

THE JURISPRUDENCE OF CRIMES AGAINST HUMANITY AND GLOBAL POVERTY*

Abstract

There have been efforts at evaluating the causes of global poverty vis-a-vis crime against humanity. The gap between rich and poor has increased over the years in the world. Crime against humanity is an offense in international criminal law that comprises various acts such as murder, extermination, enslavement, torture, forcible transfers of populations, imprisonment, rape, persecution, enforced disappearance, and apartheid, among others. States are obligated to guarantee the welfare and security of their citizens by carrying out programmes meant to eradicate poverty. Many states in the world have failed in this regard. The conversation as to whether global poverty can be taken as a crime against humanity appears to be mere rhetoric. This paper seeks to argue that there are cogent reasons why global poverty should be taken as a crime against humanity because poverty makes people sick, and dehumanizes the human person. This is particularly based on the standard and guidelines adopted in defining crimes against humanity as encapsulated in international laws, especially the Rome Statute of the International Criminal Court and International Military Tribunal for the former Yugoslavia. This paper submits that the causes of global poverty are comparable with the crimes of slavery, torture, murder, etc because poverty in itself is a massive crime against humanity. The international community must hold to account the few privileged and rich persons whose economic activities perpetuate poverty in the world and treat them in the same way the perpetrators of rape, torture, enslavement, murder, and extermination are treated. This is a sure way the global poor's right to good and meaningful life can be guaranteed. The international community should continue to protect the poor from the horrible institutions and poverty inflicted upon them by the few rich and privileged persons in the world. This paper, therefore, seeks to conceptually clarify the connection between poverty and human rights from an international human rights law perspective.

Keywords: poverty, crimes, humanity; global poverty; international law; human rights

1. Introduction

The conception of a crime against humanity as discussed in this paper is based on international law.¹ It was in response to the grave evils, atrocities, and violations of human rights perpetrated by the Nazi government in Germany that gave birth to the concept of crimes against humanity which was anchored and developed under international criminal law.² This was one of the aftermaths of the Second World War. The rules of engagement put in place by the international community for war crimes at that time made it practically impossible to deal with, punish and prosecute certain members of the civil population who were allegedly found to have committed such crimes in their own country. Therefore, the concept of a crime against humanity was applied to prevent national citizens from going unpunished. In other words, it was meant to ensure that such persons are made to account for their evil actions. The Statute of the Nuremberg Trials was the first international document and instrument designed to establish the concept of crime against humanity in 1945.³ The definition that came earlier gradually evolved over time, with some form of modifications, spanning the course of the second half of the twentieth century. This evolution continued until the birth of the Rome Statute in 1998, which created the International Criminal Court. The underlining modeling of the concept of crimes against humanity embodies the idea that individuals who either violate or undermine state policy to cause atrocities to fellow human beings are held to account for their actions and inactions by the international community.⁴

The right to sufficient nourishment and food is a human right.⁵ The alarming realization is the fact that about 842 million people in the world continue to go hungry and wallow in starvation.⁶ Almost every year, about 3.1 million children die of avoidable starvation in the world. An average of one child dies every ten seconds. Cumulatively, about seven million people die each year of hunger⁷. The desire to create the necessary awareness about those appalling figures is part of this paper's contribution to encourage people to get active and fight poverty in the world.⁸ In recent years, one positive progression is the fact that people have taken to the streets in various countries

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¹ Drumbl, Mark A. *Atrocity, Punishment, and International Law*. Cambridge University Press, (2007), P.32

² Mohammed Elewa, 'From the Nuremberg Charter to the Rome Statute: Defining the Elements of Crimes Against Humanity', *San Diego International Law Journal*, (2004), Vol. 5, P.88

³ Mathew Lippman, 'Crimes Against Humanity', *Boston College Third World Law Journal*, Vol.17, Issue 2, 1997, P.221

⁴ David Luban, 'A theory of Crimes against Humanity', *Yale JIL*, vol. 29, Issue 1, 2004, P.75

⁵ Diana Kearney, 'Food Deprivations as Crimes Against Humanity', *New York University Journal of International Law and Politics*, (2007), 46, P.281

