International criminal law

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PRINCIPLE OF INDIVIDUAL CRIMINAL LIABILITY

«International law imposes duties and liabilities upon individuals as well as upon States as crimes are committed by men not by abstract entities. Only by punishing individuals who commit those crimes can the provisions of international law be enforced.»

(Nuremberg Tribunal, Judgment and Sentence (1947) 41 AJIL, 223)
PRINCIPLE OF INDIVIDUAL CRIMINAL RESPONSIBILITY
Overview of main developments

• Judgment of the IMT in Nuremberg (1947)
• Codification of the Principles of international law recognized in the Charter and Judgment of the IMT in Nuremberg by the ILC (1950)
• Principle of individual criminal responsibility embedded in other treaties and conventions (1949 Geneva Conventions; 1948 Genocide Convention; etc...)
• 1953: attempts at the UN to create a permanent international criminal court
• ’90s: establishment of the ICTY and ICTR
• 1998: creation of the first permanent international criminal court
Codification of the principle of individual criminal responsibility

• Principle I of the Principles recognized by the IMT Charter and its Judgment (1950):
Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

• Article IV 1948 Genocide Convention
Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

• 1949 Geneva conventions: ex. Art. 129 GCIII
The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

• Rule 151 ICRC Study on CIHL: Individuals are criminally responsible for war crimes they commit.
• Article 1 **ICTY Statute** (1994) - Competence of the International Tribunal

The International Tribunal shall have the power to prosecute **persons responsible for serious violations of international humanitarian law** committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

• Article 1 **ICC Statute** (1998-2002)

An International Criminal Court (‘the Court’) is hereby established. It shall be a permanent institution and shall have the **power to exercise its jurisdiction over persons** for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions.
Par in parem non habet imperium

All States are equal and sovereign

immunities from jurisdiction
Criminal proceedings before international tribunals

- Art. 7 Nuremberg Charter

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.
Criminal proceedings **before international tribunals**

- **Article 7 ICTY Statute - Individual criminal responsibility**

(1) The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

(4) The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.
Criminal proceedings before international tribunals

• Art. 27 ICC Statute - Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.
Principles of International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (ILC, 1950)

**Principle III**

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

How to solve the conflict between fighting impunity and granting state immunity?

• ICJ, Arrest Warrant case (DRC v. Belgium, 2000) § 61
• Joint Separate opinion of Judges Higgins, Koojimans and Buergenthal (Arrest Warrant case), § 74

• ILC Report on immunity from criminal jurisdiction 2015 – exception in the agenda 2016 (§180 and ff.)