

Solving the Gordian knot of impunity for international crimes: empirical findings supporting the expansion of currently considered crimes against humanity

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Abstract

This paper deals with crimes against humanity, by pooling primary and secondary sources, and suggests a potential expansion of the term in the future based on public opinion obtained from a law student's survey. We begin by briefly tracing the historical roots of the term. The results of the survey are presented followed by policy proposals concerning the future expansion of the term. Terrorism, persecution against persons with disabilities and persecution according to sexual orientation enjoy widespread support to be recognized as crimes against humanity. Equally, environmental and cultural crimes enjoy similar support, whereas we report mixed findings for computer crimes and transnational organized crime. Various aspects ranging from legal ethics to sociological concerns are discussed before the critical evaluation and conclusions.

Key words: Crimes against humanity, international criminal law, human rights, public opinion, legal trends, customary law

Introduction

The field of international criminal law is a continuously evolving and challenging area of study. We aspire to analyze one of its particularly odious core crimes, 'Crimes against humanity' (Graven, 1950). The broader notion of crimes against humanity is as old as humanity itself. However the present status has evolved mainly throughout the twentieth century, greatly influenced by the Nuremberg Trials. The latest development was the consensus in defining Crimes against Humanity during the ICC Diplomatic Conference of 1998 (Mettraux, 2002).

Crimes against humanity encompass attacks and violations on a wide range of civilian populations, which can be committed in times of peace and do not result necessarily in the physical extermination of the victims. In contrast, the term "genocide" is narrower, and "war crimes" can only be committed during an armed conflict (Shelton, 2005). Currently, the most comprehensive, though ambiguous, definition of crimes against humanity can be found in the ICC statute. The Court restricts itself to the most serious crimes of international concern, as it declares in its articles, presenting at the same time some basic maxims of the legal science including the principles of *nullum crimen, nulla poena sine lege*, the prohibition of *ex post facto* criminal laws and its derivative of the non-retroactive application of criminal law (Sautenet, 2000).

Even though Kant and natural theorists would perceive humanness as human dignity, a crime against humanness negates the very being in the world as a human, obliterating or attempting to greatly devalue the person qua human. The crimes that could fall under international criminal law are broader than the ones regulated by the 5th Article of the ICC Statute, with those committing war crimes, crimes against humanity and genocide being *sui generis* criminals (Gilbert, 2006).

In our paper we will focus on empirical findings produced by a survey that consequently suggests policy recommendations concerning the expansion of the term of "crimes against humanity" in the future. Even though social trends or experts' opinions are in no way compel-

ling to the political powers which decide the legislation on the term, they indubitably influence public policy. Indeed, contributions to the evolution of the definition of crimes against humanity have always been achieved not merely by customary law and general principles of law, but also by subsidiary sources such as judicial decisions and academic writing (Schabas, 2006).

The paper continues with a critical debate regarding the different views expressed in favor or against the expansion of the term followed by some remarks regarding the emerging duty of criminology in the field.

Theoretical Foundations

It is sometimes stated that the term “crimes against humanity” is based upon natural law concepts (Luban, 2004). Reports of forbidden forms of crimes date back to Herodotus, who mentioned certain conduct as prohibited in the fifth century BC. St. Augustine and St Thomas Aquinas also set philosophical premises in order to distinguish a just from an unjust war (Bassiouni, 1999). Xenophon reports the earliest precedent for modern international criminal law when describing the process for treating the Athenian prisoners captured by the Spartan commander, Lysander (Cryer, 2005).

The very essence of *humanitas* can be traced to the landmark concept in Greek philosophy of *philanthropia* and the Roman concept of *ethos* (Bauman, 1996). Plato explored punitive theory with a focus on the purpose of punishment in works like *Gorgias*, *Protagoras* and *Nomoi* (‘Laws’). The union between theory and practice was further explored by Aristotle and Theophrastus. Aristotle, for instance, proposed an international institution that would give the same amount of justice either in Rome or in Athens. The philosophical approach to crime and punishment is also exemplified by Cicero, in ‘De Legibus’ (‘On the Laws’) and ‘De Officiis’ (‘On Duties’), and Seneca, in ‘De Clementia’ (‘On Clemency’) and ‘De Ira’ (‘On Anger’).