⁶ *Ibid*, P. 28

⁷ *Ibid*, P.31

⁸ Federico Wynter, 'Economic Crimes against Humanity', *Cornell International Law Journal*, Vol. 53, Issues 3, 2020, P.443

to repeatedly show their anger, and resentment and openly demonstrate in favor of a more just distribution of the commonwealth and resources in the world.⁹ Some financial pundits accuse the wealthy in the world of actively endangering the status of the poor in the world by propagating and implementing the wrong and selfish political and economic systems and procedures which are meant to perpetually keep them poor.¹⁰

One core aim of this paper is to evaluate the causes of global poverty against the definition of a crime against humanity that has developed in international law since the end of the Second World War.¹¹ The fact is that those who live in poverty continuously face excruciating obstacles and pains. These depressing situations may be physical, economic, cultural, and social. Furthermore, these dehumanizing situations make poor people experience many interrelated and mutually reinforcing deprivations such as (1) Dangerous and unsafe work conditions, (2) Unsafe and dilapidated shelter and housing, (3) Lack of good and healthy food, (4) Unequal and capricious access to justice, (5) Lack of political power and frustrating access to good healthcare that traumatize them from realizing and appropriating their rights but only perpetuate their poverty.¹² It is common knowledge that persons going through extreme poverty live in a vicious cycle of severe hardship, powerlessness, privation, stigmatization, mental retardation, discrimination, and rejection.¹³ It needs to be noted that extreme poverty is not inevitable and natural. It is, partly, at least, the creation of man, which is made conducive by man and perpetuated by States and other economic actors and collaborators through their covert and overt acts and omissions.¹⁴ It is in this sense that the concept of a crime against humanity is used here. In other words, it is purely seen from the perspective of international law rather than an independent conceptualization of what makes a crime against humanity a unique form of moral wrong which is outside the scope of this paper.¹⁵

This part of the paper will now examine global poverty vis -a- vis the international legal system. In other words, global poverty will be compared with the elements of crimes against humanity found in international law.¹⁶

2. The Relationship between Global Poverty and Crimes against Humanity

It is important to state from the onset that global poverty is a violation of human rights¹⁷. Poverty and crime usually occur concurrently.¹⁸ In order to test the validity of the comparison, it is necessary to assess the comparison with crimes against humanity to give a better understanding of what the subject matter means.¹⁹

3. World Fight to End Poverty

Poverty goes beyond more than the lack of income and productive resources to ensure sustainability and upkeep. It manifests in several forms and ways. This includes hunger and malnutrition, limited access to education and other basic services, social discrimination and rejection, and the inability to participate in decision-making that affects both the poor and the rich. It is estimated that more than 736 million people lived below the world poverty line. In the last decade, about 10 percent of the world population (pre-pandemic) was living in extreme poverty and struggling to fulfil the most basic needs like health, education, and access to water and sanitation, to name a few. There were 122 women aged 25 to 34 living in poverty for every 100 men of the same age group, and more than 160 million children were at risk of continuing to live in extreme poverty by 2030.²⁰ Radical steps must be

⁹ Pons, William. I, Lord, Jnet E, Stein, Michael Ashley, 'Disability, Human Rights Violations and Crimes Against Humanity', *AJIL*, Vol. 116, Issue 1, 2022, P.67

¹⁰ Milena Sterio, 'The Evolution of International Law', *Boston College of International and Comparative Law Review*, Vol. 31, Issue 2, 2008, P.235

¹¹ Badar, Mohamed Elewa, 'From the Nuremberg Charter to the Rome Statute: Defining the Elements of Crimes Against Humanity.' (2004) *San Diego International Law Journal*, 5, P.112

¹² Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, London: Penguin, (2006), P.23

¹³ Robertson, Geoffrey, *Crimes Against Humanity: The Struggle for Global Justice*, (2012), 4th ed. London: Penguin, P.87

¹⁴ Gillian Brock and Thomas Pogge, 'Global Tax Justice and Global Justice', *Moral Philosophy and Politics J.*, (2014), 12

¹⁵ Bassiouni, M. Cherif, *Crimes Against Humanity: Historical Evolution and Contemporary Application*, Cambridge: Cambridge University Press, (2011), P.28

¹⁶ Robinson, Darryl. 'Defining 'Crimes Against Humanity' at the Rome Conference.' (1999), *American Journal of International Law* 93(1), P.49

