the occupying authority or the lands of any other state, whether occupied or not, regardless of the facts. As for the second case, its definition is forcing a group of people residing legally on their land to move to another area within the same state or outside it. Such act is carried out based on the methodology, planning and supervision of the state or groups affiliated with it or other groups to cleanse based on racial, ethnic, national, religious or even political orientation discrimination. In all of the aforementioned definitions, some differentiate between deportation, transfer and expulsion. They see deportation as transferring beyond the borders of the state, and they see forced transfer and expulsion within the territory of the state itself. What is common in the previous definitions is that there is a transfer of a person from his original place to another place under duress (Sabah Hassan Aziz, 2015).

Section Three: The Legal Definition

Part one: Definition of forced displacement in international Conventions

The 1949 Geneva Conventions and the Convention on the Prevention and Punishment of the Crime of Genocide considered the crime of forced displacement indirectly. They prohibited what leads to the transfer of residents and children from their places in the context of attacking civilians and displacing them.

The Fourth Geneva Convention of 1949 considered the transfer or deportation of the civilian population by the occupying state to the occupied territory, a serious violation that requires

accountability and punishment. Article 49 prohibited the collective and individual deportation or forced transfer of the population in the occupied state, whether to the occupying state or any other occupied or non-occupied state, except for what is related to the security of the population or military necessity, in which case they may be transferred (Abdul Fattah Bayoumi Hijazi, 2009).

The Additional Protocols to the Geneva Conventions of 1977, Protocol I, Article 85, Paragraph (4), Part (A), consider the transfer of the population of occupied territories a serious violation of the provisions of the protocol, as well as the transfer by the occupier of part of its population to the occupied territory, all of which are considered crimes against humanity. As for the Additional Protocol II, Article 17, Paragraph 1, it prohibited the deportation or transfer of populations during non-international conflicts, and Paragraph 2 prohibited the forcing of civilians to leave their homes for any reason related to the conflict.

It should be noted that before these conventions, the term forced displacement did not appear explicitly in previous conventions dealing with human rights, but rather referred only to the right of movement. The legal definition that mentioned the term forced displacement appeared in the courts that ruled on the crime (Omar Saad Allah, 2007):

*Nuremberg Court: It considered forced displacement a crime against humanity. Article 6, paragraph (c) states that crime against humanity mean deportations and other inhumane acts committed against any group of civilians before or during the war. Thus, the Nuremberg Court of 1945 considered forced displacement among the crimes that fall under the name of crimes against humanity, which is a field that contains many crimes that there is no room to mention.

*Tokyo Court of 1946: The Tokyo Court did not deviate from the Nuremberg Court in defining the crime of forced displacement, as it defined it in Article 5, paragraph (c) as among the crimes against humanity alongside any inhumane acts committed against any civilian gathering before or during the war.

*International Criminal Tribunal for the former Yugoslavia of 1993: Forced displacement is the act of transferring population from the places where they are lawfully present, without grounds permitted under international law.

*The International Criminal Court in Rwanda 1995: Article 3 of the International Criminal Court for Rwanda states that forced displacement is considered a crime against humanity.

*The International Criminal Court: It defined forced displacement as "Forcible transfer of persons from the area in which they are lawfully present, by expulsion or any other coercive act, without justifications permitted by international law. It is important to mention that the International Criminal Court considered displacement a crime against humanity in Article 7, paragraph 1, part (d), as a crime of genocide, and in Article 6, paragraph (e), as a war crime. It explained that the forced transfer of children from one group to another is one of the acts that lead to the crime of genocide, and that the deportation or forced transfer of populations is one of the acts that constitute a crime against humanity. With regard to war crimes, unlawful deportation or transfer is considered among the serious violations of the Geneva Conventions.

The aforementioned legal definitions come together in the term deportation of persons from their original place of residence to a place they did not wish to go to voluntarily but were forced to do so, whether in peace or in war, without justification.

