Tomasz Srogosz
ORCID: 0000-0001-9753-8920

Starvation as an international crime

Hunger as a physiological state can be caused by a natural disaster (e.g. drought), state activity, illness, or deliberate human behaviour. The following article refers to the factual states related to the second option and therefore resulting from action or omission of state bodies. Unfortunately, humankind has sometimes witnessed such situations; representatives of state authorities have inflicted hunger on hundreds, thousands or even millions of people, in extreme cases leading to death, including genocide. In the 20th century, it was enough to mention the *Holodomor* (Great Famine in Ukraine) in 1932–1933, the famine plan (Backe Plan) drawn up by the Third Reich in 1941, the Great Famine in China in 1958–1962, or the famine in North Korea in 1995–1999. In recent years, the images and accounts from Venezuela (2014–2019) showed the world that the local government's policy has led to the malnutrition of around 3.7 million people.[1] Despite differences in the number of deaths and the degree of starvation, there is one common element in these factual states, i.e. the state is the "perpetrator". This is, in fact, because the state as a fundamental body of public international law is the principal guarantor of food security and the right to food.[2] While humanity is capable of providing enough food to itself,[3] apart from extreme and sudden cases of natural disasters, states and their representatives are primarily responsible for famine disasters.

[1] Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights in the Bolivarian Republic of Venezuela, Human Rights Council, forty-first session 24 June–12 July, 5.07.2019, A/HRC/41/18, par. 15; FAO, 'Panorama de la Seguridad Alimentaria y Nutricional en América Latina y el Caribe, 2018', http://www.fao.org/3/CA2127ES/ca2127es.pdf (accessed 20.01.2020).

[2] See T. Srogosz, *Międzynarodowe prawo żywnościowe*, Warszawa 2020, p. 31; idem, 'Prawo do (odpowiedniej) żywności w prawie międzynarodowym publicznym', in: I. Kraśnicka (ed.), *Prawo międzynarodowe. Teoria i praktyka*, Warszawa 2020, pp. 193–206.

[3] UN Special Rapporteur on the Right to Food Mr. Jean Ziegler indicated that "we could feed *12 billion* human beings properly, providing food equivalent to *2,700 calories* a day" (Economic, Social and Cultural Rights. Right to Food. Report by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25, Commission on Human Rights, 10.01.2002, E/CN.4/2002/58, p. 10, http://repository.un.org/handle/11176/238734 (accessed 20.01.2020).

In view of the above, a question arises whether starvation is a crime of law of nations? If so, what are the grounds for this liability under international law, including whether it involved genocide through starvation, so-called mass starvation, or whether it causes malnutrition of a part of the population? Finally, does international law regulate possible crimes comprehensively and consistently, or are changes needed to take into account, for example, situations of not only deliberate but also reckless state policies leading to famine, by introducing a classification of so-called famine crimes? Is this a crime against humanity, a war crime or perhaps genocide? Is it a crime that only concerns international armed conflicts or also non-international armed conflicts? The answers to the above questions are essential in view of the question of possible liability under international law for causing famine in recent years in Venezuela, North Korea, Syria, or Yemen. They should, as a matter of priority, be based on the existing rules of international criminal and humanitarian law, from the Geneva Conventions to the Statute of the International Criminal Court.

Geneva law

The origins of international criminal law, including the regulation of international crimes, are inextricably linked to the development of international humanitarian law, including the humanitarian protection of prisoners of war and civilians. The regulations on the international liability of individuals and states for international crimes were preceded by efforts by the international community to improve the fate of the wounded and prisoners of war and civilians in armed conflicts. The right to food was first mentioned in Geneva law. Article 11 of the Convention relating to the Treatment of Prisoners of War of 1929[4] introduces an obligation to retain food rations at the level corresponding to the quantity and quality of rations in military units and garrisons. Collective food disciplinary measures were prohibited. The 1949 Convention on the Treatment of Prisoners of War defined minimum food rations in captivity,[5] while the Convention for the Protection of Civilian Persons in Time of War established that food supplies for the civilian population in the occupied territory should be "adequate".[6]

[4] Convention relative au traitement des prisonniers de guerre, *Genève*, 27.07.1929, https://ihl-databases.icrc.org/dih-traites/INTRO/305?OpenDocument (accessed 20.01.2020).

[5] "The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners (...)"; Geneva Convention relative to the treatment of prisoners of war, Geneva, 12.08.1949, UNTS, vol. 75, p. 135, https://treaties.un.org/pages/showDetails.aspx?objid=0800000280159839 (accessed 20.01.2020), Art. 26.

[6] "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate (...)"; Geneva Convention relative to the protection of civilian persons in time

The 1977 Additional Protocols introduced an explicit ban on the starvation of civilians during military activities (as a method of warfare).[7]

Geneva law, on the one hand, provides a benchmark for the interpretation of international crimes related to starvation, setting minimum standards for feeding during (international and non-international) armed conflicts. On the other hand, it has introduced into international law, including international criminal law, the concept of starvation, as confirmed by Article 8(2)(b)(xxv) of the Statute of the International Criminal Court.[8] It should be remembered that Geneva law, which related to international humanitarian law rather than international criminal law, introduced a ban on starving civilians, but not in the context of an international crime. As indicated earlier, it was a point of reference for the parallel development of Nuremberg law, as confirmed by the definition of war crimes in Article 8(2) of the ICC Statute, referring to the Geneva Conventions and to the "laws and customs applicable to international armed conflicts". In international humanitarian law, therefore, starvation is a prohibited method (means) of warfare, while in international criminal law, it is an international crime, the evolution of which harks back to after 1945 and the Nuremberg trials.

The Nuremberg trials and the Tokyo trials

Although one of the greatest famine disasters in history caused by deliberate action on the part of the state authorities took place in Ukraine before the Second World War (the *Holodomor*), the international community saw the possibility of pursuing international criminal liability for starving the population only after 1945, as a result of the devastating extermination policy of the Third Reich. One of the officers of the Third Reich who was to be tried by the International Military Tribunal in Nuremberg was H. Backe (Minister for Food and Agriculture). He was not charged in the so-called ministers' trial, because on 6 April 1947, for fear of being transported to the Soviet Union, he committed suicide in

of war, Geneva, 12.08.1949, UNTS, vol. 75, p. 287; https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a (accessed 20.01.2020), Art. 55.

