CRIMES AGAINST HUMANITY: AN ARISTOTELIAN VIEW

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Abstract: This paper demonstrates that the article of crimes against humanity in the Statute of International Criminal Court embodies the spirit of our epoch as the epoch of humanity. It demonstrates that the article enthrones humanity as a legal entity and subjectivity, claiming that humanity is the protected species (substance) embodied in all human beings and humankind as a whole is a community of legally sovereign authority to which activities of governments and individual persons pertaining to human rights, human dignity, world peace, and humanity's security are answerable.

The Russia-Ukraine war today reminds the world of the bloody truth that human beings in the 21st century still commit the kind of crimes that were committed in the 20th century or before. It also reveals that times have changed. The war is resolutely responded to by what Georg W. F. Hegel dubbed as "*die Zeitgeist*" (The spirit of the time) of our epoch. Europe's answer to Vladimir Putin's Speech on February 22, 2022, was the total opposite of its response to Adolf Hitler's Obersalzberg Speech on August 22, 1939, before German troops invaded Poland in that year. The response of the global human community this time shames the world's response to Japan's invasion of the Northeastern provinces of China on September 18, 1931, which was followed by Japan's full-scale invasion of China on July 7, 1937. The global human community does not sleep or pretends to sleep this time. Instead, it stands firmly as a community. It insists on global justice as giving due to humanity!

Significantly, the International Criminal Court (ICC) launches an investigation of possible crimes against humanity that Russian troops and leaders may have committed in the war. The ICC investigation reflects a core principle of our epochal spirit: Humanity is a legal entity and subjectivity, and humankind as a whole is an inviolable legal authority. It underscores the epoch-making value of the article on crimes against humanity in the Statute of the *International Criminal Court* (SICC). The article makes three claims: (1) humanity is a legal entity and subjectivity that is both the legal victim in crimes against humanity and the legal authority that faults offenses as crimes; humanity's laws are the third family of public laws, and (3) all human beings and governments have the legal obligations of global justice to protect human rights, respect human dignity, promote world peace, and safeguard humanity's security.

In the background is the profound shift in the intellectual and ethical-moral landscape of the world since the end of World War II. "Why are times so dark, men know each other not at all?" asked the late medieval French poet Eustache Deschamps in the fifteenth century (Josephson, 1962, 17). In his *History of the Present*, Timothy Garton Ash observes: "That Europe at the end of the twentieth century is quite as capable of barbarism as it was in the Holocaust of mid-century." (Ash, 1999, 368; Singer, 2003, 99). Since the end of World War II, the dark age that Deschamps had known was gone. A distinctive characteristic of our epoch is that in it, human beings start to recognize each other as fellow citizens and neighbors. Admittedly, Europe at the end of the twentieth century is quite as capable of barbarism as it was in the Holocaust of mid-century. Still, times have

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changed. Europe also responded to Putin in a way that differed from the way Europe responded to Hitler in the 1930s. A revolutionary change in the intellectual, ethical-moral, and political landscape since the end of World War II is that the concept of humanity as the species substance of all human beings and the concept of humankind as whole as a political-legal community has been at the core of the epochal consciousness of humankind, and the ideas of crimes against humanity and the law of humanity are no longer marginal moral concepts, but are concepts that are at the core of the conceptual framework of the epochal spirit and entrenched in the global legal structure.

Thus, guided by *the Statute of the International Criminal Court*, this essay explores the concept of humanity as a legal substance and subjectivity in our era. The underlying three objectives of this essay are as follows: (a) to fill some lacunas of understanding of crimes against humanity consistent with *the Statute of the International Criminal Court* (SICC); (2) to demarcate crimes against humanity from genocides, crimes against peace and war of aggression—the other three families of international crimes in (SICC); and (3) to underscore the spirit of our epoch as an epoch of humanity.

I.

We shall start with Aristotle's concept of substance in the *Categories.* In *Categories*, Aristotle (2001) claimed that "there are ten ways of talking about a being: substance, quantity, quality, relation, place, time, position, state, action, or affection." (Aristotle, Categories, 8). According to Aristotle, a substance is an entity or subject that is discussed. Quantity, quality, relation, place, time, position, state, and affection are all attributes that are used to map a substance. A substance is an entity and a subject underlying activity, possessing properties; it is not a property or activity that is possessed (Ibid., 10). A substance is not an aggregation of its attributes or predicates. It is not an aggregation of its properties, traits, conditions, and activity. About substances, Aristotle said:

Substance, in its truest and primary and most definite sense of the word, is that which is neither predicable of a subject nor present in a subject, for example, the individual man or horse. However, in a secondary sense, those things are called substances within which, as species, the primary substances are included; also, those which, as genus, include the species (Ibid., 9).

