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Individual Criminal Liability for the Crimes Committed in 1956

Today, one of the most debated – for somewhat still open – questions of the Eastern-Central European political transitions in 1989-1991 is individual liability of the former elite, for the most severe human rights violations of the former regime.¹ Peace and lasting stability requires compromises – yet there is really “no peace without justice”. The choice between reconciliation and prosecution is arguably not a judicial one – however, after the decision had been made politics should be omitted from the criminal procedures to preserve the basic democratic values. Different approaches have been chosen in the countries of the former Soviet block; in Hungary, a silent decision was made favoring forgiveness instead of revenge: no criminal liability was to be exercised – with the notable exception of the crimes committed in the course of 1956 revolution and war of independence.² The present article focuses only on the international legal context of the attempts on and contents of these criminal procedures – consequently, it should be read neither as an historical analysis, nor as any political commitment or proposal. After a brief extract from the relevant events, this paper is going to examine applicable law in the particular cases, and will draw some theoretical conclusions different from the judicial process finished in 2000. Arguments will cover problems related to the domestic applicability of humanitarian law and customary international law, difference between crimes against humanity and war crimes, and elements of commanders' responsibility.

The Crimes in an Historical Context

In October 1944 the Arrowcross Party arranged a successful *coup d'état*, and organised a Nazi-type dictatorship for the last months of the World War. When in the first half of 1945, the Red Army liberated the country from the Nazis, in the course of the same military campaign it obviously occupied it for the communists. In spite of this Soviet occupation, a well reformed

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1 In those countries, where the list of persons co-operating with the communist secret polices were not uncovered, or lists had not been destroyed, some public actors (politicians, journalists even rock and roll singers) turn out to be former „agents”. In 2005 and 2006 such scandals hit Hungary and Romania.

2 The events of October 1956 were officially called „*counter-revolution*” until 1989. Then political terminology changed through „*people's uprising*” to „*revolution and war of independence*”. Today this later phrase is officially recognised in virtually every media, education and professional documents. The second part – war of independence – however has been remarkably omitted from the criminal procedures discussed below.

follow-up of the pre-war nascent democratisation process³ seemed to get a foothold, elections were held, and moderate, center right parties won. This period of democratic hopes turned out to be brief and futile – with political support from Moscow Communists gained more and more control, and by the Summer of 1948 they managed to create a one-party-system, gradually (and literally) destroying their opposition in and outside the party. From that time on a cruel, Stalinist tyranny was introduced. A short period after the death of Stalin and the partial withdrawal of Rákosi, the dictator of Hungary, there pretended some relief in the everyday political terror, yet these hopes turned out to be false until mid October, 1956. By the end of October protests started from several focuses.

On the 23rd of October university students started a peaceful march, originally as an act of sympathy for the ongoing Polish demonstrations⁴ – in the evening the crowd marched to the building of the state radio to gain publicity for their demands. There the crowd of unarmed civilians suffered a direct attack, when officers of the ÁVH – State Defense Authority, the communist Hungarian political police – opened fire, targeting the demonstrators. For the contemporary general public, these shots mark the start of the armed uprising. Remarkably, before this aforesaid atrocity, at least one other similar attack occurred against unarmed, peaceful demonstrators, demanding several victims and dozens of wounded, in the second biggest city of Hungary, in Debrecen.⁵ The command was ordered by the county secretary of the communist party, Zoltán Komócsin.⁶ Central power was a bit more slow to react to the events in the capital. At dawn, 24th October, a Military Committee was formed, directly below the Central Leadership of the communist party (MDP). This Committee issued a general command to use armed force against the “counter-revolutionist” movement, that was in force from dawn 24th October.⁷ They also set up planes for a military dictatorship, and appointed top-ranking officers as regional military dictators, for example Lajos Gyurkó in Kecskemét, whose liability will be discussed in the cases below.

