

Introduction

The current developments in criminology and victimology can be considered as a turning point. New scopes are being explored, one of which is the criminology and the victimology of war. Indeed, due to some events that occurred during recent local armed conflicts, disciplinary branches newly appear or develop in war criminology. The nature of current armed conflicts, the advancement of International criminal Law, and the opening of world trade, have lead to a visibility of civilian war victims, mostly taken into consideration by humanitarians until now. So, some of the current approaches in criminology are on the way of an emerging discipline, whose topics have specifications that distinguish them from the traditional criminal forms.

The criminology we use to work with in Western Europe is printed by a specific historical and geographical context, and focuses mostly on the pattern of a perpetrator who violates established criminal law in a Rule of law. This relation between criminology and penal law leads to limiting the reality of a victim to the commission of a crime. That entails an epistemological presupposition in victimology, which makes the victim of serious violations of penal common law the prototype of victims of serious offenses. This model does not match therefore with numerous victims whose victimization is not relevant in common law.

Thus, war events differ from offenses relevant in common law because of their nature and their massive form. To study and response these criminal war events, an International criminology² emerges, partly through the criminology and the victimology of war³. As concerns non international armed conflicts, the case of Kosovo is a key to explore and analyze current advancements in international criminology. Indeed, the past and the current events that have occurred on the Kosovo territory are testimonies of practices relating to international criminology.

The following essay aims to highlight some of the witnesses of the present evolution in western criminology, towards a science whose topics and practices contain huge international aspects. First, a rapid presentation of the context in which traditional criminology and victimology emerged, followed by a brief description of the forms and the nature of the subject matter in criminology and in victimology of war. The second part of this paper deals with the criminal practices during non international wars, and with the criminological and victimological responses, as concerns the crisis management, the settlement and the crisis output.

¹ PhD student in Criminology, University of Liège (Belgium) - Alexia.Pierre@doct.ulg.ac.be

² International criminology covers war crimes, crimes against humanity and genocide, and the international criminal law system, which prosecute and try the perpetrators; Haveman, R. ; Smeulers, A. ; « Criminology in a state of denial – towards a criminology of international crimes : supranational criminology », p 3-26, in Smeulers, A. ; Haveman, R. (eds.) ; 2008, *Supranational criminology: towards a criminology of international crimes*, Intersentia, Antwerp, 593 p

³ War criminology and war victimology are deemed to be keys of development in international criminology, Friedrichs, D.O. ; « *Towards a criminology of international crimes : producing a conceptual and contextual framework* », p 29-49 ; in Smeulers, A. ; Haveman, R. (eds.) ; 2008, *Op. Cité*

1-The emerging criminology and victimology

1-1-Context of development of traditional criminology and victimology

The evolution of classical theories and doctrines of criminology in Western Europe occurred in a mainly urban and western environment. Advancements and implementations contained then mostly local implications. A historical context may be added to this geographical environment. Indeed, the initial steps of criminology are concomitant with the beginnings of the industrial revolution and the advent of modernity. The criminology found its space among western sciences, developed in echo with new needs caused by the upheavals of modernity. Thus, from its creation, criminology is grounded in a Western culture, modern, mainly urban, and what it produces is related to topics limited to local needs.

This geographical environment and this historical context acted upon the research scope in criminology. The cultural aspects of the criminology basis led to promote an approach in terms of police and judicial solving of the criminal events. Law and justice are favorite tools in Western Europe, as regards management and settlement of criminal events in a society run by a protective government. Indeed, the western criminology in which we evolve was developed for a democratic society, ruled by a benevolent state, on the model of modern nation-state. In the traditional western criminology, perpetrators are considered as one or few people, who violate a penal law established to ensure the common and individual safety. That is a direct attack to the established orderliness, and indirectly, the State through Law, restores order. These clues can explain partly topics in victimology, considered as a specialized branch of criminology. The victimology⁴ was indeed developed after World War II, to address a need of global understanding of the criminal event, including its consequences. This led to an interest for the individual who suffered the crime, that is to say the victim. In the first time, the victim is only seen as the product of the criminal event. So the victim exists only if the penal law is violated. This excludes numerous individuals from the possible access to the victim status, because the only place to be recognized as a victim is the Law. Under various influences since 1960, the victim has progressively been viewed as a suffering person. The admission of the experience of victimization can then come from various sources, and the resort for the victims is not limited to Law anymore. The evolution of the concept of victim grew in a supportive context for socio-legal tools, leading to a prototype of victim of serious offenses, who has to be one or few people, to suffer an act classified as a criminal offense, and whose offender will be prosecuted in the bosom of the Rule of Law.

