FROM THE PAST TO THE PRESENT: GENOCIDE AND ETHNIC CLEANSING CRIMES

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Abstract

From the past until nowadays genocide is one of the fundamental crimes of humanity that cause to damage target groups like ethnic cleansing. Although Genocide and Ethnic Cleansing have commons there are separation points that exist. Also, both concepts can create similar development processes and consequences but under international criminal law, ethnic cleansing does not define as a crime, which creates huge problems with trials of ethnic cleansing and separation between genocide. Because of that "Elimination" purpose can be similar but ethnic cleansing more focus on specific areas and ethnic groups. This research will investigate historical developments of genocide and ethnic cleansing and find out common and separation points to create a general review of historical events and legal precedents.

Key Words: *Crime, Genocide, Ethnic Cleansing, International Criminal Law*

INTRODUCTION

The positive development of the world on the economic, social and cultural level on the other side people have been exposed to various torture and inhuman treatment. Through the historical development of these two different directions give the obligation to research and constantly scientifically supplement today. There's growing evidence that we had various violence because of many different reasons for a conflict. Some of the communities were systematically

targeted in a series of episodes of genocide and ethnic cleansing and other crimes under international criminal law.

With these crimes usually, we have not just violence but systematic discrimination also, bringing the horror stories with victims. These crimes are committed by every member of society or community. Women are raped and severely tortured, elderly people, and children also. Genocide crime and ethnic cleansing are the phenomena of the 20th century although they have a long history. These similar concepts nowadays have existed for millennia examples some of them are Roman destruction of Carthage in 146 BC have surprisingly modern echoes in 20th-century genocides (Kiernan, 2004:27). Genocide crime is a potential threat against peace and threatening the existence of the human race, divestiture of the contribution of this part of society creates huge harms to civilization. (Parlar, Öztürk:2018: 20). Genocide was for a long time considered a subset of crimes against humanity every genocide fulfilled the legal requirements for categorization as crimes against humanity. (Smeulers, Grünfeld:2011:90).

The ethnic Cleansing process is mostly performed when redetermination of rights and properties and resulting in harmful conclusions. We can say ethnic cleansing is a complete violation of international law.

1. GENOCIDE AND THE ETHNIC CLEANSING CRIMES AS A TERM

The word “genocide”, consists of Greek genos (race) and Latin cide (killing) two words (Lemkin, 1944:45). Genocide term firstly used in international documents same as the definition from Lemkin’s book. With this definition, genocide is an occupation for the elimination of a specific race, social group, or class especially Jews, Polish, Gypsies. Elimination of national, race, or religious groups. (Sands:2016:247) In 1943 the Polish lawyer Rafael Lemkin coined the term genocide for the Holocaust and inspired United Nations for further activities regarding crime. He first defined genocide in 1933 as follows: conceived as oppressive and destructive actions directed against individuals as a member of national, religious, or racial group Lemkin said “Genocide is directed against the national groups as an entity, and the actions involved are directed against individuals, not in their capacity, but as members of the national group.” (Yürükel:2004:4) Genocide crime is different from other crimes because it’s crime against all humanity, and one of the most grievous and heinous crimes in the world. Regarding the Convention on the prevention

and punishment of the crime of genocide came into force as an international treaty in 1950. It defines genocide as acts such as killing members of the group, they are committed with the intent to destroy in whole or in part a national, ethnic, racial, or religious group as such (Genocide Convention, Article II:1951). The definition excludes the deliberate destruction of other groups such as most notably social, economic, and political groups. (Smeulers, Grünfeld:2011:159) The exclusion of these groups is a major flaw in the definition. The mass killings of social and political groups, such as the killing of 10-15 million citizens of the former Soviet Union between 1920 and 1939, or the killing of 500.000 to 1, 000.000 Communists in Indonesia between 1965 and 1966 would not qualify as genocide according to this definition. (Smeulers, Grünfeld:2011:161)
In this modern world, Convention has a significant place as the first human rights treaty. Actually, Genocide Convention was a base for a few hours later adopted the Universal Declaration of Human Rights by the UN. (Universal Declaration of Human Rights, GA Res.217A(III), UN Doc.A/810).

Ethnic cleansing notion coming from the end of the 1980s by Soviet Russia authorities for removal crisis of Armenian population from Nagorno-Karabakh by Azerbaijan with Slavic word "ethnic-eskoye chishcheniye". After a short time, we heard this term used by reporters for Yugoslavian wars between 1991 and 1995. If we analyze events, the definition of ethnic cleansing can explain the permanent and forced removal of a specific group of people to another region.

Nations and International Organizations define with variable terminologies. Sometimes Ethnic Cleansing is defined as a systematic method, campaign, policy, or application. Each of these definitions provides to explains ethnic cleansing differently.(Şen:2010:256,257)

2. ANALYTICAL VIEW THROUGH THE HISTORY OF CRIMES

Crimes can never safely be fixed in the historical past, they remain locked in the eternal present, crying out of vengeance. (Minow:1998:14). The genocide exercises have been constantly practiced by the western nations and powers for 600 years on the 5 continents of the world. (Yürükel:2004:150).

