



Los delitos fundamentales en nombre de la «misericordia»

Core crimes in the name of "mercy"

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RESUMEN

El derecho penal internacional prohíbe ciertas categorías de conducta que se consideran delitos graves, regula los procedimientos que rigen la investigación, el enjuiciamiento y el castigo, y responsabiliza individualmente a los perpetradores. La prevención de violaciones graves del derecho internacional humanitario es fundamental, en particular dada la gravedad de determinados actos, calificados como delitos fundamentales (delito de genocidio, crímenes de guerra, crímenes de lesa humanidad y agresión). Dado que el interés de la comunidad internacional en su conjunto es castigar esas incriminaciones, existen varios principios básicos en los que se basa el derecho penal internacional.

Palabras clave: delitos fundamentales; derecho penal internacional; convención; agresión; genocidio.

ABSTRACT

International criminal law prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment, and holds perpetrators individually accountable. The prevention of serious violations of international humanitarian law is essential, particularly in view of the gravity of certain acts, qualified as core crimes (the crime of genocide, war crimes, crimes against humanity and aggression). Since the interest of the international community as a whole is to punish for those incriminations, there are several basic principles upon which international criminal law is based.

Keywords: core crimes; international criminal law; convention; aggression; genocide.



ἀλλ' εἰρκτέον τάδ' ἐστίν ον γάρ οἱ πλατεῖς
 ονδ' ἐνρύνωτοι φώτες ασφαλέστατοι,
 ἀλλ' οἱ φρονούντες ἐν κρατοῦσι πανταχόν.¹
 SOPHOCLES (1876, p. 42)

Introduction

International criminal law has developed as a part of a broader system of public international law, which has been based on state sovereignty, including each state's jurisdiction over its own territory and citizens. It has adapted through a long and slow historical process, drawing upon multiple sources. The purpose of international criminal law is to establish the criminal responsibility of individuals for international crime (Brown, 2011, p. 3). Its sources are usually considered to be those enumerated in Article 38 (1) (a)–(d) of the Statute of the International Court of Justice, in other words, treaty law, customary law and general principles of law. A subsidiary means of determining the law are judicial decisions and the writings of the most qualified publicists. They are available for use by national courts in so far as the relevant national system concerned will allow.

Treaty-based sources of international criminal law, either directly or as an aid to interpretation, include the 1907 Hague Regulations, the 1949 Geneva Conventions (and their additional protocols) and the 1948 Genocide Convention (Cryer et al., 2010, p. 9). Treaties are agreements between sovereign nations, governed by international law and binding only upon parties to each particular agreement. Customary law is composed of two elements, an objective and a subjective. The objective element is made up of the uniform and continuous practice of States with regard to a specific issue and, depending on its adherents, this may take the form of a universal or a local custom. The subjective element comprises a State's conviction that its practice on a particular issue emanates from a legal obligation, which it feels bound to respect. International customary rules bind all States, except for those States that have consistently and openly objected to the formation of a rule from its inception. No derogation is allowed from *jus cogens* norms, which generally comprise fundamental human rights and rules of international humanitarian law, as well as the prohibition of the use of armed force (Bantekas & Nash, 2009, p. 2-4). Customary international law derives from the practice of States accompanied by *opinio iuris* (the belief that what is done is required by or in accordance with law) (Cryer et al., 2010, p. 9).

General principles of law are, by their nature, general, and thus tend to be a last resort. As regards the International Criminal Court, it is to apply general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States

¹"It is not by thews and bulk,
 or shoulder's breath,
 the perfect man is known,
 but wisdom gives chief power in all the world".

that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.²The ICC may also apply "principles and rules of law as interpreted in its previous decisions". This court is not, however, bound by its previous decisions; it has no equivalent to the common law principle of *stare decisis* (Rome Statute - the International Criminal Court, 2022).

The primary sources of international criminal law are independent and capable of producing binding rules. The secondary sources serve to ascertain, and perhaps interpret, the primary sources (Bantekas & Nash, 2009, p. 2).