Nevertheless, a criminology and a victimology interested in massive phenomenon⁵ exist. Offenses studied by massive criminology are mostly related to organized criminality, from mafias or white collar crime, as well as terrorism. In massive victimology, the studied forms of victimizations are mainly natural or industrial disasters, although victims of terrorism have been a hot topic since 09.11.2001. In these massive victimizations, the group of victims is not defined before the event. It is built up through the event. There is a shade of meaning for the victims of terrorism, because they are

⁴ Cario, R. ; 2006, *Victimologie – De l'effraction du lien intersubjectif à la restauration sociale*, L'Harmattan, Paris, p115-137

⁵ Audet, J. ; Katz, J.F ; 1999, *Précis de victimologie*, Dunod

targeted as members of an identified community. However, this group is defined because of its membership to a given nation or a state. The real target of the terrorist attack is thus a State or a government, hit through its citizens. On the contrary, the deliberate offenses against civilians during war time are directed against a previously defined group. So, the crime of genocide, defined by International humanitarian law, is the only concept which considers an offense directed to a previously defined group.

1-2-Specifications of the studied objects in criminology and victimology of war

War criminology and war victimology have specificities that make them different from traditional approaches in criminology and victimology. In most cases of massive offenses against civilians perpetrated in war time, offenders are under command, often governmental or state. This implies that the victims can not complain and seek the helps usually considered in victimology, like police, army, civilian safety, or socio-legal resort. Moreover, the principle of State sovereignty, that governs the International Relations, prevents the intrusions from a third party in the state affairs, what leave the civilians and targeted populations without any possible resort⁶.

State criminality and war criminality are some organized forms of crimes. Nevertheless, these forms are beyond the scope of classical criminology in matter of organized crime, because the criminal government makes use of its regular means of action. Thus, administration, legislation and even the constitutional rights may enable or support the setting up of the criminal project. By following government guidelines, the citizens or members of the armed forces or police are not deviant in the usual sense of the word. They respect legally established standards, which allow discrimination, exclusion, indeed even disqualification as human being of a defined part of the population⁷. These organizational and logistic means allow to plan and commit massive and systematic crimes. So, criminology is not only a matter of individuals but also a matter of structural opportunities⁸.

Besides, the armed conflict environment is potentially favorable to massive offenses, as much in logistic, organizational, and human means, as in the war climate that permits to hide criminal events, like deliberate military or police offenses against civilians. This specific context and the extent of these victimizations make the civilian victims of deliberate offenses in wartime a specific category in victimology. So, various specifications are identifiable. These victims are numerous; they are targeted as members of an identified group previously defined by the criminal organization; some antagonisms were created or fed between these defined groups (targeted victims / saved); before the crime in itself, these victims are often subject to previous measures, in order to exclude them from the social group, and to deprive them of their usual support network. Furthermore, that which has been lived by these victims of massive offenses in wartime is characterized by the multiplicity of the suffered

⁶ Current tendency to « humanitarian interference », which is comparable to the intrusion of Common Law in spheres that use to be private (family violence for example)

⁷ Haveman, R. ; Smeulers, A. ; « Criminology in a state of denial – towards a criminology of international crimes : supranational criminology », p 3-26; in Smeulers, A. ; Haveman, R. (eds.) ; 2008, *Op. Cité*

⁸ Smeulers, A. ; « Perpetrators of international crimes : towards a typology », p 233 – 265; Smeulers, A. ; Haveman, R. ; « International crimes and criminology : an agenda for future research », p 487 – 512, in Smeulers, A. ; Haveman, R. (eds.) ; 2008, *Op. Cité*

victimizations and the extent of their aftermaths. Thus, these civilians are subject to discriminations and stigmatizations that limit or cancel their status as citizens, to expulsions from their regular inhabitations, to deprivations of properties and identity documents, to arbitrary arrests or imprisonments, to arbitrary executions or murders, to tortures, to rapes. This is increased by the consequences of wartime, like deportations, disappearances, dispersal of families, precarious living conditions.