¹⁷ Kasper Lipper-Rasmussen, 'Global Injustice and Redistributive Wars', *Law, Ethics and Philosophy J.*, (2013), P.72

¹⁸ Thomas Pogge, 'World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform, Cambridge Policy, (2008), P.12

¹⁹ Darryl Robinson, 'Defining Crimes Against Humanity' at the Rome Conference', *American Journal of International Law*, Issue 93(1), (1999), P.48

²⁰ *Ibid*, P.52

taken by world leaders to confront and transform rules and practices that perpetuate and aggravate poverty and inequality in the world.²¹

4. The Structural Conception of Human Rights

This conceptualization of human rights has three key features.²² The first is that it is broader than a legalistic understanding of rights. In other words, it requires secure access to the content of human rights even though this does not mean that people hold a statutory right. For instance, if a person has reasonably secured access through the customary practices of their society, then there cannot be a human rights deficit. The structural concept looks towards achieving reasonable thresholds of certainty to the contents of human rights rather than legal identification and prowess. The second characteristic is the importance of official disrespect.²³ Violating human rights is a public moral wrong, which is partly why such violations are seen as egregious.²⁴ They can occur under the colour of law. This tends to deprive people of the content of their rights as well as undermines the validity of such rights. The third feature is that the obligations attach to individuals are negative.²⁵ This avoids the mistrust and disbelief of positive rights. Individuals are not obliged to give any particular good, such as basic medicines or food, but are mandated not to give their support to social institutions that deny secure access to such goods.

5. The Issue of Whether Freedom from Poverty is a Human Right

This paper defines poverty for the purposes of this conversation as a situation where an entity for instance a person, a family, or a household does not have the minimal quantity of means as well as in the form of accumulated material resources to meet their needs and daily necessities. In other words, it is a situation where a person, family, or entity does not have sufficient resources to meet its needs. This is a situation where households are not able to meet their basic needs for survival due to no fault of theirs. They go hungry and are not able to access health care and health facilities. They lack basic amenities as well as safe and potable drinking water and sanitation. They are not able to afford basic education for some or all of the children and perhaps lack basic shelter and clothing. The point is that poverty undermines the existence of individuals and causes untold suffering. In this sense, poverty includes income poverty, capability deprivation, and social exclusion. That is why every society should strive to eradicate poverty²⁶. It needs to be pointed out that human rights are normative²⁷ and, as such, are set out in documents which have the nature of legal acts (mainly international acts) that are of more interest for philosophical, ethical and legal inquiry. This paper will consider two lines of arguments. The first focuses on the relevance and importance of humans who flourish as a component of any form of moral scholarship. The understanding and postulation is that if we value individual human beings as the basic unit of moral currency, then we must respect their right to live their concept of what constitutes a meaningful human life and define it according to their understanding. The point is that it is not possible for a reasonable concept of a good human life to live alongside extreme poverty and deprivation. The second argument is that freedom from poverty is already recognized in Article 25(1) of the Universal Declaration of Human Rights (UDHR) which clearly states as follows:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

More so, Article 28 of the Universal Declaration of Human Rights also suggests that everyone has the right and therefore entitled to a social and international order without the interference of any kind in which the rights and freedoms set forth in this Declaration can be fully realized. It is, therefore, very safe to conclude from the foregoing that freedom from poverty is a recognized human right.

²¹ Schabas, William A. 'Mens Rea and the International Criminal Tribunal for the Former Yugoslavia.', (2002), *New England Law Review*, 37, P.1011

²² Green, Leslie C. 'Grave Breaches' or Crimes Against Humanity? (1998) *Journal of Legal Studies* 8, P.29

²³ Robert Araujo, 'Sovereignty, Human Rights and Self-determination, The meaning of International Law' *Fordham International Law Journal*, Vol. 24, Issue 5, (2001), P.1512

²⁴ *Ibid*, P.1516

²⁵ David Miller, *National Responsibility and Global Justice*, Oxford: Oxford University Press, (2007), P. 21

²⁶ Jonathan Leader, 'Rethinking the Role of Ideology in Mass Atrocities', *TJPL*, Vol. 9, P.23

