THE JURISPRUDENCE OF MAKING THE SENTENCING OF CRIMES AGAINST HUMANITY MORE SEVERE THAN WAR CRIMES*

Abstract

This paper seeks to analyze the issue of penalties for crimes against humanity and war crimes and advance the argument that penalties for crimes against humanity should be more severe than war crimes. This is in contradistinction to the present position where the penalties for crime against humanity and war crimes are the same. In other words, for instance, if Mr A kills four persons in the course of an armed conflict, the penalties will be the same even if Mr A is convicted of war crimes or crimes against humanity. One major consequence of the existing proposition and permutation is that it plays down criminal intentions and motives that naturally follow war crimes and crimes against humanity which are cardinal ingredients and elements needed by the prosecution to successfully prosecute, for instance, the crime of murder in many jurisdictions. One reason the present approach has continued is that there seems to be no generally accepted blueprint and guideline to determine different levels of sentencing for war crimes and crimes against humanity. Even though the contextual elements of the war crimes and crimes against humanity are largely interwoven and analogous, crimes against humanity and war crime are not the same and should not carry the same penalties This paper seeks to recommend that the international community needs to adopt an index for imposing higher penalties for crimes against humanity vis-a-vis war crimes. Crime against humanity has a motivation with a heinous intent to kill, accompanied by an extremely serious result, such as loss of life, grievous injury, or destruction of property. This is in addition to the fact that crime against humanity is committed both in times of war and of peace.

Keywords: International Law, Severity, War, crimes, humanity, sentence.

1. Introduction

This paper seeks to examine the probabilities and circumstances of imposing more severe penalties for offences such as murder, rape, torture etc. when they are committed as a crime against humanity vis-à-vis identical offences like murder, rape, torture etc when committed as a war crime.[1] This conversation will revolve around the discriminatory and non-discriminatory sentencing motive approach which provides a distinctive and acentric framework for sentencing crimes against humanity and war crimes in terms of their correlative and comparative magnitude and weight.[2] At present the seeming imposition of penalties based on the relative consequence of crimes against humanity and war crimes is nonexistent.[3] Some people wonder why crimes against humanity and war crimes are being penalized differently.[4] The response is that they represent the most serious human rights violations known to humanity.[5] This paper submits that crimes against humanity and war crimes are not the same and should not carry the same penalties.[6] The fact is that both categories of international crimes represent different standards as clearly manifested by their different historical origins.[7] In other words, war crimes are historically based upon the conduct of combatants in times of war. One way to determine culpability, therefore, involves an evaluation as to whether or not acts committed by combatants during the period of war, were in line with the principles of proportionality, necessity, self-defence, etc. In contradistinction, crimes against humanity are clearly more serious crimes than war crimes. One case that readily comes to mind is that of Hitler's persecution of Jews before and during the Second World War, both inside and outside of Germany.[8] The seemingly difficult thing has been how to translate the aforementioned differences in value and context between crimes against humanity and

***By Richard Suofade OGBE, PhD,** Lecturer, Faculty of Law, Niger Delta University, Amassoma, Yenagoa, Bayelsa State. Email Address: ogberich@yahoo.com. Telephone Number: 08038698054

[1] Walzer, Michael. Just and Unjust Wars: A Moral Argument with Historical Illustrations. New York: Basic Books, (2006), P.29

[2] Bothe, Michael, War Crimes in Non-International Armed Conflicts. (1996) In *War Crimes in International Law*, edited by Y. Dinstein and M. Tabory. The Hague: Martinus Nijhoff

[3] William Schabas, 'Prevention of Crimes Against Humanity', Journal of International Criminal Justice, Vol.16, Issue 4, (2018), P.710

[4] Fenrick, William J. 1999. Should Crimes Against Humanity Replace War Crimes? (1999), *Columbia Journal of Transnational Law* 37,3, P.769

[5] McCormack, Timothy L. H., ed. 1997. *The Law of War Crimes: National and International Approaches.* (1997), The Hague: Kluwer, P.29

[6] Turns, David. 'War Crimes without War? The Applicability of International Humanitarian Law to Atrocities in Non-International Armed Conflicts'. (1995), African Journal of International and Comparative Law, 7, P.804

[7] Charles Jalloh, 'What makes a crime against Humanity a crime against Humanity', *American University International Law Review,* Vol. 29, Issue 2, (2013), P.412

