Journal of Advances and Scholarly Researches in Allied Education

Vol. IV, Issue No. VII, July-2012, ISSN 2230-7540

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AN INTERNATIONALLY INDEXED PEER REVIEWED & REFEREED JOURNAL

www.ignited.in

Journal of Advances and Scholarly Researches in Allied Education
Vol. IV, Issue No. VII, July-2012, ISSN 2230-7540

Sentencing Principles and Guidelines in International Criminal Law

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Abstract – The general narrative of international criminal law (ICL) declares that the system adheres in an exemplary manner to the fundamental principles of a liberal criminal justice system. Recent scholarship has increasingly questioned the adherence of various ICL doctrines to such principles. This study scrutinizes the discourse of ICL – the assumptions and forms of argumentation that are regarded as sound reasoning with appropriate liberal aims. This study argues that ICL, in drawing on national criminal law and international human rights law, absorbed contradictory assumptions and methods of reasoning. The study explores three modes by which the assumptions of human rights liberalism subtly undermine the criminal law liberalism to which the system aspires. These modes include interpretive approaches, substantive and structural conflation, and ideological assumptions. The identity crisis theory helps to explain how a system that strives to serve as a model for liberal criminal justice systems has come to embrace illiberal doctrines that contradict the system's fundamental principles.

Keywords: International Criminal Law, Community, State, Crimes

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INTRODUCTION

International criminal law (ICL), like municipal criminal law and practice, has until the adoption of the Rome Statute of the International Criminal Court (ICC) focused on the liability of perpetrators and relegated the interests of victims of international crimes to a secondary position [1,5]. This reflects the view that criminal conduct should be considered first as a wrong against the entire society and that remedial measures focus on disrupted societal order. At the international level, measures taken by the United Nations Security Council (UNSC) to punish those responsible for international crimes such as war crimes, crimes against humanity and genocide have been conceived primarily – perhaps solely – as a means of restoring international peace and security.

As argued in this study, the creation of the International Military Tribunal Nuremberg Tribunal (Nuremberg Tribunal) and the International Military Tribunal for the Far East at Tokyo (Tokyo Tribunal), the first of their kind in 1945 was similarly justified. It is argued that justifying these steps in terms of 'international peace and security' considerations is not problematic in itself. In any case, the United Nations (UN) Charter, which vests the core function of maintaining international peace and security in the UNSC, demands such justification. The problem, it is argued, is that the assumption that such action seems impliedly to take – that punishment of perpetrators alone will restore peace in embattled societies – is flawed, and arises from a narrow conception of what constitutes 'international peace and security'.

REVIEW OF LITERATURE:

The generally prevailing view of international criminal law is that it is preoccupied with the punishment of international crimes. Definitions by numerous commentators and approaches by previous international tribunals bear this out. As a branch of public international law (PIL), international criminal law (ICL) is concerned with the prohibition and processes of punishment of international crimes [6]. Cassese observes that it is the body of international rules that proscribe international crimes and require states to prosecute and punish at least some of those crimes and regulates international proceedings related to this.

Public International Law - Central to a proper understanding of International Criminal Law is the fact that it is a discrete body of public international law and, as such, operates in the context of the international legal system [7].

At the same time, the character of international criminal norms, as norms capable of engaging the criminal responsibility of individual human beings, is distinct from that of most other norms of public international law.

The Evolution of International Criminal Law - The horrors of the Second World War spawned a host of developments in international law. Among the most significant was the crystallization of the principle that violation of certain norms of international law could give rise to individual criminal responsibility. According to this principle, certain serious violations of international law would engage not only the classical form of responsibility in international law, i.e., the responsibility of the state, but also that of the individual human beings perpetrating the violation. Such perpetrators could be criminally prosecuted and punished for these violations of international law [3, 4].

The emergence of this principle was primarily driven by the need to develop effective means of enforcement. As reasoned by the International Military Tribunal at Nuremberg, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

The Establishment & Subject Matter Jurisdiction of the Special Panels - The authority of the United Nations Transitional Administration in East Timor (UNTAET) authority to administer and legislate for East Timor was granted by the Security Council in Resolution 1272 (1999).

As such, the resolution overrode the non-intervention principle and was clearly binding on all Member States, eliminating the need for consent. The Special Panels were created by UNTAET in Regulation No. 2000/155 (UNTAET Regulation). Their subject matter jurisdiction encompasses genocide, war crimes, and crimes against humanity, torture, murder, and sexual offenses. While the latter two categories are based upon domestic law, the first four are derived from international law [2].

CONCLUSION:

International criminal law is a subset of public international law, and is the main subject of these materials. While international law typically concerns inter-state relations, international criminal law concerns individuals. In this paper we found that, international criminal law places responsibility on individual persons—not states or organizations—and proscribes and punishes acts that are defined as crimes by international law.

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