A primary substance is an entity that exists in itself and thus is not predicable of another subject or present in another subject. Thus, for example, the person called "Socrates" is a substance, that is, a subject-entity—a person—existed independently on his own. He is not predicable of another subject or present in another subject. Thus, metaphysically and ontologically, it would make no sense to say either "Plato is Socrates" or "Socrates is in Plato."

However, there is another kind of substance that is predicable of a group of primary substances, which it singles out and is necessarily present in this group of primary substances that it singles out. This kind of substance does not exist independently but is embodied in a family of primary substances that it singles out. Thus, for example, humanity is a substance that is predicable of and present in all individual human beings, such as Socrates, Confucius, Plato, Mencius, Aristotle, etc. Thus, it makes perfect sense for us to say that Socrates is a member of humanity or humanity is in Socrates. The same can be said of Confucius or Plato. Thus, Aristotle claimed that substances are divided into primary and secondary substances. A primary substance is an individual entity that exists in itself and is not predicable of and presented in another entity. For example, the person called "Socrates" is a primary substance. A species such as a horse, tiger, lion, cat, or dog

is a secondary substance. So is humanity. Humanity singles out a family of beings called "humankind," just as horses single out a family of beings called "horses." As a secondary substance, it is also not predictable or presented in another species. For example, humanity is not predictable in horses or tigers, nor is it presented in horses or tigers. Meanwhile, the substance called "humanity" determines which qualities, conditions, and activities are necessary and which are possible, predicates of a family of beings called "horses," and a secondary substance. However, the species called "horse" is not predictable or presented in another species, such as a tiger or a lion. Notwithstanding, a secondary substance is predicable of and present in a family of primary substances, which it singles out, but not predicable of and present in another secondary substance. Thus, humanity is not predicable of a horse or present in a horse. A secondary substance is not predicable of and present in another family of primary substances, which another secondary substance singles out either. Thus, humanity is not predicable of and present in individual horses.

Aristotle indicated, "species and genus do not merely indicate quality, like the term 'white'; 'white' indicates quality and nothing further, but species and genus determine the quality with reference to a substance; they signify substance qualitatively differentiated." (Aristotle, *Categories*, 12). A species (e.g., humanity or humankind) is an entity that is qualitatively differentiated from other entities, not merely a property. As an entity, a species owns properties; now, a property is owned. A species owns conditions, characteristics, and activities, not a condition, characteristic, or activity. The distinction between a species (as a secondary substance) and a property or trait (as an attribute) is fundamental because each has its own ontological status and function of being. The family of beings that a species singles out are qualitatively differentiated entities. The group of beings that a property or a trait singles out are beings that share a common attribute. Thus, (red, brown, and white) horses that the species called "horse "singles out are not the same kind of group as the group of beings consisting of white house, white horse, white cat, and white wall. Notwithstanding, as an entity, a species distinguishes itself from a property or trait at least as follows.

First, a species singles out a family of entity beings that have the same nature, principles of movement and existence, and the same set of necessary attributes, while a property is shared by beings that can belong to different species. Beings that are members of a species are of the same nature and essence, e.g., all human beings have the same human nature, while all horses share the same horse nature. Beings that share a property may have different natures, e.g., a white man or woman has a sane human nature, but a white horse has a horse nature, while a white man has a human nature, and a white cat has a cat nature.

Nature is understood in the Aristotelian sense as that which defines the essence of a family of beings and the principles of movement of this family of beings. As Aristotle insisted, "things 'have a nature' which have a principle of this kind. Each of them is a substance." (Aristotle, *Physics*, 192b33-34). Thus, for example, it is a matter of fact that humankind has human nature, amid today's postmodern incredulity, just as tigers have tiger nature. The dog has its nature just as the cat has its nature. However, we cannot meaningfully and reasonably talk about "race-nature." Noteworthy, primary substances may have their independent existences, but their essences and principles of movement are determined by their species' nature. Thus, while Socrates, Confucius, Plato, Mencius, and Aristotle all had their independent existences, their essence—that is, the human being—and the principles of their movements were determined by their human nature.

