Al-Qirtas ARABIC
ISSN Online : 2709-6076
ISSN Print : 2709-6068

The Enforcement Mechanism of International Criminal Law: A Historical Analysis

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Abstract

Since time immemorial safeguarding fundamental human values inter alia remained rudimentary consideration of politically developed society. Eventually though not mechanically, all those acts by and large in contravention of the fundamental values of humanity were criminalized. In this way, certain violations of the fundamental values of humanity were classified as international crimes. For the suppression, prevention and prosecution of international crimes, the newly developed discipline international criminal law came into field. Besides prosecuting international crimes, the most sacred objective of international criminal law is the systematic protection of fundamental values of humanity. Therefore, this work suggests that the development of international criminal justice system was primarily focused on the protection of fundamental values of humanity. To this end, the article focuses on the development of enforcement mechanism of International criminal law in three stages starting from the year 1268 to 1998 and onwards. Based on the model presented by Cheriff Bassiouni, the article discusses that how the enforcement mechanisms of international criminal law works for the protection of fundamental values. Owing to it, this work elaborate the different functioning modalities of international criminal law. Lastly, the article concludes that international criminal law systematically operates for upholding the rule of law and human dignity.

Keywords: (International Criminal Law, international crimes, human dignity, perpetrators, public international law, domestic jurisdiction)

Introduction

Public International Law (PIL) exclusively deals with the states being its primary subject. The personal and material scope of PIL in all cases is determinable in terms of states.1 Due to this line of argument individuals are beyond the ambit of PIL. However, the drastic shift in the paradigm of PIL has embraced the individuals into the personal scope of PIL.2 Such as the progressive development of International Humanitarian Law (IHL) paved the way for the inclusion of non-state armed groups as well as those individuals taking part in hostilities such as prisoners of war, civilians or wounded and sick people in the scope of PIL. Similarly, with the emergence of International Human Rights Law (IHRL) the individuals' oriented approaches are now at the core of each and every discussion and development at international level.3 Besides, the transformation in the nature of warfare has given birth to certain offences known as international crimes.4 Therefore, prosecuting the perpetrators of international crimes and fixing individual criminal liability is at present above all other consideration for international community. In this context, it may be said that the rules and principles of

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ISSN Online : 2709-6076
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International Criminal Law (ICL) came into force. Both in letter and spirit, the general aim of ICL is the application of international law to individuals instead of states.

Arguably, all these branches constitute a systematic set of interconnected and cohesive rules harmonizing the causes and effects of each other. In principle, the objectives of IHL, IHRL and ICL are ultimately set towards a common end of upholding the rule of law as well as universal values of human dignity.[5] Substantially, these branches are rooted in similar ideals, however, there are procedural and subjective differences which distinguishes them from each other.[6] Thus, all these disciplines follow each other in a systematic pattern such as the violations of IHL and IHRL triggers the mechanism of ICL for prosecuting the offenders. Ultimately this regulatory multi-discipline framework leads to seek justice for the victims of international crimes. To cut it short, the mechanism of these branches revolves around a single point agenda of upholding the rule of law and human dignity.

Unlike the domestic enforcement system, the international enforcement system in criminal matters is entirely based on the will and cooperation of the states. Rather, in international matters the primary enforcer of law are the states alone. It is for this reason that at international level there is no formal agency of enforcement except that of measures ordained by the United Nations Security Council (UNSC) in the matters of international peace and security. With the passage of time, a twofold mechanism of enforcement in the sphere of ICL has evolved. Bassiouni has classified this set of mechanism into two types- the direct enforcement system and the indirect enforcement system. The direct enforcement system which in other words is also called the exercising of criminal jurisdiction by international judicial organs. In this type of mechanism, the enforcement of ICL is made directly through international treaty bodies. Whereas in the indirect system, the enforcement of ICL is based on inter-state cooperation. This second type of system in simple words is also known as the modalities of international cooperation in penal matters. How these systems work? What are its peculiarities? How ICL protects the fundamental values of humanity and works for upholding the rule of law and human dignity? To what extent these systems are effective in the enforcement of ICL? and what are its legal basis? are the questions to be dealt in this work.

Historical Development of International Criminal Justice System

International criminal law is a diversified discipline both in terms of scope and application. The criminal justice system in international arena has centuries old origin. It may be said that it is the product of persistent human struggle in the pursuit of justice. All it is based on the concept of bringing the perpetrators of heinous crimes those shocking to the conscious of humanity within the ambit of accountability. Thus for all purposes, Bassiouni divides the history of international criminal justice into three stages, the first period starts from 1268 and ranges to 1815, the second is from 1919 to 1998, and the third is from 1998 onward. The first stage consists of various events which took place in 1268, 1474 and 1815 respectively.7 However, these historical events will be elaborated to the extent of the scope of the present study without jumping into unnecessary details.

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Early Developments: 1268 To 1815

The first trial of Conradin von Hohenstaufen, Duke of Suabia, held in nowadays Italy in 1268.8 He was prosecuted for violating the Pope's command by launching attack on a fellow French ruler followed by robbing and killing Italian civilians, and thenceforth he was executed. Conradin was deemed to commit crime "against the laws of God and Man", which resembles to the then "crime against peace", contained in Article 6(a) of the Nuremberg Charter and aggression in the UN Charter. According to Bassiouni, the trial was of a political nature and the justice could be seemed as used for political purposes.9 However, the object and purpose of the trial of Conradin was to uphold the human dignity because the crimes he committed was deemed to have offended the conscious of humanity.

The second trial which took place in 1474 in Breisach, Germany was that of Peter von Hagenbach.10 Peter was a Dutch mercenary leader at that time known as condottiere. One Charles, the Duke of Burgundy hired Peter for organizing and raising army for the occupation of Breisach city and to extort taxes from the people of Breisach.11 The city of Breisach was acquired by the Duke from the Holy Roman Empire in exchange for his services provided to the Empire. While following the orders of the French Duke as his superior, Peter sacked, raped and burnt the city as a punishment for refusal from giving taxes and as well their rebel against the decision of the Duke. The attack was so cruel in nature that the whole empire was shocked and very soon a consensus was built throughout the empire that the Peter's crime is equivalent to "crime against the laws of God and Man."12

Bassiouni argues that "the heads of the twenty-six member states of the Holy Roman Empire, acted as international judges either in person or through their representatives to prosecute Peter, a Dutchman, for crimes committed in Germany on the order of a French head of state. For all practical purposes and in accordance with contemporary standards, this established the first international criminal tribunal".13.During his trial, Peter sought permission to present the written orders issued to him by the French Duke, which was refused by the tribunal. By allowing the Peter to exhibit written orders given by the Duke would have an impression that Peter should have refrain from execution the orders of his superiors being subordinate when such orders are so apparently "against the laws of God and Man."14 In the same manner, in 1814, Napoleon Bonapart, a French military dictator, was defeated by the European allies "Austria, England, Prussia and Russia" and was put on trial by the monarchs of allied countries.15 However, he was not treated as common criminal because one of the daughter of the Austrian emperor was married to Napoleon, and due to this reason he was exiled instead of inflicting sentence on him in another form. It is worth mentioning that Napoleon was given a political sentence despite that many of his acts for which he was tried, resembles to the nowadays act of aggression, crimes against humanity and war crimes.16

Although the historians regards these international trials politically motivated but these are for sure the foundation of an accountability system. It gives an impression that certain crimes were so heinous that it could not be simply overlook. Despite that there was no formal international court or tribunal to conduct the above stated trials but the jurisdiction of

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these tribunals were exercised against the accused in the absence of any formal treaty. For instance, in the trial of Napoleon, foreign states established a tribunal for putting on trial the head of another state for committing international crimes which establishes the practical removal of head of state immunity and the universal exercise of jurisdiction over the persons those accused of heinous international crimes.

