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THE ROLE OF INTERNATIONAL CRIMINAL LAW IN COMBATING TRANSNATIONAL ORGANIZED CRIME

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Abstract
International criminal law is an important subject that deals with the protection of international human rights since it aims to punish activities that violate fundamental human rights such as life, liberty, and security in general. Although the specific definition of an international crime is still debated, it is usually understood as an act that jeopardises the international community's essential interests and entails individual criminal liability. Primary international crimes include war crimes, crimes against humanity, genocide, and aggression. International criminal law, like ordinary criminal law, prohibits certain behaviours and specifies the penalties that apply when those behaviours are carried out. By adopting the Rome Statute with jurisdiction over core crimes, international society has focused public attention on these crimes, and has accepted the challenge of dealing with ICL in a more coherent manner. Finally, the article argues that the term transnational criminal law is apposite because it is functional and because it points to a legal order that attenuates the distinction between national and international.

Keywords: International Criminal Law, Transnational Organized Crime, Rome Statute, Transnational Criminal Law.

Introduction

As an effect of globalization, today states are increasingly faced crimes which crossed national borders. Thus, more and extra international cooperation is an essential component of criminal investigation or prosecutions. Since criminal activities go beyond the national borders, it is clear that the international community has recognized the need for enhancing cooperation, particularly with respect to gathering evidence located outside national state borders. In order to suppress the transnational and international crime in international criminal law knowledge, there are several international judicial cooperation regimes and institutions among states, such as: Letter of Rogatory (the traditional approach), Extradition, Transferred Sentenced Person (TSP), Mutual Legal Assistance (MLA) in Criminal Matters, International Criminal Police Cooperation (INTERPOL), European Law Enforcement Organization (EUROPOL), ASEAN Police Cooperation (ASEANPOL) respectively.

Transnational Crime

Transnational Crime is the crime which takes place in more than one country jurisdictions, but their consequences significantly affecting other countries. Transnational crime also against more than one country domestic law, however, it need not be based in international law as such. Although, either international agreements or treaty (purely procedural) and custom can be relevant to the issues concerning jurisdiction, enforcement, due process, judicial cooperation, the serving of sentences. For example: human smuggling, sea piracy, money laundering, terrorism, trafficking in illicit arm and drug. According to the Convention on Transnational Organized Crime 2000, an offense is transnational if, firstly, it is committed in more than one state, secondly, it is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state, thirdly, it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, finally, it is committed in one state but has substantial effects in another state.

On the other hand, Mutual Legal Assistance (MLA) in Criminal Matters is an international cooperation process by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal case, and in tracing, freezing, seizing and ultimately confiscating criminally derived wealth. It covers a wide and ever-expanding range of assistance. They include; search and seizure, production of documents, taking the witness statements by video conference and temporary transfer of prisoners or other witnesses to give evidence. After all, the cooperation prevails based on the reciprocity relationship principle. International criminal law is a body of law that prohibits specific types of conduct that are considered serious crimes. It establishes procedures for investigating, prosecuting, and punishing crimes, as well as holding perpetrators personally accountable. A system of international criminal law has recently emerged, imposing direct duties on individuals and punishing transgressions through international agencies. The ad hoc Tribunals for the Former Yugoslavia and Rwanda, which were founded in the 1990s, could be considered the beginning of a global criminal justice system. For this branch of law to be respected, major crimes of international standards must be punished, especially given the seriousness of specific acts classified as war crimes, which must be investigated and tried by the international community as a whole. This article talks about international criminal law, its sources, general principles of international criminal law and the categorisation of crimes in detail.

International Criminal Law

International criminal law is a part of public international law. It is the body of laws, agreements, and norms that govern international crimes and their suppression, as well as regulations that tackle conflict and cooperation between national criminal-law systems. Criminal law makes antisocial behaviour illegal and punishable. Because each country's laws reflect its values, there are occasionally considerable differences between the national laws of different countries, both in terms of the nature of the crimes and the acceptable sanctions.

Most international laws are involved with interstate trade, whereas international criminal law is concerned with individuals. Individuals, not governments or organisations, are held

accountable under international criminal law, which prohibits and punishes unlawful behaviour. The rules, techniques, and principles of international criminal law involve liability, defences, evidence, court process, penalty, victim participation, witness protection, mutual legal assistance, and collaboration.

"International criminal law" basically refers to three main areas of the law.

1. Extradition and other types of mutual legal assistance between various legal systems;
2. A collection of countries or the international community as a whole that prohibits and punishes certain behaviours; and
3. The operation of autonomous international legal systems, including courts and other enforcement mechanisms, in addition to national criminal law.

Sources of International Criminal Law

The five primary sources of international criminal law are treaties, customary international law, general principles of law, judicial decisions, and the writings of eminent jurists. These sources of international criminal law are expressly listed in Article 38(1) of the International Court of Justice Statute.

