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GROUNDS FOR INACTION (OMISSION) AND ITS RESPONSIBILITY IN THE SYSTEM OF TRANSNATIONAL CRIME

ПІДСТАВИ БЕЗДІЯЛЬНОСТІ ТА ВІДПОВІДАЛЬНІСТЬ ЗА НЕЇ У СИСТЕМІ ТРАНСНАЦІОНАЛЬНИХ ЗЛОЧИНІВ

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This article explores the role of inaction (omission) as a critical element in the commission of transnational crimes and examines its implications for criminal-legal assessment. It emphasizes the need to address the objective aspect of crimes committed through omission and the grounds for liability associated with such conduct. The study highlights the lack of a clear legal distinction concerning inaction in the statutes of international criminal tribunals, including the Rome Statute of the International Criminal Court. Although the Rome Statute does not explicitly address criminal inaction, the inclusion of "conduct" suggests an acknowledgment of inaction as part of the broader concept of behavior.

The research also underscores the ambiguity in the term "other inhuman acts" in various legal statutes concerning crimes against humanity, arguing for the inclusion of omissions within this category, as is customary in national criminal law. It advocates for recognizing omissions as a form of objective commission, particularly when individuals in official positions abuse their powers by failing to act.

Moreover, the article commends the criminalization of ecocide as an international crime but recommends clarifying that the crime's objective elements may be committed through either action or inaction. To ensure consistency in legal practice, the study calls for the explicit definition of inaction in domestic legislation. It argues for clear legal provisions specifying which crimes can be committed by action, inaction, or exclusively by omission. This approach will strengthen the legal framework for addressing transnational crimes and enhance accountability for criminal behavior through both action and omission.

The analysis of the commission of acts within the framework of transnational crimes through inaction (omission) from an objective perspective, as well as the grounds for liability arising therefrom, holds significant importance in terms of their criminal-legal assessment. The purpose of this article is to examine the role of inaction as an essential element in the system of transnational crimes and to highlight its significance in the classification of acts falling within this framework.

Key words: crime, transnational crime, criminal composition, criminal responsibility, inaction (omission).

У статті досліджується роль бездіяльності (омісії) як важливого елементу вчинення транснаціональних злочинів та аналізуються її наслідки для кримінально-правової оцінки. Наголошується на необхідності розгляду об'єктивного аспекту злочинів, вчинених шляхом бездіяльності, та підстав для притягнення до відповідальності за таку поведінку. У роботі підкреслюється відсутність чіткого правового розмежування щодо бездіяльності в статутах міжнародних кримінальних трибуналів, включаючи Римський статут Міжнародного кримінального суду. Хоча Римський статут прямо не передбачає кримінальну відповідальність за бездіяльність, включення поняття «поведінка» свідчить про її визнання як частини ширшого концепту поведінки.

Дослідження також акцентує увагу на невизначеності терміна «інші нелюдські акти» у статутах, що стосуються злочинів проти людяності, та обґрунтовує включення бездіяльності до цієї категорії відповідно до національного кримінального права. Висловлюється підтримка підходу, за яким бездіяльність може визнаватися формою об'єктивного складу злочину, особливо коли посадові особи зловживають своїми повноваженнями, не здійснюючи необхідних дій.

Крім того, у статті схвалюється криміналізація екоциду як міжнародного злочину, але рекомендується уточнити, що об'єктивні елементи цього злочину можуть бути вчинені як шляхом дії, так і бездіяльності. Для забезпечення послідовності правозастосовної практики автори закликають до чіткого визначення бездіяльності в національному законодавстві. Висловлюється необхідність передбачити правові норми, які чітко визначатимуть, які злочини можуть вчинятися дією, бездіяльністю або виключно шляхом омісії. Такий підхід сприятиме зміцненню правової основи боротьби з транснаціональними злочинами та підвищенню відповідальності за кримінальну поведінку.

Ключові слова: злочин, транснаціональний злочин, склад злочину, кримінальна відповідальність, бездіяльність (омісія).

In the modern era, the proliferation of crime, particularly transnational organized crime, resembling an epidemic across all regions [19], intensifies the responsibility of states to develop the most effective methods for combating and preventing criminal activity. It also underscores the necessity of detecting such crimes through the proper application of substantive and procedural legal norms. This responsibility is closely linked to ensuring effective enjoyment of human rights and freedoms, maintaining democratic stability, and safeguarding public security by preventing and eliminating threats to legally protected interests.

