

Larisa Arens
2/25/13

International Jurisdiction: An Analysis of Larry May's Theory on Crimes Against Humanity

Larisa Arens

Introduction

In this paper, I will review Larry May's account of crimes against humanity and justifications for international criminal law, point out problems in his account, and suggest changes that could be made to his account to make it stronger and to better serve the purpose of international criminal law. More specifically, I will support his argument that provides the basis for an international body to hold jurisdiction (in other words, what would give an international body the right to override state sovereignty). However, I will reject his definition of what constitutes international crimes, which May argues falls under crimes against humanity. After rejecting May's definition, I will provide what I believe to be a better definition for crimes against humanity/international harm that, in conjunction with May's justification for international jurisdiction, will produce a much more convincing account for international criminal law overall. In addition, I will pose two possible objections to my redefinition, both based on the claim that my definition is too broad in scope. In response to these objections, I will provide counter-arguments to them, further supporting my original proposal of how crimes against humanity/international harm should be defined.

May's Understanding of International Harm (Crimes Against Humanity)

May claims that “some crimes so clearly harm the international community that they must be proscribed in all societies.”¹ In other words, some criminal acts are so atrocious that they hurt not just the people in one community, or even an entire nation, but rather everyone in our international “community” known as humanity. Because of this, these sorts of crimes must be considered illegal universally. These universally held norms regarding crimes are what May refers to as *jus cogens* norms. These norms provide a foundation for international law. Moreover, they cannot arise from states consenting that they are, in fact, norms. This would cause a problem in states being bound by the universal norms. If states so chose, they could simply announce that they do not consent to a given “universal norm,” and consequently are no longer bound by it. This would allow for states to opt out of anything those states saw as undesirable to be held accountable to, which defeats the purpose of having any universal norms in place. Instead, *jus cogens* norms must come not from consent, but from what must be minimally binding on all states, and therefore all people. This way, a norm can be truly universal, and not opted out of by a state that does not wish to consent to the norm. A state’s consent to the norm would be irrelevant.²

May focuses on minimum moral content to provide legitimacy for *jus cogens* norms. He believes that, in order for norms to be universal and bind all states, their moral content must be kept minimal, in order to be applicable worldwide. The norms that have this worldwide application are maxims of self-preservation and self-defense, and there is “nearly universal

¹ Larry May, *Crimes Against Humanity: A Normative Account* (Cambridge, UK: Cambridge University Press, 2005), 24.

² May, *Crimes Against Humanity*, 27-29.

recognition” of this fact.³ Because May is focused on minimum moral content of universal norms, not all human rights that are violated will constitute an international crime. Instead, only human rights that defend the physical security (and therefore both the maxims of self-preservation and self-defense) of the individual can justify an international criminal court having jurisdiction and stepping in to prosecute a criminal when he has violated these rights.⁴

Additionally, May believes that states, as long as they are providing their citizens with this physical security, are sovereign. No other state or international body has the right to step in to that state to provide this security for that state’s citizens *unless* that state is not providing this security itself.⁵ By keeping the content of universal norms minimal, limited to self-preservation and self-defense, an international body would be able to deal with a *universal* right that has been violated, while also not overstepping its boundaries by claiming jurisdiction rather than a state, if the state did not perform its duty of upholding such a right for its citizens.

For May, “*jus cogens* norms must be applied with reference to differences in context and circumstance.”⁶ The context that gives international jurisdiction for *jus cogens* norms, is crime that can be perceived as an international harm, which May explains in his international harm principle. Since states are sovereign entities, there needs to be a compelling reason for why an international body can claim jurisdiction and try to prosecute a criminal rather than a state. What will give a compelling reason for international jurisdiction is that the crime in question is one that harms all of humanity, humanity being an *international* community, rather than a domestic one.

³ May, *Crimes Against Humanity*, 34.

⁴ May, *Crimes Against Humanity*, 33-34.

⁵ May, *Crimes Against Humanity*, 68-69.

⁶ May, *Crimes Against Humanity*, 37.