Article 38 of the Statute of the International Court of Justice specifies the sources of international law that regulate sovereign nation-state relations.

In Article 38, the following sources are mentioned:

- General or specific international treaties establishing norms expressly acknowledged by the opposing states;
- International custom, as evidence of a generally recognised practice that is legally binding
- Broad legal notions that civilised nations accept;
- Court decisions and the teachings of the most highly competent jurists from other nations may be employed as a secondary means of setting legal standards, according to the conditions of Article 59.

It is uncertain if Article 38 was meant to provide the Court with an exhaustive list of sources to be used at the time of its creation, but it is seldom considered a comprehensive list of international law sources today. However, there may be some misunderstanding regarding what the phrase 'sources' means, as the term is not defined in the Article. Article 38 is vital because it provides a fairly clear and explicit description of the most relevant sources to be consulted, both directly by the International Court of Justice and indirectly by other organisations that may decide international issues. As a result, Article 38 has been recognised as authoritative by both the Court and the states.

The following are the sources of International Criminal Law

Treaties

Treaties serve as a source of international criminal law, either directly or indirectly. Direct sources of international criminal law are treaty-based international criminal legislation or conventions. Subsidiary sources, on the other hand, are those that come indirectly from existing agreements. The International Military Tribunals and The Rome Statute (1988), which contain a list of crimes and procedures for prosecuting them, are legal sources that

have emerged directly from treaty formulations. Additional legal sources include The Hague Convention (1907), the Geneva Conventions (1949) and its additional protocols, the Genocide Convention (1949), and The Torture Convention (1984). As a result of the formation of treaties, all of these conventions were formed.

The statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), were both formed in response to UN Security Council Resolutions 827 and 955, respectively, are other treaty-based sources of international criminal law. International Customary Law

The International Court of Justice states in Article 38(1) that customs have two components. The first is practice, and the second is the mental element of the state, known as Opinio Juris. Both components were very well described in the North Sea Continental Shelf judgement of 1969. "In order to accomplish this result, two conditions must be satisfied. The acts in issue must not only form a well-established practice, but they must also be such, or carried out in such a way, as to reflect a belief that this practice is made mandatory by the presence of a rule of law demanding it. The idea of Opinio Juris Sive Necessitates itself implies the demand for such a belief, i.e. the presence of a subjective element. As a result, the participating nations must think they are performing a legal obligation."However, International customary law cannot be the only basis for criminal prosecution. The applicable principles can be used if the custom gets codified.

General Principles of Criminal Law

The General Principles of International Criminal Law are positive international standards that must be implemented when present law fails to provide any remedy. Such a law is necessary when there is a lacuna in present international law. If a treaty or convention fails to provide a legal framework for a specific issue, basic principles of international criminal law must be used. The next section of this article focuses more on these concepts.

Judicial Practice

Judicial experience is one of the sources of international criminal law. This can be done in two ways: first, when courts recognise existing international criminal law principles by referring to precedents and preceding Opinio Juris, and second when courts strive to designate a norm as custom through their judgments. New customary standards are regularly developed by courts by drawing them directly from elementary considerations of humanity. They pronounce judgement on the state's behaviour under the garb of compassion, expecting the state to follow the newly adopted statute.

General principles of International Criminal Law

International criminal law is based on a framework of general basic principles. They establish the reasons and conditions for prosecuting individuals for international law crimes (genocide, crimes against humanity, war crimes, and aggression), as well as other crimes against humanity's peace and security. Every legal system necessitates basic principles to create the system's overall orientation, provide broad concepts for proper legal interpretation when detailed rules on legal construction are insufficient or unhelpful, and allow courts to fill gaps in written or unwritten norms.

As international crimes are getting more complicated, because they include extraterritorial elements, it is becoming increasingly important to coordinate adherence to these rules. States must uphold them even while adhering to their own national criminal law principles as well as any particular principles included in regional agreements to which they are a party. The following are some of the general principles of international criminal law.

Basis of jurisdiction

A state has jurisdiction over its own territory which includes the power to make, interpret, and implement the law, as well as take legal action to enforce it. While enforcement authority is normally limited to national territory, international law recognises that under some circumstances, a State may regulate or adjudicate events that occur outside of its borders. Extraterritoriality is considered to be based on many principles. The following are some examples:

- The nationality or active personality principle (acts committed by citizens of the forum state);
- The passive personality principle (acts perpetrated against people of the forum State); or The protection principle (acts affecting the security of the State)

While state practice and opinion support these principles to varying degrees, they always need a connection between the act committed and the State asserting jurisdiction. Another basis for establishing extraterritorial jurisdiction is universal jurisdiction, which does not need such a connection. Universal jurisdiction refers to the assertion of jurisdiction over crimes regardless of their location or the nationality of the accused or victims.

