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AN OUTLINE REGARDING THE DEVELOPMENTS RELATED TO GENOCIDE

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Abstract

Due to the fact that the law on genocide is quite recent, it provokes the dialectic of an old fact. As a result, the law on genocide has been widely scrutinized during the course of historical developments. In addition, they remained unpunished at a large scale.
In the course of historical developments, the issue of human rights was treated as areas (issues) of the internal competence of states. Therefore, no state, not even the international community, enjoyed the right to raise the issue of human rights violations in a state without the risk of this being interpreted as interference in the internal affairs of that state.
The refusal to exercise universal jurisdiction over such violations of humanitarian principles is justified in the name of respect for state sovereignty.
An analysis of the international law literature reveals that although the law on genocide is relatively new, it has significantly influenced the protection of human rights and freedoms and has significantly contributed to the fact that these rights do not remain simple, internal affairs of individual states and, as such, not to be considered as matters of the state itself and not to remain under the authority and arbitrariness of the bodies of the state itself in the manner of their treatment.
Furthermore, the underlying aim of this paper is to analyze the development of genocide, as well as how to treat it in international law. Indeed, this has been addressed in some specific cases in which the existence of genocide has been confirmed and, in some states, which have failed to prove its existence. Therefore, the analysis is primarily focused only on the presentation and the way of regulating genocide in different periods of human history.
In particular, special emphasis has been put on issues before and after the establishment of the Convention on the Prevention and Punishment of the Crime of Genocide and the restraint of the Convention.
The study is mainly divided into two main parts. In the first part we will address the historical aspects of the emergence and development of human rights between the parties to the conflict, as well as their position in the international arena before the unique international settlement of genocide, as well as the presentation, treatment and trial of the international community to human rights violations. In the second part, the definition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide will be broadly elaborated.

Keywords: Genocide, crime, convention, human rights

1. Methodology

As far as methodology is concerned it is worth pointing out that there are several methodological approaches used in this paper. The paper analyzes a wide range of topics, which require a multidimensional approach.

The methods used are as follows:

• Comparative analysis: since the paper, as it can be understood from the title itself, deals with genocide which is provided for in international law, then the main method used is the comparative analysis.

• Historical method - It is well known that in order to properly analyze legal events in the context of international relations, it is very important to know and understand the historical context of events. In fact, the field of study of International Relations it self until after the Second World War was an integral part of the study of history.

• Secondary resources - obtained from various analysis carried out by specialized institutions. These types of data aim to enrich the topic at a large extent, by adding quite important components related to statistical data.

2. Historical aspects of the presentation of the protection of human rights in international law, with a particular emphasis on genocide

International law in human society was recognized very late, but as an archaic form it was introduced quite early. The examples of humanism shown by some monarchs and nations seem even more unusual since they were rare. At first, metaphorically said, at the first sight they resembled to distant lightning in the darkness of night, then they turned into an ever-increasing band of light, enough to illuminate the entire humanity. In conclusion, the growth of cities, the organization of nations, and the development of relations between peoples, around 2000 BC, laid down the first rules of what would later be called international law[3].In particular, the approach to international law, albeit in archaic forms, began to be implemented in some developed peoples at the time, albeit in their primitive form.Hammurabi, king of Babylon, established the famous code that bore his name and began with the words, "I made these laws to prevent the powerful from oppressing the weak" [Pictet, Jean., 2000].

The Hittites also had a code of laws, based on justice and honesty. They too signed declarations of war and peace treaties. In cases where the enemy capitulated, its inhabitants were usually unaffected. Nevertheless, the war between the Egyptian and Hittite Empires in 1269 BC ended with a very restrained peace treaty and respect for justice, a treaty which brought forth an era of harmony and friendship between the two powers [Pictet, Jean., 2000].

Moreover, the International Law of Human Rights has its roots in Roman law, in which Jus Gentium "the Law of Peoples" in Roman law, was originally the law applicable to non-Roman citizens. But in the Roman Empire the implementationwas also incorporated to show the rules of natural law applicable to all persons of any nationality, including Roman citizens. Nowadays, the source of the law is internationally recognized by the international community as a whole. Besides the term gentium inter se is used to refer to the right between peoples. An archaic form of the international law [Fellmeth, Aaron X; Horwitz, M., 2009].

