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## **ON THE QUESTION OF THE EXISTENCE OF A GENERAL CONTEXTUAL ELEMENT IN INTERNATIONAL CRIMES LIKE GENOCIDE**

### **Summary**

The article is devoted to the study of the issue of the general contextual element of international crimes existence. The article analyzes the need to establish widespread and systematic attack on the crimes of genocide.

**Key words:** genocide, contextual element, widespread, systematic

**Problem formulation.** International crimes *stricto sensu* - grave crimes threaten the peace, security and well-being. These socially dangerous acts are endowed with features that are not inherent in ordinary crimes. Crimes criminalization which occurs at the national level, are known to include two mandatory elements - subjective (*mens rea*) and objective (*actus reus*). At the same time, the plane of international law, the individual criminal act tolerated only if it includes a third, unknown systems of domestic law, a contextual element.

Each of the four regulated Rome Statute of the International Criminal Court (ICC), the compositions of international crimes characterized by specific specific contextual circumstances, allowing to individualize the above criminal acts. However, the very common view as to the existence, among others, a characteristic of each of the contextual circumstances of international crimes, referred to as large-scale or systematic acts. VN Kudryavtsev says: "... if the international crimes may be a little different from ordinary crimes committed in the framework of national law ... the international crimes in the strict sense, reach a global scale, and therefore, the objective

of the party is not a single action, or even a series of actions of one face, and a complicated and extensive activities of many individuals and organizations ... " [1, p.69]. However, it must be noted that this position can not qualify for certain.

Indeed, crimes against humanity or war crimes can not be imagined in isolation from widespread or systematic criminal activity. However, the discussion is the question about the existence of the contextual circumstances in any part of the crime of genocide. A similar opinion was expressed by G. Werle: "... the crime of genocide does not require a separate act was committed in an objective within the broader context of organized violence" [2; p. 222].

The lack of a common approach regarding the availability of a part of the crime of genocide in common contextual element in the form of a systematic broad scope, determines the relevance of the research topic.

**Analysis of recent research and publications.** Construction features of a crime of genocide has long been at the center of scientific interest of many scientists. At the same time one of the most pressing issues in the scientific discourse is the question of the presence or absence of a part of the above acts, the so-called general context of (large scale or systematic acts). This is clearly evidenced by the works of such scholars as N.A. Zielinska, N.V. Dremina-Volok, M.I. Kostenko, V.N. Kudryavtsev, A.N. Trainin, V.V. Shubin, A. Cassese, C. Kress, G. Verle, Yv. Ternon, R. Lir, P. Gaeta, W. Schabas and many others.

**The purpose of** the study is to answer the question whether the existence of the crime of genocide is the general context of (large scale or systematic offenses)?

**Statement of the basic material.** Charter of the International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis countries in Nuremberg (the Nuremberg Tribunal) is not within the jurisdiction of the judicial organ of the crime of genocide. As pointed out by NI Kostenko: "According to the classification given by the Charter, genocide closest to crimes against humanity, but differs from them in the scale of repression against certain groups of the population and the pronounced objectives" [3; p. 149]. This is confirmed by the provisions of

paragraph C of Article 6 of the Charter, that crimes against humanity include persecution on political, racial or religious grounds.

The verdict of the Nuremberg Tribunal was first focused on the mass of discriminatory acts: "... the evidence is clear that, in any case, in the East the massacres and atrocities committed not only to suppress the opposition and resistance to the German occupation forces. In Poland and the Soviet Union these crimes were part of the plan lies in the intention to get rid of all of the local population by the expulsion and extermination of it ... "[4; p. 384-389]. In general, within the meaning of the Nuremberg Tribunal, genocide - a system of criminal acts aimed at the physical destruction of the population [5; p. 409].

Official measurement of the international crime of genocide gave the Convention on the Prevention and Punishment of the Crime of Genocide for it (the Convention), adopted in 1948. Article 2 of the Act determined that genocide means acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. By the acts constituting the crime of genocide include killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about the total or partial physical destruction; imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group [6].