Early scholars include Grotius (with *De Iure Belli Ac Pacis – On the Law of War and Peace*) (Schabas, 2005), Vitoria, Ayala, Belli, Gentili and

Vattel who, in accordance with a number of judicial decisions and opinions, make reference to concepts very similar to crimes against humanity. Vattel in 1757 characterised certain crimes as being a crime against humankind in general (Tolbert, 2008). Even though these contributions are extremely important in tracing the evolution of the term, they did not refer to the present form of crimes against humanity, but more to the philosophy underlying its notion.

The first *ad hoc* International Criminal Court was established in 1474 to judge Peter von Hagenbach for crimes committed during the siege of the town of Breisach. These proceedings have also been extensively cited in the literature as the first international criminal trial for what nowadays could be called crimes against humanity (Krambia-Kapardis). In 1649, at the trial of Charles I in England, the Solicitor General John Cooke relied on natural law and the works of Bracton to say that a King always remains under God and the law. Also, scholars have suggested the creation of an international criminal court in the early stages of modern history, such as the proposal made by Gustav Moynier in 1872 (Cryer *et al.*, 2007).

Many claims exist concerning the coining of the phrase “crimes against humanity.” The French revolutionary Maximilien Robespierre, for instance, described the deposed King Louis XVI as a criminal “*envers l’humanite*” (criminal against humanity). Almost a century later, on September 15, 1890, a minister –George Washington Williams – wrote a letter to the US Secretary of State, characterising the actions of King Leopold of Belgium in the Congo as crimes against humanity (Boas *et al.*, 2008).

Finally, Marten’s Clause appeared in the preamble to the 1899 Hague Convention II and the 1907 Hague Convention IV and in many key international humanitarian law treaties onwards. It is considered as the earliest identifiable legal foundation for crimes against humanity. In sum the clause states that “populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations,

from the laws of humanity and the requirements of the public conscience”.

On 24 May 1915, the major winners of World War I – Russia, France and Britain – protested against Turkey’s massacres of Armenians, describing them as “crimes against humanity” with extended responsibility to all members of the Ottoman government (Boas *et al.*, 2008). Crimes against humanity thus, at least momentarily in the modern history created individual culpability. However, this did not conclude in a judicial enforcement of crimes against humanity, due to the obstacles raised by some countries (Simon, 2007).

Empirical Findings

The need to sustain public confidence in the administration of justice means that public opinion plays an important – albeit indirect – role in policy and practice (Bachman and Schutt, 2007). However voluminous, the literature concerning Crimes against Humanity has neglected public opinion, which is indispensable for the effective function of the judicial system – and the society as a whole (Roberts and Stalans, 2004). Having this concern in mind, we decided to examine the trends in public opinion of a part of today’s society – law students – in an attempt to draw some conclusions about the future of the term.

1. Research question

The question under consideration was the potential expansion of the term of crimes against humanity in the near future. More specifically, we addressed a variety of crimes not currently considered as crimes against humanity according to the ICC statute, in the light of their possible future inclusion via customary international law. These crimes are (i) Terrorist Attacks, (ii) forms of transnational organised crime, (iii) forms of environmental crimes, (iv) persecution against persons with disabilities, (v) persecution against sexual orientation, (vi) forms of crimes against cultural monuments and (vii) forms of computer crimes. The research question was answered by the responses given in the questionnaire designed. The research question thus tried to detect new trends in the general field of international criminal law.

2. *Design*

In the present study a Likert scale from 1 to 5 was used in which the respondents were requested to choose their degree of agreement with a statement (1 being “not at all” and 5 being “fully”) (Conville and Chui, 2007). Therefore, scores greater than 3 indicate strong support for the idea of a crime against humanity. The survey’s population consisted of law students of the University of Cambridge and the University of Athens, including undergraduate and postgraduate students of the Faculty of Law of both universities. The total number of responses from each university was greater than 200. The study can be replicable, but its generalisability is limited, as the sample includes only law students (Brunt, 2001).