[7] "Starvation of civilians as a method of warfare is prohibited. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations (...)"; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 8.06.1977, UNTS, vol. 1125, p. 3; https://treaties.un.org/pages/showdetails.aspxobjid=08000002800f3586 (accessed 20.01.2020), Art. 54; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II), Geneva, 8.06.1977, UNTS, vol. 1125, p. 609, https://treaties.un.org/pages/showDetails.aspx?objid=08000002800f3cb8 (accessed 20.01.2020), Art. 14.

[8] Rome Statute of the International Criminal Court, Rome, 17.07.1998, UNTS, vol. 2187, no. 38544; entered into force on 1.07.2002.

a Nuremberg prison. Earlier, on 21 February and 14 March 1947, he had been interrogated. His name is primarily linked to the so-called Hunger Plan, which was implemented by the Third Reich in the wake of the invasion of the Soviet Union in 1941. Although Backe was not indicted, his so-called *Hungerplan* (*der Backe-Plan*) should be seen as an example of an international crime consisting in the starvation of civilians and POWs. *Der Backe-Plan* was developed under the supervision of H. Göring as part of a comprehensive Oldenburg Plan, envisaging economic exploitation and devastation of Eastern territories. The Oldenburg Plan was approved upon Hitler's orders at a confidential meeting on 1 March 1941. It assumed the confiscation of raw materials and equipment located in factories in the Soviet Union and their transfer to the Third Reich and the destruction of all those that were to remain on site. Within the framework of the Oldenburg Plan, H. Backe was to design a plan for the starvation of the population inhabiting the areas occupied upon the invasion of the Soviet Union and for the confiscation of food for the German army and German society. *Der Hungerplan* was a result of the work of a specially designated commission, who envisaged the death of a few million people. The objective was twofold: to feed the Germans and to exterminate other nationalities east of the River Vistula.[9] Around four million people are estimated to have suffered from hunger during the German occupation, including, above all, prisoners of war, Russians, Ukrainians, Belarusians, and Jews. The most stringent conditions were applied to Red Army soldiers imprisoned in German camps; around 3 million prisoners of war died of starvation between 1941 and 1945.[10] Fortunately, the Backe Plan was not implemented on a comparable scale with respect to civilians. Importantly, starvation as a method of warfare was applied not only in the Soviet Union occupied by the Third Reich; the echo of *der Hungerplan* reverberated, e.g. in H. Frank's General Government.[11]

The fate of millions of people subject to starvation and dying because of it as a result of the Backe Plan did not escape the attention of the International Military Tribunal in Nuremberg, particularly in connection with the indictment of Göring and Frank. The Tribunal invoked Article 6(b) (war crimes) and (c) (crimes against humanity) of the IMT Charter,[12] according to which violations of the laws and customs of war, including *inter alia* the murder or

[9] More on the topic see J. Kay, 'Germany's Staatssekretäre, Mass Starvation and the Meeting of 2 May 1941', *Journal of Contemporary History*, 2006, vol. 41 (4), pp. 685–700.

[10] See T. Snyder, *Skrwawione ziemie: Europa między Hitlerem a Stalinem*, Warszawa 2011, p. 204.

[11] See S. Schwaneberg, 'Eksploatacja gospodarcza Generalnego Gubernatorstwa przez Rzeszę Niemiecką w latach 1939–1945', *Pamięć i Sprawiedliwość*, 2009, no. 1, p. 135–139.

[12] Charter of the International Military Tribunal, London 8.08.1945, UNTS, vol. 82, p. 284, http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf (accessed 21.01.2020).

ill-treatment of civilians and prisoners of war, are classified as war crimes. In contrast, murder, extermination and other inhumane treatment of civilians are classified as crimes against humanity. At the same time, the Tribunal noted that some of the war crimes were recognised under international law before the Second World War on the basis of Geneva law, in particular under Articles 2–4 of the 1929 Convention, referring to the humane treatment of prisoners of war.[13] The Tribunal indicated the inhumane treatment of Soviet POWs as a result of systematic plans to murder. The POWs in the camps were starving, and many of them died as a result (*they were starved, and in many cases left to die*). The Tribunal moreover invoked a letter of A. Rosenberg to W. Keitel.[14] The judgment also discusses, as part of the crime against humanity, the treatment of civilians, including in concentration camps, in particular, by providing inadequate amounts of food. It points out that in the occupied territories, on Göring's orders, there was a policy of confiscating natural resources, raw materials, equipment or food for the benefit of the Third Reich, which *inter alia* led to famine.[15] Some of the activities of the German authorities on Polish soil took place without the participation of Governor-General H. Frank, but there is no doubt that he was "a willing and knowing participant in the use of terrorism in Poland; in the economic exploitation of Poland in a way which led to the death by starvation of a large number of people".[16]

This leads to the conclusion that, during the Nuremberg trials, starvation was treated both as a war crime against prisoners of war and civilians and a crime against humanity in the form of extermination. In the Tokyo trial, the equivalent of Article 6(b) and (c) of the IMT Charter covering these crimes was Article 5(b) and (c) of the Charter of the International Military Tribunal for the Far East.[17] During the trial, attention was drawn above all to atrocities against prisoners held in Japanese camps, which atrocities qualified as war crimes. The inhumane treatment consisted *inter alia* in the gradual reduction of food rations, which could not exceed 420 g of rice in 1942, according to top-down instructions, and 390 g of rice per day in 1944. Nevertheless, regulations

[13] International Military Tribunal (Nuremberg), Judgment of 1 October 1946, (in:) The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Part 22 (22nd August, 1946 to 1st October, 1946), https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf (accessed 21.01.2020), p. 467.

[14] Ibid., pp. 450–452.

[15] Ibid., p. 457–458, 498.

[16] Ibid., p. 498.

