

Crimes Against Humanity Committed During the Arab Revolutions from the Perspective of International Law

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Abstract

The importance of this research lies in its subject "Crimes against humanity committed during the Arabic revolutions from the perspective of International Law", which is still one of the most important contemporary issues that keeps the international community alert. Arabs have suffered and are still suffering from heinous crimes committed, and continue to be committed during Arabic revolutions, where committers of these crimes are still at large enjoying life by escaping punishment and legal accountability. Therefore, the researchers decided to dig deep in this topic by dividing it into four topics which are as follows: the *First* topic will discuss the definition of crimes against humanity. The *second* topic to be discussed is the elements of crimes against humanity, crimes against humanity committed during the Arabic revolutions will be the *third* topic, and the *fourth* topic will be the criminal responsibility of leaders and superiors for the crimes against humanity committed during the Arabic revolutions.

Keywords: Crimes against humanity, Arabic revolutions, International Law, International courts.

Introduction

The mass revolts began to take place in several Arab countries since the beginning of 2011, they targeted toppling regimes which failed to address the rapidly deteriorating economic and social conditions for decades, those regimes also failed to meet the aspirations of the young generations who considered freedoms and human rights as a substantial issue for their lives and existence, they were not willing to accept barter as earlier generations did, whereby older generations compromised on freedom and human rights for improving the economic and social situation, the youth believe that they have the right to claim both sides of the barter.

However, these revolutions in Tunisia, Egypt, Libya, Syria and Yemen have partially achieved dropping the heads of their rulers, without toppling the entire ruling regime. It was also revealed that the regime collapse does not guarantee quick transformation to achieve the objectives of these revolutions, but it drives these communities to dispersion, loss of the state or to an endless civil war, or to a political turmoil and instability; this has resulted in committing the gravest crimes against humanity during Arab revolutions, which led to violations of the most basic human rights of the Arabs and the whole world's dignity and humanity.

As mentioned earlier the researchers will address in this research by splitting it into the following topics:

First topic: Defining crimes against humanity.

Second topic: Elements of crimes against humanity.

Third topic: Crimes against humanity committed during the Arabic revolutions.

Fourth topic: Criminal responsibility of commanders and superiors for the crimes against humanity committed during the Arabic revolutions.

First topic: defining crimes against humanity.

Crimes against humanity are considered the most prevalent at present time especially during Arabic revolutions, as they are being committed during international and internal armed conflicts, they are also being committed in the times of peace. The victims of these crimes are either citizens of the States which has committed such acts or citizens of other State¹.

However, the concept of "Crimes against humanity" is a relatively recent concept, which was first introduced in the Nuremberg list, article 6 of the list indicated that:

Crimes against humanity are acts of premeditated murder, genocide, enslavement, deportation and other inhumane acts committed against civilians, before or during war, as well as persecutions based on political, racial, sexual or religious reasons, whether those acts or persecution in violation of the domestic law of the State in which it occurred, or not, when committed by extension to a crime within the jurisdiction of the Tribunal or linked to it (a crime against peace or a war crime)².

Although the accurate definition and important principles was laid down in the article (6/c) of the

1. Shelton, Diana, International Crimes, Peace, and Human Rights, Transnational publishers, inc, 2000. Ch2. P. 210

2. Meron, Theodor, War Crimes Comes of Age, American Journal of International Law. Vol. 92. No. 3 July 1993. P. 464.

Charter, the definition is criticized that it did not distinguish between war crimes and crimes against humanity; because there are similarities between them in the opinion of Jurists, especially when offences are committed against civilians in wartime, and it was noticeable that the Court's tendency is to prosecute perpetrators for acts as war crimes, in case it was unable to do so it would be prosecuted as a crime against humanity.

This text has been repeated in Tokyo list (5/paragraph 2), and in Germany Control Council law number 10/M/6/c) which defined crimes against humanity as:

"The atrocities and crimes which includes non-exclusively premeditated murder, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts committed against civilians, or persecutions based on political, racial or religious reasons, whether such crimes violate domestic laws or not¹.

Through comparison between the definition against humanity in each of law (10), and the statute of the International Military Tribunal, Nuremberg, law number (10) added more crimes which are imprisonment, torture, and rape indicating that it had expanded the domain of crime than what exist in the definition of the Nuremberg Military Tribunal, this confirms the danger of these crimes and the pursuit of the international community to further research on the definition of crimes against humanity, in February 1993, United Nations (UN) Resolution 808 directed the establishment of the International Criminal Tribunal for the Former Yugoslavia (Tribunal) to prosecute serious violations of humanitarian law², the court statutes defined crimes against humanity in article (5) of it that: ICTY will exercise the jurisdiction to prosecute persons responsible for the following crimes when committed in armed conflicts, whether it is international or internal, or be directed against any civilian population:

(Premeditated murder, genocide, enslavement, deportation, imprisonment, torture, rape, persecutions based on political, racial or religious reasons, and other inhumane acts)³.

We realize that there is a similarity between article (5) of the International Tribunal System of Yugoslavia and the International Military Tribunal (Nuremberg), except the crimes that were added by article (5) and connected the occurrence of such crimes during *armed conflict*, not *war* as mentioned in Nuremberg.