[8] Warner, Daniel, (ed.). *Human Rights and Humanitarian Law: The Quest for Universality.* (1997), The Hague: Nijhoff Publishers, p.39

war crimes into a sentencing framework which is outside the scope of this paper. [9] However, suffice it to say that the solution to this difficulty is not far-fetched. More so, it needs to be noted that even in domestic law there is a problem of translating differences in value between crimes into a sentencing framework.[10] That is why for example, murder is a more serious offence than theft since it involves taking someone's life, whilst theft involves stealing someone's property. Murder therefore would attract a higher penalty then theft. That is how crimes against humanity and war crimes should be considered and prosecuted. In other words, crimes against humanity offences should attract higher penalties than identical offences when committed as war crimes.

The point is that war is not a necessary characteristic of an attack, but it may have a relationship with an armed conflict.[11] For instance, Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) identifies a direct relationship between crimes against humanity and armed conflict. However, no comparable relationship is made in Article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) or Article 7 of the Rome Statute. The ICTY decision in the case of *The Prosecutor v Jean-Paul Akayesu*[12] specifically stated that an attack may not be violent in nature, like imposing a system of apartheid or exerting pressure on a population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a methodical and structured manner. This makes the definition of an attack in a state of ambivalence and equivocation. Recall that, when the Rome Statute was being crafted, some delegates made frantic efforts to substitute the word 'attack' with the word 'widespread or systemic commission of such acts. Suffice it to say that the term attack was included in Article 7(2)(a) of the Rome Statute and is understood to be a course of conduct which involves the multiple commission of acts. It is still a matter of debate whether the acts that comprise an attack are necessarily violent. It has been argued that crimes against humanity would be undermined if non-violent acts are admitted because it will make the definition overly capacious. The concept of an attack requires something more than a stable system of subjugation or dominance. This kind of situation is like when you compare a military campaign that has the aim of annihilating or driving away the persecuted group instead of exploiting or oppressing it.

2. Methods of Sentencing by the ICTY for Crimes against Humanity and War Crimes

This part of the paper will look briefly consider the discriminatory motive v. non-discriminatory motive method of sentencing by the ICTY and compare it with the widespread and systematic attacks versus isolated acts methods of sentencing.

Discriminatory Motive *versus* Non-Discriminatory Motive method

The concept of the discriminatory motive v. non-discriminatory motive method[13] is a method which draws a line between illiberal and intolerant persons who take advantage of the disorderly and topsy turvy atmosphere in armed conflict situations, to actualize their plans and objectives, by committing exceptionally atrocious acts; and other persons whose offences were merely a byproduct of their being infected by the violence around them. It is this core distinction that underscores the argument in this paper that crimes against humanity offences e.g. murder, rape and torture when committed on the basis of a discriminatory motive should attract higher sentences than identical offences when committed as war crimes.[14] This method is also supported by the international customary law which suggests that crimes that are most destructive to public safety, public health and public happiness

[9] McCormack, Timothy L. H., (ed..) *The Law of War Crimes: National and International Approaches.* (1997) The Hague: Kluwer, P.44

[10] Leslie Green, 'Group Rights, War Crimes and Crimes Against Humanity', *International Journal of Group Rights*, Vol. 1, Issue 2, (1993), P.123

[11] David Crane, 'A Wrong on Humanity: Prevention of Crimes against Humanity', *University of Pennsylvania JIL*, Vol. 30, Issue 4, (2009), P.1270

[12] The Accused, Jean-Paul Akayesu, was the mayor of Taba, Rwanda. On 2 September 1998, Trial Chamber I of the Tribunal found him guilty of nine out of fifteen Counts charging him with genocide, crimes against humanity and violations of the Geneva Conventions in the first ever trial before the Tribunal. His was the first conviction ever for genocide and it was the first time that an international tribunal ruled that rape and other forms of sexual violence could constitute genocide. It was also the first conviction of an individual for rape as a crime against humanity. Akayesu appealed against his convictions and the sentence imposed on him. His principal ground of appeal was that he had not been represented by counsel of his choice. The Prosecution also presented four grounds of appeal. The Appeals Chamber held that the right of appeal for an indigent person to be represented by a lawyer free of charge did not imply the right to select the advocate to be assigned to defend him. The Chamber underscored that in this case there had been an abuse of the right of an indigent accused to legal aid at the expense of the international community. The other grounds of appeal, as well as Akayesu's appeal against the life sentence imposed upon him were also rejected