It is no coincidence that Article 31, paragraph 1, of the Constitution of the Republic of Azerbaijan, adopted on November 12, 1995, affirms that everyone has the right to live in safety [1, p. 12]. On this basis, the analysis of inaction as a criminal-legal category and the associated issues of liability within the system of transnational crimes – distinguished from other crimes by their international and public danger – holds critical importance.

In this context, the current article examines the system of transnational crimes within the framework of national legislation and criminal law doctrine, analyzing inaction in its classification into "pure" and "mixed" forms from an objective standpoint. It is worth noting, however, that other classifications of inaction exist in criminal law theory. For example, Turkish scholars, based on the Turkish Penal Code, divide inaction into two categories: pure inaction, which criminalizes the direct omission of any necessary behavior, and apparent inaction, where crimes that can be committed through action may also be committed through inaction [12, p. 580].

Before analyzing the category of inaction within the system of transnational crimes, it is essential to examine the concept, classification, and system of transnational crimes.

Transnational crimes encompass acts that concern the global community, infringe upon the interests of individual states, and transcend international borders, thereby violating the laws of multiple states [16, p. 12]. These crimes are classified into various categories and can be broadly divided into three main types:

– international crimes;
– crimes of an international nature;
– ordinary crimes with foreign elements [9, p. 76].

International crimes can be defined as particularly grave offenses that fall under the jurisdiction of the International Criminal Court (ICC), such as crimes against humanity, genocide, aggression, and war crimes.

The legal foundation of this classification is established by the Rome Statute of the ICC. From June 15 to July 17, 1998, official representatives of 160 states, along with approximately 250 non-governmental organizations, convened in Rome, Italy, to establish the International Criminal Court. Contrary to expectations, the Statute of the ICC was adopted on the final day of the conference [13, p. 34]. This court is recognized as a judicial body created for the continuous (permanent) prosecution of international crimes, offering a comprehensive classification of these crimes in the history of transnational criminal law.

Crimes of an international nature refer to acts that are criminalized through specific conventions, with the consent of the states involved, due to their necessity in ensuring state security and sovereignty. These conventions may be international, regional, multilateral, or bilateral in nature, in accordance with international law.

For example, following the adoption of the Law on the Ratification of the Council of Europe's "Convention on Cybercrime," signed on November 23, 2001, in Budapest, on September 30, 2009, Azerbaijan made declarations and reservations in this area. Additionally, with the adoption of the Law on Amendments to the Criminal Code of the Republic of Azerbaijan on June 29, 2012, Chapter XXX of the Criminal Code was dedicated to cybercrimes, and new provisions addressing cybercrimes were incorporated into this chapter [10, p. 65].

Ordinary crimes with foreign elements refer to crimes committed outside the territory of the Republic of Azerbaijan, based on the objective element of the crime. Additionally, according to the subjective element, these are crimes committed by a foreign national or a stateless person (excluding those whose permanent residence is in the Republic of Azerbaijan).

Although occasionally debated in doctrine, some argue that a crime is also considered to have a foreign element if the victim (the harmed party) is a foreign national or stateless person.

According to the classification mentioned above, we can state that, based on the objective element of the criminal composition, crimes committed through inaction can occur within all three types of transnational crimes. In order to analyze crimes committed through inaction within the system of transnational crimes, it is essential to first focus on the statutes of ad hoc (one-time) tribunals that form the basis for liability in transnational crimes.

To prosecute the perpetrators of World War II, the victorious states – USSR, USA, Great Britain, and France – established the International Military Tribunal (IMT) in Nuremberg under an agreement signed in London on August 8, 1945. The tribunal, which operated from November 20, 1945, to October 1, 1946, marked the first instance of a formal classification of international crimes in its Charter. These included crimes against peace, war crimes (violations of the laws and customs of war), and crimes against humanity, with corresponding criteria for classification.