However, the 1994 International Criminal Court Statute in Rwanda contained in article (3) the definition of crimes against humanity as follows: "the International Criminal Court in Rwanda, will have the jurisdiction to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population for any of the following reasons: national, political, ethnic, racial or religious:

(Premeditated murder, genocide, enslavement, deportation, imprisonment, torture, rape, persecutions based on political, racial or religious reasons, and other inhumane acts)⁴.

Through the comparison between the definition of crimes against humanity which was indicated in article (3) of the International Tribunal for Rwanda, and the definition which was mentioned in the system of ICTY, we find that the difference is that article (3) did not mention the (armed conflict), but it required the presence of a wild-scale attack without specifying a clear definition of the attack.

The concept of "Crimes against Humanity" has evolved since the Nuremberg Charter and was the subject of many discussions in the International Law Commission of the United Nations, the International Committee of the Red Cross (ICRC), and many international non-governmental organizations, as well as academia. One of the difficulties that also can be addressed is the fact that even an international treaty has no appointing or formal international document dealing with Crimes against Humanity as a specified definition,⁵ except some conventions that dealt with some of crimes that fall within the scope of Crimes against Humanity, including for example, the Convention on the Prevention of Genocide and Punishment which was issued by the General Assembly of the United Nations in 1948, and the 1973 Convention for the Crime of Apartheid,

Therefore, the general concept of crimes against humanity stayed under disputes; since those crimes raise religious and political sensitivities.

Until the 1998 Rome Statute came for listing the acts that create these crimes, and created a comprehensive definition for those crimes⁶. It also mentioned the crimes that fall under the jurisdiction of The

1. Basyouni, Mohamed Shareef, An Introduction to Human International Law, Al Kahera (Cairo) University, Egypt, 2005, Page 34.

2. International Criminal Tribunal for the Former Yugoslavia. Army Lawyer, 03641287, Nov95, Issue 276

3. Al Sayd , Murshied Ahmad, Al Hirmizi, Ahmad Ghazi, International Criminal Judicial System, Al Almeh Publishers and Distributers, Amman, Jordan, 2002, First Edition, Page 122.

1. Al Shalalkeh, Mohamed Fahad, International Human Law, Dar Al Maref, Alexandria Printers, Egypt, 2005, Page 370.

2. Al Kahwaji, Ali, International Criminal Law, Al Halabi Legal Publications, Beirut, Lebanon, 2001, page 168.

1. Christensen, Cameron, Forced Marriage at the Cambodian Crossroads: ECCC Can Develop a New Crime Against Humanity, 2016, Brigham Young University Law Review 1827 – 1828.

International Criminal Court¹

Article (7) of the statute indicated that : 1. presented this regulation, in any of the following acts, " a crime against humanity" when committed as part of "a widespread or systematic attack directed against any civilian population, with being aware of the attack:

A- Premeditated Murder.

B- Genocide.

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 of any limited or collective group based on political, racial, national, ethnic, cultural, religious, or gender reasons as defined in paragraph(3), or other reasons that are universally recognized as impermissible under International Law, and in connection with any act referred to this paragraph or any crime within the jurisdiction of the Court.

I- The forced disappearance of persons.

J- The crime of apartheid.

K- Other inhumane acts intentionally causing great suffering, or serious injury to physical or mental health.

2- For the purpose of paragraph (1)

(A): A phrase means: " An attack directed against any civilian population": behavioral approach involving the repeated commission of acts referred to in paragraph (1) against any civilian population in accordance with a State or organizational policy requires to commit such attack or to reinforce this policy.

(B) Genocide means imposing living conditions, including the deprivation of having food and medicine with intent to destroy a part of the population.

(C) "Enslavement" means the exercise of any authority related to the right of ownership, or all of these authorities over a person, including the exercise of such authority on people to commit trafficking, especially women and children.

(D) Deportation means forcible transfer of population "forced transfer of the concerned persons from the area in which they lawfully exist by expulsion or other coercive acts, without any permitted justifications under the International Law.

(E) Torture, means the intentional infliction of severe pain or physically or mentally suffering under the supervision of the person in charge or his control, but it does not include pain or suffering arising from legal sanctions or be a part or a result of it.

(F) Forced pregnancy means coercion of a woman to become pregnant with illegal intent to affect the ethnic composition of any population or carrying out other grave violations of International Law, and shall not in any way interpret this definition in a way that affects the national laws relating to pregnancy.

(G) Persecution means intentional and severe depriving a group of population or the total population from the fundamental rights which is in contrary to the International Law for reasons based on the identity of the group.

(H) Enforced Disappearance of persons means the arrest, detention, or abduction of persons by a State or political organization, or by its permission or support of such an act, or by its silence and refusal to acknowledge the deprivation of freedom, or to give information about these persons' fate or place; in order to deprive them from the protection of the law for a long time.

(I) The crime of apartheid means inhumane acts, similar in nature of the acts referred to in paragraph –a-, and committed in the context of an institutional system based on systematic persecution and control by a single ethnic group over any other ethnic group or groups and committed with the intention to maintain that regime².

3- For the purpose of this statute, it is understood that the term "Gender" means the two sexes, male and female, in society, and "the type of gender" expression does not refer to any other meaning in the contrary³.

Despite the fact that Article (7) of the International Criminal Court statute created a definition of crimes against humanity that included previous definitions and took advantage of the gaps which were in them; however, they

2.Hijazi, Abd Al Fatah Bayoumi, The Basic Rules in the International Criminal Court, The Greater Court, Legal Book Publication, 2008, Page 205.