The questionnaire comprised three parts. The first part consisted of two introductory paragraphs: the first shortly described the term ‘crimes against humanity’ as defined by the Rome Statute of the International Criminal Court; the second described the main research idea, informed the respondents regarding anonymity and provided contact details in case they wished to discuss the questionnaire. The second part included the main set of questions. Each question described a crime and asked the respondents to indicate their agreement to the inclusion of this crime in the term of crimes against humanity in the future (Schwarz, 1995). Furthermore, every question included the three basic elements of the crime according to the ICC statute and asked the respondents to indicate how many of these elements are fulfilled in this particular crime. Finally, the respondents were asked to rank the crimes, from the most to the least deserving to be characterized as a crime against humanity.

The last part of the questionnaire included some general questions (gender, faculty and year of study). There was also some free space for the respondent to add any further comments. The questionnaire was translated for the Greek law students. In terms of potential future improvement of the questionnaire, a method that could be employed is that of assigning scenarios to the crimes; responses to scenarios could be compared to the initial responses (Zamble and Kalm, 1990). Alterna-

tively, one could randomly assign different versions of the same question, thereby integrating an experiment into the survey.

Data Collection Strategy

A self-administered type of data collection was chosen for this study. The data collection strategy was effective for the purposive sample. After receiving approval from professors at the Faculties of Law in Cambridge and Athens, we distributed the questionnaires during the last ten minutes of a lecture. Professors prompted their students to fill in the questionnaires, and after the dismissal of the class, we were standing in the exit door, receiving the questionnaires directly from the students. The United Kingdom yielded 210 questionnaires (n=201) while Greece yielded 252 questionnaires (n=252).

Questionnaire analysis results

Criminological research is important as it does not only focus on the basic understanding of crimes, but also contributes to the formulation of policy making by rendering it more rational and responsive to developing knowledge (Farrington, 2003). The questionnaire's analysis includes three categories: the first one comprises terrorist attacks, persecution against persons with disabilities and persecution against persons because of their sexual orientation. These ranked as the three primary crimes to be included in a further expansion of the term, and their mean was very high, approaching the fourth point in the Likert scale (1-5), which demonstrates high confidence in that these crimes can be considered as crimes against humanity (Table 1). The second category embraces crimes against the environment and cultural crimes with a very high mean as well, but slightly lower than the previously mentioned crimes, forming a category on their own. The last category includes transnational organised crimes and computer-based crimes, which have a lower mean than the previous crimes and ranked as the last crimes for inclusion as crimes against humanity.

Table 1: Results for total sample

	<i>N</i>	<i>Mean</i>	<i>Std. deviation</i>
Would you consider persecution against persons with disabilities as a crime against humanity?	452	3.97	1.12
Would you consider terrorist attacks as crimes against humanity?	452	3.78	1.21
Would you consider persecution concerning sexual orientation as a crime against humanity? [e.g. repeated discrimination against the sexual orientation of a person]	452	3.74	1.19
Would you consider forms of environmental crimes as a crime against humanity? [e.g. water pollution, air pollution, forest destruction]	452	3.67	1.28
Would you consider forms of crimes committed against cultural monuments as crimes against humanity? [e.g. systematic destruction of mosques during the 92-95 Bosnia war]	452	3.41	1.33
Would you consider transnational organised crimes as a crime against humanity? [e.g. money laundering, drug trafficking, transnational economic crime, fraud]	452	2.92	1.25
Would you consider forms of computer crimes as a crime against humanity? [e.g. cyber crime, child pornography, identity theft]	452	2.90	1.33

These results suggest that crimes which directly affect a human rank significantly higher. The second category of environmental and cultural crimes, which have a slightly less direct anthropological element, are not considered equally important as potential crimes against humanity. Still, they ranked high enough to support their future inclusion as well. Finally, the category of computer crimes and transnational organised crimes is probably the one with the lowest direct causal link to human nature, which was also reflected in the responses and their ranking.

A pattern is thus formulated: the more we detach from the *stricto-sensu* essence of human, the more the public does not consider a crime, irrespective of its scale or gravity, as a crime against humanity. Society demonstrates little tolerance for crimes which are directly affecting people; however hypothetically a transnational organised crime may affect many more human beings over the long-term. Overall, one principal finding of this research is that the public supports the inclusion of more crimes as crimes against humanity, having as a first priority the crimes which have a direct effect on human beings.

