

6. INTERNATIONAL CRIME

CATEGORIES OF CRIME

- International crimes can be classified depending of:
 - The **nature** of the type of crimes
 - In which **jurisdiction(s)** the crime or crimes took place
 - Which national or international law applies
- Forms of international crimes include:
 - Crimes against the international community (jus cogens crimes)
 - Transnational crimes
 - Crimes committed outside of the jurisdiction (in another nation)

CRIMES AGAINST THE INTERNATIONAL COMMUNITY

Crimes against the international community:
Crimes that disrupt the operation, peace and security of the international community

- Jus cogens crimes and are considered crimes under all circumstances
- They cannot be legally justified and will be punished in proceedings brought in the ICC
- Security Council did establish tribunals for the prosecution of persons who committed war crimes, crimes against humanity or genocide in those conflicts
 - International Criminal Tribunal for the former Yugoslavia (ICTY) 1993
 - International Criminal Tribunal for Rwanda (ICTR) 1994
- Adhoc tribunals/special courts have also been set up in: Kosovo, Bosnia Herzegovina, East Timor, Sierra Leone, Cambodia, and most recently Lebanon

GENOCIDE

Convention on the Prevention and Punishment of Genocide (1948)

Genocide: Acts committed with **intent to destroy** a national, ethnical, racial or religious group

- Genocidal acts need not kill or cause death; they can just be one of the following acts:
 - Killing members of the group

- Causing serious bodily or mental harm
 - E.g. through widespread torture, rape, sexual violence, mutilation
 - Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction
 - E.g. deliberate deprivation of resources needed for the group's survival through confiscation of harvests, blockade of foodstuffs
 - Imposing measures intended to prevent births within the group
 - E.g. involuntary sterilisation, forced abortion
 - Forcibly transferring children of the group to another group
 - E.g. detention or through the use of violence and duress
- Both elements to the crime which must be included to classify as "genocide":
 - Mental element – "intent to destroy"
 - Physical element – five acts described above

WAR CRIMES

War crimes: Crimes which are serious breaches to International Humanitarian Law (IHL) which are applicable to armed conflict, giving rise to individual responsibility

Geneva Conventions (4) & Additional Protocols 1977 (3)

- The **Geneva Conventions** detail the rules in international armed conflict and also in non-international armed conflict (civil war)
- Any of the following acts committed against persons or property are grave breaches:
 - Wilful killing, causing great suffering or serious injury to body or health
 - Torture or inhuman treatment, including biological experiments
 - Extensive destruction and appropriation of property not justified by military necessity
 - Compelling a prisoner of war to serve in the forces of a hostile power
 - Wilfully depriving a prisoner of war or other protected person of the rights of a fair trial
 - Unlawful deportation or transfer
 - Unlawful confinement and taking of hostages
- The **Additional Protocols** relate to the protection of victims in armed conflict (international and non-international)

CRIMES AGAINST HUMANITY

Crimes against humanity: consist of a "widespread or systematic" commission of prohibited acts against a civilian population with knowledge of the attacks

- As defined by the Rome Statute
- These include:
 - Murder, extermination, enslavement

- Torture, rape, sexual slavery, enforced prostitution
- Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender grounds
- The crime of apartheid

CRIMES OF AGGRESSION

Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX) 1974

Crimes of aggression: “The use of armed force by a State against the sovereignty, territorial integrity or political independence of another State”

- The definition is guidance for the Security Council when considering whether an act of “aggression”
- The act of aggression includes:
 - Invasion
 - Military occupation
 - Annexation by the use of force
 - Blockade of the ports or coasts
- These crimes are considered a manifest violation of the Charter of the United Nations
- Rome State of the ICC determines the ICC will have jurisdiction over crimes of aggression rather than adhoc tribunals or special courts
- Since 1946 there have been no domestic or international trials for alleged crimes of aggression
 - The Security Council has on occasion determined that acts of aggression were committed by for example South Africa and Israel

TRANSNATIONAL CRIMES

Transnational crimes: Crimes committed in two or more jurisdictions simultaneously; they take place in one nation. but have international consequences

