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INTERNATIONAL JOURNAL

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INTERNATIONAL JOURNAL
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EVOLUTION OF THE INTERNATIONAL CRIMINAL LAW AND THE ICC

Authored By- Pranav Bhatnagar

ABSTRACT

This research paper aims to elucidate various aspects related to the evolution of international criminal law and the various provisions of the Rome Statute, 1998. Starting from the historical background to the development of the concept of individual criminal responsibility. It further lays down the role played by other conventions like the Geneva Convention, 1949, The treaty of Versailles etc followed by the relevant case laws. The famous precedent marking the first ever usage of international criminal law in real life and the setting up of the first ad hoc tribunal in the case of Thomas Lubanga Dyllo v. The Democratic Republic of Congo. The second half of the paper concludes with the infamous case of Peter Von Hagenbach explaining the concept of Individual criminal responsibility

INTRODUCTION

International Law is a very wide branch of law and has two types, Public International Law and Private International Law. Public international law is that type of International law that deals with the relations between the governments of the nations and includes areas like humanitarian law, human rights law, the law of the seas, International Criminal Law, etc. Specifically, International Criminal Law is a branch of international law that deals with matters involving crimes against humanity, genocide, war crimes, and crime of aggression and are governed by a single statute, known as the Rome Statute.

Whenever there is a situation of tension between countries of the world and such incidents take place which pose a threat to humanity, the biggest question that arises is that of the criminal responsibility for the crime. Sometimes, it might become quite rambling to recognize and prosecute the perpetrators. Knowing the person/ people/ community etc. who were behind the instigation and commission of crimes against humanity is imperative for justice to be served. Article 25 of the Rome statute states that a single person can be held accountable for crimes against humanity and shall be prosecuted. Provided, that person falls under the jurisdiction of the International Criminal Court. This is known as 'individual criminal responsibility'. The statute further, not only punishes the person or community specifically involved in the actions of international crimes but also, those who in any way or form, abet, aid or assist in the commission of these crimes. All in all, the statute aims at punishing every individual separately for having even the slightest role in the commission or attempt to the commission of an international crime.

Before the issue of international crimes against humanity is brought to the International Criminal Court, it shall be dealt with under the national laws of the geographical location where the crime took place. ICC comes into the picture only when the government/s fails to punish, is unwilling, or genuinely unable to penalize the perpetrators.

Thomas Lubanga Dyllo V The Situation Of The Democratic Republic Of Congo

Thomas L. Dyllo was the first person in the history of International Law to be convicted and was designated as a war criminal for the Democratic Republic of Congo. He was the chief and founder of the Congolese Patriots (UPC). UPC was a union and was the sole conspirator in the Ituri Conflict. The union had led to a humungous violation of international laws and committed grave crimes against humanity like murders, rapes, massacres, mutilations, etc. After being convicted, Thomas L. Dyllo was sentenced to 14 years of imprisonment in 2006. This means that he was acquitted in 2020 and today, in 2022 he is a free man living a normal life after causing unimaginable troubles to the families of Congo during the conflict. The case is yet another debatable topic.

History Of International Criminal Law

International criminal law is not a recently developed branch of law. In international law, certain laws are in the form of treaties and conventions whereas others are in the form of customary laws. International law governing crimes against humanity and wars can be traced as early as 1386 when England marked its presence as the first country ever to put restrictions on the hostilities and animosities by forming an ordinance under the leadership of King Richard II. Acts of cruelty against women, children, unarmed priests, and the destruction of religious places and homes were outlawed. Later, in the 1500s, Maximillian-II of Hungary (War codes) and in the 1600s Adolphus of Sweden (Articles of War) more or less stated the same rule that during a state of war, cruelty against women, children, elderly people and churchmen are prohibited and no person shall engage in such acts.

The year 1474 marks the earliest war crime trial in the history of international law. The case began when the Duke of Burgandy decided to place Peter Von Hagenbach as the head of the government of Breisach. This decision marked the beginning of the wrath that Peter Von Hagenbach was all set

to unfold. Rape, murder, confiscation of private property, and heavy illegal tax collection became an everyday sight. Men were killed mercilessly, and women and children were left to be tortured.

The biggest mistake on the part of Peter Von Hagenbach was the attempt to commit the same crimes against people of neighboring territories. Finally, the revolt by German mercenaries and local people of Breisach, Von Hagenbach was defeated. For the trial of this case, a special ad hoc tribunal was set up with the Archduke of Austria representing the sovereign of the city of Breisach. Hagenbach, during the trial, stated that every action of his was under the supervision and orders of the Duke. Therefore, the Duke must have already ratified the actions of Hagenbach but the court stated that the actions of the defendant had been proved in the court beyond doubt, hence, he was held guilty. Later, under the marshal's order, Peter Von Hagenbach was executed.