1. Read: Rome Statute of The International Criminal Court, available online at: www.icc-cpi.org

1.Basyouni, Mohamed Shareef, An Introduction to Human International Law, Al Kahera (Cairo) University, Egypt, 2005, Page 370.

2.Abdullah, Ahmad Abdullah, Dar Four - The Legal Issues in The Security Council Resolution Number 1003, The Constitutional Court, Alm Khartoum, Sudan, 2005, Page 22.

included some crimes that they already exist in the Internal Law, such as, murder and rape; thus creating a conflict between the International Criminal Court and National Courts.

For example, what is happening is a jurisdiction conflict in crimes which was caused by the tribal conflict in Darfur, so the Security Council adopted a decision to transfer the conflict to the International Criminal Court while the Government of Sudan saw that this conflict falls under the jurisdiction of national courts¹.

Moreover, the researchers believe that the definition mentioned in the Rome Covert was derived from the Nuremberg Charter, taking into account the developments occurred in the public International Law, although it did not link crimes against humanity to war crimes or crimes against peace as the Nuremberg Charter did, also it required that the crime should happen in a frame of a widespread systematic behavior; in order not to consider ordinary crimes under the jurisdiction of the International Criminal Court, it did not require that the commission of these crimes occur during international or non-international armed conflicts, but only required that the crime should be committed in a frame of a widespread or systematic attacking behavior against civilian populations, so there may be a dispute between two parties within the territory of the State, one armed and the other unarmed. Furthermore, the definition did not require committing the crime based on foundations marked by political, racial, religious or other, except in acts of persecution only. Based on what is mentioned before, the researchers believe that crimes against humanity must have several elements which are:

1. There should be repeated attacks of acts that fall within the domain of crimes against humanity.
2. The attack should be directed to civilian populations.
3. The attack should be such a widespread and/or systematic attack.
4. The proposed actions should be a part of this attack
5. The perpetrator should be aware of the attack.

These special elements of crimes against humanity distinguish them from other similar crimes in domestic or International Laws, the importance of these elements lies in the fact that they prevent the overlap between the jurisdiction of both international and domestic laws, from one side, "as mentioned earlier", as they place crimes against humanity in the scope of international jurisdiction, as well as, eliminate overlap and ambiguity between crimes against humanity and other international crimes that are similar, from the other side, such as war crimes and genocide, and in the absence of these elements, the confusion and ambiguity will surround these crimes².

Yet a group of jurists have defined crimes against humanity as an international crime of public law crimes whereby a State is a criminalized³ if it affects the lives of an innocent person, a group or their freedom or rights, due to their gender, chauvinism or for political or religious reasons or if it's damage exceed the punishment⁴. It was also defined as (offences involving strong aggression targeted towards a particular human being strict humanitarian groups to certain considerations)⁵. As defined by (Eric David)⁶ the term crime against humanity indicates acts of violence marked by its danger committed on a massive level by persons who may be employees of a State or not, for reasons: political, ideological, racial, and religious. These crimes affect the most human precious possessions i.e. his/her liberty and physical integrity.

From what was mentioned before, we see that the courts jurisdiction of such crimes is clear, but the international crimes and their classifications are always linked with political considerations, but the gap between theory and practice remains. Defining crimes against humanity as one definition, which is the definition of the International Criminal Law for such crimes would be far from logic, due to the multiple definitions of crimes against humanity in the international legal documents that explained it, even if all the documents involved described it in an explicit or implicit as those very serious crimes that are widely or systematically committed to affect a large number of victims.

Second topic: Elements of crimes against humanity.

The humanitarian crime is an international crime due to the nature of the rights that are violated in such crimes committed against human, these crimes cannot be achieved only if their elements exist: the physical, moral, and

1. Hussain, Khalil, Crimes and Courts in International Criminal Law – Criminal Responsibility for Presidents and Individuals, Al Manhal Publishers, Lebanon, 2009, First Edition, Page 18.

2. Hassan, Thabit Refat, Indications Crimes Against Humanity Indications, Justice Journal, 2006, Vol. 4, Page 1345.

3. Samuel, Ald, International Criminal Justice Mechanisms "state participation in investigations and prosecutions": available at: http://www.sageereference.com/lawenforcement/article_n.459.html.retriced11.janury.20016.

4. Oubaid, Hasan Ibrahim Saleh, International Crime, An Analytical Study, Al Nahda Al Arabia Publication, Cairo, Egypt, 1979, First Edition, Page 203.

5. David, Eric, Tulkens, T, Vandermeersch, D, International Human Law, Bruxelles, Bruylant, 2013, 4th Edition, Page 972.

international element, as well as, the legal element which is common in all international crimes, the researchers will explain these elements as follows:

First: The Physical Element.

The physical element in crimes against humanity is based on serious acts affecting one of the fundamental interests of a person, or a group of people which is connected by one political, racial, religious, cultural, national, ethnic, or related to gender (male or female).

The victim or victims in this crime are who belong to one religious doctrine, political, national doctrine, or race or gender.

Acts carried out by the physical element for this crime must be committed as part of a widespread or systematic attack against any civilian population¹ which belong to one of the previous links and the states implement a State or organization policy to commit such attack, or for strengthening this policy, as stipulated in article 7/2/A of the Statute of the International Criminal Court.