In the same political context, on January 19, 1946, a similar agreement was reached among the USSR, USA, Great Britain, China, France, Australia, Canada, New Zealand, the Netherlands, Indonesia, and the Philippines, resulting in the creation of the International Military Tribunal for the Far East (Tokyo). Operating from May 3, 1946, to November 12, 1948, the Charter of this tribunal, like the Nuremberg Tribunal, reiterated the classification of international crimes and their criminal-legal characteristics [13, p. 20–23].

An interesting point is that, within the classification of crimes listed in the aforementioned statutes, there is no direct mention of whether the acts are committed through action or inaction from an objective perspective. Furthermore, the statutes of these tribunals do not contain provisions excluding inaction. This implies that, since the objective characteristics of crimes such as murder, extermination, and others are not specifically outlined, these acts should theoretically be considered capable of being committed through inaction as well.

On the other hand, the inclusion of the term "other inhuman acts" in the system of crimes against humanity within the statutes of both the International Military Tribunal and the International Military Tribunal for the Far East may not be unambiguously accepted. The use of this phrase could be interpreted as implying that the crimes within the system of crimes against humanity are to be committed exclusively through action, rather than inaction.

The "Cold War" period, spanning nearly half a century, can be considered a "dark period" in the history of transnational criminal law in terms of the establishment of international tribunals. After the Nuremberg and Tokyo tribunals in 1945-1946, no other international tribunal with jurisdiction over international crimes was established for more than four decades. Although the wars occurring globally (such as the Vietnam War, the Korean War, etc.) between the two military-political blocs (the Western world and the Soviet Union) had long prepared the ground for the creation of international tribunals, such tribunals were not established during this period.

With the dissolution of the USSR and the end of the Cold War, the geopolitical situation of the early 1990s brought the issue of establishing tribunals for the legal assessment of the atrocities committed in the former Yugoslavia and Rwanda back to the forefront.

It should also be noted that the establishment of tribunals during this period was influenced by political interests. For instance, the expectation of creating a tribunal to hold accountable those responsible for the atrocities committed during the First Nagorno-Karabakh War, particularly the Khojaly genocide, did not materialize at that time. Historical justice was only achieved nearly 30 years later, following the victory of the Azerbaijani Armed Forces in the Second Nagorno-Karabakh War, which led to the liberation of the occupied territories. Moreover, Azerbaijan began prosecuting the perpetrators of crimes from the first war under its domestic legislation. For example, the Baku Military Court sentenced Vagif Khachatryan, who was accused of committing genocide in the village of Meshali, to 15 years of imprisonment [11].

Taking into account historical and political realities, and differing from previous tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established not through an agreement between the relevant states but as an exceptional measure under the United Nations Security Council Resolution 827, adopted on May 25, 1993. This tribunal was given the authority to prosecute three international crimes committed in the former Yugoslavia: genocide, war crimes, and crimes against humanity. Following this, the UN Security Council, in the aftermath of the Rwandan genocide, established the International Criminal Tribunal for Rwanda under Resolution 955, adopted on November 8, 1994, to prosecute genocide, crimes against humanity, and war crimes [13, p. 26–27].

When adopting the relevant Resolutions, the UN Security Council referenced Chapter VII of the UN Charter, which pertains to its authority to take measures related to "threats to peace, breaches of the peace, and acts of aggression." This chapter provides the Security Council with the mandate to take actions, including the establishment of international tribunals, in response to serious violations of international law that threaten peace and security.

In the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), no act classified as an international crime explicitly mentions inaction as a necessary element from an objective standpoint. However, as in the statutes of previous tribunals, the commission of these acts through inaction is not excluded. As is well known, many acts can be committed both through action and inaction, such as causing serious bodily harm, among others.

Article 7, paragraph 3, of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) states that if any act outlined in Articles 2–5 of the Statute is committed by a subordinate, and the individual in a position of authority knew or should have known about such acts, as well as had the responsibility to take necessary and reasonable measures to prevent or punish those responsible, the failure to do so (inaction) does not exempt the superior from criminal responsibility. Thus, inaction demonstrated by a superior, based on their official duties, can lead to criminal responsibility. A similar provision is also found in Article 6, paragraph 3, of the Statute of the International Criminal Tribunal for Rwanda, which sets out the same principle regarding individual criminal responsibility [7, p. 146].

