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## CRIMES AGAINST HUMANITY – IN PURSUIT OF AN INTERNATIONAL CONVENTION

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### ABSTRACT

The article is an argument in a discussion on a need to adopt a specialized convention on crimes against humanity. It starts with a brief historical overview of the concept starting from its origins in 1915, its milestone – the 1945 London Charter, the Genocide Convention, International Criminal Tribunals for former Yugoslavia and Rwanda and finally the Rome Statute of the International Criminal Court. Further the article presents arguments speaking in favour of a specialized convention. The arguments are divided in two categories – the first of them relate to the insufficiency of already existing legal instruments such as the Hague Conventions, the Genocide Convention and the Apartheid Convention. The other is the legal framework of the International Criminal Court including its subsidiary and complimentary role towards national jurisdictions as well as lack of provisions enabling and enforcing international cooperation in prevention, prosecution and punishment of crimes against humanity.

**KEY WORDS:** crimes against humanity (concept, history), the London Charter, the Genocide Convention, the Geneva Conventions, International Criminal Tribunals, the Rome Statute, the International Criminal Court, insufficiency of existing legal instruments.

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The leitmotif of this volume of “*Studia Erasiana*” is the law of life and death. Allow me therefore to present in this place a noteworthy but an alarming statistics, according to which from the end of World War II until 2008 some 313 conflicts of various types took place worldwide, in which the number of casualties is estimated between 92 and 101 million<sup>1</sup>.

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1 Christopher Mullins, *Conflict Victimization and Post-Conflict Justice 1945–2008*, in: M. Cherif Bassiouni (ed.), *The Pursuit of International Criminal Justice: A World*

The vast majority of these victims were members of civilian population and almost all of them are likely to fall within the meaning of crimes against humanity. Until this day, the international community has nevertheless failed to adopt a specialized convention in this domain. This article thus, is an argument in discussion on why this enterprise deserves to be undertaken and completed.

According to some reliable reports<sup>2</sup>, the very earliest citing of the term “crimes against humanity” (further “CAH”) can be traced back to 18th century France and the works of Voltaire who used it however in a philosophical rather than legal sense. Nevertheless it is possible to come across the expression studying various documents in different languages from late 18th throughout 19th century, especially with regard to slave trade and slavery in general<sup>3</sup>. The very first time however, the term CAH came up as an issue of general concern in international politics and law was on May 28, 1915 when the governments of Great Britain, France and Russia issued a joint declaration exposing the massacre of the Armenian population in Turkey as “crime against civilization and humanity” for which the members of Turkish government ought to be held responsible<sup>4</sup>. Undoubtedly the Declaration had been driven by the enormity of the crime committed by the agents of Turkish government on the Armenian civil population but that very fact has later proved to be fatal for the further legal development of the notion. The novelty of this situation namely was that the atrocities were committed by citizens of a state on their own fellow citizens and not on the citizens of another state. That in result led the 1919 Versailles Commission investigating the wartime conduct of the Central Powers to a conclusion that the above mentioned atrocities on Armenian population did not constitute a war crime since the 1907 Hague Convention applied exclusively to state combatants representing opposing states in their action against their opponent’s combatants and

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*Study on Conflicts, Victimization, and Post-Conflict Justice*, Vol. 1, Intersentia Publ., Antwerp, 2010, p. 67.

2 William Schabas, *Why Is There a Need for a Crimes Against Humanity Convention?* *Studies in Transnational Policy* 2012, no. 44, p. 261.

3 *Ibid.*

4 Egon Schwelb, *Crimes Against Humanity*, *British Yearbook of International Law* 1946, no. 23, p. 178, 181. See also: M. Cherif Bassiouni, *Revisiting the Architecture of Crimes Against Humanity*, in: Leila Nadia Sadat (ed.), *Forging a Convention for Crimes Against Humanity*, Cambridge University Press, 2011, p. 45.