On the 25th of October, at the Parliament building, the crowd considerably grown in number, hidden snipers of the political police (ÁVH) shot directly at it from the surrounding rooftops. That's how the public remembers, and what is taught in public education. According to the Fact Finding Committee's report from 1993 this action was commanded by Soviet commanders, and Soviet troops were commissioned to “liquidate the demonstration before the Parliament” - with possible aid from Hungarian forces.⁸

For the posterity the end of the “revolution and war of independence” is the 4th of November, however fights went on at certain separated locations even until January; and the new communist government was only enrolled several days after the overwhelming Soviet

3 The state and society immediately before the war was moving to the political right in the 1930's, and although it would be an enormous exaggeration to call the system democratic (it even consisted anti-Semitic elements), yet being a limited parliamentary regime, it was far better than either the Arrowcross or the Communist dictators. More detailed analysis of this issue is neither required nor possible in the present paper.

4 TISCHLER, János: Varsó – Budapest, Lengyel-magyar kapcsolatok 1956-ban (Warsava-Budapest Polish Hungarian relations in 1956) In *Iskolakultúra*, 2006/06 p 111.

5 Sortüzek – 1956, (Volleys – 1956) Ministry of Justice, Fact Finding Committee, 1993. p. 10. (hereinafter. Report Of the Fact Finding Committee.

6 *ibid.* p. 11

7 *ibid.* p. 10

8 *ibid.* p. 13

intervention of the 4th of November,⁹ until about 10-11th, when organized opposition collapses. In the course of these months more than sixty similar volley-firings took place, thirty-seven of these happened between 26-27th of October.

These direct attacks against unarmed and peaceful civil population were not the only events from those days posing (international law based) criminal liability.

In this article three Supreme Court decisions are going to be examined: a volley-firing from a fort, volley fires from airplanes (*sic!*), and another typical atrocity of those days: unlawful execution of persons *hors-de-combat*.

The factual background of the first case is as follows. Close to the north-western border of the country, at Mosonmagyaróvár unarmed civilians demonstrated in the public area in front of the local fort of the Border Guard, and wanted to have the red star removed. By that time all the rest of the armed forces (army, police) had fulfilled this by peaceful means. Here the events are highly controversial, as far as the actual responsible person's identity is regarded. From the unarmed civilians 55 died according to communists' official records, western press issued information about 80-100 victims.¹⁰

The second case is the most unbelievable example of the mad rage Major-General Gyurkó. At Tiszakécske (Újkécske in certain documents) unarmed and peaceful demonstrators were singing the national Anthem, when a MIG airplane arrived, and after a few rounds it opened fire from its machine guns.¹¹ 17 dead, 110 wounded remained on the field.¹²

In the third case examined in our article, at Kecskemét, the insurgents were already armed, when they attacked the building of the Officers' Club. Two of them were captured, and were killed on the field, by order of the same major-general, who sent the airplanes in the above case.¹³ The command was denied by some soldiers, who ran away from the field, but an officer finally executed the two PoWs brutally.

National Framework of the Applicable Law

In the discussion of the applicable law a backward approach was chosen for the present paper. The case and judgment being the only fix point of reference, examination must start at the level closest to the individual judicial actions. Without prejudice to the factual details of the aforementioned cases, there are some palpable and generally recognized facts, that should designate this first part of the legal framework. The first level of possibly applicable law – in front of a national court, examining cases that were committed in Hungarian soil, is *national criminal law*. National criminal law must be interpreted in the light of the Constitution, which is going to be examined as the second layer. Finally, any unclear issues remaining, it is for sure that there was an armed uprising going on from 23rd October 1956, and several major human rights atrocities occurred therein.

9 *ibid.* pp19-31

10 *ibid.* p. 14.