The definition implies that the Convention does not directly regulate the need for a broad scope in a systematic genocide. As rightly observes P. Gaeta: "For many, the genocide - the massacre. Murder can be massive, but the sense of Article 2 of the Convention, not necessarily those ... Although in paragraphs (A), (B), (D) and (E) of Article 2 used the plural "group members" as the direct victims of the crime of genocide, usually enough focus individual act against at least one member of the group "[7, p. 88, 94]. This position supports and A. Cassese, pointing out that, in accordance with the definition contained in Article 2, the actual total or partial destruction of a protected group is not mandatory. In this connection, at least in theory, an isolated act may be enough to qualify an act as a crime of genocide [8, p. 335].

Of fundamental importance for specifying the elements of the crime of genocide was the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Both the Tribunal devoted considerable attention to the interpretation of drill features and contextual elements of the crimes of genocide.

Thus, the Appeals Chamber of the ICTR, in its judgment in the case "The Prosecutor v Kayishema» (Prosecutor v. Kayishema) from 01 June 2001, indicated that genocide does not require the commission it within genocidal campaign or widespread or systematic attack on a protected group [ 9; p. 163].

In another decision, the case "The Prosecutor v Akaezu» (Prosecutor v. J.-P. Akayesu) dated 02 September 1998, the ICTR Trial Chamber found that the imputation of genocide is not required to establish the precise number of victims - is sufficient to establish the commission with a view full or partial destruction of a protected group any act constituting the objective side (actus reus) [10, p. 497].

The Trial Chamber of the ICTY in the case "The Prosecutor v Krstic» (Prosecutor v. Krstic) dated 02 August 2001, the situation is actually anticipated in the future, regulated by the Elements of Crimes of the ICC. The court stated that the crime of genocide should be perpetrated in the context of a manifest pattern of similar conduct directed at the full or partial destruction of a protected group, or behavior, which in itself could lead to such destruction [11, p. 682].

V. Schabas notes that individual criminal act committed against only one or a few individuals, but for the total or partial destruction of a protected group, it is necessary to qualify as a crime of genocide. The author also points out that such a qualification does not apply to the provisions of paragraph (c) of Article 6 of the Rome Statute of the ICC (deliberately inflicting on the group conditions of life calculated to bring about physical destruction of it) as the victim of an individual act, in this case, are not members of the protected group, a group per se [12, note 15]. With this position, however, it is difficult to accept. In accordance with the provisions of the ICC Elements of Crimes, Genocide by deliberately inflicting on the group conditions of life

calculated to bring about physical destruction it is considered ended since the establishment of certain conditions of life for one or several persons.

It is not uncommon, and the opposite opinion. Some authors believe that the common features of human rights violations, which could potentially be classified as international crimes are, in particular, gross and massive nature of such violations (bearing in mind that systematic violations included in the concept of mass) [13, p.4]. Interest in this sense, are the provisions of Decree-Law №1 dated July 15, 1979 adopted with a view to prosecution for crimes committed during the period of Democratic Kampuchea. This act defines genocide as "... the planned mass murder of innocent civilians, the expulsion of people from towns and villages and its concentration in" communes "... [14; p. 25]

**Conclusions.** Relying on the provisions of the ICC Elements of Crimes it may be concluded that the crime of genocide is completed as soon harm (such as murder, causing serious bodily injury and so on) at least one member of a protected group. Moreover, the Elements of Crimes of the ICC along with the commission of an act in the context of a manifest pattern of similar conduct directed at complete or partial destruction of a protected group (design, covering acts that can not be interpreted otherwise than as part of a large-scale campaign) expressly provide contextual element in the form of behavior that by itself it could lead to the destruction of the protected group. That is, hypothetically, we can assume a situation in which a person has committed a murder of one or more members of a protected group, but has all the means, resources and, most importantly genocidal intent to destroy all or part of such a group. In this case, the individual criminal act could potentially be qualified as a crime of genocide.

Of particular relevance this issue is in the light of such a function of the International Criminal Court, as a timely intervention and the quick response of the Court (timely intervention).

However, one must take into account the fundamental requirement. The ICC, in its judgment in the case *The Prosecutor v Al-Bashir* (*Prosecutor v. Al Bashir*), indicated that the individual act can be qualified as a crime of genocide only if the act

is a particular threat to the existence of a protected group or part thereof. In other words, the norm that defines the crime of genocide is a mechanism *Ultima ratio* - this rule works only in situations where the threat to the existence of a protected group, or part of it becomes a real and concrete, not hidden and potential [15, p.124].

For example, the crime of genocide, we can conclude that not every international crime *stricto sensu* inherent contextual element in the form of a broad scope of systematic action.

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