civilian population<sup>5</sup>. There was however a general consent at that time, that the unprecedented nature of the victimization with respect to Armenian minority in Turkey as well as its obvious link with the World War I, justified an extension of the idea of war crime (as in 1907 Hague Convention) to this type of purely internal conflict. Following this logic, the Commission concluded that this type of conduct ought to be recognized as a “crime against the laws of humanity” wherein this was not an *ex cathedra* establishment of a new crime but merely a legal extension of an already existing international crime, with a intent of covering a so far unprotected civilian population<sup>6</sup>. This notion as well as bringing to justice those who committed the discussed “crimes against civilization and humanity” were supposed to be one of the foundations of the Treaty of Sèvres, which was unfortunately never ratified. However, in succeeding Treaty of Lausanne, the provisions were not incorporated<sup>7</sup> and thus international community missed an opportunity to establish a major juridical precedence, which proved to have troublesome consequences some 23 years later in Nuremberg. That however does not alter the fact, that for the first time in history, the criminal responsibility for violating “laws of humanity” had actually been recognized even though the prosecution of the perpetrators had eventually been dismissed. The idea of CAH came back with a striking force after the World War II. The victorious Allies found themselves in the very same situation they were in 1919 – the facts were overwhelming but international law was incomplete and definitely not prepared to properly address the enormity of harm. Having that in mind, the four leading victors of the war elaborated and signed on August 8, 1945 The London Agreement which appended Charter established foundations for the prosecution of major war criminals before the International Military Tribunal at Nuremberg<sup>8</sup>. Subsequently the Tokyo Charter did the same in 1946 with respect to prosecution of major Japanese war criminals who were later prosecuted and tried before

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5 M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application*, Cambridge University Press, 2011, p. xxix.

6 *Ibid.*

7 For more about attempts to try and punish the perpetrators of Armenian Genocide and politically motivated decisions to abandon this initiative, see: M. Cherif Bassiouni, *Crimes Against Humanity: Historical...*, p. 91–95.

8 M. Cherif Bassiouni, *Crimes Against Humanity: The Need for a Specialized Convention*, Columbia Journal of Transnational Law 1994, no. 31, p. 459.

the International Military Tribunal for the Far East in Tokyo. Although efforts had been made to conduct the proceedings in strict accordance with principles of legality, both Tribunals received a lot of criticism<sup>9</sup> based on two fundamental considerations: the violation of principles of legality by establishing an *ad hoc* law and applying it retroactively and secondly performing the newly enacted norms to the vanquished exclusively which earned it a mock name of “victor’s justice” (germ. *Siegerjustiz*). It is by no means the purpose of this article to determine whether these doubts were justified, thus let us just recapitulate it with a conclusion that adopting a convention on CAH would most likely prevent future proceedings from that sort of criticism.

Due to the Cold War and subsequent competition of two major superpowers of the world, the further development of a notion of CAH as well as whole business of criminal prosecution went into a sort of hibernation starting late Forties and was not revived until the first half of the 1990s. Some instruments adopted within that period did however contain proscriptions regarding CAH. The most significant of them, in chronological order were:

- Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity of December 20, 1945<sup>10</sup>,
- The 1948 Convention on the Prevention and Punishment of the Crime of Genocide<sup>11</sup>,
- Report of the International Law Commission to the General Assembly of July 29, 1950<sup>12</sup>,
- The International Law Commission Draft Code of Offences Against the Peace and Security of Mankind of 1954<sup>13</sup>,

<sup>9</sup> See *i.a.* Hans Erhard, *The Nuremberg Trail Against the Major War Criminals and International Law*, American Journal of International Law 1949, no. 43; August von Knieriem, *The Nuremberg Trials*, Henry Regnery Comp., Chicago, 1959; Gordon Ireland, *Ex Post Facto from Rome to Tokyo*, Temple Law Quarterly 1947, no. 21; Richard H. Minear, *Victor’s Justice: Tokyo War Crimes Trail*, Princeton University Press 1972.

<sup>10</sup> Official Gazette of the Control Council for Germany, 1946, available at: <http://avalon.law.yale.edu/imt/imt10.asp>, accessed: 24.04.2013.

<sup>11</sup> Adopted by the United Nations General Assembly on December 9, 1948 as a Resolution 260 (III) A, available at: [http://www.oas.org/dil/1948\\_Convention\\_on\\_the\\_Prevention\\_and\\_Punishment\\_of\\_the\\_Crime\\_of\\_Genocide.pdf](http://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf), accessed: 24.04.2013.

<sup>12</sup> 2 Yearbook of International Law Commission, 1950, p. 376.