1. *Persecution against persons with disabilities and persecution against sexual orientation*

Certain facets of prosecution are already considered a crime against humanity. These subcategories however are not yet considered as part of this crime, which is the question set in this survey. Persecution against persons with disabilities gathered the highest mean amongst all the crimes, 3.97. Greek students scored a mean of 3.96 and British students a mean of 3.98, which is almost identical. It ranked 2nd in the list of crimes which most deserve the characterisation of a crime against humanity.

As far as persecution against sexual orientation is concerned, the total mean was 3.74; Greek students had a mean of 3.69 and British students a mean of 3.81. It ranked 3rd by the students. Overall both these crimes are clearly supported to be considered as crimes against humanity.

2. *Terrorist attacks*

Terrorist attacks were strongly considered as a potential crime against humanity, scoring a mean of 3.78 in the total number of questionnaires, which strengthens the hypothesis supporting their inclusion in the term of crimes against humanity. Among the Greek and English students (Tables 2 and 3) the mean was 3.69 and 3.89 respectively. It is also noteworthy that terrorist attacks ranked as the crime most deserving (1st) to be characterised as a crime against humanity.

Table 2: Greek students' sample

	<i>N</i>	<i>Mean</i>	<i>Std. De- viation</i>
Would you consider persecution against persons with disabilities as a crime against humanity? [e.g. repeated discrimination against persons with disabilities]	251	3.96	1.11
Would you consider forms of environmental crimes as a crime against humanity? [e.g. water pollution, air pollution, forest destruction]	251	3.72	1.33
Would you consider terrorist attacks as crimes against humanity?	251	3.69	1.24
Would you consider persecution concerning sexual orientation as a crime against humanity? [e.g. repeated discrimination against the sexual orientation of a person]	251	3.69	1.24
Would you consider forms of crimes committed against cultural monuments as crimes against humanity? [e.g. systematic destruction of mosques during the 92-95 Bosnia war]	251	3.33	1.21
Would you consider transnational organised crimes as a crime against humanity? [e.g. money laundering, drug trafficking, transnational economic crime, fraud]	251	3.00	1.27
Would you consider forms of computer crimes as a crime against humanity? [e.g. cyber crime, child pornography, identity theft]	251	2.89	1.41

Table 3: British students' sample

	N	Mean	Std. deviation
Would you consider persecution against persons with disabilities as a crime against humanity? [e.g. repeated discrimination against persons with disabilities]	201	3.98	1.15
Would you consider terrorist attacks as crimes against humanity?	201	3.89	1.17
Would you consider persecution concerning sexual orientation as a crime against humanity? [e.g. repeated discrimination against the sexual orientation of a person]	201	3.81	1.12
Would you consider forms of environmental crimes as a crime against humanity? [e.g. water pollution, air pollution, forest destruction]	201	3.60	1.22
Would you consider forms of crimes committed against cultural monuments as crimes against humanity? [e.g. systematic destruction of mosques during the 1992-95 Bosnia war]	201	3.54	1.44
Would you consider forms of computer crimes as a crime against humanity? [e.g. cyber crime, child pornography, identity theft]	201	2.92	1.23
Would you consider transnational organised crimes as a crime against humanity? [e.g. money laundering, drug trafficking, transnational economic crime, fraud]	201	2.81	1.22

3. Environmental crimes

The results yield a mean of 3.67, which is quite high, demonstrating a significantly positive stance towards the inclusion of this crime as a crime against humanity. Greek students had a mean of 3.72 whereas British students had a mean of 3.60. It ranked 4th in the list of crimes that can be considered a crime against humanity in the future.

4. Cultural monuments

With regard to cultural monuments, the crime has a total mean of 3.41, as Greek students reported an average of 3.33 and British students of 3.54. The overall mean of 3.41 is higher than the barrier of signifi-

cance which can be considered as the third point of this Likert scale. It ranked 6th in total in the list of crimes to be characterised as crimes against humanity.

5. Transnational organised crime

In the field of transnational organised crime, a mean of 2.92 was observed in the overall number of questionnaires. The Greek students thought that it can be considered as a crime against humanity with a mean of 3.00 whereas the British students had a mean of 2.81. Greek students consider it slightly more as a crime against humanity in comparison to British; however both samples are reluctant. The fact that transnational organized crime affects humans indirectly may have influenced the public perception. Finally, it ranked 5th compared to the other crimes to be considered as a crime against humanity.

