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# THE HISTORY AND DEVELOPMENT OF INTERNATIONAL CRIMINAL LAW

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Himani Kaushik, School of Law, Galgotias University

## ABSTRACT

Following World War II, international court trials are credited with establishing the current international criminal law system (ICL). However, antecedents can be traced back hundreds of years and across the world. ICL builds on four major branches of international law history: nineteenth-century anti-piracy bans, subsequent laws on slavery and the slave trade, the once religious and then secular doctrine of just war, and international humanitarian law (IHL) or the "law of war." The international community developed the norms, laws, instruments, and structures that now make up the current ICL machinery on this basis. As these histories are nearly inseparable in ICL, this chapter interweaves the tradition of substantive standards with that of emerging concepts of domestic and foreign authority. Several aspects of this evolution are worth mentioning right away. First, with the exception of the post-World War II era, where the international community established tribunals and the legislation they were to apply almost concurrently, many ICL norms arose long before judicial structures were available to enact them. ICL had conduct rules but no compliance rules, according to Dan-Cohn's (rules directing officials to enforce the conduct rules).<sup>1</sup> It took some time until the international community was able to translate theory into effect, as is the case for much public international law. Second, much of the system's architecture was haphazard and reactive to global events until recently, rather than the outcome of any coherent forward-looking process. The permanent International Criminal Court (ICC), which has only prospective jurisdiction, is a noteworthy exception. Third, ICL's trajectory is characterised by ever-increasing incursions into arenas that were formerly the exclusive domain of sovereign states. As a result, ICL standards are increasingly governing the care that a state should constitutionally accord its residents and those under its control, and such actions are increasingly being scrutinised, condemned, and prosecuted on an international level.

International criminal law is a body of public international law aimed at prohibiting such types of actions that are generally regarded as extreme atrocities and holding perpetrators of such acts criminally liable. Genocide, war crimes, crimes against humanity, and terrorism are the most serious crimes under international law. This report also covers offences against international law that aren't necessarily covered by international criminal law.

The relationships, obligations, and duties of states are governed by "classical" international law. Criminal law is concerned with restrictions directed against persons and the penalties enacted by individual states for violating those prohibitions. While its origins are those of human law, its implications are penal penalties levied on persons, making international criminal law a hybrid of the two. International criminal law is better described as the international community's effort to solve the world's most heinous crimes. It hasn't been the best tool for drawing the fine and complex distinctions that characterise national legislation, so they divert attention away from the large-scale massacres that "shake the conscience" with which it is concerned. This results in substantial research discrepancies between the legal systems, particularly when it comes to the definition of legal purpose. Before World War I, there were several precedents in international criminal law. However, it was not until after the war that a genuinely international crime tribunal was envisioned to prosecute suspects of crimes committed during this time frame. As a result, the Treaty of Versailles mandated the establishment of a foreign tribunal to try Wilhelm II of the German Empire. However, the Kaiser was eventually given refuge in the Netherlands. Following WWII, the Allies established an international tribunal to prosecute Nazi Germany's and Imperial Japan's war crimes as well as crimes against humanity. The Nuremberg Tribunal convened for the first time in 1945 and issued its verdicts on September 30th and October 1st, 1946. For Japanese war crimes, a similar tribunal was created (the International Military Tribunal for the Far East). From 1946 to 1948, it was in service.

While early Christian theology was characterised by a "strong pacifism" that forbade involvement in war, by the time of St. Augustine (C.E. 354-430), a doctrine of just war had formed, stating that resort to war was permissible only if the ends were right. Other religious and national traditions have also preserved the right to wage war against "infidels" or to seek vengeance for wrongdoing.

The *jus* (or *ius*) *ad bellum*—the set of rules governing the use of military or armed force in

international relations—is the result of efforts to identify the necessary conditions for war. St. Thomas Aquinas (C.E. 1225-1274) laid out the following criteria for a good theologian in his *Summa Theologica*.

To be considered just, a war must be

- (1) Authorised by a legitimate sovereign, and*
- (2) Necessary for the achievement of a legitimate goal.*
- (3) It must be for a "right intention," that is, it must be for a just cause.*

All of these were incorrectly construed as justifications for Aquinas, However, by the sixteenth century, it was widely accepted that On both sides, there may be a just war, and the laws of war may apply. Gradually shifted focus away from identifying acceptable reasons for going to war and toward regulating war's consequences — In bello, the jus (or ius) Eventually, the concept of a just war faded almost completely. By the time World War I broke out, war had become a way of life. Regarded as a true instrument of international policy and the sovereign's prerogative. As a result, international law had drastically changed. Shifted the focus It progressed from determining the morality and justice of a situation to determining the morality and justice of a willingness to go to war, but just a shaky control over the means and methods techniques of warfare, to a resignation that war is justifiable combined with revived attempts, was too difficult to universalize to make warfare's means and tactics more human. This change of attitude the change of priority from jus ad bellum to jus in bello also applies to the majority of cases. While the halting progress of terrorism and violence crimes harkens back to the jus ad bellum tradition, the state of the law of armed struggle today. Piracy, as well as the policies of slavery and the slave trade, is two of the first foreign offences committed by nations outside of war. They collaborated to criminalise and arrest each other. ICL has largely focused on acts committed by criminals up to this period.

