

# Legal Studies

## International Crime – Lesson 2

Presented by Natasha Isbel

### Syllabus Dot Points:

- Dealing with international crime:
  - Domestic and international measures
  - Limitations

# Learn about/Learn to:

You will learn about:

- dealing with international crime:
  - domestic and international measures
  - limitations.

You will learn to:

- describe the various measures used to deal with international crime
- evaluate the effectiveness of the domestic and international legal systems in dealing with international crime.

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# Dealing with International Crime - Background

The following measures increasingly overlap in tackling international crimes:

- **Domestic** laws dealing with citizens who commit offences in other jurisdictions
- **Bilateral and multilateral** treaties
- **Internationally**, using the concept of *universal jurisdiction*, especially for crimes against the international community



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# Jurisdictional Issues

- The issue of **state sovereignty** complicates international crimes. e.g. Bali 9
- Dr Sandy Gordon, the **Australian Federal Police's National Coordinator of Intelligence** states *'Increasingly, there is a new jurisdiction for both criminal and police – the international one. And with it, a new set of knowledge, skills and tools. The problem is, it is not really a jurisdiction, or at least not yet. And this fact confers an advantage on the criminal and disadvantages on police. For international criminals depended on the ability to exploit differences and inefficiencies between jurisdictions. And globalisation has greatly enhanced their prospects of doing this'* (AFP website)
- **Prosecution** of crimes against the international community can be **controversial** – frequently committed in the context of military or political conflict within the state itself e.g. Syria;
- Other states can condemn such action and prosecute the offender under the claim of **universal jurisdiction**

# Universal Jurisdiction defined



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The International Justice Resource Centre defines “universal jurisdiction” as:

*‘the idea that a national court may prosecute individuals for any serious crime against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect.’*

Relying on the concept of universal jurisdiction, individual states can take action to prosecute people committing **crimes** which have been **universally condemned** because they **infringe universal values**.

# Universal Jurisdiction - examples

- Canada has passed the *Crimes Against Humanity and War Crimes Act 2000* allowing the prosecution of anyone found within their jurisdiction who has committed crimes against humanity and war crimes
- Similarly, Norway and USA have successfully dealt with war criminals e.g.
  - Norway: successful prosecution and imprisonment of Sadi Bugingo for crimes of genocide in Rwanda
  - USA - Beatric Munyenyezi lost US citizenship, imprisoned for 10 years for immigration fraud after lying about her involvement in Rwandan genocide, may be deported to face more charges in Rwanda

# Dealing with international crime – UN Report 2010

In particular, law enforcement, like all national actors, is not geared to deal with international issues. Regional organizations and INTERPOL have done much to facilitate information sharing and joint operations, but, in the end, each criminal must be prosecuted in a national criminal justice system. And after years of struggling with transnational organized crime, the world still does not have global strategies for solving perennial problems like the trade in heroin or cocaine. In fact, from an operational point of view, these issues are rarely addressed on a world-wide basis.

# Dealing with International Crime Domestically

2011 Australian Crime Commission Annual Report stated:

- *‘Transnational networked criminal enterprises pose a jurisdictional and logistical challenge to law enforcement and regulatory agencies and present different but equally important challenges to law makers and policy agencies.*
  - *The best defence against transnational crimes is a multi-national and multi-agency investigations designed to disrupt the international networks at key hubs where trafficking routes intersect and where they may be vulnerable.*
  - *Timely exchange of intelligence with affected countries and agencies is also critical.*
- Example = Virtual Global Taskforce
    - 9 international child protection enforcement agencies, with Europol and Interpol, ran Operation Rescue, targeting offenders involved in a global child abuse ring - 184 offenders were arrested across the globe and prosecuted domestically



# Australian mechanisms

- Parliament
- Courts
- AFP
- AG Department
- Australian Crime Commission
- Commonwealth DPP
- Department of Immigration
- Australian Customs and Protective Services
- Various government departments and agencies

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# Domestic measures

- Australia's response can be extradition, mutual assistance or prosecution
- *Extradition Act 1988 (Cth)* – Australia can make requests for extradition from other countries and also can receive requests to extradite to other countries e.g. Croatia's request to extradite Dragan Vasiljkovic to face war crimes prosecution
- *Mutual Assistance in Criminal Matters Act 1987 (Cth)* – enables Australia to obtain and provide government-to-government assistance in criminal investigations and prosecutions
- Prosecutions:
  - [\*R v Wei Tang\*](#) 2008 High Court – 10 years for slavery
  - [\*R v Chee Mei Wong\*](#) 2013 NSW – 6 years sexual servitude