11 2nd Report of the Fact Finding Committee, 1994 p. 16

12 *ibid.*

13 Supreme Court Decree, 1999. Bf.X.713/1999/3, published in Fundamentum 2000. No. 1 p 97-98

The Hungarian Criminal Code in force at the time of the criminal procedures, is Act 4 of 1978 (Btk.) containing substantive criminal law. In 1956 crimes were prosecuted under a “temporary” Official Compilation of Penal Regulations in Force (BHÖ), from our recent perspective it could be considered a single set of norms describing the crimes at that time – as for the means of interpretation, we must emphasize already at this point the enormous effect of Soviet law. As for the temporal scope of these rules, that one should apply that is more favorable to the accused.

From the compilation of penal norms cited above, Act 7 of 1945 must also be named as a document that could gain particular relevance as well: yet, extreme precautions – even prejudices – are arisen in the Hungarian legal thinking when this later act is concerned. Originally “Act 7” was enacted as a governmental order to prosecute the Hungarian (Arrowcross) criminals of the World war,¹⁴ but it soon became a dreaded tool in the hands of Communists gaining increasingly more power. Today this Act is more closely connected for this later abuse than its original goals. After the transition in 1990 only a few articles of this infamous act remained in force – and those remnants might have been applicable to the the discussed offenses. Such application would entail a great amount of cruel irony: because this very act was used in the “legal” repression after the revolution. This Act has not been cited as authoritative regulation in the volley-fire cases: it was expressively named as the basis for jurisdiction in an Act from 1993, however this reference was deleted from the text by the Constitutional Court.¹⁵ The term “war crimes” is used by the the referred section of this act, however its content is quite different from the one in the Nuremberg terminology: war criminals are those, who "in any form commits or has committed, causes or has caused such activities to take place which are capable of undermining or rendering more difficult the post-war peace or cooperation of the nations, or which may create international conflict."¹⁶

Compared to the Nuremberg Statute this wording is apparently closer to the term “crimes against peace” – which phrase is still used by the standing Hungarian Penal Code (Act IV of 1978), where Chapter XI contains the national law in force.¹⁷ The title of chapter is “Crimes Against Humanity”¹⁸, containing two sub-titles: first, crimes against peace; second, war crimes. Without a detailed comparative analyzes published here, it is only noted, that the phrases show hardly any semantic similarity to the international criminal terminology.

The crimes listed in the second sub-title cover a remarkable part of international customary war crimes as existing in 1978, also conserving a reference to Act VII of 1945. The general wording of these crimes establishes crimes committed on the “battlefield” or in “occupied territory” - no distinction made between international or non-international armed conflicts: from international legal perspective it means both are relevant – indeed, the crimes are generally those covering international humanitarian law applicable in non-international armed conflicts as well.

14 Decree 81/1945. (II. 5).ME

15 53/1993 ABh, for details see below

16 Translation taken from the English version of 53/1993 ABh, found in the ICRC Internet Database of Humanitarian Law – www.icrc.org/ihl-nat

17 This chapter of the Criminal Code is going to be subject to major modifications in the near future.

18 Or „crimes against mankind” - the precise translation is debated in the Hungarian academic literature. It seems almost undoubted that the legislative process meant to translate „crimes against humanity”. As for the contents of the term, the debate is irrelevant: Chapter XI is way to far from the Nuremberg phrases.

Crimes against peace is based upon a misunderstood conception – partly because “peace” was an essential dogmatic cornerstone for the identity and (declared-only) values of the Soviet block, *p.e.* referring itself as the “peace-camp”. Crimes against peace in this regulation include war propaganda, unlawful recruitment moreover genocide and apartheid. (!) N.B. genocide and apartheid are defined in a way which incorporates excellent, verbatim translations of the respective international agreements.