The typical rivalry pits one state's citizens against the citizens of another. A model for war crimes Following the declaration of piracy and slavery as foreign offences, ICL focused on private parties operating in the interstitial space between nation-states As a result, we see a change away from a singular fixation on economic interaction, in the context of activity between countries distinct nation states, to an acknowledgement of international control over conduct that interferes with the effective functioning of the international financial system international scheme (piracy) or it has universal moral implications (slavery). Piracy was

common in the eighteenth and nineteenth centuries. In the absence of any international tribunal and because it was committed on a grand scale, was a crime that was committed on a grand scale. Any nation's courts could sue you for a long time if you were caught on the high seas. Capable of apprehending the criminals The ban of using As a result of piracy, the concept of universal jurisdiction was born. ICL is now characterized by a central element. In several ways, the fight against piracy started with a group effort with the Paris Declaration on Maritime Law of 1856, which outlawed such types of piracy in military conflict and was early all of the colonial forces also signed it. As the international community knows, There was talk about becoming a League of Nations while the international community hosted the League of Nations. Regulating piracy more broadly by international agreement; nonetheless, negotiators decided to abandon this initiative. It is not urgent enough to warrant international recognition, and got tangled up in the differences between piracy concepts International and local legislation are also applicable. It wasn't until the first that it became clear.

In 1958, the Law of the Sea Convention was drafted. A concept based on an omnibus treaty was created. Article 15 of the Constitution Piracy is described by the Geneva Convention of the High Seas as

*(1) All unlawful acts of terror, imprisonment, or any other act of oppression depredation carried out by the crew or the captain for personal gain passengers on board a private ship or plane, and directed:*

*(a) In a high-seas battle with another ship or plane, or against the people or property on board the ship*

*A) Against a ship, aircraft, individuals, or property in a port; b) Against a ship, aircraft, persons, or property in a port a place that is not within the authority of any state;*

*(2) Any voluntary contribution to the service of a ship or aircraft with factual information that makes it a pirate ship or plane;*

*(3) Any act of knowingly inciting or encouraging an act of terrorism.*

With stylistic shifts, this term appears in Article 101 of the United Nations Convention on the Law of the Sea, which was adopted in 1982. The once customary practise of universal jurisdiction over piracy finds expression in the 1982 Convention at Article 105: *“On the high*

*seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship . . . And arrest the persons and seize the property on board . . . [and] may decide upon the penalties to be imposed.*” The abolition of slavery and the slave trade is another important chapter in the storey of ICL and international human rights. Abolitionists working across the globe were responsible for gaining the passage of domestic laws outlawing slavery and the slave trade and convincing nation states to enter into multilateral treaties doing the same. Great Britain led the charge, entering into a network of bilateral and multilateral treaties that both permitted the searching of ships suspected of transporting individuals to be sold into slavery and established mixed tribunals in ports around the world to condemn slave ships. As early as the 1815 Congress of Vienna, signatories called for the voluntary abolition of the slave trade, which it described as “*repugnant to the principles of humanity and universal morality.*”

The 1890 General Act for the Repression of the African Slave Trade (“the Brussels Act”) finally called on all signatories to criminalise slave trading and to prosecute offenders — an early example of the concept of treaty-based universal jurisdiction.\* States also established an international monitoring commission, the Temporary Slavery Commission (1924-1925), which expanded its own mandate to consider analogous practises of forced labour, debt slavery, and sexual slavery. This was followed a year later by the relatively anodyne Slavery Convention of 1926, which called for the “progressive” suppression of slavery, but contained no concrete enforcement regime. The subsequent Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) (1956) returned to the regime of the Brussels Act and required domestic criminalization and prosecution. In particular, Article 6(1) provided that:

The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment. This legal response to slavery and related acts finds expression in more modern international treaties prohibiting forced labour — such as the 1932 Convention Concerning Forced or Compulsory Labour — and the trafficking of persons, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created in 1993 at the start of the war in Bosnia, and the International Criminal Tribunal for Rwanda was established in 1994 after the genocide in Rwanda. The International Law Commission began planning for the creation of a permanent International Criminal Court in 1993, and the Rome Statute creating the ICC was signed in 1998 at a diplomatic conference in Rome. In 2005, the ICC released its first arrest warrants. A branch of international law is international criminal law. As a result, the roots are identical to those found in international law. Treaties, customary international law, and basic rules of law are among the traditional references mentioned in Article 38(1) of the 1946 Statute of the International Court of Justice (and as a subsidiary measure judicial decisions and the most highly qualified juristic writings). The International Criminal Court's Rome Statute provides a similar, but not equivalent, collection of sources on which the court may depend.