[13] Olaoluwa Olusanya, 'Do crimes against humanity deserve a higher sentence', *International Criminal Law Review*, Vol. 4, (2004), P. 431

[14] Loannis Kalpouwos, 'Banal Crimes against Humanity: The case of Asylum Seekers in Greece', *Melbourne Journal of International Law,* Vol. 16, Issue 1, (2015), P. 13

should be most severely punished among different kinds of crimes.[15] This was the reasoning of Chief Justice Rehnquist in the U.S. case of *Wisconsin v. Todd Mitchel*[16], where he justified the enhancement of the penalty for crimes committed with a discriminatory motive to serve as a deterrent to others. Similarly, a system of the enhancement of penalty for crimes committed on the basis of a discriminatory motive method is recognized and applied under U.S. Federal laws as showed by subsection 3Al.1. of the United States Sentencing Commission Guidelines Manual (2003) which states as follows:

> 3A1.1. Hate Crime Motivation or Vulnerable Victim
> (a) If the finder of fact during a trial or, in the case of a mere plea of guilty or nolo contendere, the court at sentencing can determine or consider beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offence of conviction because of the actual or perceived race, colour, religion, national, origin, ethnicity, gender, disability, or sexual orientation of any person, increase by 3 levels.
> (b) (1) If the defendant knew or should have known that a victim of the offence was a vulnerable victim, increase by 2 levels.
> (2) If(A) subdivision (1) applies; and (B) the offence involved a large number of vulnerable victims, increase the offence level determined under subdivision (1) by 2 additional levels.
>
> (c) Special Instruction
> (1) Subsection (a) shall not apply if an adjustment from S. 2H1.1(b)(1applies."

Other criminal law jurisdictions also adopt this method that uses evidence of a system of penalty-enhancement for crimes committed on the basis of a discriminatory motive method. The United Kingdom is a good example of where the country's Crime and Disorder Act (1998) imposes higher penalties for offences committed with a discriminatory motive and intent. One way to showcase how the Act works is with the aid of the offence of assault and such related offences. Under this provision, the offence of assault is divided into basic assault and aggravated assault with racial induced tendencies. The latter is prosecuted and ultimately punished more severely than the former because of its perceived greater individual and societal harm such perpetration can cause to the society. This example is simply meant to show here that the punishments for certain types of crimes should carry more weight than others. This is not to say that the other crimes that carry less punishment are less detrimental to the peace and development of such a society.[17] Countries like Portugal and Norway also recognize penalty enhancements for crimes committed on the basis of a discriminatory motive method. In the case of Portugal, Section 132 of the Criminal Code of Portugal provides as follows: The gravity and intensity of the punishment shall be increased if the motivation and intention is the killing of a person on the basis of where he comes from, colour, national or religious inclination**...**the offender shall be sentenced to imprisonment from 12 to 25 years.

In the case of Norway, its Penal Code was restructured and modified to ensure that the Courts should take into consideration of cases of racial discrimination as they set up higher sentences of imprisonment for crimes of coercion[18], threats or intimidation[19]; offences that bother on a person's life, body and health[20] and acts of unlawful destruction or damage of public or private property. It needs to be noted that the higher sentences for the above crimes are meant to bring about a crime-free society and promote its peace and development.

There is also an exhibit and proof of identification and realization of penalty enhancements for crimes which are committed based on a discriminatory motive method at the regional levels. For instance, Article 8 of the European Union Proposal for a Council Framework Decision on Combating Racism and Xenophobia, stipulates the following: 'Article 8 bothers on racist and xenophobic motivation and enjoins member States to ensure that racist and xenophobic motivation and inclination may be considered as aggravating circumstances in the determination

[15] Bing Jia, 'The Differing Concepts of War Crimes and Crimes against Humanity in *International Criminal Law, IJL*, (1999), p.234

[16] 08 U.S. 476 (1993), The Supreme Court in 1993 upheld a Wisconsin hate crime statute that allowed longer prison times if a criminal chose their victim on the basis of 'the victim's race, religion, color, disability, sexual orientation, national origin or ancestry.' The case Wisconsin v. Mitchell stemmed from an assault by a group of young black men on a 14-year-old white boy. Todd Mitchell, prior to the attack, had said 'Do you all feel hyped up to move on some white people?' He claimed the hate statute that allowed enhanced penalties was a violation of the First Amendment in restricting speech. The court disagreed, saying the statute punished conduct, not speech

