NOTES ON INTERNATIONAL CRIMINAL LAW AND INTERNATIONAL CRIMINAL COURT



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BY

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MEANING, NATURE, AND SCOPE OF ICL AND ESSENCE OF INTERNATIONAL HUMANITARIAN LAW

International Criminal Law (ICL):

- It refers to a body of laws and rules that deal with the prosecution and punishment of individuals who have committed serious crimes that have an international impact.
- ICL is a branch of public international law and is distinct from domestic criminal law.
- International Criminal Law refers to a set of rules and norms that aim to hold individuals accountable for committing serious crimes that have an international dimension.
- The concept of ICL emerged in the aftermath of World War II, when the international community recognized the need for a legal framework to prosecute individuals responsible for war crimes, crimes against humanity, and genocide.

Nature of International Criminal Law:

- ICL is a relatively new field of law that has emerged in response to the need to address atrocities that have international ramifications, such as war crimes, crimes against humanity, and genocide.
- ICL is based on the principles of individual criminal responsibility, which means that individuals who commit these crimes can be held accountable, regardless of their official position or affiliation with a state.
- ICL is a branch of public international law that focuses on prosecuting individuals who have committed serious international crimes.
- Unlike domestic criminal law, which is enforced by individual states, ICL is enforced by international institutions such as the International Criminal Court (ICC) and ad hoc tribunals.
- ICL is founded on the principles of individual criminal responsibility, which means that individuals who commit these crimes can be held accountable, regardless of their official position or affiliation with a state.

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Scope of International Criminal Law:

- The scope of ICL is broad and covers a range of offenses, including war crimes, crimes against humanity, genocide, and aggression.
- The jurisdiction of ICL extends to individuals who commit these crimes, regardless of their nationality, and the crimes can be prosecuted in international courts or in the courts of individual states.
- The scope of ICL is broad and includes crimes that have an international dimension, such as war crimes, crimes against humanity, genocide, and crimes of aggression.
- ICL applies to individuals who commit these crimes, regardless of their nationality, and they can be prosecuted in international courts or in the courts of individual states.
- ICL also applies to individuals who aid and abet in the commission of these crimes or who attempt to commit them.

Essence of International Criminal Law:

- ICL is closely linked to human rights and humanitarian law because the crimes it seeks to prosecute are often violations of these laws.
- ICL is essential in ensuring that individuals who commit atrocities are held accountable, and that victims receive justice and reparations.
- By holding individuals accountable for these crimes, ICL contributes to the prevention of future atrocities and promotes peace and stability.
- International Criminal Law is an essential component of human rights and humanitarian law because it aims to prevent and punish the most serious crimes that threaten the security and well-being of individuals and communities.
- ICL seeks to hold perpetrators accountable for their actions and to provide redress for victims through reparations, compensation, and rehabilitation.
- ICL also plays an important role in preventing future crimes by deterring individuals from committing them and by promoting respect for the rule of law and human rights.

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Examples of International Criminal Law:

- The International Criminal Court (ICC) was established in 2002 to prosecute individuals for crimes of genocide, crimes against humanity, war crimes, and aggression. The ICC has jurisdiction over individuals from states that have ratified the Rome Statute, which established the court.
- The Nuremberg Trials after World War II were a landmark event in the development of ICL, as they established the principle of individual criminal responsibility and provided a framework for prosecuting war crimes, crimes against humanity, and genocide.
- The trial of former Serbian leader Slobodan Milošević for war crimes and crimes against humanity in the 1990s in Yugoslavia is another example of ICL at work.
- The International Criminal Court (ICC) is the most prominent international institution that prosecutes individuals for serious international crimes.
- The ICC has jurisdiction over individuals from states that have ratified the Rome Statute, which established the court.
- Other examples of international criminal tribunals include the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were established by the United Nations to prosecute individuals for war crimes and crimes against humanity committed during conflicts in the 1990s.

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SOURCES OF INTERNATIONAL CRIMINAL LAW

International Criminal Law draws on various sources of law, including international treaties, customary international law, and general principles of law recognized by the international community.

International Treaties:

- International treaties are formal agreements between states that set out rules and obligations related to specific issues.
- Treaties related to ICL include the Rome Statute of the International Criminal Court (ICC), which established the ICC and defines the crimes within its jurisdiction.
- Other relevant treaties include the Geneva Conventions and their Additional Protocols, which provide protections for victims of armed conflicts.

Customary International Law:

- Customary international law refers to unwritten rules and practices that have been accepted by states over time as legally binding.
- Customary international law has played an important role in the development of ICL, particularly in areas where international treaties have not been adopted.
- Examples of customary international law in the context of ICL include the principle of individual criminal responsibility, the prohibition against torture, and the prohibition against slavery and forced labor.

General Principles of Law:

- General principles of law recognized by the international community are legal principles that are not specific to any particular system of law but are recognized as universally applicable.
- General principles of law have been used to fill gaps in the law and to guide the interpretation and application of ICL.

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- Examples of general principles of law in the context of ICL include the principle of nullum crimen sine lege (no crime without law), the principle of non bis in idem (double jeopardy), and the principle of fair trial.

Case Law:

- Case law refers to decisions made by international tribunals and other international bodies that interpret and apply the law.
- Case law has played an important role in the development of ICL, particularly in clarifying the meaning of legal concepts and defining the elements of specific crimes.
- Examples of case law in the context of ICL include the decisions of the ICC, the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR).

Some other Sources of ICL are:

Soft Law:

- Soft law refers to non-binding instruments and declarations that express the views and aspirations of the international community.
- Soft law can play a role in the development of ICL by providing guidance and influencing the interpretation and application of the law.
- Examples of soft law in the context of ICL include the United Nations (UN) Basic Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

Jus Cogens:

- Jus cogens refers to peremptory norms of international law that are considered to be non-derogable and have a higher status than other norms of international law.
- Jus cogens norms apply to all states and individuals and are considered to be fundamental to the international legal order.

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- Examples of jus cogens norms in the context of ICL include the prohibition against genocide, crimes against humanity, war crimes, and torture.