Chapter Two: The Perspective of the International Criminal Court on the Forced Displacement Crime

The International Criminal Court is the permanent court to adjudicate crimes included in its charter, which are crimes against humanity, crimes of genocide, war crimes and crimes of aggression. In Addition, the special international courts that were established for a specific purpose, such as the Nuremberg Court, the Tokyo Court and the Yugoslavia Court were included as they try international criminals who commit internationally prohibited crimes.

Section one: The crime of forced displacement as a genocide in the International Criminal Court system

The International Criminal Court listed in Article 6 the acts that it considered the crime of genocide, which are:

“Killing members of a group, causing serious bodily or mental harm to members of a group, deliberately subjecting the living conditions of a group, imposing measures aimed at preventing births within a group, forcibly transferring the children of a group to others.”

Part one: Elements of the crime of forced displacement

The material element:

The material element of the crime of forced displacement is achieved, as stated by the court, when children are forcibly transferred. The act of transfer is achieved by force from the place where the group lives to another place, and the transfer operations may be used by physical transfer or by moral coercion such as threats of using force, fear, terror or violence.

The moral element:

According to the International Criminal Court, the moral element is the will of the perpetrator of committing the criminal behavior and intended to destroy a national, ethnic, racial or religious group. The intention is to eradicate this group and remove it from existence because of its characteristics, which are the motivation of the displacement.

Transferring children from one group to another that differs from it in religion, customs, traditions, language and history leads to the formation and creation of a person completely different from his original group, and this person may reject his national, religious or ethnic origin because of his upbringing in another group.

The legal element:

The text criminalizing forced displacement as a crime of genocide is stated in Article 6, paragraph 5, of the International Criminal Court.

Section Two: Forced displacement as a crime against humanity in the International Criminal Court system:

The International Criminal Court has listed a group of acts that it considers crimes against humanity when committed as part of a widespread or systematic and intended attack directed against any group of civilians. These acts are:

“Wilful killing, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender-related grounds, enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or mental or physical health.”

Accordingly, forced displacement is included in these acts, which explains why the system of the aforementioned court classifies it as a crime against humanity. Forced displacement is a crime against humanity if committed within the framework of:

A- large-scale attack.

B- Systematic and intended attack directed against any group of civilians.

C- knowledge and the will of the attack is achieved.

For the crime to be committed, the material, moral and legal elements must be present. The International Criminal Court did not specify independent elements for the crime of forced displacement, but rather these elements are supposed to be understood according to the crime against humanity (François Bouchet Solina, 2006).

Part one: The material element

The material element must be present. It is represented in the crime of forced displacement within the system of the International Criminal Court as a crime against humanity in the deportation of one or more citizens to another country or another place by force, i.e. coercion involuntarily, meaning that the latter does not want or desire to leave except the desire for asylum or migration.

The material element is present in deportation when the latter is done by expulsion, which means, “remove” by any coercive act, such as intimidation, threats, torture, or all of these acts without any justifications approved by international law for deportation.

We note that the International Criminal Court emphasizes that the deported or deportees must be legally residing in the relevant area. Thus, there is no excuse to move to another country and reside there without a legal basis or permission from that country.

Part two: The moral element:

The moral element of the crime of forced displacement requires that the perpetrator be fully aware of the coercion and compulsion that his action entails, contrary to what is stipulated in international law in general and the International Criminal Court in particular. In other words, the perpetrator must be familiar with the circumstances that justify the legitimacy of the victim's presence in the places from which they are being forcibly deported or transferred (Mahmoud Shamal Hassan, 2014).

The element of knowledge also comes when the perpetrator of the crime is aware of the factual circumstances that prove the legitimacy of the presence of the victims in the area from which they were forcibly displaced. The perpetrator also knows that the conduct he carried out (the displacement) is part of a widespread or systematic attack directed against a civilian population, which means that the intention is premeditated and available to commit the criminal act. It does not require proving the accused's knowledge of all the characteristics of that attack or the precise details of the plan or policy followed by the state or organization. In the event of the emergence of a widespread and systematic attack against the civilian population, the condition of intent indicates the fulfilment of this moral element if the perpetrator of the crime intends to continue his attack. The element of will is achieved by intent, as the perpetrator intends this behavior to be part of his attack, so it was not a coincidence or a mistake.