May presents two criteria for what makes a crime one that is a harm to humanity: firstly, that the person that is harmed by the crime is done so because of the person's membership in a particular group or the person's ownership of a characteristic not particular to the person's individual self, and secondly, that the crime is committed by a group (for example, a state). The first criterion makes a crime international by being committed against a person (or group of people) because of one's being part of a group. What is being attacked isn't so much the individual person, but rather the characteristic that is shared by all of the members of the group the victim belongs to, and the victim is merely representing everyone in the group to which the victim belongs.

In addition to this, May makes a distinction between *assaults* and *offenses* against humanity; for him, understanding this distinction is necessary in determining whether a crime can be one that is international or not. Any time a person is treated wrongly because of a non-individual reason (in other words, because of the victim's membership in a group), that treatment is an offense to humanity. Cases that involve offenses can be more easily and more appropriately dealt with in domestic courts. An assault against humanity is a type of offense that is "especially egregious and deserving of sanction," involving much more serious, non-individualized maltreatment of victims that might be better dealt with in an international court. A harm against humanity is one that assaults humanity, not merely offends it.⁷ Moreover, what makes a crime "especially egregious," making it an assault, is that the harm is widespread, having more of a collective effect than an individual one.⁸ When a harm against humanity is widespread, it becomes a crime that is of international concern. If only one victim, or even a relatively small group of victims, are harmed from such a crime, it is a situation that can, and should, be dealt

⁷ May, *Crimes Against Humanity*, 86.

⁸ May, *Crimes Against Humanity*, 80-86.

with domestically, falling under the state's duty to protect its citizens (which I will mention in more detail in the next section). When a crime becomes so widespread, harming a greater amount of people, a state will be unable to fulfill this duty on its own. Because of this, the crime becomes an international one, concerning not only the community of one state, but rather the entire international community.

The second criterion stems from the belief that May has that if the perpetrator/s of the harm is not group-based, then the crime does not rise to the level of being an international harm, because it does not warrant international interest. For a crime to be group based, in May's view, there must be "coordinated systematic harm" involved.⁹ May describes coordinated and systematic harm arising from either a state or a body like a state, giving an example of a government using rape as a tool in its program of ethnic cleansing.¹⁰

Interestingly, after enumerating on his two criteria, he then says that ideally, both conditions should be met in order to consider a crime as a harm to humanity, but that at least one of the two *must* be met to do so. In his own words,

Only when there is a serious harm to the international community, should international prosecutions against individual perpetrators be conducted, where normally this will require a showing of harm to the victims that is based on non-individualized characteristics of the individual, such as the individual's group membership, *or* is perpetrated by, or involves, a State or other collective entity.¹¹

In saying this, May is relaxing his requirement of both criteria being met for a crime to be considered a harm against humanity. While it is preferable that both be met, only meeting one is sufficient, generally.

⁹ May, *Crimes Against Humanity*, 88.

¹⁰ May, *Crimes Against Humanity*, 88-89.

¹¹ May, *Crimes Against Humanity*, 83.

I will now show how May incorporates his international harm principle into a justification for international jurisdiction, by adding an additional principle—the security principle.

Justification for International Jurisdiction

The justification May gives for an international court to try a crime rests on two principles—the international harm principle I have just mentioned, and the security principle. The security principle provides the reasoning for why a state’s sovereignty can be surpassed, and instead, an international body can claim jurisdiction to prosecute a crime. When a state does not perform its duty of providing “physical security and subsistence” to its citizens, then two statements are true.¹² The first statement is that the state in question no longer has the right to deny an international body from overriding the state’s sovereignty and coming in to provide the security the state has denied its citizens. The second statement is that international bodies may have justification to override the state’s sovereignty when the body’s genuine motive for doing so is to protect that state’s citizens.¹³

The inclusion of *both* principles is important for May. The security principle explains when some international body *may* step in. Important to keep in mind is that, in asserting that some international body may step in and have jurisdiction, May is not endorsing that jurisdiction to any particular international body that either currently exists or should exist. He is merely saying that the security principle allows that *some* international body may step in and take jurisdiction, rather than naming or alluding to any specific international body. The international harm principle is needed in conjunction with the security principle in order to make the

¹² May, *Crimes Against Humanity*, 68

¹³ May, *Crimes Against Humanity*, 68.