Judicial Activism:

- Judicial activism refers to the use of judicial power to shape the development of the law and to promote human rights and the rule of law.
- Judicial activism has played an important role in the development of ICL, particularly in interpreting and applying the law in a manner that reflects evolving legal and moral norms.
- Examples of judicial activism in the context of ICL include the decisions of the ICC and other international tribunals that have expanded the scope of individual criminal responsibility and recognized new forms of international crimes.

Regional Law:

- Regional law refers to legal instruments and institutions that are specific to a particular region of the world and that address issues related to ICL.
- Regional law has played an important role in the development of ICL, particularly in regions where the international legal framework is underdeveloped or where there are unique legal and cultural traditions.
- Examples of regional law in the context of ICL include the African Union Convention on Preventing and Combating Corruption, the Arab Convention for the Suppression of Terrorism, and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

Conclusion:

The sources of International Criminal Law are diverse and include international treaties, customary international law, general principles of law, and case law.

These sources provide a framework for holding individuals accountable for serious international crimes and for promoting respect for human rights and the rule of law.

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HISTORICAL DEVELOPMENT OF INTERNATIONAL CRIMINAL LAW AND EMERGENCE OF VARIOUS TRIBUNALS

Historical Development of International Criminal Law:

- International Criminal Law has its roots in the ancient legal principle of **"nulla poena sine lege"** (no punishment without law), which was later expanded to **"nullum crimen sine lege"** (no crime without law).
- In the 19th and early 20th centuries, there were several attempts to create a system of international criminal justice, including proposals for an international criminal court and the establishment of ad hoc tribunals to address specific crimes.
- The atrocities committed during World War II, particularly by the Nazi regime, led to the establishment of the first international criminal tribunals.

Nuremberg Tribunal:

- The Nuremberg Tribunal was established in 1945 by the Allied powers to prosecute Nazi leaders for war crimes, crimes against peace, and crimes against humanity.
- The tribunal was groundbreaking in its recognition of the principle of individual criminal responsibility and its application of international law to individuals, rather than just states.
- The Nuremberg Tribunal also established the legal definition of crimes against humanity, which has since been incorporated into the Rome Statute of the International Criminal Court.

Tokyo Tribunal:

- The Tokyo Tribunal was established in 1946 by the Allied powers to prosecute Japanese leaders for war crimes and crimes against peace.
- The Tokyo Tribunal was modeled after the Nuremberg Tribunal and applied similar legal principles, including the principle of individual criminal responsibility.

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- The Tokyo Tribunal also established the legal definition of crimes against peace, which has since been incorporated into the Rome Statute of the International Criminal Court.

International Criminal Tribunals:

- Following the Nuremberg and Tokyo Tribunals, there were several ad hoc tribunals established to address specific conflicts and atrocities, including the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).
- These tribunals were established by the UN Security Council and applied international criminal law to individuals responsible for war crimes, crimes against humanity, and genocide committed during the conflicts in the former Yugoslavia and Rwanda.
- The ICTY and ICTR paved the way for the establishment of the International Criminal Court, which is the first permanent international criminal tribunal with jurisdiction over the most serious international crimes.
- The Nuremberg and Tokyo Tribunals were the first examples of international criminal tribunals, and their establishment marked a turning point in the development of international criminal law. Prior to these tribunals, international law focused primarily on state responsibility rather than individual responsibility for international crimes.
- The Nuremberg Tribunal was significant in its recognition of the principle of individual criminal responsibility, which holds individuals accountable for their own actions even if they were acting on behalf of a government or state. This principle has since been incorporated into the Rome Statute of the International Criminal Court.
- The Tokyo Tribunal established the concept of "crimes against peace," which refers to the planning, preparation, initiation, or waging of a war of aggression. This concept has also been incorporated into the Rome Statute of the International Criminal Court.
- The ad hoc tribunals established in the 1990s, such as the ICTY and ICTR, were created in response to specific conflicts and atrocities and were designed to be temporary institutions. However, their success in prosecuting individuals for international crimes demonstrated the need for a permanent international criminal court.

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- The International Criminal Court (ICC) was established by the Rome Statute in 1998 and began operating in 2002. The ICC is the first permanent international criminal court with jurisdiction over war crimes, crimes against humanity, genocide, and the crime of aggression.

- The ICC has faced criticism from some countries, particularly the United States, which has refused to join the court and has taken steps to undermine its authority. However, the ICC has continued to operate and has prosecuted individuals for crimes in countries such as Uganda, the Democratic Republic of Congo, and Sudan.
- In addition to the ICC, there are other international and hybrid criminal tribunals operating around the world, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. These tribunals demonstrate the continued importance of international criminal law in addressing conflicts and atrocities around the world.

Conclusion:

The historical development of International Criminal Law is closely tied to the atrocities committed during World War II and the efforts to establish a system of international criminal justice in its aftermath.

The Nuremberg and Tokyo Tribunals were ground-breaking in their application of international law to individuals, while the ad hoc tribunals and the International Criminal Court have continued to build on this legacy in addressing conflicts and atrocities around the world.

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INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) AND INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

International Criminal Tribunal for the former Yugoslavia (ICTY):

- The ICTY was established by the United Nations Security Council in 1993 to address the serious crimes committed during the conflicts in the former Yugoslavia in the 1990s, including war crimes, crimes against humanity, and genocide.
- The ICTY was the first ad hoc international criminal tribunal established since the Nuremberg and Tokyo Tribunals, and it set a precedent for the prosecution of individuals for international crimes committed during armed conflicts.
- The ICTY operated in The Hague, Netherlands, and had jurisdiction over individuals responsible for crimes committed in the territory of the former Yugoslavia between 1991 and 2001.
- The ICTY indicted and prosecuted numerous high-ranking officials, military commanders, and other individuals for crimes such as murder, torture, sexual violence, and destruction of property. It also set important legal precedents on issues such as command responsibility, joint criminal enterprise, and genocide.
- Notable cases before the ICTY included the trials of former Yugoslav President Slobodan Milosevic, Bosnian Serb leader Radovan Karadzic, and Bosnian Serb military commander Ratko Mladic, among others.
- The ICTY completed its mandate in 2017 after successfully completing its trials and appeals, and it made significant contributions to the development of international criminal law and the establishment of accountability for serious crimes committed during armed conflicts.