It should be noted that the widespread and systematic attack in crimes against humanity is a confirmed and indispensable element. Its interpretation appeared in the International Criminal Court in Article 7: "an attack directed against any civilian population" means a behavioral approach that includes the repeated acts referred to in paragraph 1 against any civilian population, under a state or organization policy requiring such an attack, or in furtherance of such a policy (Nassar Walim Najib, 2008).

Part three: The Legal Element:

The criminalization of forced displacement by the International Criminal Court, as outlined in Article 7, paragraph (d), considers it an international crime. This means that the act of forced displacement is deemed a crime and perpetrators can be punished under this law.

As an example, the Israeli occupation displaced the residents of Gaza under the pretext of crimes against humanity when it unlawfully dropped bombs on civilians in their homes, forcing them to move to places it claimed were safe, and then bombed them to force them to move to Sinai after pushing them to Rafah since October 2024.

Section Three: Forced displacement as a war crime in the International Criminal Court:

According to Article 8, paragraph 2 of the ICC, War crimes regardless of their type and method, are essentially illegal acts and therefore criminal acts, especially against civilians, and are not justified by any state of war. Therefore, the International Criminal Court has jurisdiction to consider war crimes, especially when committed within the framework of a general plan, policy or framework of a larger-scale of these crimes.

Violations of the Geneva Conventions of 1949, and the enumeration of these violations came in paragraph (a) of the same article, which is represented in many acts, including unlawful deportation or transfer.

Part one: The material element:

According to the crime elements included in the International Criminal Court, the perpetrator of the crime of deporting represents the material element of the crime of forced displacement or transferring one or more persons covered by the protection of the Geneva Conventions, individually or collectively, to another country or another place. The act of transfer or deportation must be carried out for the crime to be proven, and this transfer or deportation must also be to another place or another country, whether within the same country or outside it (Fala Ibrahim, 2004).

The concerned parties are those covered by the protection of the Geneva Conventions, namely: persons who do not participate in hostilities, including civilians, health workers, relief workers, and

those who are unable to participate in the war, such as wounded and sick soldiers, shipwrecked, and prisoners of war.

More importantly, the deportation or transfer must be in the context of an armed conflict and associated with it. This means that the criminal act certainly occurs in a war environment, and therefore the Geneva Conventions wanted to refine or reduce the brutality of wars (Muhammad Ali Abdul Qader Kahwaji, 2001).

The material element includes what was mentioned in the Criminal Court among other serious violations of the laws and customs applicable to international armed conflicts within the established framework of international law. The occupying state's direct or indirect transfer of parts of its civilian population to the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory (Qasim Musaed Al-Mufleh, 2021).

Accordingly, the crime of forced displacement is achieved when the occupier transfers some or all of the population to a territory it occupies, or to a territory over which it has no sovereignty, or transfers them within the borders of their state. As soon as the occupier moves the population from their places, the crime is achieved. As for the method, it is direct, meaning transferring them by force in an explicit manner or deporting or displacing them by destroying their homes dropping bombs on their places of residence or threatening them and pressuring them to move to another place.

Part two: The moral element

The moral element requires the presence of criminal intent in its general sense, i.e. the presence of knowledge and will. The perpetrator must know that he is committing acts that violate the customs and laws of war and international treaties. The perpetrator's will must also be directed towards committing the prohibited act with his knowledge. Suppose his will is not directed towards committing this act, in that case the moral element is not available, as if the perpetrator believes he is in a state of legitimate defense. The International Criminal Court states that for a crime to be committed, the perpetrator must be aware of the actual circumstances, not assumed ones, and must know that there is legal protection for the situation. It must be clear that the individuals involved are peaceful and not participating in any fighting, and that they do not pose any danger. Additionally, there must be evidence of an armed conflict, and the perpetrator must be aware of it and persist in their crime, demonstrating a clear intention to commit the crime (Minnesota Library).