Amid the backdrop of various conflicts, the establishment of special courts in the early decades of the 21st century, which hold a distinctive place in both international and national criminal adjudication practice, has necessitated the development of key issues in transnational criminal law, including the differentiation of punishments, fair sentencing, and other related matters. In this context, the establishment of the Special Court for Sierra Leone and the Special Tribunal for Lebanon are of particular importance, as these cases have played a crucial role in advancing the legal framework for handling complex international crimes.

In the early 2000s, amidst the pervasive central authority weakness and an inadequate judiciary in Sierra Leone, the Special Court for Sierra Leone was established on an ad hoc basis to prosecute perpetrators of horrific massacres (crimes against humanity and war crimes) committed during the devastating civil war. This court represented a new type of international tribunal, differing from previous ad hoc tribunals in its establishment. Unlike earlier tribunals, which were created based on international agreements or United Nations Security Council resolutions, it was established by the decision of the UN Secretary-General. Its jurisdiction covers all categories of transnational crimes, including acts classified as crimes under Sierra Leonean law [7, p. 150].

None of the crimes established under the jurisdiction of this Court explicitly define the objective element of the offense as being committed by omission, nor is such an exclusion specified. However, it can be clearly accepted that some crimes may be committed through omission, such as acts of degrading treatment, for example. Nevertheless, as in previous judicial bodies, the Statute of the Special Court for Sierra Leone, in Article 6, paragraph 3, emphasizes that the omission of superior officials regarding the actions of subordinates does not exempt them from criminal responsibility.

Furthermore, after the 15-year-long civil war, Lebanon entered a new era, during which, on February 14, 2005, a suicide bombing targeting Prime Minister Rafik Hariri, who was preparing for elections in Beirut, occurred. In accordance with the United Nations Security Council Resolution 1757 dated May 30, 2007, a hybrid or mixed judicial body was established to prosecute individuals accused of committing or attempting to commit a series of assassinations against prominent Lebanese political and public figures, starting in 2004 [7, p. 154].

Article 2 of the Statute of the Special Tribunal for Lebanon outlines the international crimes and other offenses under the Tribunal's jurisdiction for the period between October 1, 2004, and December 12, 2005. According to the Lebanese Penal Code, crimes such as acts of terrorism, offenses against life and personal inviolability, the formation of illegal associations, failure to report crimes and violations, participation in a crime, and other provisions related to substantive criminal law are defined in the first section. Additionally, Articles 6 and 7 of the Lebanese Law on "Enhanced Penalties for Hostility, Civil War, and Interreligious Conflicts," dated January 11, 1958, which are incorporated into the Statute, are specifically emphasized in Article 2.2 of the Statute.

As can be seen from this, unlike the Special Court for Sierra Leone, the Special Tribunal for Lebanon only includes international crimes and "ordinary" crimes defined by national legislation within its jurisdiction. The Statute of the Special Tribunal for Lebanon is distinguished by its direct reference to inaction (failure to report crimes and violations) within the crimes under its jurisdiction. Furthermore, Article 3 of the Statute, titled "Individual Criminal Responsibility," specifically includes the criminal liability of a superior for inaction regarding illegal acts committed by persons under their command, as stated in subsections 2 and 2(c) of the statute.

Another example of an internationalized court is the Extraordinary Chambers in the Courts of Cambodia. It was established in 2006 under an agreement between the Kingdom of Cambodia and the United Nations, based on a treaty signed in 2003. This court was created to prosecute and try those responsible for genocide, various crimes against humanity, and war crimes committed during the Khmer Rouge regime under the leadership of Pol Pot from 1975 to 1979. According to the Law on the Establishment of the Extraordinary Chambers, the Chambers' jurisdiction includes crimes defined in Cambodia's 1956 Penal Code, crimes under the "Convention on the Prevention and Punishment of the Crime of Genocide," crimes under Article 5 regarding "crimes against humanity," and crimes under the Geneva Conventions, the Hague Conventions, and the Vienna Convention on Diplomatic Relations (war crimes).

According to Cambodia's national criminal law, acts such as murder, torture, and religious persecution were subject to punishment. Since there is no direct emphasis on the necessary elements of action or inaction in the objective aspect of these crimes, it can be concluded that these acts could be committed by inaction as well. Similarly, acts within other categories of crimes, such as murder covered by genocide and others, do not explicitly reference action or inaction, similar to the statutes of previous tribunals. Furthermore, the phrase "other inhumane acts" is included in the system of crimes against humanity, which we have discussed previously.

