

Material Basis of International Criminal Responsibility Within the Framework of the Statute of the International Criminal Court

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Abstract: In this article, we examine the nature of international crimes and offenses with international implications. It examines how these terms are defined in international legal documents. Next, the focus shifts to the Statute of the International Criminal Court (ICC), which examines how these acts are codified and their key characteristics are outlined. The article highlights the absence of a specific definition of "international crime" in the ICC statute. It examines how scholars have defined this concept in order to address this gap.

Key words: International Criminal Court, Statute, international crime, offenses with international implications, genocide, aggression, crimes against humanity, war crimes.

Introduction

A certain group of criminal behavior falls under the jurisdiction of the International Criminal Court and poses a great threat to international peace and security. One of the problems is that the International Criminal Court statute does not mention the concept of international crime. Because crimes within the jurisdiction of the court are determined by their forms and methods of prosecution, we set ourselves the goal of developing international crime concepts and signs.

In our opinion, the developed concept of an international crime for the statute of the International Criminal Court provides an opportunity once again to determine what criminal activity poses a significant threat to the world community and the level of cooperation between states regarding the active fight against international crimes.

Methodology

The International Criminal Court's jurisdiction is limited to crimes that significantly harm the international community and international interests, specifically those that arouse the concern of the entire international community. This is summarized in Article 5 of the International Criminal Court's statute. According to the statute, the court has jurisdiction over crimes against humanity, genocides, war crimes, and aggressions. The Nuremberg International Military Tribunal's Charter (Article 6) categorizes crimes against humanity into three categories:

1) To plan, prepare, initiate or conduct a war or invasion against international treaties, agreements, or persuasions, as part of a crime against peace, which is an act that is part of a general plan or conspiracy aimed at achieving any important behavior;

2) Military crimes involving violations of the laws and customs of war, such as the murder or torture of prisoners or persons at sea, the murder of hostages, the theft of public or private property, the unanswered destruction of cities and villages whose destruction cannot be justified by military necessity, and other crimes are prohibited;

3) charges against civilians based on political, racial, or religious grounds under the jurisdiction of the tribunal, regardless of whether internal rights were violated in the country in which these acts were committed, crimes against humanity, massacres, enslavement, and other atrocities committed prior to war or during wartime.

This classification of international crimes, as the first document of international criminal law aimed at protecting the security of peoples and peace, was considered to be extremely important. The first mention of personal criminal liability for war crimes was made in the Treaty of Versailles, and in particular, William II was criminalized [8]. Even so, this rule had no effect, as the main criminals of the First World War were not brought to trial.

Results and Discussion.

A note must be made regarding the opinions of Russian scientists on the concept of international crime [18]. According to A.N. Trainin, the above-mentioned crimes are defined as "aggression toward the foundations and progressive development of the lives of people." As Romemashkin also points out, the draft code of conduct against peace and human security that was drafted by the International Law Commission in 1954 referred to these crimes as international-legal crimes, according to the draft code. According to him, such a designation of crimes is inappropriate and inappropriate both in terms of essence and in terms of accuracy of legal definition. In this regard, N.I.Kostenko supports this view as well: "We believe that both legal crimes and crimes against law cannot be referred to as correct either grammatically or legally" [8]. It is obvious that the definition of the most fundamental concept - the concept of the most serious crimes against peace and security of peoples - is inadequate in this project, according to P.S.Romashkin [17]. Generally, international crimes are defined by M.I.Lazarev as crimes which encroach upon the independence of each people and peaceful relations between them [10]. On the other hand, D.B.Levin believes that crimes that encroach on the freedom of the peoples of the world, encroaching on all progressive human interests and international communication, as well as on the rights and interests of all states, should be included in the classification of international crimes. AA Modjoryan views these international crimes as acts of aggression against the state and nation as a whole.

In Karpes' view, international crime emerged out of a reaction to actions that might result from aggressive and repressive wars in which the material culture of peoples was destroyed, the war was conducted in a Vakhshian manner, and civilians were tortured and exterminated. A condemnation of these crimes and the perpetrators was expressed by the Peoples. Furthermore, he believes that legislative acts that provide for the punishment of international crimes should be reacted to if such crimes and persons occur, as these warnings of peaceful humanity that have led to international documents of the same criminal-procedural nature are lacking.