possibility of an international body to be allowed to cross the state borders (physically or metaphorically) a reality by identifying what crimes are of interest to international crime. It is important to May to make a clear distinction between what constitutes domestic crime and what constitutes international crime. During a criminal trial, “significant harm is risked to the defendant,” and more so in an international criminal trial than in a domestic one.¹⁴ May is more concerned with the defendants’ rights than many other international criminal legal theorists are, and he believes that trying a criminal internationally for what is not truly a violation of the international *jus cogens* norms is unnecessarily and wrongly infringing upon the defendant’s rights, risking more harm to the defendant than what is needed.

Although the security “principle opens the door for otherwise prohibited intrusions into [s]tate sovereignty,” May does not want this door to be swung wide, allowing for state sovereignty to be intruded upon however and whenever.¹⁵ There needs to be a very compelling reason for an international body to override state sovereignty, otherwise the whole concept of a state possessing such sovereignty, in reality, means nothing, and defendants can be risked more harm more than what is justified. Crimes that are international, being committed by a group against people who are victimized because of their group membership, after having been carried out, are indicative that the states of which the victims are citizens of were unable to fulfill their duty of providing physical security. They are also a threat to all of humanity, because the victims were attacked solely because they belonged to a group, not for any individualized reasons. When this is the case, an international body has the authority to step in and secure that security for those states’ citizens, and to uphold the security of the international community of humanity, by prosecuting the criminals who carried out the international harm.

¹⁴ May, *Crimes Against Humanity*, 82.

¹⁵ May, *Crimes Against Humanity*, 63.

I have now provided May's account for international crime and jurisdiction. I will now move to my problems with his account.

The Wrongness of May's "Harm against Humanity" View

I believe that May has inaccurately captured what it means for a crime to be one that has harmed the international community we have come to call humanity. His concept of what a crime against humanity is very narrow, in more than one way. He places too much emphasis on the behind-the-scenes details of the crime (such as who it is carried out by, why the victims are being targeted, etc.). This mistake is shown in both of his criteria for a harm against humanity. I also disagree with his specifying of two criteria for harm against humanity, then ultimately relaxing those criteria to only require that one or the other be met. I will now go over the ways I believe his view of what constitutes a harm against humanity is at fault.

Group Membership of the Victim

May's first criteria of a harm against humanity—being committed against victims because of their membership in a particular group— does not focus on what makes the victims part of the international community of humanity. What makes the victims part of this community is the fact that they, along with all of humanity, share the same basic human rights. The violation of these rights, rather than simply a non-individualized attack, should be the first criteria of a harm against humanity. Taking a look at Massimo Renzo's article, "Crimes Against Humanity and the Limits of International Criminal Law," will help in elaborating my objection.

In his article, Renzo states that there are two ways to define what a crime against humanity is. The first is that it is a crime "against humanness", i.e. crimes that somehow violate

the core humanity that we all share.”¹⁶ This is the definition Renzo supports. The second is that it is a “crime against humankind”, i.e. crimes that harm not only their direct victims, and possibly the political community, but all human beings.”¹⁶ This is a description of May’s view that crimes against humanity are an attack on an entire group of people, and that the actual victims who were attacked were representative of the entire set.

When a crime is committed against humanness, what is attacked is the dignity that is possessed by human beings. Basic human rights are what protect human dignity, “so that [people] can have a minimally decent life.”¹⁷ These basic human rights belong to everyone, creating an international community of humanity in this sense.¹⁸ According to Renzo’s view, which is one that I support, a crime against humanity would be one that violates any of the basic human rights that people have; in other words, a crime that denies a victim’s status of being human is one that is against humanity, or humanness.

May’s focus on group membership of victims does not accurately portray what makes humanity an international community. An attack on a person because he is part of a group is not truly what harms humanity. What truly harms humanity is when the very essence of humanity—the basic human rights owned by every human being—is attacked. To illustrate, consider a case in which a group of people (the victims) are targeted (because they are members of that group) by some other people (the perpetrators). The perpetrators have targeted these people because of their group characteristics because they hate that specific group, and have decided that they will attack the victims by taking the victims away from their families and preventing them from ever

¹⁶ Renzo, Massimo (2012), *Crimes Against Humanity and the Limits of International Criminal Law*, *Law and Philosophy* 31 (4):449.

