

## CHAPTER 2 – Crime: International and Comparative

### The Nature of Crime

What constitutes a crime is relative to time and place. Crime is a human behavior created by society. Every society has acceptable and unacceptable behaviors. In effect, crime is a cultural universal, but what constitutes a crime is dynamic.

Crime is a deviant behavior, but every deviant behavior is not a crime. Crime is a Western or English concept. By Western definition, an act is a crime if it has been so defined in the criminal code of a state, where it occurred. The state's criminal code also is expected to prescribe punishments for the prohibited acts. Through the criminal code, the state creates criminal law that creates the crime and the criminal. The criminal code, criminal law, crime, and the criminal are all social creations and social definitions.

Pragmatically, it is not true that without the criminal law, there is no crime. Without criminal law, the act will probably be prohibited by society under a different name depending on the language of the society. For example, for a person to kill his mother or father among the Igbo of Nigeria, it is called "*aru*" with a generic concept of an "abomination". Under the English and America legal systems, the matricide or patricide is a felonious crime as specified in the criminal code of the states.

Be that as it may, in some societies, it does not require a criminal code to define a behavior as being evil and punish it as severe as a felony or even severer than those behaviors proscribed through the criminal code. In countries where the criminal code was not the source of law and crime, until they were colonized by some European countries, such as India, Ghana, Nigeria, Kenya, Sierra Leone, Malaysia, etc., the concept "crime" and the society's concept for 'an evil act' such as "*aru*" are used concurrently. The offender in such countries may face

double jeopardy in that the state may apply its punishments based on the colonial-based criminal code, while at the same time, the offender may be ex-communicated in his/her community based on informal customary law.

What constitutes a crime is dynamic. It changes over time based on social, economic and political forces. Some laws of yester-years making some behaviors a crime may become normative standards today. For example, a ban on assault weapons in the United States was initiated during President Bill Clinton's Administration, but by September 2004, it was no longer illegal, because a new conservative administration did not like the prohibition. Similarly, homosexual behavior, an offense in many U.S. states prior to 1973, is no longer an offense in most states today.

Crimes are created by the legislature of a state through the passage of bills. The same legislature can revoke its own act and make a prohibited act a legal one. In some countries like the United States, laws that create crimes pass through three branches of the government: the House of Representatives, the Senate, and the President (Executive Branch), and it becomes a law of the land after receiving the signature of the President or Prime Minister. Some countries that have these three legislative branches including Nigeria, India, and Sierra Leone. Some countries like Kenya, Tanzania, and Zaire, have only one legislative chamber. The bill is introduced in the National Assembly or Parliament, and once it passes the Assembly, it goes to the Head of State for his signature. In such systems, opposition parties are destroyed, creating a one-party dictatorship. What becomes a crime, in such regimes, is primarily what is in the interest of the Head of State and his political party.

In colonial regimes, the concept of crime had a lot to do with power relations, where "conduct norms" were criminalized (Sellin, 1938; Ebbe, 1985, 1996). Conduct norms are

behaviors that are normal in the customs of the natives. But in the eyes of the European colonizers or imperialists, such behaviors are abnormal. For example, polygamy/polygyny is a cherished value of Nigerians, but it was criminalized by the British colonial administration of Nigeria with seven years of imprisonment (Ebbe, 1985). Also the Spaniards criminalized some matrimonial causes of Mexico such as polygyny and dowry which were purely conduct norms of the Mexican people (Sellin, 1938).

There are some behaviors that are regarded as abnormal conducts in post-traditional societies such as Nigeria, Ghana, Malaysia, Myanmar, and Kenya, which do not reach the definitional levels of a crime in pre-colonial times, but are treated and punished as a crime by colonial law. For example, trespassing, picking some oranges, mangoes, or other fruit from a fruit tree belonging to another, are not crimes, for as long as the intruder is not plucking the fruits for sale, and not trespassing for an illegal purpose. They are just minor deviances or breaches of folkways. If the owner sees the intruder, he only scolds him a little more than looking at askance at a person who breached a folkway.

### **Theories of Crime: International Perspective**

Every human being has a criminal tendency, but most persons have higher resistance acumen than others.

