



Protecting Nations from Destruction in Times of Transition and the Eve of All-Out War

Pourya Hojjati, Mohsen Qadir

Abstract

Extermination as one of the behavioral examples of crimes against humanity is carried out in the context of a widespread or organized attack against a civilian population and with knowledge of the attack and is part of a continuous policy of misconduct and not random and isolated acts. Extermination may include acts that have consequences that are not immediate, but long-term; such as the indirect deadly effects of radiation from atomic bombing on water, air, soil, etc. on the surviving population as double extermination.

Now and in the coming years, the principle of non-recourse to force has been abolished and has been replaced by the principle of resorting to force in pursuit of national interests. In the atmosphere of the principle of resorting to force and the escalation of hostilities and ultimately bloody all-out wars, human society will undoubtedly face a multitude of war crimes and crimes against humanity such as genocide and extermination. Existing institutions do not have and will not have the power to prevent an all-out war, or at least the power necessary to prevent gross violations of the laws of war and respect for human rights. In an all-out war, nations cannot be saved from the scourge of horrific crimes by simply resorting to declining international institutions. In the coming years, which will be a critical and important period, only the principle of self-help and maximizing forces and completing the level of deterrence, i.e. equipping with an atomic bomb, testing it, and officially announcing entry into the nuclear club, can save the Iranian people and the territorial integrity of Iran. Although the atomic bomb cannot prevent wars 100%; But it can control its intensity and level and reduce the likelihood of the crime of annihilation, and this would be better than leaving a nation without nuclear weapons alone and defenseless against the almost certain and inevitable attack of nuclear powers, followed by civil wars through the entry of Takfiri movements.

Keywords: double destruction, judicial procedure, transition period to the future order, maximization of forces, complete nuclear deterrence

Received: 25 Oct 2024

Revised: 29 Nov 2024

Accepted: 13 Dec 2024

Introduction

Problem Statement

With the collapse of the bipolar order and the transition period, we are witnessing the struggle of states to redefine their place in the potential future order. This situation will inevitably lead states towards maximizing power and challenging competitions and temporary blockades and ultimately the inevitable all-out war. The worrying issue, however, is that states, in a situation of concern for their survival and some of them trying to be hegemony and regulators in the future multipolar order, ignore existing structures such as humanitarian and humanitarian laws and commit a wave of widespread violations of war, aggression against humanity. Meanwhile, the crime of destruction as one of the examples of crimes against humanity is likely, especially if nuclear states, in their increasingly hostile competition and engagement in armed conflicts, launch nuclear bombings of each other's satellite countries as a warning. In addition to the destruction of part of the population, we will witness double destruction (long-term destruction, not immediate) due to the indirect deadly effects of the radiation from the atomic bombing on the water, air, soil, etc. on the surviving population. The importance of knowing the concept, nature, dimensions, requirements, and legal consequences of the crime of destruction can be understood from this. The phenomenon of destruction has occurred in the past and in the present era, despite all the scientific and

informational progress of humans, it continues to occur. Even the formation of special courts and prosecution and judicial conviction, although limited, have healed the wounds inflicted on human values and hearts; But denying the occurrence of this horrific crime has not been the necessary deterrent; moreover, in periods of instability of the ruling order and transition to welcoming the next order, various existing institutions have lost their properties and are unable to prevent or at least reduce human crimes such as extermination; as is the case of the League of Nations as a historical witness.

To understand why this phenomenon occurs and possible solutions and our duties in relation to future fundamental threats to human civilization, it is first necessary to explain and examine the definition, concept, elements and pillars of extermination, and then to address possible solutions and initiatives.

The structure of the present article will be as follows: in the first part, the concept and pillars of extermination will be mentioned with regard to existing documents such as the Statute of the International Criminal Court, the First Additional Protocol to the Four Geneva Instruments, and some of the definitions and explanations of criminal cases in the International Criminal Tribunals for Rwanda and the former Yugoslavia in relation to extermination. The second part deals with the judicial procedure related to extermination and four criminal cases from the two aforementioned courts will be explained as examples. Finally, the third and final part deals with possible future dangers in relations between states that could cause the phenomenon of extermination, what we humans can do, and the special duty of us Iranians to protect our land and our fellow citizens from possible future dangers, of which the crime of extermination could be one.

Main Question

What is the solution to protect the Iranian people from the crime of annihilation in the coming decade, when the world is heading towards an all-out war and governments are engaging in risky competitions and war formations?

Sub-Question

What is the importance of considering and considering possible solutions?

Main Hypothesis

During the transition period from the collapsed bipolar order of the past to the definitive establishment of the future order, governments (main and claimant) have been and will continue to seek to maximize their powers (in all fields) and form temporary alliances to align against each other; it seems that in order to protect Iran and its people from major criminal crimes such as annihilation, we will have no solution other than equipping ourselves with a complete nuclear deterrent.

Sub-Hypothesis

The event must be remedied before it occurs. Given that there is a possibility of an all-out war in the next few years and that various governments, from the Western bloc to the Eastern bloc, have been preparing for it for several years, in such a situation, the current mechanisms, from the nuclear non-proliferation system to criminal regulations, will become increasingly weak and ineffective. In the event of an all-out war and its possible escalation and out of control, there will be a possibility of nuclear bombing of parts of non-nuclear, peripheral, and satellite countries to warn each other of nuclear states. The fact that Iranian society thinks about it now, even if it is late, and draws up various plans, can be effective in better, more complete, and more accurate preparation of Iran for possible future events.

Research Method

The research is descriptive and analytical, and the method of library collection is by referring to documents, judicial cases, and websites.

Research Background

There are various articles related to extermination. In the article (Zamani and Shiran Khorasani, 2017, The distinction between extermination as an example of a crime against humanity and genocide in light of the Statute of the International Criminal Court), first, the elements and concept of extermination in light of the Statute of the International Criminal Court were examined, and in the next section, the concept and elements of genocide in light of the aforementioned Statute were examined. In fact, the authors sought to identify the differences and distinctions between extermination and genocide by explaining each of them. In the present study, we will first review the literature on extermination through documents and judicial practice and examine some cases of the criminal courts of Rwanda and the former Yugoslavia. After that, we will address the issue of the possibility of the crime of extermination against various nations, including Iran, in an all-out war in the coming years, and the measures and steps that should and can be taken to prevent or at least reduce the maximum volume of the crime in question, and we will mention the reasons for the necessity of discussing this issue. Obviously, the distinction between extermination and genocide will be mentioned briefly and briefly among the mention of the criminal cases; but it will not be the main subject of the study.