<sup>13</sup> Available at: [http://legal.un.org/ilc/texts/7\\_3.htm](http://legal.un.org/ilc/texts/7_3.htm), accessed: 24.04.2013.

- The 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid<sup>14</sup>,
- The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>15</sup>.

Moreover, following the outburst of the Yugoslavian conflict in 1991 and atrocities in Rwanda in 1994, the Security Council adopted Statutes of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda in May 1993 and in November 1994 respectively. Both Statues contain provisions regarding individual criminal responsibility for perpetrating CAH. Last but not least, there is a declared milestone of international criminal law, namely the 1998 Rome Statue establishing the International Criminal Court and providing perhaps the most comprehensive and certainly the longest definition of CAH so far (in its Article 7).

This historical evolution of the concept of CAH, arduous and slow as it has been, has not yet reached its final and satisfactory form. Its crucial legal elements such as nature and scope of application still remain unsettled. The more so, as there are as many as twelve different definitions of CAH in various international legal instruments<sup>16</sup> including those mentioned above. Having that in mind, there should be no doubt that there is a certain inconsistency in the fabric of international law with respect to CAH. One might of course ask whether international community does need a homogenous and consistent regulation of CAH at all? Well, let the numbers speak for themselves: according to some elaborate calculations, some 313 conflicts of various types took place worldwide from the end of World War II until 2008, in which the number of casualties is estimated between 92 and 101 million, most of whom were members of civilian population<sup>17</sup>. Less than 1% of the perpetrators of

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<sup>14</sup> Opened for signature and ratification by the United Nations General Assembly on November 30, 1973, available at: <http://www1.umn.edu/humanrts/instree/apartheid-supp.html>, accessed: 24.04.2013.

<sup>15</sup> Adopted by the United Nations General Assembly on December 10, 1984, came into force on June 26, 1987, available at: <http://www.hrweb.org/legal/cat.html>, accessed: 24.04.2013.

<sup>16</sup> M. Cherif Bassiouni, *Crimes Against Humanity: The Case for a Specialized Convention*, Washington University Global Studies Review, Vol. 9, Issue 4, 2010, p. 583 and text accompanying note 44.

<sup>17</sup> Christopher Mullins, *Conflict Victimization...*, p. 67.

these crimes have been brought to justice for the selective prosecutions have only taken place in 53 of the 313 conflicts identified by the study, which represents merely 17% of the total number of mentioned conflicts<sup>18</sup>. The most horrifying however is the growing ratio of civilian to military victims of the conflicts. The World War I, proclaimed as “the war to end all wars” produced a victimization of some 20 million people, most of which were combatants whereas civilian deaths, in general were collateral consequences of war<sup>19</sup>. Then World War II followed with all its calamity, havoc and an overwhelming number of 40 to 60 million victims, mostly non-combatants<sup>20</sup>. Eventually by the end of 20th century the ratio of civilian to military victims soared to an alarming average of 9000 to 1 with a vast majority of them as a result of acts falling within the meaning of CAH<sup>21</sup>.

Let us therefore recognize the above mentioned death toll as a first and fundamental reason to demand adopting a positive law with a main purpose of protecting civilian population in all types of conflicts from potential harm resulting from acts of CAH. There are other vital reasons to promote adoption of such an international convention, all of them however stem from one fundamental cause, namely an apparent insufficiency of *lex lata* with respect to aforementioned acts.

Originally, the 1949 Geneva Conventions with the amendment protocols (especially the Protocol II of 1977) were believed to be a body of law dedicated and prepared to adequately address the issues of humanitarian protection. But as it often happens, the reality proved to be too intricate hence the provisions of the Conventions turned out to leave an alarming impunity gap. That is predominantly due the fact, that they apply to certain circumstances and certain legal entities exclusively. For instance they do not accurately extend their protective measures to civilian populations in conflicts of a non international character as well as in purely internal civil conflicts<sup>22</sup>. The background of this situation is more of a philosophi-

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18 Nadia Bernaz, Remy Prouveze, *International and Domestic Prosecutions*, in: M. Cherif Bassiouni (ed.), *The Pursuit...*, p. 269.

19 M. Cherif Bassiouni, *Crimes Against Humanity: Historical...*, p. 1.

20 The exact number depending on the source, see: *ibid.*, p. 650; Gerhard L. Weinberg, *A World at Arms: A Global History of World War II*, Cambridge University Press 2005, p. 894.