### **Constraints**

For the moment, international criminal law does not apply to militant protest movements.

The Nuremberg Charter states in Article 9:

*"The Tribunal may declare (in accordance with any act for which the individual may be convicted) that the group or association of which the individual was a member was a criminal organisation"* during the trial of any individual member of any group or organisation.

Article 9, which was used to punish involvement of the Schutzstaffel (SS), provides for the criminalization of such organisations (presumably state-sponsored) and imprisonment for membership by enabling people to be charged even though the evidence was inadequate. It also has consequences for asset forfeiture, reparations, and other payments for losses incurred by international law breaches, but it does not place criminal liability on companies in their individual capacities. The SS and many other Nazi organisations, including the Nazi Party's Leadership Corps, were made illegal under Article 9.

In certain circumstances, such as the Inter-American Commission on Human Rights in Colombia until 1999, human rights principles have been applicable to these categories. Human rights conventions are also being applied to these communities on a case-by-case basis. Human rights are typically thought of as rights that people have against the state, and some academics

contend that they are unsuited to settling conflicts that occur through military struggle between the state and armed minority parties.

The International Criminal Court (ICC or ICCT) is a permanent tribunal that prosecutes people for terrorism, crimes against humanity, war crimes, and violence (although it cannot currently exercise jurisdiction over the crime of aggression).

The establishment of the court is perhaps the most important change in international law since 1945. It empowers two bodies of international law that deal with individual treatment: human rights and humanitarian law.

It was founded on July 1, 2002, when its founding convention, the Rome Statute of the International Criminal Court, went into effect, and it will only investigate crimes committed after that date. The Hague, Netherlands, is the court's official seat, but its hearings will take place anywhere.

The Statute of the Court has 123 parties as of November 2019, covering all of South America, almost all of Europe, much of Oceania, and about half of Africa.

Burundi and the Philippines were members until they left on October 27, 2017 and March 17, 2019, respectively. The Rome Statute has been signed by 31 countries, but they have not yet ratified it. Until they announce they do not wish to become a party to the treaty, treaty law requires certain states to refrain from "actions that would negate the intent and intention" of the treaty. Israel, Sudan, the United States, and Russia have told the UN Secretary General that they no longer wish to become states parties and, as a result, have no legal responsibilities resulting from their signature on the Statute.

The Rome Statute has not been signed or ratified by forty-one additional states. China and India, for example, are also dismissive of the Court. A Ukraine, though being a non-ratifying signatory, has agreed to the Court's jurisdiction for a term beginning in 2013.

The court can only exert authority in situations where the victim is a national of a state party, the suspected offence occurred on the territory of a state party, or the United Nations Security Council refers a condition to the court. Its aim is to supplement current national justice systems; it can only exercise authority where national courts refuse or are unable to investigate or

prosecute those crimes. Individual states are therefore given primary responsibility for investigating and punishing offences.

The Court also opened investigations in the Central African Republic, Côte d'Ivoire, Darfur, Sudan, the Democratic Republic of the Congo, Kenya, Libya, Uganda, and Bangladesh/Myanmar, among others. In addition, provisional investigations were performed in ten cases in Afghanistan, Colombia, Guinea, Iraq/UK, Nigeria, Palestine, Georgia, Honduras, South Korea, and Venezuela by the Office of the Prosecutor. On activities after July 1, 2002, preliminary investigations were completed in Gabon, Honduras, Comoros, Greece, and Cambodia-registered boats, South Korea, and Venezuela.

## **Conclusion**

It indicted 44 people in front of the media. Twenty people are facing charges: 13 are on the run as fugitives, three are in the pre-trial stage, and four are on trial. Two are completing their terms, six have served their sentences, four have been convicted, seven have had their charges against them dropped, two have had their charges against them removed, and four have died before going to trial.

Three trials against four individuals are ongoing as of March 2011: two for the situation in the Democratic Republic of the Congo and one for the Central African Republic. In the Sudanese city of Darfur, two more suspects have been sentenced to a fourth trial. Two new proceedings (against a total of six people in the situation of Kenya) will begin with the defendants' first appearances in April 2011, while one confirmation of charges hearing (against one individual in the situation of the DR Congo) will begin in July 2011.

The court's judicial division is made up of 18 judges that are chosen by the Assembly of State Parties for their credentials, impartiality, and dignity, and who serve nine-year terms that are not renewable.

Judges are in charge of ensuring impartial proceedings, making rulings, issuing arrest orders or summonses to testify, allowing suspects to join, and ordering witness safety. They choose the president of the ICC and two vice presidents to lead the court. Pre-Trial, Trial, and Appeals are the three Judicial Divisions that hear cases at various stages of the process.



Pre-trial: three judges determine whether there is sufficient proof to proceed to trial and, if not, confirm the proceedings and commit the case to trial. They're in charge of issuing search warrants or summonses, preserving facts, protecting victims and witnesses, and appointing lawyers.