However, not surprisingly in the law of an oppressive, communist state three major elements of the customary crimes against humanity are missing absolutely from this regulation: no definition exists in the Hungarian law for a *sui generis* crime, where the criminal conduct is committed

- ☞ directly against civil population (or part thereof),
- ☞ as part of a systematic and widespread attack,
- ☞ and is not related to armed conflicts in general;

which three features together would form crimes against humanity, as it is defined by international customary law created by the Nuremberg practice,¹⁹ and reflected today *inter alia* in recent international tribunals' statutes and practice.²⁰

The next layer to be examined should be the constitutional framework, that regulates the conditions of the applicability of international law in the procedures of national courts and other authorities. The Hungarian Constitution, Act 20 of 1949, incorporates a mixed system, with both monist and dualist approaches present within the same sentence; Art 7. (1) reads: “The legal system of the Republic of Hungary accepts the generally recognized principles of international law, and shall harmonize the country’s domestic law with the obligations assumed under international law.” The controversial sentence had been interpreted by the Constitutional Court in a number of decisions – two of which are directly relevant to our examination: the first is Decision 53/1993 the other is 36/1996, both regarding an act of the Parliament that was to render prosecutable the crimes committed in the 1956 revolution. The most important findings of these decisions are those regarding direct national applicability of international humanitarian law, as norms that are generally recognized in international law.

Ratio decidendi of 53/1993 ABh declared: “it is a constitutional requirement that the non-applicability of statutory limitations may only be determined with respect to those criminal offenses which have not lapsed according to Hungarian law in effect at the time of the commission of the offense; except if *international law classifies the offense as a war crime or crime against humanity*, declares or makes possible the non-applicability of statutory limitations, and Hungary has assumed the obligation by international law to preclude the applicability of statutory limitations.”²¹

19 Statute of the International Military Tribunal,

20 For ICTY see: Article 5 of the Statute, and *p.e.* Popovic case, IT-05-88, Prlic IT-04-74 ICTR see: Article 3 of the Statute. The few passed between the two Statutes show the notable difference in the wording, widespread and systematic” added by the Security Council.

21 Emphasis added

The Constitutional Court's decision introduces a concise argumentation on the position of war crimes and crimes against humanity in international law. The Court found, that the definition of these crimes had been done at a level above national laws,²² and emphasized that prosecution of these crimes is like an entrance ticket to the international community: “those states which desire to be members of the international community have to accept to undertake prosecution of such offenders”.²³

Such introduction to the problem was indeed necessary, as the Court bravely went on, and find a way for direct applicability of international law at domestic courts. The aforementioned *Ratio decidendi* of the decision is most clearly interpreted in such way by the Court's reasoning, recognizing first in the chapeau of section IV that “international law touches upon such an area which otherwise falls within the sovereign state's domestic penal power, [...] in a manner which, in many respects, diverges from the basic principles and application of domestic penal law”, thus accepting that conflict – actual and theoretic as well – may occur in such legal processes. The court ruled that in such conflicts, international law shall prevail: “the state which prosecutes and punishes crimes against humanity and war crimes, *acts upon the mandate given to it by the community of nations, according to the conditions imposed by international law.*”²⁴ For international lawyers this description already purports, that the Constitutional Court described certain features of an international *ius cogens* norm – which phrase is named expressively later in the decision. Section V of the document explains again, that “obligation to prosecute war crimes and crimes against humanity refers to the whole body of [relevant] international peremptory norms”.

As the Constitution does not define those “generally accepted principles”, the decision gives a list of customary regulation applicable for the 1956 revolution. “The rules of the international humanitarian law embrace: the offense of "grave breaches" as defined by the Geneva Convention of August 12, 1949; the violation of the laws and customs of wars, as the rules of the 1907 Hague Convention were interpreted and applied by the Nuremberg International Military Tribunal; the actions made punishable under the Convention on the Prevention and Punishment of the Crime of Genocide, whether committed during war or peace time; and, finally, the crimes against humanity, as contained in the Charter and the judgment of the Nuremberg International Military Tribunal, committed against the civilian population during international or domestic armed conflicts. Within these broad categories, the documents and pertinent conventions contain the specific definitions of the behaviors constituting the offenses.” This list is the last element revealing the plain will of the Constitutional Court to force national ordinary courts to base prosecution and judicial classification only on international law, with no reference made to the respective national crimes.