Second, a species cannot be predicable of and present in another species or another family of primary substances, but a property or trait can be predicable of and present in

another property or trait, as well as in multiple families of beings that multiple species single out. Thus, horses are not predictable and are presented in tigers. But the red color can be predicted from and presented in white color. There can be mixed properties or traits, but there are no mixed species. A species can only be embodied in beings that are members of this species but cannot be predictable of and present in beings that are members of other species. Thus, humanity cannot be predicable of and present in individual horses or lions. A property or trait can be a common characteristic of beings from multiple species, e.g., there can be a white house, a white horse, a white cat, and a white car.

Third, a species determines what properties, capacities, functions, conditions, and activities are necessary properties and dispositions of beings of this species. A property is just a property. It determines neither what substance will necessarily possess or not possess this property nor what other properties, conditions, and activities a substance will necessarily possess or not possess. Thus, for example, the species called "horse" determines what properties, capacities, functions, and conditions are necessarily properties, capacities, functions, and conditions of all individual horses. But the white color determines neither what entity is necessarily white nor what other properties a white horse, a white house, or a white cat necessarily has.

Fourth, the relationship between a species and the primary substance of this species is necessary. In comparison, the relationship between a property and a primary substance is contingent or necessary. The relationship will be necessary if and only if such a property has a necessary connection with the species of which the primary substance is a member. Thus, the relationship between the species called "humankind" and Socrates is necessary. Socrates is necessarily a human being. But he was contingently a Greek or 5'5 in height. He was a Greek, but he could be a German.

Fifth, a species owns multiple properties, conditions, and activities. It has more than itself. A property or trait owes nothing but itself and is merely owed by a substance. A species can have multiple properties, conditions, and activities, but a property is merely a property itself. Thus, for example, the species called "humankind" can have properties such as color, weight, height, and physical conditions and activities, while white color is just white color, nothing more and nothing less. A species is an owner, while a property is an object of being owned.

In light of the above, the first philosophical question we should ask about crimes against humanity is whether humanity, which is the object of the act of offending, is opposing, is a substance (a species) or an attribute (a property, function, or trait, etc.). Taking article 7 (1) of the Statute of the International Criminal Court as the guide, we see that the answer is evidently that humanity which is offended and opposed in crimes against humanity is a species or a substance, not a property, function, or condition—in short, an attribute. First, in crimes against humanity, it is humanity that possesses multiple properties (e.g., human dignity, rights, and status) that are offended and injured. Second, in crimes against humanity, the humanity offended and injured is not predicable of beings of any other species, such as a horse, a tiger, a lion, or a dog. Third, in crimes against humanity, it is humanity that has its species-nature and essence that is offended and injured. Fourth, crimes against humanity offend humanity by attacking a set of necessary attributes of humankind, not just one attribute of humankind. Fifth, in crimes against humanity, humanity is both the victim of legal injury and the legal authority that fouls certain offenses as crimes. In crimes against humanity, humanity that is injured is a subject. So, humanity is that which is offended, and that considers certain offenses as crimes.

Surprisingly, scholars such as David Luban and various others who attempt to conceptualize what property humanity is in crimes against humanity all fail in their endeavors. For example, Luban (2004) attempts to conceptualize humanity as a property of humanity and suggests that the humanness offended in crimes against humanity is the essence that all human beings share. He further defines humanness as humankind's social nature. The further he tries to define humanness that is offended in crimes against humanity, the more confusion he gets. The minimal objection which one can raise to Luban's approach is the Socratic complaint against Euthyphro: I asked for one, and you gave me many. Attempts to conceive of humanity as other human property, function, capacity, or activity do not fare better either. They will have the same issues that Luban's view has. The insurmountable difficulty is that, in all international statute laws, crimes against humanity involve assaulting more than one human property, function, condition, or activity; a property cannot account for another property; only a substance can account for multiple properties, functions, conditions, and activities. Thus, at the end of the day, Luban fails badly in his account of humanity that is against crimes against humanity. We know the problem: humanity *that is against* crimes against humanity is not an attribute but a substance!

In summary, it is one thing to conceive humanity as a substance. It is quite another to conceive it as an attribute (e.g., property, function, condition, activity, etc.). In the institution of the offense of crimes against humanity, humanity is not conceived as a legal attribute of a person. Instead, it is conceived as a legal substance. The institution asserts not only what Kant claimed: out of the crooked timber of humanity, nothing straight can be built. It also asserts that the timber of humanity that is crooked in crimes against humanity is a substance, not an attribute.

II.