6. Computer crimes

Computer crimes ranked last (7th) in the list concerning their characterization as a crime against humanity. This was also reflected in their mean, as they had an average of 2.90; Greek students had an average of 2.89 and British students an average of 2.92. This finding reveals a hesitant view on this crime, as public opinion does not clearly perceive it as a crime against humanity.

A first conclusion is that in most cases, Greek and British law students ranked these crimes almost identically. None of the crimes was considered significantly as a crime against humanity by one group and not by the other. This is an expected but nonetheless desirable finding given that these crimes have an international character. There were not big differentiations even among a common law and a civil law country. What is more, the ranking of crimes which mostly deserve the characterization of a crime against humanity was the same for both groups (Table 4).

Table 4: Crimes Ranking

	<i>N Valid</i>	<i>Mean</i>	<i>Median</i>
Rank – Terrorist attack	445	2.20	1.00
Rank – Disabled persons persecution	445	2.86	2.00
Rank – Sexual orientation persecution	445	3.68	3.00
Rank – Environmental crime	445	3.75	4.00
Rank – Transnational organised crime	444	4.40	5.00
Rank – Cultural monuments	444	5.10	6.00
Rank – Computer crimes	444	5.92	7.00

Future Trends Regarding the Extension of Crimes against Humanity

Our overall proposals are a multidimensional mixture based on the aforementioned questionnaires. We suggest that some crimes could be included in the near future in the overall definition of crimes against humanity.

1. Persecution against persons with disabilities and against sexual orientation

These two kinds of persecution are examined in conjunction as their nature is similar, being sub-categories of the crime of persecution. We suggest that these two kinds of persecution constitute fully a crime against humanity, and consequently their inclusion in the term is justified. They are considered as a crime against humanity via custom; public perception and the opinion of leading experts are in favour of their inclusion, so they should be included in the term, as heinous violations of human rights.

2. Terrorist attacks

Although opposition exists it is widely accepted that forms of terrorism may be included under the subject jurisdiction of the ICC (Nesi, 2006). One obvious proposal would be to prosecute terrorism in the subcategory of murder, but according to Nesi, breaking down a terror-

ist attack into multiple single offences of murder would lead to losing the notion of terrorism, its dreadful nature and the panic it spreads to the global society. Terrorist manifestations could be prosecuted under the heading of other inhumane acts (Lutz and Reiger, 2009).

Numerous authorities support the inclusion of terrorism in the list of crimes against humanity – if not a separate core crime – based on existing customary law. The discussion was greatly fed by the 9/11 terrorist acts. These terrorist attacks were described by many observers, including the United Nations High Commissioner for Human Rights, as crimes against humanity. However, not all terrorist attacks meet the threshold of crimes against humanity, and there is a possibility they could not be prosecuted. Therefore, Cassese argues that large-scale acts of terrorism demonstrating severely atrocious effects may be considered as crimes against humanity (Jackson, 2007).

Acts of international terrorism may therefore fit under the Article 7 concept, and are viewed as the most repugnant crimes against humanity, constituting crimes which strike at the very core of human decency (Proulx, 2004). The September 11 attacks opened Pandora's Box, which can be treated efficiently only through legal principles of universal jurisdiction (Paust, 2007). Treating terrorism as a crime against humanity may take account of the *modus operandi* but may not reveal anything about the specific intent to induce terror in the minds of the public or officials who the terrorist was trying to get to change their minds – and thus it would be only partly satisfactory (Griffiths *et al.*, 2008). Overall, terrorist attacks should be included in the notion of crimes against humanity.

3. *Forms of environmental crimes*

Environmental crimes could include atmospheric pollution, marine pollution, global warming etc. These damages have a domino effect leading eventually to human beings through the damage caused to animals. Moreover, the effects of industrial development in the form of global warming can have catastrophic effects for the globe. State responsibility arises when environmental damage is inflicted, via *jus co-*

gens norms; these guarantee *erga omnes* obligations and can lead to crimes against humanity due to the violation of moral and legal principles.