Combating Transnational Organized Crime Through Better International Cooperation

The globalization of criminal activities has created a need for strengthened forms of international cooperation. The investigation, prosecution and control of crime cannot be confined within national boundaries. To keep pace with contemporary forms of crime, including transnational organized crime, corruption and terrorism, we need improved and streamlined mechanisms. More concerted efforts are needed in extradition, mutual legal assistance, transfer of sentenced persons, transfer of criminal proceedings, international cooperation for purposes of confiscation, including asset recovery, and international law enforcement cooperation.

The role of United Nations conventions

United Nations multilateral instruments help in harmonizing international cooperation standards. The United Nations Convention against Transnational Organized Crime (UNTOC) and its additional Protocols and the United Nations Convention against Corruption (UNCAC) were adopted following the precedent of the 1988 Drug Trafficking Convention (the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances), to establish rules, institutions and shared responsibility to combat transnational crime. They play a key role in harmonizing obligations and addressing legal gaps in international cooperation in criminal matters. For example, these instruments provide a basis for extradition and mutual legal assistance. There is almost universal adherence to the three crime-related conventions.

As of 5 December 2014, the 1988 Drug Trafficking Convention had 189 parties, the UNTOC 183 and the UNCAC 174 parties.

United Nations multilateral instruments as catalysts for further international cooperation

The universal crime-related conventions encourage States parties to conclude bilateral and multilateral agreements to increase the effectiveness of international cooperation. The ultimate objective is to enhance international cooperation through broadening the range of legal bases on which States can rely through a combined use of multilateral and bilateral agreements. The model treaties developed through the United Nations Crime Congresses have offered guidance towards convergence of related treaty provisions. The Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters, in particular, are valuable tools for the development of bilateral and multilateral arrangements in the area of judicial cooperation. The United Nations Office on Drugs and Crime (UNODC) has also developed tools that promote and support international cooperation in criminal matters, including the Directory of Competent Authorities, the Mutual Legal Assistance Request Writer Tool and, most recently, the knowledge management portal known as SHERLOC (Sharing Electronic Resources and Laws against Crime). UNODC also runs the Counter-Terrorism Online Learning Platform, which provides a gateway to practitioners (mostly criminal justice and law enforcement) for networking, exchanging information and sharing best practices.

The regional perspective

The second half of the 20th century witnessed the advent of regional agreements and schemes, often among States of the same region or those sharing common legal traditions. For example, the European Union Member States have agreed, subject to specified grounds for refusal, to recognize and execute European evidence and arrest warrants without any further formalities. The Caribbean Community (CARICOM) also has an arrest warrant treaty.

Central and competent national authorities

The ability to promptly request and respond to international cooperation requests is particularly important, given the serious nature of the offences and their transnational nature. Under the crime-related conventions, States parties designate central and competent authorities to facilitate international cooperation in criminal matters. These authorities coordinate the sending, receiving and processing of requests. The most commonly designated central authorities for mutual legal assistance are ministries of justice, offices of the attorney-general and ministries of foreign affairs. States have extensively shared their experiences of effective central authorities, such as the importance of around-the-clock availability, their competence for mutual legal assistance purposes under different treaties and quality control of requests. The extent to which central authorities are able to perform an effective coordination role is also dependent upon the availability of infrastructure, staffing and training opportunities. UNODC has provided technical assistance to Member States to enhance their capacity to deal quickly and efficiently with mutual legal assistance requests and facilitate international cooperation.

Regional cooperation networks

Regional networks can also enhance international cooperation. UNODC supports Member States in setting up networks of prosecutors and central authorities, such as the Central American Network of Prosecutors against Organized Crime (REFCO) and the Network of West African Central Authorities and Prosecutors against Organized Crime (WACAP).

Enhancing international cooperation

The Thirteenth Crime Congress will consider further opportunities to broaden the range of legal bases on which Member States can rely for international cooperation in criminal matters, to build on the existing framework of international conventions and regional treaties.

International Criminal Law and Transnational Criminal Law

The distinction between international criminal law and transnational criminal law is not always very clear. International criminal law stricto sensu is referred to the branch of international public law that defines and covers typically the so-called core crimes, such as genocide, war crimes, crimes against humanity and aggression; whereas transnational criminal law covers 'crimes of international concern' or so-called treaty crimes. The latter are set out basically in treaties (see for example, the criminal offences established under UNTOC and its Protocols) as crimes for which suspects are to be prosecuted only through domestic penal mechanisms in the State where they were arrested or are to be extradited to the State in which prosecution will take place.

Bassiouni (2003) considers the distinction between international criminal law and transnational criminal law. He starts from the observation that international criminal law is the product of the convergence of two different legal disciplines which have emerged and developed along different paths so as to be complementary, but co-extensive and separate (Bassiouni, 2003). These two disciplines are the criminal aspects of international law and the international aspects of national criminal law.