[17] Shane Darcy, 'Prosecuting the war crime of collective punishment', *Journal of International Criminal Justice*, Vol. 8, Issue 1, (2010), P. 36

[18] s.222

[19] s.227

[20] ss.228-232

of the penalty for offences other than those referred to in Articles 4 and 5'. It is noteworthy to mention here that for instance, even the ICTY judges generally do agree with the argument that prosecution as a crime against humanity owing to its requisite discriminatory intent, is more serious than war crimes. What is however problematic is how to structure the perceived differences in gravity between both categories of international crimes into the context of international criminal law. This opinion is for example evident in the following set of amalgamated statements made by the ICTY in the *Blaskic*[21] case: 'Here, the Trial Chamber takes note of the ethnic and religious discrimination that the victims suffered. In consequence, the violations are to be analyzed as persecution which, in itself, justifies a more severe penalty which equally justifies the higher sentencing'.

The above only goes to show that neither the Statute nor the Rules lay down expressly a scale of sentences applicable to the crimes falling under the jurisdiction of the Tribunal. Article 24(2) of the Statute draws no distinction between crimes when determining the sentence. The Trial Chamber passes only prison sentences, the maximum being life imprisonment pursuant to Sub-rule 101 (A) of the Rules. The Trial Chamber is of the view that the provisions of Rule 101 of the Rules do not preclude the passing of a single sentence for several crimes. As regards the foregoing, the Trial Chamber takes note that although until now the ICTY Trial Chambers have rendered Judgements imposing multiple sentences, Trial Chamber I of the ICTR imposed single sentences in other cases previously dealt with.

The foregoing clearly highlights the problem of streamlining the perceived differences in gravity and magnitude between persecution as a crime against humanity and war crimes into the context of international criminal law. Finally, it is the resolution of this problem that the later part of this paper focuses on.

Widespread and Systematic attacks *versus* Isolated acts method

A brief mention of the above method even in passing is instructive and necessary. The 'widespread and systematic attacks versus isolated acts' method is not the focal point of this paper and that is why it will attract only a brief comment. This method is based on the characterization of crimes against humanity as crimes involving large scale premeditated attacks; and war crimes, as crimes entailing comparatively small-scale isolated attacks. The implication, therefore, is that the former category of international crimes i.e. crimes against humanity should attract a higher penalty than war crimes. Suffice it to say that this method failed to attract widespread support amongst the judges of the ICTY. Not surprisingly, this approach has also been criticized as being too artificial. This criticism is based on the fact that the elements used to separate crimes against humanity and war crimes i.e. the widespread and systematic attacks criterion and the isolated acts criterion, for purposes of sentencing, are questionable and problematic. The point is that it is more practical to award penalties for crimes against humanity and war crimes offences based on penalties awarded for similar offences under the penal code of the former Yugoslavia, rather than to invent a new penalty index that does not explain but rather serves a complex notation.

Same Interest method

The same interest method is also not the focal point of this paper therefore will only attract brief mention here. This method is based on the assumption that murder, torture, rape etc. under national laws are equal to their international criminal law counterparts. This method draws strength from Article 24 of the ICTY Statute and Rule 10128 of its rules of procedure. For instance, penalties in Article 24 as aforementioned are described as follows:

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment only. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
> 2.When higher sentences are being imposed, the Trial Chambers should take into consideration and apply such factors and elements as the gravity of the offence and the personal circumstances of the convicted persons.
> 3. In addition to imprisonment, the Trial Chambers may order that any property taken be returned and proceeds acquired by criminal conduct, including by means of duress be given back to their rightful owners.

The above provision has been interpreted as opening the way for extending sentences to offences such as murder, rape, torture, etc. under the law of the former Yugoslavia, to murder, rape, torture, etc. under the ICTY's subject matter jurisdiction. The description of penalties by Rule 101 is instructive:

> (A) A person convicted may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life span.

[21] supra, paragraph 6

> (B) To determine the sentence, it is important to take into consideration the factors and ingredients mentioned therein, as well as such factors as (i)any aggravating circumstances; (ii)any mitigating circumstances including the substantial cooperation by the convicted person before or after conviction; (iii)the general practice regarding prison sentences (iv)the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.
> (C)Concession shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender or arrest.