In the system of transnational crimes, particularly in the most advanced system of international crimes, it is necessary to examine the 1998 Rome Statute of the International Criminal Court (ICC) in order to analyze the determination of inaction as part of the objective element of the crime. Although the Rome Statute does not explicitly regulate inaction, the ICC has indirectly affirmed the possibility of exercising jurisdiction over crimes committed through inaction. It is not by chance that in many provisions of the Rome Statute, the term "conduct" is used, which broadly encompasses both action and inaction. This inclusion of "conduct" in the essential elements of crimes under the jurisdiction of the ICC is reflected in most academic discussions on the matter, suggesting that inaction is considered as an integral part of criminal responsibility under the Statute [15].

However, the term "inaction" explicitly stated in the Rome Statute serves more of a guarantee function than a substantive criminal law meaning. Specifically, according to Article 93, paragraph 2, of Section 9, titled "International Cooperation and Legal Assistance," the Statute stipulates that the Court has the authority to provide guarantees that a witness or expert who has appeared before the Court will not face prosecution, detention, or any other restriction of personal liberty due to any actions or inactions that may have occurred before their departure from the requested state. This provision emphasizes a protective mechanism for individuals involved in legal proceedings, ensuring their safety from retribution or punishment based on their cooperation with the Court [17, p. 66].

Although the Republic of Azerbaijan has not ratified the Rome Statute of the International Criminal Court (ICC), it is one of the few countries that has incorporated its provisions into national criminal law. In Azerbaijan's 1999 Criminal

Code, under Section VII, titled "Crimes Against Peace and Humanity," almost all the international crimes outlined in the Rome Statute are codified. This demonstrates Azerbaijan's commitment to addressing international crimes such as war crimes, genocide, and crimes against humanity within its domestic legal framework [14, p. 72].

Article 103 of the Azerbaijani Criminal Code is dedicated to the crime of genocide and includes the actions listed in the Rome Statute of the International Criminal Court (ICC). The acts specified in this article, such as "killing members of a group, causing serious harm to the health of members of a group, or causing serious harm to their mental faculties," as well as "creating living conditions aimed at the physical destruction of the group in whole or in part, and taking measures to prevent births within the group," can be accompanied by both actions and omissions. Considering that genocide is a formal crime, it can be noted that the crime described here could be committed purely through inaction [2, p. 118].

Article 105 of the Azerbaijani Criminal Code, which criminalizes the act of exterminating a population, differs from the crime of genocide in that it does not contain the specific intent (special purpose) required for a crime against humanity, as in the case of genocide. Although the objective aspect of this crime is not directly specified, it is evident that the possible acts could be committed both by action and inaction. As a material crime, it can be observed as a mixed inaction in its objective aspect.

Article 109 of the Azerbaijani Criminal Code, when committed in conjunction with crimes against humanity, is dedicated to the crime of persecution. The act of "brutally depriving individuals of their basic rights due to their affiliation with a group or organization" as outlined in this article can be committed through both action and inaction. For example, failing to ensure a person's right to legal assistance when committing a crime against humanity could be classified as an act of inaction. This crime can be observed both in its pure form and as a mixed inaction [14, p. 124].

Article 110 of the Azerbaijani Criminal Code addresses the act of forcibly disappearing individuals and is expressed as an alternative criminal composition. The act of "refusing to provide information about the fate or whereabouts of a person, with the aim of depriving the person of legal protection for an extended period, under the instruction, support, or consent of the state or a political organization" is objectively committed through inaction. This failure to provide information is derived from the duties and powers of the relevant officials, and their failure to act constitutes a clear omission. This act is a formal composition and is committed through pure inaction.

Article 111 of the Azerbaijani Criminal Code outlines actions that involve a special intent, which is a necessary element of the subjective aspect, namely "the purpose of maintaining a group of any race in slavery and ensuring the superiority of another racial group for that purpose." This article includes a variety of acts that can be committed both through actions and omissions. Some of the acts mentioned can be committed by either taking action or by failing to act, depending on the circumstances [5, p. 118].