21 M. Cherif Bassiouni, *Crimes Against Humanity: The Case...*, p. 581.

22 M. Cherif Bassiouni, *Crimes Against Humanity: The Need...*, p. 476.

cal than strictly legal nature. The Geneva Conventions were primarily conceived as an instrument to regulate various aspects of armed conflicts, including *i.a.* warrants and prohibitions regarding humanitarian conducts of parties to the conflict, whereas CAH should be seen as “politics gone horribly wrong”<sup>23</sup> in the sense, that they are committed by organized political groups with a primary aim to commit acts of violence on victims due their membership in a group or population rather than their individual characteristics or being a party to some kind of a conflict<sup>24</sup>.

Another international legal document containing provisions related to CAH is the 1948 Genocide Convention<sup>25</sup>. Its legal framework has some very significant limitations however. According to Article 2 of the Convention, offences must be accompanied by specific intent of destroying a protected group in whole or in part. This definition unequivocally excludes situations where the required intent does not exist. Perhaps one of the best examples of how incredibly high standards of proof this specific requirement imposed, is that a UN Commission of Inquiry on Darfur could not find the requisite intent<sup>26</sup> even after more than 100'000 deaths and systematic bombing of Darfuri villages by Sudanese Air Force<sup>27</sup>. The other critical limitation of the Genocide Convention is the list of entities protected. Again, the Article 2 of the Convention mentions *expressis verbis* national, ethnic, racial and religious groups. Hence, it does not protect social groups, political groups and a whole range of conceivable groups and individuals who might need an international legal protection<sup>28</sup>. The most horrific practical example of the consequences this loophole in the framework of the Convention might entail, is probably the case of Khmer Rouge rule in Cambodia. From 1975 to 1979, the regime intentionally annihilated an estimated number of 1,7 to 2,5 million people, out of

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23 David Luban, *A Theory of Crimes Against Humanity*, Yale Journal of International Law 2004, no. 29, p. 108.

24 *Ibid.*

25 See: note 11.

26 International Commission of Inquiry on Darfur, *Report to the Secretary General*, Geneva (25 Jan. 2005), p. 4, available at: [http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf), accessed: 24.04.2013.

27 Gregory H. Stanton, *Why the World Needs an International Convention on Crimes Against Humanity*, in: Leila Nadia Sadat (ed.), *Forging a Convention...*, p. 353.

28 for a interesting explanation of the motives of the four Powers negotiating the Convention, see: William Schabas, *Why Is There a Need...*, p. 262–267.

total population of 7 million Cambodians<sup>29</sup>. Irrespective of all the overwhelming scale of this tragedy, the Genocide Convention had absolutely no legal application in the killing fields of Cambodia due the fact that the regime attacked groups based on a social and political criterion, which the Convention does not refer to. This is probably one of the reasons, for which the Genocide Convention has earned itself an opinion of being emasculated of its preventive muscle<sup>30</sup>.

The 1973 Apartheid Convention is another international legal instrument covering crimes related to CAH<sup>31</sup>. Unfortunately its scope of application is restrained due to specific intent requirement imposed by its Article II, which recognizes particular acts as crimes of apartheid provided that they are “committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons”<sup>32</sup>. For that reason exclusively, not to mention another, the Apartheid Convention must also be deemed as insufficient instrument to properly address the issue of CAH.

At a diplomatic conference in Rome, on 17th of July 1998 an international convention was adopted, which by some was believed to be a milestone in development of international law. The convention established the International Criminal Court (further ICC) and recognized core international crimes within its jurisdiction, among of them, CAH. It should be stated however, that the framework of the Rome Statue as well as legal nature of the ICC render them incapable to cope with CAH independently, without support of a dedicated convention. There are several major reasons of this state of affairs. The first and perhaps most obvious is that the jurisdiction of the ICC is essentially limited to the territory and nationals of its state parties (Article 12.2 of the Rome Statue of the International Criminal Court<sup>33</sup>), except when there is an *ad hoc* acceptance of jurisdiction pursuant to Article 12.3 or a United Nations Security Council referral under Article 13.b<sup>34</sup>.

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29 Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide*, Texas Tech University Press, 2005, p. 118–120.