To the extent that section (B) of the above provision refers to Article 24 and it equally appears to suggest that offences such as murder, rape, torture, etc. under Yugoslavian law, should be awarded the same sentences as murder, rape, torture, etc. under the ICTY's subject matter jurisdiction. This is certainly not in tandem with the proposition of this paper because of its complexity and retrogression. The main weakness of this approach is that it obscures distinctions between the respective criminal intention and motives for war crimes and crimes against humanity. Criminal intention as well as a motive in criminal law is key in prosecuting offenders in all states' jurisdictions.[22] This was also the thinking of Green when he rhetorically stated as follows:

> No doubt the dividing line between the warring parties in the territory of Bosnia and Herzegovina was ethnic oriented, especially after the formal withdrawal of the Yugoslav Army in May 1992, the armed conflict was so permeated with ethnic nuances and antagonism that all offences thus committed might be considered as crimes against humanity. Is it possible to really argue convincingly that some parts of the opposing military forces or local populations might not be conversant with the ethnic nature of the armed conflict, and that, if charged with breaching international humanitarian law, their intent would only be that required for war crimes?[23]

As it is evident from the above statement the fact is that it is crimes against humanity that were actually committed in the former Yugoslavia but calling these acts war crimes and the claim that war crimes are equal to crimes against humanity for penalty purposes may not be correct. Furthermore, the issue of intent is as a proof is required and must be satisfied in both war crimes and crime against humanity. The best way to determine whether the history of crimes against humanity supports the contention that they constitute more serious offences than war crimes is by examining the penalties imposed in respect of these crimes by the tribunals or courts established immediately after the Second World War. Such a survey shows that the tribunals and courts did treat crimes against humanity as being more grievous offences than war crimes.

3. Penalties for Persecution as a Crime against Humanity Offences and War Crimes Offences under the ICTY
This part of the paper discusses penalties for multiple offences such as single offences, convicted as persecution as a crime against humanity and war crimes.[24] The aim is to find out restraints and handicaps to the relative penalties for persecution as a crime against humanity vis-à-vis war crimes in the context of the ICTY. The question of the relative seriousness of crimes against humanity and war crimes divided the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on several occasions. This goal will be achieved as we consider the following[25]:

(a) Cases that involve and deal with single convictions for multiple offences under persecution as a crime against humanity.
(b) Cases involving cumulative convictions for persecution as a crime against humanity and war crimes based on the same set of acts, but where the aggravating effect of the former conviction was recognized as *lex specialis* to the latter. In such instances, the overall penalty will be attributed to the persecution as a crime against humanity conviction.
(c) Cases involving single convictions for multiple war crimes offences.

This conversation will further identify the *ratio decidendi* of each case and utilize this *ratio* in the context of cases where the defendants were convicted of persecution as a crime against humanity offences.

The paper considers *Furundzia's case* which involves the rape and torture of a Muslim woman, by the accused who is a Serb. It followed that in relation to his role in the aforementioned atrocities, the accused was convicted of war crimes. The key statement which indicates the basis for his conviction is as follows:
'It is alleged that the accused continued to probe her about her children in many annoying manners that got her so frightened, including her alleged visits to the Moslem part of Vitez and asking why certain Croats had helped her when she was Moslem. The witness told the tribunal that the accused also used intimidating words against her children' [emphasis added].[26]

From the foregoing case, it can be seen that there was a direct relationship between the victim's failure to provide satisfactory answers to the accused whilst she was being questioned and the ill-treatment and abuse that she was subjected to, which

[22] Cameron Charles Russel, 'The Chapeau of Crimes against Humanity: The impact of the Rome Statute of the International Criminal Court, *Eyes on the ICC*, Vol. 8, Issue 1, (2011-2012), P. 54
[23] L. C. Green, 'The Jurisprudence of International Law', *Canadian Yearbook International Law*, Vol. 26, (1998), P.318
[24] Allison Marston Danner, Bias Crimes and Crimes against Humanity in Context, The new culpability: Motive, Character and Emotion in Criminal Law, *Buffalo Criminal Law Review*, Vol. 6, Issue 1, (2002), P.423
[25] Micaela Frulli, 'Are Crimes against Humanity More Serious than War Crimes?' *European Journal of International Law*, Vol.6, (2001), P.328
[26] Furundžija (IT-95-17/1)

negated the requisite mental element for establishing discriminatory motive. It is therefore this factor which was instrumental in the accused conviction for crimes against humanity instead of war crimes.