Towards Institutionalized Justice: 1919 to 1998 and Onward

After the World War-I in 1919, the victorious allies tried German leader Kaiser Wilhelm von Hohenzollern for committing war crimes during the war. In Article 227 of the Treaty of Versailles, 1919, it was for first time provided that a head of state, Germany's Kaiser Wilhelm von Hohenzollern, would face criminal trial for act which is known as aggression.17.Article 227 can be termed as the predecessor provision of the nowadays aggression in international law. This time the victorious European Allies decided to prosecute the German's Emperor, notwithstanding his head of state status. Despite of German's Kaiser close family relations with Queen Victoria and the Russian Emperor Nicholas, just like Napoleon who had with the Emperor of Austria, the Allies were committed to try him for his atrocities during the war.18 When the Allies sought the extradition of the Kaiser from the Netherlands, on the contrary the Dutch asserted that "neither such crime existed in international law and nor in national legal system". Importantly, these efforts established a principle of complete head of state immunity.19

Similarly, articles 228 and 229 of the Treaty provided for the prosecution of German war criminals by a tribunal to be established by Allies, but such tribunal was never established. Later on in 1921, the German Supreme Court was chosen as tribunal by the Allies for trying war criminals.20 In 1919, the Allies established a Commission to investigate the "Responsibility of the Authors of the War and on Enforcement of Penalties".21 In the beginning, a list of 20,000 Germans was prepared in order to prosecute them for war crimes, but was later reduced to 875. Afterwards the number was brought down to forty-five by the mutual agreement of Allies. However, only twenty-two persons were charged by the German Prosecutor General, wherein the Tribunal highest sentence was a three year imprisonment for one of the accused.22

In the same manner, some extra ordinary Courts Martial after the First World War were established in Ottoman Empire for the prosecution of Turkish officials for those crimes which would be nowadays classifies as 'crimes against humanity'.23 However, the USA and Japan both members of the commission, objected over the classification of those crimes that "no such crimes exists in positive international law, and that such crimes are derived from natural law".24

In the same manner, after the Second World War the victorious Allies adopted the Charter of International Military Tribunal for Nuremberg (IMT), and thus introduced "crimes against humanity" in Article 6 (c) of the Charter.25 This time the Allies had no choice but to incorporate the "crimes against humanity" in the Charter as "crime under positive

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international law". Consequently, the same crime was also incorporated in the statute of International Military Tribunal for the Far East (IMTFE) known as Tokyo Tribunal, and as well in Control Council Law No. 10 under which trials were conducted against Germans by German Courts during 1946-51.26 Later in the years 1993 and 1994 the Security Council included this crime into the Statutes of the ICTY and ICTR. Afterwards in 1998 crimes against humanity was incorporated in the ICC's Statute.27

In 1994, the UNSC in pursuance of its power under chapter VII of the UN Charter, established two ad hoc tribunals, the ICTY and ICTR. Similarly, the establishment of "mixed-model tribunals for Sierra Leone, Timor-Leste, Kosovo, Cambodia, Bosnia, and Lebanon" was also a landmark development in international criminal justice system.28 Afterwards on 17th July, 1998 under the patronage of United Nations 120 states adopted a statute in Rome for establishing ICC at Hague.29 It was the first time in the history that states decided to accept the jurisdiction of a permanent international court for the prosecution of those persons (national or non-national) who committed most serious crimes in their territories after the entry into force of the Rome Statute on 1 July 2002.30

In wake of the above discussion, it has been established now that reason for prosecuting serious international crimes was the gravity and heinous nature of those offences committed at that time. Additionally, the international community set out certain standards such as irrelevancy of the nationality of person accused of international crimes. It may also be said that although there was no prior treaty or agreements for prosecuting the offenders for international crimes but to curb heinous practices the jurisdiction of tribunals were extended at once even to the nationals of the countries which were not party to the agreements for prosecution of international crimes. Lastly that the head of state' immunity was completely eliminated in matter of international crimes.31 In a broader sense, these historical events though politically triggered and motivated were aimed at pursing the higher goals of upholding the rule of law and human dignity. Admittedly, the discussed events were not result oriented, however, these developments paved the way for the establishment of permanent system for bringing into accountability the perpetrators of international crimes.

The Enforcement Mechanism of ICL

In order to analyze the efficacy of international criminal justice system in upholding the rule of law and human dignity, it is necessary to evaluate the enforcement mechanism of ICL. The enforcement of ICL embodies two legal regimes, 'the direct enforcement system' and the 'indirect enforcement system'.32 Indirect enforcement system is a legal regime that applies to inter-state cooperation in the enforcement of domestic criminal law.33 Whereas direct enforcement system is a regime applicable to international judicial institutions having the powers to enforce their orders and judgments, notwithstanding states cooperation or assistance. IMT and IMTFE are the examples of the direct enforcement system in the context of ICL.34

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The Direct Enforcement System

Soon after the World War I the idea of a permanent court emerged under the auspices of the "League of Nations Advisory Committee" in 1921, in order to overcome the problems of prosecuting offenders those guilty of crimes committed in war.35 It was then followed by the task of drafting a statute for ICC assigned to International Law Association (ILA) in 1926.36 The League of Nations drafted a statute for an "international criminal court" followed by adaption and opening for signature, but could not be done.37

It was the atrocities committed in World War Second that shocked international community, and finally to some extent a consensus built on adoption of a formal institutional framework for prosecuting offenders those guilty of international crimes. This time politics were kept aside, and pure legal tendencies were developed, which thus led the victor states towards the establishment of IMT or Nuremberg Tribunal, and IMTFE or Tokyo Tribunal.38 The institutional development of international criminal justice is also known as "direct enforcement system" as against the inter-state cooperation in penal matters.

The Nuremberg Tribunal

Although in 1937, a treaty for bringing into existence an international criminal court for trying offences related to terrorist activities failed due to the lack of states' support. The actual twist in international enforcement of criminal law came at the end of World War II. In the famous Moscow Declaration of 1943, the Allies declared that the Germans accused of war crimes would be prosecuted by those countries where they were accused of committing atrocities. In this way the Moscow declaration provided a political backdrop to the creation of IMT and IMTFE.39 Following the Moscow Declaration, the "United Nations Commission for the Investigation for War Crimes" was established by the Allies, which prepared a "Draft Convention for the Establishment of United Nations War Crimes Court", whereas its text was mostly based on the "1937 Treaty of the League of Nations" as well as on an academic work by an unofficial body, the London International Assembly.40

After the war, it was the London Conference in 1945, where the four Allies agreed over the establishment of Nuremberg trial.41 The representatives of the four powers promptly signed and adopted an "Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the IMT" on 8th of August 1945.42 The elements for definition of war crimes were picked from the Hague Conventions, while for "crimes against peace" from the Kellogg-Briand Pact of 1928. Similarly, in order to conduct prosecution of German citizens for German crimes, the elements of "crimes against humanity" that emerged in World War I was borrowed from the Armenian massacres.43 The four classified 'Nuremberg crimes' were: "conspiracy to commit crimes against peace; planning, initiating, and waging wars of aggression; war crimes; and crimes against humanity".44 Same formula was adopted for trials of Japanese at the IMTFE regarding prosecution of "crimes against peace, war crimes, and crimes against humanity".45 The enactment of Control Council Law No. 10, somewhat changed version of the Charter of IMT

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by the four Allied powers provided legal basis for the German civilian courts enabling them to prosecute German. In this connection, several trials were also held by the American Military Tribunals in the period 1946 to 1948.46

The German war criminals were charged with a term did not contain in the substantive provisions of the Statute, what they would called "Genocide", however, they were convicted by the tribunal for crimes against humanity or "the atrocities committed against the Jewish people". Following the Nuremberg principle, the UN adopted a resolution in 1946, wherein genocide was held as a "crime against international law". Later on in 1948, the UN introduced and adopted a "Convention on the Prevention and Punishment of the Crime of Genocide".47 The definition provided in article II of the Convention was later on incorporated without making changes in article 6 of the ICC Statute.48

Verily, the UN Charter mandated the UNGA the responsibility, inter alia, to prepare recommendations for "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification" in furtherance of its mandate. Thereafter, the UNGA established International Law Commission (ILC) in 1947.49 Besides the mandate of preparing a draft statute of permanent court in accordance with article VI of the Genocide Convention, the UNGA in 1950 also directed the commission for preparation of the "Nuremberg Principle", a draft "Code of Crimes against the Peace and Security of Mankind". The commission submitted the draft statute of ICC and the revised code of offences in 1954, but the UNGA did not pay any heed to the code and statute. According to William Schabas, "ostensibly pending the sensitive task of defining the crime of aggression, in fact, political tensions associated with the Cold War had largely hindered progress on the war crimes agenda."50 Notwithstanding politically motivated prosecutions, IMT & IMTFE, however, provided institutional and as well normative basis for the international criminal justice system. Robert Cryer articulated the post-Nuremberg scenario in the following words:

"What actually happened at Nuremberg has been overshadowed by the legacy it left. The Nuremberg legacy is a curate's egg; allegations of Victor's justice and selective justice do have some purchase. The trial process also had some faults, the crimes against peace charge was, in truth, ex post facto, the crimes against humanity charge was of uncertain provenance and, on some matters, the judgment was less than candid. On the other hand, we cannot forget that modern international criminal law finds its first real practical example in the Nuremberg IMT and, contrary to the view of Hans Kelsen, the effect on international law of the IMT's Charter and judgment was profound".51

