

Forum:	Legal Committee
Issue:	Creating an international convention for the classification of crimes against humanity
Student Officer:	Eirini Sotiropoulou
Position:	Chair

PERSONAL INTRODUCTION

Dear delegates,

My name is Eirini Sotiropoulou and I will have the honor of serving as the main Chair of the Legal Committee during this year's 7th session of the Platon School Model United Nations Conference. Having attended the 6th session of PS-MUN as a Student Officer, I am especially looking forward to this year's conference, as the Legal Committee is one of the most challenging, intriguing and substantial committees of every MUN conference. Comprehending laws and their role in maintaining regional, national or international peace and security is the key element for the preservation and development of civil society.

The challenges you will be facing in this committee include gaining a basic understanding of international law and its relation to the UN, making decisions about the balance of power between international and domestic law, familiarizing yourselves with the various institutions responsible for drafting and implementing international legislation and their status in the international community and most importantly, assessing the limitations of international law and severe breaches thereof in real life.

My job as a Chair is to assist you in these efforts before and during the conference. This document should assist you in gaining a basic understanding of the topic at hand and help you organize your research, but it should in no case be the only source you draw information from. Researching your specific country's policy and history on this matter as well as researching further details is crucial for the drafting of quality resolutions and your active, fruitful participation in the debate. In case you need any further help do not hesitate to contact me at ireade93@gmail.com.

I wish you all a constructive and productive preparation and I will see you at the conference.

Kind Regards,

Eirini Sotiropoulou

INTRODUCING TOPIC

Crimes against humanity are considered to be crimes that degrade the value of humanness, committed deliberately, on a large scale and/or systematically against civilian populations or distinguishable parts thereof by governments or de facto authorities. Their range is not limited to atrocities committed in times of war, but extends to such acts during peacetime. Crimes such as murder, extermination, massacres, enslavement, torture, deportation, unjust imprisonment, sexual abuse, forced starvation, death squads, the use of child soldiers and even political and racial oppression can be classified as crimes against humanity only under the condition that they are committed on a mass-scale. Because popular morals dictate that such acts are indeed an almost unperceivable degradation of humanity itself, the concept of them is grasped by the general public and the phrase “crimes against humanity” is often invoked. However, entering the domain of legal definitions, consensus and clarity unfortunately start decreasing.

Even though crimes against humanity are a defilement of the essence of humanity itself and have always occurred during the darkest periods of recent history, and even though various international courts and tribunals have created documents classifying these crimes to serve their purposes at the time, surprisingly no one globally agreed upon and accepted convention for the classification of crimes against humanity exists. Their definition is not included in the Geneva Conventions or a specialized treaty, which is the case for the crime of genocide and war crimes, thus creating an absence of contextual consensus for lawmakers and states. States are also unwilling to incorporate existing international legislation for the preservation of human dignity into their domestic laws, creating a further hindering the process of bringing those accountable for crimes against humanity to justice.

Crimes against humanity may in some cases overlap with the crime of genocide and war crimes but they are definitely distinguishable as a separate category: For a crime to be classified as genocide, it needs to be motivated by the intent “to destroy in whole or in part” an ethnic group etc., but that clarification is not necessary in order to classify aggressions against such groups as crimes against humanity.

What constitutes the definition of crimes against humanity so controversial is the haziness of the distinctive line between crimes that would normally be prosecuted by most nations’ domestic criminal justice systems and those that pass under international criminal jurisdiction if they are part of a systematic or widespread strategy and assault. The trait of crimes against humanity is widely accepted to be the perpetration of heinous crimes by a State or in the context of a state policy, but non-state organizations (the aforementioned “de facto authorities”) are also often included in definitions and some scholars argue that any entity with the potential to carry out crimes against humanity should be charged for such, which creates a certain conceptual vagueness.

So what should the official rationale for the prosecution of crimes against humanity be? Should it be counteracting the threat they pose to our conscience as a humanity, our international peace and security or both? Should it focus on the actions and involvement of States in such atrocities, or merely be an effective stance against group-based harm?

11 different conventions enumerating crimes against humanity exist, but their definitions diverge slightly, creating a weakness in customary international law that needs to be covered. A common base of principles and a level playing field should exist for the international community so that lines that are not to be crossed are clearly drawn out, responsible authorities can take action quickly and coherently and states can abide by their international obligations and be effectively called out in case they don't.

KEY TERMS

International criminal law

International criminal law is comprised of public international laws aiming to define and prohibit serious criminal conduct and the commitment of atrocities, as well as to hold the perpetrators accountable and impose penal sanctions. The core crimes are war crimes, the crime of genocide, crimes against humanity and the crime of aggression. While traditional international law mostly concerns states, international criminal law mostly concerns individuals.