¹⁷ Renzo, *Crimes Against Humanity*, 451.

¹⁸ Renzo believes that the basic human rights human beings have are those that have been enumerated in the “Rome Statute and other international documents” (449).

being able to see or talk to their family members again. According to May's view, this would be considered a harm to humanity; the victims are attacked because of their group membership. However, it should be clear that the reason why this situation is a crime against humanity is not because the victims were targeted because of a group characteristic, but because they were prevented from being able to have "minimally decent li[ves]," by being wrongfully separated from their families.¹⁹ May's account would then seem to be an incomplete way to decide what makes a crime against humanity or not. If we instead apply the criterion of a harm against humanity being one that violates the humanness of people, or their basic human rights, it would be clear that the crime in my example was not one against humanity, and instead international concern should be focused on what crimes take away people's human dignity.

Systematicity

The requirement in May's second criterion that the crime must be coordinated and systematic does not allow for the possibility that perpetrators, in an uncoordinated and unsystematic way, might carry out the same crimes that a state or state-like being can carry out, producing the same results as well. For example, an assortment of people from different places might hate a certain race. They never speak to each other to collaborate on any plot to kill a large number of people in that race, although that is the goal they each wish to achieve. They each concentrate on the same area, which holds a large population of people of the race they all hate, and kill as many of these people as they each can, violating the victims' basic human right to not be unjustly killed (in other words, murdered) that all of humanity shares. As a result, hundreds (or maybe even thousands) of people from that race are killed. In another example, another assortment of people who have spoken to each other and know each other, but do not set out

¹⁹ Renzo, *Crimes Against Humanity*, 451.

arranged and coordinated plan to kill people for the same reason as the previous example, instead arbitrarily and haphazardly doing so whenever they got the chance or felt like doing so on a whim. The same results as the previous example arise, with hundreds or thousands of victims being killed.

According to May's theory, the perpetrators in both examples would *not* be committing crimes against humanity, and the interest in prosecuting these criminals would *not* be of international interest. This seems highly problematic. His theory is essentially saying that as long as the crime was not coordinated and carried out by either a state or a body that is similar to a state, then it is not an international harm, *even if* the crime/s carried out produce the same results. This conflicts with the focus May also has for international crimes to be widespread. There are instances, such as in my example, in which a large enough part of humanity is harmed—or killed—for the crime of the harm to be of international interest, and whether the interest is international or not should not be based upon whether the crime was carried out in a methodical, organized way or not.

What should be more important of a crime for it to be a harm against humanity and of interest to an international body is not how many people were involved in committing the crime and how organized they were in carrying out that crime, or that the victims were targeted because of a group characteristic they have. What should be required for a crime to be regarded as a harm against humanity should be that the crime was an attack on victims' humanness by violating one or more of their basic human rights that every human beings has, and what should be required for it to be an *international* crime is that the crime was widespread, carried out in such a large-scale way that it raises more than just domestic worry for one state.

Now that I have explained what I believe are problems with the way May defines what international crime is, I will propose a way that his definition can be improved to be stronger and to better serve the international community of humanity.

May's Relaxing of His Two Criteria

When May relaxes his criteria of what makes a crime one that is a harm to humanity and of international concern to only require that one criterion or the other be met, he is denying the specific importance of each of his criteria. He is saying that the crime can either be just a harm carried out against the victims because of their group membership, or just a systematically carried out crime. Regardless of the fact that I disagree with aspects of both his criteria, having a system of international jurisdiction in which there are two criteria for which a state's sovereignty can be infringed upon, but only one or the other need to be met is problematic. May himself places high importance on state sovereignty, and does not want it to be wantonly overridden, expressing that "[t]here must be some compelling reason why the international community is warranted in prosecuting individuals as opposed to [s]tates."²⁰ If there are two criteria for when state sovereignty can be overridden, but an international body can decide to use both, one, or the other to claim jurisdiction, we are left with a system of competing jurisdictions (state and international) that is unpredictable and inconsistent. If state sovereignty is going to be intruded upon, the approach to doing so must be rigidly structured, and being able to choose one criterion or the other is not a rigid structure, and does not give us the compelling reason May is insisting upon.²¹

²⁰ May, *Crimes Against Humanity*, 81.