It was the Nuremberg trials that provided institutional framework for international criminal justice. Nuremberg trials despite of various loopholes are generally considered as beginning of the ICL in institutionalized form. The principles laid down in Nuremberg, however, substantiated the idea of creating a permanent ICC in long term, which eventually happened at the end of 20th century.52

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The Tokyo Tribunal

The trials held at Tokyo took over two and a half years. Robert Cryer articulated the same by terming it a long and lengthy trial for the reason that there were "4,336 exhibits admitted, 419 witnesses testified in person and 779 witnesses gave evidence by affidavit, consequently, all this led to a 1218-page majority judgment, which upheld ten counts of the indictment, finding all the accused guilty, although not as charged."53 In all 7 accused were given death sentence, one was sentenced to imprisonment of twenty years and other for seven years and the remaining to imprisonment for life. While varying in length and quality there were three dissent notes, one concurring and one separate opinion.54

In nutshell, IMT & IMTFE provided a direct enforcement and institutional mechanism and as well normative basis to international criminal justice system.55 Moreover, the categorization of crimes and its codification shielded the norms of IHL and IHRL, which were grossly violated during the World War II. Furthermore, the adoption of Genocide convention and the establishment of ILC with the task to prepare Nuremberg principle and draft statute of ICC proved a gateway for the establishment of ICC later on in 2000. In addition to, trials held at Nuremberg and Tokyo laid down a procedural framework especially for prosecuting individuals those accused of international crimes. Finally, the underlying reason for the codification of certain crimes was the serious nature of the crime in its historical context.

Meeting the Ends through Ad Hocism: ICTY & ICTR

Richard Goldstone argues about the ad hoc justice as: "[I]t is clearly inappropriate for a political organ to be given authority to decide that in some countries of the world international humanitarian law should be enforced and not in others. Justice should never be undertaken on an ad hoc or political basis."56 Various factors contributed to the establishment of international criminal tribunals in the early 1990s, most importantly was the Cold War era that had dominated the international politics for almost fifty years. Antonio Cassese articulated those factors as: "(i) a clear reduction in the distrust and mutual suspicion that had frustrated friendly relations and co-operation between the Western and the Eastern bloc; (ii) the successor states to the USSR (the Russian Federation and the other members of the Confederation of Independent States) came to uphold greater respect for international law; (iii) as a result there emerged unprecedented agreement in the UNSC and increasing convergence in the views of the five permanent members, with the consequence that this institution became able to fulfill its functions more effectively".57 Moreover, being confronted with the high degree of violence in the former Yugoslavia and Rwanda in the 1990s, the post-Cold War international community preferred "ad hoc international criminal tribunals" over engaging in more costly military intervention to halt the genocide and ethnic cleansing.58

The UN Security Council (UNSC), in February 1993, established a tribunal empowering it to prosecute "persons responsible for serious violations of international

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humanitarian law committed in the territory of the former Yugoslavia" since 1991.59 The Secretary-General proposed a draft to the UNSC, which was then adopted without any modification in its Resolution 827 of 8 May 1993.60 Security Council Resolution 80861 directed the Secretary General to observe "whether the establishment of a criminal tribunal would have a basis in law and also asked for an appropriate statute". The Secretary General submitted a report along with a statute which contained that the tribunal was to "apply rules of international humanitarian law that are beyond any doubt part of the customary law".62 Based on that report, the UNSC adopted Resolution 827 on 25 May 1993 and established the "International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY)."63 The territorial jurisdiction of the Tribunal was limited to the frontiers of the former Yugoslavia, while temporally it had jurisdiction to prosecute offences beginning in 1991, whereas its end-point was left for determination to the UNSC.

In 1994, the UNSC mandated a "Commission of Experts" for investigating the situation in Rwanda and on the basis of the report submitted by the Commission, a "threat to international peace and security" was determined.64 The UNSC subsequently ordered the establishment of an "International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States between 1 January 1994 and 31 December 1994 (ICTR)".65 The Statute of ICTR closely resembles to that of the ICTY, however, the war crimes provisions establishes the fact that the genocide in Rwanda has taken place in consequence of purely internal armed conflict.66

Initially, the idea for extending ICTY jurisdiction to Rwandan atrocities could not succeed because the establishment of a permanent court was feared by a number of states.67 Nevertheless, both the tribunals were the subsidiary organs of the UNSC, whereas the Appeals Chamber68 and prosecutor were common for both the tribunals.69 Developing a balanced and coherent jurisprudence was the underpinning aim of the establishment of these common tribunals, which manifestly has been achieved.70 The first major judgment of the Appeal Chamber of Yugoslavian tribunal, presided by Antonio Cassese, the Tadic jurisdictional decision of 2 October, 1995, dealt with important legal matters relating to the establishment of the tribunal.71 It was affirmed in the words as follow: "international law dictates that every tribunal is a self-contained system, whose jurisdictional powers may be limited by their constitutive instruments, though they cannot be allowed to jeopardize their judicial character".72 The findings of Tribunal in Tadic were relatively a progressive and innovative development in respect of war crimes law, which was then incorporated in the statute of ICC. 73 It was also held by the tribunal that "crimes against humanity could be committed in peacetime and war crimes during internal armed conflicts".

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Towards Permanent Solution: The ICC

It was in 1989, when the Cold War had come to its end, the UNGA requested the ILC "to address the question of establishing an international criminal court".74 This tremendous initiative taken by the UNGA was in response to the suggestion put by a coalition of "sixteen Caribbean and Latin American States (led by Trinidad and Tobago)" for seeking out a possibility for the establishment of a specialized court for dealing with the problems of drugs trafficking.75 The ILC after completion of the report in 1990 submitted it to the 45th Session of the UNGA. After being the report was favorably received, the UNGA once again requested the ILC to continue its work on a draft, therefore, culminated in the production of a comprehensive text in 1993, which was modified in 1994.76 Taking the ILC draft statute as basis, the UNGA decided to take step towards the establishment of a court in 1994. In order to consider the substantive issues arising out from the draft statute, the UNGA convened an AD Hoc Committee in 1995.77

After taking into consideration the AD Hoc Committee' s work the UNGA in 1996, finally created a preparatory committee (PREPCOM) on the establishment of ICC.78 The mandate of the PREPCOM was examining the ILC Draft and to come forward with a comprehensive proposals for an international conference to adopt a treaty for the ICC.79 In 1998, the Committee submitted to the conference of plenipotentiaries at Rome, "a Draft statute and a Draft Final Act consisting of 116 articles contained in 173 pages of text with some 1,300 words in square brackets". Delegates of more than 160 states participated in the conference, in addition to number of international organizations and more than hundred non-governmental organizations.80

After extremely hot and intense negotiations and compromises, on 17th of July 1998 the ICC statute was finally signed. The Conference adopted the statute by 120 votes to 7 (USA, China, Libya, Iraq, Israel, Qatar, Yemen) with 21 abstentions. In accordance with article 126, after submission of the 60th instrument of ratification, the Rome Statute of ICC finally came into force on 1st July, 2002.81 Following its coming into force, the first session of the Assembly of States Parties (ASP) was convened on 3rd September 2002 which lasted for 7 days, wherein, the "Elements of Crimes and the Rules of Procedure and Evidence" were adopted without changing the text that had been prepared and approved by the Preparatory Commission two years earlier.82

As far the ratification of the statute is concerned, the United States initially declared that it would not sign the Statute, however, after fear of being isolation from the proceedings of the ICC preparatory commission, it finally signed the Statute on 31 December, 2000. Later on, clarifying that it had no intentions to ratify the Statute, the US withdrew its signature on 6 May 2002.83 Afterwards the US openly adopted a hostile attitude towards the Court.84 Moreover, those states that did not submit the instruments of signatures by the deadline, but was wishing to join the Court are said to accede to, rather than ratify, the Statute.85

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The Statute of the ICC was highly welcomed among the legal scholars especially by those critical of human rights and IHL violations.86 Literally as well as technically, the Statute laid down a remedial framework for the grave violations of IHRL and IHL. The ICTY described the ICC's Statute legal significance in Prosecutor v. Furundzija as under:

"At present it is still a non-binding international treaty (it has not yet entered into force). It was adopted by an overwhelming majority of the States attending the Rome Diplomatic Conference and was substantially endorsed by the General Assembly's Sixth Committee on 26 November 1998. In many areas the Statute may be regarded as indicative of the legal views, i.e. opinio juris of a great number of States. Notwithstanding article 10 of the Statute, the purpose of which is to ensure that existing or developing law is not 'limited' or 'prejudiced' by the Statute's provisions, resort may be had com grano salis to these provisions to help elucidate customary international law. Depending on the matter at issue, the Rome Statute may be taken to restate, reflect or clarify customary rules or crystallise them, whereas in some areas it creates new law or modifies existing law. At any event, the Rome Statute by and large may be taken as constituting an authoritative expression of the legal views of a great number of States".87