Early criminological theories focused on the offender as the source of criminal behavior. He was presumed to have been possessed by the devil. And when Jesus Christ demonstrated through His miracles that a person could be possessed by the devil, he added some fuel to demonism as a cause of crime. In effect, exorcism was seen as the only remedy.

In the 16<sup>th</sup> century, Sir (Saint) Thomas More (1478-1535) made poverty a very important factor in criminal behavior in England. He told the British Parliament of his time, that if a man

has determined to be alive but his basic needs are not provided, he must steal. More made this assumption after England executed a man who stole a loaf of bread (More, 1516). Since More's assertion, poverty has been claimed by many writers as a factor in criminal behavior (Merton, 1968). However, it must be noted that poverty as a factor in crime is not a cultural universal. Some religions of various societies regard poverty as given by God, and "that which God has given to you should not be dropped, but rather should be cherished" (Nigerian Islamic society). In effect, among Moslem societies, crime rate is low not because of the severe, Draconian degree of punishment, but because the members are made to believe that with poverty on earth, their kingdom is in Heaven, even Jesus Christ preached it in Christianity.

Other Individualist Theories are:

- The Classical School of Criminology led by Cesar Beccaria. It is based on "free will" ideology and hedonism. Its penal prescription is the principles of commensurate desserts. Let the punishment fit the crime. Beccaria's followers were Jeremy Bentham and Francois Voltaire.
- The Psychoanalytic Explanations and Psychiatric/Psychological Explanations also concentrate on the individual's mind as a source of good and evil acts.
- The Positive School of Criminology led by Cesar Lombroso emerged as the first scientific approach to the study of crime, but also concentrates on the individual as a source of deviant behaviors. For Lombroso, the criminals are biological throwbacks, they reproduce the characteristics of their ancestors. In other words, criminal behavior is inherited. Lombroso's followers were Enrico Ferri and Raffael Ganofolo.

### Sociological Explanations:

- Sociological theories of crime disagree with Lombroso. For Sociologists, criminal behavior is learned. Sociologists do not regard hereditary and personality traits as causes of criminal behavior. Instead, sociologists seek the causes of criminal behavior in the society. In effect, sociologists look for social factors such as economic conditions (Bonger, 1916), anomie (Durkheim, 1933; Merton, 1968), culture conflict (Sellin, 1938), ecological determinism (Shaw and McKay, 1942), conflict (Chambliss, 1974; Quinney, 1974) sub-culture (Cloward and Ohlin, 1960), social control (Hirschi, 1974), differential association (Sutherland, 1947), and societal reaction/labeling (Tannenbaum, 1939), as explanations of criminal behavior. In contrast with the individualist theories of crime, sociological explanations assert that the causes of criminal behavior should be sought in the organization and operation of society.

### International Perspective

The above individualistic and sociological theories are mostly applicable to Western societies. To what degree are they applicable to societies in Asia, Africa, and the Middle East? Unmistakably, some of the Western theories are culturally specific theories, just like the theory of poverty as a cause of crime.

On the international perspective, crime rates vary not only because theories of crime in various societies vary, but cultural values also vary. For example, Shaw and McKay's assumption that crime in some areas of Chicago is a product of "ecological determinism" or "cultural transmission," was investigated in Buenos Aires, Argentina by DeFleur (1966) and in Lagos, Nigeria by Ebbe (1989) and both found the theories inapplicable to both cities and

countries. In the same vein, the strain (anomie) theory of Merton (1968), like poverty, is not a universal theory (Ebbe, 1992).

Crime theories that have international applicability are conflict theory, differential association, social control, and culture conflict. Societal reaction theory and economic conditions are culturally specific theories.

### **International Crimes**

- **Money Laundering:** In money laundering some commercial banks and illegal underground banking systems in different parts of the world facilitate the crime. The bankers “maintain ledgers in codes so that no official paper trail is created. The speed, simplicity, and confidentiality of these transactions made them attractive and safe” (Beare, 1995: 183; Ebbe 1999 and 2003).