The criminal aspects of international law consist of a body of international proscriptions which criminalize certain types of conduct irrespective of particular enforcement modalities and mechanisms, such as: aggression, war crimes, unlawful use of weapons, crimes against humanity, genocide, apartheid, slavery and slave-related practices, torture, unlawful medical experimentation, piracy, hijacking, kidnapping of diplomats, taking of civilian hostages, drug offenses, falsification and counterfeiting, theft of archaeological and national treasures, bribery of public officials, interference with submarine cables, and international traffic in obscene publications. For Bassiouni, although some of these crimes emerge from customary international law, they are also included in one form or another in conventional international criminal law.

On the other hand, Boister (2003) insists on the distinction between core international crimes covered by international criminal law stricto sensu on the one hand, and treaty crimes on the other. He argues in favour of labelling the latter category as 'transnational criminal law'. In his view, by adopting the Rome Statute of the International Criminal Code with jurisdiction over core crimes, the international community has focused public attention on these crimes, but has in a way underestimated the significance of analysing in a coherent manner the

system of law that the crime control treaties establish. A first step in focusing attention on this system would be to give it an easily identifiable label - 'transnational criminal law'. Examples of transnational crime treaties establishing transnational criminal law offences, or treaty crimes, are inter alia: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; the 2000 United Natons Convention against Transnational Organized Crime (UNTOC) and its three supplementary Protocols on Human Trafficking, Migrant Smuggling and Firearms Trafficking; and the 2003 United Nations Convention against Corruption (UNCAC). Module 5 will address primarily UNTOC and the Firearms Protocol. For additional information on the Protocols on Human Trafficking and Migrant Smuggling, please see the E4J University Module Series on Trafficking in Persons and Smuggling of Migrants; information on the UNCAC and corruption in general can be found in the E4J University Module Series on Anti-Corruption.

It is essential to harmonise legal frameworks at the national and international levels. When the same processes and laws are in place, cooperation becomes easier and faster. Multilateral and regional accords are used to accomplish this. Article 18 of the Organized Crime Convention is based on a variety of previous global and regional initiatives. It urges state parties to give the greatest feasible mutual legal assistance in investigations, prosecutions, and judicial proceedings. The Organised Crime Convention further requires state parties to provide reciprocal similar assistance to one another if the inquiring state has reasonable grounds to suspect that one or more of these offences are transnational. Transnational crimes include circumstances in which victims, witnesses, revenues, instruments, or proof of such crimes are situated in the requesting state, as well as scenarios in which the crimes are committed by an organised criminal gang.

Term 'Transnational Criminal Law

The distinctions pointed out above between the system of law under discussion, ICL stricto sensu, and national criminal law, call for the use of a distinctive label. The terms international and national criminal law indicate both the legal order of reference and the particular kind of criminality suppressed. TCL can be similarly tested. With regard to the legal order of reference, the problem is that the term used to describe the system of law established by the suppression conventions must adequately describe a system determined by international and national law. The existing terms for the crimes created by the suppression conventions are inadequate in this regard. Including these crimes within a broadly defined ICL makes 'ICL' a hold-all for all international law that has penal implications. Moreover, the term 'ICL' implies a direct relationship between international society and the criminal in question, and in the indirect system there is none. A drug trafficker may break the law of a particular state, but he or she is not an international criminal and there is no international crime of drug trafficking. On the other hand, including this system within national criminal law obscures its provenance and the international obligations that exist to implement and enforce it. Recognizing the inadequacies of the existing terms, publicists have attempted hybrid labels. However, the potential for terminological confusion abounds. Consider the label 'crimes of international concern', and the fact that the preamble to the Rome Statute refers to 'the most serious crimes of concern to the international community as a whole'. The term suggested in this piece for the system of law established by the suppression conventions is a hybrid label

that avoids long and complicated phrasing. Jessup used transnational in order to deliberately attenuate the distinction between national and international legal orders, thus avoiding the difficulties of positing an international society acting as a community generating international law.109 Using the label TCL for this system is sympathetic to Jessup's purpose, and suggests perhaps the existence of something slightly more elusive — a transnational legal order. With respect to a description of criminality, the case for the use of the term 'TCL' is clearer. It has long been recognized that transnational relations can be governed by both domestic and international law.110 The generic or systemic identity of TCL flows primarily from the fact that TCL is a set of international and national norms pursuing a particular function addressing a particular class of subjects. These norms have been established primarily to suppress, through indirect penalization, certain forms of undesirable conduct that have phenomenological or normative transnational elements, carried out by individuals within the jurisdiction of the state parties to the enabling treaties. Penal and jurisdictional provisions, together with associated forms of legal assistance, are common structures embedded in the different parts of the system, the various treaties. The fact that these provisions perform standard functions in different treaties, illustrates the functional nature of this system. TCL is, it is submitted, an appropriate descriptive term to encapsulate offences spanning — 'transcending' — two or more national jurisdictions. The use of TCL is not an attempt to coin novel terminology for its own sake. Nor is it an attempt to establish a new division of legal normative science. It is rather an attempt to highlight the existing distinction between international criminal law stricto sensu and the norms established by the suppression conventions, using an admittedly mainly descriptive rather than normative label.