Article 113 of the Azerbaijani Criminal Code criminalizes the act of torture committed as part of a large-scale or systematic attack on civilians, whether in times of peace or war. The act of "inflicting mental suffering on persons who are detained or otherwise deprived of their liberty" can be observed as pure omission (such as failing to provide food, etc.). This demonstrates how an omission, such as neglecting to fulfill basic human needs, can constitute an act of torture under the law.

On the other hand, Chapter 17 of the Criminal Code is dedicated to war crimes. It should be noted that many of the actions listed here are criminalized during both international and internal armed conflicts, unlike in the Rome Statute. For example, while the Rome Statute addresses the use of hunger as a weapon in international armed conflicts, domestic legislation also includes this provision as applicable during internal armed conflicts. This reflects the broader scope of the Azerbaijani Criminal Code, which covers both international and non-international armed conflicts in its definition of war crimes.

Article 116 of the Criminal Code, which defines the complex crime of "violating international humanitarian law norms during armed conflict," includes the unjustified delay in the repatriation of prisoners of war and civilians. This act of inaction is committed through pure inaction, as it involves the failure to take necessary actions, which directly violates international humanitarian obligations.

Article 117 of the Criminal Code, regarding "inaction or issuing criminal orders during armed conflict," refers to a situation where a superior or official deliberately fails to use all available means within their authority to prevent crimes outlined in Articles 115 and 116 of the Criminal Code during an armed conflict. This deliberate failure to act is expressed through pure inaction, as the individual in question has the duty to act but deliberately refrains from doing so.

It is known that various sections and chapters of the Criminal Code of the Republic of Azerbaijan establish and criminalize the commission of international crimes. According to Article 3 of the Criminal Code, such acts (whether through action or inaction) result in criminal liability only when all the elements of the criminal offense as defined by this Code are present.

For example, in the sections of the Criminal Code concerning economic crimes, crimes against public security and order, as well as crimes against state authority, a significant number of international crimes have been established. Let us consider some of them:

The majority of the crimes identified in the section on corruption and other crimes against public service interests are classified as international crimes based on their transnational characteristics. For instance, the United Nations Convention against Corruption, dated October 31, 2003, the Council of Europe’s Convention on Criminal Responsibility in Relation to Corruption, dated January 27, 1999, and other international and regional instruments are dedicated to preventing corruption crimes and criminalizing them.

Corruption refers to the abuse of power by an official for personal gain, leading to the creation of dangerous situations for society and the state. This includes the commission of crimes, the provision of information that benefits criminal groups and creates a system for social control, and the unlawful release of individuals arrested by law enforcement for committing crimes, thereby fostering criminal activities [8, p. 101].

Article 308 of the Criminal Code addresses the crime of abuse of office powers. Given the broad scope of officials' duties, the forms of abuse of power may vary. In this case, the acts of abuse can be committed both through action and inaction (such as the failure to use official powers when required by public interest or official duties). These acts must stem from the official's legal authority. The abuse of office powers, in violation of the official’s duty, is defined by the scope of duties set forth in relevant normative acts and labor contracts between state and local authorities, as well as public and private institutions, commercial and non-commercial organizations [4, p. 847].

Abuse of office powers is divided in legal literature into two categories: in a narrow sense, it refers to the misuse of powers within the scope of one's official duties, and in a broader sense, it involves the use of official authority in service relationships for personal gain. Article 308.1 of the Criminal Code is dedicated to the narrow sense of abuse, specifically the misuse of authority within the scope of the official's duties. The specific duties and responsibilities for each position are clearly defined in relevant acts (such as the Labor Code, employment contracts, etc.).

The criminal offense is material in nature according to its objective aspect, requiring significant damage to be caused. Significant damage is a value-based concept that must be assessed by the court. It can be evaluated in terms of property damage, violations of constitutional rights and freedoms, harm to the state's reputation, cases of inactivity, and so on. The concealment of crimes covered by this offense, as well as other crimes committed through inaction, may also result in the creation of an aggregate offense under Article 307 of the Criminal Code.

The other crimes committed by omission outlined in this chapter may include negligence committed through mixed omission under Article 314 of the Criminal Code, as well as the failure to prevent construction work carried out in violation of legislatively established regulations through pure omission under Article 314-3, among others.