# Case Study - Project Spade

- Three year worldwide investigation of global child porn distribution
- Police said 108 people had been arrested in Canada, 76 in the United States and 164 in other countries from Spain to Mexico and South Africa.
- 65 Australians arrested and charged with charged with 399 offences, including accessing, possessing, producing and distributing online child exploitation material
- As a result of the operation, 386 children have been removed from harm



<http://www.smh.com.au/national/348-arrested-in-global-child-porn-investigation-20131114-2xke5>

[SMH '348 arrested in global child porn investigation'](#) November 2013

# Case Study - Sex Slavery



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- People trafficking is:
  - acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them e.g. sex slavery
  - a crime against humanity as it is involuntary;
  - is a profitable business, being the 3<sup>rd</sup> largest transnational crime (UNODC – UN Office of Drugs and Crime)
- UNODC's *Global Report on Trafficking in Persons* = sexual exploitation most common form of people trafficking, particularly women and young girls.
- UNODC's aims to:
  - increase the level of protection and assistance provided to victims = their involvement with authorities is integral in tackling trafficking
  - develop state capacity to investigate and prosecute trafficking offences
  - encourage cross-border co-operation in investigations and prosecutions

# Sex Slavery – International responses

- UNODC is responsible for the *Convention against Transnational Organised Crime and its Protocols* e.g. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000* (*Trafficking in Persons Protocol*) - 140 nation states have signed this Protocol
- Article 3 of the Protocol aims to provide a consistent worldwide definition of '*Trafficking in Persons*', which can then be used to guide nation states when enacting domestic legislation to criminalise this behaviour.
- Nation states, such as Australia, need to legislate to criminalise these practices. However, leaving member states to deal domestically with the crime of trafficking is arguably an ineffectiveness of the Protocol, as not all states view prostitution as criminal behaviour.

# United Nations Global Initiative to Fight Human Trafficking – UN.GIFT

- Builds on the benefits of cooperation and coordination among the anti-trafficking activities of UN agencies, international organisations and other stakeholders to create new partnerships and develop effective tools to fight human trafficking.
- This global initiative is **based on the simple principle** *'human trafficking is a crime of such magnitude and atrocity that it can't be dealt with successfully by any government alone. This global problem requires a global, multi-stakeholder strategy that builds on national efforts throughout the world.'*

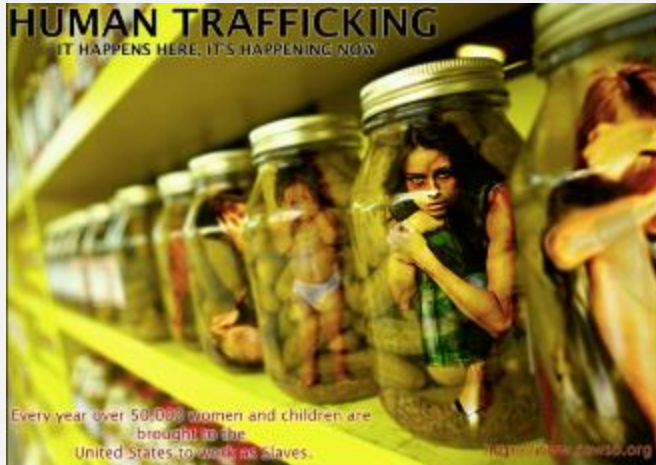


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# Sex Slavery – Domestic responses

- ✓ Australia's international obligations to trafficked and exploited people are protected under several human rights treaties and instruments:
  - Protocol to prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
  - UDHR
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social and Cultural Rights
  - 1926 Slavery Convention
  - Convention Against Transnational Organised Crime
  - Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery
  - International Labour Organisation convention on Forced or Compulsory Labour
- ✓ Australia strives to meet its international obligations by enacting domestic criminal, migration and workplace laws which deter and punish slavery and trafficking.

