

Legal Studies

International Crime – Lesson 1

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Syllabus Dot Points:

categories of international crime, including:

- crimes against the international community
- transnational crimes

Learn about/Learn to:

You will **learn about**:

- categories of international crime, including:
 - crimes against the international community
 - transnational crimes

You will **learn to**:

- define international crime

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Defining International Crime

International crimes

- broadly defined
- covers any crime with international origins or consequences
- facilitated by growth in technology and globalisation
- difficult to investigate and punish effectively due to state sovereignty
- increasing levels of community awareness



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Categories of International Crime



2 types:

a. transnational crimes

- Usually occurs within 1 country but can have legal implications internationally
- e.g. drug importation, illicit arms trade, people trafficking, cybercrime/internet scams, child abduction

b. crimes against the international community

- Crimes disrupting the operation, peace and security of the international community
- e.g. crimes against humanity, war crimes, genocide, crimes of aggression

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a. Transnational Crimes

- Many crimes have a transnational element with key evidence being located outside the domestic jurisdiction
- UN Report 'The globalisation of crime' 2010
 - *'Transnational criminal markets crisscross the planet, conveying drugs, arms, trafficked women, toxic waste, stolen natural resources or protected animals' parts. Hundreds of billions of dollars of dirty money flow through the world every year, distorting local economies, corrupting institutions and fuelling conflict.'*
- Australian Crime Commission
 - Transnational organised crime has been estimated to generate US\$870 billion each year globally, illicit drugs account for around half of the total, with significant funds also derived from trafficking in persons, firearms, natural resources and wildlife, people smuggling, counterfeit goods and cybercrime. Only a small portion of these funds - estimated at around 2% - are recovered.

Transnational crimes

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graph TD; A[Transnational crimes] --> B[Money Laundering]; A --> C[Human Trafficking]; A --> D[People Smuggling]; A --> E[Drug Trafficking]; A --> F[Arms Trafficking];
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Money Laundering

Human Trafficking

People Smuggling

Drug Trafficking

Arms Trafficking

a. Money Laundering

The Australian Crime Commission describes money laundering:

- The basic motivation behind most crime is to make money;
- If criminals want to use that money it needs to appear to have come from legitimate sources—they need to 'clean' or 'launder' it;
- There is no single method of laundering money but strategies to launder money include:
 - breaking up large amounts of cash and depositing it into different bank accounts
 - buying real estate, luxury assets or investing in businesses
 - purchasing casino chips and cashing them out shortly afterwards.



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b. People Smuggling



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- The Australian Attorney General's Department describes people smuggling as *'the organised, irregular movement of people across borders on a payment-for-service basis'*.
- People smuggling is a very different crime from human trafficking.

c. Human Trafficking

- The Australian Attorney General's Department describes human trafficking as '*the physical movement of people domestically or across borders through deceptive means, coercion or force*'.
- Human traffickers are motivated by the prospect of exploiting their victims once they reach the destination country. This is what makes it a different crime to people smuggling.
- Example = sex slavery



Slavery was abolished
150 years ago...

and yet there are more
people in slavery today...

than at any other time
in our history.

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d. Arms Trafficking

- Is defined as the illegal smuggling of contraband weapons or ammunition
- The Australian June 2014 article 'Why we're gunning for the illegal trade in weapons' states *'illegally traded conventional weapons claim more than half a million victims every year. These weapons kill, maim and disable, undermine economic prosperity and development, and keep millions of people, especially women and children, trapped in fear.'*



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e. Drug Trafficking



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- The United Nations Office on Drugs and Crime describes drug trafficking as *'a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws.'*
- Interpol states that it *'continues to grow as a global crime as accessibility to drugs becomes increasingly widespread; trafficking routes have become shorter and more diverse and borders more are now easily crossed'*.

Drill It Out

Which of the following is best characterized as transnational crime?