Jus cogens

Jus cogens means “the compelling law” and according to *West's Encyclopedia of American Law*, it is “That body of peremptory principles or norms from which no derogation is permitted; those norms recognized by the international community as a whole as being fundamental to the maintenance of an international legal order”. In effect, that means the following for crimes that are part of jus cogens, a legal term deemed to be inviolable by the international community:

- The place of commitment of the crime is irrelevant, as the perpetrator can be prosecuted by all States (universal jurisdiction)
- States are obliged to help each other secure the evidence necessary to prosecute
- All States have a duty to prosecute (or extradite)
- Neither the “political offense exception” nor the “defense of obedience to superior orders” can be claimed by the accused
- No domestic statute of limitation applies and no one is immune from prosecution, not even heads of State

Consequently, jus cogens is the ultimate standing of international law accepted by the international community. Crimes against humanity are widely considered to fall under the category of jus cogens, but this has not been explicitly defined.

Ratification

Ratification is an international act whereby a country validates its consensual binding to the terms of a treaty or other documents of international law.

Historical Negationism

Often referred to as historical revisionism or denialism, historical negationism is the illegitimate distortion of history and more significantly, historical crimes. Most often applied to deny war crimes and crimes against humanity via historical interpretation incompatible with proper scientific historical discourse, historical negationism is a dangerous tool. The most famous example is Holocaust denial.

HISTORICAL INFORMATION

The concept of international justice for individuals mainly appeared in the beginning of the 20th century and the term “crimes against humanity” was first used in 1915 by the governments of Russia, France and Great Britain, who condemned the alleged massacres committed by the Turkish Government against Armenians in a common declaration.

Some of the most important international conventions and documents containing and defining this term and its content include the following:

Nuremberg Tribunal:

The first prosecution of individuals for the perpetration of crimes against humanity took place in 1945, after the Second World War, whereby former high-ranking Nazi militants were tried by the International Military Tribunal at Nuremberg. The crimes committed that fell under the category of crimes against humanity according to the court were the attempt to exterminate the Jewish race (holocaust) as well as illegal scientific experiments on human subjects (e.g. testing medicines, super cooling and testing the human capability of drinking sea water).

Crimes against humanity were defined by the charter for this tribunal as “...murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or prosecutions on political, racial or religious grounds in execution or in connection with any crime within the jurisdiction of the



Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” The same definition was incorporated by the International Military Tribunal for the Far East (Tokyo Tribunal) in 1946.

The International Law Commission:

In 1947, the United Nations General Assembly charged the International Law Commission with drafting “a code of offenses against the peace and security of mankind”. The Draft Code was completed 50 years later and included the following definition of crimes against humanity:

“Murder, extermination, torture, enslavement, persecution on political, racial, religious or ethnic grounds, institutionalized discrimination, arbitrary deportation or forcible transfer of population, arbitrary imprisonment, rape, enforced prostitution and other inhuman acts committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group.”

As you can see, the definition is broader and extended in comparison to that of the Nuremberg Charter in order to be applicable to new and unprecedented situations that have since arisen, e.g. the prosecution of crime of Apartheid in South Africa that falls under “institutionalized discrimination”. Furthermore, this definition does not limit crimes against humanity to acts “before or during the war”, as the Nuremberg Charter does, leaving open the possibility of crimes against humanity occurring in times of peace.

The International Criminal Court and the Rome Statute:

The permanent International Criminal Court (ICC) is an international tribunal and organization that came into force in 2002. The foundational and governing document of the ICC is the Rome Statute, a multinational treaty with 124 state parties. It has the jurisdiction and responsibility of prosecuting individuals for the perpetration of war crimes, genocide and crimes against humanity, under the condition that a state or the Security Council refer investigations to it or in cases where domestic courts are unwilling or unable to prosecute criminals. It defines crimes against humanity as follows:

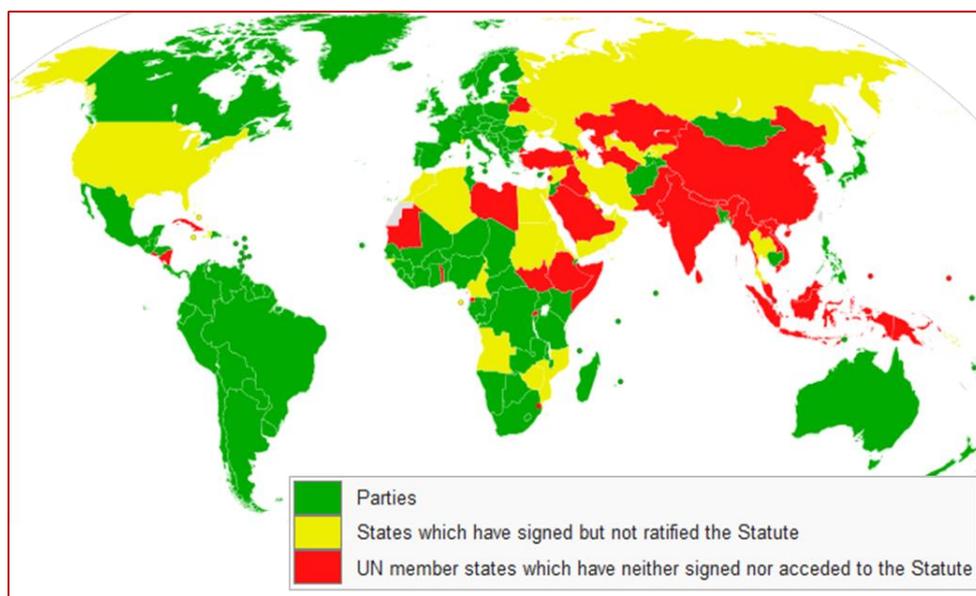
“For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