Money laundering has three important elements: the conversion or transfer of the money or property; the concealment or disguise of the origin of the money or property; and a wanton desire to regain possession of the money or property (Bantekas and Nash 2003).

### **Cyber Crime**

The development of new and faster means of computing and communication has brought about easy opportunities for executing various crimes nationally and internationally. Some of the crimes in cyber space include theft of services, marketing stolen goods, receiving services without paying for them, information piracy, counterfeiting telephone cards, unauthorized access to an organization’s telephone switchboard, illegal interception of information, electronic eavesdropping from international surveillance to international industrial espionage,

counterfeiting currency notes of any country, credit cards, identification cards, driver's license, national passport, immigration visa, identity theft, forgery of signatures, international money order, copyright infringement, CD and album bootlegging, dissemination of offensive materials, racist propaganda, instructions for the fabrication of incendiary bombs and other explosive devices, electronic money laundering, electronic vandalism and terrorism (Grabosky, 2000), and fraud in online marketing.

### **Genocide**

The term "genocide" is a calculated, systematic killing of an ethnic group, a nation, or a collectivity on the basis of their ethnicity, nationality, religion, race, or economic and political domination (e.g. Tutsi vs. Hutu in Rwanda/Burundi (1994), Former Yugoslavia (Serbia vs. Croatia, Serbia vs. Bosnia-Herzegovina (1990s), or the 1966 Hausa pogrom against the Igbo of Nigeria that led to the Nigerian Civil War (1967-1970).

Under international law, genocide is a crime. The term "genocide" was developed by a Polish Jew, Raphael Lemkin, in 1944. In the emergence of the Nazi Holocaust, Lemkin successfully fought for a committee of nations to develop international laws defining and prohibiting genocide. While the systematic massacre of the Armenians by the Turks in 1915 provoked international outrage and condemnation, it did not lead to any criminal proceedings (Darian, 1989). However, two decades later, the revulsion precipitated by the Jewish Holocaust led to a response to Lemkin's cry for international action by the adoption in 1948 of the Genocide Convention. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide stated categorically that the prohibited acts constitute a crime under international law (78 UNTS 277), Arts II of the 1948 Genocide Convention defines genocide as:

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious groups, such as:

- a) killing members of the group;
- b) causing serious bodily harm or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about it physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

### **Drug Trafficking**

The concept of “drug trafficking” refers to illegal drug smuggling across national borders. Drug trafficking is a transnational crime; a violation of international law. Types of narcotics smuggled are cocaine, heroine, LSD, opium, marijuana, and methamphetamine. These illegal drugs are smuggled from major producing nations to the major consuming countries. Most of the narcotic drugs are produced in poor countries and exported illegally to rich countries of Europe and North America.

### **Maritime Crimes**

There are national and international criminals who specialize in sea crimes otherwise known as maritime crimes. These crimes are committed either at wharfs where ships are anchored, within the territorial sea of a country, or on the high seas.

Maritime crime emanates from the laws of the sea – which are customary laws and treaty laws. They are a part of the offense of piracy *jure gentium* specified in Articles 14 and 101 of the 1958 Geneva Convention on the Law of the Sea (UNCLOS) respectively.

The UNCLOS of 1958 and 1982 defined piracy as follows:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed,
  - i. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - ii. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft (Talbot v. Janson, 3 US 153 [1795]);
- (c) Any act of inciting or of intentionally facilitating an act described in paragraphs (a) or (b).

In an 1844 case, the United States Supreme Court gave a further explanation of piracy in its ruling. The court ruled that piracy is an act of aggression prohibited by the law of nations, being hostile and criminal in character and commission, and without sanction from public or sovereign authority. That's the way it is whether the aim of the perpetrator was plunder, hatred, revenge or wanton abuse of power (USA v. Cargo of Brig Malek Adhel, 43 US 210 [1844]).

### **Illegal Transportation of Women, Children, Goods, and Services**

Illegal transportation of women and children from one country to another, and from one continent to another has been one of the global transnational crimes since the 1900s.

Unfortunately, this illegal transportation of women and children was only recently addressed by some humanitarian and religious organizations on a very limited scale. It was only at the turn of the 21<sup>st</sup> Century that some governments in Europe and the United States started to speak against this mind-boggling enterprise on a national and international scale.