In the article (Shirian Nasel, 1402, Reflection on the Crime of Annihilation in International Criminal Law), while examining and explaining the crime against humanity in general and one of its exemplary crimes, namely extermination in particular, he has distinguished between the crimes of genocide and extermination, and then explained the legal, material and moral elements of the crime of extermination. After that, he briefly and briefly explained extermination in the international tribunals of Yugoslavia and Rwanda, and finally he has stated an example of extermination in the contemporary era. The aforementioned example is related to the past, namely the First World War, namely the Great Famine in Iran. In our research, we focus on explaining and explaining the possibility of the phenomenon of extermination occurring in the near future and how to manage and confront the occurrence of that phenomenon and try to prevent it. Also, the criminal cases in the courts of Rwanda and Yugoslavia have been explained in more detail.

In the article (Zamani and Shiran Khorasani, 2018, Destruction through Violation of Human Security), they examined the relationship between destruction and various dimensions of human security, such as health and hygiene, food and economic security, etc. The aforementioned article seeks to show that the violation of human security dimensions can be a basis for destruction to occur; therefore, they first discuss the concept of human security and its various dimensions, and in the second part, they discuss the concept and elements of destruction as discussed in their other article in distinguishing it from genocide. Finally, they explain destruction in each of the eight elements of human security mentioned in the article. The issue of human security dimensions and the violation leading to destruction of those dimensions in the present research (and its mission) is not confined to the Arabs.

1- Destruction

1-1- The concept and elements of destruction

Destruction is mentioned as one of the behavioral examples (predicate crimes) of crimes against humanity in Article 7 of the Statute of the International Criminal Court. The said article introduces a number of acts such as murder, destruction, enslavement, displacement of a population, imprisonment, torture, sexual rape, persistent persecution and harassment of a group, (enforced) disappearance of individuals and racial discrimination as crimes against humanity, of course, provided that these crimes are committed within the framework of a widespread or organized attack against a civilian population and with knowledge of that attack; also, the said crimes are part of a continuous policy of misconduct (a pattern of behavior and not a series of random and isolated acts) by persons complicit with the perpetrator. The attack may be before, during or even after armed conflict; Therefore, the existence or occurrence of an armed conflict is not a condition for the commission of these crimes. Since extermination is considered an example of a crime against humanity, it must have the same conditions and characteristics required for a crime against humanity. Of course, as one of the branches of the International Criminal Tribunal for the former Yugoslavia

stated in the Krstić case, in order to prove the crime of extermination, in addition to fulfilling the necessary conditions for a crime against humanity, a specific population must be targeted and its members must be killed or conditions must be imposed on them that aim to destroy a significant number of the population.

In the current state of international criminal law, a crime against humanity requires a general context of criminal conduct consisting of a widespread and systematic attack against a civilian population.

In order to determine whether an attack is widespread or organized, some elements can be mentioned whose existence indicates the fulfillment of these restrictions; These include: the number of criminal acts, the existence of criminal patterns, the means and resources involved, the number of victims, the existence of public statements regarding the attacks, the existence of a plan or policy to target the civilian population, the means and methods used in the attack, coordinated military operations that were repeated geographically and temporally and led to a similar result, and a change in the ethnic, racial, religious or political composition of the population as a whole.

The First Chamber of the Rwandan Tribunal in the Nyitgeka case (2003) found the accused responsible for the crime of extermination as one of the leaders in the operation against Tutsi refugees that resulted in the killing and extermination of a significant number of them; during which, according to the Chamber itself, he had killed an old man, a young man and a teenage girl. In fact, given that his actions were consistent with a widespread and organized attack, the crime of destruction was established in his case and there was no need to establish the commission of multiple acts against him.

The acts committed must be related to the attack. In fact, the alleged acts committed must be part of a widespread or organized attack directed against a civilian population and not just a simple contemporaneity between the acts and the attack. In fact, any violation to be considered a crime against humanity must be very serious and part of a criminal plan and general pattern and not an isolated and scattered incident. Of course, it is not necessary that the alleged acts must be similar and identical to other acts committed during the attack. It is also worth noting that a crime committed before, after or apart from the main attack against a civilian population can still be considered part of the attack if it is sufficiently related.

Therefore, in relation to widespread or organized, it is not necessary for the accused to have personally committed numerous and widespread acts, but rather for him to have committed a limited act, if the act was part of a widespread or organized attack and the perpetrator was aware of the existence of such an attack.

The accused must have knowledge that an attack is being carried out against a civilian population and that his act or conduct is part of the attack. Lack of knowledge may make the crime an ordinary crime or, depending on the circumstances and circumstances, a war crime. It is clear that the mental element of knowledge relates to knowledge of the context of the attack, not the motive or reason for the attack.

In addition, Article 7, Section 2 (b) of the Statute of the Court defines extermination or extermination as an act committed with the intention of destroying a specific population and the result of this act must not be limited to the population as a whole, but if the act of the perpetrator is accompanied by the intention to destroy and its scope is limited for any reason to a number of individuals of that group or population, the act committed has the characteristics of the crime of extermination. Destruction may also include acts the result of which is not immediate, but long-term. For example, the deliberate imposition of certain conditions of life, including deprivation of access to food and medicine, designed to destroy a portion of a population.

The International Criminal Tribunal for Rwanda in the Akaiso case defined the crime of extermination in paragraph 591 as follows: "It is a crime which, by its very nature, is committed against a group of persons. Extermination differs from murder in that it requires an element of mass killing, which is not required for murder." In paragraph 592, the First Chamber defined the essential elements of extermination as follows:

1. The accused or his subordinates participated in the killing of some of the persons named or described.

2. The act or omission was unlawful and intentional.
3. The act or omission must be part of a widespread or systematic attack.
4. The attack must be directed against a civilian population.
5. The attack must be carried out on discriminatory grounds; that is, national, political, ethnic, racial or religious.

