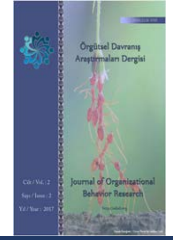




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STUDYING HOW TO REPAIR DAMAGES TO VICTIMS OF INTERNATIONAL CRIMES IN INTERNATIONAL CRIMINAL COURT

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ABSTRACT

After the first and second world wars, as the international law was not yet very strong, naturally, the important issue of the position of victims and repairing the damages to them and compensation of their losses have not yet been a major concern. In the meantime, the talk of international circles rather than enforcing the justice was the punishment of international wars criminals. After the periods of cold war and occurring the killings in Bosnia and Herzegovina and then, establishment of international court tribunal for the former Yugoslavia and then, Rwanda genocide and establishment of the second special international criminal court, in spite of silence in the statute of both courts about the rights of victims and repairing damages to them, Rwanda local law along with organic law 1996 and formation of Gacaca courts somewhat symbolically have given attention to the rights of victims and enforced the rules in order to repairing damages. After, by universal consensus on the Rome statute and formation of international criminal court, the rights of victims went one step further. The attention was given to the right of participation in the proceedings, right to be protected and finally the right to enjoyment of reparation and compensation. Thereafter, the victim will have the right to claim compensation but he is not a party in the claim, instead, he can submit his request in the proceedings. Today, the reparation and repairing damages to victims has opened both its place in the proceedings and has become the institution which can be like a punishment or a hybrid tool with its own specific functions.

Keywords: *Reparation, International Criminal Court, Special International Criminal Court*

INTRODUCTION

Now, for protectors of criminal law, reparation and compensation of damages to victims of international crimes has importance. This has led to greater consideration in the subject of compensation of damages to victims in the field of international law and in the cases of plight of them. (Draft Statute, 1994) In this regard, the international law commission acknowledged that to clarify the issue and the distinction between the punishment for reparation and other penalties, non-custodial sentences are related to civil law field rather criminal law field. According to this commission, it is more reasonable to invest these crimes to domestic courts and related international agreements. (Bassiouni, 2006)

it means that these kinds of punishments are placed between the civil and criminal scopes. In regarding to the relationship between the reparation and punishment, the other had said that: the history of relation between the reparation and punishment indicates a gradual separation that led to differences between both of them. But, our time is heavily sensitive to the rights of victims and development of restorative justice. (Dixon et al., 2011)

Recently, a very serious movement as title “restorative justice” was born in USA.

On the other hand, in French, the new criminal amendments has been predicted as “sanction-reparation”, that are based on commitment of obligator to pay Compensation to victim in a specific time and under the defined methods by court (Fischer, 2003). Using of title “reparation in favor of victims” in the article 75 of statute of international criminal court is interesting. However, this article has not been placed in the chapter relate to punishments, but, we can talk about criminal dimensions of this policy in the international law.

The victim in international criminal law has a complicated and contradicted role and actually, it is not what we seen in domestic law. Some of national laws allow that in order to obtain compensation, a victim to be considered as a party in the criminal procedure or private plaintiff. But at the level of international law, such a thing has not yet been foreseen. (Rouzbeh, 2006)

Nonetheless, now, reparation or pay compensation to victims is one of the worrying concerns of international jurists and international criminal law. On the other hand, the globalization movement of criminal law led to a revolution in traditional views that effort to separate the scope of criminal law from civil law. So, hereafter, the criminal law has a strong tendency to blame the crime in ways close to civil law.

The first speech: reparation in the international criminal law

The international law requires the countries to predict the reparation and compensation of victims of serious violence of humanitarian law. Primarily, the rule of repairing damages resulting of war as a concept after World War (Glickman, 2004) enters into international law. This means that the above-mentioned rule determine the amounts that a victorious country, as repairing damages and war costs, impose on the defeated country. The issue of reparation is an important chapter of international customary law and based on the convention. In the other words, the crimes such as genocide, slavery or aggression that has been condemned by international public law and international criminal law, has been committed more and more. (Happold, 2007)

The unlawful conducts and contrary to international commitments, is separated by characteristics such as being severe and causing harm to international community. However, the base of reparation by a state that violates its obligations may be the crimes committed by that state¹. In the other words, if a state breach the international humanitarian law or international human rights, then, commitment to reparation can not impose on the other state. This rule has been recognized also internationally, so that it can be called a comprehensive commitment. It means that the repaired damage involve all of physical and intellectual damages resulting of the lawful act or omission internationally. Permanent court of international justice (PCIJ) in this regard states:

the basic principle resulting of concept of unlawful act and is based on international tradition is: repairing damages so that remove all of the effects and consequences of unlawful act and provide the same position that there would be have if the unlawful act was not committed. In this regard, we can pay attention to instances:

First, the history of World War and other that has been considered recently is a dispute that about reparation of damages to Bosnia and Herzegovina has been brought by Serbia.