²¹ Another smaller, less significant reason why I object to this relaxation of criteria is that I have pointed out a problem with each of the two criteria in question. Even if one is eliminated and the other is the sole criterion used to identify an international crime/harm to humanity, either of the criteria used is still problematic on its own.

I have just identified the problems I have with May's account. I will now provide my own account that will eliminate those problems.

My Redefinition of International Crime

As I mentioned before, Larry May's definition of what constitutes an international crime is too narrow, incorrectly focused on what makes a crime one that harms humanity, how the crime is orchestrated, and who commits the crime, having all of those aspects being group-based. His reason for having all of those things be group-based is that "[g]roup-based harms are of interest to the international community because they are more likely to assault the common humanity of the victims and to risk crossing borders and damaging the broader international community."²² I believe that the new definition I am about to give for international crime will better embrace the notion of the kind of harm that causes international concern that May was trying to achieve with his own definition.

What would make his theory of international criminal law and international jurisdiction better is if his definition was redefined not to include the aspects of group-based harm, both in the victims (being targeted for a group characteristic) and the criminals (being part of a systematic, organized group). Instead, an international crime should simply be one that requires two things: that the crime be one that violates a basic human right, so that it violates something possessed by everyone in the international community known as humanity, and that the crime was widespread, carried out against a large enough group of victims that it raises international concern. This redefinition acknowledges the fact that what is important for international interest is what rights are being violated (basic security-defending rights), and that enough people are

²² May, *Crimes Against Humanity*, 83.

harmed that the crime is no longer merely a domestic concern, not that the crime is carried out in a specific way by a specific entity, or that the victims belong to a specific group. “[A] system of international criminal law should be well designed to minimize rights violations and maximize the prospects of effectively prosecuting whatever violations do take place,” and this system that I am proposing is designed in this way.²³ Under my proposal, basic human rights violations would be one of the fundamental international concerns, along with the “widespreadness” of the violations. Since my proposal puts emphasis on these rights violations, and May’s does not, it puts the system of international criminal law in a better position to minimize these violations than May’s does.

Under this definition, even if there is not an organized group of criminals carrying out the crime, or perhaps even a collection of criminals who are committing the same crime and have never even met each other, they may be prosecuted internationally. I believe there are times (or at least could be times in the future) in which criminals do not organize, or structure, how they are going to carry out crimes and instead unsystematically carry out their crimes. As long as the crimes that are carried out in a situation similar to this violate the victims’ basic human rights and the harm is widespread, these crimes should still be reason for international concern. Also, the victims do not need to share a similar characteristic for why they are being targeted that makes them part of a common group. The victims are already part of the common international group of humanity, and when their basic human rights are being violated, something that everyone in this world has is being abused, and the victims can be seen as representing the entire

²³Altman, Andrew and Wellman, Christopher Heath (2004), “A Defense of International Criminal Law,” *Ethics* 115(1):48.

international community. When crimes that violate these rights are widespread, enough victims are harmed by these crimes that the international community, as a whole, is harmed, and international jurisdiction is justified.

Unlike how May relaxes his criteria to require that only one or the other be fulfilled in order for a crime to qualify for international jurisdiction, I require that both of my criteria—violation of basic human rights and widespread harm—be fulfilled. This way, it will be more clear of when an international body is justified in claiming jurisdiction, and state sovereignty is respected more than it is in May's arrangement.

Some people may see a problem with my proposal for this redefinition by claiming that I have made the concept of an international crime too broad. In the next section, I will lay out this objection to my proposal, and I will also refute it with my own counterargument.

Objection to the Impracticality of My Proposal

It could be objected that the way I have redefined an international crime has so widened the scope of criminals who can be prosecuted internationally that it creates too long of a list of criminal who need to be prosecuted by an international body. To explain how this is the case, consider thinking of the scope of criminals that can be prosecuted internationally according to May's proposal as a *subset* of the scope I have created in my proposal.