As regards the fourth condition, it is important to note that the principal object of the attack must be any civilian population and not only civilians. It is important that the population concerned is generally considered to be civilian, which is This means that the mere presence of a small number of soldiers in a population will not change the general character and nature of the population.

Article 50 of Additional Protocol I to the Geneva Conventions, after defining civilians and the civilian population, does not consider persons who are part of the armed forces of a party to the conflict and who have withdrawn from the battlefield, members of armed forces, and members of militias or volunteer forces forming part of such forces, even when they are not armed or taking part in hostilities, to be civilians. Furthermore, members of other militias and members of other volunteer forces other than those forming part of armed forces, including organized resistance groups, cannot claim civilian status under these conditions if: (1. They are under the command of a person who is responsible for the actions of his subordinates; 2. They bear a distinctive and permanent insignia recognizable at a distance; 3. They openly carry arms. 4. Conduct their operations in accordance with the laws and customs of war.

Regarding the fifth condition ((In terms of discrimination and the group concerned, extermination differs from genocide because its criteria are more flexible with regard to the group concerned. In particular, they include groups that are more difficult to identify, such as political groups)).

While agreeing with the definition of extermination in the Akaiso case, the First Chamber of the Rwandan Court in the Rutaganda case (1999) acknowledged in paragraph 84: ((The Chamber considers that the act or omission which constitutes extermination must be discriminatory in nature and directed against members of the civilian population. Furthermore, this act or omission includes, but is not limited to, the direct act of killing. It can be any act or omission, or collective acts or omissions which cause the death of the group concerned)). In fact, the Chamber considered the omission to be included in the definition and possibility of establishing the crime of extermination.

The Rwandan Chamber II in Kishima and Ruzindana (1999) held that the act(s) or omission(s) may be committed with intent, recklessness or gross negligence. In relation to the creation of living conditions that lead to mass killings, the Chamber gives examples in paragraph 146, including: ((imprisoning a large number of people and depriving them of the necessities of life, leading to mass death. Introducing a deadly virus into the population and preventing medical care, leading to mass death)).

2-1- Judicial Procedure

1-2-1- Tolimir Appeal Case (2015)

On 12 December 2012, the Trial Chamber (Chapter II of the International Criminal Tribunal for the former Yugoslavia) found Tolimir guilty of various crimes, including genocide, conspiracy to commit genocide, extermination, persecution and inhumane acts through forcible transfer as a crime against humanity, as well as murder as a violation of the laws or customs of war, and sentenced him to life imprisonment. The Chamber found that a widespread and systematic attack by Bosnian Serb forces, mainly against the Bosnian Muslim civilian population of Srebrenica and Žepa, took place during the indictment period. The attack consisted of several interrelated components: military attacks on both areas, restrictions on humanitarian aid, the evacuation of women, children and the elderly from besieged areas, and the killing of thousands of Bosnian Muslim men in a short period of time, mainly in July 1995. A widespread and organized operation to kill Bosnian Muslim men, resulting in at least 4,970 murder victims after the fall of Srebrenica, as well as the deaths of three prominent Bosnian Muslim leaders (Emir Imamović, Avdo Palić and Mehmed Hajrić).

The killings were found to have met the essential element of the crime of extermination and to have been committed with the requisite intent to kill on a large scale. Tolimir appealed his conviction. The Appeals Chamber ultimately upheld the life sentence on 8 April 2015.

Tolimir's main argument was that the Trial Chamber had erred in law by applying the wrong standard of proof in relation to the objectives of extermination as a crime against humanity. He argued that the wording of Article 5 of the Statute required that all crimes against humanity, including extermination, must be directed against any civilian population and that the victims of extermination must therefore have been targeted for extermination by reason of their civilian status. He also argued that the Chamber had erred in finding that the alleged killing of Bosnian Muslim men from Srebrenica was itself part of a widespread or systematic attack against the civilian population. He noted that the killings were targeted at men of military age who were considered members of the Army of Bosnia and Herzegovina (ABiH), particularly in view of the general mobilization order issued by the ABiH to men within the territory of Srebrenica a few days before its fall, which in his view had the effect of depriving the men of their civilian status. He argued that the Trial Chamber erred in fact and law in finding that Bosnian Muslim men were also targeted by Bosnian Serb forces without any attempt to distinguish between civilians and combatants during the attack.

Tolimir also argued that the Court had erred in finding that the killing of three Bosnian Muslim leaders from Žepa was part of a single killing operation, as the three men were killed at a time after the killings in Srebrenica. He argued that, given the circumstances, the three could not be considered victims of the crime of extermination.

The Prosecutor responded by stating that the Court had correctly found that the attack was directed primarily against the Bosnian Muslim civilian population of Srebrenica and Žepa and involved the killing and forcible transfer of thousands of people. The Prosecutor argued that the victims of an attack and crimes against humanity did not have to be civilians, but could also be evacuees (wounded, surrendered, etc.). The Prosecutor argued that Article 5 of the Statute only required that the attack be directed against a civilian population as a whole and that the essential acts be part of that attack; that is, the presence of a small number of military personnel in a population generally considered to be civilian did not alter the status of the group and thus justify the massacre of civilians. The Prosecutor noted, however, that the Court did not find that the victims of the killings were military personnel, but rather that the victims included boys, men and elderly women who had never been involved in armed conflict. The Court of Appeal also stated that there was nothing in the text of Article 5 of the Statute or in previous Court of Appeal rulings that required victims of crimes against humanity to be civilians and that factors such as the civilian status of the victims, the number of civilians, and the proportion of civilians in a civilian population were relevant in determining whether attacks and operations met the requirement of Article 5 of the Statute that they were carried out against a civilian population. The Court of Appeal rejected Tolimir's claim that the trial court erred in this regard. The Court noted that it was sufficient for the trial court to be satisfied that the crime of extermination was established on the basis of evidence of the intent to kill on a large scale as part of a widespread or systematic attack against a civilian population.

As regards the murders of the three Žepa leaders, the Prosecutor submitted that, according to the Court's case-law, the crime of extermination could be committed on the basis of the accumulation of separate and unrelated events, that is, on the basis of the aggregate; therefore, the Prosecutor considered that there was no error in aggregating these three murders with other murders committed by the same Serb forces following similar attacks in Srebrenica and Žepa.