International Criminal Tribunal for Rwanda (ICTR):

- The ICTR was established by the United Nations Security Council in 1994 in response to the genocide that occurred in Rwanda, where an estimated 800,000 people, primarily ethnic Tutsis, were killed in a span of 100 days.
- The ICTR was tasked with the prosecution of individuals responsible for genocide, crimes against humanity, and war crimes committed during the Rwandan genocide.

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- The ICTR operated in Arusha, Tanzania, and had jurisdiction over individuals responsible for crimes committed in Rwanda between January 1 and December 31, 1994.
- The ICTR indicted and prosecuted numerous individuals, including high-ranking government officials, military personnel, and other individuals involved in the planning and execution of the genocide. It also addressed issues such as hate speech, incitement to genocide, and sexual violence as part of the genocide.
- Notable cases before the ICTR included the trials of former Rwandan Prime Minister Jean Kambanda, former Minister of Family and Women's Development Pauline Nyiramasuhuko, and former Mayor of Taba Jean-Paul Akayesu, among others.
- The ICTR completed its mandate in 2015 after successfully completing its trials and appeals, and it contributed to the establishment of accountability for the Rwandan genocide and the development of international criminal law in addressing genocide as a crime under international law.
- The ICTR also played a role in promoting reconciliation and healing in Rwanda through its outreach and community-based programs, aiming to facilitate the process of justice and reconciliation in the aftermath of the genocide.

Conclusion:

In conclusion, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were ad hoc international criminal tribunals established by the United Nations Security Council to address serious crimes committed during conflicts in the former Yugoslavia and the Rwandan genocide, respectively. The ICTY and ICTR made significant contributions to the development of international criminal law and the establishment of accountability for serious crimes committed during armed conflicts. They indicted and prosecuted numerous high-ranking officials, military commanders, and other individuals for crimes such as murder, torture, sexual violence, and genocide. The ICTY and ICTR also set important legal precedents on issues such as command responsibility, joint criminal enterprise, and genocide. Both tribunals completed their mandate after successfully completing their trials and appeals, and they contributed to promoting reconciliation and healing in their respective regions through their outreach and community-based programs.

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HYBRID TRIBUNALS

Hybrid tribunals are a type of international criminal tribunal that are established with the participation of both national and international judges, prosecutors, and other personnel. Here are some notes on hybrid tribunals in Cambodia, Lebanon, Iraq, and the Special Court of Sierra Leone:

Extraordinary Chambers in the Courts of Cambodia (ECCC):

- The ECCC is a hybrid tribunal established in 2006 to address the crimes committed during the Khmer Rouge regime in Cambodia between 1975 and 1979.
- The ECCC is a combination of Cambodian and international judges, prosecutors, and other personnel, and has jurisdiction over genocide, crimes against humanity, and war crimes.
- Notable cases before the ECCC include the trial of Khmer Rouge leader Kaing Guek Eav, also known as "Duch," who was found guilty of crimes against humanity and sentenced to life in prison in 2010.
- The ECCC has faced some criticism for its slow pace and lack of transparency, but it has also been praised for its efforts to promote accountability and address the legacy of the Khmer Rouge regime.

Special Tribunal for Lebanon (STL):

- The STL is a hybrid tribunal established in 2007 to address the assassination of former Lebanese Prime Minister Rafik Hariri in 2005.
- The STL is a combination of Lebanese and international judges, prosecutors, and other personnel, and has jurisdiction over terrorist acts and related offenses.
- Notable cases before the STL include the trial of four members of the Lebanese militant group Hezbollah, who were charged with involvement in the assassination of Hariri. The trial began in 2014 and is ongoing.
- The STL has faced some challenges, including political interference and funding issues, but it has also been praised for its efforts to promote accountability and justice in Lebanon.

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Iraqi High Tribunal (IHT):

- The IHT is a hybrid tribunal established in 2005 to address crimes committed by the Saddam Hussein regime in Iraq, including genocide, crimes against humanity, and war crimes.
- The IHT is a combination of Iraqi and international judges, prosecutors, and other personnel, and has jurisdiction over crimes committed between 1968 and 2003.
- Notable cases before the IHT include the trial of Saddam Hussein, who was found guilty of crimes against humanity and executed in 2006.
- The IHT has faced criticism for its lack of independence and political interference, but it has also been praised for its efforts to promote accountability and justice in Iraq.

Special Court for Sierra Leone (SCSL):

- The SCSL is a hybrid tribunal established in 2002 to address the crimes committed during the civil war in Sierra Leone between 1991 and 2002, including crimes against humanity, war crimes, and other serious violations of international law.
- The SCSL is a combination of Sierra Leonean and international judges, prosecutors, and other personnel, and has jurisdiction over individuals who bear the greatest responsibility for the crimes committed during the conflict.
- Notable cases before the SCSL include the trial of former Liberian President Charles Taylor, who was found guilty of aiding and abetting war crimes and crimes against humanity in Sierra Leone and sentenced to 50 years in prison in 2012.
- The SCSL has been praised for its efforts to promote accountability and justice in Sierra Leone, and its legacy includes contributions to the development of international criminal law and the establishment of accountability for serious crimes committed during armed conflicts.

Overall, hybrid tribunals play an important role in promoting accountability and justice for serious crimes committed during armed conflicts, and they demonstrate the potential for collaboration between national and international legal systems in addressing these issues.

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Concept of Universal Jurisdiction

- Universal jurisdiction refers to the principle that certain serious crimes, such as genocide, war crimes, crimes against humanity, and torture, can be prosecuted by any state, regardless of where the crime was committed or the nationality of the perpetrator or victim.
- Universal jurisdiction is based on the idea that these crimes are so heinous that they concern the international community as a whole, and that states have a duty to prevent and punish them.
- The concept of universal jurisdiction has been recognized in various international treaties and customary international law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Geneva Conventions, and the Rome Statute of the International Criminal Court.
- Universal jurisdiction is not without controversy, as it can raise issues of state sovereignty, political considerations, and practical challenges, such as the difficulty of obtaining evidence and extraditing suspects from other countries.
- Some notable examples of cases prosecuted under universal jurisdiction include the trial of former Chilean dictator Augusto Pinochet in Spain for human rights violations committed during his regime, and the trial of former Liberian President Charles Taylor in The Hague for war crimes and crimes against humanity committed during the civil war in Sierra Leone.
- Universal jurisdiction can also apply to crimes committed in the context of armed conflicts, including crimes committed by non-state actors such as rebel groups and terrorist organizations.
- The exercise of universal jurisdiction is subject to certain requirements, such as the existence of a legal basis for jurisdiction, the seriousness of the crime, and the absence of domestic proceedings or the inability of the state with primary jurisdiction to prosecute the crime.
- Universal jurisdiction has been used by national courts and international tribunals, such as the International Criminal Tribunal for the former Yugoslavia, to prosecute individuals for serious crimes committed during armed conflicts and other contexts.