In order to understand the ICC, it is imperative to look what it is and how it is different from the tribunals established in past. Unlike the ICTY and ICTR- the ad hoc Tribunals, ICC is a permanent Court established by a treaty.88 It has a separate 'international legal personality'89 being an independent 'judicial institution'.90 The drafters of the Rome Statute while taking a pragmatic approach wished to relate the Court to the UN through an agreement, which is evident from the fact that UNSC plays a significant role in referring the cases to the Court under article 13(b) of the Statute. Moreover, there is no financial connection between the ICC and the UN, except where the Court incurs the expenses as a result of UNSC referrals91; however, in all other cases the Court meets its expenses from the contributions made by the State Parties or voluntary contributions.92

The Court has four organs: the presidency, the judicial chambers, the prosecutor and the registry. It has 18 full time judges of the court which are elected by the ASP for a non-renewable period of nine years. Under Article 43 (4) of the Statute, the Registrar of the Court is elected by the judges for the period of five years. Moreover, Article 42(4) of the statute provides for the election of Prosecutor by the ASP, and the Deputy Prosecutors in the same manner from the list of candidates proposed by the Prosecutor. Furthermore, the ASP is established with certain specific powers and functions, such as "electing judges, the Prosecutor, and the Registrar" (Article 212). It also reviews and approves the budget of the Court. The ASP has the mandate to adopt "rules of procedure and evidence in conformity with the Statute, and as well the rules for the internal functioning of the Court".

International Criminal Court is an independent international entity, established under the patronage of the UN.93 It enjoys jurisdiction over international crimes by virtue of article 5, 6, 7 and 8 of the Statute.94 Under the Statute, the Court can exercise jurisdiction under article 13 to 15 over international crimes such as "crime of aggression (with effect from 17 July

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2018), genocide, crimes against humanity and war crimes".95 Article 12 of the Statute provides certain pre-conditions for the jurisdiction to be exercised by the Court.96 Similarly, article 13 deals with the referral of case to the prosecutor by the state parties, or UNSC and or the initiation of proceedings by the prosecutor.97 The referral of situation by a state party to the Court is provided under article 14.98 Under Article 13(b) the UNSC is empowered to refer a situation for investigation to the Court, while article 16 provides for deferring the investigation or stopping prosecution on the request of the UNSC resolution passed by it for the period of twelve months.

Now coming to the key point that how these historical developments serve the fundamental values of humanity. First, it can be held that the crimes enlisted in the ICC Statute are verily of heinous nature. It is due to this reason that even when there were no such crimes under the positive International law the ruling authorities of different dominions realized the need for suppressing the crimes shocking to the consciousness of humanity. Secondly, although the trials at Nuremberg and Tokyo Tribunals were ex post facto in nature but what was important is the universality of those tribunals which had replaced the Westphalian model of domestic jurisdiction. Thirdly, the recent developments in form of ICTY and ICTR also perpetuates the idea that upholding the fundamental values has been always of paramount importance for international community. Fourthly, the adoption of the Rome Statute by large number of states constitute a sufficient opinion juris which prove the existence of international custom with respect of international crimes. Finally, the foregoing developments suggest that certain international crimes are so heinous that even they were brought within the jurisdictional ambit of ad hoc tribunals in order to meet the ends of justice.

Modalities of International Cooperation: The Indirect Enforcement System

In substance, the whole mechanism of ICL falls within the scope of direct enforcement system. Legal scholars accentuate that the theory of universal jurisdiction has its basis in the famous maxim aut dedere aut judicare, meaning that the states has two primary duties in dealing with offenders of international crimes. The First duty requires the states to extradite the offender to the state of nationality if required under any special treaty of agreement. The second duty is to prosecute the offender keeping in the universal nature of crimes. In this context, there is no third option with the state which has the custody of the offender. Under the second option, the states have got the right to exercise universal jurisdiction. It is for this reason, when there is no remedy at international level, then the accused persons accused of international crimes can be brought to justice with inert-state cooperation.

The maxim "aut deder aut judicare" is the foundation of "indirect enforcement system".99 The maxim was developed by Hugo Grotius in 1624 as "aut dedere....aut punier";100 however, in 1973 Cheriff Bassiouni changed the aut punier to aut judicare as the object of contemporary criminal justice is to judicare ("to judge" or "to try") instead of punishing until after establishing the guilt.101 International cooperation in penal matters has its roots in the maxim "aut dedere aut judicare".102 All other modalities of ICL are secondary to the goals of prosecution or extradition. The duty to extradite or prosecute falls under

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international obligations of states particularly in the regime of indirect enforcement system. On the other hand, in direct enforcement system a new concept has been introduced known as complementarity.103 Under complementarity rule the role of international judicial institutions such as ICC is secondary to that of states in prosecution of international criminals. States are under obligations to extradite or prosecute the international criminals, if they are not willing to do so, then the ICC's jurisdiction becomes compulsory.

Except for certain international crimes classified as jus cogens, recognition of the duty aut dedere aut judicare as part of general international law is not yet clearly evident from the practices of states.104 The duty to enforce, under the domestic laws of states exists under conventional and customary ICL. Generally, obligations arising out of treaties are legally binding, only on signatories; while becomes binding on other states (third states) when the obligations arises out of general international law. In this context, the aut dedere aut judicare establish the right of states to exercise universal jurisdiction over core international crimes.Based on the maxim, there are several other modalities which the states executes in their mutual dealings especially in criminal matters. At present there are eight modalities of international cooperation in penal matters.105 All these modalities, however, differ from each other in their respective areas of application. The theoretical basis of the "indirect enforcement system" are in the famous maxim aut dedere aut judicare.

Extradition

Extradition is regarded as one of the pioneer and oldest method of procuring international cooperation in penal matters.106 The pioneer treaty related to extradition dates back to 1268 B.C.E., wherein the parties agreed to exchange their nationals with one another, who were criminals. The treaty was concluded between the Pharaoh of Egypt, and the Prince of Hittites.107 Until then, extradition remained the subject of various treaties both bilateral and multilateral.108 In nutshell, extradition is a form of international cooperation whereby the states enters into a formal treaty for surrendering their nationals to one another who have allegedly committed offences in the territorial jurisdiction of either state. 109 Currently, national legislations of many states contain the provisions related to extradition, but unfortunately half of the members of the UN do not have such provisions in their national laws.110 In addition to, there are certain requirements for extradition that have reached to the status of CIL, such as the requirement of "double criminality", and the "principle of specialty".111 Although, there is no UN multilateral convention on extradition, however, a model bilateral treaty do exists.112States mostly prefer to engage in bilateral extradition treaties that are mostly lengthy, burdensome and costly.

Legal Assistance (Mutual Legal Assistance)

Mutual legal assistance is a new legal trend taking place among states since 1960s.113 Legal assistance has origin in a century-old practice known as "Letters Rogatory"114, which is still in practice, however, mostly in civil nature matters, and reflects the "principle of comity". Under this practice, the courts of one state send a request to the courts of another state in

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respect of judicial assistance and cooperation in collecting the "testimony of a witness or securing tangible evidence".115 Consequently, the courts then send the "oral or tangible evidence" to the requesting state followed by certification that the evidence, so requested has been obtained according to the legal requirements of the requested state.116 It is pertinent to note here that, the "Letters Rogatory" was "based on comity, and not on treaties", thus, the requested state had no obligations to accept the request or act upon thereto.117 It was a very long and time consuming practice because there was no time limit for the request to be executed by the requested courts.118 In nutshell, after extradition it is one of an effective modality of cooperation between states in penal matters for reaching into the roots of the case.