22 At several points the popular English translation of the text available in the ICRC Internet Database of Humanitarian Law is somewhat misleading: therefore in the present article corrections had been exercised. Here the Internet-version uses the phrase „supra-national”, while the original text talks about a „level [of regulation] above national laws” - thus it is rather a question of international and domestic law, than a suggestion supposing some kind of international criminal supra-national power above states. See 53/1993 ABh IV.1.

23 This translation is again a personally modified version of the one at ICRC website (see footnote above). Here original emphasizes were used, based upon the Hungarian text.

24 ABh 53/1993 para. IV.3, original emphasize

Applicable International Law: Facing the Courts

From the layers of regulation discussed above only one was clear how to apply – constitutional regulation, including the Constitutional Court's decisions. The actual norm and content thereof to be applied for the cases was not easy to identify – neither from national, nor from international level.

The first mistake of the courts in the first procedure was the wrong determination of the conflict – contrary to international law and to the decision of the Constitutional Court discussed above.²⁵ As both the accused and the victims were Hungarian nationals, acting in Hungarian territory, it was not even examined, if there was an international armed conflict or not. The only question raised was if the requirements of non-international armed conflicts²⁶ were met. However, these requirements has been identified oddly by the Military Court acting at first instance. The court coined common Article 3 of the 1949 Geneva conventions with the 1977 Additional Protocol II – and found that there was not a non-international armed conflict going on during the armed uprising, because one of the parties (the insurgents) were not in a responsible chain of command, and were not controlling a designated part of state territory.²⁷ This argument is erroneous legally, as found by the Revision Council of the Supreme Court,²⁸ and in our consideration it has arguable or maybe just dubious factual faults as well.

As for the factual doubts that should be raised: first, a responsible chain of command cannot be expected from peacefully demonstrating civilians; second a responsible, loose chain of command possibly existed within the National Guard, organized after a few days (27-28th October) of the uprising. Third, insurgents controlled parts of state territory, not at all minor in terms of population density, sometimes covering hundreds of thousands inhabitants.²⁹ Most memoirs agree in that there was relative calm in the first days of November – which may mark a level of effective control.

The legal mistake made is more obvious. The court applied retroactively the Protocol, which was originally not meant to nullify the pertinence of common Article 3 – that miniature convention within the 1949 Conventions which is a set of rules to guarantee a minimum level of humanitarian protection in conflicts falling outside the scope of the *original conventions*. The fact, that a situation is not within the scope of Protocol II is without prejudice to the relevance of common Article 3 to the same situation.³⁰ Article 3 has a wide scope by nature,³¹ narrowing it in a way, that the first and second instances tried, is contrary to the very basic logic of international humanitarian law.

25 ABh 53/1993, resolution

26 KOVÁCS, Péter: Hungarian Report in the Yearbook of International Humanitarian Law, 2000. vol. 1. p 518.

27 Supreme Court Decree, 1999. Bf.X.713/1999/3, published in Fundamentum 2000. No. 1 p 99.

28 See footnotes 13 and 27.

29 Isabelle Voneche Cardia: L'octobre hongrois: entre croix rouge et drapeau rouge, Bruylant, Bruxelles 1996 – Hungarian translation used, translated by L. Csejdy and Sz. Kovalik Deák 2006. p. 50 Cardia, *op. cit.*

30 KOVÁCS, Péter: Hungarian Report in the Yearbook of International Humanitarian Law, 2000. vol. 1. 376

31 Antonio Cassese writes: „it has therefore become difficult or even impossible for belligerents to claim that they are free to disregard the existing law.” International Law, OUP, 2001, Oxford p. 331

From the international legal point of view an even more radical questions should also be raised, that has already been bypassed above, namely if there was an international armed conflict before 4th November when Imre Nagy, prime minister of the revolution read his famous last speech aired by the Hungarian State Radio, sending the message that “our troops are at war” with the Soviet Union.