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Principle of State Sovereignty and International Criminal Law

- The principle of state sovereignty is a fundamental principle of international law, which holds that states have exclusive authority and control over their territories, populations, and resources.
- However, international criminal law challenges the principle of state sovereignty by establishing the jurisdiction of international criminal tribunals and the principle of universal jurisdiction.
- The jurisdiction of international criminal tribunals is based on treaties, such as the Rome Statute of the International Criminal Court, and can be accepted by states through ratification or accession. This allows for the prosecution of serious crimes committed by individuals who cannot be prosecuted in their own countries.
- Universal jurisdiction, as discussed earlier, allows states to exercise jurisdiction over certain serious crimes regardless of where they were committed or the nationality of the perpetrator or victim. This challenges the principle of state sovereignty, as it allows states to prosecute individuals for crimes committed outside their territory.
- The tension between the principle of state sovereignty and international criminal law has been a source of debate and criticism, with some arguing that international criminal law undermines the sovereignty of states, while others argue that it is necessary to ensure accountability for serious crimes and prevent impunity.
- Ultimately, the balance between state sovereignty and international criminal law will continue to be a topic of debate and negotiation, as the international community seeks to ensure accountability for serious crimes while respecting the principles of international law and state sovereignty.
- The principle of state sovereignty is not absolute, and is subject to limitations and obligations under international law, including the duty to respect human rights and prevent serious crimes.
- International criminal law does not aim to replace domestic criminal law, but rather complements it by providing a framework for the prosecution of serious crimes that transcend national borders.
- International criminal law recognizes the importance of cooperation between states in the investigation and prosecution of serious crimes, and provides for mechanisms of mutual legal assistance and extradition.

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- The tension between state sovereignty and international criminal law highlights the need for dialogue and cooperation between states and the international community, in order to ensure that the principles of international law and human rights are respected while promoting accountability for serious crimes.

Conclusion

In conclusion, the concept of universal jurisdiction and the principle of state sovereignty are two general principles of criminal law that are relevant to international criminal law. Universal jurisdiction allows for the prosecution of serious crimes regardless of where they were committed or by whom, while the principle of state sovereignty recognizes the importance of national legal systems and the role of states in the investigation and prosecution of crimes. International criminal law seeks to balance these principles by providing a framework for the investigation and prosecution of serious crimes that transcend national borders, while respecting the rights and responsibilities of states. Cooperation and dialogue between states and the international community are crucial in upholding these principles and promoting accountability for serious crimes.

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PRINCIPLES OF CRIMINAL LIABILITY

Nullum Crimen Sine Lege:

- This principle, also known as the principle of legality, means that no one can be punished for a crime that was not clearly defined as a crime at the time it was committed.
- In other words, criminal liability cannot be retroactively applied.
- This principle is enshrined in various international human rights instruments, such as Article 15 of the International Covenant on Civil and Political Rights.
- The principle of legality is a fundamental principle of criminal law and is also found in many national legal systems.
- The principle applies not only to substantive criminal law but also to procedural criminal law.
- The principle of legality is closely related to the principle of fair notice, which requires that the law be clear and unambiguous so that individuals know what conduct is prohibited.
- **Example:** In the case of Furundzija before the International Criminal Tribunal for the former Yugoslavia, the accused argued that the charges against him were invalid because the specific acts he was accused of were not defined as war crimes at the time they were committed. The tribunal rejected this argument, finding that the acts in question constituted a violation of customary international law at the time they were committed.

Nullum Peona Sine Lege:

- This principle means that no one can be punished with a penalty that is not prescribed by law.
- The penalty must be proportionate to the crime committed, and must not be cruel, inhuman, or degrading.
- This principle is also known as the principle of proportionality.
- The principle of proportionality requires that the punishment be proportional to the seriousness of the crime.

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- This principle is also enshrined in many national legal systems and is an important safeguard against arbitrary or excessive punishment.
- The principle of proportionality is closely related to the principle of individualization, which requires that the punishment be tailored to the individual offender.
- **Example**: The European Court of Human Rights has held that life imprisonment without the possibility of parole constitutes cruel and inhuman treatment, in violation of Article 3 of the European Convention on Human Rights.

Principle of Individual Criminal Responsibilities:

- This principle holds that individuals are responsible for their own actions, and cannot be held criminally liable for the actions of others.
- This principle is enshrined in various international criminal law instruments, such as Article 25 of the Rome Statute of the International Criminal Court.
- This principle is an important principle of international criminal law and is also found in many national legal systems.
- The principle of individual criminal responsibility is based on the idea that individuals have moral autonomy and are responsible for their own actions.
- This principle is closely related to the principle of personal jurisdiction, which requires that the accused be personally connected to the crime in order to be held criminally liable.
- **Example:** In the case of Tadic before the International Criminal Tribunal for the former Yugoslavia, the accused argued that he should not be held responsible for the actions of others because he was acting under superior orders. The tribunal rejected this argument, finding that individuals have a duty to refuse to carry out orders that would result in the commission of serious crimes.

Principle of Superior Responsibility or Command Responsibility:

- This principle holds that superiors can be held criminally responsible for the actions of subordinates if they knew or should have known that the subordinates were committing serious crimes, and failed to take measures to prevent or punish those crimes.