For May, criminals that could be prosecuted internationally are those that have committed widespread crimes against victims because of the victims' group membership, and are also part of a systematically organized group of criminals carrying out these crimes. These criminals are also internationally prosecutable under my proposal, but the reasons why criminals are internationally prosecutable under my proposal cover not only these criminals which I have

just described, but *many more* criminals. Under my proposal, the victims do not need to be targeted because of their group membership, and the criminals do not need to be systematically organized in carrying out their crimes, opening up more possibilities for crimes to be deemed internationally prosecutable than May's proposal does. Trials and court proceedings take a considerable amount of time, and this new definition of harm to humanity would greatly increase the number of people who would need to have their own international trials and court proceedings.

A concept given by John Arthur can be used to support this claim. In his essay, "Famine Relief and the Ideal Moral Code," Arthur states that "an ideal moral code must not only be one that can win public support but must also be workable and practical."²⁴ In saying this, he is implying that any moral code that is not feasible in what it calls for should not be a moral code at all. Likewise, it can be said that a "code" of international jurisdiction that defines international crime in such a way that it creates a situation where prosecuting criminals internationally is not doable, it cannot be the correct "code." There is no point in having such a code in theory if it cannot be carried out in practice.

In response to this objection, I will refer back to May's security principle. In this principle, it is stated that "international bodies *may* be justified in 'crossing the borders' of a sovereign state when acting to protect those subjects."²⁵ However, "may" does not mean the same thing as "required." Just because an international body will have more criminals that it *may* prosecute, under my definition, than under May's definition, does not mean it has to be the judicial body that *does* prosecute each and every one of these criminals. There may be, and dare I

²⁴ John Arthur, "Famine Relief and the Ideal Moral Code," in Hugh LaFollette, *Ethics in Practice: An Anthology*, Blackwell Publisher, 2007, 588.

²⁵ May, *Crimes Against Humanity*, 68 [emphasis added].

say, will be, times when it will be both more practical and more reasonable for a domestic tribunal to try a criminal that has committed an international crime, or for a system to be created that places international tribunal-like bodies in many countries that have the sole purpose of trying international criminals that have harmed humanity. The principle of complementarity, as laid out in the Rome Statute of the International Criminal Court, can be applied here.

In the Rome Statute, the International Criminal Court's (ICC's) power of jurisdiction is limited by the fact that it may only deal with international crimes, and by state sovereignty. This means that state courts will have jurisdiction first, before the ICC does. The ICC is supposed to complement the domestic courts in trying international criminals. This means that domestic courts, if they are unable to try these criminals, or are not effective in their doing so, can be complemented by the ICC, which can either assist in a case or take over the case.²⁶ This system would reduce many of the costs of having only one, international, tribunal, including costs of time, travel expenses, and limited capability. In other words, there is a way to make prosecuting international criminals, under my definition of what is an international crime, doable.

Additionally, this would uphold the value of state sovereignty that May seems to also be upholding. Domestic courts would get the chance to prosecute international criminals first, before their boundaries are crossed and international criminal cases are tried by an international body.

In addition, even though redefining harm against humanity to be broader will cause there to be more people who need to be prosecuted in an international tribunal, it shouldn't be the reason why we don't take this redefinition into serious consideration. Otherwise, one could

²⁶ Yang, Lijun, "On the Principle of Complementarity in the Rome Statute of the International Criminal Court," *Chinese Journal of International Law* 4,1 (2005): 122.

attribute this problem even to a domestic tribunal situation. It is hypothetically possible for an astounding increase in the number of people committing a domestic crime of theft. Would this staggering number of people who need to be prosecuted by the state the perpetrators are citizens of be a reason not to prosecute them? To say no to this question would undoubtedly be absurd. Yes, it will become much more costly (time, resources, money, expertise, etc.) to prosecute all these criminals, but this is not an excuse not to do so.

There is one more objection I would like to mention, one that could possibly be made by May himself. May places greater importance on honoring the accused's right to liberty than on the victim's rights that were allegedly violated. Because of this, he might be able to argue that my definition of an international crime is too broad, thus violating the accused's right to liberty more than is necessary or allowable. I will go over this objection and my response to it in the next section.