It is possible to commit crimes against humanity according to a policy or plan prepared by top officials of the State, these crimes can also be committed by private initiatives with top officials overlooking the acts against humanity, which might be clear through their refusal to prevent the attack directed against the civilian population or to punish the perpetrators of this attack².

Requiring the policy element is considered a huge improvement as it does not necessary need to be a state's policy, it could be considered as an organization's policy and the organization could be operating without orders from the state³.

The policy (whether State or organizational policy) does not have to be designed or drawn, it can be extracted from the way the inhumane acts are carried out. Article (7) of the International Tribunal does not oblige the participation of the defendant in preparing the policy⁴.

This means that any person may commit crimes against humanity and benefit from the absence of states or organizational policy, and hence the acts will not be considered as crimes against humanity from a legal perspective⁵.

Also, for the crime to happen it has to be in the physical appearance as a reflection in reality. The person is the perpetrator of the crime and this is represented in a positive or negative behavior that leads to the criminalized result under the law. The basic elements apply to the crime as to the internal law which are the behavior or action or prohibited act that affects the international interests harmfully or expose them to danger.

The physical element of the crime is either a positive behavior which is to carry out a criminal act, or a negative behavior which is to refrain from doing an action ordered by the law⁶.

But confusion between crimes against humanity and war crimes may occur if the action happened during a period of war or occupation, and therefore it becomes difficult to distinguish between them; because the physical element can be one in both cases, such as, murder, genocide, and enslavement, and here it is necessary to refer to the moral element, if it was found that the committed acts have been committed by religious, political, racial, national, or ethnic motive, so this crime is a crime against humanity, if not, it is a war crime.

Second: The Moral Element- Mens Rea

When a crime against humanity is considered a perpetrated intentional crime, the moral element will take the appearance of the criminal intent.

The criminal intent should be based on a specific intent, as well as, general intent. General intent consists of knowledge and will which means that the offender knows about the inhumane acts he/she committed are a part of a widespread or systematic attack against a civilian population pursuant to a policy or plan. This knowledge can be tangible or infer a conclusion⁷. And his/her will should be directed to committing this act, and

1. Buka, Sawsan Tmirfan, Crimes Against Humanity in Light of The International Criminal Court Regulation, Al Halabi Legal Publication, 2006, First Edition, Page 248.

1.Buka, Sawsan Tmirfan, Crimes Against Humanity in Light of The International Criminal Court Regulation, Al Halabi Legal Publication, 2006, First Edition, Page 258 and after.

2.Hamoudah, Muntaser Saeed, International Criminal Court – The General Theory of International Crime, New University Publication, Alexandria, 2006, Page 101.

3.Alwan, Mohamed Yousef, Crimes Against Humanity, 2001, Research Submitted to The Scientific Seminar Regarding The International Criminal Court – Challenging Legal Immunity _ International Red Cross Committee, Page 210.

4.Hassan, Thabit Refat, Indications Crimes Against Humanity Indications, Justice Journal, 2006, Vol. 4, Page 1347.

5.Al Kahwaji, Ali, International Criminal Law, Al Halabi Legal Publications, Beirut, Lebanon, 2001, page 168.

1.Lain Scobbie, The Jurisdiction of the international Criminal court, research presented to the symposium about the international criminal court: A, Challeh, e. to, Impunity, The International committee of the red cross, Damascus, 3-4 November 2001, p.17.

his/her intention of the act should be directed towards the specific intent which is to deprive the basic rights of a particular group.

It's members are connected by a specific element (religious, racial, political, cultural..) And in case this element was not present, the moral element is negated, and the crime against humanity does not take place, but an international crime may occur such as war crimes (as mentioned previously) or just an internal crime¹.

Third: The International Element.

Crimes against humanity is naturally international crimes; due to the nature of the rights that are being targeted, for the international element to exist in the crime in case the crime occurred in the implementation of a plan drawn by a State against a human group connected by a particular doctrine or ideological belief, the group is not required to hold the citizenship of the State, or the victim is foreign or national, but mostly these crimes are committed on patriots who hold the nationality of the State².

The introduction of paragraph (1) and (2A) of Article (7) of the International Criminal Court statute point to international element, which is represented by the following elements:

1. The widespread or systematic attack.
2. The attack directed against civilian population.
3. The fact that the attack is done in accordance with the policy of a State or organization.
4. Knowing about the attack.

Forth: The Legitimate Element.

Means the illegal description that is stipulated by the rules of the International Law on the committed act, in the domestic criminal law, incrimination is based on the presence of legislation that mention clearly that the committed act is illegal and places a punishment for it, so the rule should be written, and hence other unwritten legal sources are excluded. While these conditions do not exist in the international criminal law; due to the nature of crimes against humanity which based on common rules decided by international conventions³.

Public International Law is mainly based on international common Law and practice, and there are some countries that do not have a written law such as some Anglo-Saxon countries where the law is composed by judicial decisions and precedents.

The American Court of human rights ruled in 2006 that the risk of crimes against humanity is a peremptory and deterministic rule, so there must be punishment for these crimes in accordance with the General Principles of International Law⁴.