According to Cassese (Cassese, 2004), a reason for the prior exclusion of environmental crimes was the lack of public perception that they constitute a heinous violation of human rights. The present study, however, shows that at an embryonic level, society favours their inclusion in the term of crimes against humanity (Freeland, 2005). Environmental damage has outrageous consequences, and can occur in a widespread, severe and long-term manner; it is under certain conditions already a war crime (Article 8, 2, b, iv) so the starting line has been set (Wattad, 2009). Besides, the most serious environmental damage takes place during times of peace.

4. Forms of Crimes against Cultural Monuments

According to O'Keefe (2006), destruction and plunder of cultural property can qualify as crimes against humanity under the act of persecution, in addition to the already established war crime. He presents the provision of persecution as best fitting a potential cultural crime in order to qualify as a crime against humanity.

Some cases in the IMT include crimes as varied as burning and demolishing of synagogues to the plunder of public and private property (Rosenberg, Streicher and Eichman) as persecutions. Moreover, in Blaskic the ICTY ruled that persecution could take the form of confiscation or destruction of symbolic buildings belonging to the Muslim population of Bosnia- Herzegovina. The same was the case in Kordic, where destruction or willful damage to religious buildings, if it happens with discrimination, can qualify as persecution and, therefore, as a crime against humanity. A similar judgment was made in Plasvsic, where the accused pleaded guilty to persecution in the destruction of cultural and sacred objects during the Bosnia war (Abtahi, 2001).

During 2001, monuments such as the Buddhas of Bamiyan and the World Trade Center were destroyed, both of which symbolised a manifestation of civilisation. Also, the UNESCO Director-General character-

ised this destruction as a crime against culture. This crime can currently only be prosecuted in *lato sensu* interpretation of the persecution provisions, although this requires intent of discrimination, raising the threshold of its commission. It would therefore be proposed that the crime should have its own provision in the term of crimes against humanity, irrespective of its current regulation as a war crime.

5. *Forms of transnational organised crimes*

Crimes that can be included in the discussion as transnational organised crimes include drug trafficking, money laundering and corruption. The Final Act of the Rome Conference includes a resolution on treaty crimes recommending that the Review Conference should consider means to enable the inclusion of crimes of terrorism and drug crimes (UN Doc. A/Conf. 183/C.1/L.76/Add. 14. P.8); there also seems to exist a greater consensus than in the past (Mallat, 2002). This therefore leads to the assumption that transnational organized crime might be considered as a crime against humanity in the future (Kemp, 2001).

Many treaties exist for all these offences, but they are still incapable of effectively dealing with them at an international level (O'Shea, 2002). According to Bantekas (2006), transnational corruption can be conceived as an elevated international offence, but it has not yet been regulated at the level of international criminal law. This further suggests that corruption can take the form of a crime against humanity, with necessary extension of jurisdiction of the national and international courts (Lippman, 1997).

6. *Forms of computer crimes*

Computer crimes may include a vast range of crimes, such as child pornography, identity theft or facilitation of transnational crimes. They have the peculiarity that it is quite difficult to define them. Generally, the internet can provide the tools needed to commit old crimes in a new environment, leading to new types of crimes.

An important characteristic of this category of crimes derives from the distance of the perpetrator from the crime scene, which was in the past the starting point of the evidentiary procedure. The existing defi-

nition of crimes against humanity does not suffice to deal with situations such as a cyber-attack taking down a power grid; nevertheless cyber attacks would not qualify yet as a crime against humanity (Stevens, 2009).

The Role of Criminology Regarding Crimes against Humanity

Some crimes are so egregious that they victimise humanity as a whole, even if the perpetrators practically never reach out beyond their territory. A construction of a criminological theory could facilitate the review of the crimes under consideration in this study in the future. We suggest that the key issue is the scale of harm caused. A concrete criminological theory could emerge that would define the crimes caused, the major issues that arise and detect the future trends. The future of the term is interconnected with the evolution of criminology. Violations against human rights globally are occurring every moment, and an analysis of the exact motives, the scale of these attacks and methods of preventing them will bestow a completely different perspective on the study of crimes against humanity as we know them. Criminology has not yet sufficiently dealt with issues such as genocide and crimes against humanity, even though the atrocities influence a great proportion of world's population.

Detecting the trends and arguing on the scale of international harm caused is open to debate. If criminologists could invent a scale of international harm, this could instantly lead to revolutionary changes in international criminal law, the conception of crimes against humanity, the expansion of the term via customary international law and a future policy of prevention (Maier-Katkin, 2004).

