

International Criminal Law and Victor's justice: The Case of Cote d'Ivoire

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Abstract

The article is dealing with the concept of Victor's Justice appeared after the Second World War that instituted the Nuremberg and Tokyo processes against the Nazis regime by the Allied countries. Now the concept is being developed and applied as an example for local conflict with international crimes as that occurred in Cote d'Ivoire. So the case of Cote d'Ivoire is provided as an example.

Keywords: Victor's Justice; International Criminal Law; International Criminal Tribunal; International Criminal Court; use of force by states; ban of the use of force; international crimes.

1. Introduction

The International Criminal Law (ICL) reached an important moment in its history after the Second World War (WW2) as a result of the victory of the allied countries such as France, United Kingdom, Russia, United States of America and others over the Nazis regimes led by Germany [1].

The atrocities committed during the war obliged the International Community to create International Criminal Tribunals to trial the Nazis leaders and other criminals, comprised The Nuremberg Criminal Tribunal and The Tokyo Military Tribunal [2]. Thus, from that moment the practice to trial supposed war criminals have become a tradition for the ICL. As a result Special Tribunals were created e.g. the Special Tribunal for the Former Yugoslavia, the Special Tribunal for Cambodia, the Special Tribunal for Rwanda, the Special Tribunal for Lebanon, the Special Court for Serra-Leone and the Ad-Hoc Court for East Timor.

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Finally a permanent International Criminal Court (ICC) was created by the Rome Statute of 1998. It is important to note that the Nuremberg criminal Tribunal and the Tokyo Military Tribunal tried only the losers of the war, which led to the establishment of these tribunals.

One of the recent cases for such example is the outcome of the Ivorian civil war that erupted after the political crisis of 2002 and particularly in 2010 known as post elections crisis. As a result, only the losers in the conflict are being trialed until now by The National Tribunals as well as the ICC.

The alleged war criminals in ICC custody are The Former President Mr Laurant Gbagbo and his closest adept Mr Charles Ble Goude.

The above situation from the lay point of view calls on the discussion to interpret the trials by the ICC as Victor's Justice [3]. In accordance with the Victor's Justice or La Justice des Vainqueurs [4] exercised by the Nuremberg Criminal Tribunal and the Tokyo Military Tribunal and other crucial examples becomes more and more popular that it is interpreted as the "principle of the ICL": The Principle of Victor's Justice.

1.1. Objectives of this scientific paper

The end objective of this article is:

- to clarify the evolution of the ICL,
- to determine the history of the International Criminal Tribunals and the concept of the Victor's Justice taking into account the situation in Cote D'Ivoire.

2. The evolution of the ICL and the use of force

The concept of the Victor's Justice is the result of many evolution of the international law, particularly The ICL.

2.1. The International Criminal Law and the use of force

The International Law, particularly the ICL for a long time did not prohibit the use of force in international relations between states.

The concept of Victor's Justice before WW2 did not exist in the International Law and particularly the ICL did not prohibit the use of force (the war) in international relations between states as a means of international settlement of disputes. The Hague conventions of 1899 and 1907 simply just regulated the way to conduct wars by limiting the use of the force and means of the war. For instances The Hague Convention of July 1899 was for pacific settlement of international disputes, but did not prohibit hostilities as it declared that "Powers, that are not party in the dispute, have the rights to offer good offices or mediation, even during the course of hostilities" (art. 3.2). Article 7.2.of the same Convention stipulated that if the mediation, occurs after the commencement of hostilities it causes no interruption to the military operation in progress, unless there be an agreement to the contrary.

As a result International Relations were dominated by the concept of The **Jus in Bello** which means the possibility of the states to use war as a means to settle international dispute. In this situation, the ICL just regulated the means of the war [5]. The **Jus in Bello** regulated only the laws and customs of the warfare.

The interesting question from this, is how do states deals with the losers of wars that have been taken place all over the world all the time? There are many answers to this question. Usually on one hand, the losers all this while have been jailed in order to be changed by the parties in war by agreement when reaching friendly settlement of disputes. And on the other hand, the prisoners (or losers) were reduced to slavery or used in the Army in order, to conquer new territories (by antic states for example). Thus, the International Community has never created a special international criminal tribunal to trial losers of armed conflicts before the WW2. Only an International Permanent Court of Arbitration by The aforesaid Hague Convention of July 1899 was created for pacific settlement of international disputes by the Chapter II. This Permanent Court of Arbitration is available up till now. The purpose of the Permanent Court of Arbitration was just to conciliate belligerences that recognize it competences.

2.2. The ban of the use of force or Jus ad Bellum

The dispute about the use of force in international relations continues to create division among scholars. For some of them the current international law did not prohibit the use of the force while others are supporting the contrary.

The most famous Pact on the prohibition of the use of the force in International relations that attracted more states was the Brian Kellogg Pact of 1928. Brian Kellogg's Pact prohibited war between states parties to it. Brian Kellogg treaty consists of renouncing war as an instrument of national policy and urging peaceful means for the settlement of international disputes, which was originally signed in 1928 by: Australia, British India, Belgium, Canada, Czechoslovakia, France, Germany, Irish Free State, Italy, Japan, New Zealand, Poland, South Africa, United Kingdom and United States and others states later joined [6].