Third Topic: Crimes against humanity committed during the Arab revolutions

According to (Maya Bhardwaj)⁵as result of the deterioration of the political, social, and economic conditions in some Arab countries and rampant unemployment, ignorance and poverty, devoting personality of authority, corruption and injustice, and permanent imposition of state emergency, large numbers of people went out in demonstrations and protests which began in Tunisia then Egypt, and spreaded out to Libya, Yemen, and Syria, and overthrown some regimes and on the way to bring others down⁶. The Arab Regimes and in the aftermath of the 2008 economic crises did not protect their societies by taking social measures to cope with the economic difficulties⁷.

These regimes suppressed rebels by violence and armed force posing serious crimes punishable under the International Law, senior civil or military government officials were involved in these crimes structure, those actions elevated the criminal level from local ordinary crimes to crimes against humanity.

Hence, we must divide this section into:

First: What is the revolution?

Many law jurists believe that the right of revolution is based on the right of lawful defense which legislations

2. Al Kahwaji, Ali, International Criminal Law, Al Halabi Legal Publications, Beirut, Lebanon, 2001, page 125.

3. Hasan, Saeed Abd Al Lateef, International Criminal Court – Establishment, Regulation, Jurisdiction and Legislation, Dar Al Nahda, Cairo, Egypt, 2004, Page 244.

1. Abu Haif, Ali Sadek, International Public Law, Al Maaref Publications, Alexandria, Egypt, 1986, Page 21.

2. Read: The Inter - American Court of Human Rights Ruling in Almonacid – Arellano et al vs. Chile issued on 26th of September 2006. , available online at: www.corteidh.or.cr.

1. Bhardwaj, Maya: Development of Conflict in The Arab spring Libya and Syria, From Revolution to Civil War, 2012, Washington University International Review, page 77.

2. Read, The Arab Revolution, Wikipedia, Freedom Encyclopedia, <http://ar.wikipedia.org/wiki>, accessed March 2016.

3. Khalil, Yousef, 2015, Neoliberalism and The Failure of The Arab Spring, New Politics, Page 82.

4. Read, The Arab Revolution, Wikipedia, Freedom Encyclopedia, <http://ar.wikipedia.org/wiki>, accessed March 2016.

unanimously considered as one of the most important punishment preventives whether in individual or collective bases.

A Revolution can be defined from a political perspective as a changing to the current situation whether to a better or worse situation, it is pushed by dissatisfaction and a better living. It is a political movement in the country which people, army, or other groups in government are trying to remove the ruling power¹.

For this, a revolution is a fight within a State by a group of people who move out State power and use armed action against the existing government without being able to achieve victory, and without government's ability to finally put down the revolution with the continuation of the conflict between the two sides, during the period of military action against the government until the revolution's success or failure, those individuals or groups are called Rebels.

There are differences between civil war and revolution, the revolution is a military action against the government, not a fight between civilians. If armed revolution erupts within the State for the separation of a state, territory, or colony, and obstructs the government from extending its sovereignty without reaching to a civil war².

Civil war is an armed conflict among civilians, or militias. If revolution succeeds it will punish former rulers, but if the revolution failed, and the government managed to arrest the rebels, it can prosecute and sentence them in accordance with its domestic law. However, if revolution lasted for a long time, the rebels are subjected to the rules of Geneva Conventions of 1949, whereby other countries are not allowed to interfere or be on the side of one party against the other, and this is in exchange for both government's and rebels' commitment not to harm state's funds and individuals³.

The rebels' issue is an internal issue and other States are not allowed to interfere to help the rebels or government, if a State tried to interfere in favor of one of the parties, it is considered an interference in the internal affairs of the States, but when the rebels continued their actions it becomes closer to civil war.

What is happening in the Arab World are first-class popular revolutions, and as a result of these revolution: there will be a change in the path of history and the international community. The first revolution was born in an Arab country and spread to another to continue its growth and then moved into third and fourth... until the day when it becomes a complete revolution in every sense which means to become the region's revolution of century.

We cannot consider what is happening in the Arab World a coup to seize power; because the nature of the coup is different from the nature of revolution. The scene is not an attack from outside the system as much as a power-grab from the inside, it's almost politically neutral in terms of its objective, which is the replacement of the ruling team with another, leaving the deciding of policy trends to the following regime⁴.

The coup differs from revolution in terms of tools and method of execution, it does not depend on comprehensive confrontation or overcoming by force, but it depends the State apparatus, whether military or a mixture of military and civilian, aim to grab control from existing government and control all the states sectors.

Also, the revolution is different from the coup, characterized by having a more general goal which is to change the social and political structure of the country not only changing the ruling class. Coup could be a preface for a revolution, and some coups could be revolutionary in origin⁵.

However, the revolution depends on popular masses not on a small group of coup planners, so the process of changing the structure (Revolution) may take a longer time, bloodshed, and fluctuation between victories and setbacks.

Second: The Definition of Crimes against Humanity committed during the Arab Revolutions.

By studying the Arabic Internal Criminal Legislations, the researchers found out that the laws criminalized the majority of actions including crimes against humanity, but it didn't define the crimes against humanity stipulated in the International Law; since it has never been the subject of an agreement before the primary Rome Statute of the International Criminal Court which has been ratified by only four countries, and those countries do not witness any revolutions. This would raise difficulties to justify and establish punishment for such crimes.

However, the basic elements of crimes against humanity exist in crimes committed during the Arab revolutions.