Legal assistance may be obtained under Article 18 of the convention for

- Obtaining evidence or making statements
- Providing judicial documents for service
- Conducting search warrants and seizures
- Examining objects and locations
- Providing data, facts, expert opinions, papers, and records,
- Identifying or tracking criminal profits, property, or instruments for evidence
- reasons, as well as their seizure for confiscation.
- Making it easier for witnesses to appear
- Any other sort of assistance that is not prohibited by domestic law.

The United Nations Office on Drugs and Crime's (UNODC) tools to facilitate mutual legal assistance.

The UNODC has established tools to foster international cooperation and address the challenges that transnational organized criminal organisations face. The United Nations Office on Drugs and Crime (UNODC) developed the Mutual Legal Assistance Request Writer Tool (MLA Tool) to assist criminal justice practitioners in swiftly drafting MLA requests, therefore increasing state collaboration and accelerating responses to such requests. The computer-based application is easy to use, adaptable to a state's substantive and procedural law, and requires little prior knowledge or expertise with mutual legal assistance.

The United Nations Model Law on Mutual Assistance in Criminal Matters

To enhance the development of domestic legislation, the UNODC developed Model Legislation on Mutual Legal Assistance in Criminal Matters. The Model Law provides measures to assist countries in providing more effective assistance in international criminal proceedings.

The United Nations Model Treaty on Mutual Assistance in Criminal Matters

The General Assembly adopted the Model Treaty on Mutual Assistance in Criminal Matters in Resolution 45/117, and it was later updated in Resolution 53/112. It is designed to be utilised by countries as a tool in the negotiation of bilateral instruments of this nature, allowing them to deal with transnational criminal proceedings more efficiently. In order to fully benefit from mutual legal assistance operations, national legislation must be studied and, in certain situations, amended to promote international collaboration and the use of foreign evidence.

Categorisation of international crimes

International criminal justice develops a system of responsibility for the most heinous crimes committed across the world, such as genocide, war crimes, and crimes against humanity. International criminal courts and tribunals adopt legislative measures to establish subject-matter jurisdiction over major international offences. Efforts to combat such crimes have been internationalised as a consequence of necessity, reflecting the need to put a stop to crimes that frequently evade national authorities. Human trafficking, involvement in slave trade, and terrorist offences like piracy and plane hijacking are all covered by international treaties and customary legal principles.

Following World War II, the first modern international criminal tribunal convened at Nuremberg, Germany, to trial Nazi Germany's military and civilian leaders (A similar tribunal was established in Tokyo to punish accused Japanese war criminals). The Nuremberg trials (1945–46) prosecuted three types of crimes such as crimes against peace, war crimes, and crimes against humanity. The offences were precisely specified and applied only to crimes done during the international war. More than half a century later, genocide was recognized among the three forms of crime in the Rome Statute of the International Criminal Court (ICC; 1998). The requirements for crimes tried in Nuremberg developed dramatically during the second half of the twentieth century, and they now cover offences committed during peacetime or civil wars. The most terrible crimes in international law are genocide, war crimes, and crimes against humanity.

War crimes

The 1949 Geneva Convention and the 1977 Additional Protocols to the Geneva Conventions define war crimes as serious violations of war norms and conventions. The norms and customs of war only apply to acts committed during an armed conflict, which can involve the use of armed force between nations or long-term military combat between states and armed organizations or groups.

Significant breaches of the rules and customs applicable in international armed conflict and serious violations of the laws and customs applicable in non-international armed conflict are

classified as war crimes under Article 8 of the Rome Statute of the International Criminal Court. Grave violations of international humanitarian law are dealt with by the International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone and the UNTAET Regulation No. 2000/15 for East Timor, which establishes jurisdiction for serious violations of international humanitarian law.

The following serious violations of international humanitarian law are classified as war crimes:

1. willful killing;
2. Torture or cruel treatment, such as biological experimentation;
3. Inflicting significant pain or serious bodily or emotional injury on purpose;
4. Significant property destruction or appropriation that is not justified by military necessity and is carried out unlawfully and without cause;
5. Compelling a prisoner of war or other protected individuals to serve in an enemy force
6. Depriving a prisoner of war or other protected person of the right to a fair and regular trial on purpose;
7. Deportation or transfer without authorization, as well as wrongful detention
8. Taking hostages.