- This includes crimes such as:
 - Child sex tourism
 - People smuggling and human trafficking
 - Money laundering
 - Drug trafficking
- In Australia, the main law dealing with transnational crimes is the *Criminal Code Act 1995 (Cth)*

CHILD SEX TOURISM

Criminal Code Act 1995 (Cth), Division 272: Child sex offences outside of Australia

Child sex tourism: Australian travellers go to other nations in order to engage minors (under 16) in sexual activities

- The penalty is 20 years imprisonment
- Other nations have passed similar laws to Australia’s laws which effectively extend Australian criminal law into other jurisdictions

PEOPLE SMUGGLING

Criminal Code Act 1995 (Cth), Division 271: Trafficking in persons and debt bondage
Migration Act 1958 – Offence of people smuggling

- Includes people smuggling, human trafficking and various offences related to sexual servitude and debt bondage
- An offence of trafficking in persons has a penalty of imprisonment for 12 years

MONEY LAUNDERING

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)

Criminal Code Act 1995, Division 400 – Money Laundering

Money laundering: “an act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources” (INTERPOL)

- Penalty: 25 years imprisonment or 1500 penalty units
- *Crimes (Sentencing Procedure) Act 1999* defines that 1 penalty unit - \$110

DRUG TRAFFICKING

Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX) 1974

Customs Act 1901 (Cth)
Criminal Code Act 1995, Part 9.1 – Serious Drug Offences

Drug trafficking: sale and distribution of illegal drugs/psychotropic substances across national borders

- In the Customs Act, drugs are often referred to as “controlled substances”
- The Act makes it illegal for controlled substances to be imported, exported and the proceeds of drug trafficking are liable for forfeiture

CRIMES COMMITTED OUTSIDE OF JURISDICTION

Crimes outside of jurisdiction: Crimes committed outside of an individual’s domestic jurisdiction

- Individuals are subject to the laws of the nation they visit

DEALING WITH INTERNATIONAL CRIME

DOMESTIC MEASURES

CRIMES AGAINST THE INTERNATIONAL COMMUNITY

- Crimes against humanity, genocide and war crimes can be heard by domestic courts and tribunals
- Concern that domestic processes will be a 'sham'
- The ICC reserves the right to order the arrest for trial of a person whose matters are heard in 'sham' trials

UNITED STATES COURT MARTIALS

- War crimes can be prosecuted in the US through the War Crimes Act of 1996
- US does not accept the jurisdiction of the ICC as it is not a party to the Court
- Court Martials (military courts) have been used to prosecute army officers such as:
 - Lieutenant William Calley in 1970 for the massacre at My Lai (Vietnam) where he ordered the shooting of civilians suggesting they were all Vietcong
 - He was found guilty for the premeditated killings of 22 villagers
 - He received life in prison, but served 3 years under house arrest before his sentence was reduced
- In 2011, Sergeant Calvin Gibbs, to stand trial to face charges that included murdering three unarmed Afghan civilians, keeping body parts as war trophies and beating a whistle-blower

"UNIVERSAL JURISDICTION" - CANADA

- Under the Crimes Against Humanity and War Crimes Act 2000, Canada can prosecute anyone found within their jurisdiction with crimes against humanity and war crimes
- Desire Munyaneza was sentenced to life imprisonment for crimes of genocide, crimes against humanity in the massacres in Rwanda of the Tutsi people

SERBIAN WAR CRIMES SUSPECT DRAGAN VASILJKOVIC EXTRADITED FROM AUSTRALIA (ABCNews, July, 2015)

- Australia has extradited Dragan Vasiljkovic, Serbian war crimes suspect to face allegations of torture and murder
- Charges related to Zagreb's war of independence between 1991-95
- He had exercised his right to challenge the extradition process in 13 matters including several unsuccessful applications to the HCA

TRANSNATIONAL CRIMES

- Interpol is the main policing body that assists the nation state to capture and bring to trial people who commit transnational crimes
- There can be simultaneous raids and prosecutions in several nations
- Each nation will apply its own domestic laws to the offences that have been committed