The Rome Statute includes the most extended and analytical definition of crimes against humanity in existing international legal documents, specifying the crime of apartheid and the enforced disappearance of persons and providing details on what constitutes rape and sexual violence, deportation and torture on both a physical and mental level.

Countries status on the International Criminal Court



While the definition provided by the Rome Statute may seem adequately comprehensive and clear, much controversy can arise from a clarification on the definition in paragraph 2 of Article 7: "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a *State or organizational policy* to commit such attack;". The fact that, according to this

definition, crimes against humanity can be committed both by States or state-like organizations leaves the matter open to the interpretation of the judges and creates a crucial debate concerning the standing of international law in relation to state sovereignty, as well as the nature of the fundamental aims and role of the ICC and the extent of its jurisdiction.

What should the characteristics of such an organization be? Judges have argued that the organization should share in a common purpose, operate over a prolonged period of time, have a specified and recognized hierarchical structure that includes a policy-making branch responsible for organizing the commitment of the crime and finally, the ability to both carry out the policy and sanction members that do not comply by it. Most cases entering the ICC concern core crimes committed in the African continent, where modern warfare mostly consists of conflicts within the states and not between states (e.g. Sierra Leone, DR Congo etc.) Conflicts mostly include rebel groups capable of committing atrocities that could potentially be classified as crimes against humanity and weakened states unable to react and restrain, making ICC intervention possibly necessary.

Enabling the ICC to intervene in such cases by creating a respective legal definition would be an evolution in international law, as it would expand the ICC's jurisdiction to even potentially solely private organizations, something which is currently not the case in the greater part of international legislation.

The counter-argument is that this contradicts traditional international law, the aim of which is to infringe upon state sovereignty as little as possible. Many nations do not wish to accept the ICC's jurisdiction as it is and the Court is very dependent on the ones that do to be able to carry out its duties, since the terms of the Rome Statute were based on long multilateral negotiations between states and agreed upon in good faith. The argument here is that, even though this part is open to interpretation, modifications could possibly infringe upon the competence of domestic legal systems and the jurisdiction states have upon crimes occurring within their own territory. The same controversy applies for the ILC definition.

However, it is stated in Article 10 of the Statute that the Statute is not to be considered a definitive codification of international criminal law. It is merely the best existing reflection of international consensus on the matter.

Finally, it must be noted that nations with a great geopolitical and financial influence on current global affairs are not signatories of the ICC, e.g. China, India and Saudi Arabia. Furthermore, the Russian Federation and the United States of America were signatories but withdrew their signatures.

International Criminal Tribunal for the former Yugoslavia (ICTY):

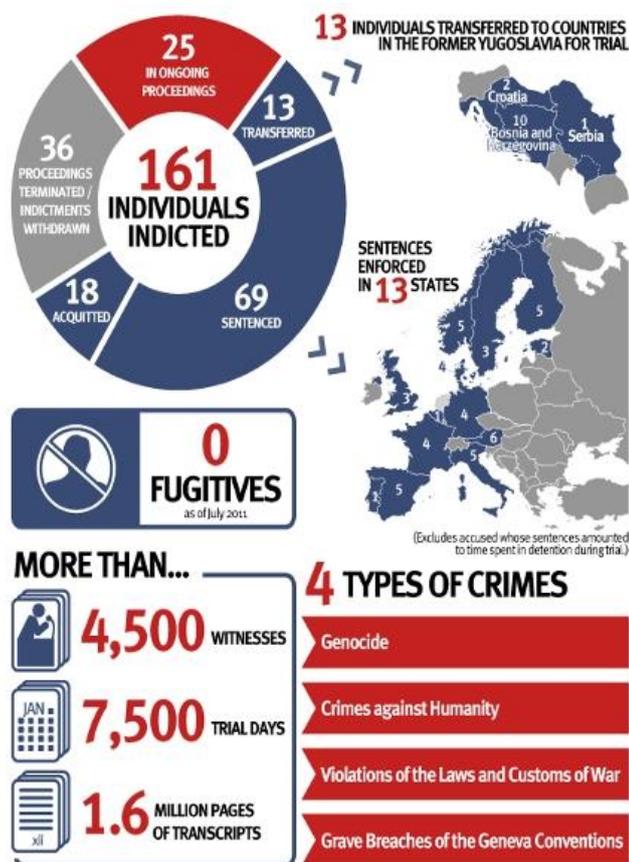
The ICTY is an ad hoc military tribunal that was established by the UN Security Council in 1993 in order to prosecute individuals for serious crimes committed during the