The three Žepa leaders were arrested by Serb forces on 27 and 28 July 1995 and killed in August due to head or skull injuries. The remains of the three Žepa leaders were found in a mass grave, along with six other victims, in Vraglovi, Rogatica. The trial court concluded that the killing of the three Zepa leaders was part of a large-scale, organized killing operation that began on July 13, 1995, and constituted the main act of destruction. The court argued that the three men were targeted because of their leadership positions before Zepa fell.

In considering this issue, the Appeals Chamber initially noted that the crime of extermination can be proven by the aggregation of separate events. It is not necessary that the killings be committed on a large scale, in a central location and over a short period of time. On the other hand, the International Criminal Tribunal for Rwanda stated that, as a general matter, the element of mass murder cannot be satisfied by considering collectively distinct events committed in different places, under different circumstances, by different perpetrators, and over a long period of time, namely a period of two months.

The Appeals Chamber also noted, referring to the findings of the Trial Chamber, that there were common factors between the killings of the three ZEPA leaders and the mass killings of Bosnian Muslim men and boys in Srebrenica. These were: 1. The killings took place after the fall of the two besieged areas. 2. The victims were all Bosnian Muslims. 3. The brutality of the killings. 4. The general identity of the perpetrators of these killings as members of the Bosnian Serb forces. 5. The link to the overall objective of the Bosnian Serb forces to rid the besieged areas of the Bosnian Muslim population.

The Appeals Chamber of the Court found that the three ŽPA leaders were killed in late August and September 1995, thus following the main attack on the civilian population, which included military operations against both besieged areas, the expulsion of thousands of civilians from Srebrenica and ŽPA, and the killing of Bosnian Muslim men from Srebrenica that occurred in July 1995. The Appeals Chamber was not persuaded that the killings of the three ŽPA leaders were part of the same killing operation that targeted the Bosnian Muslim men and boys of Srebrenica. The Court noted that, given the different contexts and circumstances in which the three killings were committed, no reasonable court could have concluded that the killings of the three ŽPA leaders were part of the Srebrenica killing operation. The Chamber considered the three murders to be separate acts and noted that the Trial Chamber had erred.

2-2-1- Milomir Appeal Case (2006)

Milomir was a physician who became actively involved in politics during the 1990 multi-party elections in Bosnia and Herzegovina. In November 1990, as a member of the Democratic Party of Serbia (SDS), he was elected to the Prijedor Municipal Assembly, and in January 1991 he was elected as its Deputy President, and shortly thereafter in January 1992 as President of the General Assembly of the Prijedor Municipality of Serbia.

In the indictment issued on 27 March 2001, Milomir was charged with complicity in genocide while he was the head of the Prijedor Municipality Crisis Staff. The indictment was subsequently amended and he was ultimately tried on charges of genocide, complicity in genocide, extermination, murder as a crime against humanity, murder as a violation of the laws or customs of war, persecution, deportation and other inhumane acts (forcible transfer). The court found him guilty of extermination as a crime against humanity, murder as a violation of the laws or customs of war, persecution as a crime against humanity, including the crimes of murder as a crime against humanity and deportation as a crime against humanity. The Trial Chamber (Chapter II of the International Criminal Tribunal for the former Yugoslavia) sentenced Milomir to life imprisonment on 31 July 2003. Milomir appealed the verdict. The appeal verdict was issued on 22 March 2006, and the appeal declared the appropriate sentence to be 40 years' imprisonment.

Some of the objections raised by Milomir in his appeal against the original judgment included: systematicity or widespreadness as a requirement of the crime of extermination, legal error in establishing the crime of extermination itself. Milomir denied that the attacks were systematic, arguing that they were isolated, sporadic, random and uncontrolled, or carried out by unrelated third parties. The issue examined by the Appeals Chamber in this regard was whether the Trial Chamber had erred in concluding that the attacks against the non-Serb civilian population of Prijedor, to which the appellant was a party, were widespread or systematic. The Appeals Chamber noted that the Court's case-law was clear that for the purposes of crimes against humanity, an attack must be either "widespread" or "systematic", but not necessarily both. The Appeals Chamber stated that the appellant's submissions presupposed that a systematic attack against a civilian population must encompass the entire civilian population of the particular area attacked. This assumption is incorrect. It is sufficient to show that sufficient individuals were targeted in the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against

a civilian population, and not against a limited and randomly selected number of individuals. Accordingly, an attack against a civilian population may be classified as systematic even when some members of that civilian population are not targeted.

The appellant submitted that the attack was systematic because it had been in place since 7 January 1992, when the Assembly of the Serbian People in Prijedor was first established and a plan was prepared to clear the town of Prijedor of non-Serbs and others who were not loyal to the active Serbian authorities. The attacks began in late May 1992, based on a plan against civilians in places such as Hambarin and Kozarac, as well as predominantly non-Serb areas such as the Bordo area..., with hundreds of non-Serbs killed and many more arrested and detained by the authorities.

The Appeal confirmed the systematic nature of the attack and, for reasons of judicial economy, did not consider it necessary to examine whether such an attack was also widespread, and consequently dismissed this part of Milomir's claims.

Milomir appealed the finding of the crime of extermination by the Trial Chamber, believing that for this crime to be established, conditions must be met, such as: (((A broad plan to commit mass murder must be created, which is collective in nature and not directed at individual individuals, the person accused of extermination must also be aware of this hypothetical broad plan, the intention to kill a large number of people, which must be thousands of people to reach the threshold of the seriousness and seriousness of the crime... and finally, the acts constituting the crime must be collective in nature and not directed at individual individuals))).

Regarding the broad plan of mass murder, the appeal stated that the Court's case law does not support the requirement of a broad plan of mass murder and its knowledge of such a plan and that knowledge of that element is not required to realize and establish extermination as a crime against humanity. The criminal act of extermination is an act of killing on a large scale. The criminal act (*actus reus*) also involves a large number of people or the systematic exposure of a number of people to conditions of life that will inevitably lead to death. The necessary intent for extermination is that the accused, by his acts or omissions, intended to kill on a large scale or, by systematic adherence to them, to subject a number of people to conditions of life that will lead to their death.