[17] Charter of the International Military Tribunal for the Far East, Tokyo 19.01.1946, "Treaties and Other International Agreement of the United States of America 1976–1949. Multilateral 1946–1949", Department of State Publication 8521, 1970, p. 20, http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf (accessed 19.01.2019).

in this regard turned out to be fictional because the principle was actually introduced in the camps where such minimum rations were offered to prisoners able to work, while the others were denied them. In addition, the camp commanders ignored the instructions and did not even provide the prisoners able to work with these minimum rations. In 1943, further guidelines were introduced under which those prisoners who did not take a special oath of allegiance to the Japanese Government were to be kept under special surveillance, in fact involving immobilisation for a few days without water, food or sanitary facilities, often in full sunshine. This was intended to induce them to sign the above oath. This policy resulted in constant malnutrition among the Allied POWs and an increasing number of famine victims.[18]

Raphael Lemkin's idea and the 1948 Convention

The Nuremberg trials made the international community aware that starvation can be an instrument of state policy aimed at exterminating national or ethnic groups. *Der Hungerplan* was not the first time that civilians were intentionally starved on a large scale. A decade earlier, tragic events took place in Ukraine (so-called *Holodomor* in 1932–1933). R. Lemkin, the author of the concept of genocide, was an indirect witness to these events. Twenty years after the Great Hunger, he wrote an article about it, entitled 'Soviet Genocide in the Ukraine.'[19] The Lemkin concept was not included into the definition of international crimes in the Charter of the International Military Tribunal and the Charter of the International Military Tribunal for the Far East. However, it was referred to in the Nuremberg indictment, where the term "genocide" was used for the first time (probably because Lemkin was an advisor to Judge R. Jackson).[20] The notion and criminal sanctioning of genocide was addressed in the 1948 Convention,[21] to which R. Lemkin contributed a lot.

According to the Convention definition, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about

[18] International Military Tribunal for the Far East, Judgment of 4 November 1948, in: J. Pritchard, S.M. Zaide, D.C. Watt (eds.), *The Tokyo War Crimes Trial*, vol. 22, New York 1981, pp. 688–698; https://www.legal-tools.org/doc/8bef6f/pdf (accessed 19.01.2019).

[19] R. Lemkin, 'Soviet Genocide in the Ukraine', in: L.Y. Luciuk (ed.), *Holodomor: Reflections on the Great Famine of 1932–1933 in Soviet Ukraine*, Kingston 2008.

[20] K. Wierczyńska, *Pojęcie ludobójstwa w kontekście orzecznictwa międzynarodowych trybunałów karnych ad hoc*, Warszawa 2010, p. 25.

[21] Convention on the Prevention and Punishment of the Crime of Genocide, Paris 9.12.1948, UNTS, vol. 78, p. 177; entered into force on 12.01.1951.

its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group (Art. II). The definition, then, covered three of the eight fields of life addressed by Lemkin,[22] i.e. economic, physical and biological, the first two being connected with the crime of starvation. Genocide in the economic sphere is about destroying the basis of the economic existence of a national, ethnic, racial or religious group, while genocide in the physical sphere can consist of racial discrimination in nutrition or the creation of life-threatening conditions. These two categories are included in Article II(c) of the Convention. It should be borne in mind that the crime of genocide involving the deliberate creation of living conditions for members of a group calculated to cause their physical destruction in whole or in part may occur both in war and in peace.

The 1948 Convention amended the catalogue of international crimes. While during the Nuremberg trials *der Hungerplan* and the crimes committed by Frank and Göring were treated as war crimes and crimes against humanity, upon the adoption of the 1948 Convention they should be seen rather as genocide, defined there. This also concerns the Great Famine in the Ukraine between 1932 and 1933, which the Appellate Court in Kiev and part of the international community recognised on 13 January 2010 as the crime of genocide. The Ukrainian court closed the proceedings because of the death of the perpetrators (Stalin, Molotov, Kaganovich, Postyshev, Kosiora, Chubar, Katavevich), concluding that they had committed genocide under the 1948 Convention. The court established that the facts of the case prove that the criminal activities of the persons indicated by the investigators were directed against the very existence of part of the Ukrainian national group. The factual evidence gathered and verified confirmed that the living conditions imposed on the Ukrainian national group were aimed at its partial physical destruction through the *Holodomor* in Ukraine, which resulted in the extermination of 3,941,000 people. It was proved that the characteristics of the *Holodomor* meet the criteria set out in the 1948 Convention. The Court stated that the perpetrators listed in the resolution were found guilty of masterminding the genocide of part of the Ukrainian ethnic group by creating living conditions designed to destroy it through the *Holodomor* between 1932 and 1933.[23] The resolution of the Ukrainian court was not the only such act. The *Holodomor* was declared a crime of genocide by the state authorities of other

[22] R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress*, Washington 1944, p. 82f; R. Lemkin divides genocide into political, social, cultural, economic, biological, physical, religious, and moral; see K. Wierczyńska, *Pojęcie*..., op. cit., pp. 13–15.

[23] https://holodomormuseum.org.ua/en/resolution-of-the-court (accessed 20.01.2020).

countries (Poland,[24] the United States,[25] Estonia, Australia, Canada, Hungary, Lithuania, Paraguay, Peru, Slovakia, Georgia, Argentina, Colombia, Czechia, Ecuador, Latvia, Portugal) and the European Parliament.[26]

The path to the International Criminal Court

The Nuremberg trials and the subsequent Nuremberg principles and the concept of genocide no doubt had a decisive impact on the development of international criminal law as to the prevention and penalisation of international crimes. Half a century after the adoption of the 1948 Convention, the Statute of the International Criminal Court in 1998 was approved without any changes. Although the ICC Statute draws to a large extent on the legacy of Nuremberg law and the 1948 Convention, we must note the significant evolution that occurred since 1948, above all in the area of human rights protection. The year 1948 did not go down in history just as the year of preventing and penalising the crime of genocide. The Universal Declaration of Human Rights adopted one day after the Convention (10 December 1948)[27] ushered in an unprecedented expansion of human rights, which determined the approach of the international community to many issues, international crimes included. The latter began to be seen in the context of human rights violations, not necessarily a point of reference in the Nuremberg and

[24] Resolution of the Polish Senate of 16 March 2006 on the anniversary of the Great Famine in Ukraine, MP, no. 21, item 234: "The Senate of the Republic of Poland would like to recall that the Great Famine of the *Holodomor* was deliberately provoked by the tyrannical Bolshevik regime ruling the Soviet Union, and was intended to weaken and destroy the Ukrainian nation, thus suppressing its aspirations for freedom and rebuilding its own independent state; (...) in view of the above, the Senate of the Republic of Poland expresses its solidarity with the Ukrainian position that the Great Famine of 1932–1933 should be considered a crime of genocide and that the main culprits as well as the individual perpetrators responsible for these crimes should be identified".