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- This principle is enshrined in various international criminal law instruments, such as Article 28 of the Rome Statute of the International Criminal Court.
- The principle of superior responsibility is a relatively new principle of international criminal law, and was first developed in the Nuremberg trials after World War II.
- The principle of superior responsibility is based on the idea that superiors have a duty to prevent or punish crimes committed by their subordinates.
- This principle is closely related to the principle of individual criminal responsibility, as it imposes criminal liability on individuals for the actions of others. However, it is also distinct from individual criminal responsibility, as it applies only to those in positions of authority.
- **Example:** In the case of Blagojevic before the International Criminal Tribunal for the former Yugoslavia, the accused was a commander in the Bosnian Serb army. He was held responsible for the crimes committed by his subordinates, even though he did not directly participate in those crimes, because he knew or should have known that his subordinates were committing serious crimes and failed to take measures to prevent or punish those crimes.

Conclusion

In conclusion, the principles of criminal liability play an important role in international criminal law as well as in many national legal systems. These principles, including the principle of legality, principle of proportionality, principle of individual criminal responsibility, and principle of superior responsibility or command responsibility, ensure that individuals are held accountable for their actions and that punishment is fair, proportionate, and tailored to the individual offender. These principles also serve as important safeguards against arbitrary or excessive punishment, and help to ensure that justice is served in a fair and impartial manner.

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PRINCIPLES OF EXCLUSION OF LIABILITY

Exclusion of jurisdiction over persons under eighteen:

- This principle is based on the idea that minors are not fully mature and are therefore less responsible for their actions.
- Many legal systems set a minimum age for criminal responsibility, below which minors cannot be held criminally liable.
- In international criminal law, the Rome Statute of the International Criminal Court sets the minimum age of criminal responsibility at 18.
- The exclusion of jurisdiction over persons under eighteen is based on the principle of juvenile justice, which recognizes that children and young people are not fully developed and should be treated differently from adults in the criminal justice system.
- The Rome Statute also provides that, in cases where a person under 18 is alleged to have committed a crime, the best interests of the child shall be a primary consideration.

Examples:

- Under the Rome Statute of the International Criminal Court, individuals who are under 18 years of age at the time of the alleged crime cannot be prosecuted for international crimes.
- Similarly, many national legal systems set a minimum age for criminal responsibility, such as 10 years of age in England and Wales, 12 years of age in France, and 14 years of age in Germany.

Non-application of statute of limitations:

- The principle of non-application of statute of limitations is based on the idea that certain crimes are so serious that they should not be subject to any time limit for prosecution.
- In many legal systems, there are time limits for prosecution, known as statutes of limitations, which prevent prosecution for crimes committed beyond a certain period of time.

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- However, certain crimes, such as genocide, crimes against humanity, and war crimes, are considered so serious that they are exempt from these time limits.
- The non-application of statute of limitations is based on the idea that certain crimes, such as war crimes and crimes against humanity, are so serious that there should be no time limit on prosecuting those who commit them.
- This principle is also based on the recognition that these crimes often occur in situations of conflict or political instability, where it may not be possible to investigate and prosecute them in a timely manner.

Example:

- The International Criminal Tribunal for the Former Yugoslavia (ICTY) was able to prosecute individuals for crimes committed during the Balkan wars of the 1990s, despite the fact that some of these crimes occurred more than a decade earlier.
- Similarly, the International Criminal Tribunal for Rwanda (ICTR) was able to prosecute individuals for their role in the Rwandan genocide, despite the fact that some of these crimes occurred in 1994.

Mental element:

- The principle of mental element is based on the idea that in order to be guilty of a crime, an individual must have the requisite mental state, or mens rea.
- Mens rea refers to the mental element of a crime, such as intent, knowledge, recklessness, or negligence.
- In many legal systems, a defendant cannot be convicted of a crime unless the prosecution proves that the defendant had the requisite mens rea.
- The principle of mental element is important because it ensures that individuals are not held criminally liable for accidental or unintentional conduct.
- However, in some cases, such as certain strict liability offenses, mens rea is not required for a conviction.
- The mental element principle is based on the idea that individuals should only be held criminally liable for acts that they intended to commit or knew were wrongful.
- This principle is important because it protects individuals from being punished for acts that they did not know were illegal or that they did not intend to commit.

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- However, it can also be difficult to prove intent, particularly in cases where the defendant is a member of a group or organization that has committed a crime, but did not personally commit the crime themselves. This is where the principle of command responsibility can come into play, as it allows for the prosecution of individuals who did not commit the crime themselves, but who were in a position of authority and had command responsibility over those who did.

Examples:

- In many legal systems, murder requires the mental element of intent, meaning that the defendant must have intended to kill the victim.
- In contrast, certain strict liability offenses, such as traffic violations, do not require the mental element of intent or knowledge, meaning that a defendant can be convicted even if they did not intend to violate the law.

Conclusion:

In conclusion, the principles of exclusion of liabilities, including the exclusion of jurisdiction over persons under eighteen, non-application of statute of limitations, and mental element, are important concepts in international criminal law. These principles are designed to protect individuals from being unjustly punished and to ensure that only those who are truly responsible for crimes are held accountable. By understanding and applying these principles, international criminal tribunals can uphold the rule of law and provide justice for victims of serious crimes.

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ESTABLISHMENT AND STRUCTURE OF ICC UNDER ROME STATUTE

The International Criminal Court (ICC) was established by the Rome Statute of 1998 as a permanent international criminal court to investigate and prosecute individuals accused of the most serious crimes of international concern, such as genocide, war crimes, and crimes against humanity.

Below are the key points regarding the establishment and structure of the ICC:

- Establishment: The ICC was established by the Rome Statute, which was adopted by 120 countries in 1998. The ICC came into existence on July 1, 2002, after the necessary ratification of the Rome Statute by 60 countries.
- Jurisdiction: The ICC has jurisdiction over the most serious crimes of international concern, including genocide, crimes against humanity, war crimes, and the crime of aggression (which was added to the ICC's jurisdiction in 2010).
- Structure: The ICC is made up of four main organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The Presidency is responsible for the overall administration of the court, while the Judicial Divisions are responsible for the adjudication of cases. The Office of the Prosecutor investigates and prosecutes cases, and the Registry is responsible for the non-judicial aspects of the court's work, including the administration of the court and the provision of support services.
- Judges: The ICC has 18 judges who are elected by the Assembly of States Parties to the Rome Statute for a term of nine years. Judges must have high moral character, impartiality, and integrity, as well as relevant experience in criminal law and international law.
- Prosecutor: The Prosecutor of the ICC is an independent official who is responsible for investigating and prosecuting crimes within the ICC's jurisdiction. The Prosecutor is appointed by the Assembly of States Parties for a term of nine years.
- Assembly of States Parties: The Assembly of States Parties is the governing body of the ICC and is made up of representatives from each country that has ratified the Rome Statute. The Assembly is responsible for making decisions on issues such as the ICC's budget, electing judges and the Prosecutor, and amending the Rome Statute.