R v CHEE MEI WONG [2013] NSWSC

- Convicted of conducting a business involving sexual servitude and debt bondage
- Using the threat of deportation and physical violence, Ms Wong forced the 6 women from Malaysia to take medication to prevent menstruation, perform sex acts against their will
- She pleaded not guilty to 7 charges, but the jury found her unanimously guilty of all of them and she was sentenced to 6 years imprisonment

R v HO MAN SAMSON LAW [2015] QSC

- 43 year old man was sentenced to eight years imprisonment for trafficking drugs into Australia
- Ho Man Samson Law arrived at Brisbane International Airport from Hong Kong with methyl amphetamines (0.999kg) concealed in his pants
- Arrested and charged with one count of importing a commercial quantity of border controlled drug

R v TRIVEDI [2012] NSWDC

- Diveye Trivedi pled guilty to one count of people trafficking through the organisation of the travel of an Indian male to Australia in order to work as a chef
- Man was subjected to exploitative conditions and received threats against his person and family
- Mr Trivedi was sentenced to 250 hours community service and a fine of \$1000
- It is the only conviction for labour trafficking in Australia

CRIMES COMMITTED OUTSIDE OF JURIDICITION

- When an individual flees after having committed a crime, they must be extradited back to the nation of the crime
- There are three rules that apply to extradition:
 - The nation where the individual has fled from and to must both recognise the offence in their criminal laws
 - Sanctions or punishments for the offence are recognised under the laws of both jurisdiction (punishments are not excessive)
 - The nations have an [extradition agreement](#) (treaty) allowing for the transfer of alleged offenders

INTERNATIONAL TRANSFER OF PRISONERS ACT 1997 (CTH)

- Australia is able to undertake transfers with over 60 countries through the **Council of Europe Convention on the Transfer of Sentenced Persons** and a number of bilateral treaties
- The scheme aims to promote the successful rehabilitation and reintegration into society of the prisoner while preserving the sentence imposed by the sentencing country
- Transfers are not intended to provide a more lenient or convenient alternative for prisoners
- Transfers are not automatic, they require consent from both countries and the prisoner

INTERNATIONAL MEASURES

INTERNATIONAL CRIMINAL COURT

- The ICC has the authority to hear jus cogens crimes
- It is an intergovernmental organisation tribunal that sits in The Hague, Netherlands
- It was established by a multilateral treaty, the Rome Statute (123) which serves as its governing document
- The ICC is intended to complement existing national judicial systems
- May only exercise its jurisdiction when certain conditions are met:
- National courts are unwilling or unable to prosecute criminals
- UN Security Council or individual states refer investigations to the Court
- The ICC has had 15 matters in 8 cases brought to it

THE PROSECUTOR v THOMAS LUBANGA DYILO [2012] ICC

- Lubanga was convicted of committing war crimes under the Rome Statute consisting of: enlisting and conscripting children under the age of 15 into the FPLC and using them actively to participate in hostilities in the context of an armed conflict
- Sentenced to 14 years imprisonment which is currently being served at the Detention Centre in The Hague
- He became the first person arrested under a warrant issued by the ICC in 2006, and his trial began in 2009
- Has been the only conviction of the ICC thus far since its establishment in 2002

ADHOC TRIBUNALS/ SPECIAL COURTS

- Adhoc tribunals are also called 'war crimes' tribunals that are created to hear alleged criminal offences that have occurred during a particular conflict
- These bodies are not permanent
- **International Criminal Tribunal For The Former Yugoslavia**

- 161 indictments for crimes against humanity, crimes and genocide
- 147 completed case, 80 which resulted in a conviction
- **International Criminal Tribunal In Rwanda**
- **Special Court For Sierra Leone**
 - Prosecution of Charles Taylor (Head of State) for aiding and abetting or car crimes and crimes against humanity
 - He was sentenced to 50 years
- **Cambodia Killing Fields War Crimes**
 - No statute of limitations (time limit)
 - Court also undertakes reparations and reconciliation
 -
- **Extraordinary Chambers In The Courts Of Cambodia (ECCC)**
 - A UN-backed tribunal established in 2006 to try some of the most egregious crimes of the Pol Pot era