The *Statute of the International Criminal Court* vouches for the claim made in this paper above. The statute unmistakably conceives crimes against humanity as offenses against humanity as a species and against humankind as a whole, as a community. It claims that humankind as a whole, as a community, is the victim of legal injury in crimes against humanity, and humankind as a whole, as a community of legal sovereignty, is the authority that fouls certain offenses as crimes, and which crimes against humanity offend. It claims that humanity is a legal substance because only a legal substance can be both the victim of legal injury and the authority that fouls certain offenses as crimes. Article 7 (1) of *the Statute* reads:

> Crimes against humanity: For the purpose of this statute, 'crimes against humanity' means any of the following acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack: Murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international laws, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any individual group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, enforced disappearance of persons, the crime of apartheid, other inhumane acts of a

> similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[1]

In Article 7(1), the above, a set of archetypes of crimes against humanity is listed. Those crimes listed in Article 7(1) above are not crimes whose names connote, but crimes against humanity as a species and humankind as a whole, a community. What they injure and offend are not only those individual persons who are their direct victims, but also humanity as a species and humankind as a whole as a community. Thus, its *Explanatory Memorandum* clarifies the nature and essence of crimes against humanity as follows: crimes against humanity are particularly odious offenses in that they constitute a severe attack on human dignity, or grave humiliation, or the degradation of one or more human beings. They are not isolated or sporadic events, but are part of either a government policy (although the perpetrators need not identify themselves with this policy) or a wide practice of atrocities tolerated or condoned by a government or a *de facto* authority. However, murder, extermination, torture, rape, political, racial, or religious persecution, and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. [2]

Needless to say, *the Statute of the International Criminal Court* is the most significant milestone in the history of the institution of the offense of crimes against humanity. Its codification of crimes against humanity into international laws is of great importance. The Statute has established that humanity, which is a legal concept against crimes, is a legal substance, not a legal attribute (property, function, or condition). It claims that crimes against humanity are against the species called "humanity" itself, not just a member of the species or an attribute of the species.

Thus, *the Statute of the International Criminal Court lists a set of archetypes of crimes against humanity and defines the nature, essence, and characteristics* of these crimes. By doing so, it contains some conceptual renovations to the discourse of the institution of the offense of crimes against humanity, which is comprehensive. It enthrones the concept that humanity as a species can be the victim of legal injury and is the victim of legal injury in crimes against humanity. It claims that specific harm can be done to a species when harm is done to members of the species on a great scope and degree. The claim is not so much the Hegelian claim that when a quantitative change reaches a certain scope and degree, it produces a qualitative change. The claim is more than a widespread scope, and systematic, policy-laden offenses against human beings are crimes against humanity as a species and humankind as a whole community. No wonder the Statute of the International Criminal Court explicitly claims the following.

First, in the Statute, crimes against humanity are defined as *odious offenses* attacking human dignity, gravely humiliating human persons, or degrading human beings. That is to say, any of these three kinds of acts is an offense that can be called "crimes against humanity." Here, needless to say, the qualification "degrading human beings" is understood as depriving human beings of their human status and reducing them to the status of non-human beings. The author of this paper would like to suggest that if human beings are degraded into non-human beings, they are out of the family of humankind, which means they are deprived of their humanity substance. Thus, odious attacking human dignity is attacking what is essential to a human being. Odious degrading a human being is depriving a human being of his/her humanity substance.

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[1] "Crimes against humanity", https://en.wikipedia.org; Geras, *Crimes against Humanity*, pp.29-30.
[2] "Crimes against humanity", https://en.wikipedia.org

Second, in the Statute, the range of paradigm cases of crimes against humanity is expanded to include such practices as torture, sexual slavery, enforced prostitution, and the like. This broadens the range of what can be categorized as crimes against humanity and, therefore, broadens the concept of crimes against humanity itself. It also underscores crimes against humanity as offenses attacking human dignity, gravely humiliating human persons, or degrading human beings.

Third, the Statute claims that crimes against humanity are offenses that must be prosecuted in accordance with the Statute or "other grounds that are universally recognized as impermissible under international law." Conceptually, the justification — "grounds that are universally recognized as impermissible under international law" — again asserts the global human community as a sovereign community whose laws have global validity and authority. Meanwhile, the justification also, in effect, asserts that there is such a thing as "the law of humanity."

Fourth, corresponding to the above, the Statute imposes two thresholds for crimes against humanity: (1) they are part of a widespread or systematic practice, and (2) they are either part of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a *de facto* authority. The first threshold is that crimes against humanity are widespread or systematic practices that are no longer offenses against individual members of the human species but offenses offending humanity as a species itself. The second threshold is that crimes against humanity implement a policy that offends and injures humanity or humankind as a species. These two thresholds also underscore what those archetypes of crimes against humanity which article (7) list: they are not crimes against individual persons or individual groups of persons which their names indicate; widespread, systematic, government policy-laden murdering of a certain portion of the civil population do not belong the category of ordinary crimes of murder—that is, deadly termination of individual persons; instead, they are crimes injure and offending humanity or humankind as the species; humanity or humankind as a species is the victim which those offenses injure. The same can be said of other archetypes of crimes against humanity listed in Article 7.