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SOME ADDITIONAL KEYPOINTS:

- The ICC is governed by the Rome Statute, which was adopted in 1998 and entered into force in 2002.
- As of April 2023, 123 states have ratified the Rome Statute and are therefore members of the ICC.
- The ICC is based in The Hague, Netherlands, and is composed of four main organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry.
- The Presidency is responsible for the administration of the ICC and is composed of the President and two Vice-Presidents, who are elected by the judges for a term of three years.
- The Judicial Divisions consist of the Appeals Division, the Trial Division, and the Pre-Trial Division. The judges are elected by the Assembly of States Parties for a term of nine years, and they are assisted by legal officers and support staff.
- The Office of the Prosecutor is responsible for investigating and prosecuting crimes within the jurisdiction of the ICC, and is led by the Prosecutor, who is elected by the Assembly of States Parties for a term of nine years.
- The Registry is responsible for providing administrative and logistical support to the ICC, and is led by the Registrar, who is appointed by the judges for a term of five years.
- The ICC's jurisdiction is limited to four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.
- The ICC can exercise jurisdiction over these crimes if they are committed by a national of a state party, or if the crime takes place on the territory of a state party.
- The ICC can also exercise jurisdiction if the United Nations Security Council refers a situation to the Court, even if the state where the crimes were committed is not a party to the Rome Statute.

In summary, the ICC is a permanent international criminal court with jurisdiction over the most serious crimes of international concern. It is made up of four main organs and is governed by the Assembly of States Parties. The ICC's structure and procedures are designed to ensure the independence, impartiality, and integrity of the court and its officials.

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CONCLUSION:

In conclusion, the International Criminal Court was established under the Rome Statute in 1998 as a permanent international tribunal to investigate and prosecute individuals responsible for the most serious international crimes, including genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC is composed of four main organs, namely the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry, which work together to ensure the effective functioning of the Court. The ICC's jurisdiction is limited to state parties to the Rome Statute and crimes committed on their territory, but the Court can also exercise jurisdiction in situations referred to it by the UN Security Council. Overall, the ICC plays an important role in holding individuals accountable for international crimes and promoting respect for human rights and the rule of law.

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CONCERNS OF OPPOSITIONS TO ICC

Some of the main concerns and criticisms of the International Criminal Court (ICC) include the following:

1. **Jurisdiction:** One of the main criticisms of the ICC is that it only has jurisdiction over states that have ratified the Rome Statute. This means that the Court cannot investigate or prosecute crimes committed by non-state parties, such as the United States or China, which has led to accusations of bias and unequal treatment.
2. **Sovereignty:** Another concern is that the ICC may infringe on state sovereignty by interfering in the internal affairs of states. Some states have also criticized the Court for taking actions without their consent or cooperation, which they argue violates their sovereignty.
3. **Selectivity:** Some critics argue that the ICC has been selective in its investigations and prosecutions, focusing primarily on African countries and neglecting crimes committed by Western states or powerful actors such as corporations.
4. **Impunity:** Others have raised concerns that the ICC's efforts to hold individuals accountable for international crimes may have unintended consequences, such as enabling some actors to escape accountability by avoiding situations where the ICC has jurisdiction.
5. **Effectiveness:** There have been criticisms that the ICC's processes are slow, costly, and often do not result in meaningful justice for victims. Some have also argued that the ICC is not effective in preventing or deterring crimes against humanity, genocide, and war crimes.
6. **Political influence:** The ICC has been accused of being politically influenced and serving the interests of powerful states or international organizations. This has led to accusations that the Court is not impartial and that its investigations and prosecutions are politically motivated.
7. **Resource constraints:** The ICC has faced challenges related to limited resources, which has impacted its ability to investigate and prosecute cases effectively. Some have argued that the ICC needs more funding and resources to carry out its mandate and achieve its goals.

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8. **Cooperation of states:** The ICC depends on the cooperation of states to carry out its work, including access to evidence and suspects. However, some states have refused to cooperate with the Court or have hindered its investigations, which has created significant challenges for the ICC.
9. **Lack of universality:** The fact that not all states have ratified the Rome Statute means that the ICC's jurisdiction is limited, which has led to accusations of unequal treatment and bias.
10. **Impartiality and objectivity:** Some have criticized the ICC for lacking impartiality and objectivity in its investigations and prosecutions, which has raised questions about its legitimacy and credibility.

Overall, the concerns of opposition to the ICC are diverse and complex, and highlight the challenges faced by the Court in its efforts to promote international justice and accountability. While the ICC has made progress in holding individuals accountable for serious crimes, these concerns will need to be addressed to ensure the continued effectiveness and legitimacy of the Court.

Conclusion:

In conclusion, the International Criminal Court (ICC) has faced opposition and criticism from various actors since its establishment under the Rome Statute in 1998. The concerns of opposition to the ICC are diverse and include issues related to jurisdiction, sovereignty, political influence, resource constraints, cooperation of states, lack of universality, impartiality, and objectivity. Addressing these concerns is important for ensuring the effectiveness and legitimacy of the ICC in promoting international justice and accountability. Despite the challenges it has faced, the ICC has made significant progress in holding individuals accountable for serious crimes, and remains a critical institution in the fight against impunity for international crimes.