Objection to the Violation of the Accused's Right to Liberty

In the introduction of his book, May asserts that the rights of the victims "should not be the overriding concern of international criminal law," and that at least as much attention needs to be given to the rights of the defendants, so that they "are not themselves subject to human rights abuse."²⁷ That is the very reason why he wanted to restrict international jurisdiction only to crimes that are especially egregious. Universal sanctions should only be imposed on those who truly have committed extremely terrible acts, on a universal basis. If someone is prosecuted by an international body that has not committed such an act, his human rights to liberty have been severely violated. One could object that, because my proposal of how to define international

²⁷May, *Crimes Against Humanity*, 4.

crime broadens the scope of who may be internationally prosecuted, it risks the possibility of more people being accused and brought to trial for allegedly committing international crimes that were wrongly accused. By not requiring that the criminals of international crimes be organized and systematic about carrying out their crimes, the level of specificity of identifying who is an international criminal and who is not is lowered, thus allowing for more mistakes and defendants wrongly brought to international criminal trials, which infringes on their human rights.

In reply to this opposition, I would claim that a accused's right to liberty is no more violated in an international court than it is in a domestic court. In both situations, the accused is not free to go where the accused chooses, and is instead held in confinement until the accused's trial is completed. If the accused did, in fact, commit the actions the accused is being tried for, then the accused has, in committing those actions, given up his right to liberty, no longer possessing it in the way that innocent people who have not committed such actions possess it. If the accused has *not* committed those actions and is held for a trial, the accused's right to liberty has been violated, regardless of whether the accused was tried internationally or domestically. Furthermore, there may be cases in which wrongfully convicting a defendant in an international tribunal will violate the defendant's rights less than if the defendant had been tried in a domestic court. Some international tribunals do not give out the sentence of the death penalty, and some domestic courts *do*. Depending on the international tribunal and domestic court in question, a defendant may have been wrongfully killed if the defendant had been tried in a domestic court, but the defendant's life was spared because the defendant was tried in an international tribunal. The difference of the trial being domestic or international has no moral significance on the rights violations of a defendant.

Conclusion

In this paper, I focused on the problems I had with the way that Larry May defines what an international harm is (or a crime against humanity). His requirements are too narrowing, focusing on the wrong aspects of crimes that target victims because of their group membership and putting too much emphasis on how the criminals organize carrying out their crime. The way I redefined an international harm removes these two requirements, refocusing on the harm that was done (violation of basic human rights) and what makes the harm an international concern (that the harm was widespread, affecting many victims).

Two objections can be made to the way I would redefine international harm. The first objection argues that my redefinition is impractical because it would cause a significant increase in the number of criminals who would need to be prosecuted internationally. However, the mistake in this argument is that it assumes that just because the new definition does increase the number of criminals who *may* be prosecuted internationally, that means that an international body, rather than a domestic body, under the principle of complementarity, *has* to prosecute all these criminals. I believe that it is a possibility for domestic tribunals to try many of the criminals who have committed international crimes, alleviating some of the burden an international tribunal would have to try *all* such criminals. The second objection is that international trials oversteps a defendant's human right to liberty in such a harsh way that the definition of international harm *should* be narrow, so as not to wrongly infringe on the defendant's right, to which I replied that the way in which an international trial infringes on such a right is no different from the way a domestic trial does.

Works Cited

Altman, Andrew and Wellman, Christopher Heath (2004). "A Defense of International Criminal Law." *Ethics* 115 (1):35-67. Print.

LaFollette, Hugh. *Ethics in Practice: An Anthology*. Malden, MA: Blackwell Pub., 2007. Print.

May, Larry. *Crimes against Humanity: A Normative Account*. Cambridge, UK: Cambridge UP, 2005. Print.

Renzo, Massimo (2012). Crimes Against Humanity and the Limits of International Criminal Law. *Law and Philosophy* 31 (4):443-476. Print.

Yang, Lijun. "On the Principle of Complementarity in the Rome Statute of the International Criminal Court." *Chinese Journal of International Law* 4.1 (2005): 121-32. Print.