As to the requirement of intent to kill a large number of people, the Court also stated that the moral element of the crime of extermination clearly requires an intent to kill on a large scale or to systematically subject a large number of people to conditions of life that will lead to their death. This intent is a clear reflection of the criminal act (*actus reus*) of the crime. There is no support in customary international law for requiring an intent to kill a certain threshold number of victims. In fact, no numerical threshold has been established in relation to the criminal act (*actus reus*) of extermination. Extermination differs from murder in that it requires an element of mass murder that is not required for murder. The crime of extermination is murder on a large scale. The terms "large scale" or "large number" do not indicate a numerical minimum; therefore, the Appellant rejected Milomir's submission that the crime of extermination required the intent to kill thousands of people in order to reach the threshold of severity.

As to whether the Trial Chamber erred in finding the moral element of the crime of extermination, the Appellant stated that the Trial Chamber found that the violence was committed on a large scale against the non-Serb population of Prijedor and that Milomir, due to his political position and role in implementing the plan to create an exclusively Serb town, was familiar with the details and progress of the campaign of extermination against the non-Serb population. The Trial Chamber also found that Milomir, as the head of the People's Defence Council, was a key co-ordinator between the Serb civilian, police and military authorities. In fact, these facts led the Trial Chamber to find that Milomir was aware of the killings of non-Serbs and that they were occurring on a large scale, and that he acted with the necessary intent, or at least recklessness (*dolus eventualis*), to exterminate the non-Serb population of the town of Prijedor in 1992.

The Appeals Chamber found Milomir responsible for the crime of extermination on the grounds that the mass killing of persons was a natural and foreseeable consequence of the common purpose and that, despite being aware of this possibility, he nevertheless acted in furtherance of the common purpose.

3-2-1- Miko v. Jopljanin Appeal Case 2016

Jopljanin was the head of the Banja Luka Regional Security Service Centre (from 6 May 1991) and from at least 5 May 1992 until July 1992, he was a member of the Crisis Staff of the Autonomous Region of Krajina (ARK). Miko was also an ex officio member of the National Security Council of the Republika Srpska and, from 31 March 1992, also became the first Minister of the Interior of Serbia. Among the charges that led to the filing of the case against the two individuals and were examined in the preliminary proceedings were the following: 1. Persecution on political, racial and religious grounds 2. Extermination 3. Murder 4. Torture 5. Inhumane acts 6. Deportation and 7. Other inhumane acts (forcible transfer). The prosecution also charged the two with violations of the laws or customs of war under Article 3 of the Statute. The indictment held Miko and Jopljanin responsible for these crimes under both Article 7(1) (incitement, aiding and abetting, committed by participation in a common crime) and Article 7(3) of the Statute (primary responsibility). The indictment also held Jopljanin responsible for these crimes under Article 7(1) of the Statute (planning and ordering).

In the original trial, the indictment alleged complicity in a joint criminal conspiracy (JCE) to permanently expel Bosnian Muslims and Bosnian Croats from the territory of the planned state of Serbia. The court also found that this purpose was carried out through the crimes of deportation, other inhumane acts (forcible transfer), and persecution through preparatory acts of forcible transfer and deportation, as crimes against humanity.

The Trial Chamber (Chapter Two of the International Criminal Tribunal for the former Yugoslavia) sentenced both to 22 years in prison on 27 March 2013. The Appeals Chamber ultimately upheld the same sentence for both on 30 June 2016.

One of the counts of Joplejanin's conviction was extermination as a crime against humanity. Joplejanin appealed the 2013 verdict. In his appeal, Joplejanin raised various objections to the conviction for extermination. The first objection raised was that the Chamber erred in law and fact. For example, the matters on which it held that it had been wrongly held liable included: 1. the requirements of the criminal act for extermination in connection with the Sanski Most incident) and the killing of approximately 95 victims in the Omarska detention camp in the town of Prijedor in July 1992. 2. the physical perpetrators in connection with the Sanski Most incident had the mental element required for extermination. 3. it was foreseeable to Joplejanin or he was aware that the extermination would take place and therefore a miscarriage of justice had occurred.

In connection with the Sanski Most incident, the Chamber found that on 7 July 1992, a large number of detainees were transferred by police officers (Sanski Most SJB) from the detention camp (Betonirka) in Sanski Most to the Manjača detention camp. The court found that about 20 of the detainees died of suffocation during transport and that these deaths constituted murder. The Trial Chamber also found that, given the circumstances of the incident, the killing of 20 prisoners in the Sanski Most incident was sufficiently large to meet the criteria for murder. On appeal, Jopljanin objected that the criterion for determining the threshold by which the killing of 20 people would constitute the crime of extermination had not been explained and the necessary reasons had not been provided. The prosecutor on appeal argued that the large-scale requirement did not imply a minimum number of victims, but had to be assessed on a case-by-case basis, taking into account the circumstances in which the killings occurred. The Appeals Chamber recalled that the criminal act of extermination was an "act of killing on a large scale" and that it was this "massiveness" element that distinguished the crime of extermination from the crime of murder. The appellant noted that the term "large-scale" did not suggest a precise numerical approach to the minimum number of victims. In fact, the assessment of large scale is made on a case-by-case basis, taking into account the circumstances in which the killings occurred. On the other hand, the Appellate Division noted that relevant factors include, but are not limited to: 1. the time and place of the killings; 2. the

selection of the victims and the manner in which they were targeted; 3. the type of victims; 4. whether the killings were aimed at a collective group rather than at the victims in their individual capacity; and 5. the population density of the area of origin of the victims. These factors do not constitute elements of the crime of extermination as a crime against humanity, but are factors that the trier of fact may consider when assessing whether the “large scale” element has been met. Furthermore, if the killings are considered part of a single operation, separate incidents of killing may be aggregated in order to meet the large scale requirement. Whether the killings are part of the same operation must be assessed on a case-by-case basis, taking into account the circumstances in which they occurred. On the other hand, the Appeals Chamber stated that the collective consideration of distinct events committed in different places, under different circumstances, by different perpetrators, over a long period of time could not meet the requirements of large-scale murder.