1. Charl Rosso, International Public Law, Translated to Arabic by Shukr Alla, Khalifa, and Saed Abd Al Muhsin, Al Ahleh Publication, Beirut, Lebanon, 1982, Page 126.

2. Tung, Wiliam L., International Law In an organization world. 1990, New York, P.55.

1. Abd Al Hameed, Mohamed Sami, The Essentials of Public International Law, 1996, Dar Al Matbouat Al Jameh - University Printing House, Alexandria, Egypt, Page 490.

2. Bufer, Andre, The Revolutionary War – The New War Trend, 1993, Al Mossasa Al Arabia (The Arab Foundation) for Research and Publication, Beirut, Lebanon, Page 80.

The physical element of crimes against humanity is achieved when the crime moves from the preparation and visualization stage to the tangible stage, and hence when the Libyan troops and some groups of citizens and Mercenaries who worked for the former president committed extrajudicial killings of thousands of civilians who had gathered in public places, and arbitrarily arrested opponents, and committing acts of enforced disappearance of thousands of demonstrators, torture, and sexual assaults¹.

In addition, the Syrian forces carried out and planned joint operations against peaceful demonstrators in several areas including: Damascus, Hama, and Homs, and committed numerous acts of murder by randomly shooting peaceful demonstrators, separators from the armed forces or police, and opponents to the committed crimes, this was a violation of the right to live, guaranteed in the Article (6) of the International Covenant on Civil and Political Rights, and item (a) of Article (7) of the Rome Charter, these troops also practiced arbitrary detention and solitary confinement without facing any criminal charges or judicial supervision, also the frequent and systematic detention of demonstrators and members of their families, represents a violation of the human right to liberty and security of person and having a fair trial, and that was what Articles (9, 10, 14) of the International Covenant on Civil and Political Rights have guaranteed, in addition to item (2) of Article (7) of the Rome Statute. Besides that, the persecution acts which represented in restricting the troops from their rights: peaceful assembly, speech, and freedom of movement².

Whereas the *actus reus* of crimes against humanity represented in general and specific intent (as noted earlier), the general criminal intent for crimes against humanity committed during the Arab revolutions is represented in that the perpetrators, who work under the authority and orders of superiors, know that their actions were a part of armed attacks at a nationwide level. In addition, the general intent appears in targeting two news agencies to prevent them from covering events, disable Internet services, confiscate cameras, and remove mass graves.

The specific intent is represented in the specific intention of committing a crime against a group or a part of the population, forcing them not to claim freedom, reform, and democratic change³.

The International element, which is that the criminal behavior targeting international community's interests that are protected by International Law, was apparent in crimes against humanity committed during the Arab revolutions when the authorities of each State committed crimes in several regions inside the country and in a widely, systematically, and orderly manner by the armed forces or police against a group of civilian population who went out in peaceful demonstrations to seek their basic rights which are guaranteed by their constitutions and many relevant international conventions⁴.

The legal element of crimes against humanity, which is represented in the international incriminating rules that condemn these crimes, is also available in the crimes against humanity committed during the Arab revolutions through the Charter of the United Nations, the two international covenants, the Convention against Torture, the Universal Declaration of Human Rights, and many decisions, conventions, and related provisions including: the Arab Charter of Human Rights and the Charter of Rome Statute of the International Criminal Court⁵. In addition, the actions of crimes against humanity were criminalized by the general principles of the domestic laws of States such as the Principle of Respect for the Physical Integrity of individuals, and Respect for Acquired Rights of individuals, States, and groups.

Forth Topic: The Criminal Responsibility of Commanders and Superiors for the Crimes against Humanity committed during the Arabic Revolutions.

To maintain the State's integrity and sovereignty over its national ground, it enacts national laws, to protect its employees or military personnel who execute orders and instructions issued from their public authorities, and give legitimacy to their actions, considering that the execution of these orders is a reason of justification, and therefore the execution of these orders is an obligation, regardless the extent of its legitimacy or not.

The question that always arises is what will happen to that protection when the subordinate's actions constitute crimes against humanity, as is the case in our Arab countries today which are witnessing Arabic

1. Available online at: www.aljazeera.net the website was accessed on February 2016.

2. Read: The Independent International Investigation Committee for Syria, Published on November 23, 2011, Pages 14 – 25.

3. Read: The Arab League Council Resolution Regarding The escalating Situation in Syria Number 7446 D.R.S.X (م.ع.ع.د) issued on February 12, 2012.

1. Several United Nations General Assembly and Security Council Resolutions Condemned The Organized and Wide Spread Human Rights Violations by The Syrian Authorities and Armed Groups, Read UNGA Resolution Number A/RES/66/2532012, Issued on February 16, 2012, Published in November 21, available online at: www.documents-dds-ny.un.org.

2. The Arab Covenant for Human Rights was signed on May, 23 2004, and became active on March, 3, 2008, eleven countries ratified it.

revolutions, such as Syria, Libya and Yemen, where many heinous crimes are committed, brutal massacres, arrest, torture, displacement, rape, and an affront to human dignity and waste of his rights.