In the meantime, one of the most famous and influential authors of the international law, Hugo Groci (early seventeenth century) believes that along with jus gentium there should be used the term jus inter civitates (Law between states). The last term has been adopted by all

authors who have considered that international law regulates relations between states [Gruda, Z., 2002].

It was necessary to strengthen and protect human rights, since in this period human rights were to a certain extent a form of quid pro quo with which the state agreed that, in fact, everyone should look at their own affairs. What was happening within the borders of a sovereign state was a problem that should not bother anyone but the state itself [Schabas, William A., 2000].

In this regard, the state had the right to resolve internal affairs as it saw fit and necessary, even if it meant using brutal violence against residents living within its territory. Based on this, the states began to issue individual acts for the protection of human rights, especially in the Middle Ages, where England played an important role. Human rights have taken place in many different writings from ancient times.
However, based on the fame and historical value, we distinguish: The Great Charter of Freedoms (Magna Carta Libertatum) of 1215, the Bill of Rights of 1689, the Declaration of Independence of the United States of America (1776 and Declaration of the Rights of Man and of the Citizen (1789) [Gruda, Z., 2002].

Through these acts in England and, most recently, in France, states aim to guarantee freedoms and human rights within their territory. International law was subject to a rapid development owing to the positive influence of the French Bourgeois Revolution (1789-1793). Under the influence of this revolution are presented the ideas: on legal equality between states; the sovereignty of the people instead of the sovereignty of feudal and absolute monarchs; on other human freedoms [Gruda, Z., 2002].

However, the First World War which was characterized by gruesome atrocities, countless casualties and the destructions it brought, influenced the introduction of some progressive principles of international law and significant change of international relations. Meanwhile, one of the most important efforts has been to present commitments for the establishment of an international organization, which would take care of the evading or termination of wars. Consequently, this would greatly contribute to the replacement of the old international order based on the balance of power, with another more harmonious (more appropriate), which would lead to reduction of armaments, the peaceful resolution of international disputes and implementation of the principle of self-determination [Gruda, Z., 2002].

For the first time after the First World War, the states created a supranational mechanism, the League of Nations, which had three main goals:

- International cooperation,
- Restoring peace and
- Restoring security in Europe [Reka, B., 2016].

During this time, despite the results achieved and the efforts made to maintain peace and security, international relations were strained. Germany, defeated in the First World War, wanting revenge on the Allies, and Italy and Japan, dissatisfied with what they had gained, demanded "redistribution of the world." The Germans with the policy of "penetration in the East" sought "investigative space", the Italians sought "the country under the sun", while the Japanese sought the creation of the "Empire of a billion people". These, together with the

incompetence of the League of Nations and the rift that reigned between the great powers on many important issues, caused World War II [Gruda, Z., 2002].

Only after the Second World War and the its consequences, did the states take the initiative to create a supranational mechanism which, despite the League of Nations, should be functional and vital, and would include, at least, the most important of the world. It is the United Nations (UN). The name United Nations was first used in the Declaration of the United Nations of January 1, 1942 by the President of the United States Franklin D. Roosevelt, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Powers [https://www.un.org/en/sections/history/history-united-nations/index.html].

The United Nations is an organization founded in 1945.The Charter of the United Nations was signed on June 26, 1945 in San Francisco in the conclusions of the United Nations International Conference and entered into force on October 24, 1945. The Statute of the International Court of Justice is an integral part of the Charter [Karta e Kombeve të Bashkuara dhe Statuti i Gjykatës Ndërkombëtare të Drejtësisë, 1998].

With foundation and entry into force of the United Nations Charter, a supranational mechanism was established, as well as states pledge to maintain international peace and stability. Aiming to protect them, the General Assembly within its competencies and in accordance with Article 13 approves the Convention on the Prevention and Punishment of the Crime of Genocide, which provides for the fight against the crime of genocide, regardless of whether they are committed by individuals or states.

3. The phase before the approval of the Convention on the prevention and punishment of the genocide crime

Within the framework of establishing a unique basis of international norms for the prevention and punishment of the crime of genocide and especially after the First and Second World Wars, based on the Atlanta document, of August 1941, is the first international document which laid the foundations and starting points for establishing principles regarding the Allies' determination to fight aggression and punish the aggressors of World War II. The goals of the Atlanta Document have been; ensuring and guaranteeing human rights and those who violate these rights should be punished.