[25] Interestingly, the US Senate in its resolution of 14 March 2018 on the Great Famine in Ukraine referred to Raphael Lemkin's legacy: "Whereas Raphael Lemkin, who devoted his life to the development of legal concepts and norms for containing mass atrocities and whose tireless advocacy swayed the United Nations in 1948 to adopt the Convention on the Prevention and Punishment of the Crime of Genocide, authored an essay in 1953 entitled, 'Soviet Genocide in [the] Ukraine,' which highlighted the 'classic example of Soviet genocide,' characterizing it 'not simply a case of mass murder [, but as] a case of genocide, of destruction, not of individuals only, but of a culture and a nation". Paragraph 3 of the US Senate resolution read: "recognizes the findings of the Commission on the Ukraine Famine as submitted to Congress on April 22, 1988, including that 'Joseph Stalin and those around him committed genocide against the Ukrainians in 1932–1933'"; https://www.govinfo.gov/content/pkg/BILLS-115sres435ats/pdf/BILLS-115sres435ats.pdf (accessed 21.01.2020).

[26] European Parliament resolution of 23 October 2008 on the commemoration of the artificial famine in Ukraine from 1932 to 1933, OJEU, 21.01.2010/C15/E16; the European Parliament considers the *Holodomor* to be a crime against humanity and also invokes the 1948 Convention.

[27] Universal Declaration of Human Rights, Resolution 217 of the UN General Assembly of 10 December 1948, http://www.un.org/en/universal-declaration-human-rights (accessed 22.02.2020) – UDHR.

Tokyo trials. These rights might have been referred to only tangentially, as the rights of prisoners of war and civilians during armed conflicts.

The codification of the crime of genocide and the development of international human rights law after the Second World War has contributed to a change in the view of the functions of the state. Confirmed in the UDHR and subsequently in the Human Rights Covenants,[28] the right to food[29] made the state the principal guarantor of food security.[30] The famine artificially caused by states like North Korea became an object of interest not only for international criminal courts, as before, but also for international bodies dealing with human rights protection. It is telling that while the pre-war Great Famine in Ukraine was treated solely as an international crime (genocide), similar contemporary situations are no longer regarded as crimes of international law, but also as human rights violations.[31] The international crime of starvation is seen as a grave violation of the right to food. We deal, therefore with a twofold approach in the evolution of international law on combating hunger in peace. On the one hand,

[28] International Covenant on Economic, Social and Cultural Rights, New York, 16.12.1966, UNTS, vol. 993, p. 3; entered into force on 3.01.1976, entered into force on 18.06.1977 (ICESCR); International Covenant on Civil and Political Rights, New York 16.12.1966, UNTS, vol. 999, p. 171, entered into force on 23.03.1976, entered into force on 18.06.1977 (ICCPR).

[29] There are three tiers of the right to food. The first one, which includes the right to life as the first generation right (Article 3 of the PDPC and Article 6 of the ICCPR), includes the citizen's right to food and imposes a positive obligation on the state of taking all necessary steps to provide the population with food sources to the extent necessary to preserve life (preventing loss of life). The second, under the obligation of the fundamental socio-economic right to food, i.e. the second generation right (Article 11 of the ICESCR), obliges states to take all steps to protect the population from hunger or malnutrition (right to freedom from hunger). The third tier, i.e. the socio-economic right to food, beyond the fundamental obligation, is connected with the state's obligation to raise the standard of living, the implementation of which depends on the socio-cultural environment (see T. Srogosz, *Międzynarodowe*..., op. cit., pp. 1–38).

[30] The concept of food security was clarified at the World Food Summit in 1996 and relates to physical, economic and social access to quantitatively adequate, safe and nutritious food to meet dietary needs and food preferences for an active and healthy life (Rome Declaration on World Food Security, World Food Summit 13–17 November 1996; http://www.fao.org/docrep/003/w3613e00.htm (accessed 22.02.2020).

[31] See Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HCR/25/63, https://www.ohchr.org/en/hrbodies/hrc/coidprk/pages/reportofthecommissionofinquirydprk.aspx (accessed 22.02.2020): "The rights to food, freedom from hunger and to life in the context of the Democratic People's Republic of Korea cannot be reduced to a narrow discussion of food shortages and access to a commodity. The State has used food as a means of control over the population. It has prioritized those whom the authorities believe to be crucial in maintaining the regime over those deemed expendable (...) The commission found evidence of systematic, widespread and grave violations of the right to food in the Democratic People's Republic of Korea. While acknowledging the impact of factors beyond State control over the food situation, the commission finds that decisions, actions and omissions by the State and its leadership caused the death of at least hundreds of thousands of people and inflicted permanent physical and psychological injuries on those who survived (...) The commission is concerned that structural issues, including laws and policies that violate the right to adequate food and freedom from hunger, remain in place, which could lead to the recurrence of mass starvation".

the international criminal tribunals established at the end of the 20th century continue the legacy of Nuremberg law in relation to war crimes, crimes against humanity and genocide. On the other hand, we must note the general acceptance of the concept of the responsibility of protection, which in a way crowns the legal and human achievements of the international community in the second half of the 20th century.[32] According to this concept, it is the state that is obliged to meet the fundamental needs of the population, including nutrition, within the so-called humanitarian security.[33] This trend is conducive to a reflection on extending the scope of international crimes, for example by the actions of state authorities, which recklessly lead to a food crisis and hunger among the population[34] (e.g. a question arises about the personal liability of principal officials of the Venezuelan state in connection with the crises continuing since 2014, referred to later on in this text).