As far back as 1949, Article 1 of the United Nations “Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949 Convention)”, which supersedes many other previous regulations relating to the traffic of women and children (‘white slavery’), penalizes any person who, in order to gratify the passions of another:

- (a) procures, entices or leads away, for purposes of prostitution, another person, even with consent of that person;
- (b) exploits the prostitution of another person, even with the consent of that person.

Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Art. 3 (1)(c), adopted an Action Plan to fight illegal and harmful transportation of children for slave labor, prostitution, and pornography.

### *Causes of Illegal Transportation of Women and Children*

There are many factors that led to the emergence of illegal transportation of women and children. Among them are:

- Disastrous or catastrophic events such as war, tsunami or floods, famine, and other facts that create refugees;
- Bad economic conditions such as abject poverty, unemployment, and unconcerned government policies;

- Conservative cultural traditions such as stratification systems that deny some people (outcasts, culturally designated slaves) access to good things of life;
- Discrimination against some minorities and religious groups in some countries;
- Population explosion with the concomitant large degree of college and high school graduate unemployment;
- Corruption among law enforcement agencies by colluding with transnational traffickers; and
- Emergence of predatory states around the world, where the head of state rules like a mafia boss (Nigeria 1967-2008), and the entire society is socially disorganized.

The origination countries and regions of the supply of women and children for illegal transportation are:

- The regions of Africa: West, East, North, and South;
- Countries of South and Central America and Mexico;
- Southeast Asia and China;
- Middle East;
- Disturbed countries of Central and Eastern Europe: Albania, Bosnia and Herzegovina, the Province of Kosovo, Macedonia, Czech Republic, Moldova, Romania, Ukraine, Croatia, and Bulgaria.

Destination countries:

- Great Britain;
- Italy;
- France;
- Germany;

- the Netherlands;
- Canada; and
- the United States.

### **Illegal Immigration**

Every sovereign state has laws guarding her territorial integrity called “immigration laws.” The immigration laws of a country control legal and illegal entry, specify when a legal or illegal alien should be deported to his/her country of origin, and when an alien is qualified to be naturalized. This section of a country’s government is handled by different departments in various countries. For instance, Immigration Agency can be under the Department of Foreign Affairs, Home Affairs, Justice Department, Internal Affairs, or the State Department.

### **Extradition Treaty**

Extradition is the surrendering by one country or state to another country or state, of a person accused of a crime or crimes committed in the latter, so that he/she may be tried there, pursuant to a treaty signed by the two countries or states.

Extradition treaties can be of two types: bilateral and multi-lateral. A bilateral extradition treaty is between two sovereign nations or countries, while a multi-lateral extradition treaty is among countries of the same region or different regions of the world. For example, a bilateral extradition treaty could be one between the United States and Canada or the United States and Israel. Examples of multi-lateral extradition treaty are as follows:

- Economic Organization of West African States (ECOWAS Treaty),
- Pact of the League of Arab States. This pact was signed in Cairo on March 22, 1945 by Egypt, Iraq, Trans-Jordan, Lebanon, Saudi Arabia, Syria, and Yemen. Only Egypt,

Jordan, and Saudi Arabia ratified the treaty which became operative on August 23, 1954 (Bassiouni, 1974);

- European Convention on Extradition. This was signed in Paris (France) on December 13, 1957. The signatories to the 1957 treaty were Austria, Czech Republic, Denmark, France, Germany, Greece, Switzerland, Turkey, Ireland, Israel, Italy, Luxemburg, Netherlands, Norway, Portugal, Spain, Sweden and United Kingdom and Northern Ireland. This treaty became effective on April 18, 1960. On November 17, 1997, the following other European countries signed and ratified the treaty: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Poland, Rumania, Slovakia, and Slovenia (Newman, 1999).
- Convention Between the UK, Australia, New Zealand, South Africa, India, and Portugal. This treaty was signed in Lisbon on January 20, 1932, and was supplementary to the extradition treaty of October 17, 1892.

There are many other multi-lateral extradition treaties in regions of Africa, Asia, and South America.