Execution of Foreign Sentences

Due to the large number of foreign guest workers in Europe, this practice started there with the purpose of returning the persons sentenced for different crimes to their countries of origin.119 In this connection, US by following the European's example entered bilateral treaties with Canada, Mexico, Turkey and other states for bringing back their citizens who were sentenced abroad.120 US also acceded to the "European Convention on Transfer of Sentenced Persons, 1983" on this subject.121 Execution of foreign penal judgments has not gained that much recognition in most of the legal systems of the world.122 However, it can still be termed as an effective modality of international cooperation in penal matters, if adopted.123

Recognition of Foreign Penal Judgments

Historically states have always refused to recognize foreign penal judgments by terming as against their national sovereignty.124 Penal judgments are considered as an exercise of national sovereignty. But practical situation is different, because the states concede extradition on the basis of foreign penal judgments.125 Bassiouni argues that:"Admittedly, this is based on the fictional distinction between recognizing the consequences of a penal judgment and recognizing the penal judgment itself. Nevertheless, it is a legal fiction which shows that the non-recognition of foreign penal judgments is fundamentally dogmatic".126

The suitable way for the states is to recognize the foreign penal judgments subject to the existence of due process of law and satisfaction of the requirement of double criminality.127 States while dealing with the subject, does not extends recognition to foreign penal judgments, however, through extradition they give recognition to the consequences of foreign penal judgments.128 Presently, only a European convention on the subject exists which is known as, "The European Convention on the International Validity of Criminal Judgments, 1970".129

Transfer of Criminal Proceedings

Transferring criminal proceedings is modality of international cooperation in penal matters, wherein one state transfers (being "forum non convineins") criminal proceeding to another state for the reason that the "transferee state" has more effective contacts with the parties

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(being a "forum conveniens").130 Such practice takes place when extradition fails, then the requested state has the duty to prosecute.131 Transfer of criminal proceedings always follows the failure of extradition.

Certainly, the duty to prosecute under this modality is different from that provided under the principle of "aut dedere aut judicare", where the prosecution follows the refusal to extradite. In this connection a reference can be made to the Article 8 of Italian Criminal Code, wherein it is provided that, and "where an Italian citizen is sought for extradition, and where the individual cannot be extradited because of his nationality, Italy must prosecute."132 No bilateral treaties, however, exists on the subject.

Freezing and Seizing of Assets (Deriving From Criminal Activities)

Requesting one state by another for assistance in the "tracing, freezing, and seizing of assets" comes under this subject.133 It, however, does not differ from other forms of procuring evidence of criminal proceedings, rather it is a part of legal assistance.134 Confiscation of evidence is followed by the foreign penal judgment in the requested state, thus, it provides for another modality, namely, as the enforcement of foreign penal judgments.135

The adoption of the United Nations Convention for the Suppression of the Financing of Terrorism, 1999136 was furtherance of the scheme, the seizing and freezing of assets those deriving from criminal activities. Furthermore, the adoption of UNSC Resolution 1373 on September 28, 2001, requiring all states to adopt effective domestic legislations to trace and ban funding activities for terrorism activities.137 In this connection, a special committee was established within the UNSC to follow up the implementation of the aforesaid resolution. In 2002, 164 states had reported to the Committee on Terrorism regarding their national legislations.138 Inter alia, the seizing and freezing of assets has been proved one of an effective modality of cooperation in penal matters.139 Contemporarily, most of the states have national legislations on the subject which is a sign of uniformity at international level.

Intelligence and Law Enforcement Information Sharing

Historically, intelligence and law enforcement agencies used to share information regardless of legal and judicial supervision over them.140 This sort of de facto mechanism of international cooperation which has been remained secret and the laws of almost all the countries are silent over the subject. It is an inter-state activity mostly based on political considerations of the states.141 There is no exhaustive international, regional, bilateral, or national legislation so far on the subject. On the contrary, it has always been perceived by the legal scholarship as selective, inefficient, sporadic, erroneous, and a threat to individual right of privacy. In short, the law enforcement and intelligence sharing has not been recognized as a formal mean of international cooperation, however, it is dependent on the will of the states.142

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Regional and Sub-Regional "Judicial Spaces"

In recent times, relatively a new idea has been adopted by the European Union known as "judicial spaces".143 "Judicial Spaces" means that an area which is determined as judicial space is open for law enforcement officials to carry on investigations outside their national boundaries.144 Moreover, judicial orders within the "judicial space" is to be enforced by the states without requiring inter-mediation of a judicial order issued by the enforcing state.145 In the absence of comprehensive and exhaustive international cooperation mechanism, the regional and sub-regional cooperation in penal matters have comparatively proved effective especially in the field of enforcement of penal judgments, investigation and information sharing.146

Although the above discussed modalities of international cooperation are mostly practiced on state to state level but some of the modalities of cooperation are embodied in Part 9 & 10 of the Rome Statute. These modalities shares common theoretical basis with the doctrine of universal jurisdiction which is embodied in the maxim aut dedere aut judicare. Hence, it may be said that these modalities supplement in achieving the targets of the two principle obligations of states to extradite or prosecute. Because the procedure involved is complementary to the process of prosecution or extradition.

Conclusion

International criminal law is a newly developed branch of public international law. Alongside international human rights law and international humanitarian law, ICL operates within its sphere to uphold and protect human dignity. In historical context, international crimes have always been regarded as shocking to the conscious of humanity and for this reason the then authorities never compromised on bringing the perpetrators into the ambit of accountability. Although some of the trials were held for the prosecution of ex post facto crimes but the heinousness of such crimes was the reason behind the establishment of Nuremberg and Toyo Tribunals after the Second World War. Similarly, the objectives behind the establishment of ICTY and ICTR were to prosecute jus cogens international crimes. As a permanent solution, ICC was created by a large majority of states so that the powerful individuals accused of serious international crimes could be punished. The enforcement mechanism of international criminal law comprises of two systems. Direct enforcement and indirect enforcement. The direct enforcement system is undertaken through international courts and tribunals, whereas indirect system is mostly based on inter-states cooperation in penal matters.

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[1] Personal Scope means to whom it applies, while material scope is in which situation it is applicable.

[2] *See for detail discussion on Public International law* Peter Malanczuk, Akehurst's Modern Introduction to International Law, 7th Rev. ed., (New York: Routledge Publishers, 1997); Malcom N. Shaw, International Law, 6th ed., (USA New York: Cambridge University Press, 2008); Gideon Boas, Public International Law: Contemporary Principles and Perspectives (UK: Edward Elgar Publishing Limited, 2012).

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[3] *See for the historical development of human rights law* Shelley Wright, International Human Rights, Decolonisation and Globalization (USA New York: Routledge Publishers, 2001*); see for International human rights in global perspective* Susan C. Mapp, Human Rights and Social Justice in a Global Perspective: An Introduction to International Social Work (USA New York: Oxford University Press: 2008); *see also* Olivier De Schutter, International Human Rights Law: Cases, Materials, Commentary (USA New York: Cambridge University Press, 2010); Dinah Shelton, "An Introduction To The History Of International Human Rights Law" The George Washington University Law School Public Law And Legal Theory Working Paper NO. 346 (August 2007), accessed March 3rd, 2017, http://ssrn.com/abstract=1010489.

[4] *See generally* Iryna Marchuk, The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis (Heidelberg: Springer Science+Business Media B.V., 2014).

[5] Sulaf Abdullah Hama Rashid, "International Criminal Law Role In Facing Human Rights Violations," Journal Of Organizational Behavior Research 4:2 (2019): 307 in 299-316.

[6] Paul De Hert, Stefaan Smis and Mathias Holvoet, Eds, Convergences and Divergences between International Human Rights, International Humanitarian and International Criminal Law (Cambridge UK: Intersentia Ltd, 2018), p. 3.

[7] M. Cheriff Basssiouni, "Perspectives on International Criminal Justice," Virgina Journal of International Law, 50: 2 (2009): 296.

[8] Robert Cryer, Prosecuting International Crimes- Selectivity and the International Criminal Law Regime (Cambridge University Press, 2005), p. 14.

[9] Bassiouni, "Perspectives" 296-297.

[10] Cryer, Prosecuting International Crimes, 17.

[11] Ilyas Bantekas and Susan Nash, International Criminal Law, Second ed. (Australia: Cavendish Publishing, 2003), p. 325.

[12] *See Generally* Howard S. Levie, "The History and Status of the International Criminal Court," International Law Studies 75 (2000), https://stockton.usnwc.edu/cgi/viewcontent.cgi?article=1427&context=ils.
See also Howard S. Levie, "The rise and fall of an internationally codified denial of the defense of superior orders," International Law Studies 70 (1998), https://stockton.usnwc.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com.pk/&httpsredir=1&article=1485&context=ils. *See also* Paola Gaeta, "The defence of superior orders: The Statute of the International Criminal Court versus customary international law," *European Journal of International Law* 10 (1999), ejil.org/pdfs/10/1/571.pdf.

[13] Bassiouni, "Perspectives", 298.

[14] In 1945, under article 8 of the Nuremburg Charter the defense of superior order was eliminated. Article 8 provided as; "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires." Similarly Bassiouni states: "The court declined to articulate this possibility, and, in fact, this duty of conscience would not emerge in ICL for another 471 years, when the IMT Charter was adopted in London in 1945. Accordingly, the court's refusal to accept Peter's defense shielded the Duke from responsibility. Peter was sentenced to be drawn and quartered, a particularly brutal method of inflicting death." Bassiouni, "Perspectives", 298.