²⁷ L. C. Green, 'The Jurisprudence of Law', *Canadian Yearbook*, vol. 26, (1998), p.301

6. Global Poverty as a Human Rights Violation

This paper considers human rights from both the moral and the legal sense²⁸. The structural conception of human rights often focuses on the state rather than the international system.²⁹ This is because states coercively impose and are the most well-known violators of human rights. The international system is more complicated both in terms of whether it is coercively enforced and whether it actually does violate human rights. However, there is also a postulation in another dimension that those who say the international system has a legitimate obligation and it is purely within its jurisdiction make those permutations because the poor voluntarily sign up to it and like it is well known '*volenti non fit iniura*'.³⁰ As a coercively imposed social institution, the international system is a proper subject for human rights claims that 'foreseeably and avoidably' causes global poverty, which constitutes a human rights violation. There are two ways in which the international system does this. One way is through the privileges granted to states under international law and the second way is the manner in which powerful states set the rules of the global economy. Any group that manages to obtain the means of threat and duress within a state's territory tends to be recognized as the legitimate government, regardless of how it comes to power or how it treats its people, or even whether it has support from the people. It also importantly gains the right to act in the name of its people, which brings with it some privileges that help to create or exacerbate global poverty. For want of space, only the resource privilege will be mentioned here in passing. The resource privilege grants control over the natural resources in a territory and, with it, the legal power to transfer ownership. Consequently, a military dictatorship that comes to power in a *coup d'etat* can sell legal ownership of rights to a multinational corporation. These privileges only facilitate oppression and instability in weak states. The funds that are made available by resource privilege can be used to secure oppressive regimes that are customarily known to rule by arbitrary and draconian means and methods. They can be used to create patronage alliances in the military, which in conjunction with the arms privilege to buy military ordinances that can be used to maintain an authoritarian regime. Oppressive regimes, supported by domestic clients and international institutions, have no incentive to provide secure access to the content of human rights. These privileges also destabilize weak states, especially those richly endowed with natural resources and assets. The resource privilege provides a strong incentive for powerful agents, such as the military, to seize power. The benefit of seizing power outweighs the risks. One example that readily comes to mind is Nigeria, which is endowed and rich with abundant petroleum resources. In the post-independence life of Nigeria, the military has ruled for approximately 43 years, and yet it has found it difficult to address the endemic corruption bedeviling the country. The fact is that any attempt to remove the military's architecture could lead to turbulent insurrection. The borrowing privilege also has an effect that undermines governmental structures. For example, a despotic and tyrannical regime may take excessive internal and external loans with little public benefit and, even if it is overthrown by a popular revolution, the debts will still be there. This is a serious constraint on the new government's ability to create social conditions in which citizens have secure access to the content of their human rights. This is because much of the government's funds will be used to service such debts. The privileges bestowed on states, regardless of their negative trait or the unpopular entry of their governments only generate an international order in which it is difficult to guarantee the human rights of its citizens.

7. Elements of Crimes against Humanity

This part of the work will briefly look at the elements of crime against humanity by focusing on Article 7 of the Rome Statute and Article 3 of the International Criminal Tribunal for the former Yugoslavia. In order for an act to be considered a crime against humanity, both statutes state that it must be 'committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack'. From the foregoing, there are five necessary conditions which include: (1) There is an attack; (2) The relevant acts are part of the attack; (3) The attack must be widespread or systemic; (4) The attack must be directed against a civilian population; and (5) There must be knowledge of the attack. The elements provide a general framework for crimes against humanity: *attacks, acts, and agents*. The first two elements of a crime against humanity define the same as an act that occurs

²⁸ Leslie Green, *supra*, P. 127

²⁹ *Ibid*, P.133

³⁰ *Volenti non fit iniuria* is a common law doctrine which stipulates that if someone willingly without any form of compulsion from anybody or force places himself or herself in a precarious position where harm might result, knowing full well that some degree of harm might result, such a person is not able to bring a claim against the other party in tort or delict. This doctrine applies only to the risk which a reasonable person would consider them as having assumed by their very voluntary actions. That is why, for instance if a boxer consents to being hit, and to the injuries that might be expected from being hit, but does not consent to (for example) to his opponent striking him with an iron bar or other dangerous weapon, or punching him outside the usual terms of boxing and his opponent use any of such weapons on him this doctrine will not avail that his opponent. That is why this doctrine is also called voluntary assumption of risk.