A recent publication of the ICRC³² recognizes, that the 1956 Hungarian revolution showed some features of international armed conflicts,³³ however it would have been an impassable way to try for the application of the 1949 Conventions as such.³⁴ In order to grant a certain humanitarian protection for the victims, the ICRC moved in the direction of smaller opposition, and cited only common Article 3 as a ground for its actions. By applying a norm, the ICRC also determines the nature of a conflict,³⁵ however, in so doing, the ICRC is not concerned with criminal liability issues. Its primary – almost only – concern is the protection of victims.³⁶ Considering the Soviet-ICRC relations at the early 1950s (practically not existing)³⁷, and the practical political reality of the Soviet block, we cannot agree more, that it would have surely been impossible to offer humanitarian aid while naming the Soviet actions for what they were. It is also important to highlight that this was the first case of a de facto international conflict not recognized by at least one of the belligerents.³⁸ The cited analysis correctly notes, that the Hungarian government was interested in a peaceful solution, and in spite of the ongoing fights, would not have wanted to call the confrontation with the Soviet Union an international armed conflict.³⁹ In spite of all the difficulties ICRC strategy proved to be successful: an enormous amount of blood, medicine food and financial aid arrived in the country.⁴⁰

Consequently, emphasizing again that the ICRC is probably the most competent body on the world to adjudge the character of an armed conflict, we should disregard the outcome of their implicit evaluation of the 1956 revolution expressed by the reference to common Article 3. It was a successful attempt to make aid possible, and not a formally created legal statement that should be used in a national procedure as the sole proof for the determination of the nature of the conflict

It is generally accepted, that from 4th November, an international armed conflict was going on. Common Art. 2 of the Geneva Conventions reads: “In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to *all cases of declared war or of any other armed conflict* which may arise between two or more of the High Contracting Parties, *even if the state of war is not recognized by one of them.*”⁴¹ This in itself undoubtedly reflects that without recognition at least from one belligerent, the armed conflict has no international character.

32 See footnote 29

33 Cardia, *op. cit* Preface by M. Molnár, p. 11.

34 *ibid.*

35 Cardia, *op. cit.* p. 133

36 *ibid.*

37 Cardia, *op.cit* pp 31-32

38 Cardia, *op. cit.*, Preface, p 10.

39 *ibid.*

40 Parallel with the ICRC mission, the Polish Red Cross Movement also organised and forwarded a huge quantity of similar aid, that was the result of a spontaneous wave of sympathy from the Polish people.

41 Emphasis added. Common Article 3, of the Geneva Conventions of 12th August, 1949.

The Hungarian courts – even in the revision process – derived from this statement a logically correct, however wrongful position. The next *alinéa* of the very same article states that “[t]he Convention shall also apply to *all cases* of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”⁴² These two definitive elements refer to two independent situations where the Geneva Conventions may apply; the first being a declared or at least partially recognized armed conflict between belligerents, the other is military occupation. In light of this, we find a highly underestimated problem in the evaluation of the crimes committed in and after the 1956 revolution: this is the “residence” of Soviet troops in Hungary at that time. Soviet troops occupied the country in the World War, and the situation was upheld by the 1947 Paris Peace Treaty. Article 22 of the Paris Treaty allowed the stationing of Soviet troops necessary to keep the supply lines for the troops located in Austria, until the undisclosed date of the declaration of the Austrian independence. This happened in May, 15, 1955, one day after the signature of the Warsaw Pact – which is absolutely no coincidence. However, there is a common misunderstanding in the general and professional public opinion, many believe, that the continued presence of the Red Army in Hungary was justified by the Warsaw Pact itself.⁴³ On the contrary: Article 8, in line of the preambular reference to the UN Charter's principles could even have declared the opposite, if the political reality could ever have suggested something even close to such an interpretative result. The only rule in the body of the Warsaw Pact that might be cited as at least a trace for stationing Soviet troops in member states, is Article 5, which allows the Parties to introduce common measures to enhance their defense capacities.