2-Scope of the international criminology and victimology

2-1-Challenges of the current armed conflicts

Subsequent to World War II, the armed conflicts changed, as much geographically that as regards the type of war. Indeed, the worldwide confrontation gave way to local conflicts, arising from decolonization⁹ for a part, and from the fall of communism blocs (former USSR, former Yugoslavia), for another part. The logics that drive these conflicts are from nationalist and identity claims, instead of the ideological and the technological, as it was during World War II and Cold War¹⁰. Moreover, these current armed conflicts are rooted on very deep oppositions, the war being the emerged part of very old and well-kept conflicts¹¹. The setting up of these conflicts and the means employed led to create antagonisms which far exceed the politics in order to involve people, and ensure popular support and mobilization¹². Furthermore, victims affected by offenses during these local conflicts are not war damages, but well the target of commanded military assaults, in opposition to the rules of the Law of armed conflict¹³. However, the employed means reveal the will to deeply affect the identity of the group defined as enemy, and to destroy this identity. This is true for torture or massive rape¹⁴. The aftermaths of these types of conflicts, and of the crimes occurring consequently, are severe and last for a very long time, not only for individuals and community, but also for the society and its pillars.

The visibility of these armed conflicts, and of the acts occurring during, does not mean that these practices are recent. Nevertheless, the International Relations are on the way of globalization, making impossible not to know these occurrences. Moreover, the extended consequences of these recent local crises carry risks of destabilization, and represent a threat for world peace. Thus International Community plays an important part in matter of management, settling and crisis output concerning local armed conflict, especially in case of suspected deliberate offenses against civilians. The recent non international armed conflicts, in which International Community must intervene, allow observing new ways to act, new areas of involvement, and new tools in matter of management, settling and crisis output. Thus, specific and innovative practices are emerging, exceeding the

⁹ Rothe, D.L. ; Muliins, C.W. ; « Genocide, war crimes and crimes against humanity in Central Africa : a criminological exploration », p 135 – 158, in Smeulers, A. ; Haveman, R. (eds.) ; 2008, *Op. Cité*

¹⁰ Durand, D. ; 2010 (1979), *La systématique*, PUF, Coll. Que sais-je ?, Paris, p120-121

¹¹ Dérens, J.A. ; « Les mémoires antagonistes du Kosovo », *Le Monde Diplomatique*, juillet 2005

¹² In example, the Mille collines radio in Rwanda, the only available one, which broadcast propaganda messages against Tutsis ; or the Serbian medias, which broadcast fake news about military victories in order to demoralize the Albanians.

¹³ Conventions Of La Haye, 1907 ; Conventions of Geneva, 1949

¹⁴ Salas, D. (Dir.) ; 2004, *Victimes de guerre en quête de justice*, L'Harmattan ; Chap. 2 : Reconnaître la victime (le cas du viol), p 89-131

criminology and victimology of common law. In this scope, new kinds of peace missions, or institutional innovation in International penal Law, are noticeable. This reflects the development of a consistent International criminology, which grows on empiricism, through the various encountered events.

2-2-Managing and settling local armed conflicts: the case of Kosovo

What is implemented to manage, settle and overcome the crisis in Kosovo, illustrates the emerging international criminology, through war criminology, war victimology, and empiricism. During the Balkans crisis, it is no more a matter of international conflict, in which the great powers are involved, and who settled its own conflict; but it is about regional conflicts, which carry their own logics. During the Balkans conflicts, the means usually employed by the International Community, as diplomatic ultimatums or economic embargoes, are ineffective. The crisis must be settled through others ways than the usual. So, International Community developed alternatives, allowing more specific approaches, which fit with issues in former Yugoslavia.

