

“Serious International Crimes, Human Rights, and Forced Migration”

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ABSTRACT

Persecution in International Criminal Law and Refugee Law

Persecution is a term that pertains to both international criminal law and refugee law. In light of the fact that forcible displacement is often a result of large scale crimes, it seems likely that intersections exist. This paper analyses the correlation of persecution as an international crime and the refugee definition. On the one hand, persecution is a crime against humanity pursuant to Article 7 ICC Statute and is defined as “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” (Article 7(2)(g) ICC Statute). On the other hand, persecution is part of the refugee definition of Article 1A Refugee Convention. Article 1A Refugee Convention defines a person who, “owing to well-founded fear of being *persecuted* [...] is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ” as a refugee. This paper interprets the term “persecution” in both contexts and detects similarities and differences. Taking into account all forms of forcible displacement, it also deals with the question whether victims of an international crime such as persecution, deportation, or forcible transfer can automatically be qualified as refugees. At the same time, it explores the possibility of deducting from a refugee phenomenon the existence of international crimes as a “root cause”. Such international crimes are not confined to “persecution” as a crime against humanity, but also include, for instance, deportation as a war crime (Article 8(2)(a)(vii) ICC Statute). If committed as part of a widespread or systematic attack or in the context of an armed conflict, refugee-producing acts such as human rights deprivations in an armed conflict or large-scale state oppression could qualify as international crimes. Lastly, the paper discusses the allegation raised against States (such as Australia) that their unlawful expulsion of refugees could also amount to deportation as a crime of international law.

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