- A. Murder
- B. Torture
- C. Sexual assault
- D. People smuggling

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b. Crimes against the International Community



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Overview



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- Duhaime's Law Dictionary defines international crimes as '*crimes which affect the peace or safety of more than one state or which are so reprehensible in nature as to justify the intervention of international agencies in the investigation and prosecution thereof*'.
- **Different** from domestic crimes which have an international element – they are so profound and significant that they disrupt the peace and security of the international community e.g. Syria

Crimes against the international community defined

Are crimes disrupting the operation, peace and security of the international community:

- **Genocide** – a specific act committed with intent to destroy, in whole or part, a national, ethnic, religious or racial group
- **Crimes against humanity** – murder, extermination, torture, rape, political, racial or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice
- **War crimes** – serious violations of the laws applicable in armed conflict giving rise to individual criminal responsibility e.g. murder, mutilation, cruel treatment and torture, taking of hostages, slave labour camps, intentionally directing attacks against the civilian population or against buildings dedicated to religion, education, art, science or charitable purposes where that destruction is not justified by military or civilian necessity
- **Crimes of aggression** – now defined for the ICC to implement, effective 2015

Crimes of Aggression defined

- Means the *'planning, preparation, initiation or execution by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression, which by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations'*
- An *'act of aggression'* means the *'use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations'*

Background to development of International Criminal Laws

- Following the end of World War 2, the **Nuremberg and Tokyo Tribunals** were established to prosecute political and military leaders for war crimes. These tribunals were the impetus for the evolution of modern international criminal laws.
- In 1945, the **Charter of International Military Tribunal** (Nuremberg Tribunal) codified international customary laws. In 1946, a unanimous resolution of the UN General Assembly affirmed the international criminal law principles enshrined within the Nuremberg Charter.
- A **significant outcome** of the **Nuremberg Tribunal** was the '*recognition of individual responsibility*' under international law. The International Military Tribunal declared at the Nuremberg Trial:

"That international law imposes duties and liabilities upon individuals as well as upon states has long been recognised ... 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 ..."



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- After Nuremberg, and particularly since 1990, a wide variety of international laws and mechanisms to deal with crimes against the international community
- A variety of measures are used to combat these crimes, such as:
 - Sanctions
 - Peacekeepers
 - Peacemakers
 - Military intervention
 - Post-criminal actions
 - domestic courts
 - criminal tribunals (ad hoc tribunals)
 - actions within the International Criminal Court (Rome Statute) or International Court of Justice

Genocide



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Genocide

- Originally defined in the **Genocide Conventions (1948)** as '*a specific act committed with the intent to destroy, in whole or in part, a national, ethnic, religious or racial group, as such*'
- Further clarified by the 'ad hoc' tribunals dealing with the Yugoslavian and Rwandan genocides
- Acts inflicted on a group which constitute genocide when committed with the **requisite intention** are:
 - Killing members
 - Seriously harming (physical or mental) members
 - Inflict living conditions designed to physically destroy group in whole or in part
 - Preventing births
 - Forcibly transferring children
- The **definition is the basis of a prosecution before the ICC**
- Is a need to **prove intent** and the **group membership**

Genocide

- Note that the definition of genocide under international law does **not protect all human groups** i.e. political or social groups
- This arguably is an **ineffectiveness of the ICC** e.g. can't prosecute members of one political party who exterminate their political opponents for the crime of genocide e.g. Khmer Rouge who exterminated their political opponents in Cambodia between 1975-78



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Genocide – Recent Examples



- **Rwanda** – lasted only 100 days but around ½ - 1 million people were killed
- **Syria** - massacres and mass atrocities against pro-democracy protesters and the civilian population are being committed by Syrian security forces; chemical weapons being used

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Crimes against humanity

- Defined in Article 7 Rome Statute as including acts of extermination, murder, forced pregnancy, torture, persecution etc *'when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack'*
- Definition has recently been expanded to include sexual violence



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War Crimes

- **Article 8** of the **Rome Statute** defines war crimes extensively - includes grave breaches of the Geneva Conventions '*namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention.*'
- The Rome Statute provides for **command responsibility** = that a military commander will be criminally responsible for crimes committed by forces under his/her effective control if they knew or should have known in the circumstances, of the unlawful behaviour of subordinates but failed to take reasonable measures to prevent or punish them.
- The ICC does not have jurisdiction if the offender is **under 18 years old**. Geoffrey Robertson QC claims that this is a weakness and age should be a **mitigating factor in punishment** and not a reason to exonerate them from the crimes they have committed e.g. child soldiers

Crimes of Aggression

Crimes of aggression means the *'planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression, which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations'*

Recent examples considered internationally by some nations to be *'acts of aggression'*:

- North Korea launching a rocket
- Russian invasion of Ukraine
- Bombing of Flight MH17



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Drill It Out

Which of the following is the best example of a transnational crime?

- A. Torture
- B. Genocide
- C. War crimes
- D. Human trafficking

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