Crimes against humanity

The definition of crimes of the laws and customs applicable in non-international armed conflict are classified as war crimes under Article 8 of the Rome Statute of the International Criminal Court. Grave violations of international humanitarian law are dealt with by the International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone and the UNTAET Regulation No. 2000/15 for, *and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in the execution of or in connection with any crime within the Tribunal's jurisdiction, whether or not in violation of the domestic law of the country where perpetrated*."

The Control Council Law No. 10 (CCL No. 10) of 1945 was the second international law to incorporate a provision for crimes against humanity, the principal importance of which is the elimination of the war connection requirement, which required acts to be related to war to be unlawful. "Murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial, or religious grounds, whether or not in violation of the country's domestic laws," were defined as crimes against humanity in CCL No. 10.

According to Article 5 (*1945)* of the International Criminal Tribunal for the Former Yugoslavia's Statute, crimes against humanity include *"Murder, extermination, slavery, deportation, incarceration, torture, rape, persecutions on political, racial, and religious grounds, and other cruel actions when perpetrated in armed conflict, whether international or internal*,"

Genocide

Raphael Lemkin coined the word "Genocide" in 1944 in his book "Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposal for Redress," which was

published about Nazi atrocities in Europe during World War II. Genocide was originally thought to be a sub-category of crimes against humanity, described as the "*intentional killing, destruction, or eradication of groups or people of organizations*."

The Genocide Convention of 1948 defines genocide as one of five types of crimes committed with the intent of eradicating a national, ethnic, racial, or religious group in whole or in part.

1. Assaulting and killing members of the gang;
2. Inflicting significant bodily or mental injury on group members;
3. Inflicting on the group circumstances of existence that are likely to cause its physical destruction in whole or in part;
4. Implementing measures to avoid births within the group;
5. Forcibly shifting the group's children to a different group

As a result of the Convention, genocide has taken on new significance as a distinct crime. The concept of genocide under the 1948 Genocide Convention was narrower than both the definition of crimes against humanity and Lemkin's definition of genocide. Articles II and III of the Genocide Convention were, however, replicated exactly in Article 4 of the International Criminal Tribunal for the former Yugoslavia (ICTY) Statute and Article 2 of the International Criminal Tribunal for Rwanda (ICTR) Statute to establish the concept of genocide. Genocide is the most serious and aggravated type of crime against humanity, as well as "the crime of crimes," among other international crimes.

War crimes, crimes against humanity, and genocide, in general, are all activities that are illegal under national law, such as murder and rape. Whether it be an international or domestic armed conflict (war crime), an attack on a civilian population (crime against humanity), or the planned extermination of an ethnic, racial, national, or religious group (genocide), the context in which the act is committed identifies it as an international crime.

Prosecution and defence

Ordinary offences that cross the boundary into international crimes have serious implications. Most importantly, typical legal norms that regulate the exercise of jurisdiction no longer apply. According to international law, a national criminal justice system may punish crimes committed within the state's territory or by its citizens, but not crimes committed outside the state's borders by non-nationals. This rule has been relaxed in the case of war crimes, crimes against humanity, and genocide. Under the principle of universal jurisdiction, national courts have the authority to punish certain offences regardless of where or by whom they are committed.

In circumstances of significant violations of the Geneva Conventions and the crime of torture, international treaties make a prosecution, not just a right, but also a duty. Under the principle of Aut Dedere Aut Judicare, which means "either adjudicate or extradite," national governments must either try offenders or extradite them to a country that is willing to do so. Accords dealing with terrorism, counterfeiting, and nuclear material theft all use the phrase "try or extradite."

The arguments that an accused may use to justify his actions are governed by certain rules. Despite having immunity under national law, a head of state cannot use it to protect himself against war crimes, crimes against humanity, or genocide. He may, however, seek protection from prosecution in other states for crimes committed while in office, provided they were not

committed in private. Heads of state, on the other hand, are not immune from prosecution in international courts or tribunals. Furthermore, both treaty and customary law remove statutory limitations, which in many national legal systems, including war crimes, crimes against humanity, and genocide, constitute a substantial bar to prosecution many years after a crime has occurred.

Individuals may not claim that they were acting on orders from a superior, even though most national legal systems allow this for military and peace officials. Although subordinates cannot be exonerated in such instances, commanders are the focus of international criminal law. Even if there is no evidence that they directed the crime to be committed, persons in positions of authority, whether military or civilian, may be held accountable for war crimes, crimes against humanity, and genocide committed by individuals under their command.