within the context of an attack. The idea that a crime against humanity is necessarily part of an attack seems to preclude global poverty from the start. The term 'attack' gives rise to the idea of violence and armed conflict. Although the history of crimes against humanity does gesture towards this, the evolution of jurisprudence since the Nuremberg Trials has moved away from a necessary link between attacks and war or even violence. One thread that shreds autonomy is subjugation and oppression. This is because those who are under servitude no matter how well kept live at his or her exploiters mercy. The point is that some attacks are like military occupations rather than campaigns. Even though they may not be violent, they are well coordinated and direct. That is why they have the capacity to create profound human rights deficits. Even though the well-kept bondsman may enjoy a decent standard of living, but it is certainly at the discretion of the owner. They do not have secure access to the contents of their human rights. This is because global poverty produces a human rights deficit.

Widespread or Systemic

One core condition is that a crime against humanity must be widespread or systemic.³¹ A crime against humanity is not an isolated instance of murder or rape. These actions are horrendous, but they must occur within the context of a larger plan in order for them to qualify to become a crime against humanity.³² One concomitant result from the foregoing is that it removes, or at least minimizes uncontrolled conflict from the usual definition. A widespread attack is one that is gigantic, incessant, large scale proportion, which is carried out concertedly with a high amount of seriousness and has its focus on a variety of victims. A systemic attack is rigorously organized and follows an asymmetrical shape based on a common pattern that involves large public or private resources. It is this element that serves to connect what would otherwise be disparate acts. The direct involvement of the state implies that there must be some form of a well-coordinated responsibility for the acts in question. The emphasis being made by this paper which topic hovers around global poverty once more goes to show that the state system and international trade covenants are responsible for global poverty. This is likely to be appraised as widespread in the sense that the state system is global and systemic so long as the global trade systems are the upshot of the policy of certain state actors.

Mens Rea

The last element goes to the mental state (*mens rea*) of the person who commits a crime against humanity. One requirement in the Rome Statute is that the agents have knowledge that they are part of an attack. This appears to be the biggest challenge that can be compared with global poverty. In order for someone to be guilty of a crime against humanity, according to Article 7 of the Rome Statute and Article 3 of the International Criminal Tribunal for the former Yugoslavia, they must have knowledge that their acts are part of a widespread or systemic attack. What remains to say here is to assert that a consideration of the fact the accused action was reckless is sufficient proof of *mens rea*. The idea that a person was reckless is linked with charges of criminal negligence. It is distinct from mistaken oversight as long as it does not require the person to avoid information that he or she suspects to be criminal. Even though they will have to engage in a course of action that has foreseeable harmful direct consequences. The difficulty with making the case for recklessness is that this tends not to be sufficient for crimes against humanity. However, there is reason to think that the law is evolving towards accepting recklessness as being sufficient. The *mens rea* component can be satisfied in the sense that, while the primary aim of the international economic system is not to impoverish the world's most vulnerable people, there is a foreseeable and avoidable outcome of the economic policies pursued by the institutions of the global economy and affluent states. Therefore, while the impoverishment of millions of people and subsequent poverty-related deaths may not have been the direct aim of these actors, it is a concomitant repercussion and upshoots. The type of deliberate intention at play with global poverty is that of a systematic construction of an international system that causes or perpetuates severe poverty which results in the unnecessary deaths of millions of people. This sense of intentionality is in tandem with the legal conception of crimes against humanity. The point is that global poverty is comparable to a crime against humanity if it has sufficient similarities with the aforementioned actions.