Part three: The legal element:

Article 8 of the International Criminal Court is the text that criminalizes forced displacement and considers it a war crime. Accordingly, what the Israeli occupation is committing in Gaza, is a war crime because the displacement of Gaza residents is happening within the framework of an armed attack, if we consider that Israel is at war with the people of Palestine and Gaza in particular (Wikipedia).

Conclusion

The Criminal Court shows that it has jurisdiction over the crime of forced displacement as a crime of genocide when there is an intent to partially destroy a group or eliminate it from existence. It considers forced displacement as a crime against humanity and war crime when it is within the framework of an armed conflict. This description of such an act surrounds the perpetrators so that they do not escape punishment, because they have violated a right guaranteed internationally in international covenants such as the Human Rights Charter. We appreciate the texts contained in the International Criminal Court. However, the implementation cannot be seen in reality, as the mechanisms that guarantee this are not activated. Hence, bringing the perpetrators to the court to be questioned and punished. There is no better evidence of this than the Sudanese President Al-Bashir and the Russian President Putin, as they are both free. Also, for the court's rulings to be enforceable against the countries concerned, the latter must have ratified the ICC Charter, otherwise, there will be no judgments against them, and many perpetrators emerge from this loophole.

Results:

- * The International Criminal Court criminalizes forced displacement as more than one crime.
- * The International Criminal Court criminalizes forced displacement in times of peace and war.

* The International Criminal Court guarantees children in the crime of forced displacement protection.

* The requirement of intent to destroy the targeted population partially or entirely is difficult to prove and may allow the perpetrator to escape punishment.

Recommendations:

* The definition of some ambiguous terms such as group in the crime of genocide. These terms need precise clarification.

* Expand the characteristics of the group referred to in Article 6 to include the cultural, political or ideological group characteristics.

* Sufficiently rely on the context of events to prove the intention to destroy the group partially or entirely.

* Hold perpetrators of forced displacement accountable for their crimes within the jurisdiction of the International Criminal Court, as they are found guilty in neutral countries whereas there are no verdicts against them in their countries of origin or their allies.

References

1. *Al-Maany Al-Jami' on the website*. <https://www.almaany.com/ar/dict/ar-ar>
2. Abdul Fattah Bayoumi Hijazi. (2009). *The International Criminal Court*. Dar Al-Nahda Al-Arabiya.
3. François Bouchet Solina. (2006). *Scientific Dictionary of International Humanitarian Law*. Translated by Ahmed Masoud, Dar Al-Malayin.
4. Fala Ibrahim. (2004). *International Civil Liability for the Crime of Genocide*. Dar Al-Nahda.
5. Ibrahim Abdullah Al-Hamdani. (2013). *War crimes in international law and the courts competent to adjudicate them*. First Edition. Dar Al-Kotob Al-Ilmiyyah.
6. Muhammad Ali Abdul Qader Kahwaji. (2001). *International Criminal Law (The Most Important Crimes and International Criminal Courts)*, First Edition. Al-Halabi Legal Publications.
7. Mahmoud Shamal Hassan. (2014). *Children and Forced Displacement*. Dar Al-Kotob Al-Ilmiyyah.
8. *Minnesota Library*. <http://hrlibrary.umn.edu/arab/iccelelements.html>
9. Nassar Walim Najib. (2008). *The Concept of Crimes Against Humanity in International Law*. Arab Unity Studies Center.
10. Omar Saad Allah. (2007). *Dictionary of Contemporary International Law*. University Publications.
11. Qasim Musaed Al-Mufleh. (2021). The Crime of Forced Displacement in International Law and Islamic Jurisprudence. *Scientific Journal of King Faisal University*, 22(1).
12. Sabah Hassan Aziz. (2015). *The Crime of Forced Displacement, A Comparative Study*. Master's Thesis. Faculty of Law, University of Nahrain.
13. *Wikipedia*. <https://ar.wikipedia.org>

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