In relation to the Omarska camp, the Chamber found that approximately 28 prominent members of the Prijedor Muslim community detained in Omarska, including lawyers, doctors and police officers, were systematically killed between 25 and 27 July 1992; it also found that in July 1992 eighteen people were executed in one incident by camp guards based on a list provided by Rade Knjević, an inspector of the Prijedor Police Station (SJB) who had visited the camp, and that an additional 50 people were killed in the Omarska detention camp. The Chamber found that all of these killings were part of an operation and concluded that the total number of victims, which amounted to approximately 95, was sufficiently large to meet the requirements for the crime of extermination. Jopliyanin argued that the killings were only cumulative if at least one of the incidents was considered large-scale in itself. The Appeals Chamber found no support for this proposition in the case law of the Court and rejected the claim. The Court held that Jopliyanin had not shown that the Trial Chamber erred in law or fact by finding that the killings at Omarska camp met the requirements of large-scale and amounted to extermination in aggregate; therefore, Jopliyanin’s ground of appeal on this point was rejected.

Regarding the mental element required for extermination, Jopliyanin argued that the prosecution had failed to prove beyond a reasonable doubt that the principal perpetrators had the requisite conditions for extermination. It is possible that various acts (such as transporting prisoners in a locked refrigerated car without sufficient ventilation in the summer) resulted in death through mere negligence rather than intent to kill. He held that the court had erred in law in finding that the main perpetrators of the incident had the necessary intent, because the moral element for destruction is not met by recklessness or gross negligence. The Appeals Chamber, after reviewing the case, held that the trial chamber had failed to provide a reasoned opinion that the serious bodily harm inflicted on the detainees by the Sanski Most police officers was such that they should have reasonably known that it might lead to the death of a large number of detainees, and that there had been an error of law. However, a reasonable trial could have found beyond a reasonable doubt that the main perpetrators of the Sanski Most incident had the necessary resources to destroy; therefore, the court’s error did not invalidate the verdict, and this claim and Jopliyanin’s application were also dismissed.

As regards the alleged errors of law and fact in finding that the destruction was foreseeable for Jopliyanin, the Appeals Chamber observed that the Trial Chamber had found that he not only knew of the involvement of the Prijedor SJB in the incident, but also did everything in his power to ensure the immunity of the perpetrators. The Appeals Chamber held that, based on the fact that Jopliyanin had assigned the Prijedor SJB to escort the detainees, while being aware of their previous involvement in the killing of a large number of detainees in similar circumstances in Korićanske Stijene, a reasonable trier of fact could therefore have considered that Jopliyanin had been aware of and accepted the possibility of similar events occurring. The Prijedor police escorted the non-Serb detainees to Croatia, despite Jopliyanin’s knowledge of their involvement in the Korićanske Stijene murders. The trial court did not err in law or fact in finding that Jopliyanin’s commission of the crime of extermination was foreseeable and that he willingly accepted the risk of committing such crimes. The Appeals Chamber also dismissed Jopliyanin’s claim and thus dismissed Jopliyanin’s third ground of appeal (alleging errors of law and fact in relation to the court’s findings of responsibility for the crime of extermination) in its entirety.

4-2-1- Ntabakuze Appeal Case (2012)

From June 1988 to July 1994, Ntabakuze served as the commander of a Rwandan army para-commando battalion at Camp Kanombe, Kigali. Ntabakuze was arrested on 18 July 1997 in Nairobi, Kenya, and subsequently transferred to the court's detention centre in Arusha, Tanzania. Ntabakuze's case was initially joined to that of Gratién Kabiligi, Head of the Operations Office (G-3) of the Rwandan Army General Staff from September 1993 to 17 July 1994. On 29 June 2000, Chamber I of the Court granted the Prosecutor's request to join the cases of Ntabakuze and Kabiligi to those of Theonse Bagosura and Anatole Nsengyumwa. Bagosura was the Director of the Cabinet of the Rwandan Ministry of Defence, and Nsengyumwa was the Commander of the Giseni Operational Division in April 1994. The Tribunal found Ntabakuze guilty of genocide, crimes against humanity (murder, extermination, persecution and other inhumane acts) and grave breaches of Article 3 Common to the Geneva Conventions and Additional Protocol II (violence against life) under Article 6(3) of the Statute of the Tribunal. The Tribunal found him responsible for the killing of Tutsi civilians by his subordinates in the Kabza area of Kigali on 7 and 8 April 1994, in Nyanza Hill on 11 April 1994 and at the Institute for African and Mauritian Statistics and Economics (IAMSEA) in the Remera area of Kigali on or about 15 April 1994. The Tribunal also found him responsible for preventing the refugees killed in Nyanza Hill by his subordinates. The Trial Chamber (Branch One of the International Criminal Tribunal for Rwanda) sentenced Ntabakuze to life imprisonment on 18 December 2008. The court also sentenced Nsengyumwa and Bagosura to life imprisonment. Kabiligi was acquitted of all charges. Ntabakuze appealed, requesting that his conviction be quashed, his release ordered, and that the appeal order be made for compensation for unlawful imprisonment or, alternatively, a reduction in his sentence. The Appeals Chamber ultimately overturned the life sentence on 8 May 2012 and imposed a sentence of 35 years' imprisonment.

Ntabakuze claimed that the Trial Chamber erred in convicting him of murder, extermination and persecution as crimes against humanity because he knew or had reason to know that the crimes at Nyanza Hill and IAMSEA were part of a widespread or systematic attack against the civilian population and that his subordinates had "intent and awareness of such circumstances". Furthermore, Ntabakuze argued that there was insufficient evidence to show that the crimes were committed against any person on the basis of membership of an identifiable group or that he knew or had reason to know that his subordinates had such an intention and that the court therefore erred in convicting him of persecution.

The Appeals Chamber noted the express findings of the trial court that both the perpetrators of the attacks and Ntabakuze knew that their actions were part of a widespread and systematic attack against the civilian population on ethnic and political grounds. The court made this finding by considering a number of factors. In particular, the court considered the ethnic composition of the people who had taken refuge in the various locations as well as the actual or perceived political affiliations of many of those killed or targeted at the roadblocks at the time. It also took into account Ntabakuze's position as a high-ranking military officer and his necessary familiarity with the situation both nationally and in the areas under his control and the open and notorious manner in which many of the attacks and massacres were carried out.

The Appeals Chamber noted that it had found no error in its finding that Ntabakuze had in fact known that his subordinates were about to commit the crimes at Nyanza Hill and IAMSEA. Consequently, Ntabakuze's appeals were dismissed.