It should be noted that the Brain Kellogg Treaty was one of the fundamental argument to try WW2 alleged criminals, because Germany as well as Japan were parties to The Pact. The responsibility of Germany was crucial as not only Brian Kellogg Pact was binding on the country, but also by the Versailles' Treaty as the result of WW1 [7].

The efforts of the League of Nations to prevent the war among states were not successful. Only at the end of WW2 and the adoption of the United Nations (UN) Charter[8] brought in a new international order by prohibiting the unilateral use of force as method for settlement of international dispute. The new international order is determined by the new Principles of the International Law enshrined in the UN Charter by the state parties.

According to The UN Charter "All members shall settle their international disputes peacefully [8]" and "shall in their international relations refrain from the use of force or threat against territorial integrity or political independence of any state, or in any manner inconsistent with the purpose of the UN [8]. All these principles are

part of the common principles of the International Law as well as ICL.

In spite of explicit nature of the Principles, it is important to note that many experts are opposed to the concept of the prohibition of war by the UN Charter and the International Law this is because Chapter VII gives the opportunity to decide if the use of force can apply or not.

Despite the prohibition of the use of the force between states by different international instruments, such as the Brian Kellogg Treaty, the UN Charter and others, still there was no provision on how to prosecute potential international war criminals until the creation of the Nuremberg and Tokyo Tribunals before 1946.

2.3. The History of the International Criminal Tribunals and the concept of the Victory' Justice

The establishment of the international criminal tribunal after WW2 to trial the supposed war criminals, was the first example in the history of humanity, as Leipzig War Crimes Trials was held by the German Supreme Court. This can be depicted as Germany prosecution of Germans war criminals (own citizens) in her territory after the WW1.

Critics on the establishment of the Nuremberg criminal Tribunal and the Tokyo Military Tribunal are legally non-justified, and as a result many scholars considered them as instruments of the victory of the war. Many lawyers found these tribunals as illegal and non-legitimated for many reasons and they considered them as a Victor'sJustice.

Arguments against the creation of both international criminal tribunals are as follows: it has never been created an international instance to prosecute the alleged war criminals; secondly, under which criminal law are they to be prosecuted and under which legal system; thirdly, the violation of the principle of non- retroactivity of the criminal law; fourthly, why there are not indictments against the crimes committed by the allies countries, etc.

For example, as regards crimes committed by allied countries, the postwar trial of German Grand Admiral Karl Dönitz at the Nuremberg Trials in 1946, Admiral Chester W. Nimitz furnished an affidavit in support of the practice of unrestricted submarine warfare, a practice employed throughout the war in the Pacific by the allied countries. This evidence is widely referred to as a reason why Dönitz was sentenced to only 10 years imprisonment [9]. The using of the atomic bomb on Hiroshima and Nagasaki against civilians by the United States has been forgotten, etc.

Twenty-four individuals were indicted, along with six Nazi organizations (such as the "Gestapo," or secret state police) [10] during the Nuremberg Trial. Many accused were sentenced to death and some criminals were given prison sentences ranging from 10 years imprisonment to life. Those condemned to death were executed by hanging on October 16, 1946 [10].

The criminals that were sentenced to death were: Alfred Jodl, Alfred Rosenberg, Arthur Seyss-Inquart, Ernst Kaltenbrunner, Fritz Sauckel, Hans Frank, Hermann Göring, Joachim von Ribbentrop, Julius Streicher, Martin Bormann, Wilhelm Frick, Wilhelm Keitel. And those sentenced to life imprisonments were: Erich Raeder, Rudolf

Hess and Walther Funk. Others that were sentenced to few year imprisonments were: Albert Speer (20 years), Baldur von Schirach (20 years), Baron Konstantin von Neurath (15 years) and Karl Dönitz (10 years).

From the aforementioned list, no one from the allied countries has been tried or convicted in spite of the denunciation of the process as the Victor's Justice. The Tokyo Military Tribunal (TMT) has indicted 28 persons including dignitaries of the Japan Empire solely without the King. The TMT is not exempted from this accusation of the Victor's Justice.

The sad story of these processes is that no one from the victory camp has been prosecuted, in spite of many facts and evidence of violations of laws and customs of the war. In these cases, the use of atomic bomb in Japanese cities with million civilian casualties constitutes war crime that have never been committed anywhere in the world. After the trial of WW2 criminals by Allied countries, the creation of such Tribunals continued around the world. If the legality of the WW2 criminal Tribunals were contested by many scholars as a Victor's Justice on one hand, on other hand those created afterwards were largely conformed to the International Law, International Criminal Law and Human Rights Law as well as they were created on the basis of the new international order founded on the basis of the UN Charter.