The author, however, believes that these laws can be applied not only in the event of global international disputes that threaten mankind's survival. In the world today, there are a number of forces that wish to keep people in fear before the start of a war by maintaining the threat of war, by creating local conflicts and supporting them [7]. According to I.I. Karpes,

international crimes can not only be the result of aggressive wars and their consequences, but can also occur when peaceful relations between states and peoples develop.

A recent study of International Crimes provides scholars with the opportunity to distinguish between crimes committed by separate groups that are not as severe as crimes committed by the first group, and refers to these crimes as crimes of an international or international law order, which are either criminal violations or crimes of international nature [2].

In scientific discussions, it has been proposed that they can sometimes be referred to as international crimes. In its place, it should be noted that some of them at the last minute appeared as crimes of an international nature of a new composition, while another type of crime took on a new appearance and approached international crimes. There is a fundamental difference between the orientation of M.I. Blum's work, "Deystvie ugolovnogo zakona v prostranstve I Mejdunarodno-pravovaya borba s prestupnostyu", and the danger to the world and humanity that it poses. In our opinion, such claims (opinions) are extremely controversial in the present day. They cannot be equated nor compared based on their own level of risk. It is the opinion of I.I. Karpes that, first of all, all crimes, especially those of an international nature, must be compared and equated with other crimes. If not, it will be impossible to determine their level of danger, develop methods to deal with them, or determine which group of crimes should include them in. The second issue is that international crimes are as invariable as crimes of international nature. A new one may emerge, or an existing one may change its level of danger [7].

Crimes against international relations are extremely serious crimes in their nature and encroach on peaceful relations between states.

International law enforcement can suffer very serious harm when international crimes are committed [7], according to I.I. Karpes. It is important to note that it is the entire system of international norms that regulate social relations between states in accordance with the principles of international law that constitutes the concept of international law.

According to S.V. Chernichenko, there is no officially recognized definition of international crime, but there is one single opinion within the theory that it is not advisable to attempt to construct a comprehensive list of such behavior. Although this is possible in the current period, it is better not to do so, since international law continues to develop and the need to complete this list cannot be denied [19].

One thing should be noted, Article 19 of the draft approved by the UN Commission on international law provided the following definition of an international crime with articles on the responsibility of states: "an act contrary to international law that arises as a result of a state violation of a highly fundamental international obligation to ensure the vital interests of the international community is a violation of International crimes in accordance with the provisions of international law may arise in particular as a result of:

a) as a result of a severe violation of international duty, which is fundamental in ensuring international peace and security, such as the obligation that prohibits aggression; b) as a duty prohibiting the establishment or forcible maintenance of colonial rule, as a result of a severe violation of the protection of international duty, which is fundamental to ensure the right to self-determination of peoples; c) as a result; d) as a result of severe violations of the international obligation of fundamental importance for the protection of the environment, such as the obligation to prohibit the mass pollution of the atmosphere or seas" [6]. We would like to mention that these provisions of the project on the responsibility of states are not generally recognized, but they have still had an impact on the theory of responsibility. This rule provides insight into what constitutes an international crime in our opinion, and which offenses should be

included in the list of international crimes in our opinion. As stated in article 19 of the project concerning the responsibility of states, the conduct of International Criminal States in violation of international law will be directed against the vital interests of the international community and will be viewed as a separate dangerous act. In Chernichenko's opinion, the term "international crime" is metaphorical in nature, as crime refers to a violation of international law rather than a violation of the law [19].

Article 19 correctly defines international crimes as offenses that harm the vital interests of the international community, namely, international peace and security.

Foreign scientists J.Abi-Saab, G.Gadja and others fully approve the expression of Article 19 as an accurate reflection of the essence of the problem, emphasizing the importance of supporting international peace and security within the framework of omnes obligations to the ER in accordance with the UN Charter.

A similar strategy permeates the entire UN Charter. An important task of the United Nations is to "support international peace and security, to prevent and eliminate threats to peace, and to take effective collective action to repel acts of aggression and other violations of peace". Our opinion is that this definition is one of the UN Security Council's obligations to combat international crimes. According to Article 24 (1) of the UN Charter, the Security Council has the primary responsibility for ensuring international peace and security, and it represents all members of the organization.