The second discussion is that of *Mucic's case*[27] which involves nefarious and odious activities committed against Serbian detainees in a notorious prison detention known as the *Celebici* prison detention. The story shows that in relation to his role in these heinous crimes, the accused was convicted of crimes against humanity. The key statement which indicates the basis for his conviction is as follows: The criminal responsibility of Mr Mucic is tied to his failure to exercise his superior authority in favour of the detainees in the Celebici prison detention. The case reveals that Mr Mucic, who was said to have deliberately neglected his duty to supervise those under him, thereby enabling them to maltreat the detainees in the Celebici prison camp, was imputed with knowledge of their crimes. Mr Mucic was consciously creating alibis for the possible criminal acts of subordinates. It would constitute a travesty of justice, and an abuse of the concept of command authority, to allow the calculated dereliction of an essential duty to operate as a factor in the mitigation of criminal liability. What was offensive in the present circumstance was his rationale for staying away from the prison detention camp at night without making provision for discipline during these periods, which was supposed to save him from the superfluity of the guards and soldiers, failure to do this only rather aggravated his liability.[28]

It is crystal clear from the above that the accused crime against humanity conviction was based on the fact that he abandoned his responsibility to supervise his subordinates, thereby enabling them to maltreat the detainees. It is therefore this factor which was instrumental in the accused conviction for crimes against humanity. Practically every case prosecuted before the International Tribunal has involved an attempt at ethnic cleansing, in which particular groups have been specifically targeted for various kinds of arbitrary abuse, destruction and mistreatment by way of murder and detention. Not surprising that the Chamber sees no essential difference between this case and the other trials involving ethnic cleansing in the Prijedor municipality. The essence of the foregoing is that crimes involving ethnic cleansing must be treated with disdain which is why such crimes must fall under the crime against humanity with a higher carry a higher level of sentencing and punishment.[29]

4. Conclusion

This study has examined the issues bothering on penalties for crimes against humanity and war crimes advocating that sentencing of crimes against humanity be made more severe than war crimes**.**[30] The paper assessed three sentencing approaches and adopted the discriminatory motive v. non-discriminatory motive method. One core rationale for adopting the discriminatory motive versus nondiscriminatory motive method over the other methods is because it carries the most effective type of comparing offences that bother on crimes against humanity vis-à-vis war crimes offences. The main weakness of the same interest approach is that it obscures distinctions between the respective criminal intention and motives for war crimes and crimes against humanity. Criminal intention, as well as motives in criminal law, is key in prosecuting offenders in all states' jurisdictions.[31] The 'Widespread and Systematic attacks versus Isolated Acts' method has been criticized as being too artificial. This criticism is based on the fact that the elements used to separate crimes against humanity and war crimes i.e. the widespread and systematic attacks criterion and the isolated acts criterion, for purposes of sentencing, are questionable and problematic. Even though there seems to be no generally accepted blueprint and guideline to determine different levels of sentencing for war crimes and crimes against humanity, this paper recommends that the international community needs to adopt an index for imposing higher penalties for crimes against humanity vis-a-vis war crimes[32]. This reasoning is based on the proposition that offences that bother on crimes against humanity should attract more severe penalties than identical offences when committed as war crimes because of their relative gravity.[33] This proposition is supported by the international customary law which suggests that crimes that are most destructive to public safety, public health and public happiness should be most severely punished among different kinds of crimes.[34]

[27] Mucić et al. (IT-96-21)

[28] Ibid.

[29]Mohammed Elewa Badar, 'From Neremberg Charter to the Rome Statute: Defining the Elements of Crimes against Humanity, *San Diego International Law Journal*, Vol.5, (2004), P. 123

[30] Joseph e. Kennedy, 'Making the Crime fit the Punishment, Emory Law Journal, Vol. 51, Issue 2, (2002), P. 812

[31] Wadie Said, 'Sentencing Terrorist Crimes, *Ohio State Law Journal*, Vol. 75, Issue 3, (2014), P.515

[32] William Schabas, 'Prevention of Crimes against Humanity', *JICJ*, Vol. 16, Issue 4, (2018), P.718

[33] J. Jordan, *International Criminal Law,* Caroline Academic Press, (1996), P.291

[34] Mark KieIsgard, 'Sentencing Insights in International Crimes Court of Cambodia', *City University of Hong Kong Law Review*, Vol. 3, Issue 1, (2011), P.52