Hence, all the international criminal courts were then established exclusively under Resolutions of the UN Security Council on the basis of the Chapter VII of the Charter. The Article 39 of the same Charter states that the UN Security Council may take all means and measures in order to maintain or to restore international peace and security [8]. For this purposes and on this basis the UN Resolutions created The Special Tribunal for The Former Yugoslavia[11], The Special Tribunal for Cambodia[12], The Special Tribunal for Rwanda[13], The Special Tribunal for Lebanon[14], The Special Court for Serra-Leone[15] and The Ad-Hoc Court for East Timor [16].

As result, only in 1998 the International Community reached an argument on the establishment of a permanent International Criminal Court (ICC) on the basis of the Rome Statute [17], which entered into force in 2002. Thus, the WW2 constituted the beginning of the history of the creation for international criminal tribunals around the world.

From this point of view, the history of the international criminal tribunals can be interpreted in two ways. The first interpretation is that it gave a good signal that in future, those who are attempting to commit international crimes, such crimes as crime of genocide, war crime and crime against humanity. These persons concern could be prosecuted by an international criminal tribunal specially established for this purpose or by the ICC. The second point is that the history of the creation of the International criminal tribunals has taint of many infringements on the existing International Criminal Law. This situation opened the way to another interpretation of the concept of the Victor's Justice as a principle of the international criminal law by lay people.

3. The Victor's Justice and the case of Cote d'Ivoire

Côte d'Ivoire is a West African country that for long time has been considered as a model for stability and development in Africa after the granting independence from the former colonialpower (France). Unfortunately,

from 2000 to 2010, the country was involved in a civil war that has resulted to the death of many thousand civilians. It recorded more than 3000 civilian deaths for the only period of 2010 to 2012 after the general presidential election under the auspice of the UN which was opposed by the Nation Popular Front (FPI) with its leader the former President Laurant Gbagbo and the Republican Assembly Party (RDR) under the rule of the current President Alassane Dramane Ouattara.

For more information about the Ivorian crisis, it is important to note that, in 2002 took place a push that thwarted by national armed forces. As a result the state was divided in two parts. The North was occupied by the opposition, under the leadership of Soro Guillaume the current Chairperson of the National Parliament with his mentor the President Alassane Ouattara and the South by the President Laurant Gbagbo.

The Agreements of Ouagadougou [18] between both sides open the way for a general election but without disarmament of rebels that controlled the North part of the country ruled by the opposition. So after the General presidential election that has opposed both leaders and after the proclamation of the results, each side claimed victory. As a result, there was serious armed conflict between both sides. The President Laurant Gbagbo and many members of his camp whose legitimacy was contested by the international community were arrested in 2011 by a branch of the divided national armed forces with the support of France armed forces operating under the auspices of the UN forces. Without concentration on the political dispute of who really won, let pay particular attention on the outcome of the civil war in terms of crime against humanity, war crime and allegations of human rights violations.

The ICC during the hostilities indicted President Laurant Gbagbo and his camp for committing international crimes. After his arrest, he was transferred to ICC in Hague in November 2011 for custody. One of the closer partner of the President Laurant Gbagbo, a Former Minister Charles Ble Goude was also transferred in March 2014 to the same Court for custody. Laurent Gbagbo and Charles Blé Goudé are accused of four count charges of crimes against humanity: murder, rape, other inhumane acts or – in the alternative – attempted murder, and persecution, allegedly committed in the context of post-electoral violence in Côte d'Ivoire between 16 December 2010 and 12 April 2011 [19]. Another warrant was also issued for the same charges against Simone Gbagbo the wife of Laurant Gbagbo and the Former first Lady [19]. It should be noted that according to recent information the Government of Cote d'Ivoire decides to trial Simone Gbagbo in the National Court without her transfer to the ICC in Hague.

On the other hand, it is important to note the massive process against the pro Gbagbo camp going on in Côte d'Ivoire at the National Court were more than 82 persons [20] are prosecuted including the wife and the son of Laurant Gbagbo Mr Michel Gbagbo and other former military and political dignitaries.

Violence perpetrated by both sides during the short period of 2010 to 2011 resulted in approximately 3,000 deaths, significant number of populations were displaced, tortured, sexual abused, widespread destruction of property [21], etc.

As mentioned above, gross violations of human rights were committed by both parties of the conflict.

Unfortunately, as observed above there is only one side of the conflict that is being prosecuted by the National Court as well as by the ICC.

4. Conclusion

As conclusion, the winner of the armed conflict between the camp of the former President Laurant Gbagbo and the current President Alassane Dramane Ouattara was the opposition party ruled by the last one.

The victory of the opposition party has led to the exercise of the Victor's Justice on the losing camp as it happened after the WW2. Taking into account the examples of the history of the international criminal justices, it obviously sad that the Victor's Justice continued to be exercised not only at international level but also as principles for settlement of local international crimes. It should be noted that Victor's Justice has never been a principle of ICL and cannot be used as a pretext for justice for international crimes whatever degree of international crimes committed during local armed conflicts as well as for international armed conflicts. In this case, both sides that were involved in the Ivorian crisis must be prosecuted as there are serious evidences of international crimes committed by both sides.

5. Future

There must be an accountability for committing international crime what ever crimes have been commeted during inteternational armed conflicts as well as internal.

Aknowledgements

The victor's Justice is not a priciples of ICL

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