The harm to international law enforcement from the commission of international crimes cannot be compared with the harm to ordinary offenses and is associated with a conscious and demonstrative unwillingness to obey the rules of international law, and is characterized in a significantly different manner and warrants a more severe form of responsibility for the commission of these crimes.

Along with the term "international crime", the theory of international law also includes the terms "crime against international law," "crime of international nature," "crime under general international law," and "crime in accordance with international law." In particular, the term "crime against international law" was used in the Nuremberg Tribunal verdict, which states that crimes against international law are committed by individuals rather than abstract categories[15].

Generally, crimes against international law, crimes in accordance with general international law, and crimes of an international nature are considered to be the same thing.

In addition, it should be noted that whenever there is a discussion of crimes against international law, or crimes in conformity with international law, it is indicated that the discussion is about the behavior of individuals. In most cases, these individuals appear in two different qualities, as well as as physically private individuals. The Nuremberg tribunal Charter states in Article 6 that "...for the trial and punishment of the chief military criminals of European nations ... The established tribunal has the right to trial and punish the persons who have committed, whichever of the following crimes occurred, in the interests of European countries, whether as an individual or as a member of the organization.

The principles of international law, recognized by the statute of the Nuremberg Tribunal, which was adopted at the second session of the UN International Law Commission in 1950 and which is reflected in this tribunal's decision, state: "Any individual who commits an act that is recognized as a crime by international law will be held liable and punished accordingly" [13].

The first variants of the draft code of crimes against peace and Human Security, which provides for specific crimes, used phrases such as: "any person who plans, commits or orders to commit (appropriate behavior) as a boss or organizer", "any person who is committing (appropriate behavior), ordering to commit it", "any person who is committing (appropriate behavior)," as a representative or agent of Such definitions were partially abandoned in the final draft of the code of crimes against peace and Human Security, submitted by the International Law Commission to the UN General Assembly on July 26, 1996[5].

The legal nature of the terms "crimes against international law", "crimes in accordance with international law", "crimes against peace", "war crimes", "crimes against humanity", "crimes against peace and security of humanity" is defined the same in the context of the relevant documents, which means that in all cases, individual behavior is also implied. According to him, this is the most significant difference between the project and Article 19, which deals with state responsibility. Individuals who conduct themselves in the category of crimes against international law commit crimes when they are recognized as such by all or part of the international community, as well as the majority of the international community. In recognition of this, they also recognize the need to unite the efforts of states to combat Chernichenko [19].

The concept of crimes against international law and crimes against peace and security of humanity are partially compatible, according to S.V. Chernichenko. However, individuals have behaviors that are so dangerous in the international community that they are able to qualify as crimes that require the integration of the actions of states to fight them, which are crimes against international law, however these crimes (for example, piracy, counterfeiting, etc.) are also not sufficiently dangerous to be considered crimes against peace and human security [19].

According to X.T. Odilkoriev, an international crime is defined as a violation of international law norms and principles which pose a danger to humanity, which serve as a fundamental component of protecting individuals, preserving the vital interests of the international community and maintaining peace in the world. As a result of this case, there is a great risk that officials who commit international crimes may apply the criminal policy of their countries to their implementation. Heads of state, high officials, and other officials of Criminal Policy are also responsible for international political and material crimes [16].

We should note that the term "international crime" in the theory is often used to refer to both state and individual behavior. It is also important to note that in recent times the term has been used to refer to crimes against international law[8]. R.A.Müllerson believes, in particular, that state-level crime must distinguish between the crimes committed by individuals and the crimes committed by individuals. It is important to note that there is a wide range of quality, degree, and types of phenomena that may be encountered within an international crime. Here, not only the subjects of crime and the objects of aggression are typical, but also the methods and forms of responsibility.

S.V. According to Chernichenko, in accordance with the more radical view of supporters of the dualistic theory of international and domestic state rights relations, crimes against international law are committed by states to punish individuals who are considered criminal towards each other, persons guilty of committing them, and cooperate with one another in fighting such behavior (by exchanging information,

As noted repeatedly by the UN Commission on International Law, crimes committed by states differ from crimes committed by individuals. In particular, in the case of the 45th session, it discusses the consequences of international crimes committed by states. The commission

emphasized that international crime does not constitute a crime as defined by the criminal justice system.