During the American Civil War in 1861, President Abraham Lincoln administered a specific code, known as the Lieber Code. The code was named 'Lieber' following its preparator's name. Francis Lieber was a professor of law at Columbia College. This code is particularly of great significance in history because it was one of the earliest tries to codify war crimes. Articles 44 and 47 of the code lay down that any act by American soldiers like, Rape, burglary, theft, arson, murder, etc., committed on the land of the invaded country, shall be considered to be an act committed on the land of America and shall be strictly penalized.

Treaty Of Versailles And The Evolution Of Individual Criminal Responsibility Under International Criminal Law

The Treaty of Versailles was executed in 1919 after the 1st World War. Articles 227, 228 and 229 played a significant role in giving due consideration to the concept of individual criminal responsibility. Particularly, Article 228 stated that the allied powers have the right to try and penalize individuals who are involved in such activities which violate the custom of wars. Such persons can be brought before the military tribunal after due handover by the German government. The tribunal was set up after Kaiser Wilhelm II had violated the laws and posed a threat to international peace and morality. This was laid down under Article 227 and the main agenda of the

tribunal was to punish individuals like Wilhelm who pose a threat to international peace and tranquility

Nuremberg And Tokyo Trials- Evolution Of The Concept Of Individual Criminal Responsibility

The Second World War had spread so much devastation in the world that it became important for the nation-states to formulate proper measures to hold states and individuals liable for actions during wars. After taking the past into due consideration, it could be traced that there had been multiple cases of crimes during wars that could not be judged to be belonging to a particular jurisdiction. Moreover, the mayhem that Hitler and the Nazis had spread in Germany and the crimes conducted in Japan, led to the formation of Nuremberg and Tokyo international military tribunals.

CHARTER OF NUREMBERG INTERNATIONAL MILITARY TRIBUNAL

Article 6 of the charter elucidates the acts for which individuals can be legally punished or penalized. They are as follows:

1. Crimes against peace
2. War crimes
3. Crimes against Humanity

the charter stated that any individual who is in any way holding a role in the planning, preparation, initiation, or waging of war; murder, inhuman acts against people, violating the laws of war shall be prosecuted.

The Nuremberg and Tokyo trials together played a significant role in expanding and forming case laws on the concept of Individual Criminal Responsibility. After the London Agreement in 1945, the United Nations General Assembly took matters concerning international law into its own hands. The UNGA had already affirmed the principles related to international law under the charter of the Nuremberg military tribunal by the way of a resolution {Affirmation of the Principles of International Law by the Charter Of the Nuremberg Tribunal}. This means that there was no further

need to cross-check or examine the principles mentioned under the charter. Now, the UNGA had only one task, codifying international law by the International Law Commission. The International law commission adopted the resolution in the year 1950 and worked following the affirmation of the United Nations General Assembly.

ILC only concentrated on making the body of those principles and codifying them.

Principles of International Law as stated:

Principle 1- The most basic introduction of any statute states the definition of the topic that the statute is covering. Similarly, principle one of International law stated that any person or group, or community that commits an act that is considered a crime under international law shall be punished for the same.

Principle 2- states that even if the crime committed by the person is not a crime under the domestic laws of the nation he belongs to, doesn't mean that he can shed his responsibility. He shall still be tried under the International Law.

Principles 3 and 4 (also articles 7 and 8 of the Nuremberg Charter)- Focused on explaining that no matter what the designation of the person is, whether he is working in the government or for the state or works on the orders of the government shall not be deprived of his responsibility.

Principle 4 also states that the moral choice of the person also plays a significant role. This particular principle gives discretionary powers to the tribunal to decide from case to case³ whether the accused had any other choice or it was solely his intention.

Principle 6 has special relevance to Article 6 of the Charter of Nuremberg. Both codify the 3 types of International law namely: Crimes against peace; crimes against humanity and war crimes.

Contemporary Growth Of Genocide As A Crime

Genocide in the most common terms is described as the mass killing of people. According to article 2 of the convention, The killing is generally centric on a particular religion, race, ethics, ideologies, etc and every person involved in it shall have the intention of doing so. The convention was adopted in 1951 and stated clearly that Genocide is a crime punishable under International law irrespective of whether it took place during or before the actual war broke out. In 1948, during the adoption of the Universal Declaration of International Human rights, a brand new convention was

adopted which talked volumes about genocide as a crime against humanity. It has a very close reference to human rights. The name of the convention is "Convention on the prevention and punishment of the Crime of Genocide." Article 4 of the convention specifically dealt with the concept of individual criminal responsibility and states that the responsibility not only lies on the state or its officials but also individuals. In short, any person who gets involved in the act of

Genocide to cause harm or torture people belonging to a particular group shall be punished severely under both, domestic and international laws. It is of great relevance as it is contemporary to article 6 of the ILC convention and somehow, introduces a new type of international crime to the world.

CONCLUSION

After the convention was set up, the four Geneva conventions, particularly, 1949 and the Hague convention of 1954 played a significant role in shaping the statutes of international criminal law. All these charters and conventions established the grounds for the future International criminal code and the International Criminal Court.