While the statutes of the International Criminal Tribunal for the Former Yugoslavia (Art. 2–5)[35] and of the International Criminal Tribunal for Rwanda (Art. 2–4)[36] reiterated the definitions and the catalogue of war crimes, crimes against humanity and genocide enshrined in the ICC Charter, the ICC Statute provides a more detailed and comprehensive list of such acts (Art. 5–8). The casuistry of the ICC Statute provided for the first literal reference to the starvation of population in an international instrument defining international crimes. Under Art. 7(2)(b), extermination as a crime against humanity consists, e.g. in the deliberate creation of such living conditions as *inter alia* deprivation of access to food, with the intent to destroy part of the population.[37] War crimes include deliberate starvation of civilians as a method of warfare by depriving them of

[32] See *The Responsibility to Protect. Report of the International Commission on Intervention and State Responsibility*, Ottawa 2001, http://responsibilitytoprotect.org/ICISS%20Report.pdf (accessed 22.02.2020); Resolution of the UN General Assembly A/RES/60/1 of 16 September 2005, 2005 World Summit Outcome Document, http://undocs.org/A/RES/60/1 (accessed 22.02.2020), sections 138–139.

[33] Ibid., p. 15.

[34] See D. Marcus, 'Famine Crimes in International Law', *American Journal of International Law*, 2003, vol. 97.

[35] Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf (accessed 23.02.2020).

[36] Statute of the International Tribunal for Rwanda, https://legal.un.org/avl/pdf/ha/ictr_EF.pdf (accessed 23.02.2020).

[37] "'Extermination' includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population". The essential element of extermination is not the death of a specific group of people; the result is the creation of living conditions, including deprivation of access to food, designed to destroy part of the population, which must be distinguished from starvation, which is the result of a war crime as provided for in Article 8(2)(b xxv). While starvation means depriving civilians of "adequate" food in terms of quantity and quality, or, in the case of prisoners of war, minimum rations as referred to in Geneva law, extermination includes (during armed conflicts or at the time of peace) deprivation of access to any food (Article 7(2)(b) does not refer to "adequate food").

objects indispensable to their survival – Art. 8(2) (b) (xxv).[38] The crime against humanity as defined in Article 7(1)(k) may also be mentioned and also considered in the context of intentional (deliberate but not reckless) starvation of the population,[39] although the notion of extermination prevailed earlier in reference to all artificial famine disasters.

However, does not the excessive casuistry of the ICC Statue make its provisions weaker than the general terms of Nuremberg law? The criticism concerns two aspects. Firstly, in Article 8(2)(a-d) on international conflicts, starvation of civilians is listed as a war crime, while in Article 8(2)(e) on non-international conflicts, this crime is no longer present. Secondly, the development of international human rights law and the concept of the responsibility to protect may lead to the conclusion that the concept of extermination contained in the ICC Statute may prove insufficient, with the result that some, for example, reckless actions by state authorities leading to starvation will never be judged from the perspective of international liability.

Based on the literal wording of the ICC Statute, we can say that the war crime involving deliberate starvation of civilians may only be committed during an international conflict,[40] while a similar act committed during a non-international conflict is no longer an international crime. It is hard to judge whether the foregoing loophole is a deliberate action on the part of the statute drafters or simply an oversight. It is an excellent example of the disadvantage of excessive casuistry in trying to create an exhaustive catalogue of crimes. It makes it necessary to supplement this catalogue by applying the procedure for amending the Statute provided for in Article 121 of the Statute. Interestingly, this possibility was used by the States Parties in 2010, resulting in the addition of subsections xiii-xv to Article 8(2)(e). Regrettably, these provisions do not address starvation but the use of poisons, including gases and certain types of projectiles causing excessive suffering. Actually, the amendments to Article 8(2)(c) consisted of copying the analogous regulations from Article 8(2)(a)(xvii-xix) relating

[38] "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions".

[39] "For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

[40] It should be stressed that starvation, as part of a war crime, does not require proof of the effect of the death of a human being or a specific group of people; the effect here is already starvation, i.e. deprivation of food rations as provided for under Geneva law (see K. Dörmann, 'War Crimes under the Rome Statute of International Criminal Court with a Special Focus on the Negotiations on the Elements of Crimes', *Max Planck Yearbook of United Nations Law*, 2003, vol. 7, pp. 388–389).

to international conflicts.[41] The catalogue of war crimes that can be committed during a non-international conflict remains inconsistent with humanitarian law, the starting point for international criminal law; specifically, this applies to the ban on starvation as a means of warfare introduced by the 1977 Additional Protocol to the Geneva Convention for the Protection of Victims of Non-International Armed Conflicts. This inconsistency was noted in 2018 by Swiss representatives to the Working Party on the Amendment of the ICC Statute, who proposed the inclusion of the crime of starvation in Article 8(2)(e). The Swiss request was supported by many delegations, who pointed to the need to rectify an inaccuracy that had arisen at the interface between international and non-international conflicts. Reference was made to the customary nature of the crime of starvation in non-international armed conflicts and to UN Security Council Resolution 2417/2018, which treats starvation of civilians as a war crime, making no distinction to types of conflict.[42] Some argued that since the prohibition of starvation is customary, there is no need to amend Article 8(2)(e). In response, the Swiss representatives rightly pointed out that the penalisation of war crimes as defined in the ICC Statute is, after all, based on the well-known criminal law principle of *nullum crimen sine lege*. This brief discussion aptly illustrates the weakness of the ICC Statute compared with Nuremberg law. Since starvation was defined as a war crime in relation to international armed conflicts, the logical line of reasoning of a defender of a potential participant in a non-international armed conflict would be that this cannot possibly constitute a war crime in his case, because despite the customary nature of the crime, the principle of *nullum crimen sine lege* prevails. As a result, the working group adopted a resolution recommending that the Assembly of States Parties amend the ICC Statute, Article 8(2)(e), by adding a sub-paragraph defining the starvation of civilians.[43]

Responsibility to protect

Another aspect related to the critique of the ICC Statute concerns the excessively narrow definition of starvation as an international crime, referring to the provisions of Nuremberg law and Geneva law from the latter half of the

[41] Resolution RC/Res.5. Amendments to Article 8 of the Rome Statute, 10.06.2010, https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf (accessed 27.02.2020).