30 Gregory H. Stanton, *Why the World Needs...*, p. 353.

31 See note 14.

32 *Ibid.*

33 Available at: [http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655e-b30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655e-b30e16/0/rome_statute_english.pdf), accessed: 24.04.2013.

34 *Ibid.*, see also: Kai Ambos, *Crimes Against Humanity and the International Criminal Court*, in: Leila Nadia Sadat (ed.), *Forging a Convention...*, p. 295.

Having in mind that more than half of the people in the world are citizens of countries that are not parties to the ICC, allows us to better understand why the international community is in desperate need of a discussed convention. Another reason that may speak in favor of a specialized CAH agreement is the complementarity of the ICC and its accessory role toward national jurisdictions, which means the states can successfully obstruct ICC's aspirations in this respect, as long as they are able and willing to prosecute CAH by themselves<sup>35</sup>. It is noteworthy however that such a solution is fully eligible because the ICC was never meant to replace the national judicial systems in the first place. National courts should always be the primary place where both internal as well as international law is enforced<sup>36</sup>. The problem though is that the Rome Statue does not impose any explicit obligation on its State Parties to outlaw CAH under their own national law, which again results in a considerable impunity gap. This is another reason why a specialized convention on CAH is necessary, provided that it would extend the rule of law in this regard into the laws of states around the world and not only members of the ICC<sup>37</sup>.

Further investigation of the ICC Statue reveals subsequent loopholes in its legal framework which the proposed convention is supposed to clear out. Although CAH are generally recognized as *mala per se*<sup>38</sup>, there is no agreement among authorities whether there is any implicit obligation in the existing treaty law to prosecute them<sup>39</sup>. The Rome Statue recalls in its Preamble, that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes"<sup>40</sup> but this obligation is not contained *expressis verbis* in any of the operative provisions of the Statue. In another words, the ICC does not have the authority under the Rome Statue to order states to open investigations or prosecute CAH domestically<sup>41</sup>. Given the resource limitations of the ICC, the conceivable practical

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35 *Ibid.*, p. 296.

36 Gregory H. Stanton, *Why the World Needs...*, p. 354.

37 *Ibid.*, p. 356.

38 for philosophical foundations of condemning CAH in various cultures, see: M. Cherif Bassiouni, *Crimes Against Humanity: The Need...*, p. 488.

39 See: Norman Geras, *Crimes Against Humanity: Birth of a Concept*, Manchester University Press, 2011, p. 33.

40 See: note 33.

41 Payam Akhavan, *The Universal Repression of Crimes Against Humanity before National Jurisdictions*, in: Leila Nadia Sadat (ed.), *Forging a Convention...*, p. 30.

consequence of legal status presented above, is that a few “big fish” may perhaps be prosecuted by the ICC (unless of course they are citizens of one of the state parties or commit their crimes on the territory of a state party), whereas the “small fries” may commit CAH with impunity as long as they will not be prosecuted by national courts<sup>42</sup>, which in some states potentially vulnerable to social unrest and resulting victimization, seems very unlikely.

Last but not least, the “value added” of an international convention on CAH would be establishing a platform for interstate cooperation. Notwithstanding the fact, that currently 122 states are members of the ICC, the Rome Statue does not contain provisions imposing any inter-state cooperation in connection with the crimes within the jurisdiction of the ICC. The main line of legal structure of the Statue is vertical – it establishes relations between the ICC and its states parties. It does not apply to non-states parties, nor can it be applied between states parties and non-states parties<sup>43</sup>. What it means in practice is that the states parties have an obligation to the ICC only in the event of ICC undertaking an investigation or prosecution with respect to CAH. But for those states parties which have not adopted national implementing legislation there is neither an obligation to prosecute acts of CAH nor to extradite those responsible for it to another state party which actually adopted relevant legal regulations. What is missing thus, is a legal platform for horizontal relationships between states parties to the Statue as well as states parties and non-states parties. A platform which would enforce on states (regardless of whether parties or non-parties of the ICC) the prosecution of CAH and if not, than at least extradition of those responsible for them to states which will carry out prosecution and trial. Such a legal platform would also be a connecting link between the ICC and its non-state parties and a juridical incentive for international cooperation in the field of prevention, investigation, prosecution and punishment of alleged perpetrators of CAH. In another words, a specialized convention would complete the missing links of a legal framework designed to increase the accountability for acts of CAH and thereby diminish the impunity gap that currently exists<sup>44</sup>.

