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INTRO TO INTERNATIONAL CRIMINAL LAW

Int'l law is a system primarily concerned with the rights and obligations of States and of international organisations established by the States. The two exceptions to State-centred subject matter of int'l law are **int'l human rights law** and **int'l criminal law** – both of these branches are concerned with rules and principles applying directly to individuals.

Int'l crim law can be distinguished from domestic crim law in that the former penalises crimes, which are egregious and are capable of producing wide-scale harm. Crimes that can be thought of as 'int'l' involve actions traditionally carried out by States or their agents or are of a transnational, or multi-jurisdictional nature.

Sources of Int'l Law – Statute of the ICJ art 38

- i. Customary Int'l Law
- ii. Treaties
- iii. General Principles of law
- iv. *Jus Cogens* (rules of CIL which allow for no derogation and invalidate any other rule in conflict in them) – In int'l law, if a *jus cogens* shall so emerge, such peremptory norm will prevail over any conflicting treaty provision [*VCLT* art 64].

Int'l Criminal Law Conventions

- ❖ Govern the criminal responsibility of individuals; and
- ❖ Impose obligations on States, which accept the duty to prosecute or extradite individuals accused of int'l crimes, and cooperate with int'l crim tribunals to facilitate their prosecution.

Scope of Criminal Responsibility

Specific crimes that attract individual responsibility at int'l law include:

- Piracy
- Slavery
- Genocide
- Torture and cruel, inhuman or degrading punishment
- War crimes
- Crimes against humanity
- Acts of aggression
- Trafficking – humans or drugs

Crimes against Humanity: These occur in the context of a widespread or systematic attack on a civilian population. Specified acts include murder, terrorism, extermination, enslavement, torture, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, persecution, rape and sexual violence and enforced disappearances.

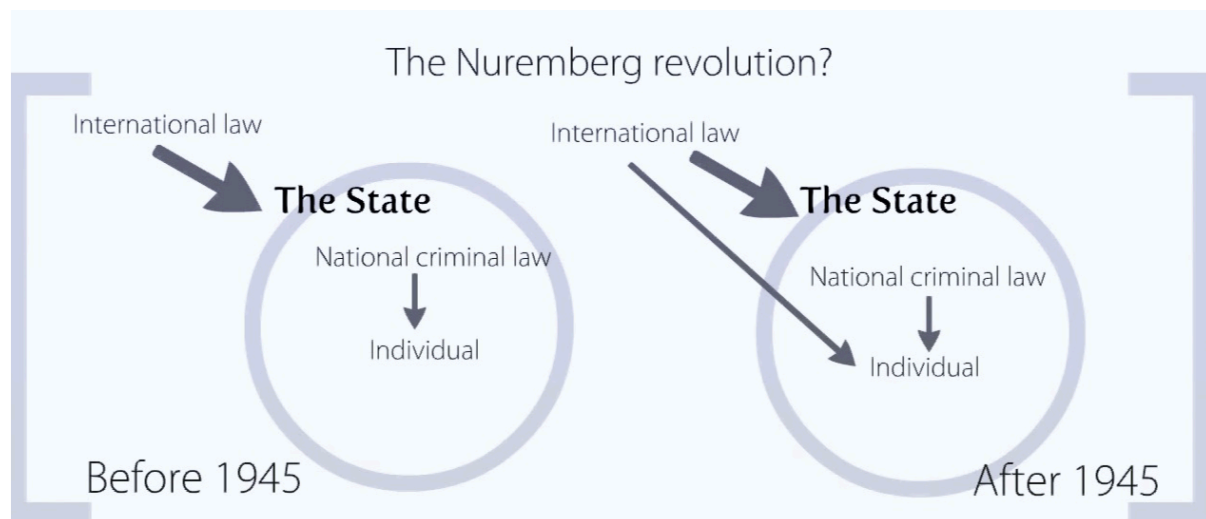
War Crimes: These occur in the context of an armed conflict. Art 8(2) of the *Rome Statute* of the ICC codifies war crimes and divides them into four categories – the first two relate to war crimes committed in the context of an **int'l armed conflict** and the second two relate to war crimes committed in the context of an **internal armed conflict**.