Later, in July 1942, the semi-official International Commission for the Reform and Development of Criminal Law, and in June 1943, specifically considered some of the most interesting issues for the organization of the international prosecution of war criminals [Salihu, I., 2016].

Based on this initiative and with the aim of taking responsibility of the persons who, during World War II, caused the hitherto unseen horror for humanity, on August 8, 1945, an agreement was achieved in London among the great allied forces (United States, France, England and the Soviet Union), to form the international military tribunal which would adjudicate the criminals of World War II, whose acts could not be addressed in the territorial jurisdiction of states [Salihu, I., 2016].

Allied states were hereby tried for the major crimes committed during World War II at the Nuremberg International Military Tribunal established in 1945. This court aimed to punish the perpetrators of crimes during World War II and bring those responsible to justice.

Therefore, the trials of the accused took place and, as a result, after 216 court hearings, on 1 October 1946, a decision was made on 22 of the 24 defendants. (Robert Ley committed suicide while in prison and Gustav Krupp von Bohlen und Halbach's mental and physical condition did not allow him to stand trial.) Three of the defendants were released: Hjalmar Schacht, Franz von Papen and Hans Fritzsche. Four were sentenced to 10 to 20 years in prison: Karl Dönitz, Baldur von Schirach, Albert Speer and Konstantin von Neurath. Three were sentenced to life imprisonment: Rudolf Hess, Walther Funk and Erich Raeder. Twelve of the defendants were sentenced to death and hanged on gallows. Ten of them - Hans Frank, Wilhelm Frick, Julius Streicher, Alfred Rosenberg, Ernst Kaltenbrunner, Joachim von Ribbentrop, Fritz Sauckel, Alfred Jodl, Wilhelm Keitel and Arthur Seyss-Inquart - were hanged on October 16, 1946. Martin Bormann was tried and sentenced to death in absentia, and Hermann Göring committed suicide before being executed [https://www.britannica.com/event/Nurnberg-trials].

In addition, the International Military Tribunal in Tokyo was established on January 15, 1946, to punish crimes committed by Japanese forces [Salihu, I., 2016]. This trial within the trial resulted in Two (Yosuke Matsuoka and Osami Nagano) of the twenty-eight defendants dying of natural causes during the trial.

One defendant (Shumei Okawa) had a mental illness on the first day of the trial, was sent to a psychiatric ward and was released in 1948. Twenty-five (25) others were found guilty, with numerous charges. In addition, seven (7) were sentenced to death by hanging on gallows, sixteen (16) to life imprisonment, and two (2) to probation. The seven death row inmates were found guilty of incitement or implicated in mass atrocities, among other charges. Three of the sixteen convicts died between 1949 and 1950 in prison. Thirteen (13) others were released on parole between 1954 and 1956, less than eight years in prison for their crimes against millions [http://law2.umkc.edu/faculty/projects/ftrials/tokyo/tokyolinks.html].

Although international efforts to combat and punish war crimes in the Nuremberg and Tokyo cases prove that many of those responsible failed to be punished for their actions, but after a short time of serving a good deal of them were set free, as if nothing had happened.

Therefore, based on what we pointed out, an urgent need arose to create an international obligation to punish the crime of genocide. As a result, the term genocide was first used by the Polish lawyer Raphael Lemkin in 1944 in his book Axis Rule in Occupied Europe. In this regard, the term is comprised of Greek prefix genos, implying race or tribe, and the Latin suffix cide, meaning murder. In part, Lemkin developed the term in response to the Nazi policies of systematic killing of Jews during the Holocaust, but also in response to previous instances in the history of targeted actions aimed at the destruction of particular groups of people. Raphael Lemkin later led the campaign to recognize and codify genocide as an international crime [https://www.un.org/en/genocideprevention/genocide.shtml].