The size of these troops is remarkable: at the day the pullout should have started, five Soviet army divisions, overall numbering 100 000 soldiers, were stationed in Hungarian territory – just as a comparison: the size of the complete Hungarian Army was maximized at 65 000 soldiers by the Paris Peace Treaty. This particular Red Army force was asked by the communist Hungarian government in the evening 23rd October, to help “rebuilding serenity” in the country. On 24th October around 1000 (according to some guesses at least twice as much) Soviet tanks arrived to the streets of Budapest.⁴⁴ However, infantry troops were not supporting at that time, at least according to the official sources. However, on the 30th October, following their overall defeat in downtown Budapest, Soviet tanks still held a strict control over the Ferihegy civil airport.

The very number of the hostile Soviet troops fighting, or stationed in Hungary show that the Red Army could exercise an effective control over the majority of the territory: their goal here – even in the official rhetorics – was to *upkeep* the supply lines, in other words control parts of the territory. Such situation is considered occupation by Article 42 of the Annex of the Hague Convention on the Rules of Land Warfare, relevant to the case as treaty obligation and as customary international law, accepted as such by the Constitutional Court. Consequently, we must accept that Hungary was under Soviet occupation, and in the state of an armed uprising – these forming up an international character for the armed conflict, even before the recognition of its existence on 4th November.

42 Common Article 2 of the Geneva Conventions of 12th August, 1949.

43 Cardia, *op. cit.* p. 38 see editorial note!

44 HORVÁTH Miklós: 1956 katonai mérlege : A magyar és a szovjet fegyveres erők a forradalomban (*Military Analysis of 1956: Hungarian and Soviet Armed forces in the revolution* In: Rubicon, 2002. (13. évf.) 11-12. sz. 43. old

There are other notable symptoms, which would probably not determine the nature of the conflict, however strongly support that a *de facto* international armed conflict going on. First of these is the ICRC mission in Hungary in 1956, contacting only the Soviet leadership in Moscow, and their representation in Budapest.⁴⁵ In the already mentioned recent comprehensive publication of the ICRC, there is an interesting and correct justification for such actions – as far as political circumstances are concerned.⁴⁶ Whatever political reasons are cited, or whatever political realities were faced at that time, the fact, that for the humanitarian mission of the ICRC in the territory of a sovereign state another sovereign state's permission is needed and employed, is an objective trace of control over the territory of the state hit by the crisis, as well as international character thereof.

Not less important are modern historical research upon the activities of the Hungarian communist leaders in Moscow, showing other supporting arguments for the international character. Most important is the very early date of the decision on the Soviet intervention that finally took place on 4th November.⁴⁷ The decision was not preceded by a Hungarian request for intervention – it was a unilateral declaration announced personally by Nikita Khrushchov to three Hungarian party leaders: Gerő, Hegedűs and Piros.⁴⁸ From that start on, negotiations between Soviet and Hungarian “comrades” were establishing the creation of a politically acceptable form of their comeback to power that they just lost. Finally, Soviet military leadership had clear-cut plans for such a revolution at the latest since Summer, 1956. Colonel Malenkov adjusted it to the actual circumstances on 22nd October at Budapest.⁴⁹

So the question of applicable law must be re-worded: in an international armed conflict, when non-international troops fight each other, what regulations should apply? It seems, that the conflict should determine, not the actual belligerents. The crimes cited so far are mostly part of a systematic and widespread direct attack against civil population – thus they are crimes against humanity – where the nature of the armed conflict is irrelevant, and other conditions should be the core of the examination.

45 Cardia, *op. cit.*, preface, p.33.

46 *ibid.*

47 BARÁTH Magdolna: A Moszkvába menekült magyar pártvezetők 1956. október végi–november eleji tevékenységéről, p. 273. (On the Activities of the Hungarian Party Leaders Fled to Moscow at the turn of October-November 1956 IN: Múltunk, 2005. Vol. 50. No. 1.

48 *ibid.*, 274

49 Fact Finding Committee's 2nd Report, 1994. pp 9-10.