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Mutilation of Dead Bodies a Crime against Humanity

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One of the basic well-established principles in Islamic law is that death has a sanctity and dignity that must be observed, whether the deceased is Muslim or non-Muslim, being one of God's creatures that He Almighty has honored.

In the Noble Qur'an's Sura Isra', Verse 70, Allah Almighty says: "And We have certainly honored the children of Adam ... and preferred them over much of what We have created, with [definite] preference".

Prophet Mohamed, peace be upon him, completely forbade mutilating corpses as an affront to human dignity even if the dead body was for enemy; therefore, the Prophet says in his holy Hadith: "... do not break your pledge; do not mutilate (the dead) bodies; and do not kill the children"

Thus, Islam establishes moral rules for wars that cannot be violated, even in fighting against non-Muslim warriors, including forbidding the killing of children, women, the elderly and the disabled, and also prohibiting mutilation of the fighters' dead bodies after overcoming them.

In public international law and international criminal law, "crime against humanity" is a modern concept that only appeared in the aftermath of World War II when international public opinion was alerted to the atrocities committed during it. On August 8, 1945 the United States, England, France and the Soviet Union signed the London Agreement which became the basis for the trials before the International Military Tribunal at Nuremberg, known as the Nuremberg Tribunal, for trial of war criminals.

Article VI of the Nuremberg Tribunal charter defines crimes against humanity as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated," adding, "Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or

conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.”

Four years after the end of World War II and at the invitation of the International Committee of the Red Cross, the international community approved in August 1949 the four Geneva Conventions. The Fourth Convention addresses the protection of civilian persons in time of war. The Convention consists of 159 articles and is considered part of international humanitarian and criminal law, in attempt to bridge the loopholes in previous agreements and treaties.

Many of the texts of the treaty focused on the issue of protecting the rights of the dead bodies during war, on the grounds that the dead have a “sanctity” that must be observed outside the framework of conflicts and revenge disputes between the warring parties, and according to these articles it is forbidden to treat the dead in an “inappropriate” manner, including taking pictures with them and cutting, mutilating and burning their bodies, stressing the need to bury the dead within the norms.

Article 31 of the Fourth Geneva Convention prohibits the practice of any physical or moral coercion towards protected persons, and also prohibits all measures that would cause physical suffering or extermination of the existing protected persons under its authority, where the matter is not limited to killing, torture, corporal punishment, mutilation, and medical and scientific experiments not required for the medical treatment of the protected person, but also includes any other atrocities, whether carried out by civilian or military agents. “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.”

Article 130 of the aforementioned Convention states that: “The detaining authorities shall ensure that internees who die while interned are honorably buried, if possible according to the rites of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.”

It also states that: “Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect.”

Article 130 further stipulates that "In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request."

Crimes against humanity in the Rome Statute:

On July 17, 1998, 120 countries agreed at a meeting of the United Nations General Assembly in the Italian capital, Rome, on what has been known as the "Rome Statute" and considered it a basis for the establishment of a permanent International Criminal Court (ICC). The statute entered into force from the first of July 2002; and since then, the ICC has the full competence to try individuals in cases of genocide, crimes against humanity, and war crimes.

Part Two of the Rome Statute defines jurisdiction, admissibility and applicable law of the International Criminal Court, as Article V stipulates that: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

The first paragraph of Article VII enumerates the acts that are considered crimes against humanity, including: intentional killing, torture, and enforced disappearance of people. However, this paragraph does not suffice to mention the total of various criminal acts in order not to be mentioned exclusively, but it opens the door to criminalizing any other act that is considered inhumane, as Paragraph (h) of the same article states: "... or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court".

Then the second paragraph of the same article explains the meaning of some of these crimes, describing torture as "the intentional infliction of severe pain or suffering, whether physical or mental,

upon a person in the custody or under the control of the accused”, and defines the enforced disappearance of persons as: “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

Non-applicability of statutory limitations to war crimes and crimes against humanity

The United Nations adopted the “Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity” and opened it for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968, but the Convention entered into force on 11 November 1970.

The Convention preamble states that (the States Parties to the Convention) “Considering that war crimes and crimes against humanity are among the gravest crimes in international law;

Convinced that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security;

Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes; and

Recognizing that it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application; they have agreed ...”

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Article 1 of this Convention states that: "No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

Article IV urges the States Parties to the Convention to make legislative amendments to the internal laws to comply with the provisions of the Convention in a way that prevents any perpetrator of crimes against humanity from escaping with the pretext of the statutory limitations.

It reads: "The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished."

Responsabilité solidaire for crimes against humanity

In application of the principles of criminal legitimacy, the individual criminal responsibility is the basis for punishment which is stipulated in Article 25 of the Rome Statute which states that:

1- The Court shall have jurisdiction over natural persons pursuant to this Statute.

2- A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

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3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court.

However, it also holds a person responsible if he “attempts to commit such a crime by taking action that commences its execution by means of a substantial step...”

But because war crimes and crimes against humanity are dangerous, heinous, and have broad effects, as they threaten the entire international community; therefore, the Rome Statute deprived their perpetrators from immunities granted to them according to the law, which prevents them from being brought to the criminal court, no matter what senior posts they occupy.

Article 2 of the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity stipulates that: “If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.”

Also, for the first time in international law, the Convention establishes the individual criminal responsibility of the head for state’s actions without regard to the official capacity of the perpetrator of these acts. Article VII of the Nuremberg Tribunal Regulation stipulates that: “The official position of the defendants, whether they are Heads of State or responsible officials in Government Departments shall not be considered as freeing them from responsibility or mitigating punishment.”

Persons in official positions of power must therefore prevent their subordinates and those subject to their orders from committing any actions that violate the rules of international humanitarian law, otherwise they shall be subject to accountability and trial for not abiding by this, according to Article 28 of the Rome Statute on the responsibility of commanders and superiors for the actions of their subordinates. The article classified the leaders into two sections,

First: military commanders

that shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under their effective command and control, or effective authority and control as the case may be, as a result of their failure to exercise control properly over such forces, where:

- That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

In order not to apologize for ignorance of the law, international legal provisions obliged military commanders to learn about the rules of international humanitarian law. Article 82 of the Additional Protocol to the Geneva Convention provided for the provision of legal advisors to provide legal advice to military commanders to ensure that the rules and provisions of international humanitarian law are not violated.

Second: non-military leaders

(with respect to superior and subordinate relationships not described in paragraph A) that shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- The crimes concerned activities that were within the effective responsibility and control of the superior; and
- The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

To sum up:

- Enforced disappearance,
- Extrajudicial killing "without a fair trial",
- Mutilation of the dead body "or cutting off parts of the dead body",
- Burning the dead bodies,
- Intentionally hiding the dead person's identity, and
- Reluctance to handing over the dead body to the dead person's kin and burying it in an unknown location,

Are all crimes against humanity that are not subject to statutory limitations, regardless of the time of their commission, and require international trial, where accountability is based on solidarity liability that does not stop at the original perpetrators or participants only, but extends to the agitators, the military commanders and the civilian leaders.