[15] *See generally* J. Christopher Herold, The Age of Napolean, 1st ed. (USA: American Heritage Publishing Company, 1963); David Avrom Bell, The First Total War: Napoleon's Europe and the Birth of Warfare as We Know it (USA: Houghton Mifflin Harcourt, 2007).

[16] Bassiouni, "Perspectives", 298-299.

[17] Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) Article 227, June 28, 1919.

> Article 227: "The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties.A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defense. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy and Japan. In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to

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fix the punishment which it considers should be imposed. The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex- Emperor in order that he may be put on trial."

[18] "The device used in 1919 was to draft Article 227 in such an artful manner that it would not be deemed legally enforceable, and yet at the same time, that it would convince public opinion of the serious intentions of the victorious Allies. The crime was defined in Article 227 as 'the supreme offence against . . . the sanctity of treaties.' To European public opinion, it sounded just right." Bassiouni, "Perspectives", 302.

[19] Ibid.

[20] Antonio Cassese, International Criminal Law, 2nd ed. (U.S.A: Oxford University Press, 2008), p. 30.

[21] "Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties," *Report Presented to the Preliminary Peace Conference*, 29 March 1919, reprinted in American Journal of International Law 14: 1-2 *(*1920): 95–1 , http://www.legal-tools.org/doc/63159c/.

[22] Jackson Nyamuya Maogoto, War Crimes and Realpolitik: International Justice from World War I to the 21st Century. 2004, 64, https://www.rienner.com/uploads/47da985f5271e.pdf; *see also* M. Cheriff Bassiouni, "World War I: "The War to End All Wars" and the Birth of a Handicapped International Criminal Justice System." 30 Denv. J. Int'l L. & Pol'y (2002), 244.

[23] Cassese, *International Criminal Law*, 30. *See for more details on the historical evolution of the crime against humanity* M. Cherif Bassiouni, Crimes against Humanity: Historical evolution and contemporary application (New York: Cambridge University Press, 2011).

[24] Bassiouni, "Perspectives", 303.

[25] Charter of the International Military Tribunal.

[26] "After the Second World War the prosecution was normally effected by the victor state, as well as by one of its allies, on the basis either of the principle of territoriality (the crime had been committed on its territory), or of passive nationality (it was sufficient for the victim to have the nationality of an allied country). Although various national legislations also made provision for punishment on the basis of the principle of active nationality' (the law-breaker had the nationality of the prosecuting state), in practice scant use was made of this principle, for obvious reasons. (One notable exception is the trials conducted by German courts against Germans during 1946-51, under a set of provisions jointly passed by the four Allies, the Control Council Law no. 10.)" Cassese, *International Criminal Law*, 30.

[27] *See* Statutes of the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court.

[28] *See generally for detail analysis of the mixed model criminal tribunals* M. Cherif Bassiouni, International Criminal Law: International Enforcement, Vol. III, 3rd ed. (Netherlands: Martinus Nijhoff Publishers, 2008); *see for substantive and procedural aspects of international tribunals* William A. Schabas, The Un International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone (UK: Cambridge University Press, 2006); *see also* Yves Beigbeder, International Criminal Tribunals: Justice and Politics (London: Palgrave Macmillan, 2011).

[29] *See generally* Marlies Glasius, *The International Criminal Court: A global civil society achievement* (New York: Routledge, 2006); *see also* Benjamin N. Schiff, Building the International Criminal Court (New York: Cambridge University Press, 2008); Dominic Mcgoldrick et al., eds, The Permanent International Criminal Court: Legal And Policy Issues (USA: Hart Publishing, 2004).

[30] *See generally* Tim Allen, *Trial justice: the International Criminal Court and the Lord's Resistance Army* (London: Zed Books Ltd, 2006); Sascha Rolf Lüder, "The legal nature of the International Criminal Court and the emergence of supranational elements in international criminal justice*",* IRRC 84: 845 (March 2002), https://www.icrc.org/eng/assets/files/other/079-092_luder.pdf.

[31] *See generally on the institutional development of international criminal justice system* William A. Schabas and Nadia Bernaz, eds, Routledge Handbook of International Criminal Law (New York: Routledge, 2011). It is pertinent to mention that the historical development of ICL which mostly took place in European context has always been remained doubtful in the eyes of those nations who at the time, when such developments were taking place, were mostly politically subjugated by the European colonial powers, and due to this reason they considers the existing rules of international law as alien to them.

[32] Bassiouni, International Criminal Law, 22.

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[33] *See on international cooperation between the states in penal matters* Geoff Gilbert, Responding to International Crime (The Netherlands: Martinus Nijhoff Publishers, 2006).
[34] Bassiouni, International Criminal Law, 22-23.
[35] *See* Report to the Third Assembly of the League on the Work of the Council and on the Measures taken to execute the Decisions of the Assembly, July 3rd, 1922, accessed March 13, 2017, http://digital.library.northwestern.edu/league/le00193a.pdf.
[36] Cryer, Prosecuting International Crimes, 36; Schabas, An Introduction to ICL. *See also* Historical Survey of the Question of International Criminal Jurisdiction - Memorandum submitted by the Secretary-General, Doc. A/CN.4/7/Rev., http://legal.un.org/ilc/documentation/english/a_cn4_7_rev1.pdf.
[37] The Convention for the Creation of International Criminal Court and a Convention for the Prevention and Punishment of Terrorism were adopted in 1937, however, neither of the conventions entered into force. The Convention on Terrorism received only one ratification, whereas, the convention on the Court received none. It is notable that the idea of international criminal court before the Second World War met with failure due to the lack of interest by the state parties. Legal and political scholars argued that the atrocities of the Second World War would have not taken place, if the states should have shown interest in the ratification of both the conventions. They regard the conduct of state a legal and political failure of that time. *See for comprehensive analysis on the International Criminal Court as proposed in 1937* Leila Sadat Wexler, "The Proposed Permanent International Criminal Court: An Appraisal", Cornell International Law Journal 29: 3 (1996), http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1390&context=cilj.
[38] *See* Philippe Sands, ed, From Nuremberg to The Hague: The Future of International Criminal Justice (New York: Cambridge University Press, 2003); *see on the Nuremburg Trial* Joe J. Heydecker and Johannes Leeb, The Nuremberg Trial: A History Of Nazi Germany As Revealed Through The Testimony At Nuremberg, trans. and ed. by R. A. Downie (USA: Greenwood Press, 1975); *see on the Tokyo trials* B.V.A Roling and Antonio Cassese, The Tokyo Trial and Beyond: Reflections of a Peacemonger (UK: Polity Press, 1994).
[39] Moscow Declaration of 1943 which states as: "the . . . [United States, United Kingdom and USSR] . . . speaking in the interests of the 32 United Nations . . . declared . . . at the time of the granting of any armistice to any government that may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of the liberated countries and of the free governments which will be erected therein . . ."
[40] ''Draft Convention for the Establishment of a United Nations War Crimes Court,'' U.N. War Crimes Commission, Doc. C. 50(1) (30 September 1944), as cited in William Schabas, An Introduction to the International Criminal Court (New York: Cambridge University Press, 2002), 5; *see also* SCHIFF, Building, 24.
[41] Ibid.
[42] *See for the Executive Summary* Tove Rosen, ed, "The Influence of the Nuremberg Trial on International Criminal Law", https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/.
[43] *See for historical evolution of the concept of crimes against humanity* M. Cherif Bassiouni, Crimes against Humanity: Historical evolution and contemporary application (New York: Cambridge University Press, 2011); *See also* Mark Lattimer and Philippe Sands, eds, Justice for Crimes Against Humanity (USA: Hart Publishing, 2003).
[44] Schiff, Building the ICC, 25.
[45] "The bench was more cosmopolitan, consisting of judges from eleven countries, including India, China and the Philippines, whereas the Nuremberg judges were appointed by the four major powers, the United States, the United Kingdom, France and the Soviet Union." See Schabas, An Introduction to ICL, 7.
[46] Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 20 December 1945, Official Gazette of the Control Council for Germany, No. 3, (31 January 1946), 50–55.
[47] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9 December 1948 as General Assembly Resolution 260. It entered into force on 12 January 1951.
[48] Article 6 of the Rome Statute of International Criminal Court, 1998.

