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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 16: THE CRIME AGAINST HUMANITY

➤ *Applicable law*

There exists no specific international convention relating to the crime against humanity.

Reference must be therefore made to the Statutes of the Nuremberg Tribunal, the ICTY, the ICTR and the ICC.

➤ *Constituent elements*

Context :- act committed within the scope of a generalised or systematic attack launched upon a civilian population (art. 7 – 2 a ICC Statute: multiple commitments of acts against any civilian populations, in application or in pursuit of the policies of a State or an organisation having the intention to carry out such an attack).

- attack directed against the civilians

Nature of the act : serious acts, and multiple acts as defined in texts.

Definitions vary from one statute to another with regard to acts which constitute a crime against humanity.

Article 7 of the ICC Statute sets out the following non-exhaustive list :

- a) Murder ;
- b) Extermination ;
- c) Enslavement ;
- d) Deportation or enforced transfer of population ;
- e) Imprisonment or other form of serious deprivation of physical freedom in violation of the fundamental principles of international law ;
- f) Torture ;
- g) Rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity ;
- h) Persecution of any identifiable group or community for political, racial, national, ethnic, cultural, religious or sexist reasons under paragraph 3, or according to other criteria which are universally



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recognised as inadmissible under international law, and connected with any act specified in this paragraph or any crime which falls within the jurisdiction of the Court ;

i) Enforced disappearance of persons ;

j) Crime of apartheid ;

k) Other inhuman acts of a similar nature which intentionally cause great suffering or serious harm to physical integrity or physical or mental health.

The ICC Statute makes it possible to try criminal behaviours adopted by agents of the State against their own population, and without any situation of war.

Intention : knowledge of this generalised or systematic attack by the perpetrator, awareness from the perpetrator that his acts form part of this attack.

The ICTR Statute requires that the acts be committed for national, ethnic, racial, religious or political motives. The ICTY and CPI require discriminatory motives only for the crime of persecution.

➤ **Development of the definition in texts**

The requirement of a context of armed conflict, which was contained in the Nuremberg Tribunal Charter, and taken up in the ICTY Statute, was removed with the adoption of the ICTR Statute.

A new element requiring that the act be committed as part of a generalised or systematic attack was introduced by the Statutes of the ICTR and the ICC. This element is also required by the case-law of the ICTY.

The Statutes of the ICTY and the ICTR included rape amongst acts which constitute a crime against humanity. The ICC Statute extended this notion to other forms of sexual violence (enforced prostitution etc.).

The Statute of the ICTY considered as discriminatory motives constituting persecution political, racial or religious grounds. The ICC added those based on national, ethnic, cultural or sexist considerations.

➤ **Development of international case-law in defining the crime**

International case-law tends to attenuate the state dimension of the crime. Indeed, in the *Tadic* case of the ICTY (judgement of 7 May 1997), insurrectionary authorities (quasi-state) are acknowledged as perpetrators of the crimes. In the *Kunarac* case (judgement of the ICTY of 132 June 2002), evidence of a plan or policy underlying the crime is not required for its qualification.

➤ **Regime**

The United Nations Convention on the non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes, adopted on 26 November 1968, and the European Convention on the non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes, adopted on 25 January 1974 internationally affirm the principle of non-applicability of statutory limitation, irrespective of the date of the commission of the crime.

Sources :

-Henri D. BOSLY, Damien VANDERMEERSCH, *Génocide, crimes contre l'humanité et crimes de guerre face à la justice : les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010.

-Rafaëlle MAISON, « Crime contre l'Humanité », in *Dictionnaire des Droits de l'Homme*, Puf, 2008.

-Web site of Trial Watch : <http://www.trial-ch.org/index.php?id=800&L=5>

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