Core crimes regulated by international criminal law

The core crimes enumerated in the Rome Statute are deemed to be the most important international crimes. The label 'core' is without question used to refer to the perceived elevated status of these crimes and it designates special standing regarding international jurisdiction (Schwöbel-Patel, 2020, p. 769). At the time of World War II, the international laws that applied to wars were the Hague Conventions of 1899 and 1907. These regulations set forth rules regarding attacks on civilian populations. The Conventions did not anticipate air warfare and, therefore, did not contain any specific provisions on air attacks. Instead, the Conventions prohibited targeting undefended towns and cities by naval and field artillery. Additionally, the Conventions prohibited using "arms, projectiles, or material calculated to cause unnecessary suffering" (Vail, 2017, p. 845-846).

Perhaps one of the most significant developments in the law of armed conflict since 1907 was the adoption in 12 August 1949 of four Conventions replacing the two Geneva Conventions of 1929: I-Wounded and Sick in the Field; II-Wounded, Sick and Ship wrecked at Sea; III-Prisoners of War; IV-Civilians.³ Of these, the Civilians Convention is completely new and is the consequence of the treatment suffered by civilian populations of occupied territories during World War II and represents the first attempt to protect the civilian population during conflict, although it is essentially concerned only with the protection of civilians in occupied territory and not the

² Art. 21(1)(c) of the ICC Statute. This and all other sources of law available to the ICC are qualified by Article 21(3) which requires application and interpretation of the law to be consistent with internationally recognized human rights, and without adverse discrimination.

³ Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention III Relative to the Treatment of Prisoners of War; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War.

treatment of civilians in a belligerent's own territory, unless such civilians possess enemy nationality (Green, 2000, p. 43).

The core crimes (genocide, crime against humanity, war crimes and aggression) are considered to be the international crimes *stricto sensu* (Luban, O` Sullivan & Stewart, 2010, p. 3). The Convention on the Prevention and Punishment of the Crime of Genocide⁴ was adopted by the United Nations General Assembly on December 9, 1948, and entered into force on January 12, 1951. Article II of the Genocide Convention making, the commission of genocide a crime, has been incorporated in the 1998 Rome Statute of the International Criminal Court. The Genocide Convention was the first legal instrument to formally define genocide. According to the convention, genocidal acts are not limited to murder but pertain to any attempt to cause serious bodily or mental harm to members of a group, or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Genocide is not only a crime against a particular group of people but also a crime whose intent is the obliteration of their history, culture, and future existence as well (Horvitz & Catherwood, 2006, p. 168).

The Fourth Geneva Convention employed a similar definition in Article II, which describes genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." These acts are banned under international law regardless of whether they are committed in war or in peacetime.

All signatories are obliged to prevent and punish any acts of genocide that take place under their jurisdiction. Signatories agree to enact appropriate legislation to make these acts illegal under national law and provide appropriate penalties for violators. The convention also declares it illegal to conspire to commit genocide, incite others to commit genocide, attempt to commit genocide, or become complicit in the commission of genocide (Slavković, 2014, p. 268).

Genocide was in essence an aggravated form of crime against humanity. Whereas genocide involved the physical annihilation of the group, crimes against humanity covered a larger range of acts, subsumed under such terms as persecution. Genocide only covered groups defined by race, nationality, ethnicity or religion, whereas crimes against humanity extended to include political groups as well. But at the time they were devised in the mid-1940s, probably the most important difference was the fact that genocide could be committed in time of peace as well as during war. Crimes against humanity, though broader in scope in some respects, were also more limited, because they could only be carried out in time of armed conflict (Shelton, 2004, p. XIV).

⁴ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

The concept of crimes against humanity was first articulated as an international offence in Article 6(c) of The Nuremberg IMT Charter. This read as follows: "Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any other crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated" (Bantekas & Nash, 2009, p. 123).

According to Article 7. of the 1998 Rome Statute of the International Criminal Court "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" (Rome Statute - the International Criminal Court, 2022).

Crimes against humanity must be committed as part of a widespread or systematic attack against a civilian population, while the commission of a war crime requires that the relevant prohibited conduct has a close connection with an armed conflict (Guilfoyle, 2020, p. 809). The Charter of the Nuremberg International Military Tribunal of 1945 stated that the court had the authority to try individuals or members of organizations for one of three crimes (crimes against peace, war crimes, and crimes against humanity). Article 6 (c) defines war crimes as violations of the laws or customs of war, which shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder of or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Crowe, 2014, p. 164).