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[49] Article 1 of the ILC's Statute provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification." Article 15 defines "progressive development" as "the preparation of draft conventions on subjects that have not yet been regulated by international law, or in regard to which the law has not yet been sufficiently developed in the practice of states". It defines "codification" as "the more precise formulation and systemization of rules of international law in fields where there already have been extensive state practice, precedent, and doctrines". Statute of the International Law Commission, (1947).

[50] Schabas, An Introduction to ICL, 9. Also cited by Schiff, Building the ICC, 27.

[51] "The trial took place over ten months, and 403 open sessions. In the end three of the defendants (Shacht, Fritzsche and von Papen) were acquitted, three of the six indicted organisations (the Gestapo, the SS and the Leadership corps of the Nazi party) were declared criminal. Of the remaining defendants, twelve were sentenced to death and seven to periods of imprisonment ranging from ten years to life. The Soviet judge, Major-General Nikitchenko, dissented from all the acquittals and the life sentence for Rudolf Hess. He would have declared all the defendants and organisations guilty, and sentenced Hess to death." *See* Cryer, Prosecuting International Crimes, 40; *See also* Hans Kelsen, "Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?" The International Law Quarterly 1: 2 (1947):153-71, http://www.jstor.org/stable/762970?origin=JSTOR-pdf

[52] *See generally on Nuremburg trials* Norbert Ehrenfreund, The Nuremberg Legacy: How the Nazi War Crimes Trials Changed The Course of History (New York: Palgrave Macmillan, 2007); Paul Julian Weindling, Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent (New York: Palgrave Macmillan, 2004); *see also on Nuremberg story* Ulf Schmidt, Justice at Nuremberg: Leo Alexander and the Nazi Doctors' Trial (New York: Palgrave Macmillan, 2004).

[53] Cryer, Prosecuting International Crimes, 44.

[54] *See* Madoka Futamura, War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg legacy (New York: Routledge, 2008).

[55] The atrocities committed during Second World War were somehow addressed during the historic Nuremberg and Tokyo trials. Despite of various loopholes both in substantive and procedural aspects of the trials paved the way for the establishment of an international court in order to prosecute the persons accused of international crimes. Legal and political scholars consider the Nuremberg and Tokyo trials as normative and legal basis for the permanent international criminal court, which was resultantly created in the Rome Conference of 1998. *See for the historical development took place in the area of international criminal justice* José Doria, Hans-Peter Gasser and M. Cherif Bassiouni, eds, The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor *Blishchenko* (The Netherlands: Martinus Nijhoff Publishers, 2009).

[56] Justice Richard Goldstone, 'Conference Luncheon Address at Symposium: Prosecuting War Crimes: An Inside View', Transnational Law and Contemporary Problems, 7: 1 (1997), pp. 3.

[57] Cassese, International Criminal Law, 324.

[58] Christopher K Lamont, International Criminal Justice and the Politics of Compliance (England: Ashgate Publishing Limited, 2010), 5.

[59] *See* Birgit Schlütter, Developments in Customary International Law: Theory and the Practice of the International Court of Justice and the International ad hoc Criminal Tribunals for Rwanda and Yugoslavia (The Netherlands: Martinus Nijhoff Publishers, 2010).

[60] Schabas, An Introduction to ICL, 11.

[61] *Report of the Secretary General pursuant to Security Council Resolution 808* (1993), UN Doc S/25704(1993), para 2, reprinted in 32ILM (1993), 1159.

[62] Bantekas and Nash, International Criminal Law, 340. See also, Schabas, An Introduction to ICL, 11.

[63] *See generally* Rachel Kerr, The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy (New York: Oxford University Press, 2004); *See* International Criminal Tribunal For The Former Yugoslavia: Judicial Reports 1996 (The Hague: Kluwer Law International, 2002), accessed April 11, 2017, http://www.un.org/icty; *See also* William A. Schabas, The Un International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone (UK: Cambridge University Press, 2006).

[64] Bantekas and Nash, International Criminal Law, 340-41.

[65] Security Council resolution 955 (1994) of 8 November 1994 amended by Security Council resolutions 1165 (1998) of 30 April 1998, 1329 (2000) of 30 November 2000, 1411 (2002) of 17 May 2002 and 1431 (2002) of 14

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August 2002, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatuteInternationalCriminalTribunalForRwanda.aspx

[66] Schabas, An Introduction to ICL, 11. Both the tribunals were empowered to prosecute the persons responsible for serious violations of IHL. The statutes of the tribunals slightly differed from each other as the Yugoslavian tribunal dealt with both international and internal conflicts, while ICTR dealt only with non-international armed conflicts. The justification behind the establishment of the ICTY was that the criminality taken place in the region constitutes "threat to international peace and security", and that curbing such crimes would "contribute restoration and maintenance of peace". Consequently, this justification was the basis for the tribunal to be created under the Chapter VII of the UN Charter. Similarly, for Rwandan tribunal, the UNSC's resolution provided that a failure to punish the crimes of 1994 would a threat to peace and security, in addition to a new element of restorative justice, "The prosecution of persons responsible for serious violations of international humanitarian law would contribute to the process of national reconciliation." *See* SCHIFF, Building the ICC, 44; *see also* UN Security Council Resolutions 808 and 827 of 1993, http://www.un.org/en/sc/documents/resolutions/1993.shtml;

[67] Bantekas and Nash, International Criminal Law, 340.

[68] ICTR Statute, Art 12(2).

[69] Ibid, Art 15(3).

[70] *See generally* Gideon Boas and William A. Schabas, eds, International Criminal Law Developments in the Case Law of the ICTY (The Netherlands: Brill Academic Publishers, 2003).

[71] *Prosecutor* v. *Tadic* (Case No. IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, (1997) 105 ILR 453, 35 ILM 32, http://www.icty.org/x/cases/tadic/acdec/en/51002.htm.

[72] Ibid, para 11.

[73] Schabas, An Introduction to ICL, 12.

[74] UN General Assembly Resolution 44/39 of 4 December 1989.

[75] "Their reason for suggesting this extraordinary act of revival was not the protection of human rights, or the enforcement of international criminal law……, [b]ut to create a collaborative measure for enforcing national laws based on the 1988 Vienna Convention against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. This was suggested as a means for countries whose judicial systems were unable to cope with the power and influence of rich drug barons, and to ensure that prosecution occurred in an independent forum, less subject to the pressures that could be brought to bear on national politicians, judges and prosecutors." Cryer, *Prosecuting International Crimes*, 57.

[76] *Report of the International Law Commission,* 46th Sess., 2 May-22 July 1994, http://legal.un.org/ilc/sessions/46/.

[77] M. Cheriff Bassiouni, "Negotiating the Treaty of Rome on the Establishment of an International Criminal Court," Cornell International Law Journal, Vol. 32, no. 3 (1999): 443, http://scholarship.law.cornell.edu/cilj/vol32/iss3/3.

[78] Schabas, *An Introduction to ICL*, 13-14. Schabas articulated the internal story of the Ad hoc committee as "…..Debates within the Ad Hoc Committee revealed rather profound differences among States about the complexion of the future court, and some delegations continued to contest the overall feasibility of the project, although their voices became more and more subdued as the negotiations progressed. The International Law Commission draft envisaged a court with 'primacy', much like the ad hoc tribunals for the Former Yugoslavia and Rwanda. If the court's prosecutor chose to proceed with a case, domestic courts could not pre-empt this by offering to do the job themselves. In meetings of the Ad Hoc Committee, a new concept reared its head, that of 'complementarity', by which the court could only exercise jurisdiction if domestic courts were unwilling or unable to prosecute….." *See also* 'Report of the Ad Hoc Committee on the Establishment of an International Criminal Court', UN Doc. A/50/22, https://www.legal-tools.org/en/doc/b50da8/.

[79] GA Resolution 50/46; UN Doc. A/RES/50/46; the mandate was extended by GA Resolution 51/207, UN Doc. A/RES/51/207, On the PREPCOM's work, *See* Report of the Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/51/22; *See also* Cryer, Prosecuting International Crimes, 59; Schabas, *An Introduction to ICL*, 14; Bantekas and Nash, International Criminal Law, 376; Cassese, International Criminal Law, 329; Bassiouni, International Criminal Law, 586-587; Robert Cryer et al., An Introduction to International Criminal Law and Procedure, 2nd ed. (Cambridge University Press, 2010), 121.