The codification of crimes against humanity *in the Statute of International Criminal Court* completes the codification of the institution of the offense of crimes against humanity in the Nuremberg Judgment, amid the codification in Nuremberg Judgment was done by the four victoria allied powers, while the codification in *the Statute of International Criminal Court* was done through an international democratic process spearheaded by the United Nations. Thus, the codification of crimes against humanity in *the Statute of the International Criminal Court* is more globally democratic and has more democratic legitimacy. Equally crucial, it indicates a key role that the UN can play in a new global order under the rule of law.

All the same, the codification of crimes against humanity as part of the functioning legal architecture in the globe represents a key development of the human consciousness in our time: that is, the recognition of the legal obligation to humanity; the recognition of our legal obligation to give due to humanity as the substance of all human beings and the recognition of humanity as a sovereign authority to which certain crimes must be held accountable for and a legal object which can be victim of certain crimes; the recovery of sense that humanity is the purpose, not merely a tool to other purpose of all legally justified human acts.

In particular, the codification of crimes against humanity as part of the global legal architecture is a milestone for the concept of global justice. It marks an important legal

turn in the global endeavor to realize global justice. It substantializes global civil-political justice and global corrective justice under the rule of law. Meanwhile, it marks a humanity turn in the present understanding of global justice. It codifies the law of humanity as part of a functioning, institutionalized legal order of global justice, and that in terms of global justice, we are legally obliged to keep humanity as a substance standing straight; we are legally obliged to obey humanity's law; we are legally obliged to be answerable for our activities to humankind as a whole as a sovereign community.

The concept of crimes against humanity designates humanity as the legal victim in a certain criminal offense, expanding our concept of possible legal victims and our concept of global corrective justice. As articulated in the Judgment of *the International Criminal Tribunal for the Former Yugoslavia (ICTY)* in the Erdemovic case, 'It is therefore the concept of humanity as victim which essentially characterizes crimes against humanity'"[3]. To claim that humanity is the victim of a crime is to claim that humanity is the harmed object or the harm-receiver in a crime.

As Luban, Geras, and Renzo note, in the statutes of *the International Criminal Tribunal for the former Yugoslavia* (ICTY), *the International Criminal Tribunal for Rwanda* (ICTR), and *the International Criminal Court* (ICC), crimes against humanity are crimes against the human status of victims of the crimes and properly concern the whole of humanity. Crimes against humanity systematically attack a set of necessary attributes of humanity and thus threaten directly the security of humanity as a species. Humanity as a species necessarily exists with a set of necessary attributes. When there are no necessary attributes, there is no humanity as a substance. By this token, in crimes against humanity, humanity as a species and humankind as a whole community become the victims of legal injury that crimes against humanity produce. For example, Robertson also observes, "The very fact that a fellow human would conceive and commit them diminishes every member of the human race."[4] Geras defines crimes against humanity as "inhuman acts" or "inhumane acts of and beyond a certain level of seriousness" on the one hand and offences against the human status on the other hand.[5] Arent indicates the same point when she points out that after the crimes against humanity which the Nazis have committed, "no people on earth … can feel reasonably sure of its continued existence without the help and the protection of international law."[6] These philosophers all try to define an offence against a substance (humanity) in terms of offences against some attributes (e.g., human status) of the substance. Just as damaging a house is defined in terms of damaging the windows, doors, or other components and attributes of the house, injury to humanity as an entity can only be defined in terms of injury to its components and attributes. Still, injuries to attributes or components of a substance are necessary conditions for injury to the substance, but not injury to the substance itself.