Romans: Oldest of all int'l crimes – *hostis humani generis* (the enemies of mankind).

Middle Ages: Customary laws of war among European sovereigns, such as the prohibition on killing prisoners of war.

The 20th C (post-WWII) brought **significant expansion in the scope** of individual criminal responsibility at int'l law.

Nuremberg Tribunal 1947: “Crimes against int'l law are committed by men, not by abstract entities and only by punishing the individuals who commit such crimes can the provision of int'l law be enforced”.



As can be observed above, prior to the end of WWII, int'l was merely enforceable against the State, which would then have to punish the individual using domestic crim law. However, post WWII, int'l law is directly applicable to the individual.

Genocide

- ❖ Although genocide was recognised as an int'l crime, a crime of genocide was also found to attract individual criminal responsibility [*Genocide Convention*, 1948].
- ❖ The Int'l Tribunal for the Far East (Japanese war crimes) (1946-1948) contained similar charges to Nuremberg.

Four Geneva Conventions

- i. *Convention for the amelioration of the condition of the wounded and sick in armed forces on land;*
- ii. *Convention for the amelioration of the condition of the wounded, sick and ship wrecked members of the in armed forces at sea;*
- iii. *Convention relative to prisoners of war; and*
- iv. *Convention for the protection of civilians in a time of war.*

1977 Geneva Convention Regime of Individual Criminal Responsibility – Extensions

Protocol I: Extended to include armed conflicts, in which people are fighting against colonial domination and alien occupations and against racist regimes in the exercise of their right to self-determination.

Protocol II: Develops and further supplements the *Geneva Convention*.

Development of ICL

1990s

Most significant period in the development of international criminal law since the 1940s.

Two Important Episodes:

1. Civil War from 1991-1995 in Yugoslavia – over 120,000 killed
2. 1994 Genocide in Rwanda – somewhere between 500,000 and 1,000,000 of the Tutsi ethnic group were killed.

THE ICC AND THE *ROME STATUTE* 1998

After 60 States ratified the *Rome Treaty*, it came in to force on 1 July 2002 thereby bringing into existence the **Int'l Criminal Court**. Any person committing a crime within the Jurisdiction of the ICC will be “individually responsible and liable for punishment”. The ICC issued its first arrest warrants in 2005. The ICC is permanent, as opposed to the ICTY and ICTR.

The ICC, located in The Hague, is the world's first permanent int'l criminal court. Crimes (war crimes, crimes against humanity and genocide) committed after 1 July 2002 are tried in the ICC. ICC has jurisdiction if the crime was committed in the territory of one of the member States or by a national thereof. These conditions, however, do not apply if the matter is referred to the prosecutor by the UN Security Council, whose resolutions are binding for all UN member States, or if a member State makes a declaration accepting the jurisdiction of the court.

The ICC is intended to complement (not replace) the national justice system. It has a four-part structure (the 4 organs of the Court carry out distinctive mandates): The ‘Presidency’, ‘Chambers’, the ‘Office of the Prosecutor’ and the ‘Registry’.

“The Presidency” is made up of 3 judges: President and 2 VPs. The Presidency manages the Court, represents the Court to the outside world and helps to organise the work of the judges. Also responsible for supervising the punishment imposed on persons found guilty by the Court.

“The Registry” is the largest organ of the Court – its functions include the provision of administrative and operational support to the “Judiciary” and to the “Office of the Prosecutor”. It also provides support to its own activities, incl. defence, victims, communications and security. It develops effective mechanisms to assist victims, witnesses and the defence with a view to safeguarding their rights in accordance with the *Rome Statute* and the rules of procedure and evidence.