³¹ David Crane, 'A Wrong on Humanity: Prevention of Crimes against humanity', *University of Pennsylvania JIL*, Vol. 30, Issue 4, (2009), P.1275

³² Charles Jalloh, 'What makes a crime against humanity a crime against humanity', *America University International Law Review*, Vol. 29, Issue 2, (2013), P. 412

8. Consequences of Global Poverty and Crime against Humanity

The foregoing conversation so far shows that global poverty and crimes against humanity can have debilitating effects on the people and the perpetrators can be made to face the same legal consequences. This is clearly seen in its complexity with the causes of global poverty. This throws up an interesting aspect of the life experiences of crimes against humanity which is the fact that those who get involved in these crimes sometimes do not think they are doing anything wrong. The mass atrocities that comprise crimes against humanity are often characterized by persons who participate or acquiesce because they believe that the victims are somehow less than human, or less worthy of humane treatment. It is hard to deduce how individuals can become so insensitive to their complicity with radical injustices when their activities have been normalized. If individuals can believe that causing the murder of their fellow human beings based on their ethnicity or religion is morally acceptable, then it is possible that similar circumstances can exist with how people view their attitudes towards the state of the global poor. The crime against humanity conversation brings into focus the severity of the wrong in a way that mere injustice does not. Crimes against humanity produce a state of moral urgency and exclusivity.³³ This is reflected in how crimes against humanity override norms, such as state sovereignty, sovereign immunity, and superior orders.³⁴ There is a special odiousness about crimes against humanity. This is reflected in the sentiment that crimes against humanity 'outrage the conscience of humanity', though what the cause of this outrage is the matter of some debate. This is true even if in practice international criminal law is obtuse and shoddy.³⁵ There is a need for metropolitans to modernize and overhaul their understanding of a long-term ideal theory to a more instantaneous and prompt non-ideal theory. It must not confine itself to the systemic reforms, but the ways in which individuals might escape its worst effects and speed up the realization of the reforms that metropolitans promote. This will require the scope of the debate to be expanded and developed. Ordinarily, the literature focusses on the duties of moneyed and opulent persons, but resistance asks what the poor in the world are permitted to do in reaction to intransigent and radical injustice that are ongoing. This will help to redefine the global poor as instruments in this debate rather than victims or passive beneficiaries of duties of justice.

9. Conclusion

Political and economic leaders in the various states including the World Bank reiterated the possibility of the eradication of poverty within the 20th century, but that did not happen. Even though the new goal of the eradication of poverty is now the year 2030 but from all indications the progress is so far slow which now cast doubts as to whether that goal is feasible. It is certainly possible to eradicate global poverty, but the international community must rearrange the fundamental rules of our economic system which is designed by the privileged few for the privileged few carefully arranged to perpetually impoverish the poor. Unless global poverty is seen as a crime against humanity and the few gladiators in the global economic system whose activities are meant to perpetuate poverty are made to face the law, poverty will remain unabated. Every country's constitution should stipulate that the public and the private actor must act in accordance with the principle of ensuring freedom from poverty. One way to complement and strengthen this principle will be to grant people and citizens the subjective right to freedom from poverty. Inequality has increased tremendously.³⁶ If poor people had participated proportionately in global economic growth, poverty would have been drastically reduced. It is quite possible to eradicate poverty, but there is a need to reconsider the fundamental rules of our economic system. Currently, these rules are designed by the privileged and rich for the privileged and rich. We need to redesign these rules to consider the poor.³⁷ It is not morally right and acceptable that the poorer half of the world's population lives on 3 percent of global household income.³⁸ They do not have enough food or shelter. They do not have clean and potable water or adequate sanitation. Many adults are illiterate. This sort of excruciating poverty, which is completely avoidable, is a massive crime against humanity.³⁹

³³ Kunnemann, R. 'A coherent Approach to Human Rights'. *Human Rights Quarterly*, Baltimore, Maryland v. 17, (1995), p. 312

³⁴ Samantha Besson, 'Sovereignty, International Law and Democracy', *EJIL*, Vol. 22, Issue 2, (2011), P. 379

³⁵ Robert Merger, 'National Sovereignty and International Patent', *Michigan State Law Review*, Issue 5, (2019), P.1258

³⁶ May, Larry. *Crimes Against Humanity: A Normative Account*. (2005), Cambridge: Cambridge University Press, P.29

³⁷ Pogge, Thomas. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, (2008), 2nd ed. Cambridge: Polity, P.23

³⁸ Osiel, Mark. 2005. 'The Banality of Good: Aligning Incentives Against Mass Atrocity.' *Columbia Law Review*, (2005), 105(6), P.1812

³⁹ Luban, David. 'A Theory of Crimes Against Humanity.' (2004), *Yale Journal of International Law*, 29, P.96