

On the development and research of crimes against humanity in international criminal Law

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Abstract: After World War II, international crimes against humanity were officially established. And it is on its way to becoming an international crime. Therefore, at present, crime against humanity is still in the development stage, and its concept is not perfect enough. Many relevant systems are not clear enough. For example, in crime against humanity, many behaviors cannot be interfered by domestic and foreign criminal laws, so how to judge whether a crime or an act should be under domestic jurisdiction or international jurisdiction? There needs to be a clear institutional demarcation line within the jurisdiction. In addition, as a crime of international criminal law, the content of crimes against humanity may conflict with other contents of international crimes, so it is very necessary to distinguish the difference between the two. Through the analysis of the concept of crimes against humanity and the elements of crime, this paper carries out research to make the concept of crimes against humanity in international criminal law clearer.

Keywords: Crimes against humanity; Concept; Objective conditions; Subjective requirement.

1. Introduction

Crimes recognized internationally as one of the greatest criminal circumstances include crimes against humanity. This crime is a lack of humanity, which mainly includes the infringement of the fundamental interests of the inherent dignity of human beings, the strict punishment of the perpetrators, and the elimination of crimes against humanity. The problem is no longer a national one, but should be raised to the whole international, but also the direction that the international community should make joint efforts. Therefore, on the basis of introducing the relevant theories of crimes against humanity, this paper expounds the object and objective elements of crimes against humanity, and further develops and researches the crimes against humanity in international criminal law.

2. Overview of crimes against humanity

2.1. Concept of crimes against humanity

Crimes against humanity were a very important crime, separate from other crimes among international crimes, although this conclusion was only recently established. However, in a sense, crimes against humanity are as old as human history. The meaning of crimes against humanity is interrelated with the meaning of humanism and human rights. It is because of the concept of humanity and human rights that the crimes against humanity after the Nuremberg Charter gradually developed.

The establishment of crimes against humanity was in the Nuremberg trials after World War II. Due to the need to consider the rationality of international criminal law, it is defined by the development of the meaning of war crimes. That is to say, the emergence of crimes against humanity was based on the prohibition of war crimes under international humanitarian law at that time. In this period, crimes against humanity were called crimes against humanity, which corresponded with the significance of the crime in its

development stage. The concept of crimes against humanity was defined after the Second World War in accordance with international humanitarian law in international trials. But its later development was in accordance with international human rights law. With the development of society and international criminal law, the concept of crimes against humanity is constantly updated. It is particularly important that crimes against humanity in the establishment of the process, mainly used to defend the right is what makes people human. Crimes against humanity, in their content, should not be limited to international humanitarian law. Although the concept of humanity itself is much more than the meaning of humanity in international humanitarianism, humanity should not be confined to the definition of armed conflict. In international law, however, the concept of humanity is more likely to be combined with the concept of international humanitarian law. It is easy to confuse crimes against humanity with crimes against humanity. Crimes against humanity exist as a concept and are in a developing stage.

2.2. The formation of the concept of crimes against humanity

As early as 2002, the International Criminal Court was established as the first judicial body to hold people accountable for international criminal law. Its document was established in the Statute of the International Criminal Court in 1998, which introduced crimes against humanity in great detail and made corresponding provisions. The Statute of the International Criminal Court requires that crimes against humanity should no longer be linked to international war or internal armed conflict and should no longer be used as grounds for discrimination. The annex to the Statute, Elements of Crime, includes various types of crimes against humanity, such as

The corresponding provisions on deportation, forced migration, torture, enforced disappearance, persecution and extermination have been refined. From the development course of crimes against humanity, we can see that the scope of application of this crime is gradually expanding. From this,

we can conclude that crimes against humanity have three characteristics, which must be satisfied when judging whether they constitute crimes against humanity:

First, the harm to the international community caused by the act, which is one of the major differences between international human harm and the crimes stipulated in domestic law. Only when the result of harm has reached a certain degree of seriousness, can it be identified as a crime against humanity if it involves endangering the common interests of all mankind. Moreover, the severity of the crime should be judged based on international influence.

Second, the illegality of the act to the international criminal law. When judging whether a certain crime can constitute a crime against humanity, we should look at whether it is stipulated as a crime against humanity in the international criminal law convention. If it is deemed to constitute an international crime in the provisions of an international treaty, it can bind not only the State but also the entire international community. However, the concept of the criminal circle did not coincide with the concept contained in international customs as a whole. Most current ideas are mainly identified with the traditional field of international law, but in the field of international law, international treaties are the single most important law.

Thirdly, the sanction of the act to the criminal, as far as the individual criminal is concerned, its legal consequences are usually fine, penalty and so on. There are still some disputes about the subject of crimes against humanity in the country. In the international law, it is difficult to impose criminal sanctions on the citizens of some countries. The conservative international criminal law can be realized in the court hearing, but the criminal law sanctions are difficult to realize in reality, so it involves the accusation of crimes against humanity.