It is moreover argued that public opinion promotes the formation of customary law, or *jus nascendi* and reflects the *opinion juris*. Therefore, the *vox populi*, and its separation from the opinion of states can be of monumental importance to the expansion of the term of Crimes against Humanity, and its broader transformation in the field of criminal law. Indeed, public opinion is considered extremely influential in our era, and the present empirical research has its own significance in

throwing a light on a grey zone of criminal law and criminological theory, in regard to the expansion of odious international crimes such as crimes against humanity (Meron, 2000).

1. *Arguments in favour of the expansion of crimes against humanity*

One major argument for the further expansion of the term is the continuous challenging fight against impunity (Kritz, 1996). In specific categories of crimes, the inability to prosecute the perpetrators may lead to the assumption that the law is unable to confront them sufficiently. The principle of equal and unbiased distribution of justice therefore has to be safeguarded. Moreover, customary law is the main player in the field of the transformation of international criminal law, as no global law-making institution exists. Customary international law exists if actual practice (*consuetude, repetitio facti*) can be found, based on a sense of legal obligation (*opinion juris sive necessitates*) in a uniform, widespread and long-term manner (Brownlie, 2008).

Furthermore it is significant that in the present study the results of law students in two European countries lead to the assumption that a further regulation of the term is possible in the future. We could however state that some of these crimes can already fall under the jurisdiction of international tribunals via *latosensu* interpretation of their statutes. However their notion has not suppressed its independence by the fact that crimes against humanity have developed during the last years mainly through the codification of tribunals.

2. *Arguments against the expansion of crimes against humanity*

When it comes to the other side of arguments we can firstly note that crimes like terrorism do not yet have a universally accepted definition which increases their ambiguity and therefore jeopardises the efficient regulation of a vague crime. Specialists in the field consider some of these crimes as not having the necessary gravity to be characterised as crimes against humanity, and any effort to include them in an international tribunal's jurisdiction could trivialise and dilute the term (Boister, 2009). Moreover, they could potentially be prosecuted under

the provisions of general international law or through inter-parties agreements rather than international criminal law.

Furthermore, the category of treaty crimes has not yet reached the level of international crimes, which connotes that national law still applies to them and does not entail individual criminal responsibility via custom. A practical reason could be the unwillingness of the international community to regulate these crimes, as this would constitute a political action by the states.

In response to these concerns, one could briefly mention that not having a universally agreed term, for example in terrorism, does not necessarily prevent its inclusion in the ICC's jurisdiction, as has happened before in the case of the crime of aggression. Potentially, every crime against a civilian can be considered as a crime against humanity; the specific crimes analysed in the present paper have troubled the international community greatly, and have shown considerable repetition throughout time.

The Burden of Criminology and Final Remarks

The challenge that emerged through this analysis was to approach the potential future expansion of crimes against humanity (Glasius, 2005). Our world is continuously evolving, and serious violations and deprivations of human rights are an eminent threat (Van Schaack, 1998). Should we classify every crime as a crime against humanity we would degrade the seriousness of such crimes by generalising them (Heitzer, 1998). We, hence, based our further comments on the analysis of the severity of certain crimes. There is no doubt that the crimes we examined are severe violations in domestic criminal law. A leap would, however, turn them to international crimes, and this exact leap depends greatly on the public perception of these crimes.

Ancient philosophers have thoroughly tried to identify our nature as political animals and how this is interrelated with safeguarding law and order in an otherwise chaotic societal structure. Criminology is a multidisciplinary science that embraces and analyses various topics that require international attention one of which being crimes against

humanity. It is an odious crime that requires our immediate response. As Ellie Wiesel poignantly said during her 1986 Nobel Prize Address: "When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men or women are persecuted because of their race, religion or political views that place must-at that moment- become the center of the universe" (Wiesel, 1986). This paper used empirical findings to initiate a long overdue debate and advocate in favor of the expansion of crimes against humanity. Fight against impunity requires *-inter alia-* a careful yet decisive expansion of the term to safeguard human rights and the international legal order. We thus acknowledge the duty of Criminology and welcome further contributions related to this topic.

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