[42] "Underlining that using starvation of civilians as a method of warfare may constitute a war crime" – Resolution 2417 (2018) adopted by the Security Council at its 8267th meeting, on 24 May 2018, S/RES/2417(2018), http://unscr.com/en/resolutions/2417 (accessed 27.02.2020).

[43] "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies", Report of the Working Group of Amendments, seventeenth session, The Hague 5–12 December 2018, ICC ASP/17/35, https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/ICC-ASP-17-35-ENG.pdf (accessed 27.02.2020).

20th c., but without developing the concept of the responsibility to protect and the attendant role of the state as the primary guarantor of the right to food. Nuremberg law and Geneva law do not take account of the new developments of the 21st century in international relations and subsequently in international law. The growing importance of humanitarian security, including food security, a result of the evolution of human rights, has led to changes in the perception of sovereignty and the functions of the state. It is stressed that the concept of human rights has given rise to additional demands and expectations in relation to the way states treat their own citizens, and sovereignty involves a dual responsibility. Externally, this responsibility involves respect for the sovereignty of other states, while internally, it consists in respect for the dignity and fundamental rights of all people in a state.[44] States, including the high-ranking officials, are no longer seen only in terms of international security, as after 1945, when shadowing the birth of the UN were the Nuremberg trials, and R. Lemkin's concept was gaining momentum. The evolution outlined above, the foundations of which were laid as early as 1948 in the UDHR, has changed the perception of famine disasters caused by states. Until very recently, the international community was only interested in cases of starvation, which clearly met the criteria of genocide or crimes against humanity, and therefore consisted in the deliberate creation of conditions designed to destroy (such as the *Holodomor*). At the end of the 20th century, attention was drawn to the disaster of famine, which would not necessarily be caused deliberately, although the issue of culpability could certainly be seen as controversial here. The report of the Special Commission appointed by the UN Human Rights Council to investigate human rights violations in North Korea emphasises that the exercise of the right to adequate food entails the obligation for the state to implement appropriate policies aimed at avoiding malnutrition and hunger. The Commission identified the famine in North Korea as a complex problem, arising not only from the deliberate activities of the authorities consisting in so-called *Songbun* (segregation of the population influencing the food rations received) but also from the misguided agricultural policy. In the Commission's view, North Korea had violated its population's right to food not only through deliberate policy but also through the failure to implement: a/ the positive obligation to take all measures to provide the population with food sources that are sufficient to preserve life (the citizen's right to food) and b/ the obligation to take all measures to protect the population from hunger or malnutrition (a fundamental obligation under the socio-economic right to food). In its conclusions, the Commission stated that "crimes against humanity have been committed against a starving population; these crimes are the result of decisions and policies that violate the universal human right to food; they were taken with

[44] *The Responsibility*..., op. cit., pp. 7–8.

the aim of maintaining the existing political system, in the full knowledge that they could exacerbate hunger and entail deaths". The last sentence is especially noteworthy: "They were taken for purposes of sustaining the present political system, in full awareness that they would exacerbate starvation and contribute to related deaths."[45] Analysis of the above sentence may justify a conclusion that the Commission need not have taken into account intent, set out under Art. 6 (*genocide means any of the following acts committed with intent to*...) and Art. 7 of the ICC Statute (*extermination includes the intentional infliction*...), assuming in these provisions the form of the *dolus directus*.[46] Rather, the Committee's findings point to a culpability that ranges between recklessness and potential intent. This trend stems from the evolution of the international legal order from a state-centred to an anthropocentric one linked to the expansion of human rights. The international community is now responding not only in a situation of evident and deliberate mass starvation, comparable to that of the *Holodomor*, but is also taking on the responsibility for civil protection when reckless action by the authorities does not necessarily result in starvation with fatalities. For this reason, we must note the proposals to revise the current treaty acquis on famine crimes, the aim of which is to prevent crimes from being concealed under the veil of the centuries-old "myth" of natural famine.[47]

Famine crimes?

D. Marcus distinguishes four degrees relating to the authorities' faminogenic behaviour, depending on the commitment and motivation of senior state officials. The fourth degree (the least severe) covers situations where a corrupt government leads to a food crisis and is unable to meet the basic needs of the population, which results in a famine. The third degree concerns authoritarian governments which turn a blind eye to the problem of food shortages yet have the appropriate means to respond. Their behaviour is characterised by indifference and does not always involve awareness (*mens rea*), for which there is international responsibility. The second degree is already linked to recklessness[48] and government policy

[45] Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, 7.02.2014, A/HRC/25/CRP.1, https://www.ohchr.org/en/hrbodies/hrc/coidprk/pages/reportofthecommissionofinquirydprk.aspx (accessed 23.02.2020), pp. 144–209, 333.

[46] See T. Iwanek, *Zbrodnia ludobójstwa i zbrodnie przeciwko ludzkości w prawie międzynarodowym*, Warszawa 2015, p. 237.

[47] D. Marcus, *Famine*..., op. cit., p. 280.

[48] This is an Anglo-Saxon form of recklessness in that the perpetrator deliberately does not aim to establish the actual state of affairs and the related possibility of committing a prohibited act (this is so-called wilful blindness); see S. Frankowski, *Wina i kara w angielskim prawie karnym*, Warszawa 1976, p. 113. The above concept of so-called conscious unintentionality (recklessness) perfectly proves the existence of a tenuous line between unintentionality (in Poland in the form

leading to hunger. Finally, the most stringent form of famine crimes (of the first degree) covers a deliberate policy, where hunger is used as a tool of extermination of selected populations. D. Marcus proposes to consider the first and second degree actions as international crimes.[49] Importantly, D. Marcus's four-degree catalogue of faminogenic behaviour, where the first and second degrees concern international crimes, does not mean that the state always meets international obligations of the right to food by taking action defined as the fourth or third degree. In these cases, there is a violation of the right to adequate food, but without the consequences of international criminal responsibility.