Yugoslav Wars after 1991. The ICTY tried individuals for breaches of the laws of war, genocide and crimes against humanity and provided the following definition for the latter:

“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.”

This definition, like that of the Nuremberg Charter, creates a nexus between crimes against humanity and armed conflict. Furthermore, it adds imprisonment, torture and rape to the list of crimes included in Nuremberg.



International Criminal Tribunal for Rwanda (ICTR):

The ICTR was established as an ad hoc tribunal by the Security Council in 1994, following the genocide committed by the Hutu majority government against the Tutsi ethnic group in order to prosecute governmental official responsible for this. The definition included in the ICTR Statute is identical to that of the ICTY in the enumeration of crimes, but no connection between crimes against humanity and armed conflict is made, owing to the domestic nature of the Rwandan genocide. Moreover, it included and added requirement for the acts to be part of a “systematic or widespread attack against any civilian population on national, political, ethnic, racial or religious grounds”.

COUNTRIES AND ORGANIZATIONS INVOLVED IN THE ISSUE

Special Rapporteur for Crimes against Humanity

In 2014, the International Law Commission of the UN decided to appoint Mr. Sean D. Murphy Special Rapporteur for Crimes against Humanity. The Special Rapporteur systematically issues reports on various legal aspects of the issue, the first of which was published in 2016 and included two proposed draft articles for a convention on crimes against humanity, one of which focused on the definition of such crimes, including explanatory notes on each of the enumerated crimes. You may find the full text of the report here: <http://legal.un.org/docs/?symbol=A/CN.4/680>

Crimes Against Humanity Initiative

The Crimes Against Humanity Initiative is a project that was started in 2008 by Professor Leila Nadya Sadat of the Whitney R. Harris World Law Institute and it has the aim of analyzing the necessary elements of a convention on crimes against humanity and drafting a proposed treaty. The draft treaty it has proposed is currently under debate in the UN International Law Commission and various states around the world. You may find the full text here:

<http://law.wustl.edu/harris/cah/docs/EnglishTreatyFinal.pdf>

TIMELINE OF EVENTS

1915	First use of the term “crimes against humanity” in an international legal document
1945	Nuremberg Trials
1947	The ILC is charged with the creation of a Draft Code by the UN General Assembly
1993	Creation of the ICTY
1994	Creation of the ICTR
2002	ICC comes into force
2008	Start of the Crimes Against Humanity Initiative
2014	Appointment of the Special Rapporteur on Crimes Against Humanity

POSSIBLE SOLUTIONS

While the name of this topic is “creating an international convention for the classification of crimes against humanity”, delegates are of course not expected to write the convention itself, as a Legal Committee resolution would not qualify as such. Instead, the aim of your draft resolutions should be to draw out guidelines for the creation of this convention, including what its aim should be, how and by whom it is going to be created, which crimes it should classify as crimes against humanity,

whether there should, by definition, be a connection between crimes against humanity and conflict etc. This convention should also be applicable by international courts and tribunals. Different nations choose to incorporate or not incorporate international law into their domestic systems, or choose to value domestic legislation above customary international law, so this should be reflected upon different resolutions. Is this, however, undermined by the “crimes against humanity as jus cogens” argument? Furthermore, different states have different approaches to the aforementioned dilemma concerning the ICC definition of crimes against humanity. Should the convention refer to state action only or otherwise draw out very strict lines for the non-state actors that qualify as de facto authorities, or should it refer to any organization or group capable of committing crimes against humanity? States that are known to have engaged in historical negationism or to have committed acts that could qualify as modern crimes against humanity are less likely to want this convention to be deemed as part of jus cogens and to incorporate obligations of international law onto their domestic policies. Furthermore, nations with a strong sense of state in which traditionalism is deeply rooted are less likely to wish for a definition that would allow international courts and tribunals to take over delivering justice to partially or wholly private groups and organizations, whereas nations with weakened governments that are constantly threatened by rebel groups and militias, or even by terrorist groups, could wish for international jurisdiction over such groups. Delegates therefore need to research their nations’ history, participation in previous UN events and ad hoc tribunals, the current situation in their nations, whether their policy puts international law above domestic legislations and finally, modern occurrences of crimes against humanity worldwide.

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