During the middle ages expiration process of one of the largest minorities of Europe, Jews and Muslims because of their religious characteristics. Middle-age Europeans forced them to

convert to Christianity and Spain expelled Jews in 1492 and Muslims in 1502. Even they expelled all Muslim converts (Moriscos) in the early 17th century.

Also, North America was forced to resettle for most Native Americans in the 19th century. Homesteady act opened up most of the lands for White settlers and tribes who resisted the occupying White settlers were brutally crushed. At the same century Principality of Serbia and Principality of Montenegro did force migration to Albanians from their homeland to Prishtina and Skopje. Because of the religion of Albanian people, Islam Nis converted to an Islamic area after they became part of the Ottoman Empire and Serbian forces capture Nis and expelled Albanian people from there.

Therefore, we can see that crimes such as genocide, ethnic cleansing, crimes against humanity are not just historical events, they are existing and offering in nowadays. The genocidal acts have not been named before the 1940s. The genocidal act has been named by Winston Churchill as `the crime without a name in the 1940s. (Ülgen:2018:3). Genocide Convention has been ratified by a hundred and forty nations. The Genocide Convention became one of the few international conventions which are not only executable through the ICJ but are also applied by international criminal tribunals holding individuals responsible for its violations. (Safferling, Conze:2010:4). During the period of application of The Convention have emerged new institutions and instruments. For example one of them is International Courts for Ruanda and Former Yugoslavia and International Criminal Court as the most important institution.

Late history of ethnical cleansing can be forced migration of Rohingya people which result with of more than 140,000 people displaced. In 2015 Yale Law School concluded Myanmar systematically targeting Rohingya population because of their ethnicity and religion and classified as genocide. Also Rohingya people's case is very important because of The United Nations High Commision for Refugees has explained forced migration and systematical targeting of Rohingya people as ethnic cleansing.

3. ELEMENTS OF GENOCIDE CRIMES

A perpetrator doesn't need to intend to destroy an entire group act committed with the intent to destroy a substantial accessed part of a protected group constitute genocide. According to the one school, the annihilation of ``protected group`` in whole or part or even the killing of

members of such group can only materialize when such prohibited acts are part and parcel of a general plan or policy. Actually, how can be to qualify as a genocide need to be supported by or be predicated on a general action pursued by a government or a de facto state-like authority. (Cassese:2010:133).

The crucial criterion, which separates genocide from other crimes, is a mental criterion. The special mental element of the crime is the intent to destroy the group as a whole or in parts.
The international character of the crime of genocide is contained in the mental element that the perpetrator aims at the destruction of an entity that is protected by international law. (Safferling:2010:163). When we speak about ordinary intent, means that perpetrators must choose victims because of their membership of the relevant group.
Therefore, the special intent of the genocide which is whereas some authors opine that ``knowledge of destruction`` should be enough to establish the special intent requirement. (Safferling:2010:171).

About in whole or in the part good example can be *Krstic* case where Court pointed out that an exact number cannot be given. (Krstic Case:2004:14)
Victim of genocide crime is a group of people but not all groups only specific groups be a part of these victims. Preparation works create lots of disputes but only specific groups include this agreement.

4. ELEMENTS OF ETHNIC CLEANSING CRIMES

Actions described as liquidation from specific land of the specific ethnic, religious, or linguistic group have to be illegal regardless of the outcome. Procuring illegal outcomes of liquidation, cleaning of a specific ethnic race, or forced migration have to describe as ethnic cleansing. (Şen:2010:262)

The perpetrator's motive is not mentioned in the 1948 Convention. The articular motive is irrelevant racial hatred like that of the Nazis for Jews may be the main motive but the motive for other genocides may be for instance territorial conquest, economic gain, or religious domination. The intent is that matters is that the destruction of the group is consciously desired.

Some parts of ethnic cleansing actions policies include solid elements of genocide. The ethnic cleansing extensive concept if we compare it with genocide at the same time ethnic cleansing constructs a hypothesis of intention to genocide.

5. DIFFERENCES BETWEEN CRIMES

Genocide defines as a crime under the rules of the United Nations and incorporated clearly into the legal codes of most of the world's nation-states. Ethnic cleansing, on the other hand, is the name given to a form of behavior embracing a number of crimes that fall within other groupings: war crimes, crimes against humanity (both of which, it should be emphasized, are categories of crimes, rather than crimes per se), and, on occasion, the crime of genocide itself. (Bartrop:2008:7)

Ethnic cleansing contains dispose of a specific group as genocide but separation points between genocide and ethnic cleansing can obtainable with differences of genocide characteristics of ethnic cleansing. For many ethnic cleansing and genocide can describe as similar concepts but if we examine closely there are obvious differences between them. Because it is so hard to eliminate the process of whole race or ethnic group, create an intention to force migration. With this aspect, we can give Srebrenica an example of ethnic cleansing which contains genocide characteristics.