Key features of legal process of the international criminal system

1. People under the age of 18 are not prosecuted by the ICC when they commit a crime.
2. The prosecutor must undertake a preliminary investigation before initiating an investigation, taking into account concerns such as appropriate evidence, jurisdiction, seriousness, complementarities, and the interests of justice.
3. The prosecutor must obtain and reveal both incriminating and exonerating evidence when conducting an inquiry.
4. Unless proven guilty, the defendant is presumed innocent. The prosecutor bears the burden of evidence.
5. At all stages of the proceedings (pre-trial, trial, and appeals), the defendant has the right to receive material in a language that he or she fully knows and understands. As a result, ICC procedures are conducted in a variety of languages, with teams of interpreters and translators on hand.
6. Pre-trial judges issue arrest warrants and ensure that there is sufficient evidence before a case may go to trial.
7. The defendant is referred to as a suspect before a case is committed to trial (during the pre-trial phase). When a case is brought for trial, the defendant is referred to as the accused since the accusations have been confirmed.
8. After examining evidence from the prosecutor, defence, and victim's counsel, trial judges give a verdict and if the offender is found guilty, make decisions on punishment and restitution.
9. Appeals judges rule on appeals from either the prosecutor or the defence.
10. If new evidence is produced after a case is closed without a guilty verdict, the prosecutor may reopen it.

Conventions and covenants relating to International Criminal Law

Individual criminal responsibility is governed by international criminal law conventions, which also impose obligations on states that accept responsibility for prosecuting or extraditing individuals accused of international crimes, as well as cooperating with international criminal tribunals to make such prosecutions easier. The following are examples of international criminal law instruments:

Hague Regulation

The First Hague Peace Conference of 1899 was called to "revise the statement addressing the rules and customs of war elaborated in 1874 by the Conference of Brussels, but was not accepted because it failed to fulfil its primary objective of reducing armaments." The Conference of 1899 was successful in establishing a Land Warfare Convention, which was later supplemented by regulations. Both the Convention and the Regulations were amended during the Second International Peace Conference in 1907. There are only small differences between the two versions of the Convention and Regulations. The provisions of the two land warfare accords, as well as the majority of the substantive articles of the Hague Conventions of 1899 and 1907, are seen as embodying customary international law principles. As a result, they bind states that are not officially party to them.

In 1946, the Nüremberg International Military Tribunal expressed its opinion on the 1907 Hague Convention on Land Warfare. "*The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing international law at the time of their adoption… but by 1939, these rules… were recognised by all civilised nations and were regarded as declaratory of the laws and customs of war*." The two Additional Protocols to the Geneva Conventions of 1949, which were approved in 1977, substantially supplemented and extended the requirements included in the Regulations.

The Geneva Conventions of 1949 and their Additional Protocols

The Geneva Conventions and its Additional Protocols are at the centre of international humanitarian law, which regulates armed conflict and strives to minimize its effects. They are designed to safeguard civilians, health specialists, and relief workers who are not involved in the conflicts, as well as those who are no longer battling, such as injured, ill, or shipwrecked troops and prisoners of war. According to the Conventions and their Protocols, any infractions must be avoided or removed. They have strict regulations for dealing with serious offences. Those who are responsible for serious crimes must be caught, punished, or extradited, regardless of where they are from**.**

The First Geneva Convention

Following those established in 1864, 1906, and 1929, this is the fourth amended edition of the Geneva Convention on the Rights of the Wounded and Sick. There are a total of 64 articles. These protect injured and sick people, as well as medical and religious personnel, medical units, and medical transports. The Convention also recognises the distinguishing emblem. It has two annexes: a hospital zone draft agreement and a model identity card for medical and religious personnel.

The Second Geneva Convention

For the first time in a Geneva Convention, this Convention governed the protection of injured, ill, and shipwrecked personnel of armed forces at sea. The 1889 and 1907 Hague Conventions, which expanded the ideals of the Geneva Conventions on the Wounded and Sick to maritime combat, formalised the procedures for safeguarding the wounded, ill, and shipwrecked during a naval battle.

This Convention has 63 articles. In addition to the protection of wounded, sick, and shipwrecked members of the armed forces at sea, these articles provide specific protection for hospital ships, coastal rescue craft, medical aircraft, and other medical transports at sea, as well as religious, medical, and hospital personnel performing their duties in a naval context. The Convention also recognises the distinguishing emblem. It has one annexe, a model identity card for medical and religious personnel deployed to naval soldiers.

The Third Geneva Convention

The 1929 Convention on Prisoners of War was replaced by the current Convention. This convention defined 'prisoner of war' and provided adequate and humane treatment to such detainees, as stipulated by the first Convention. It specifically required Prisoners of war to provide their captives with just their names, ranks, and serial numbers. Torture may not be used to elicit information from Prisoners by countries that have signed the Convention.

The Fourth Geneva Convention

Before 1949, the Geneva Conventions only applied to combatants, not civilians. This Convention protects civilians against severe treatment and attack, much as the ill and injured military were protected in the First Convention. In addition, new regulations governing the treatment of civilians have been enacted. Assaults against civilian hospitals, medical transportation, and other medical facilities are strictly forbidden. Internees' and saboteurs' rights are also established. Eventually, it examines how occupiers should relate with those who are occupied.