# Domestic Responses



<https://www.google.com.au/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&cad=rja&uact=8&ved=0CAYQjB1qFQoTCIfnxeCFkcgCFeTopgodVTUN5A&url=http%3A%2F%2Fbiusvpa.blogspot.com%2F2011%2F03%2Fstatistics-on-human-trafficking.html&psig=AFQjCNE1HZpJAGGtXWffg2vLDs4HB8Z2jA&ust=1443231309535104>

- Australian Federal Police have a dedicated trafficking team, which is supplemented by co-operation with state police in investigations. The aim is to support and protect trafficked people when they assist in the prosecution of offenders.
- The key criminal provisions are in the **Criminal Code 1995 (Cth)**, with recent Code amendments by the:
  - *Slavery Act Amendments 2013*, ensuring the criminalisation of the broadest range of exploitative conduct
  - *Vulnerable Witness Act 2013*, providing visas for vulnerable witnesses giving evidence
- These amendments help to further ensure that Australia meets its international human rights obligations in relation to people trafficking



# Case Study – Sex Slavery: R v Tang (2008)



<http://www.smh.com.au/news/national/sex-slavery-first-woman-jailed/2006/06/09/1149815296540.html>

- Successful Australian prosecution of crime against humanity – slavery and people trafficking
- Tang found guilty of several charges relating to the possession and use of a slave contrary to s270 Criminal Code 1995 (Cth)
- NSW State Library LIAC states:
  - The charges related to five women who were recruited from Thailand to work in brothels in Australia.
  - The women were not kept locked up, but had entered Australia on illegally obtained visas, their passports and return air tickets were kept by the respondent, and they had limited English and no money.
- The **High Court** dismissed the conviction appeal by the accused after considering the provision of the Criminal Code covering "offences against humanity", in particular "slavery, sexual servitude and deceptive recruiting".
- The definition of slavery in the *Criminal Code 1995 (Cth)* is very similar to the definition contained in Article 1(1) of the International Convention to Suppress the Slave Trade and Slavery

# Drill It Out

An Australian citizen has been charged under laws enacted by the *Crimes (Child Sex Tourism) Amendment Act 1994 (Cth)*. The alleged events occurred when he was on holidays in Indonesia.

This is an example of the operation of which type of law?

- (A) International law
- (B) Transnational law
- (C) Australian domestic law
- (D) Indonesian domestic law

**(BOSTES 2011 Exam Q18)**

# Dealing with International Crime Internationally

International responses to condemn and combat international crime include:

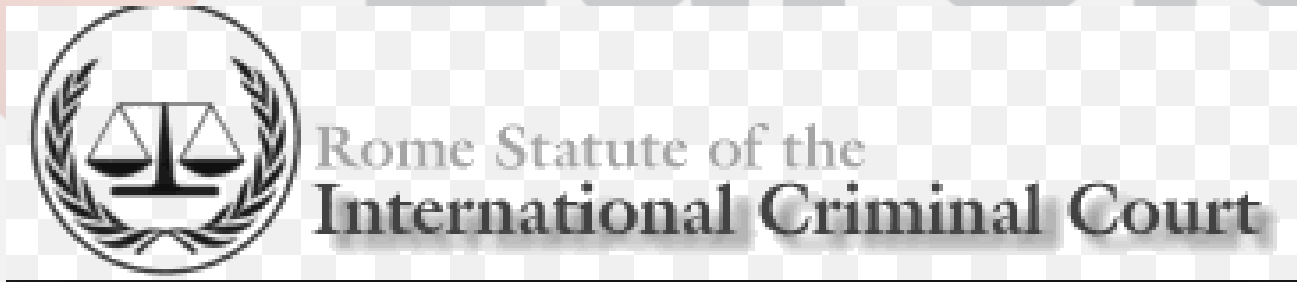
- International **treaties** which target specific types of international crimes - this relies on the co-operation of nation states e.g. Geneva Conventions and the Rome Statute establishing the International Criminal Court
- International **courts and tribunals** that deal with enforcement of international crimes e.g. ad hoc tribunals and since 2008, the permanent International Criminal Court
- **Intelligence sharing and co-operation** between various agencies both within a nation and between nations when investigating and prosecuting international crimes e.g. Interpol, Europol, Virtual Global Taskforce, UN agencies and NGO's

Relying on nation states using domestic legislation to prosecute either transnational crimes or crimes against the international community is generally the most successful means of prosecuting international crime.

# Treaties and Conventions

There are a number of significant conventions which define international crimes and set out certain standards of international behaviour:

- The Geneva Conventions (1864) - sets standards for the humanitarian treatment of the victims of war
- The Rome Statute 2008



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# Courts and Tribunals

- In 2002, the Rome Statute established the permanent **International Criminal Court (ICC)** to prosecute crimes against the international community. Independent of the United Nations, it consists of 18 judges from the 123 signatory nations. Its jurisdiction is universal.
- The ICC is a court of last resort, only prosecuting a matter when a sovereign state can't. Member states retain their jurisdiction to investigate and prosecute international crimes and are encouraged to do so.
- Prior to the establishment of the ICC, ad hoc tribunals were used to deal with genocide, war crimes and crimes against humanity e.g. the **International Criminal Tribunal for Rwanda (ICTR)** and **the International Criminal Tribunal for Yugoslavia (ICTY)**.
- The need for a permanent International Criminal Court became apparent to the international community following the atrocities of Yugoslavia and Rwanda.

