Anfal Case and genocide Crime

The Second Trial Chamber has issued its decision of the case 1\T2\2006 dated in June,24, 2007, that stated on the conviction of a number of defendants in accordance with the provisions of Article 11 of the Iraqi High Tribunal Statute No. 10 of 2005 for crimes of genocide in addition to Article 12 relating to crimes against humanity and Article 13 of war crimes and after having the access to the facts of the case, we would like to discuss the applicability of the genocide on the Anfal operations from a legal standpoint, according to the legal provision contained in the IHT Statute and it is from the facts of the case files.
Article 11 – First of the IHT Statute has defined the genocide as a crime committed (to destroy a national, ethnical, racial or religious group as such in whole or in part). This definition reproduces verbatim from the text of Article 2 of the Genocide Convention, which opened for signature by the General Assembly of the United Nations decision No. 26 (III) of December 9, 1948 and its expiration date is in January 12, 1951 and ratified by Iraq in January 20, 1959.

Referring to the discussions that preceded the signing of the Genocide Convention is clear that the countries that participated in this convention were divided into two parts: first demanded expansion of the concept of genocide to include political crime and second led by the Soviet Union had wished not to expand the concept of the crime and excluded the political crime To keep genocides political opponents exerted by Stalin far from the provisions of this Convention.

The second trend desire achieved only when the concept of genocide in Article 2 of the Convention to destroy a national, ethnical or religious group without political basis of this minor and unjust concept of the owners opinion, all the crimes committed and the massacres the have been carried out by destroying the political groups which are against the ruling authority, have emerged the scope of the genocide. Perhaps what happened in Cambodia is the clearest evidence that it was genocide of more than a million people at the hands of the Red Khmer between 1975-1985 which is almost half of Cambodia's population, without considering such a crime of genocide because national or ethnic or religious victims and the reason was not for the commission of those crimes, but was targeted for political reasons, which is not covered by the provisions of the Convention, despite the gravity and the brutality of these crimes.

Many efforts have been made to avoid failures occurred in the concept of genocide and that when drafting the Basic Law of the International Criminal Tribunal for Yugoslavia in 1993 and the Statute of the International Criminal Tribunal for Rwanda in 1994. Efforts have also been made with the Preparatory Committee for the development of the International Criminal Court, however, those efforts, alas, has failed so that the Preparatory Committee referred to, could not make any changes, even simple text of article 2 of the Genocide Convention that its text referred above.

And that the international community be able to expand the concept of genocide set by Article 2 of the Convention the authorities authoritarian dictatorship in the world will remain exercising the cruelest kinds of genocide and oppression against political opponents without being considered crimes of genocide under control contained in the Convention.

Accordingly, the Special intent of the crime of genocide is not achieved, according to the article 2 of the Convention and Article 11 of the court statute. Only if the availability of an intent of destroying or genocide of the protected Community wholly or partly because of national or ethnic or religion victim and not for any other reason such as political conflict. And then it is not required to commit such crimes should be within a broad and much, but enough to be achieved against a number of people as long as the motive is to commit ethnic, national or religious of the victim and not for any other reason.

standing on the applicability of the provisions of Article 11 of the court statute for crimes of genocide for acts committed in the Anfal operations, requires to pose a major questions depends on the answer by determining the legal adjustment for those acts.

First:

Is the process of depreciation confined to a particular geographical area or were pursuing Kurdish nationalism in order to eliminate them?

Second:

Has there been a national separation between points of conflict? Are they any different from the nationality of the offenders and the nationality of the victims?

To answer the first question is from the facts of the case files, the Anfal operations included a specific geographic area in advance not to exceed other neighboring areas although those neighboring regions inhabited by the Kurdish nationalist, which is the largest population of the region than what has been meant in Anfal operations. The thing that clearly indicates that the Anfal operations aimed at targeting a geographical area and it did not target the citizens of a certain nation. Decision NO.4008 issued on 20\6\1987 had allowed the killing without prior warning of every moving object in that area regardless of the nationality of the targeted object. Killing was not confined to the affiliates of a certain nationality, and the destruction did not exempt a village occupied by another national group. The majority of the population residing in the targeted geographical area who belong to a certain national group which is the Kurdish nation does not change anything since the criminal act did not target them because of their nationality but because of their existence in the area aimed to be destroyed.

It might be said that the genocide crime does not have a condition to terminate the group totally but the crime could be realized even if the termination was partial.

The termination of the group in the genocide crime whether completely or partially should be for the national, ethnic or religious affiliation of the victim. If the national affiliation of the victims in the Anfal case was the target, the authority would have chosen other Kurdish areas in which it can terminate larger numbers of people with less and easier efforts. So the termination operations where can find certain geographical areas. If we know that the targeted area was under the control and the influence of opponent political parties, the motive behind that was to terminate the political enemies. That is to say that the events indicated that the conflict was not a national one but it was a political conflict. We can say that the nationality of the victims was not the reason behind committing those acts.

Those who oppose that may say that the victims were all political enemies as most of them were children and illiterate women and elderly people. We may reply to that by saying that the oppressive former regime authorities did not recognize the constitutional principle of the personal punishment because the regime used to harm the families of its political enemies wherever they were.

As for the second question about the nationality of both parties of the conflict which means the nationality of the criminals and the victims, it's quite clear in the case files that the parties who were fighting against the authority in that targeted geographical area aimed to be destroyed did not entirely belong to the Kurdish nation. There were other parties most of whose members belong to other nationalities including Arabs.

On the other side, the attackers did not belong to one nation as the sons of the Kurdish nation formed 250 national defense battalions. If each battalion consisted of 300-500 fighters the number could be more than half a million Kurdish fighters who participated in attacking that geographical area with the attacking authority forces. This number was more than the number of those who fought against them who were from deferent nationalities. The number also equaled or might be more than the number of the attacking forces of the government.

This can be proved by the decision of the second trial chamber No. (1/C/2nd/2007) when it decided to inform the investigative court to take the measures against 423 defendants most of whom belonged to the Kurdish nationality and they had occupied leading positions in the Anfal operations.

This clearly indicates that the conflict was not a national one and this means that there was no intent to terminate the group because of its national affiliation by the sons of another nation.

It is quite clear from the aforementioned that the acts committed in the Anfal operations though barbaric and brutal because of the indiscrimination among the victims, can not be subjected to the provision of article 11 of the IHT statute because they were not considered genocide crimes in accordance with the definitions of this crime stipulated in this article and which was literally quoted from the text of article 2 of the genocide prohibition treaty.

Our modification of those acts may lead to considering them as crimes against humanity according to the provisions of article 12 of the IHT statute because they were acts committed within the framework of a comprehensive and systematic offensive against a group of civilian population.

It is worth mentioning that crimes against humanity are not less serious than the genocide crimes if not worse. It is not a condition in the latest crimes to be within a framework of a comprehensive and systematic offensive but it is a condition in the crimes against humanity that they should have this condition which was very clear in the Anfal operations.

Judge
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Appellate chamber judge