On the other hand, Ntabakuze submitted that the court had erred in convicting him of murder and extermination as crimes against humanity on the basis of the same set of facts. The Appeals Chamber recalled that cumulative convictions entered under different legal provisions but based on the same conduct are permissible only if each of the legal provisions involved has a distinct material element that is not included in the other. An element is materially distinct if it requires proof of a fact that is not required by the other. Using this well-established principle, the Court of Appeal held that cumulative convictions for extermination and murder as crimes against humanity were not permissible, arguing that while extermination requires a materially distinct element that the killings occurred on a mass scale, murder does not involve an element that is materially distinct from extermination. The appeal noted that the Trial

Chamber had erred in entering cumulative convictions for murder and extermination as crimes against humanity for the killings committed at Nyanza Hill and IAMSEA. The appeal upheld Ntabakuze's conviction for extermination under Article 5 of the indictment but quashed his conviction for murder as a crime against humanity under Article 4 of the indictment.

2- Complete Nuclear Deterrence

After the end of the post-World War II bipolar order, we are witnessing a relatively long period of transition. During this transition period to the next order, states move towards maximizing their powers in all dimensions and to the extent they are able. States enter into temporary alliances and blocs appropriate to the temporary transition period. All the efforts that various claimant and important states make at this time are due to their greater preparation for the time of facing the deadline, i.e. the start of an all-out war. During the transition period, the existing superpower loses the necessary ability to impose its will, whether through political and soft means or military and hard means, against existing actors in different parts of the world. We are now witnessing that the United States is neither capable of fully confronting the Houthis and opening the Red Sea to ships bound for the fake Zionist regime, nor of ending the war in Ukraine, or more precisely, of fully imposing its demands on Russia, nor of dictating its demands to North Korea without incurring heavy costs. In fact, in the current climate, the United States cannot ensure order and stability in different parts of the world in accordance with its own interests and demands and to the detriment of the interests of emerging powers. In relation to emerging powers, they also want to redefine a new world order that is consistent with and responsive to new realities and conditions. The alignment of the main European governments and the various speeches they make against Russia, Iran, and China indicate that they are preparing themselves for an important and serious battle in their geographical area. The United States, while welcoming and benefiting from the dragging of Russia and Iran into wars of attrition in its geopolitics, is preparing for confrontation and battle with China in the South China Sea. This is a time when the possibility of an all-out war can be considered probable. In any case, in the coming decade, and especially in the next three or four years, we will witness very sensitive conditions, especially since in the West Asian region we are witnessing a fake, petrified and savage regime that has broken the reins and does not care about any existing international law or mechanism. Of course, this is also one of the natural characteristics of this transitional period, which is basically a temporary constructivism that will not respond to the interests and protection of the security and territorial integrity of states. Now and in the coming years, the principle of non-recourse to force has been abolished and has been replaced by the principle of resorting to force to pursue national interests. This is a reality, although it is temporary, and after the establishment of the next order, governments will again put the non-recourse to force at the forefront of their policies.

In an atmosphere of the principle of resorting to force and the escalation of hostilities and ultimately bloody wars, human society will undoubtedly be faced with a multitude of war crimes and crimes against humanity, such as genocide and extermination; as was also experienced in World War II.

The duty of the media, thinkers, and activists is to reflect on and use the lessons learned from the events of World War II and the international realities that bombs and missiles with heavy warheads and even nuclear weapons will fall on nations, to enlighten their own lands in the first place and then to human societies in the second place, and to demand the necessary measures to make nations as safe as possible.

What is clear is that in an all-out war, nations cannot be saved from the scourge of horrific crimes by resorting solely to decaying international institutions. In contemporary history, we have witnessed that various mechanisms such as the League of Nations failed to protect against crimes and disasters imposed on humanity, and this was due to the nature of that particular era. Even now, existing institutions do not have and will not have the power to prevent the occurrence of all-out war, or at least the power necessary to prevent the gross role of the laws of war and respect for human rights.

What can manage and control the level of war and prevent a nation from facing the risk of genocide and destruction is to complete and maximize the level of deterrence, that is, nuclear deterrence. The fact that in an all-out war, the possibility of using tactical nuclear weapons and atomic bombs will be high does not contradict this point. Certainly, nuclear states in conflict with each other will prefer not to directly target

each other's territory and people, and initially target the bordering, peripheral, and non-nuclear states of the nuclear state as a warning to each other. The atomic bomb does not completely eliminate war and human, financial, and material losses, but it can control its intensity and level.

The territory of Iran is facing an objective and significant threat to its survival and that of its people. The fake regime equipped with the atomic bomb and the global nuclear powers such as the United States, Britain, and France, who fully support the regime, feel that they are in a special situation and opportunity when they can take Iran and the Iranians to task. The threat of widespread massacre of the people if the hostility against Iran intensifies further is an objective threat, and we have a short window of opportunity to make up for all the opportunities that arose for Iran to build and test the atomic bomb and officially announce its entry into the League of Nuclear States after the events of October 7, and we burned them. At this critical juncture, only the principle of self-help and the maximization of forces can save the Iranian people and the territorial integrity of Iran.

The talk about the massive loss of Iranian lives during the Great Famine of World War I due to the passivity and erroneous positions of the statesmen of the time could be repeated this time with greater intensity, of course, along with the threat to territorial survival and humiliation of national pride and dignity; if the statesmen were passive and not inclined to make difficult decisions on the spur of the moment; if the media owners, intellectuals, and the general public did not feel the danger and were indifferent. It is true that the construction of the atomic bomb could bring with it increasing global pressures (of course, only for a few years, when it needs to be tolerated, as in the case of Pakistan), but if we do not want this bomb, what kind of problems will we face and what idea will we have to overcome them? We will face the threat to the survival of territorial and governmental integrity, as well as widespread bombing by NATO and Zionism, bloody civil wars through the entry of Takfiri and separatist movements. Appealing to institutions that are in decline and that serve the interests of the Western bloc will not be beneficial; as it has been in the last twenty years, neither for the economy of the Iranian people nor for the lives and human rights of the people of Libya, Sudan, etc. In the second imposed war on Iran, two nuclear powers officially attacked a country that is a member of the nuclear non-proliferation regime and a member of the Atomic Energy Agency and nuclear power plants under the supervision of the Agency's inspectors, and the Agency was unable to defend Iran's rights and even a simple condemnation and a verbal-diplomatic form. Of course, this is a characteristic of this period when these declining institutions will basically lose their properties, at least until the end of this situation and the complete and definitive establishment of the next order, and realism will be the immediate remedy for the national human interests of the nation-states.