3. The subject and subjective elements of crimes against humanity

3.1. Overview of subjective requirements

One of the conditions to constitute a crime includes subjective elements of crime. It reflects the psychological state in which people can control and implement criminal acts stipulated by law.

The establishment of any crime must meet certain subjective conditions, that is, the psychological state of the person at the time of committing the crime. In domestic criminal law, the main boundary between crime and non-crime is to judge people's psychological state under what kind of behavior, so as to determine whether to meet the subjective conditions for the establishment of a crime, is our criminal law theory mainly divided intentional injury crime and negligent injury crime. In the constitutive elements of crimes against humanity, intentional injury can be understood as direct intent or indirect intent.

If willfulness and negligence are defined as subjective factors at the same level, then the subjective factors at the other level of crimes against humanity need to be further discussed. If the subjective state of human is determined on the premise of intention, then we should mainly discuss the intention and motivation of human in carrying out this action. If the difference of subjective factors at the first level is the criterion of crime and non-crime, then the difference at the second level is the difference between domestic crime and international crime.

3.2. The subject of criminal responsibility for crimes against humanity

As a subject of responsibility, the individual is not the traditional international law, but its subject is criminal responsibility. It is one of the most important contents in international criminal law that each person has his own independent responsibility. Under article 25 of the Provisions of the International Criminal Court, the Court had jurisdiction in cases of natural persons and crimes against humanity, and independent individual responsibility was still subject to punishment under the statute. The provisions of such acts are primarily aimed at preventing individuals from hiding under the aegis of State sovereignty when committing a crime, resulting in the function of punishing and intervening against crimes against humanity not being fully implemented. At the same time, Article 26 and Article 31 exclude special individual subjects such as minors and mental patients from bearing criminal responsibility. In the case of special circumstances such as joint crime, abetting crime, assisting crime and so on as defined in the third sub article of Article 25, the individual shall bear the corresponding responsibility. It can be seen that the crime against humanity takes the individual as the subject.

In traditional international law, the state is the primary subject. However, the Statute of the International Court of Justice does not regard the state as the subject of crimes against humanity. State sovereignty in principle excludes the criminal responsibility of the state. However, the legal concept of the state is more abstract, and it cannot adopt the same approach to bear criminal responsibility as the natural person. In this paper, I also agree with the view that the state is the main body of the law in drafting the system. In the case of crimes against humanity, he is manifested through the acts of natural persons, so he cannot be regarded as the subject of crimes against humanity. However, in the research, some scholars also put forward that the immunity of the state and the sovereignty of the state should not be an obstacle to the state in the international criminal responsibility. As an abstract entity and the lack of crime, intention does not affect the ability of a state to bear international criminal responsibility, but the intention of its penalty mainly lies in punishment and prevention. To this extent, restriction of national sovereignty, international sanctions, compensation, force sanctions and so on are all the ways for a state to bear criminal responsibility as the subject of crimes against humanity.

3.3. Harmful to human subjective conditions

In the concept of criminal justice, whether a person is a crime, a negligent crime or an intentional crime is often determined according to his or her criminal behavior and purpose, so as to judge the crime. In the process of behavior, people may be forced by cognitive ability, values, situation and so on, which will have a certain impact on their behavior and expression, and even have serious wrong expression, so as to produce the expression of behavior and the purpose of behavior deviation.

In Article 30 of the Statute of the International Criminal Court, the main requirement is criminal psychology, which stipulates that human behavior is mainly aimed at the civilian population in knowing the law and breaking the law. In the subjective sense, it is intentional behavior, which is also a kind of intentional aggressive behavior. In other words,

people should not only recognize the object of the behavior and the content of the consequences. You also need to understand the concept and background of aggressive behavior, which is not purely subjective. The elements of knowing and willful psychological acts do not require that human acts have the same motive for attacking the decision maker. Therefore, whether the concept of what constitutes knowing should be combined with the policies mentioned below in judicial practice, considering that crimes against humanity are usually committed under large-scale acts of aggression, in this context, Attacks are usually known to the public, so it is difficult for defendants to justify large-scale attacks.

In the concept of committing crimes against humanity stipulated in the Statute of the International Criminal Court, the crimes of murder, extermination, exile, slavery and so on are all intentionally committed by human subjectively. In this case, the judge can make a presumption based on various facts and evidence. For example, The political background at the time of the act, the background of the defendant's status in society, the performance of his duties, the cooperation between the defendant and the attack planner, the universality and severity of the act in the implementation process, etc. To judge people's subjective behavior. As the strictest person in international crime in the subjective vicious degree of criminal behavior. The expression of the influence of human behavior and cognitive ability in the wrong aspect produces the deviation of the intended purpose and expression effect. Therefore, an act caused by subjective negligence or negligence is generally not recognized as a crime against humanity under such circumstances.