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JURISDICTION AND ADMISSIBILITY OF ICC AND PRE-CONDITION TO EXERCISE OF JURISDICTION

Jurisdiction and admissibility are critical aspects of the International Criminal Court (ICC) that determine its authority to hear and prosecute cases. Here are some detailed notes on these topics:

Jurisdiction:

- The ICC has jurisdiction over four main crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.
- Jurisdiction is divided into two types: territorial and personal.
- Territorial jurisdiction is based on the location of the crime, and the ICC can exercise jurisdiction if the crime was committed on the territory of a state party or if a state party refers a situation to the ICC.
- Personal jurisdiction refers to the individuals who can be subject to ICC proceedings. The ICC can exercise jurisdiction over individuals who are nationals of a state party, individuals who commit crimes on the territory of a state party, and individuals referred by the UN Security Council.
- The ICC can also exercise jurisdiction over crimes committed before its establishment in 2002, but only if the crime was committed after the entry into force of the Rome Statute and if the state where the crime was committed is a party to the ICC.
- The jurisdiction of the ICC is divided into two categories: territorial jurisdiction and personal jurisdiction. Territorial jurisdiction refers to crimes committed within the territory of a state party or where the accused is a national of a state party. Personal jurisdiction refers to the nationality of the accused, where they can be held accountable for crimes committed regardless of where the crime took place.
- The ICC can only exercise jurisdiction over crimes that are considered to be the most serious, such as genocide, crimes against humanity, war crimes, and the crime of aggression.
- The ICC can only prosecute individuals, not states or organizations.

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Admissibility:

- Admissibility refers to the criteria that must be met for a case to be heard by the ICC.
- The case must fall within the ICC's jurisdiction and must be of sufficient gravity to justify its intervention.
- The case must also be admissible in accordance with the principle of complementarity, which means that the ICC will only hear cases where national courts are unwilling or unable to do so.
- The ICC also considers the interests of justice when deciding whether a case is admissible, taking into account factors such as the nature of the crime, the age and health of the accused, and the likely impact of the proceedings on victims and witnesses.
- The admissibility of a case before the ICC is subject to a number of conditions. The case must be within the jurisdiction of the ICC, it must be admissible, and it must not be under investigation or prosecution by another court or state.
- The ICC can only intervene if a state is unable or unwilling to investigate and prosecute the crimes within its jurisdiction.
- The ICC can also intervene if the UN Security Council refers a situation to the Court, even if the state in question is not a party to the Rome Statute.
- The ICC has faced criticism for its selective approach to investigations and prosecutions, with some accusing the Court of bias against certain countries and political groups.
- Some countries, including the United States, have refused to ratify the Rome Statute and do not recognize the jurisdiction of the ICC. This has led to tensions between the ICC and some states, and has limited the Court's ability to investigate and prosecute crimes in certain parts of the world.

Pre-conditions to exercise of jurisdiction by the International Criminal Court (ICC) related to the power of referral and deferral under the Rome Statute:

1. **Power of Referral** under the Rome Statute: According to Article 13(b) of the Rome Statute, the UN Security Council has the power to refer a situation to the ICC for investigation and prosecution, even if the state involved is not a party to the Rome Statute. This means that the ICC can investigate and prosecute crimes in situations

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that have been referred to it by the UN Security Council, regardless of whether the state in question has ratified the Rome Statute or not.

Example: The situation in Darfur, Sudan was referred to the ICC by the UN Security Council in 2005, even though Sudan is not a party to the Rome Statute. This resulted in the ICC issuing arrest warrants against individuals accused of crimes against humanity, war crimes, and genocide committed in Darfur.

2. **Power of Deferral** under the Rome Statute: According to Article 16 of the Rome Statute, the UN Security Council has the power to defer an investigation or prosecution by the ICC for a period of 12 months, renewable indefinitely. This means that the ICC's jurisdiction can be temporarily suspended or deferred by the UN Security Council in certain situations.

Example: The UN Security Council has used the power of deferral under the Rome Statute in situations such as the situation in Sudan, where the Council passed resolutions deferring the ICC's investigation and prosecution of crimes in Darfur for consecutive periods of 12 months.

It's important to note that the powers of referral and deferral by the UN Security Council have been subject to criticism and debate, as they raise questions about the relationship between the ICC and the UN Security Council, and the potential for political influence in the ICC's proceedings. However, these powers are recognized under the Rome Statute and form part of the ICC's jurisdiction and admissibility criteria.

Conclusion:

In conclusion, the International Criminal Court (ICC) is an international tribunal established to prosecute individuals for international crimes such as genocide, war crimes, and crimes against humanity. The jurisdiction of the ICC is limited to cases where the state is unwilling or unable to prosecute the accused, or when the crime is committed within the territory of a state party to the Rome Statute. The pre-conditions to the exercise of jurisdiction include the power of referral and the power of deferral under the Rome Statute. The power of referral

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enables states, the United Nations Security Council, and the ICC Prosecutor to refer cases to the ICC, while the power of deferral allows the Security Council to defer an investigation or prosecution for up to one year. Despite opposition from some states, the ICC continues to play a significant role in the fight against international crimes and in promoting accountability for perpetrators of such crimes.

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BASIS OF JURISDICTION: JURISDICTION RATIONE TEMPORIS, JURISDICTION RATIONE LOCI, JURISDICTION RATIONAE PERSONAE, CONCEPT OF COMPLEMENTARY JURISDICTION CRIMES WITHIN THE JURISDICTION OF THE ICC SUBSTANTIVE INTERNATIONAL CRIMINAL LAW: WAR CRIMES, CRIMES OF AGGRESSION, CRIMES AGAINST HUMANITY AND CRIMES AGAINST PEACE

Basis of Jurisdiction:

- **Jurisdiction ratione temporis:** This refers to the time period during which the alleged crime was committed. The ICC can only prosecute crimes committed after July 1, 2002, which is the date the Rome Statute came into force. in other words, it refers to the time frame during which the alleged crime was committed. The ICC can only exercise jurisdiction over crimes committed on or after July 1, 2002, the date the Rome Statute entered into force.
- **Jurisdiction ratione loci:** This refers to the place where the alleged crime was committed. The ICC can only prosecute crimes that were committed on the territory of a state party or by a national of a state party. In other words, it refers to the location of the alleged crime. The ICC can exercise jurisdiction over crimes committed within the territory of a State party, or on board a vessel or aircraft registered to a State party, or in a situation referred to the ICC by the United Nations Security Council.
- **Jurisdiction rationae personae:** This refers to the person who committed the alleged crime. The ICC can only prosecute individuals, not states or organizations. In other words, it refers to the personal jurisdiction of the ICC. The ICC can exercise jurisdiction over persons who are nationals of a state party, or who have committed crimes on the territory of a State party, or who have been referred to the ICC by the United Nations Security Council.