Notwithstanding, in the Statute of International Criminal Court*, as it is in the Nuremburg Judgment,* the institution of the offence of crimes against humanity implies that humanity is a legitimate legal authority. To claim that humanity is a legitimate legal authority is to claim both (1) that humanity imposes proper legal obligations on states,

[3] Geras, *Crimes against Humanity*, p.57.
[4] Geoffrey Robertson, *Crimes against Humanity* (London: Allen Lane, 1999), p.220.
[5] Geras, *Crimes against Humanity*, pp.51, 49, 52.
[6] Arent, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1964), p. 273; Robertson, *Crimes against Humanity*, p.331; Geras, *Crimes Against Humanity* p.59.

communities, and citizens and (2) that humanity is a power to which human actors' actions are held accountable. As Geras notes,

> The idea of humankind-as-sovereign seems in any case to have been implicit in the legal thinking by the time of Nuremberg … In another of the post-war trials, the Einsatzgrouppen case conducted under Control Council Law No.10, a US military tribunal stated similarly that the defendants were being tried 'because they are accused of having offended against society itself, and society, as represented by international law, has summoned them for explanation'; their crimes, it said, were "[n]ot crimes against any specified country, but against humanity. Humanity is the sovereignty which has been offended," As the tribunal also declared: Humanity can assert itself by law. It has taken on the role of authority.[7]

Renzo also indicates that humanity is not only a being on whom a crime introduces injury, but also a being to which doers of certain actions and practices are legally held accountable. Thus, Renzo argues that the concept of crimes against humanity indicates that in a crime, a criminal is held accountable and answerable not only to his/her immediate victim(s), but also to humanity itself. The concept of crimes against humanity brings about the idea of legal entitlement and responsibility attached to our humanity identity. It makes clear that wrongdoers must account for their wrongs, and that they are answerable to the community of humanity. [8]

In short, "crimes against humanity are those that properly concern the whole of humanity." [9] In the *Statute of International Criminal Court*, it is claimed that crimes against humanity assault humanity as a species by assaulting those necessary attributes of humanity. It is claimed that the sensibility, sentiment, and understanding of the whole of humankind as the legal subject are offended and violated. It is claimed that humanity is a species (substance) and humankind as a whole is a substance (entity).

III.

Crimes against humanity are inhumane and evil. However, inhumanness or evil nature is not what makes them offenses against humanity. It is the breaking of humanity's laws that makes them crimes against humanity. Crime means transgressing and breaking public/civic laws. Where crimes occur, there are public laws that define and prohibit such actions. G.W.F. Hegel (1952), who defined crime as infringement of rights, also defined crime as infringement of public laws (Hegel, 1952, 36). By this token, what makes offences crimes against humanity is that they transgress humanity's laws. The essence of a category of crimes is defined by the kind of public laws that such crimes break. Breaking humanity's laws is one essential feature of crimes against humanity.

The entrenchment of the idea of humanity's laws as the third family of public laws in various statutes is an epoch-making achievement since 1945. Robertson (1999) observes, "as one Nazi war crimes tribunal explained, 'crimes against humanity … can only come with the purview of this basic code of humanity." (Robertson, 1999, 208) While *London Charter of Military Tribunal* and *the 1945 Nuremberg Trial*, as well as consequent international statute laws, bring new stock value to the concept of humanity's laws, SICC

[7] Geras, *Crimes against Humanity*, pp.45-46.
[8] Massimo Renzo, "Crimes against Humanity and the Limits of International Criminal Law," *Law and Philosophy*, 31, (2012):443-476, at pp.456-457.
[9] *Ibid*, 460.

enthrones humanity's laws as the third family of public laws, and as the core of the global legal architecture of our epoch. In particular, the article on crimes against humanity declares that humanity's laws are the governing public laws in the global human community, applicable to all human beings and governments on earth.

Sela Benhabib (2006) claims, "Since the UN Declaration of Human Rights in 1948, we have entered a phase in the evolution of global civil society which is characterized by a transition from international to cosmopolitan norms of justice (Benhabib, 2006, 15-16). She argues that since 1948, "an international human rights regime has emerged." (Ibid., 27) But the beginning of the beginning was 1945: *the London Charter of Military Tribunal* (1945), the *Nuremberg Trial* (1945), *the Tokyo Trial* (1945), etc. Since *the Nuremberg Trial*, the global regime of humanity's laws has been transforming from a utopia into an emerging reality. Since crimes against humanity had been legally institutionalized as a family of global crimes in 1945, the global human community is also the global regime of humanity's laws—that is, the regime under the rule of humanity's laws.

Luban claims that humanity's laws "are not, at bottoms, created by any political community at all." (Luban 2004, 139). He insists that humanity's laws exist pre-politically. M. Cherif Bassiouni (2004) claims that existing statutory laws that define "crimes against humanity" as such are all territorial, and "as a result, one cannot say that there is conventional law providing for universal jurisdiction for 'crimes against humanity'" (Bassiouni 2004, 52). I beg to differ. In my view, SICC and other statute laws are neither pre-political nor merely territorial. Instead, they are public laws established in international or global democracy, which have global authority and validity. Noteworthy. The United Nations spearheaded the process of establishing SICC in 1945, and SICC was agreed upon by nation-states in 1998, going into operation in 2002. Also, even though Russia is not a signatory to SICC, the ICC still issues warrants of arrest for Putin for possible crimes against humanity and other global crimes, which all signatories are obliged to implement.