As has been stated above, CAH both as a moral issue as well as a legal category are widely condemned and rejected by all major religious

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42 Gregory H. Stanton, *Why the World Needs...*, p. 354.

43 M. Cherif Bassiouni, *Revisiting the Architecture...*, p. 58.

44 M. Cherif Bassiouni, *Crimes Against Humanity: The Case...*, p. 589.

and philosophical systems of the world. The laws and writings of scholars and prophets throughout Christian, Islamic, Judaic and other cultures and civilizations have emphasized the conviction that values such as life, liberty, personal dignity and physical integrity are among the fundamental rights of humanity<sup>45</sup>. Therefore, the world is in desperate need of a convention to fill in the loophole in international law which currently permits acts of CAH to remain unpunished. Such a convention has been an issue since at least one hundred years, when international community discovered the overwhelming scale of atrocities perpetrated on Armenian minority by the Turkish government. It seems quite obvious, that legal expressions related to protection of fundamental humanitarian values usually emerge after dark periods of history<sup>46</sup>. But the same history teaches us, that if the opportunity is not seized right after those horrendous events, the chance usually goes by until another tragedy shakes the conscience of humanity. Conceivably that is due the fact that a general feeling of optimism seems to prevail after those dark periods of history. It is however a duty of humanity these days, to make sure that this time we learn our lesson of history and not repeat mistakes of the past as it has been happening so many times before. With the establishment of the ICC in 1998 the international community made a major step toward prevention and deterrence of CAH. The proposed codification is a indispensable continuation on this path to international legal integrity. For as Pope Paul VI said: “If you want peace, work for justice”.

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## SUMMARY

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### ○ POTRZEBIE MIĘDZYNARODOWEJ KONWENCJI W SPRAWIE ZBRODNI PRZECIWKO LUDZKOŚCI

Prezentowany artykuł jest głosem w dyskusji na temat konieczności przyjęcia międzynarodowej konwencji dotyczącej zbrodni przeciwko ludzkości. Punktem wyjścia rozważań są dane prezentowane przez międzynarodowe organizacje, w świetle któ-

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<sup>45</sup> M. Cherif Bassiouni, *Crimes Against Humanity: The Need...*, p. 488.

<sup>46</sup> *Ibid.* p. 486.

rych w latach 1945–2008 doszło na świecie do ok. 313 konfliktów, w których zginęło między 92 a 101 milionów ludzi, z których zdecydowana większość na skutek czynów wypełniających znamiona zbrodni przeciwko ludzkości. W artykule zaprezentowana jest krótka historia rozwoju pojęcia w doktrynie prawa międzynarodowego, począwszy od wspólnej deklaracji mocarstw Ententy, poprzez Kartę Londyńską z 1945 r., Konwencję w sprawie Zapobiegania i Karania Zbrodni Ludobójstwa, Trybunały do osądzenia zbrodni w byłej Jugosławii oraz w Ruandzie, aż po Statut Rzymski Międzynarodowego Trybunału Karnego. W dalszej części podjęta została próba zaprezentowania argumentów przemawiających za przyjęciem międzynarodowej konwencji w sprawie zapobiegania i karania zbrodni przeciwko ludzkości. Do najważniejszych z nich należy nieskuteczność dotychczas funkcjonujących instrumentów prawa międzynarodowego, w tym Konwencji Genewskich, Konwencji w sprawie Zapobiegania i Karania Zbrodni Ludobójstwa oraz Konwencji w sprawie Zapobiegania i Karania Zbrodni Apartheidu. Druga kategoria przyczyn związana jest konstrukcją prawną Międzynarodowego Trybunału Karnego, w tym przede wszystkim z jego ograniczoną jurysdykcją oraz subsydiarnym i komplementarnym w stosunku do jurysdykcji wewnętrznej charakterem. Ostatnim omówionym argumentem przemawiającym za uchwaleniem międzynarodowej konwencji w sprawie zbrodni przeciwko ludzkości jest brak regulacji narzucającej ramy współpracy międzynarodowej w zakresie zapobiegania i karania tego rodzaju przestępstw.