# Case Study: Rwanda

- Genocide, crimes against humanity and war crimes were perpetrated on a horrific scale, primarily against Tutsi civilians and moderate Hutus. Soldiers, politicians and ordinary citizens were amongst the perpetrators.
- Between 800,000 and 1 million men, women and children were massacred by Hutu extremists - a rate of killing four times greater than at the height of the Nazi Holocaust.
- 93 indictments for crimes against humanity, war crimes and genocide - 78 completed cases (56 convictions)

# Case Study: Rwanda

**Butare case** – Pauline Nyiramasuhuko, the former Minister of Family and Women’s Development, sentenced to life for the crimes of genocide, crimes against humanity (*extermination, rape and persecution*) and serious violations of the Geneva Conventions (*violence to life, outrages on personal dignity*).

**Callixte Nzabonimana** May 2012 sentenced to life for acts of genocide



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# International Criminal Court (ICC)

- 15 cases in 7 situations have been brought before the ICC
- **First conviction** in 2012 of Thomas Lubunga Dylio for war crimes relating to the use of child soldiers = 14 years imprisonment



<http://www.google.com.au/url?sa=i&source=imgres&cd=&cad=rja&uact=8&ved=0CAgQjB0wAGoVChMI6lqo0MmRyAIVYYimCh3uag4x&url=http%3A%2F%2Fnews.bbc.co.uk%2F2%2Fhi%2F7850397.stm&psig=AFQjCNHGQDqmtndXD6OiaCCAV79Q1zVkeEQ&ust=1443249535516013>



# Case Study – Child Soldiers

- Thousands of children, boys and girls, some as young as 8 years old, are serving as soldiers in armed conflicts around the world. They fight on the front lines, participate in suicide missions and act as spies, messengers or lookouts. Girls may be forced into sexual slavery.
- Many are abducted or recruited by force, while others join out of desperation, believing that armed groups offer their best chance for survival.
- The *Convention on the Rights of the Child (CROC)* is an international human rights treaty that protects the rights of children and young people up to the age of eighteen.
- Signatory countries are responsible to ensure that the rights of children are recognised and upheld. Articles 35 and 36 of CROC = Protection from or prevention of abduction, sale or trafficking and all other forms of exploitation
- Rebel leader Thomas Lubanga → recruited and used child soldiers in hostilities
  - The ICC's guilty verdict has been said to be the first step in bringing justice to the tens of thousands of children forced to fight in conflicts
  - Demonstrates the enforcement of human rights and upholding of justice
- Effectiveness:
  - Possibly deters other rebel leaders, further raising the consciousness of the world to the need to ensure that those responsible for international crimes are brought to account
  - Provides elements of closure for those affected by perpetrators = achieves justice

# Limitations

As can occur domestically, there are obstacles which limit the effectiveness of measures implemented to deal with international crime e.g.

- ✓ Cost of achieving justice – prosecutions and convictions are very expensive e.g.
  - ICTY 1993-2011 cost US\$1.7b
  - ICC annual budget Euro 90-100m
- ✓ Not all nation states prosecute international criminals domestically (e.g. using universal jurisdiction) = lack of co-operation
- ✓ Lengthy time taken to investigate and prosecute cases e.g. up to 10 years as the process of obtaining physical and oral evidence from witnesses (translations needed) is extremely time consuming
- ✓ ICC is based in The Hague and is logistically removed from the occurrence of these crimes
- ✓ Lack of commitment to the international courts and tribunals - not all countries have signed the Rome Statute e.g. USA and China
- ✓ Gridlock of cases for the courts, tribunals and ICC to deal with

# Drill It Out

What comes under the jurisdiction of the International Criminal Court?

- (A) War crimes
- (B) Cyber-terrorism
- (C) Drug trafficking
- (D) People smuggling



**(BOSTES 2012 Exam Q14)**

# Drill It Out

Which one of the following crimes is heard by the International Criminal Court?

- (A) Piracy
- (B) Genocide
- (C) Drug smuggling
- (D) Credit card fraud



**(BOSTES 2011 Specimen Paper Exam Q4)**



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