After the second world war, United Nations enacted the Convention on the Prevention and Punishment of the Crime of Genocide, on December 9, 1948. There are some key points about description in the convention. The term was "intent to destroy" not "intent to remove" this definition creates major problems for regulations of ethnic cleansing. Removal of a group from coveted land to another according to which the group may retain its existence is not the destruction of a specific group as specified in Article II of Prevention and Punishment of the Crime of Genocide.

According to Becker genocide describing as the systematic elimination of a specific race, politic, or cultural group but ethnic cleansing is forced migration or elimination of an unwanted human group.

Maybe it is best to describe ethnic cleansing as a private crime that does not have the will to eliminate the target group. Because the elimination of specific target group mostly includes genocidal elements with a desire to systematic cleaning policies to human groups.

6. JURISDICTIONS ON GENOCIDE AND ETHNIC CLEANSING CRIMES

If we research international criminal courts in international law, we can trace the first ideas of establishments long before the 20th century. The first trial with international characteristics performed 1474 Breisach, Germany established a court with twenty-seven judges with taking part of every judge from all states in the Holy Roman Empire to the trial of crimes against God's and man-made laws in other words war and human rights crimes to Peter von Hagenbach. After the trial, Peter von Hagenbach was found guilty and sentenced to death for crimes against God and humans. (Şen:2010:169)

Trials for war crimes and atrocities convert impulse for revenge into state-managed truth-seeking and punishment and yet depend for the most part upon symbolism rather than effectuation of the rule of law. At the best, tribunals can try a small percentage of those actually involved in collective violence on the scale of recent vents in places like Bosnia, Rwanda, Argentina, Cambodia. Prosecutorial decisions at times may seem to create scapegoats: the exercise of discretion not to prosecute may imply a kind of amnesty without any public debate or approval. Especially in the emerging fields of international tribunals, these prosecutorial decisions are deeply influenced by resources and cooperation with other power centers over matters such as arrests and investigations.

In history, the first founded Court for judgment of war crimes was International Military Tribunal called Nuremberg Court has limited its judgment to wartime genocide and did not include peacetime genocide. (Schabas: 2010:19).

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The trial court itself had invented for the first time a process for a guilty plea and did not have a mechanism in hand for treating a guilty plea joined with an explanation. (prosecutor Erdemovic, IT 95-14/1-T,1999)

Trials and decisions of the International Criminal Court were mostly used as the main source of ethnic cleansing crimes in old Yugoslavia. Forced migration element of ethnic cleansing obtainable from Bosnia under the crimes against humanity. Courts did not clearly define ethnic cleansing inside of the crime category yet.

Especially Krstic decisions mention ethnic cleansing much more detailed. Mentioning the forced migration of forty thousand Bosnian Muslims after the occupation of Srebrenica impact of systematic elimination of Bosnians and shows us clear intention to systematic ethnic cleansing plan. (The Prosecutor v. Radovan Karadzic and Ratko Mladic op.cit. p.988)

CONCLUSION

Nowadays we are eyewitnesses of many crimes around the world with ethnic cleansing elements without procedures and trials. Reasons for this situation is one side because of the undefined and unrecognized crime on the other hand because preparators generally are not members of the international criminal court or Hague international court and they are not responsible for these crimes because they have no authority. They need permission from the council of security of the UN but according to the experiences and code, it is not easy to apply this decision in practice.

Ethnic cleansing crime shows us prevention of a crime doesn't need only national regulations also international regulations are so important to prevent ethnic cleansing as a crime. The need for international cooperation is clearly emerging. It is obvious for the regulations of 1948 genocide crime are not suitable for modern problems and trials. The requirement to enlargement for a description of genocide crime is incontrovertible. Genocide crime with extensive content makes them much more comprehensive. Even if not possible to regulate ethnic cleansing as a separate crime it must be part of the subheadings of genocide. Because elements of ethnic cleansing are also part of genocide factors.

Clarification of some elements and actions of genocide crime with the establishment of two ad hoc courts becomes more understandable with precedents.

Like other international crimes, genocide is based on individual responsibility. Although accepting international crimes as individual responsibility sometimes genocide can explain as government policy because it is so hard to commit a crime like genocide as an individual person without the power or opportunity of the state. It should not be ignored to evaluate genocide as a responsibility of a state.

The importance and impact of the legal definition are enormous. First of all, it serves as a way of establishing individual criminal responsibility for this type of crime.

Genocidal ideologies often have totalitarian features: they are extreme, radical, and absolute. With the procedure in genocide trials, ethnic cleansing crime was incorporated. If it's the crime defined separately it will be easier for the process of trials, procedures, and punishments. This undefinition of this crime is a big deficiency in the international criminal law tradition.

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