

International Criminal Justice

Historical background of international criminal law: the Nuremberg acquis

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Historical development of international criminal law

- 19th century: International Criminal Law blossoms
- The first rules for the penal addressing of crimes during armed conflicts are developed
- The first military manuals including rules of criminal responsibility are issued
- Hague Conventions 1899, 1907 (predecessor of the Fourth Geneva Conventions of 1949)
- Martens Clause (common article 3) – shifts responsibility to the states → the state is responsible for all acts made by individuals who are part of its military forces

Historical development of international criminal law (2)

- 20th century: League of Nations (LoN) – article 227 Versailles Treaty – provided that the German Kaiser had to extradite → for the violation of international ethics and the sanctity of treaties
- The Netherlands refused extradition
- Article 228: trial of the staff of German military forces
- Versailles Treaty: it depends on the allied powers to initiate trial proceedings for law of the war violations (state discretion)
- Leipzig war crimes trials: demonstrated the existing legal gap / insufficient implementation of international law rules

Historical development of international criminal law (3)

- LoN: eighth Assembly meeting → characterized war as an international crime
- BUT: absence of sanctions' enforcement (leads states to exercise some sort of criminal jurisdiction)
- WWII: Moscow Declaration (1/11/1943) – Nazi atrocities in Europe
- Quadrilateral conference – London 1945: provided the statute for the Court to adjudicate on war crimes during WWII – both substantive and procedural provisions

Historical development of international criminal law (4)

- International Military Tribunal for the Far East: established by Special Proclamation and Charter issued by General of the Allied Powers Douglas MacArthur ≠ not conventionally
- London statute recognized:
 - α) war crimes
 - β) crimes against peace
 - γ) crimes against humanity

Nuremberg Trials

- Reference to the Kellogg-Briand pact → aggressive war is not illegal – it constitutes a crime
- Established individual criminal responsibility
- Lasted 218 days (20 November 1945 – 1 October 1946) / (the Japanese trial lasted for 417 days)
- Nuremberg Law: constitutes of a) Moscow Agreement, b) London Agreement, c) the Court's statute → it forms a special international conventional regime which is legally binding for the parties

Nuremberg Trials (2)

- The British and Soviets initially required the perpetrators to be executed without prior trial. The Americans insisted on having a trial.
- Prosecutors / Judges = Allies (Prosecutor: USA, Judges: UK, France, USSR)
- Defendants: 21 individuals (military staff and politicians of Nazi Governments) / Herrmann Goering, Alfred Rosenberg, Albert Speer, Hjalmar Schacht, Rudolf Hess, Karl Doenitz, Joachim von Ribbentrop
- Martin Bormann (in abstentia)
- Robert Ley (committed suicide before the trial ended)

Nuremberg Trials (3)

Charges:

- crimes against peace (primarily for aggressive wars against European states)
- war crimes (extermination of civilians and POWs)
- crimes against humanity (genocide of Jews, Roma, homosexual, slaves and massive executions)
- conspiracy for the application of the above plan = criminal responsibility for acts of anyone who was executed their plan

Nuremberg Trials (4)

- Verdict: 3 were deemed innocent / the rest were convicted (at least for one of the above crimes) / 11 = death penalty / 7 = imprisonment
- Nuremberg Principles:
 - A) individual criminal responsibility (article 6)
 - B) national legislation is irrelevant
 - C) Individual's status is irrelevant (article 7) (immunities)
 - D) action upon command does not lift criminal charges (article 8)
 - E) fair trial
 - F) taxonomy of international crimes: war, against peace, against humanity
 - G) synergy / complicity

Nuremberg Trials (5)

- 6a: crimes against peace → peace overthrow – war establishment (customary values see Hague) – aggressive wars are the ultimate crime (is it an ex post facto rule?)
- 6b: war crimes → violation of conventional rules or customs regarding warfare (jus in bello)
- 6c: crimes against humanity → extermination, slavery, racial persecution et.c. (anything violating human dignity) / it covers crimes against German citizens too (competence extension *ratione temporis*)

Nuremberg Trials (6)

- The question of causality was deeply explored – necessary to establish individual criminal responsibility
- Who commits a crime against peace: it is limited to those taking decisions (either military staff, or political)
- Who commits war crimes: military forces, as well as civilians (irrespective of their hierarchical position)

Nuremberg Trials (7)

- Crime: actus reus + mens rea (legal fault / factual fault / threat / use of force)
- Command doctrine ≠ knowledge of the superior

- Nuremberg court competence (for the exercise of criminal jurisdiction):
 - a) territoriality principle
 - b) nationality / active personality principle
 - c) passive nationality principle
 - d) protective principle (the state protects the defendant because the crime has violated its core national interests)
 - e) universality principle (initially supported by Brownlie & Carnegie)

- * The Allied Powers were NOT the only prosecutors, since another 19 countries entered the trial*

Nuremberg Trials (8)

- 1946 UN GA: authorized the International Law Commission to categorize and codify the Nuremberg principles
- 1951, 1954 unsuccessful drafts: not adopted due to disagreement on the definition of aggression
- First Special Rapporteur Ioannis Spyropoulos
- 1974: conclusion on the definition of aggression – “use of armed force by a state against the sovereignty of another state or use of force in any other way incompatible with the UN”