War crimes as listed in Art. 8(2)(a) of the ICC Statute cover grave breaches of the Geneva Conventions of 12 August 1949 (Article 50), namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling

a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial (Rome Statute - the International Criminal Court, 2022).

Grave breaches of the Geneva Conventions concern acts committed in the context of an international armed conflict against persons or property protected under the relevant provisions of the four 1949 Geneva Conventions (Dörmann, 2004, p. 17).

General Assembly Resolution 3314 (XXIX) of December 14, 1974, constitutes the most detailed statement of the United Nations on aggression (crime against peace). The resolution defines aggression in its first articles. Article 1 provides: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

Article 3 lists a series of acts which, regardless of a declaration of war, would constitute aggression, including the invasion or attack by the armed forces of a state of the territory of another state, bombardment by the armed forces of a state against the territory of another state, the blockade of the ports or coasts of a state, and the sending of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another state (Shelton, 2004, p. 13). According to Article 6(c) of the Charter of the Nuremberg Tribunal in 1945, the following acts are crimes against peace coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing (Jovašević, 2010, p. 126-127).

In 2010, the Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court agreed on a definition for the crime of aggression after years of deliberations. The ASP adopted the Rome Statute in 1998, but the crime of aggression proved too contentious. The ASP failed to reach a consensus on its definition or jurisdictional regime (Veroff, 2016, 733). In September 2002, the Assembly of States Parties appointed a Special Working Group on the Crime of Aggression. Participation in the Group was open to any member states of the United Nations and any member states of the UN agencies, as well as member states of the International Atomic Energy Agency. After years of work, at the last formal session of the group, in February 2009, the final version of the provisions on the crime of aggression was adopted. The group agreed that Article 8 *bis* should be worded as follows: 1. For the purpose of this Statute, crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. 2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another

State, or in any other manner inconsistent with the Charter of the United Nations (Grzebyk, 2013, p. 118-119).

Absence of a treaty that prohibits nuclear and depleted uranium weapons – court practice

Ryuichi Shimoda et al. v. The State

Until 2017, there was no comprehensive or universal ban on nuclear weapons in international law, which is why some scholars argued that nuclear weapons are not *per se* illegal under the laws of war and customary international law. Theoretically, the use of nuclear weapons would be a violation of IHL due to the restrictions (proportionality and distinction) of international law on the types of weapons that states can use.

The health and physical effects of nuclear weapons make their use incompatible with, and illegal under, the humanitarian principles of customary international law. The military advantage can never outweigh the vast humanitarian concerns because radiation will spread indiscriminately and uncontrollably. This indiscriminate aspect, by itself, precludes nuclear weapons from ever being used (Vail, 2017, 842, 843-844).

A 1963 ruling from the Tokyo District Court supports these assertions. In *Shimoda v. State*, the Tokyo court found that the United States' use of nuclear weapons during World War II violated the Hague Conventions and customary international law⁵ by causing unnecessary suffering. The court noted that the nuclear bomb was a "really cruel weapon" that caused massive destruction and mass casualties. Any weapon the use of which is contrary to the customs of civilized countries and to the principles of international law should *ipso facto* be deemed to be prohibited even if there is no express provision in the law; the new weapon may be used as a legal means of hostilities only if it is not contrary to the principles of international law. Atomic bomb must necessarily be prohibited because it has characteristics different from other conventional weapons in the inhumanity of its effects (Ryuichi Shimoda et al. v. The State, 2022).

⁵ Specific legal rules and provisions: Article 25 of the regulations of the Law and Customs of War on Land of 1899 (indiscriminate nature of attack); Article 23(a) of the regulations of the Law and Customs of War on Land annexed to the Hague Convention IV on 18 October 1907.; Geneva Protocol of 17 June 1925, (prohibition on 'the use in war of asphyxiating, poisonous or other gases); Articles 22 and 24 of the Draft Rules of Air Warfare of 1923 (prohibition on indiscriminate aerial bombing of non-combatants) (International Crimes Database, 2022).