Here, we must point to the Universal Legal Rule that International Law supersedes Internal Criminal Law. This means that the protection provided by national authorities and laws for their employees and military personnel is negated once it conflicts with the rules of the General Legal International Principles, and this is confirmed by the Article (53) of Vienna Convention of 1980 on international treaties as stipulated: " that the rules of the International Humanitarian Law for all countries of the world are mandatory and commanding, regardless the extent of accession or reservation to the terms of this agreement or some of it. It shall not be violated or modified only through issuing new legislations with the same nature considering that the principles of International Common Law is one of the sources of the International Humanitarian Law¹.

In regard to subordinate's responsibility regarding crimes carried out by executing his/her boss orders, we will address the International Criminal Courts' opinion toward this:

Nuremberg Court specializes in prosecuting criminals individually or as members of organizations, groups or both (the first Article of the court Statute), and the official position of suspect, whether a president or senior official, is not an excuse, or act, or reason for mitigating the punishment (article (7) of the Statute), and does not absolve the suspect from responsibility in what he/she is doing according to the instructions of his/ her government or boss, but it can be a reason for mitigating the punishment, if the Court found that justice requires this (Article 8 of the Regulation)².

The court statute did not only place criminal liability on the main perpetrator, but also included all the criminal contributors either mentors, organizers, provokes or partners³.

Tokyo Court is specializes in prosecuting normal individuals who commit such crimes in their personal capacity, not as members of terrorist organizations, and the official status can be considered as a circumstance mitigating the punishment (previous Article of the court statute)⁴.

The former Yugoslavia court specializes in prosecuting persons responsible for serious violations of the International Humanitarian Law, meaning normal persons without juristic persons, countries or institutions (Article 1 of the regulation) and the Statute of the Court approved that the individual criminal responsibility of each person planned for the crimes listed in the Statute, incited, ordered, committed, helped, or encouraged in any other method in the planning, preparation or execution, is considered responsibility from a criminal perspective, this includes the president of State since the official position of the suspect, whether was a head of State or government or a government official, does not absolve him from criminal responsibility or mitigate punishment (Article 7 of the Statute)⁵.

Rwanda Court has jurisdiction over normal persons only; whatever the degree of their contribution and their jobs (Article 5 of the Statute) with the same details mentioned in the jurisdiction of the former statute of Yugoslavia Court. The International Criminal Court in Rome, exercises its jurisdiction over normal persons only, and not juristic person, who are over eighteen years old (Article 26 of the court statute), regardless of their level of contribution in the crime: perpetrators, partners, interferers or provokes whether directly or indirectly, or by temptation, assistance, or incitement, or otherwise, and whether the crime is completed or stopped at the initiation due to circumstances unrelated to the perpetrator's will (Article 25 of the court statute)⁶.

The official status of the suspect is not considered as a removal of responsibility, an excuse for mitigating the punishment, or granting legal immunities or special procedural rules which may a person without trial or prosecution (Article 27 of the court regulation)⁷.

However there is no criminal liability for the perpetrator if he/ she suffers an illness or mental deficiency led to

1. Brownlie, Ian, *Principles of Public International Law*, 4th ed. 1990, Clarendon Press, Part 11. P.211.

2. Shams Al Deen, Ashraf Tawfeek, *International Criminal Law Principles*, 1998, Dar Al Nahda Al Arabia Publication, Cairo, Egypt Page 101.

3. Obeid, Hussain Ibrahim Saleh, *International Criminal Judiciary – History, Application, Legitimacy*, 1997, Dar Al Nahda Al Arabia Publication, pages 85 – 86.

1. Abu Ghazaleh, Khalid Hasan, *International Criminal Court and International Crimes*, 2010, Dar Jalees Al Zaman Publication, First Edition, Amman, Jordan, page 111.

2. Al Shukri, Ali Yousef, *The International Criminal Judiciary in a Changing World*, First Edition, 2008, Al Thakafa (Culture) Publications, Amman, Jordan, Pages 52 – 53.

3. Bedar, Adam Abd Al Jabar Abdullah, *Protecting Human Rights During International Armed Conflicts – Between Legality and The Law*, First Edition, Al Halabi Legal Publications, Beirut, Lebanon, 2009, Page 402.

4. For additional information kindly read articles (27 and 28) of The International Court Statute available online at: www.icty.org.

his/ her inability to recognize the illegality of the criminal action, and from the unjustified reasons: the case of compulsory drunk to commit the crime, self-defense, and the case of coercion resulting from the threat of imminent death, or causing serious, continuous, or imminent body harm against that person or another person (Article 31 of the court Statute).

However, it does not absolve the perpetrator of criminal responsibility under the pretext of obeying the orders of the government or the President, unless the perpetrator is located within one of the following cases (Article 33 of the Statute):

- 1- Legally bound to obey the order.
- 2- Does not know it was unlawful
- 3- The illegality was not apparent¹

By analyze Article (33) mentioned above, we provide the following notes:

1. The first paragraph of this Article considered that executing orders of superiors a contraindication of responsibility, and this text violated the existing International bases in the Criminal Law, which considered the superior command a mitigation for punishment, not an exemption from it, and this what was adopted by the principles of the Nuremberg court, and Yugoslavia and Rwanda trials.

2. The second paragraph requires that the subordinate is not responsible for the execution of his/ her superior's illegal command when he/ she does not recognize the illegality of the command. As a result, the subordinate does not bear the criminal responsibility due to the lack of the criminal intention represented in the perpetrator's lack of knowledge of illegal status for his/ her action that established crime against humanity and resulted from executing the commands of his/ her superiors. On the other hand, if the subordinate knows the illegality of the action and did execute them, then he/she will be legally accountable in this case; because he/she committed a crime willingly and knowing that the acts he/she is committing are illegal².

