



War crimes Interfaces between international humanitarian law and international criminal law

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Abstract

International humanitarian law and international criminal law both are branches of public international law. International Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts .but; International criminal law (ICL) is a subset of public international law, While international law typically concerns inter-state relations, international criminal law concerns individuals. In particular, international criminal law places responsibility on individual persons — not states or organizations — and proscribes and punishes acts that are defined as crimes by international law. war crimes is subject of international humanitarian law (IHL) and international criminal law (ICL), Because, in section (C) Article 5 of the Statute of the International Criminal Court (ICC), A Crime of within the jurisdiction of the Court is: " war crimes ", Therefore **war crime** is a serious violation of the laws and customs of war (also known as international humanitarian law) giving rise to individual criminal responsibility in international criminal law. War crimes in fact is common chapter (Interfaces) between international humanitarian law (IHL) and international criminal law (ICL).

Keywords: conflicts, Jurisdiction, International Criminal Court, International Crimes, War crimes.

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Introduction

International criminal law is a relatively new body of law, and aspects of it are neither uniform nor universal. For example, some aspects of the law of the ICTY are unique to that jurisdiction, do not reflect customary international law and also differ from the law of the ICC. Although there are various interpretations of the categories of international crimes (Robert,2010) , these materials deal with crimes falling within the jurisdiction of international and hybrid courts, including the ICTY, ICTR, and the ICC. These crimes comprise genocide, crimes against humanity, war crimes and the crime of aggression. International criminal law also includes laws, procedures and principles relating to modes of liability, defences, evidence, court procedure, sentencing, victim participation, witness protection, mutual legal assistance and cooperation issues (marco, 2011). International

Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts by: a) sparing those who do not or no longer directly participate in hostilities; b) restricting it to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy. Therefore war crimes is subject of international humanitarian law (IHL), In the same way, in section (C) Article 5 of the Statute of the International Criminal Court (ICC), A Crime of within the jurisdiction of the Court is " war crimes ", Therefore **war crime** is a serious violation of the laws and customs of war (also known as international humanitarian law) giving rise to individual criminal responsibility in international criminal law. War crimes in fact is common chapter between international humanitarian law (IHL) and international criminal law (ICL) .

War crimes

A **war crime** is a serious violation of the laws and customs of war (also known as international humanitarian law) giving rise to individual criminal responsibility. Examples of war crimes such as: (Gary D, 2010)

murdering, mistreating, or deporting civilian residents of an occupied territory to slave labor camps.

murdering or mistreating prisoners of war or civilian internees. forcing protected persons to serve in the forces of a hostile power killing hostages.

killing or punishing spies or other persons convicted of war crimes without a fair trial.

wantonly destroying cities, towns, villages, or any object not warranted by military necessity.

Similar concepts, such as perfidy, have existed for many centuries as customs between countries, but these customs were first codified as international law in the Hague Conventions of 1899 and 1907. The modern definition of a war crime was further developed under the auspices of the Nuremberg Trials, based on the definition in the London Charter that was published on August 8, 1945. Along with war crimes, the charter also defined crimes against peace and crimes against humanity, which are often committed during wartime and in concert with war crimes.

Article 22 of The Hague IV (" Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907") states that: "The right of belligerents to adopt means of injuring the enemy is not unlimited". Over the last century, many other treaties have introduced positive laws that place constraints on belligerents. Some of the provisions, such as those in the The Hague and the Geneva Conventions and the Genocide Convention, are considered to be part of customary international law, and are binding on all. Others are only binding on individuals if the belligerent power to which they belong is a party to the treaty which introduced the constraint. The trial of Peter von Hagenbach by an ad hoc tribunal of the Holy Roman Empire in 1474, was the first "international" war crimes trial, and also of command

responsibility (Edoardo,1999,) He was convicted and beheaded for crimes that "he as a knight was deemed to have a duty to prevent", although he had argued that he was only "following orders". War crimes are serious violations of the rules of customary and treaty law concerning international humanitarian law that have become accepted as criminal offenses for which there is individual responsibility.(Shaw,2008) Colloquial definitions of *war crime* include violations of established protections of the *laws of war*, but also include failures to adhere to norms of procedure and rules

of battle, such as attacking those displaying a peaceful flag of truce, or using that same flag as a ruse to mount an attack on enemy troops. The use of chemical and biological weapons in warfare are also prohibited by numerous chemical arms control agreements and the Biological Weapons Convention. Wearing enemy uniforms or civilian clothes to infiltrate enemy lines for espionage or sabotage missions is a legitimate ruse of war, though fighting in combat or assassinating individuals, even if he or she is a military target, behind enemy lines while so disguised is not, as it constitutes unlawful perfidy. (Smith,2007) Attacking enemy troops while they are being deployed by way of a parachute is not a war crime. War crimes are significant in international humanitarian law because it is an area where international tribunals such as the Nuremberg Trials and Tokyo Trials have been convened. Recent examples are the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council acting under Chapter VIII of the UN Charter. (ICRC Commentaries on the Convention (III))

International Criminal Court (ICC)

On July 1, 2002, the International Criminal Court, a treaty-based court located in The Hague, came into being for the prosecution of war crimes committed on or after that date. In article 5 statute of international criminal court (ICC), Crimes within the jurisdiction of the Court is: (a) The crime of genocide; (b) Crimes against humanity; (c) **War crimes**; (d) The crime of aggression. Therefore war crimes is a serious violation of the laws and customs of war (also known as international humanitarian law) giving rise to individual criminal responsibility in international criminal law.

Relationship between of international humanitarian law (IHL), human rights, and International criminal law (ICL)

International criminal law is related to other areas of international law, including humanitarian law and human rights law. Indeed, both international humanitarian law and human rights law helped develop ICL and continue to contribute to its interpretation and application (and the reverse is also true). The major distinction between international criminal law and these other bodies of law is the fact that ICL deals with individual criminal responsibility for violations of international law. Conversely, humanitarian or human rights laws primarily focus on the actions and obligations of states, governments or parties to a conflict.

Conclusion

Therefore in a conclusion from this article, It is said in fact " war crimes " is common chapter between international humanitarian law (**IHL**) and international criminal law (**ICL**), Because in section (C) Article 5 of the Statute of the International Criminal Court (ICC), A Crime of within the jurisdiction of the Court is " war crimes "; On the other hand, International Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts. Therefore **war crime** is a serious violation of the laws and customs of war (also known as international humanitarian law) giving rise to individual criminal responsibility in international criminal law.

References

- [1] Cryer R, 2010., An Introduction to international criminal law and procedure,4 (2d ed.). Cambridge University Press.
- [2] Greppi E, 1999, The evolution of individual criminal responsibility under international law ,International Committee of the Red Cross No. 835., 111-112.
- [3] ICRC Commentaries on the Convention (III) relative to the Treatment of Prisoners of War Article .
- [4] Michael, S, (2007). Killer Elite: The Inside Story of America's Most Secret Special Operations Team. New York, New York: St. Martin's Press. 124-127
- [5] Sassoli M, Antoine A, 2011, How Does law protect in war? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law, Volume I , Outline of International Humanitarian Law, Third Edition, International Committee of the Red Cross.
- [6] Solis G, 2010. The Law of Armed Conflict: International Humanitarian Law in War. Cambridge University Press.
- [7] Shaw, M.N (2008). International Law. Cambridge University Press.

Abbreviations

- (ICC) - International Criminal Court (ICL) - International Criminal law
(ICTY) - International Criminal Tribunal for the Former Yugoslavia (ICTR) -International Criminal Tribunal for Rwanda
(IHL)- International Humanitarian Law