In the *Shimoda case* in 1963, the plaintiffs, residents of Hiroshima and Nagasaki in 1945, brought proceedings against the Japanese Government on the ground that, by signing the 1951 Peace Treaty with the Allies, it had waived their right to seek compensation from the United States for its use of atomic bombs in violation of the laws of war. The plaintiffs argued, *inter alia*, that the government's waiver of their claims obliged the government to pay them compensation itself. The Tokyo District Court ruled that, even though the aerial bombardment was an illegal act of war, individuals could be considered the subjects of rights under international law only in so far as they had been recognized as such in specific instances, such as, for example, in cases of mixed arbitral tribunals. In light of this determination, the Court concluded: "There is in general no way open to an individual who suffers injuries from an act of hostilities contrary to international law to claim damages on the level of international law, except for the cases mentioned above." The Court went on to consider the question of whether the plaintiffs could seek redress before the municipal courts of either of the belligerent parties and concluded that considerations of sovereign immunity precluded proceedings against the United States either before Japanese or US courts (Practice Relating to Rule 150. Reparation, 2022).

According to Article 19. Paragraph (a) of the Treaty of Peace with Japan, signed at San Francisco on 8 September 1951, "Japan waives all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war or out of actions taken because of the existence of a state of war, and waives all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory prior to the coming into force of the present Treaty". Paragraph (b) prescribes that "The foregoing waiver includes any claims arising out of actions taken by any of the Allied Powers with respect to Japanese ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising in respect to Japanese prisoners of war and civilian internees in the hands of the Allied Powers, but does not include Japanese claims specifically recognized in the laws of any Allied Power enacted since September 2, 1945" (Treaty of Peace with Japan (with two declarations), 2022).

According to the Hague Conventions of 1899 and 1907, because Hiroshima and Nagasaki were undefended cities, it seems likely that the nuclear weapons' destruction would be classified as "unnecessary suffering. Not only did the bombings violate international law at the time, but the nuclear attacks on Japan also violate modern international law. Today, the Geneva Conventions along with its Additional Protocols—which further added to IHL—comprise the law of armed conflicts. Additional Protocol I came into action in 1977. Many Protocol I provisions are recognized rules of customary international law. Protocol I requires parties in armed conflict to abide by the principles of proportionality and distinction.⁶

Based on Protocol I, which has done away with the distinctions of defended and undefended cities, the bombings would have been disproportionate and indiscriminate. Additionally, the Geneva

⁶ Additional Protocol I, *supra* note 8, arts. 51–52.

Conventions are directly inspired by the principle of humanity, which prohibits causing suffering, injury, or destruction that is not required to realize a lawful military objective. Thus, humanity is incorporated into the concepts of proportionality and distinction. The goal of IHL is to minimize combatant and civilian suffering by placing limits on the type of destruction a state may inflict (Vail, 2017, p. 847-848).

The UN Treaty on the Prohibition of Nuclear Weapons (TPNW), or the Nuclear Weapon Ban Treaty, is the first legally binding international agreement to comprehensively prohibit nuclear weapons with the ultimate goal being their total elimination. It was adopted on 7 July 2017, opened for signature on 20 September 2017, and entered into force on 22 January 2021. The concept of security under the treaty is different from the traditional one. In traditional thinking, security refers to the national and military security of each state. However, the security under the TPNW is comprehensive security for all humanity, which means it includes not only military but also human, humanitarian, environmental, and other types of security. The treaty, if compared with the contents of the obligations of the NPT⁷, prohibits the use or the threat of using nuclear weapons or the stationing of nuclear weapons on one's territory. It prohibits the testing of nuclear weapons, which is a much wider mandate than the CTBT⁸, which prohibits only nuclear weapons test explosions.

The principal obligation of the treaty is the "prohibition" of certain activities concerning nuclear weapons, but it does not provide for the "destruction" or "elimination" of nuclear weapons directly. The purpose of the TPNW is to stigmatize and delegitimize nuclear weapons in the long term. Although it entered into force, its supporters need to keep trying to increase the number of treaty parties and sway public opinion to change government attitudes (Kurosawa, 2021, 12-15).