Historically, the concept of humanity's laws today can be traced back to Kant's concept of cosmopolitan laws. According to Kant, "the legal principles implemented within single states should lead ultimately to a global legal order that unites all peoples and abolishes war: 'all forms of the state are based on the idea of a constitution which is compatible with natural rights of man, so that those who obey the law should also act as a unified body of legislators.'" (Habermas, 1998, 165). Thus, Kant advocated a global order of justice under the rule of a cosmopolitan constitution and a global order wherein human rights were protected under cosmopolitan laws. The concept of humanity's laws and Kant's concept of cosmopolitan laws share two core ideas: (1) they are global laws of protection of human rights, and (2) they are global laws to establish world peace. The entrenchment of humanity's laws in international statutes, legal precedents, and international/global covenants since 1945 institutionalizes Kant's ideal of a global order under the rule of cosmopolitan laws and a cosmopolitan constitution.

Kant recognized that the path to a cosmopolitan world society was long and bumping. He claimed, "The greatest problem for the human species … is to achieve a universal civil society administered in accord with the right." (Kant, 1972, 33). In Kant's view, humankind faces a great challenge to develop a global order to protect individuals' cosmopolitan rights under the rule of cosmopolitan law, e.g., the cosmopolitan constitution. Thus, human civilization under a cosmopolitan constitution is a two-step journey. First, "distant parts of the world can establish with one another peaceful relations that will eventually become matters of public law." (Ibid., 118) Second, "the human race can gradually be brought closer and closer to a cosmopolitan constitution." (Ibid.). To

spell it differently, the first step is developing international laws to protect all human beings' cosmopolitan rights and to establish permanent world peace. The second step is developing those international laws into cosmopolitan laws and a cosmopolitan constitution.

Kant did not call cosmopolitan laws "humanity's laws" or ever use the term "humanity's laws." Still, by cosmopolitan laws, Kant referred to laws that (1) bring about permanent world peace among humankind and (2) protect basic human rights around the globe—rights which Kant dubbed as "cosmopolitan rights of hospitality" on the earth. Thus, Kant's cosmopolitan laws are humanity's law, and the cosmopolitan constitution is the constitution of humanity. About their origin, Kant's cosmopolitan laws evolved from international laws. By this token, in Kant, humanity's laws evolve from international laws that purport to protect human rights and promote permanent world peace. Meanwhile, cosmopolitan laws are public laws of humanity, for humanity and by humanity, not merely moral laws. By this token, in Kant, humanity's laws are public laws of humanity, for humanity, and by humanity.

The explicit use of the concept of humanity's laws started in "the Martens Clause in the Hague Conventions of 1899 and 1907." (Geras, 2011, 5-6). It co-originated with the concept of crimes against humanity that emerged as a central concept in public discourse at the end of the 19th century and the beginning of the 20th century. As Geras points out, *the Second Hague Convention of 1899 preamble* and the Fourth Hague Convention of 1907 preamble both explicitly evoke the concept, "the laws of humanity." (Ibid., 7) The term "laws of humanity" is part of what is known as the *Martens Clause*. Needless to say, "If there are the laws of humanity, then there can be acts in violation of them: infractions or offences; crimes." (Ibid) Thus, the laws of humanity were understood as international laws, "the law of nations," or the law "among civilized peoples" at the end of the 19th century and the beginning of the 20th century. (Ibid.). Since *the London Charter of the Military Tribunal* and the Nuremberg Trial in 1945, the idea of humanity's laws has been embedded and entrenched in the vocabulary of international law and legal precedents.

In content, humanity's laws are about the security of humanity as a species and humankind as a community and the security of humanity's necessary properties (for example, Locke's famous "rights of property"—life, liberty, and pursuit of wealth). The security of humanity is understood in a twofold sense here: On the one hand, it is the security of individuals as human beings who have those necessary properties, traits, and capacities to be humans; on the other hand, it is the security of humanity as a species and humankind as a whole as a community. Ruti Teitel claims, "Humanity's law is universalizing enough to offer a new legal and political subjectivity. This subjectivity is defined and shaped by the humanity concept itself and is articulated and achieved through the multiplication of claims in diverse actors' struggles over access to courts and other institutions of global laws." (Teitel, 2018, 216). The article on crimes against humanity in SICC institutionalizes humanity as the protected species and legal subjectivity that prescribes public laws and prohibits activities damaging humanity as a species, offending humanity as the legal authority, and assaulting humanity's necessary properties and capacities, including human rights, human dignity, and human status.