In view of the above, we should consider whether the codified and internationally recognised catalogue of international crimes is currently sufficient and does not need to be supplemented, for example with new categories of so-called famine crimes. The significance of this question is evident in the context of the established concept of responsibility for protection, the content of the right to food and the recent famine in Venezuela or the crisis in North Korea. The latter has been described above, while the former, continuing from 2014, is the most serious economic collapse of recent decades. The background was the sharp fall in the price of oil, the staple of the Venezuelan economy. The crisis has resulted in growing shortages of food supplies. In 2017, hunger and malnutrition affected around 75% of the country's population, while around 90% of the population found themselves in poverty. The food crisis was primarily due to Venezuela's previous dependence on food imports.[50] The report of the UN High Commissioner for Human Rights emphasises that the economic collapse and the violation of socio-economic rights, including the right to food (the number of hungry and undernourished people is estimated at around 3.7 million) are caused by misguided economic policy, a crisis in state institutions and corruption. In the Commissioner's view, the government has not shown that it has exhausted all the available resources to ensure the progressive exercise of the right to food, nor that it has sought international support to make up for the shortfall. The economic and social policies adopted in recent decades have undermined food production and distribution systems, increasing the number of people dependent on food aid programmes. Furthermore, the report points out that the Venezuelan government introduced in 2016 a special food

of recklessness and in the Anglo-Saxon system in the form of wilful blindness) and intent in the form of the so-called potential intention (see M. Kowalewska-Łukuć, *Zamiar ewentualny w świetle psychologii*, Poznań 2015, pp. 135–137).

[49] D. Marcus, *Famine*..., op. cit., pp. 246–247.

[50] See T. Srogosz, *Międzynarodowe*..., op. cit., p. 50; 'Zoos are forced to slaughter animals to feed others in Venezuela, where bone-thin pumas have become the face of the crisis', Mail Online, 1.03.2018, https://www.dailymail.co.uk/news/article-5449023/Venezuelans-eat-rats-dogs-economy-nosedives.html (accessed 28.02.2019).

distribution programme (CLAP – Local Committees for Supply and Food Distribution), which did not cover the entire population because not all people were on the government's list of beneficiaries.[51]

The famine situations described above were caused by states. The pattern was similar and boiled down to socio-economic policies that violated the right to adequate food and even the right to life.[52] Evident in these policies is the discrimination of specific social groups (*Songbun* and CLAP), yet we cannot speak here about acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. The allegation of genocide should, therefore, be regarded as incorrect. The same can be said of the charge of crimes against humanity. The condition for accountability is to prove a "systematic attack against civilians", including extermination. However, this boils down to deliberately creating conditions designed to destroy parts of the population (acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) extermination (...) includes the intentional infliction of conditions of life, (...) calculated to bring about the destruction of part of a population). Even if we agreed that the crime involves potential intent[53] (although such a position is untenable given the literal interpretation of Article 8(1) and (2)(b) of the ICC Statute, which refers to a deliberate attack on civilians; moreover, "designing" or "calculating" living conditions so as to lead to the destruction of the population requires deliberate and planned action[54]), the situations in Venezuela and

[51] Report of the United Nations High Commissioner for Human Rights on situation of human rights in the Bolivarian Republic of Venezuela, 5.07.2019, A/HRC/41/18, https://www.ohchr.org/Documents/Countries/VE/A_HRC_41_18.docx (accessed 24.01.2020).

[52] A more distant famine caused by reckless state policy was the Great Famine in China between 1958 and 1962, caused by collectivisation leading to the collapse of agricultural production; it is estimated to have claimed between 42 and 60 million deaths (see F. Dikötter, *Wielki Głód. Tragiczne skutki polityki Mao 1958–1962*, Wołowiec 2013).

[53] See Art. 30(2b) of the ICC Statute – "In relation to a consequence, that person (...) is aware that it will occur in the ordinary course of events"; however, we should bear in mind that the ICC is inconsistent in the interpretation of Art. 30 of the Statute, allowing once for a broad interpretation and indicating the possibility of commitment of an international crime even in conscious unintentionality, and thus also with a potential intention (Prosecutor v. Lubanga, ICC PT. Ch., Decision on the Confirmation of Charges, ICC-01/04-01/06-803-tEN, 29.01.2007, https://www.icc-cpi.int/pages/record.aspx?uri=266175 (accessed 25.02.2020), par. 352ff), and on another occasion limiting intention under Art. 30 of the ICC Statute solely to the *dolus directus* (Prosecutor v. Bemba Gombo, ICC PT. Ch., Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, 15.06.2009, https://www.icc-cpi.int/pages/record.aspx?uri=699541 (accessed 25.02.2020), par. 360); the doctrine highlights that prevailing in the current ICC practice is a restrictive interpretation of intent (M.E. Badar, S. Porro, 'Article 30.2 (b)', in: M. Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, Brussels 2017, p. 319).

[54] Prosecutor v. Al Bashir, ICC PT. Ch. I, Second Decision on the Prosecution's Application for a Warrant of Arrest for Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-94,

North Korea could hardly be included in the category of crimes under Art. 8 (1) and (2) of the ICC Statute. No doubt, they differ from the crimes which impacted the origins of the notion of genocide and crimes against humanity (*Holodomor* and *der Hungerplan*). They did not have the clear aim of starving the population to death through planned policies. Indeed, Stalin and Göring used hunger as a means of fighting against nations and ethnic groups; in the case of the Soviet Union, it was used against a social group (so-called kulaks). This perception of starvation as an international crime is still valid today and is reflected in the casuistic regulations of the ICC Statute, still embedded in the realities of the Nuremberg trials and the 1953 article by R. Lemkin. There is a no broader reference to the violation of the right to food, the cause of which may be, as in the case of the famine in North Korea and Venezuela, a reckless (deliberately unintentional) state policy (second degree of faminogenic behaviour in D. Marcus' classification).