Another type of international crime, ecological crimes, also bear a transnational character due to the significant damage they cause. On the other hand, in Azerbaijan's political history, the commission of ecological crimes has led to conflict and war. For instance, the destruction of the Topkhana Forest in Karabakh in 1988 contributed to the escalation of political tensions and the onset of the Karabakh conflict in November of the same year.

On the other hand, the damage caused to the environment is a matter of concern for the entire international community. The United Nations' "Convention on the Law of the Sea" of April 29, 1958, the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" of March 3, 1973, the "Convention on Biological Diversity" of June 5, 1992, and other instruments contain provisions aimed at the protection and preservation of ecosystems.

It should be noted that environmental crimes also serve as one of the factors contributing to climate change. It is no coincidence that during the COP-29 (Conference of the Parties 29), hosted by Azerbaijan, potential agreements made within the framework of the United Nations Framework Convention on Climate Change aim to bring changes to the national legislation and policies of the member states [18].

The environmental crimes set forth in Chapter 28 of the Criminal Code generally encompass acts that harm the ecosystem by causing damage to the environment. Under Article 250 of the Criminal Code, pollution of water (water sources), under Article 251, pollution of the atmosphere (air), under Article 252, pollution of the marine environment, and other acts are objectively committed through inaction [2, p. 248].

It should be noted that the forms of inaction identified here generally involve a mixed form. Specifically, the listed behaviors lead to significant harm to animals, plants, fish, and other aquatic bioresources, forests, or agriculture (Criminal Code, Article 250), pollution of the air or alteration of its natural properties (Criminal Code, Article 251), and pollution of the marine environment (Criminal Code, Article 252).

Considering the destructive consequences of environmental crimes and the increasing public danger of their expanding effects, it must be emphasized that combating crimes aimed at the destruction of the environment should be one of the key directions of the state's modern criminal policy [6, p. 58]. It is no coincidence that on October 22, 2024, the Law on Amendments to the Criminal Code of the Republic of Azerbaijan introduced Article 104-1, which criminalizes the offense of "ecocide" [**3**]. In this regard, the national legislator has aligned the legal status of this offense with international crimes. While the criminal composition directly refers to "other actions," it is argued that the offense could also be committed through inaction. The inclusion of the term "other actions" in the disposition of the article, followed by the phrase "these actions... create danger," is not unequivocally accepted. This is because, according to the Criminal Code, the term "action" encompasses both acts and omissions. As stated in Article 3 of the Criminal Code, criminal liability arises only when all the elements of the crime, as defined by the Code, are present, whether through action or omission.

Conclusions. Based on the nuances mentioned above, the following conclusions can be drawn: international criminal tribunals' statutes have not yet provided a clear legal distinction regarding the commission of international crimes through inaction and its types. In criminal law theory, when examining the possibility of an act being committed both through action and omission from an objective perspective, it becomes clear that, even though not explicitly stated, the actions established in the relevant statutes can be committed in either form (action or omission).

As mentioned above, although there is no explicit provision in the Rome Statute of the International Criminal Court regarding criminal inaction, the inclusion of "conduct" within the statute can serve as an example of accepting inaction as part of the concept of behavior. This indicates that criminal liability for inaction could be inferred under the broader definition of conduct in the statute [17, p. 4].

On the other hand, the use of the term "other inhuman acts" in the statutes of various adjudicating bodies to regulate a broad range of crimes against humanity cannot be unambiguously accepted when considering the possibility of their objective commission. Just as in national Criminal Law, we support the approach that the term "act" should encompass both actions and omissions.

Furthermore, although the objective commission of a crime by omission is not explicitly established in the statutes of most adjudicating bodies, it can be considered as pure inaction when a leading person abuses their official powers and fails to act.

We commend the criminalization of ecocide as an international crime in the national Criminal Code concerning ecological crimes. However, we believe it is appropriate to specify in the provision of the article that the objective elements of the crime can be committed by both action and inaction.

Given that internationally recognized crimes are typically criminalized in domestic law and lead to accountability, we argue that the concept of inaction, as a necessary element of the objective aspect of the crime, should be defined in domestic legislation. Additionally, it should clearly identify which acts can be committed through both action and inaction or exclusively by omission.

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