In the Joint Statement of the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races of January 03, 2022, it was stated that they reaffirm the importance of addressing nuclear threats and emphasize the importance of preserving and complying with their bilateral and multilateral non-proliferation, disarmament, and arms control agreements and commitments. They remain committed to their Nuclear Non-Proliferation Treaty (NPT) obligations, including Article VI obligation "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." They underline their desire to work with all states to create a security environment more conducive to progress on disarmament with the ultimate goal of a world without nuclear weapons with undiminished security for all (Joint Statement of the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races, 2022).

⁷ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was opened for signature in July 1, 1968 and entered into force on March 5, 1970.

⁸ Comprehensive Nuclear-Test-Ban (CTBT) was signed in September 1996 following the decision at the 1995 NPT Review and Extension Conference.

The practice of the International Court of Justice

It is widely agreed that international law forbids states to use force unilaterally even for the purpose of the so-called "humanitarian intervention". The chief treaty regulating the use of force, the Charter of the United Nations does not name "humanitarian interventions" among lawful exceptions to Article 2(4). Relevant UN General Assembly resolutions and the International Court of Justice confirm this overarching rule. It was also recognized in leading treatises that "humanitarian intervention" was prohibited under both the relevant treaty law and customary international law. In recent times, the issue became particularly important in connection with NATO aggression on Federal Republic of Yugoslavia called *Angel of Mercy* (1999) (Саяпин, 2014, p. 131).

With regard of the term "humanitarian", it is necessary to provide explication of what moral norms and principles constitute. One of the key Confucian moral norm is the concept of *ren* 仁, which is often translated as benevolence or humaneness. In terms of how to concretely practice or make manifest *ren*, Confucius gave different explanations, including loving your fellow human beings, being tolerant, sincere and respectful, helping others overcome challenges and difficulties, helping others reach the aspirations you yourself wish to reach, avoiding placing impositions on others that you would not want imposed on yourself, and diligently observing ritual propriety (Norman, 2020, 135).

On April 29, 1999, Yugoslavia filed an Application instituting proceedings against the United States of America "for violation of the obligation not to use force", accusing that State of bombing Yugoslav territory "together with other Member States of NATO". On the same day, it submitted a request for the indication of provisional measures, asking the International Court of Justice to order the United States of America to "cease immediately its acts of use of force" and to "refrain from any act of threat or use of force" against the FRY.

As a basis for the jurisdiction of the Court, Yugoslavia invoked Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948, as well as Article 38, paragraph 5, of the Rules of Court. Article IX of the Genocide Convention provides that disputes between the contracting parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice.

In an Order issued in the case concerning Legality of Use of force (*Yugoslavia v. United States of America*), the Court rejected the request for the indication of provisional measures submitted by the Federal Republic of Yugoslavia. In its Order, the Court, having found that it manifestly lacked jurisdiction to entertain the case, decided to dismiss it (Case concerning legality of use of force - Yugoslavia v. United States of America, 2022).

Some scholars considered that the intervention of NATO was an implementation of its new „Strategic Concept“. However, the use of armed force against the FRY was clearly illegal due to the

lack of the authorization by the United Nations Security Council (Sunga, 2006, p. 40). After the end of the aggression, the District Public Prosecutor's Office in Belgrade filed an indictment against the leaders of the NATO alliance. They were tried *in absentia* and the District Court in Belgrade, by its judgment K. 381/2000, convicted them on September 21, 2000, because of co-perpetration in criminal offences: Instigating an aggressive war (Article 152 of the Criminal code); Violation of territorial sovereignty (Article 135); War crime against the civilian population (Article 142); Employment of prohibited means of warfare (Article 148).⁹

At that time, criminal offences against humanity and international law in FR Yugoslavia were regulated by Federal criminal code.¹⁰ According to Article 148. (Employment of prohibited means of warfare) Section 1., "whoever during time of war or armed conflict orders employment of means or methods of warfare that are banned under rules of international law or who uses such means or methods, shall be punished by imprisonment up to one year. Section 2. prescribes that if the offence specified in Section 1 of this Article results in killing of a number of persons, the offender shall be punished by imprisonment up to five years or by imprisonment of twenty years (Lazarević, 1995).