The establishment of the International criminal tribunal for former Yugoslavia is an example of the emerging practices in international criminology. The extended damages, particularly to human, led so the UN to establish an innovative criminal court to prosecute, try and convict offenders charged with serious violations of International humanitarian Law, on the basis of the individual responsibility. It is noticeable that the ICTY is relevant for past and coming offenses, thus breaking with the logic of the first appearance of International criminal Law, through the International Military Tribunals, whom competences were limited to events occurred during World War II. In the same way, the International criminal tribunal for Ruanda was given competences to prosecute "persons responsible for genocide and other serious violations of International Humanitarian Law committed (...) between 1 January 1994 and 31 December 1994 »¹⁵. While in 1993, the ICTY was "established for the prosecution of persons responsible for serious violations of International humanitarian law committed in the territory of the former Yugoslavia since 1991"¹⁶. Since the establishment of the ICTY, others criminal institutions have been set up, particularly the International Criminal Court. This Court differs from previous ones because it is permanent. Indeed, institutions as ICTY, ICTR, Hybrid Court for Cambodia, or Special Tribunal for Sierra-Leone are limited in time, space and competences.

Concerning the crisis output, the creation of UNMIK¹⁷, the temporary United Nations Mission in Kosovo, is a new pattern. This pattern of crisis output is ambitious, complex and innovative. Indeed, the setting up of this peace mission took place at a changing time in matter of international peace missions. Because of the extent of the damages and the complexity of the Kosovo situation, UN developed an international mission pattern, making provisions for the participation, to equal parts, of others multilateral international organizations, under UN command. The current peace missions are no longer only concerned by security, but can also be civil missions, going up territory administration, or

¹⁵ Statute of the International Criminal Tribunal for Ruanda, November, 8, 1994, Resolution 955

¹⁶ Updated Statute of the International Criminal Tribunal for former Yugoslavia, May, 25, 1993, Resolution 827

¹⁷ June, 10, 1999 – S/RES/1244

up rebuilding institutional and social levels, as in Kosovo. UNMIK is so a governance system associated to a social pattern, created to output the crisis, as an alternative to a previous pattern that does not stand anymore. UNMIK is therefore responsible for four pillar areas. The territory administration stays under UN command. UNHCR is in charge of humanitarian assistance. Democratization and institutionalization are under OSCE responsibility. European Union supports economic rebuilding, through development of structures and tools needed for making a strong basis in order to develop a market economy, and to promote Kosovo integration in the regional and European financial institutions. The Kfor, under NATO command, keeps peace.

Conclusion

Neglected by academics in criminology, the non international armed conflicts show nevertheless criminal events, particularly military attacks targeting massively and systematically civilians. So, new objects of study are emerging in the scope of criminology and victimology, far exceeding the traditional framework of criminology and victimology in Western Europe, and going towards international criminology. The international concerns of this criminology come from the seriousness of the observed phenomenon, and from the fact that the International Community is directly implied, because of the massive violations of International humanitarian law, conventionally established at an international level. Furthermore, the worldwide stability and security are concerned by the consequences of these armed conflicts, as much politically or economically, as on a humanitarian point. Indeed, the extent of these crises and the aftermaths carry risks of humanitarian disasters. Thus, even regional, the recent non international armed conflicts led the members of the International Community to intervene in matter of management, settling and crisis output. Those are the international logistic, financial, human, scientific, or economical means which allow an effective intervention from the International Community in order to manage, settle and output the crisis.

The international criminology is thus a discipline interested in collective and massive events, as much from the perpetrators' side, as from the victims', or from the third intervening. Moreover, creativity is a specificity of the emerging war criminology and victimology, what energizes the practices and makes them fit to situations carried by the armed conflicts. Indeed, both these disciplines develop mainly on empiricism. Nevertheless, if the management and the settling are mostly reactive, the acts are designed for the long term. So, institutional innovations express the adoption of new practices in matter of International criminal law, including prevention. In crisis output matters, the UNMIK in Kosovo is highly innovative. Firstly, UNMIK is collaboration between various International multilateral organizations; secondly, this framework suggests a global rebuilding, set up for the long term and designed to survive the withdrawal of international presence. These current practices are claiming for going beyond the emergency support, towards an integrative vision of the settling and crisis output¹⁸. Finally, these long term practices, and the emergence of an identifiable

¹⁸ For instance, the integration to the European Union of states from former Yugoslavia

pattern, allow academic production, what suggests the setting up of international criminology on non international armed conflicts in the disciplinary scope of Criminology in Western Europe.