According to S.V. Chernichenko, international crime can be understood as state actions directed only against the international community, resulting in serious violations of international law. It is important to recognize that crimes against international law (crimes in accordance with international law) are the actions of individuals recognized by states as criminals, requiring the integration of actions to combat them, which are dangerous on an international level. The list also includes crimes against peace and human security [19]. Meanwhile, S.V. Chernichenko believes that the list of crimes against international law can only be approximate, as with the list of international crimes. This is an evolutionary phenomenon.

Crimes against international law have been partially transferred to the draft code of crimes against peace and security. In addition, Article 5 of the International Criminal Court statute clarifies that the court's jurisdiction is limited to serious crimes that arouse the concern of the international community as a whole. According to this statute, the court is authorized to prosecute the following crimes: genocidal crimes; crimes against humanity; war crimes; and crimes of aggression [3]. In order to prosecute persons responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia between 1991 and 1999, the Charter of the International Tribunal for Rwanda and the Charter of the International Criminal Tribunal prescribe crimes of this nature. Crimes under the jurisdiction of the tribunal for the former Yugoslavia included: serious violations of the Geneva Convention of 1949 (2-m), violation of war laws or customs (3-m), genocidal (4-m), and crimes against humanity (5-m). The jurisdiction of the tribunal for Rwanda included the following crimes: Genocide (2-m), Crimes Against Humanity (3-m, violations of Article 3, common to the Geneva Conventions of 1949), and Additional Protocol II (4-m).

According to S.V. Chernichenko, international crime will not always be associated with crimes against international law. Many of these crimes are committed by individuals and are not always associated with international crimes, even though they are included in the draft code of crimes against peace and Human Security, the statute of the International Criminal Court, or the statutes of the international tribunals on Yugoslavia and Rwanda. It is also possible to carry out the genocide by an individual acting on his own initiative. Of course, there are cases in which crimes against international law are constantly associated with international crimes. According to S.V. Chernichenko, the most dangerous crimes are crimes against international law that are either associated with international crimes or have structures similar to those of international crimes. It is necessary to distinguish between the actions of individuals as individuals and the actions of individuals, in which behavior occurs on behalf of the state. Since the state is not an abstract concept, but primarily a union of individuals, its actions, that is, the actions of the state, will always reflect the actions of certain individuals. Thus, international law norms that are directed at the state are ultimately directed at individuals acting on its behalf [19]. As a result, the question arises: Can the content of the actions of individuals who act on behalf of the state coincide with the content of the actions of the state that constitute international crimes? This included S.V. Chernichenko answers: "no matter what high position an official who used the state as a weapon in committing an international crime, for this purpose the conduct he personally committed does not cover all the conduct of the state that constitutes this international crime. For example, aggression committed by the state, that is, an international crime involving the appropriate behavior of the head of state, chief of the general staff and others, and seen as individual actions, can be included in any of their crimes against international law" [19].

Conclusion

Our view is that all international crimes are characterized by the aggression of interests of an international nature, as reflected in bilateral and multilateral treaties between states aimed at combating international crimes.

N.I.Kostenko, having studied a number of tariffs given by scholars, concludes: "international crimes – it is a serious violation of an international obligation, such as aggression, a serious violation of the ban on international terrorism, a serious violation of the international obligation expressed in the Prohibition of encouraging or establishing a colonial state by force, which is important to guarantee the right of peoples to determine their own fate, a serious violation of the international obligation expressed in, directed against the entire international community and criminalized by states, encroaching on normal relations between the main subjects of international law, they cause serious damage to international cooperation in political, economic, socio-cultural, scientific and technical and other activities"[8].

A much more detailed description of this concept of international crime is required, including the general aspects inherent in international crimes, the rights and violations of international rules, and the names of these crimes. In addition, as society progresses, new forms of relationships emerge, including international ones, some of which may end. As the period progresses, new types of crimes may be added to the range of international crimes, as this also applies to crimes recognized as international crimes. Therefore, the definition given to international crime, the concept also reflects the attitude towards a certain time period.

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