¹ - QNEGHINGR, Jean-francois, op.cit, p.50- 51



A) After the World War 1

With the end of World War, the world was confronted with a number equivalent to 5 percent of the civilization victims that needed to receive and repair damages. In this period, each country strengthened its relations with the like-minded and teammate countries to able to oblige the others to pay its own compensations (Deperchin, 2004). At the same time, the concept of “war victim” emerged in legal literature. So that, at the time of Versailles treaty at 2 June 1919, the issue of repairing damages in the framework of international law became concern of the involved countries in war. So that, in the eighth section of treaty, was paid attention to “reparations” that included the general and specific regulations. Principally, under the articles 232-231 of this treaty, Germany was responsible due to committing military aggression and subsequently, was obliged to repair and compensation of damages to victims. Article 321 in this regard expressly states:

the allied and associated governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damages to which the allied and associated governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies and then, in the subsection 2 of article 232 states:

Germany accepts all of responsibilities of “reparation of damages to civilizations of the allied and associated governments.

The document an *The second speech: the issue of reparation in law of international criminal courts:*

In this field, the issue we are discussing is in terms of resources and legal texts organized more that the previous one. Therefore, there are several legal texts that always emphasize on imposition of damages resulting of violation of international law to countries regarding their relations with persons (Dubuis, 2003). In these cases, the universal declaration of the human rights has foreseen the right to resort to constitution or ordinary law against the actions that violate recognized rights. Also, international convention of civil and political rights oblige the countries to guarantee “useful resorting” about violation of the rights and freedoms and secure applying this kind of resorting. When the UN human rights committee was still active, given its power of interpretation and oversight over its members in the international conventions of civil and political rights emphasized and reaffirmed the countries commitments to ensure the safety of the reparation. (Fourcans, 2007)

The article of European convention on human rights, in the cases that the domestic law of obliged party does not issue the permission and possibility of completely removing the results of the recognized violation by the court, affirms a kind of balanced or fair violence. Also, the American convention on the human rights allow the American court of human rights as the case may be to issue a warrant, repair and pay compensation to victims as regarding the results of the adoption of measures leading to human rights abuses. The resolutions of UN commission on the human rights always emphasized on the cases of the massive and widespread human rights violations: including of: the declaration relate to the rights of victims resulting of crimes or abuse of power issued in 1985, as well, declaration relate to the right of repairing damages to victims resulting of violate the human rights or international humanitarian law in 2005. ²

² Doc.: E/CN.4/2005/59



Also, the Durban conference that was held on the reparation of the vicious results of slavery, enslavement and racist colonialism in 2001, and approved the declaration and plan of action, by focusing on the role of domestic legislations and necessity of pay attention to domestic law systems, highlighted the issue of reparation and pay compensation to victims. (Pierre, 2008) However, these resolutions are not binding, but, they are used as essential material for justifying the rules and judgments of international criminal and non-criminal court. The figure depicted on the issue indicates the dynamics of this institution. (Brown, 2004) But, our purpose is to give value to this institution in the logic of criminal law and accept it as a criminal institution in the international criminal field so that we can put it as one of the punishments on the legal punishments list. This institution has appeared in the gradual and different stages, as follow:

in the first stage, at the time of New York and Tokyo courts, then, at the course of contemporary international criminal courts and finally, PCIJ that created the strong capacity to develop the rights of victims. (Boisson de Chazournes and Heathcote, 2004)

CONCLUSION

In one of the definitions of restorative justice, known it as a form of punishment based on compensation. Here, the compensation means attempt to repairing the horrific effects of crime and its resulted losses and damages, completely or symbolically. This definition and other ones indicate that we have to pay attention to reparation and compensation of damages to victims of international crimes in the scope based on the above-mentioned school teachings. After the silence in the statute and legal texts of international special criminal courts about rights of victims and repairing damages to them, now, with a more serious examination of the statute of court on the issue and the developments seen in national laws about reparation and compensation damages, it is time to organize a special criminal-legal regime in order to repair damages to victims of international crimes.

Due to the silence of the statute of Rwandan international criminal court, resorting to the applied model in Gachacha local law system each of which has its own functions. Perhaps, the more reasonable way is integrating and developing the conceptual scope of the solutions contained in the statute of international criminal court. The fundamental feature of the evolution about rights of victims in court in the first place is separation between position of witness, that always existed and victim. The latter sometimes attends in the proceedings for imposing damages on him and become in a comparative way the subject of international criminal justice. However, although the court has accepted the rights of victims in various forms, but is not sufficient. The next step can be reform the regulations of procedure law and evidences based on accepting victim as a party in litigation. This rule exclude the victim of the shortage and when he feel violate his rights, can brought the claim.

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