Conclusion

In the second imposed war on Iran, two nuclear powers officially attacked a country that is a member of the nuclear non-proliferation regime and a member of the Atomic Energy Agency and nuclear power plants under the supervision of the Agency inspectors, and the Agency was unable to defend Iran's rights and even a simple condemnation and a verbal-diplomatic form. Of course, this is a characteristic of this period when these declining institutions basically lose their own properties, at least until the end of this situation and the complete and definitive establishment of the next order, and realism will be the urgent remedy for the national human interests of the nation-states.

Now and in the coming years, the principle of non-recourse to force has been abolished and has been replaced by the principle of resorting to force to pursue national interests. In the atmosphere of the principle of resorting to force and the escalation of hostilities and ultimately bloody all-out wars, human society will undoubtedly face a multitude of war crimes and crimes against humanity, such as genocide and extermination; as was also experienced in the Second World War. What is clear is that in an all-out war, nations cannot be saved from the scourge of horrific crimes by simply resorting to declining international institutions. In contemporary history, we have witnessed that various mechanisms such as the League of Nations failed to protect against crimes and disasters imposed on humans, and this was due to the nature of that particular era. Now, the existing institutions do not have and will not have the power to prevent an all-out war or at least the necessary power to prevent gross violations of the laws of war and respect for

human rights. The land of Iran is facing an objective and significant threat to its survival and that of its people. The fake regime equipped with an atomic bomb and the world nuclear powers such as the United States, Britain and France, which fully support the regime, find themselves in a special situation and opportunity when, in their opinion, they may be able to take Iran and Iranians to task. The talk of the widespread loss of Iranian lives during the Great Famine of World War I due to the passivity and erroneous positions of the then statesmen can be repeated this time with greater intensity and, of course, with the threat of territorial survival and humiliation of national pride and dignity.

In the coming years, which will be a sensitive and important period, only the principle of self-help and maximizing forces and completing the level of deterrence, i.e. equipping with the atomic bomb, testing it, and officially announcing entry into the nuclear club, can save the Iranian people and the territorial integrity of Iran. It is true that the atomic bomb cannot prevent wars 100%, but it can control their intensity and level and reduce the likelihood of the crime of destruction. This would be better than leaving a nation without nuclear weapons alone and defenseless against the almost certain and inevitable attack of nuclear powers, followed by civil wars through the entry of Takfiri movements.

Destruction, as one of the behavioral examples of crimes against humanity, is committed in the context of a widespread or organized attack against a civilian population with knowledge of that attack and is part of a continuous policy of abuse rather than random and isolated acts. Destruction may include acts whose consequences are not immediate, but long-term; such as the indirect lethal effects of radiation from atomic bombing on water, air, soil, etc. on the surviving population as double destruction.

References

1. _Prosecutor's Case against Al-Hassan Aq Abdulaziz at the International Criminal Court, June 26, 2024
2. _Casse, Antonio, Gaeta, Paolo, International Criminal Law, Translated by Hossein Piran, New Press, Third Edition, First Edition, 1401
3. _Henkertz, Jean-Marie, Duswald-Beck, Louis, Customary International Humanitarian Law, Majd Publications, Vol. 1, Ch. 2, 1402
4. _Zaman, Qasem, Khorasani, Reza Shiran, The Distinction Between Destruction as an Example of a Crime Against Humanity and Genocide in the Light of the Statute of the International Criminal Court, Legal Research Quarterly, No. 80, 1396
5. _Zaman, Qasem, Khorasani, Reza Shiran, Destruction through Violation of Human Security, Comparative Law Studies, Volume 9, No. 1, 1397
6. -Shirian Nasel, Maryam, Reflection on the Crime of Destruction in Criminal Law International, Quarterly Journal of International Criminal Law, Volume 1, Number 1, 1402
7. <https://www.law.cornell.edu/wex/extermination>
8. <https://www.icc-cpi.int/court-record/icc-01/12-01/18-2594-red>
9. <https://www.icc-cpi.int/Publications/Elements-of-Crimes.pdf>
10. <https://cld.irmct.org/notions/show/342/extermination>
11. <https://guide-humanitarian-law.org/content/article/3/extermination-1/>
12. Prosecutor v. Jean-PAUL Akayesu, (1998), ICTR chamber 1, Case No. ICTR-96-4-T, Judgment
13. Prosecutor v. Georges Anderson Nderubumwe Rutaganda, (1999), ICTR chamber 1, Case No. ICTR-96-3-T, Judgment and Sentence
14. Prosecutor v. Climent Kayishema and Obed Ruzindana, (1999), ICTR chamber 2, Case No. ICTR-95-1-T, Judgment
15. Prosecutor v. Eliezer Niyitegeka, (2003), ICTR chamber 1, Case No. ICTR-96-14-T, Judgment and Sentence,
16. Prosecutor v. Zdravko Tolimir, (2015), ICTY Appeals chamber, Case No. IT-05-88/2-A, Judgment
17. Prosecutor v. Milomir Stakic, (2006), ICTY Appeals chamber, Case No. IT-97-24-A, Judgment
18. Prosecutor v. Mico Stanisić & Stojan Zupljanin, (2016), ICTY Appeals chamber, Case No. IT-08-91-A, Judgment

19. Aloys Natabakuze v. prosecutor, (2012), Appeals chamber, Case No. ICTR-98-41A-A, Judgment
20. <https://unictr.irmct.org/en/cases>
21. <https://unictr.irmct.org/en/cases/ictr-96-04>
22. <https://ucr.irmct.org/scasedocs/case/ICTR-95-01#eng>
23. <https://ucr.irmct.org/scasedocs/case/ICTR-96-03#eng>
24. <https://ucr.irmct.org/scasedocs/case/IT-98-32#eng>
25. <https://ucr.irmct.org/scasedocs/case/ICTR-96-14#trialJudgement>
26. International Convention on Genocide, 1948
27. Statute of the International Criminal Court, 1998
28. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977