Concept of Complementary Jurisdiction:

The ICC has complementary jurisdiction, which means that it can only prosecute individuals when the state is unwilling or unable to do so. This is based on the principle of complementarity, which states that the ICC is a court of last resort. In other words, it refers to

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the principle that the ICC is a court of last resort, and that it will only exercise jurisdiction when national courts are unwilling or unable to prosecute the crimes in question. This principle is enshrined in Article 17 of the Rome Statute.

Crimes within the Jurisdiction of the ICC:

- **War Crimes:** War crimes are defined in Article 8 of the Rome Statute as serious violations of the laws and customs of war, including acts such as murder, torture, and intentionally targeting civilians. in other words these are serious violations of the laws and customs of war, including murder, torture, and intentionally directing attacks against civilians.
- **Crimes of Aggression:** Crimes of aggression are defined in Article 8 bis of the Rome Statute as the planning, preparation, initiation or execution of an act of aggression by a State against the sovereignty, territorial integrity or political independence of another State. In other words it is the acts of aggression by a state against the sovereignty, territorial integrity, or political independence of another state.
- **Crimes against humanity:** Crimes against humanity are defined in Article 7 of the Rome Statute as certain acts committed as part of a widespread or systematic attack directed against any civilian population, including acts such as murder, torture, and rape. which means it is the widespread or systematic attacks directed against any civilian population, including murder, enslavement, and torture.
- **Crimes Against Peace:** Crimes against peace, also known as aggression, are defined in Article 8 bis of the Rome Statute as the planning, preparation, initiation or execution of an act of aggression by a State against the sovereignty, territorial integrity or political independence of another State. In other words it is the act of planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements, or assurances.

Substantive International Criminal Law:

This refers to the body of law that defines and governs international crimes, and the punishments for such crimes. It includes the definitions of the crimes within the jurisdiction

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of the ICC and the elements of those crimes. It is based on customary international law, international treaties, and the decisions of international tribunals.

Conclusion:

In conclusion, the jurisdiction of the ICC is based on three main factors - jurisdiction ratione temporis, which refers to the time frame during which the crime was committed, jurisdiction ratione loci, which refers to the geographical location of the crime, and jurisdiction rationae personae, which refers to the personal jurisdiction over the accused. The ICC also has complementary jurisdiction, which means that it can only exercise its jurisdiction if a State is unwilling or unable to investigate and prosecute the crimes within its jurisdiction.

The crimes within the jurisdiction of the ICC include war crimes, crimes of aggression, crimes against humanity, and crimes against peace. These crimes are defined in the Rome Statute, which is the legal basis for the establishment and operation of the ICC. The ICC's mandate is to investigate and prosecute individuals who have committed these international crimes and to ensure that they are held accountable for their actions.

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DEFENCES

Defences in International Criminal Law are used to justify or excuse the conduct of an individual who is accused of committing an international crime. Some of the common defences available under international criminal law include:

1. **Mental Incapacity:** Article 31 of the Rome Statute states that a person shall not be criminally responsible if, at the time of the alleged crime, they were suffering from a mental disease or defect that rendered them unable to appreciate the nature and quality of their conduct or to understand that their conduct was unlawful. Simply, this defence can be invoked if the accused lacked the mental capacity to understand the nature and consequences of their actions at the time the crime was committed. For instance, if the accused suffered from a mental disorder or disease which prevented them from understanding the wrongfulness of their actions.
2. **Self-Defence:** Article 31 also states that a person shall not be criminally responsible if the conduct in question was necessary to defend themselves or others against an imminent and unlawful use of force. However, the use of force must be proportionate to the threat faced. In other words this defence can be used when the accused committed a crime in order to protect themselves or someone else from imminent harm. However, the force used must be proportionate and necessary.
3. **Duress and Necessity:** Article 31 further states that a person shall not be criminally responsible if they were compelled to commit the crime by force or the threat of force that made it impossible to act otherwise, or if the conduct was necessary to avoid a greater harm. Particularly this defence can be invoked if the accused was compelled to commit a crime due to a threat of death or serious harm to themselves or another person, and had no reasonable alternative but to commit the crime.
4. **Intoxication:** Article 31 does not explicitly mention intoxication as a defence. However, it does state that a person shall not be criminally responsible if they were not in a position to control their conduct, such as in cases of reflex actions or unconsciousness. Simply speaking this defence can be used if the accused was intoxicated or under the influence of drugs or alcohol at the time the crime was committed and lacked the necessary intent or capacity to commit the crime.

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5. **Mistake of Fact and Law:** Article 32 of the Rome Statute states that a mistake of fact or law shall be a ground for excluding criminal responsibility if it negates the mental element required for the crime, such as the intent to commit the crime or knowledge of its unlawfulness. in layman this defence can be invoked if the accused made an honest mistake about the facts or law surrounding the crime and as a result, did not have the necessary intent to commit the crime.

It is important to note that not all of these defences may be applicable in international criminal law and the availability of these defences may vary depending on the specific crime and the jurisdiction in which it was committed.

In addition, some crimes such as genocide and crimes against humanity do not allow for certain defences such as duress, necessity or mistake of fact and law. In such cases, the accused may be held liable even if they had a legitimate reason for committing the crime

Conclusion:

In conclusion, the various defences available under international criminal law serve as a means of mitigating or completely absolving a defendant from criminal liability. The defence of mental incapacity, self-defence, duress and necessity, intoxication, and mistake of fact and law provide opportunities for individuals to avoid prosecution or receive reduced sentences. However, the application of these defences is highly fact-specific and dependent on the circumstances of each case. Additionally, the Rome Statute of the ICC sets out specific requirements and limitations for the application of these defences. It is important for individuals and legal practitioners to have a thorough understanding of these defences and their limitations in order to effectively navigate international criminal proceedings.

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