4. The object and objective view of crimes against humanity constitute elements

4.1. The concept of the object of crime

Among the constitutive elements and theories of crime, the object of crime is the most controversial, and the dispute about the meaning of the object of crime has become the focus of society. The relevant meanings of the object of crime mainly include "theory of rights", "theory of legal order", "theory of legal interest" and "theory of the object of crime". The object of crime mainly refers to whether a person's behavior belongs to the legitimate rights and interests or whether it infringes on legal interests. The theory of legal interest holds that the object of crime is protected by criminal law. As the driving force to realize penalty and the ultimate protection of interest, interest is not only the driving force to formulate and implement criminal law, but also the purpose embodied in criminal law. Therefore, it is in line with the nature and characteristics of legal crime to interpret the meaning of the object of crime as protecting interests. Human behavior cannot be taken as an independent object, the victim's behavior as an objective element of a crime, in its content is to constitute the object elements of behavior, rather than constitute an independent crime.

4.2. The object of a crime against humanity

What is the definition of international crime, what features are included, and why the acts with these features lead to the constitution of crimes against humanity have become the focus of research and debate among scholars in the field of international criminal law. Whether a crime against humanity

should be independent from the scope of international criminal law is not only limited to the content it contains, but also depends on the standards reflected in the criminalization of things. From this, it can be seen that what behaviors meet the standards of international crime and international criminal law. Crimes against humanity are included in breaches of international human rights law. It was once thought that. Human rights standards within a country are a matter within the sovereignty of a country, and other countries should refrain from interfering. But after the end of the two world wars, and especially after World War II, the international community realized that the important issue, the extent of the territory of a country, in terms of its human rights is not just a national matter. In other words, the situation of human rights in a country is not only an independent internal affair of that country, but also has an important impact on the peace and security of the international community. In the case of crimes against humanity, although the individual is the victim in this concept, the target of the crime is ultimately all mankind. History has proved that a country cannot treat its citizens' human rights well within the regime, nor will it treat its neighbors well. Therefore, crimes against humanity are not only a violation of a country's domestic human rights, but also a violation of the peace and security of the international community.

4.3. Harm the objective conditions of the person

Among the objective elements of a crime, the acts and external events carried out by people as stipulated in the criminal law are mainly represented as the objective elements of a crime. Generally speaking, in the criminal laws of various countries in the world, at least two elements must be achieved to be regulated as a crime. The two elements are mainly psychological elements and behavioral elements. The view of the Chinese criminal law circle is that in addition to the implementation of the behavior, the objective elements of the crime also include causality, the object of the behavior, the result of the crime and other factors, such as time, place and so on. In international criminal law, the elements of the act may also involve other elements. For example, it is usually said in the world that the objective conditions of crime in our country are basically consistent with the behavioral elements.

5. Conclusion

The reason why the definition of crimes against humanity has been included in the international crime is that the crime has reached the vicious and serious nature of the crime, and this seriousness has affected a country, and its involvement in interests has caused violations to many countries and even the whole international community. In this paper, it is precisely because of the impact of crimes against humanity on international crimes in terms of objective factors, which will harm the interests of the society and the peace and security of the international community violated by human crimes. It will also affect the recognition of values of the international community, common economic interests among multiple countries, public security and human conscience.

In a word, crimes against humanity have caused particularly serious consequences in terms of their impact on human beings, greatly shocking the conscience of mankind and causing great harm to the interests of all mankind. The international community must take corresponding measures

to prevent the occurrence of such crimes. Let those who have committed crimes be punished as a warning to others not to sin, and hope that those who have let go of their SINS will be brought before the judges.

References

- [1] Li Meng. Development Research on Crimes against Humanity in International Criminal Law [D]. Harbin Institute of Technology.
- [2] Chu J W. On the Obligation of States to establish jurisdiction over Crimes against Humanity -- Comment on Article 6 and 7 of the Draft Articles on the Prevention and Punishment of Crimes against Humanity [J]. Journal of International Law, 2021(2):23.
- [3] Jiang Su. Behavioral Control Theory in International Criminal Law [J]. 2021(2015-2):176-192.
- [4] ZHENG Zehua. Study on the Application of the Crime of Endangering Public Security by Dangerous Methods -- Taking the Knife Throwing Case and other three cases as examples [J]. Times People, 2022(25):3.
- [5] Feng Jun, Ma Lili. Review of legislation on crimes endangering the security of national human genetic resources [J]. Hebei Law, 2021, 39(8):11.
- [6] Wu Yilan, Chen Changchun. Empirical Research on the Factors Influencing the Social Harm of delinquent Minors under the Social Bond Theory [J]. Juvenile delinquency, 2021, 000(003):113-125.
- [7] Yang Shiyun. The State cannot be the subject of international Criminal Law [J]. 2021(2013-2):27-29.
- [8] ZHENG Zehua. Study on the Application of the Crime of Endangering Public Security by Dangerous Methods -- Taking the Knife Throwing Case and other three cases as examples [J]. Times People, 2022(25):3.
- [9] Fang Rui 'an. Regulation of Economic Sanctions by International Human Rights and Humanitarian legal System [J]. Human Rights Law, 2022, 1(3):21.