Journal of Advances and Scholarly Researches in Allied Education

Vol. V, Issue No. IX, January-2013, 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. V, Issue No. IX, January-2013, ISSN 2230-7540

Analysis of Development of Traditional International Criminal Legislation

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Abstract – The rise of international criminal law has been one of the remarkable features of international law since 1990. One of the less-explored questions of international criminal law is its social effects, within the international community and the community of public international law, in other parts and activities of international law. In particular, what are the effects of the rise of international criminal law and its emerging system of tribunals on the rest of the laws of armed conflict? What are the effects upon apparently unrelated aspects of humanitarian and human rights law? What are the effects upon other large systems and institutions of public international law, such as the UN and other international organizations? As international criminal law has emerged as a visible face of public international law, has it supplanted or even 'crowded' other aspects and institutions of public international law? This brief study offers a high-altitude, high-speed look at the effects of international criminal law on other parts of public international law and organizations.

Keywords: International Criminal Law, Traditional, Legislation

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INTRODUCTION

The emergence of international criminal law ranks as perhaps the signal achievement in public international law since 1990 and the end of the Cold War. The ' rise and rise ' of not only a corpus of substantive criminal law but also tribunals, beginning with the Yugoslavia tribunal (ICTY) and culminating in the flagship tribunal, the International Criminal Court (ICC), is one of the most remarkable phenomena in international law and organizations in the past two decades [1]. I say this, moreover, as occasional critic of international tribunals and international criminal law; it is not an idle description. The rise and rise of international criminal law has produced, however, a number of consequences for the rest of international law. Some of these consequences appear to have been anticipated, while others appear to have been both unanticipated and unintended. The affected areas of international law include the laws of armed conflict generally, but also – or so this essay will suggest – attitudes toward the United Nations as an institutional and organizational system. My purpose in this essay is to identify some of these phenomena. The purpose is not criticism. It is, rather, to identify them, and to do so cutting across a heterogeneous group in a short space. The aim is to convey that this historically emerging body of law carries weight and 'structural' implications, not only within its own sphere of activity, but for international law, politics, and institutions more generally. The essay moves rapidly from one phenomenon to the next, not pausing very long on any particular topic. It does not attempt to link them except by their relationship to international criminal law. It is as much or more about the activity, international criminal law as social practice, as it is about the law itself [2].

REVIEW OF LITERATURE:

International criminal law has emerged largely. It is not really seen by the countries of the world as a mutual benefit 'club' in any obviously material sense – the understanding much of the world has with trade. For the wealthy, developed, stable, democratic countries of the world, international criminal law is mostly an exercise in altruism. One can construct many involved arguments to prove the contribution of international criminal law, international tribunals, and the international criminal court (ICC) to the global rule of law, to collective security and stability, and finally to material conditions globally [4,5]. But those efforts, whatever their intellectual merits, must be regarded as a stretch, at least by the standards on which the practical world judges the material benefits of trade.

The ground for the emergence of international criminal law as an aspect of global governance was not, therefore, very fertile or promising, at least seen from the standpoint of international relations theory, incentives and disincentives. Regimes of order based around altruism, one might say, are never very

promising, at least if they carry very much in the way of costs. And yet something *has* emerged.

Development of customary international criminal law:

In international criminal law, just as in general international law, custom is one of the most disputed sources of law. Yet, especially in the field of international criminal law, controversies around the formation of customary international law seem to be rooted in the fact that the classical, two-fold concept of custom formation of Art. 38 (1) (b) of the ICJ Statute does not fit the norms in this field. International criminal law is still a relatively new area of international law and most of its rules are of a prohibitive character. In many areas the existence of certain rules has been discussed for the first time before the international criminal tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR). Therefore, hard evidence of state practice and *opinion juris*, which according to Art. 38 of the ICJ Statute make up a customary rule, is not easy to find.

Traditional sources of international law:

A discussion of the sources of international law typically starts with a key provision in the Statute of the International Court of Justice (ICJ). This provision states that the ICJ, which is entrusted with the task of deciding the basis of international law, shall apply
treaties, customary international law and general principles of law. It shall also draw on decisions of courts and tribunals and on scholarly writings as evidence of the rules of law [3].

Treaties - Treaties are the most obvious source of international law. These are agreements, concluded typically between sovereign states. Treaties may be given diverse names like pact, agreement, covenant, charter, and protocol, memorandum of understanding and exchange of letters. Treaties may be either bilateral or multilateral, and deal with a wide range of matters. There are multilateral law-
making treaties that codify certain fields like the Law of Diplomatic Relations or the Law of the Sea. These large multilateral treaties usually engage the attention of those who deal with the development of international law.

CONCLUSION:

In this paper we found that certainly do have a significant number of constitutional features, from its public law foundations, separation of powers features, its rule of law commitment, to its human rights mindset. It is a particular narrative that comes with its own assumptions about rational individuals with individual autonomy and as such it is open to some and blind to other ways of dealing with atrocities or with other international regimes or states.

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