3. The third paragraph considered no responsibility for subordinates who execute illegal presidential commands before the International Criminal Court unless the illegality was apparent, and if the perpetrator does not realize that the action is illegal then there is no criminal responsibility. Either because of the nature of the action when it is not easy to determine whether its legal or not, or the mental condition of the subordinate which may not help him/ her in realizing the illegality of the presidential command issued for him/her, so he/she is considered not responsibility when executing the command.

According to General rules the perpetrator's intention in international crimes should be directed towards perpetrating the crime by committing the actions leading to it. Plus, this action must be based on the will to harm the interests that are protected by the International Criminal Law, which did not happen in this case; assuming that the subordinate was not aware of the illegality of it because the illegality of the command was not clear.

Unawareness shall not be considered in the crime of genocide, and crimes against humanity; since everybody is familiar with international crimes and international humanitarian law especially that the International Criminal Court has narrowed its jurisdiction when it did not decide the responsibility for international crime caused by some errors. Article (30) of the Statute distinguished between conscious and unconscious conduct, and acknowledged responsibility for the crimes committed in the first type, whereas excluded the perpetrator's accountability in the second type; considering that the availability of the danger in a conscious conduct, whereas it considered that there is no danger or the danger is minimum in unconscious conduct³.

All of the above leads us to the fact that those responsible for crimes committed against the Arab nation during the Arabic revolutions, regardless of their, locations, positions, nationalities, or their roles in executing, supporting, financing, and instigating, must be brought to a fair trial at the end, especially the fact that crimes against humanity are not prescribed in accordance with the text (29) of the International Criminal Court Law.

In this case, it's incumbent that the Security Council to bear all the legal and moral responsibilities, and act immediately without delay to investigate what crimes were committed in the past and are being committed currently heinous massacres against Arabic nations during Arab revolutions. Therefore, we must take the initiative to pursue criminals wherever they were and wherever they are, so as to ensure that perpetrators do not escape fair trial.

Conclusion

Crimes against humanity are serious crimes which leaves major effects not just in the hearts and minds of victims and their families, but also the international community, because it is an assault on humanity, lives,

Besg, Nawal Ahmad, International Human Law and Civilians Protection in Times of Armed Conflicts, 2009 Al Halabi Legal Publication, Page 277.

Husni, Mahmoud, International Criminal Law Lessons, Legal Science Institute, Cairo University, 1960, Page 111.

Mohamed, Hani International Criminal Court, Nations Prosecuting its Hangmen, A Research Published Online at: www.islamonline.net/arabic, Accessed June, 2010.

freedom, and dignity.

Accordingly, crimes against humanity committed by some Arabic regimes against peaceful civilian demonstrators during Arabic revolutions do not prescribe over time (according to the Convention of non-prescription of war crimes and crimes committed against humanity of 1968, and in accordance with Article (29) of the Rome covenant of the International Criminal Court). Therefore, those crimes perpetrators can be prosecuted at any time, and sooner or later they will be brought to justice; Arabic nations and The International Community will not forget violations committed widely and orderly against Arabs by regimes that used to govern them.

In conclusion, and as the reason for creating international criminal courts is to promote national justice in countries that might suffer from such crimes¹, hence it is important putting the crimes committed during the Arabic revolutions in their correct criminalization template is one of the criminal justice tools that determine the crime and the perpetrators and facilitate the task of the Criminal Justice. In addition, it also places Arabic societies before their responsibility, and help them to see their future path, not to let perpetrators of these serious crimes escape from accountability, and punishment regardless of their levels or positions.

At the end of this research, the researchers reached to some conclusions and recommendations as the following:

Results:

1. In the past there was almost no interest by the International Community in crimes against humanity; because the developed colonizing countries are treating their nationals humanely, but at the same time they persecute other nations.
2. The establishment of international courts is a preventive measure apposing crimes against humanity and a method for maintaining international peace and security, and this can be done by bringing perpetrators of crimes against humanity to justice, punishing individuals for their international crimes, and excluding the idea of international immunity as a reason to prevent chasing and punishment.
3. The continuation of the international community to adopt a selective policy and dual standard options in implementing the rules of international legitimacy in opposing crimes against humanity. The interests of major countries impose themselves in many cases in a way above the global understanding of the International Law's application.

Reserch Recommendations:

1. There is an intense need to take into account the right of persons who are exposed to crimes against humanity during the Arabic revolutions for making their lawsuits before the International Criminal Court and ensure their right to do so.
2. Directing the lawsuit to all countries of the world and especially the Arabic States that, which have not ratified the Statute of the International Criminal Court, to ratify and join it; in order to have an effective role in the amendments that can enter the Statute.
3. The need for having legislations to account the states governments as liable, as well as individuals if proved that the States' governments colluded in crimes against humanity and crimes within the jurisdiction of the International Criminal Court.
4. That the Arab countries take the initiative to enact the necessary laws and legislations that allow their citizens or others, resorting to national courts and submit motions to courts regarding crimes against humanity committed against its citizens, and residents and if there is no other available option, resorting to the International Criminal Court.

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