The Additional Protocols to the Geneva Conventions

In the two decades since the Geneva Conventions were ratified, the number of non-international armed conflicts and national liberation wars increased across the world. Two new Protocols to the four 1949 Geneva Conventions were approved in 1977 as a result of this. They increase the protection of victims in both international (Protocol I) and non-international (Protocol II) armed conflicts, and they impose restrictions on how wars are waged. Protocol II was the first international treaty dealing with non-international armed conflicts. In 2005, a Third Additional Protocol was adopted, creating the Red Crystal as an extra emblem with the same international status as the Red Cross and Red Crescent emblems.

Convention on the Prevention and Punishment of the Crime of Genocide.

The Genocide Convention was one of the earliest United Nations conventions to address humanitarian issues. It was passed in 1948 in response to the atrocities of World War II, and it came after the United Nations General Assembly Resolution 180 (II) of December 21, 1947, which stated that "genocide is an international crime, implying the national and international responsibility of individual people and nations." Since then, the Convention has been widely recognised by the international community, and the great majority of nations have ratified it. Article 2 of the Convention specifies a precise definition of genocide, including the required intent and prohibited behaviour. It also asserts that genocide may occur in both peace and conflict.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Convention Against Torture is the most significant international human rights treaty dedicated primarily to the prevention of torture. Signatory nations are required under the Convention to prohibit and prevent torture and cruel, inhuman, or degrading treatment or punishment in all circumstances. The Convention mandates governments that have joined it to investigate all allegations of torture, prosecute perpetrators, and compensate victims. The United Nations General Assembly ratified the Convention in 1984, and it went into effect in 1987. As of April 2006, 141 countries had ratified the Convention.

International Convention on the Suppression and Punishment of the Crime of Apartheid

The United Nations' resistance to the South African government's discriminatory racial practices, known as apartheid, which lasted from 1948 to 1990, spawned the Convention on the Suppression and Punishment of the Crime of Apartheid, also known as the Apartheid Convention. The Apartheid Convention was a watershed moment (because it permits States to prosecute non-nationals for crimes committed on a non-State party's territory while the accused is physically within the jurisdiction of a State party) in the anti-apartheid movement because it not only declared apartheid to be unlawful since it violated the United Nations Charter, but it also declared apartheid to be criminal. In 1973, the United Nations General Assembly passed the Apartheid Convention, which went into effect in 1976.

According to Article 1 of the Apartheid Convention, apartheid is a crime against humanity, and "*inhuman conduct arising from apartheid policies and practices and related policies and practices of racial segregation and discrimination are international crimes."*

International Criminal Court

The International Criminal Court (ICC) is a court that examines grave international crimes such as genocide, war crimes, and crimes against humanity as the last resort. The ad hoc international tribunals formed in the 1990s to examine atrocity crimes committed in the former Yugoslavia and Rwanda served as inspiration for the court. The court's basic instrument, the Rome Statute, was passed in July 1998, and the court began functioning in 2003. However, the court has faced several challenges since its inception. It has failed to get support from major countries such as the United States, China, and Russia, which say that it undermines national sovereignty. As human rights crises defined by international crimes become more common, the court's mandate has proven to be both more necessary and more difficult to fulfill than its founders anticipated.

The International Criminal Court is based in The Hague, Netherlands, and has field offices in various nations.

The court is composed of eighteen judges, each nominated by the member countries and representing a different member nation. It requires that its members seek a gender-balanced court as well as representation from each of the UN's five regions in the judiciary. Judges and prosecutors are chosen for non-renewable nine-year terms. The court's president and two vice presidents are elected from among the judges and are in charge of the court's administration, as well as the register.

The court has jurisdiction over four categories of offences, they are

1. Genocide
2. War crimes

3. Crimes against humanity
4. Crimes of aggression

Conclusion

However, challenges such as international terrorism, religion, the environment, and new patterns of war and peace continue to degrade international relations, necessitating effective implementation. Political pressure for the convergence of the substantive criminal laws of states will increase. The system of law established by the suppression conventions will be developed to enable this convergence, despite the fact that in its present form it is not a particularly satisfactory vehicle for sponsoring convergence. The poverty of many of its provisions is striking, especially when addressed from perspectives other than effective law enforcement. Greater attention should be focused on this system. It should be tested against the benchmarks that have informed the development of the penal function in domestic law. A first step in focusing attention on this system would be to give it an easily identifiable label — 'transnational criminal law'. Overall, referring to the last progress of the international judicial cooperation experienced by states revealed that bilateral agreement is much more preferential than multilateral one. Despite of the dissimilarity of legal system between states concerned, also, it is with the purpose that the agreement tends to be able to maintenance the certain state interests, agendas, and no commitment to disburse compensation as annually member's contributions which compulsory conditional for many international treaty.

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