Genocide was first recognized as a crime under international law in 1946 by the United Nations General Assembly (A / RES / 96-I). First and foremost, it was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). The Convention has been ratified by 149 States (as of January 2018). The International Court of Justice (ICJ) has consistently stated that the Convention embodies principles that are part of general international customary law. This implies that regardless of whether States have ratified the Genocide Convention, they are all bound as legal issues by the principle that genocide is a crime prohibited under international law. The ICJ has also stated that the prohibition of genocide is a legitimate norm of international law (or ius cogens) and consequently, no exception is allowed [https://www.un.org/en/genocideprevention/genocide.shtml].

The definition of the crime of genocide as contained in Article II of the Genocide Convention was the result of a negotiation process and reflects the compromise reached between the Member States of the United Nations in 1948 at the time of the drafting of the Convention. Genocide is defined in the same terms as in the Genocide Convention in the Rome Statute of the International Criminal Court (Article 6), as well as in the statutes of other international and hybrid jurisdictions. Many states have also criminalized genocide in their domestic law, others have not yet done the same
[https://www.un.org/en/ge nocideprevention/genocide.shtml].

In this perspective, in Article 6 of the Rome Statute of the International Criminal Court, "genocide" means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as such:

a) Murder of group members;
b) Causing serious bodily or mental harm to group members;
c) Deliberate infliction of group living conditions, calculated to bring about its physical destruction in whole or in part;
d) Establishment of measures aimed at preventing births within the group;

Forced transfer of group children to another group [https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf].

These actions are deliberately planned and oriented towards a unique group, where as a result we will have the complete or partial destruction of that group. Therefore, through the Statute of the International Criminal Court, specifically Article 6, it is intended to define the basic elements for dealing with genocide cases.

This aims to bring those responsible for the crime of genocide to justice and not to go unpunished and consequently, this will affect the prevention of the crime of genocide. But there are cases like in the United States of America that have defined genocide: The Implementing Act of the 1987 Genocide Convention (Proxmire Act) - Amends the federal penal code to establish the crime of genocide (specified acts committed intentionally) specific to destroy a national, ethnic, racial or religious group). It gives sentences for each person who commits or attempts to commit any of these acts (a fine of $ 1,000,000 and / or imprisonment

for up to 20 years, and life imprisonment if group members are killed). Sets criminal penalties (a fine of $ 500,000 and / or imprisonment of up to five years) for direct and public incitement to an act of genocide [https://www.congress.gov/bill/100th-congress/senate-bill/1851].

There is a tendency of contemporary states is that genocide, in addition to being defined by the Convention on the Prevention and Punishment of the Crime of Genocide, is included in the domestic legislation. To illustrate this, it is worth mentioning the case of the US wherein along with the imprisonment there are also fines for persons'actions, but also for cases that remain attempts. This indicates that the awareness of the contemporary community has risen to such levels, that they have managed to regulate it within the legislations of the respective countries.

International law recognizes that genocide is illegal under customary international law, as well as laws and treaties, and that it is a crime of universal concern [Segall, A., 2001].

The term genocide has been used in lawsuits by the International Military Tribunal, and within two years it was a subject of a UN General Assembly resolution. But the resolution spoke in the past, describing genocide as a crime that "happened". Subsequently, the General Assembly completed the setting of standards in this regard with the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, where "genocide" was defined in detail and technically as a crime against international law [Fellmeth, Aaron X; Horwitz, M., 2009].

In order to establish the legal basis, the General Assembly of the United Nations adopts Resolution 96 in the 55th Plenary Session of the General Assembly of the United Nations and according to which it is determined that genocide is a denial of the right to existence of whole human groups, as murder is a denial of the right to life of individual human beings, such a denial of the right of existence poses a threat to the conscience of humanity, brings great loss to humanity in the form of cultural and other contributions represented by these human groups and contrary to the moral law and spirit and purposes of the United Nations.

Conviction of the crime of genocide is an international concern. The General Assembly specifies that genocide is a crime under international law which the civilized world considers, and for the commission of which, the perpetrator and accomplices - whether private individuals, public officials or statesmen, and whether the crime was committed for religious, racial reasons, political or any other reason - are punishable and invites Member States to adopt the necessary legislation to prevent and punish this crime. Furthermore, it recommends that international cooperation be organized between states in order to facilitate the prevention and prompt punishment of the crime of genocide and to this end fosters the Economic and Social Council to undertake the necessary studies, with a view to drafting a convention on the crime of genocide to be presented at the next regular session of the General Assembly [https://undocs.org/en/A/RES/96(I)].