The statement of the special commission established by the UN Human Rights Council might provide an argument in favour of treating the famine in North Korea as a crime against humanity (in addition, crimes against humanity have been committed against starving populations; these crimes have their source in decisions and policies violating the universal human right to food; they were taken for purposes of sustaining the present political system, in full awareness that they would exacerbate starvation and contribute to related death[55]). However, it should be remembered that the author of these words was not an international court or the UN Security Council, but a commission set up by a subsidiary body of the UN General Assembly. Secondly, the commission does not refer to concepts laid down in Nuremberg law and codified in the ICC Statute, but to violations of the right to food. Thirdly, in the commission's statement, perhaps unconsciously, a structure resembling wilful blindness appears; as has been said earlier, it is not supported by the existing treaty definitions of international crimes.

Nevertheless, the commission's statement may serve as a good indicator for the development of regulations relating to so-called famine crimes. At this stage of the development of human rights, there is no doubt that extending the catalogue of international crimes to include the second category of famine crimes (according to D. Marcus' classification) is necessary and obvious. The best solution is to amend the ICC Statute, because the custom that was the cornerstone of the concept of genocide even after the Second World War,

12.07.2010, https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/05-01/09-94 (accessed 25.02.2020), par. 33; M. Gillet, 'Extermination', in: M. Klamberg (ed.), *Commentary*..., op. cit., p. 40.

[55] Report of the detailed findings..., op. cit., p. 333.

is now unthinkable because of the principle of *nullum crimen sine lege*, firmly anchored in international criminal law.

One might wonder whether to go further than D. Marcus' proposal. Since the violation of the right to adequate food is a tort committed by the state as a subject of international law, should not individual liability be introduced for the fourth and third category of famine crimes? After all, the concept of responsibility to protect has changed the perception of the state in international law. It is the main guarantor of human rights, and its role is to meet the basic needs of the population. From this perspective, a corrupt power, or one that turns a blind eye to the problems of feeding the population, should be treated in the same way as one that pursues a reckless or deliberate policy that results in famine.

In conclusion, the following proposals can be made: 1. add to Article 8(2)(e) (on non-international armed conflicts) a sub-paragraph defining starvation of civilians; 2. add the criterion of recklessness to Articles 30, 7(2)(b) and 7(1)(k), which recklessness would consist in deliberate negligence; 3. alternatively, create a new category of famine crimes (under the ICC Statute or under a separate framework convention on international food law[56]) which involves starving civilians as a result of reckless policies of state authorities (including corruption or refusal of external aid).

Bibliography

Badar M.E., Porro S., 'Article 30.2 (b)', in: M. Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, Brussels 2017.

Dikötter F., *Wielki Głód. Tragiczne skutki polityki Mao 1958–1962*, Wołowiec 2013.

Dörmann K., 'War Crimes under the Rome Statute of International Criminal Court with a Special Focus on the Negotiations on the Elements of Crimes', *Max Planck Yearbook of United Nations Law*, 2003, vol. 7, pp. 388–389.

Frankowski S., *Wina i kara w angielskim prawie karnym*, Warszawa 1976.

Gillet M., 'Extermination', in: M. Klamberg (ed.), *Commentary on the Law of the International Criminal Court*, Brussels 2017.

Iwanek T., *Zbrodnia ludobójstwa i zbrodnie przeciwko ludzkości w prawie międzynarodowym*, Warszawa 2015.

Kay J., 'Germany's Staatssekretäre, Mass Starvation and the Meeting of 2 May 1941', *Journal of Contemporary History*, 2006, vol. 41 (4), pp. 685–700.

Kowalewska-Łukuć M., *Zamiar ewentualny w świetle psychologii*, Poznań 2015.

Lemkin R., *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress*, Washington 1944.

Lemkin R., 'Soviet Genocide in the Ukraine', in: L.Y. Luciuk (ed.), *Holodomor: Reflections on the Great Famine of 1932–1933 in Soviet Ukraine*, Kingston 2008.

[56] See T. Srogosz, *Międzynarodowe*..., op. cit., pp. 220–221.

Marcus D., 'Famine Crimes in International Law', *American Journal of International Law*, 2003, vol. 97.
Pritchard J., Zaide S.M., Watt D.C. (eds.), *The Tokyo War Crimes Trial*, vol. 22, New York 1981.
Schwaneberg S., 'Eksploatacja gospodarcza Generalnego Gubernatorstwa przez Rzeszę Niemiecką w latach 1939–1945', *Pamięć i Sprawiedliwość*, 2009, no. 1, p. 135–139.
Snyder T., *Skrwawione ziemie: Europa między Hitlerem a Stalinem*, Warszawa 2011.
Srogosz T., *Międzynarodowe prawo żywnościowe*, Warszawa 2020.
Srogosz T., 'Prawo do (odpowiedniej) żywności w prawie międzynarodowym publicznym', in: I. Kraśnicka (ed.), *Prawo międzynarodowe. Teoria i praktyka*, Warszawa 2020, pp. 193–206.
Wierczyńska K., *Pojęcie ludobójstwa w kontekście orzecznictwa międzynarodowych trybunałów karnych ad hoc*, Warszawa 2010.

Abstract

Famine has been usually seen as a natural disaster. Meanwhile, cases of extermination of populations by state authorities are known in history, during war or peace. Hence it is important to answer the questions: is starvation a international crime? what are its constituent elements? does international law exhaustively regulate this crime? Answer is possible after discussing a genesis of crime based on the Geneva conventions on protection of prisoners of war and civilians, and then analyzing a development of international law of human rights and the responsibility to protect. The statute of ICC is a result of development of nuremberg laws and humanitariam law, which requires changes because of necessity to abolish a gap between norms of war crimes in international conflicts and non-international conflicts and because of necessity to conform to international law of human rights and responsibility to protect. Considering the situations of hunger in North Korea or Venezuela, it may be first proposed to add to the ICC statute the form of recklessness of starvation, or, secondly, to establish a category of famine crimes (under the ICC statute or separate convention), taking into account a starvation of civilians due to reckless public policy (including corruption, or a refusal to aid from abroad).

Keywords: public international law, international crime, starvation, war crime, genocide, crime against humanity