Hobbes and Locke claimed that laws protecting the security of individuals and their properties were natural laws. Kant claimed that cosmopolitan laws are those laws protecting the security of humanity embodied in individual persons and humanity's necessary properties (e.g., human rights, human dignity, and human status) of all human beings. In our epoch, humanity's laws are public laws that protect humanity's necessary properties (e.g., human rights, human dignity, and human status), conditions, and

capacities, and set limits on human activities and practices in order to protect those properties of humanity. Notably, since the Nuremberg Trial in 1945 and *the UN 1948 Declaration of Human Rights*, the norm of human rights has become part of the functioning, legal architecture of our time. As Robert Fine says, "Human rights are a social form of right that has arisen in our own times and is an achievement of our age … It has a legal status within international law and has percolated into other areas of international and domestic law" (Fine, 2009, 17).

Correspondingly, humanity's laws are public laws intended to promote world peace, which is indispensable to humanity's security. In Kant, cosmopolitan laws and the cosmopolitan constitution purport to establish permanent world peace. Today, as Teitel claims, "the law of humanity [is] a framework that spans the law of war, international human rights law, [and] international criminal justice." (Ibid., 4) Humanity's laws are public laws of the global human community that impose obligations of justice on all human beings to safeguard the security of humanity and promote world peace. They set limits on human activities and practices that concern human rights, the security of humanity, and world peace.

About humanity's laws in our epoch, these truths are self-evident. First, there are international criminal statutes such as *the London Charter*, *SICTY*, *SICTR*, and *SICC*, as well as various international/global covenants that have been enacted since the end of World War II. Second, there are established legal precedents, such as the Nuremberg Trial, that have enacted humanity's laws. Additionally, since the SICC came into operation in 2002, there have been 31 cases of crimes against humanity that the Court has prosecuted. Third, since the end of World War II, the concept of humanity's laws has been entrenched in the global legal architecture. The crown jewel of such achievements is the article on crimes against humanity in the SICC. Humanity's laws, our epochal concept!

In summary, the article on crimes against humanity in SICC enthrones humanity's laws as public laws of the global human community that set the limits of human activities, practices, and basic social institutions in order to globally protect basic human rights, human dignity, and human status of all human beings, to promote world peace, and to safeguard humanity's security, and to preserve humankind as a community of the same species. It institutionalizes humanity's laws as a core component of the global legal architecture. In turn, offenses are categorized as crimes against humanity because they transgress humanity's laws. The article on crimes against humanity in SICC is thus a milestone in human civilization toward Kant's ideal of a world under the rule of a cosmopolitan constitution.

IV.

In conclusion, the article on crimes against humanity in SICC epitomizes the mandate of our epoch to recognize the legal authority of humanity and humanity's laws. It imposes the legal obligations of global justice on all human beings to protect human rights and dignity globally, promote world peace, and safeguard humanity's security. It mandates that all human beings cultivate an epochal culture that actualizes humanity as a legally protected substance and subjectivity. It is thus an epoch-making milestone in human civilization toward Kant's ideal of a world under the rule of the cosmopolitan constitution.

For some philosophers today, the concept of humanity as a species has outlived its meaning and value. Yet, the concept of humanity as a legal substance, together with the concept of humanity's laws, is what the article on crimes against humanity in SICC—that is, article 7—has enthroned. In the article, humanity is a legal subjectivity, and humankind

as a whole is a community of legal authority that holds all human beings accountable for their activities pertaining to human rights, human dignity, world peace, and humanity's security. According to the article, humanity's laws are the third family of public laws, and prohibit activities violating and offending humanity as a legal substance and subjectivity, and assaulting and harming humanity's necessary properties, conditions, and capacities, such as human rights, dignity, and status.

The article on crimes against humanity in SICC epitomizes two core ideas of our epochal spirit: (1) the concepts of humanity as a species and humankind as a whole are at the center of our ethical, social-political, and legal thinking; (2) the norm of humanity as a legal norm, not merely a moral norm. It underscores our epoch as one of humanity, for humanity, and by humanity. It summarizes the profound achievements that various international statute laws, including SICC, legal precedents, including *The Nuremberg Trial*, and international/global covenants have achieved since the end of World War II.

At the end of the day, humanity, humanity's laws, and humankind as a community, that is all we know in our epoch, and that is all we should know in our epoch!

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