The United Nations Economic and Social Council, in accordance with its obligation under Resolution 96 (I), have been invited to prepare a draft Convention on Genocide [Gruda, Z., 2002].

In accordance with this and in order to approve the convention on the prevention and punishment of the crime of genocide at the meeting held on December 9, 1948 the General Assembly of the United Nations adopted the Resolution and text of the Convention on the Prevention and Punishment of the Crime of Genocide [https://undocs.org/en/A/RES/260(III)].

The Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations General Assembly, based on its values which it proclaims in its introductory part declares that genocide is a crime under international law. Contrary to the mission and intentions of the United Nations and which the civilized world condemns, given the fact that in all periods of history genocide has caused great losses to humanity, committed to save humanity from evil and moreover international collaboration is of key importance [Gruda, Z., 2002].

4. Convention on the prevention and punishment of the genocide crime

The Convention is comprised of nineteen (19) articles, where Article XIII defines the manner of entry into force and which states that the Convention enters into force after the ninetieth day after the date of deposit of the twentieth instrument of ratification or accession by the States. in accordance with Article 11 of the Convention of any member of the United Nations and of any non-member State to which the General Assembly has been invited for this purpose.
Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide defines acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such as follows:

a) Murder of group members;
b) Serious violation of the physical or mental integrity of group members;
c) Conscious submission of the group to such living conditions that lead to its complete or partial physical mutilation;
d) Measures aimed at preventing births within the group;
e) Forced transfer of children from one group to another
[https://undocs.org/en/A/RES/260(III)].

The Convention also provides for cases where it has directly and indirectly influenced the commission or attempt to commit genocide, where Article III stipulates that acts should be punished:
a) Genocide;
b) Agreement to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempted genocide;
e) Complicity for genocide [https://undocs.org/en/A/RES/260(III)].

Through this Convention, the international community has intended not to go unpunished for acts committed either in the name of the position held by persons or as their individual actions, namely in Article IV Persons who have committed genocide or any of the other offenses listed in Article III shall be punished, whether governmental, official or special persons [Gruda, Z., 2002].

The list of groups protected by the Convention has provoked the debate since 1948, compared to other aspects of the convention. This is often manifested by claiming that victims of certain atrocities, which respond to the terms of the Convention, clearly do not belong to any of the four protected categories [Schabas, William A., 2000].

In Addition, Articles five and six of the Convention set out the obligations of states to sanction the prohibition and punishment of the crime of genocide within their legislation, as well as before the jurisdiction of judicial bodies in Article Six of the Convention which defines domestic courts or in certain cases courts established for the punishment of the crime of genocide committed, but that the jurisdiction of these courts have recognized the jurisdiction of this court.

Moreover, Article Sixteen of the Convention also provides for the manner of its repeal. According to this, as a result of denunciations, the number of Contracting Parties to this Convention reaches less than sixteen, the Convention shall cease to be in force from the date of when the final denunciation will enter into force [Gruda, Z., 2002].

4. Conclusions

The struggle for the protection of human rights and freedoms began in its archaic forms, but its attention was concentrated in different periods, although genocide as a term has emerged quite late. As a result, there numerous attempts have been carried out to establish mechanisms which have been defined either through moral norms, customary and even international legal acts. Meanwhile, the lack of a supranational mechanism for the protection of these values and, particularly, a unique international document which will be binding on all states, shows that until recently states were based on the principle of absolute sovereignty over their citizens.

Therefore, only after the establishment of the United Nations important initiatives wereundertaken to punish and prevent the crime of genocide, and here it should be emphasized that Raphael Lemkin played an important role, both in defining the term genocide and in lobbying and promoting punishment of the crime of genocide, in particular his involvement in the commission played a special role in drafting the Convention on the Prevention and Punishment of the Crime of Genocide.

With the establishment of the Convention on the Prevention and Punishment of the Crime of Genocide by the United Nations General Assembly, for the first time, genocide took on an international form. Furthermore, it established the international basis for identifying, prosecuting and punishing the crime of genocide.

Above all, to fight to prevent and punish genocide is extremely difficult, taking into account the cases that have occurred after the foundation of this Convention, it is an indication that the state must be strongly committed to the promotion and maintenance of universal values.

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