

International Law and the Consequences of the Coup

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Rome Statute of the International Criminal Court

- Article 7 – Crimes against humanity
 - "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;

Rome Statute of the International Criminal Court

- Article 7 – Crimes against humanity
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;

Rome Statute of the International Criminal Court

- Article 7 – Crimes against humanity
 - (h) Persecution against any identifiable group or collectivity on political [or] . . . religious . . . grounds . . . in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

Rome Statute of the International Criminal Court

- Article 7 – Crimes against humanity
 - (i) Enforced disappearance of persons;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Rome Statute of the International Criminal Court

- Article 7 interpretive provisions
 - 2(a)"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

Rome Statute of the International Criminal Court

- Article 7 interpretive provisions
 - "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

Rome Statute of the International Criminal Court

- Article 7 interpretive provisions
 - (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

Rome Statute of the International Criminal Court

- Article 7 interpretive provisions
 - (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State . . . followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Rome Statute of the International Criminal Court

- Article 25 – Individual Criminal Responsibility
 - (3) a person shall be criminally responsible and liable for punishment for a crime [against humanity] if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

Rome Statute of the International Criminal Court

- Article 25 – Individual Criminal Responsibility
 - (3) a person shall be criminally responsible and liable for punishment for a crime [against humanity] if that person:
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

Rome Statute of the International Criminal Court

- Article 25 – Individual Criminal Responsibility
 - (3) a person shall be criminally responsible and liable for punishment for a crime [against humanity] if that person:
 - In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;

Qaddafi Indictment, June 27, 2011

- Indictment covered Mu'ammarr Qaddafi, his son Saif al-Islam, and their chief of military intelligence, Abdullah Al-Senussi for crimes against humanity in connection with murder *and* persecution of civilians from Feb. 15, 2011 onwards
- Attacks were alleged to have occurred “with a purpose to ‘quell the February 2011 popular demonstrations by all means’ and pursuant to state policy”

Qaddafi Indictment, June 27, 2011

- Notable facts
 - Legal system criminalized “propaganda against the regime and demonstrating against the government”
 - Government incited people against dissidents, arresting them, members of their families, and sometimes disappearing them entirely
 - Government launched campaign to cover up crimes by targeting journalists

Qaddafi Indictment, June 27, 2011

- Notable facts
 - While precise number of deaths unknown, “reasonable grounds to believe that within two weeks in February 2011, “(i) hundreds of civilians were killed by the Security Forces; (ii) hundreds of civilians were injured primarily as a result of shootings by the Security Forces and (iii) hundreds of civilians were arrested and imprisoned by the Security Forces”

Qaddafi Indictment, June 27, 2011

- Notable Facts
 - Attacks against demonstrators were systematic, widespread and in furtherance of state policy “aimed at deterring and quelling the February 2011 demonstrations.”
 - Security forces abducted, arrested and tortured dissidents evincing occurrence of “persecution”

Legal Grounds for Individual Culpability

- Establishing principal liability requires proof of control over the crime, which can exist in one of four ways:
 - Direct perpetration
 - Perpetration through another person or indirect perpetration
 - Co-perpetration based on joint control
 - Indirect co-perpetration with suspect's orders

Legal Grounds for Individual Culpability

- Liability for indirect perpetration or co-perpetration has following requirements:
 - Suspect controls organization
 - Organization must have hierarchical apparatus of power
 - Execution of criminal acts secured by almost automatic compliance

Legal Grounds for Individual Culpability

- Liability for indirect perpetration or co-perpetration has following requirements:
 - Suspect satisfies subjective elements (knowledge) of crime
 - Suspect must have awareness of circumstances enabling him to exercise control over the crime, either individually, or jointly with another, in the case of indirect co-perpetration

Legal Grounds for Individual Culpability

- Culpability for indirect co-perpetration also requires proof of the following additional elements:
 - Existence of an agreement or common plan between two or more persons
 - Co-ordinated essential contribution by each co-perpetrator resulting in realization of objective elements of crime
 - Suspects must be mutually aware and mutually accept that implementation of common plan will result in realization of objective elements of the crime

Rabaa and “Crime Against Humanity”

- Rabaa massacre only most prominent of series of post-coup massacres, all of which together would satisfy requirement of “widespread or systematic attack directed against any civilian population, with knowledge of the attack”
- There is also little doubt that senior government officials, including the likely next President of Egypt, could be proven to have participated in the decision making leading up to Rabaa, in addition to their having control over the forces that carried out the operation

Likelihood of Prosecution and Consequences for Democratization

- Egypt not a party to the Statute of Rome
- Unlikely there will be a referral from Security Council as in case of Qaddafi indictment
- BUT, present government probably unwilling to take risk that future governments will not accede to Statute of Rome
- Accordingly, substantially lessens likelihood of any meaningful ceding of power to civilian rule – look at Pinochet precedent who was stripped of constitutionally provided immunity