



The evolution of international criminal law

The development of international criminal law is closely linked to the establishment of international criminal courts, i.e. the punishment of crimes under international law by international courts. In the process, the establishment of individual criminal responsibility under international law faced two main **obstacles**: first, in classical international law, states, not individuals, were the exclusive subjects. Therefore, establishment of criminal norms in international law first required the recognition of the individual as a subject of international law. Second, it was necessary to overcome states' defensive attitude towards outside interference, which was rooted in the concept of sovereignty.

- **Versailles Peace Treaty of 28 June 1919**

The treaty made first attempts to establish individual criminal responsibility under international law and to set up international criminal courts, see Art. 227-230.

- **Charter of the International Military Tribunal at Nuremberg (IMT Charter)**

Article 1 of the London Agreement of 8 August 1945 provided for the creation of an international military tribunal "for the trial of war criminals whose offenses have no particular geographical location." These major war criminals were to be tried on the basis of the IMT-Charter, which was included as an appendix to the Agreement. The trial before the IMT at Nuremberg against "Göring et al." began on 20 November 1945; the court announced its judgment on 30 September and 1 October 1946.

Central provisions of the IMT Charter:

- Art. 6: crimes: **crimes against peace; war crimes; crimes against humanity**, (only) if committed in connection to crimes against peace or war crimes. The domestic legality of a crime does not prevent its prosecution under international law.
- Art. 7: perpetrator's official capacity does not bar punishment: **no immunity**.
- Art. 10: punishment of crimes committed in the name of certain organizations: punishment of membership in organizations whose criminal character was to be determined by the IMT.

The IMT Charter can be considered the birth certificate of international criminal law. The charter's main statement was that crimes against peace, war crimes and crimes against humanity entail individual responsibility under international law. The best-known passage of the judgment commented on this:

„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.“

- **Charter of the International Military Tribunal for the Far East, on the basis of a directive from the Commander-in-Chief of the Allied Forces of 19 January 1946 (IMTFE-Charter)**

The IMTFE-Charter is modeled after the IMT-Charter and shares its provisions on punishable crimes.

- **Control Council Law No. 10 of 20 December 1945 (CCL No. 10)**

With this law, the Allied Control Council for Germany accepted and improved upon the model of the Nuremberg war crimes trial. The law was intended to ensure that the subsequent trials in the four occupied zones would rest on a uniform legal basis. Numerous national trials took place, including the twelve so-called Nuremberg subsequent trials (1946-1949). For crimes against humanity, CCL No. 10 included an improvement that still has an effect today: the nexus to war crimes or crimes against peace required by the Nuremberg Charter was eliminated.



• International criminal law during the Cold War

Up to the early 1990s, efforts to codify or develop international criminal law or bring about the creation of an international criminal court remained unsuccessful. Some important activities:

- **Codification of international criminal law in international treaties:** of particular importance are the **Genocide Convention** of 9 December 1948; and the **Geneva Conventions** of 12 August 1949, **Additional Protocols** to the Geneva Conventions of 8 June 1977.
- **Activities in the framework of the United Nations:** Confirmation of the Nuremberg Principles by the U.N. General Assembly on 11 December 1946 (GA Resolution 95); International Law Commission (ILC) drafts for an international criminal code and the statute of an international criminal court, in particular **ILC Draft Code of Crimes Against the Peace and Security of Mankind (1954, 1991, 1996)**.
- **Some trials before national courts:** e.g. *Eichmann* (District Court of Jerusalem, Judgment of 12 December 1961)

• International Criminal Tribunal for the former Yugoslavia, 1993

The Yugoslavia Tribunal (ICTY) was established by the United Nations Security Council under Chapter VII of the U.N. Charter on 25 May 1993 (SC Resolution 827). The ICTY is an ad-hoc Tribunal and has jurisdiction over crimes under international law committed in the territories of the former Yugoslavia since 1 January 1991 (see Art. 1 of the ICTY Statute). It has jurisdiction only over those crimes that are “beyond doubt customary law”, such as war crimes, genocide and crimes against humanity (see Art. 2-5 of the ICTY Statute). The Tribunal is seated in The Hague, The Netherlands.

• International Criminal Tribunal for Rwanda, 1994

Like the ICTY, the Rwanda Tribunal (ICTR) was established by the Security Council acting under Chapter VII of the U.N. Charter as an ad-hoc Tribunal on 8 November 1994 (SC Resolution 955). The Tribunal has jurisdiction over genocide, crimes against humanity and war crimes that have been committed on the territory of Rwanda or by Rwandan citizens between 1 January and 31 December 1994 (see Art. 2-4 of the ICTR Statute). The court has its seat in Arusha, Tanzania.

• The International Criminal Court and the Rome Statute (ICC Statute)

On 17 July 1998, the ICC Statute was adopted by 120 States at an international conference in Rome. It entered into force on 1 July 2002. Up to now (December 2007) 105 States have ratified the Statute. The Statute establishes the International Criminal Court with seat in The Hague, The Netherlands. Unlike the ICTY and ICTR, the ICC is not a temporary but permanent court. Its jurisdiction is not limited to certain conflicts or time periods (see Art. 1, 11 et seq. of the ICC Statute). However, the Court is subject to the principle of complementarity, that is, it can act only if States are unwilling or unable to carry out criminal proceedings (see Art. 17 of the ICC Statute). The ICC Statute contains detailed provisions on genocide, crimes against humanity, and war crimes (see Art. 5-8 of the ICC Statute). For the first time, general principles of international criminal law were codified (see Art. 22-33 of the ICC Statute).

• Hybrid courts

A new type of transitional justice has recently emerged in a number of states: National ad hoc tribunals working with international assistance and partly applying international criminal law. Such “hybrid courts” have been established in East Timor (2002), Sierra Leone (2002) and Cambodia (2003)

Recommended reading: Gerhard Werle, *Principles of International Criminal* (2005), Part One (A); Antonio Cassese, From Nuremberg to Rome: International Military Tribunals to the International Criminal Court, in: Antonio Cassese, Paola Gaeta and John R.W.D. Jones (eds.), *The Rome Statute of an International Criminal Court: A Commentary*, Vol. 1 (2002), pp. 23 et seq.