THE DOMESTIC COURTS

- A country may use its own courts, or a "Truth and Reconciliation" Commission to hear matters that were committed during conflict within the nation

FORMER AUSCHWITZ GUARD OSKAR GRONING JAILED OVER MASS MURDER (Kate Connolly, The Guardian, 15 July 2015)

- 94-year-old German who worked as a bookkeeper at the Auschwitz death camp has been convicted of an accessory to the murder of 300,000 people
- He was sentenced to four year in prison
- He previously brought to court in 1978, but the trial collapsed with prosecutors ruling that Groning was not directly responsible for the deaths of the prisoners, thus could not be put on trial

- **Transnational crimes** can be dealt with:
 - Through treaty law which allows nations to share information, exchange prisoners and create extradition agreements
 - Through domestic laws in nations where the crimes were committed (most effective when many nations have similar laws)
- **Crimes committed outside the jurisdiction:**
 - Dealt with by the nation in which the offence took place
 - A process of extradition may be undertaken
 - Crimes committed in an embassy carries the law of the home nation into another's territory
 - Lead to problems of diplomatic immunity
 - Foreign diplomats are unlikely to be charged for crimes on foreign soil

LIMITATIONS

STATE SOVEREIGNTY

- Significant limitation on all types of international crime
- Since there is no higher authority than the state, the state cannot be compelled or forced to give someone up to the ICC
 - Nations such as USA, Syria and Sudan refuse to allow their nationals to be brought before the ICC
- 123 nations have ratified the Rome Statute, and thus support the ICC
- However, several nations, including those in the Security Council: USA, Russia, China and Israel haven't

WHAT KENYA'S WITHDRAWAL MEANS FOR THE INTERNATIONAL CRIMINAL COURT (MC Zimeta, The Guardian, 2013)

- The parliament of Kenya voted to withdraw the country from the ICC after country's new deputy president William Ruto and president Uhuru Kenyatta were due to face trial at the Hague
- Both were charged with crimes against humanity for violence that took place in the 2007 Kenyan elections
- The ICC is supposed to be a court of last resort, as in 2007, Kenya did not have the internal capacity to resolve and address the situation
- The ICC has frequently come under fire for being politically motivated
- Several countries have signed but not ratified the Rome Statute – Israel, Jamaica, Monaco, Russia, Thailand
- The US refused to ratify the treaty because of concerns that it would interfere with American national sovereignty and that it would put American citizens and soldiers at risk of political persecution from other countries through the ICC

RESOURCES

- Resource inefficiency can limit the effectiveness of international mechanisms to deal with crime
- In its first 13 years of operation, the ICC has heard only one matter to its completion, and only successfully prosecuted that one
- Ad hoc courts have been very expensive and gained relatively few prosecutions whilst taking a very long time to constitute and fund

RWANDA GENOCIDE

- In Rwanda after the genocide, the sheer number of genocidaire cases, and the inability of the justice system to process them, led to the creation of community [gacaca courts](#) (community justice)
- There was often an absence of lawyers, lack of adherence to international legal standards
- But nonetheless, it has delivered some benefits in terms of justice, truth, reconciliation and democratic participation

HYBRID COURTS

- Hybrid courts were created to address the perceived shortcomings of the IC Tribunals
 - These include the Special Court for Sierra Leone, Special Tribunal for Lebanon, Bosnian War Crimes Chamber
- Better accommodate sovereignty concerns, promote local ownership and legitimacy, deliver credible justice at a lower cost than fully international proceedings
- However, they are vulnerable to domestic political interference – especially in countries such as Cambodia with weak records of judicial independence
- They are susceptible to confusing and inefficiency as they merge multiple legal systems and personnel with disparate backgrounds, training and approaches to justice

OVERALL EFFECTIVENESS

- **Steven Freeland – International Law Expert** states the possible measures of success are [2008]:
 - The end of all conflict
 - A reduction in the number of wars
 - Larger number of prosecutions by international bodies
 - Greater accountability of state criminal systems
- Since 1990, ad hoc tribunals and ICC have had over 160 successful prosecutions
- Nation State convictions and co-operation has increased significantly
- Whilst limitations exist, it has been effective into bringing criminals into account eventually