To this date, there is no treaty regulating depleted uranium weapons. Yet, International Humanitarian Law prohibits weapons that cause unnecessary suffering, have indiscriminate effects or cause long-term damage to the natural environment and therefore theoretically should apply fully to this. The usage of depleted uranium munitions was only indirectly forbidden (by General convention which is against environmental pollution).

According to Article 35. Section 1. of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), "It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering". Section 2. prescribes that "it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment" (The Geneva Conventions of 1949 and their Additional Protocols, 2022).

This is a confirmation of the 1977 *Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques* (Article I): "Each State Party to this Convention undertake not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party" (Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 2022). All the restrictions upon the means and

⁹ Decision of the District court in Belgrade K. 381/2000.

¹⁰ Criminal code of FR Yugoslavia - "Official Gazette of SFR Yugoslavia", No.44/76- 1329, 36/77- 1478, 34/84- 895, 37/84-933, 74/87- 1743, 57/89- 1441, 3/90-63, 38/90-1217, 45/90-1340, 54/90-1773 and " Official Gazette of FR Yugoslavia", No. 35/92- 651, 37/93-816, 24/94-273, 61/01 of 09.11.

methods of warfare and the weapons that may be used during conflict are directed to protect both combatants and noncombatants from unnecessary suffering (Green, 2000, p. 127-128). According to Article 55., Section 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, "Care shall be taken in warfare to protect the natural environment against widespread, longterm and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population" (The Geneva Conventions of 1949 and their Additional Protocols, 2022).

The rule prohibiting the use of weapons causing superfluous injury is a customary norm applicable to all parties to any armed conflict. The United States has not "accepted" the provisions on environmental protection set out in the 1977 Additional Protocol I and has repeatedly expressed the view that these provisions are "overly broad and ambiguous" and "not a part of customary law"(Casey-Maslen, 2019, p. 98-99).

Conclusions

Umberto Eco considers that "It is an intellectual duty to proclaim the inconceivability of war". He rejects the question of humanity and inhumanity, morality and immorality of war and gives an order to the intellect to perceive the outcome of war beyond ethics and ideology, to see it in its practical senselessness.

The core crimes enumerated in the Rome Statute are deemed to be the most important international crimes. The label 'core' is without question used to refer to the perceived elevated status of these crimes and it designates special standing regarding international jurisdiction. The 1945 Statute of the International Court of Justice recognises two types of sources: primary and secondary. The primary sources of international criminal law are treaties, international custom and general principles of law, all being independent and capable of producing binding rules. The secondary sources, namely the writings of renowned publicists and the decisions of international courts, serve to ascertain, and perhaps interpret, the primary sources.

According to the The Convention on the Prevention and Punishment of the Crime of Genocide of 1948, genocidal acts are not limited to murder but pertain to any attempt to cause serious bodily or mental harm to members of a group, or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." The Fourth Geneva Convention of 1949 employed a similar definition in Article II, since genocide implies "any of the enumerated acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

The Charter of the Nuremberg International Military Tribunal of 1945 defines war crimes as violations of the laws or customs of war, which shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder of or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity. War crimes as listed in the ICC Statute cover grave breaches of the 1949 Geneva Conventions.

According to the 1998 Rome Statute of the International Criminal Court, crime against humanity implies any of the enumerated acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. On the other hand, for the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

Absence of a treaty that prohibits depleted uranium weapons attracted special scholars' attention. According to the 1949 Protocol Additional to the Geneva Conventions, "It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering". Convention also forbids employing of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Prohibition of using "arms, projectiles, or material calculated to cause unnecessary suffering" firstly was prescribed in the Hague Conventions of 1899 and 1907. Apart from Protocol Additional to the Geneva Conventions of 1949, the severe damage of the natural environment is also forbidden by the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques of 1977. The International Humanitarian Law bans weapons that cause unnecessary suffering, have indiscriminate effects or cause long-term damage to the natural environment, but the usage of depleted uranium munitions is only indirectly forbidden.

God doesn't want a loathsome crime to remain undetected. That's the way a scrupulous judge should reason. At times the Devil will try to trick us with the help of tears. All we have to do is learn how to perceive his temptations and his tricks. And not to forget that no one is safe.

JOHNSON (1984, p. 46)

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Conflict of interest

The author declares no conflict of interest.