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[80] *See generally on the establishment of international criminal court* Michael J. Struett, The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency (New York: Palgrave Macmillan, 2008).
[81] *See for the Official Records of the Rome proceedings* "United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court Rome," 15 June -1 7 July 1998, Official Records, Volume III, Reports and other documents, http://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings_v3_e.pdf.
[82] *See for the Elements of War Crimes* Knut Dormann, Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary (UK: Cambridge University Press, 2003).
[83] *See generally on the U.S policy towards ICC* Lee Feinstein and Tod Lindberg, Means to an End: U.S. Interest in the International Criminal Court (Washington, D.C.: Brookings Institution Press, 2009). *See also* Jason Ralph, Defending the Society of States: Why America Opposes the International Criminal Court and its Vision of World Society (New York: Oxford University Press, 2007).
[84] *See for example* American Service Members Protection Act, 2002, referring to the Rome Statute, the preamble to the Act declares: *"Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the US to use its military to meet alliance obligations and participate in multinational operations including humanitarian interventions to save civilian lives."* The Act prohibits "agencies of the United States government from cooperating with the Court, imposes restrictions on participation in United Nations peacekeeping activities, prohibits United States military assistance to States Parties to the Statute, and authorises the use of force to free any United States citizen who is detained or imprisoned by or on behalf of the Court". Schabas, An Introduction, 23. See also Murphy, Sean D. "American Servicemembers' Protection Act." American Journal of International Law 96: 4 (2002): 975–77. doi:10.2307/3070701.
[85] There were three accessions by Dominica and Afghanistan and by Timor Leste, which did not even exist as a sovereign State until May 2002. Schabas, An Introduction to ICL, 19.
[86] "The Rome Statute of the ICC reflects states' agreement over how to institutionalize a broad range of international criminal justice norms while still protecting national sovereignty. In some areas, most prominently the issue of jurisdiction, the Statute's final provisions can be characterized as a lowest common denominator outcome, keeping on board all but the states most concerned about a potential erosion of sovereignty. On other topics, such as reparations and victims' rights, the Statute represents the cutting edge of normative development. From the Court's standpoint, the Statute is broadly permissive, even quite demanding, because of the range of objectives it outlines. But the Court faces the conundrum that while charged with an immense task, it must rely upon states to support and enforce its actions." Schiff, Building the ICC, 68.
[87] *Prosecutor* v. *Furundzija* (Case No. IT-95-17/IT), Judgment, 10 December 1998, para. 227, accessed April 20, 2017, http://www.icty.org/case/furundzija/4.
[88] ICC Statute, Art 1.
[89] Ibid, Art 4(1).
[90] *See for the legal aspects of international organizations* Carsten Stahn and Göran Sluiter, The Emerging Practice of the International Criminal Court (Legal Aspects of International Organizations), Vol. 48 (The Netherlands: Martinus Nijhoff Publishers, 2009).
[91] Ibid, Art 115(b).
[92] Ibid, Art 115(a) and 116.
[93] "It is notable that although the Court is not an integral part of the United Nations (i.e. the ICC does not organically belong, nor is it subject, to the UN, in the sense that the International Court of Justice is), provisions have been made so that the ICC takes into consideration the workings of the UN (in particular, of the Security Council) and the UN recognizes the ICC as the official body in the area of prosecuting individuals for international criminal law violations. The cooperation of the Court and the UN is therefore expected in certain fields, in order that the Court's functions be facilitated and carried out seamlessly. In this sense, the ICC and the UN are organizations not exclusive of one another but complementary to each other." *See* D. Dimitrakos, "The Principle of Universal Jurisdiction & the International Criminal Court", pp. 26, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383587.
[94] ICC Statute.
[95] *See* Karin N. Calvo-Goller, The Trial Proceedings of the International Criminal Court: ICTY and ICTR Precedents (The Netherlands: Martinus Nijhoff Publishers, 2006).

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[96] Article 12 of the ICC Statute:

"(1) A State which becomes a Party to this Statute thereby accepts the jurisdiction of Court with respect to the crimes referred to in article 5 (2) In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national. (3) If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9."

[97] Article 13 of the ICC Statute:

"The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15."

[98] Article 14 of the ICC Statute:

"1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation."

[99] *See* "Final Report of the International Law Commission on The obligation to extradite or prosecute (*aut dedere aut judicare*) (2014) adopted by the International Law Commission at its sixty-sixth session, in 2014, and submitted to the General Assembly as a part of the Commission's report covering the work of that session" (at para. 65). The report appeared in Yearbook of the International Law Commission, 2014, vol. II (Part Two), accessed May 2nd, 2017, http://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf; *see also* Andre da Rocha Ferreira et al., "The obligation to extradite or prosecute (aut dedere aut judicare)", UFRGS Model United Nations Journal 1 (2013): 202-221, https://www.ufrgs.br/ufrgsmun/2013/wp-content/uploads/2013/10/The-obligation-to-extradite-or-prosecute-aut-dedere-aut-judicare.pdf.

[100] *See* Hugo Grotius, *De Jure Belli ac Pacis Libri Tres*, trans. Francis W. Kelsey, Vol. 2 of The Classics of International Law, ed. James Brown Scott (Oxford: Clarendon Press, 1925).

[101] Bassiouni, International Criminal Law, 488.

[102] "The position attributed to Grotius- that all states have a common interest in suppressing international crimes is the foundation of why states should engage in international cooperation in penal matters. At the time of Grotius and until the twentieth century, international cooperation was essentially limited to extradition. Thus, the legal literature of almost five hundred years remained focused on extradition, whose rationale, however, extends to all other forms of international cooperation in penal matters." Bassiouni, International Criminal Law, 488.

[103] "The principle of complementarity can be defined as a functional principle aimed at granting jurisdiction to a subsidiary body when the main body fails to exercise its primacy jurisdiction." See Xavier Philippe, "The Principles Universal Jurisdiction and Complementarity: How Do The Two Principles Intermish?" International Review of the Red Cross 88: 862, (2006): 380. See also Mohamed M. El Zeidy, The Principle of Complementarity in International Criminal Law (The Netherlands: Leiden, Martinus Nijhoff Publishers, 2008).

[104] These *jus cogens* international crimes includes: aggression, genocide, crimes against humanity, apartheid, war crimes, piracy, slavery and slave-related practices, and torture.

[105] Bassiouni, *International Criminal Law*, 500. *See also for states policy consideration in international cooperation* M. Cherif Bassiouni, "Policy Considerations on Interstate Cooperations in Criminal Matters," Pace Yearbook of International Law 4, (1992): pp. 123-146.

[106] Gilbert, *Responding,* 24-53.

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[107] M. Cherif Bassiouni. International Extradition and World Public Order (New York: Sitjhoff-Ocean Publications, Dobbs Ferry, 1974), pp. 32-33.
[108] *See on Extradition* Isidoro Zanotti, Extradition in Multilateral Treaties and Conventions (The Netherlands: Martinus Nijhoff Publishers, 2008).
[109] "Extradition is the formal process whereby a fugitive offender is surrendered to the State in which an offence was allegedly committed in order to stand trial or serve a sentence of imprisonment. There is no general rule of international law that requires a State to surrender fugitive offenders and extradition arrangements proceed on the basis of a formal treaty or a reciprocal agreement between States. The increase in the mobility of suspects has resulted in the increased willingness of States to use this form of mutual legal assistance to enforce their domestic criminal law. While the US continues to prefer bilateral treaties as the legal basis for extradition, European States are increasingly reliant upon multilateral regional treaties. The process of extradition, which is founded on the concepts of reciprocity, comity and respect for differences in other jurisdictions, aims to further international co-operation in criminal justice matters and strengthens domestic law enforcement." *See* Bantekas and Nash, International Criminal Law, 179.
[110] M. Cheriff Bassiouni, International Criminal Law Conventions and Their Penal *Provisions* (Martinus Nijhof Publishers, 1997), 607.
[111] "…. The requirement of double criminality (also referred to as dual criminality), whereby the crime charged in the requesting state must also be found in the criminal laws of the requested state. Another such requirement is the principle of specialty (also referred to as specialty), whereby, the requesting state can only prosecute the surrendered person for the crime for which extradition was granted." See Bassiouni, International Extradition, 461-510, 551-568.
[112] See U.N. Model Treaty on Extradition, General Assembly Resolution. 116, U.N. GAOR, 45TH Session, Annexure at 211-14; U.N. Doc. A/Res/45/116 (1990); U.N. Model Treaty on Mutual Legal Assistance in Criminal Matters, G. A. Res 117, 45th Session, Annexure at 215-19, U.N. Doc. A/Res/117 (1990).
[113] The European Convention on Mutual Legal Assistance, 20 April 1959; First Additional Protocol, 15 Oct. 1975; Second Additional Protocol, 17 Mar. 1978; *See also* Recovery And Mutual Legal Assistance In Asia And The Pacific, Proceedings of the 6th Regional Seminar on Making International Anti-Corruption Standards Operational Held in Bali, Indonesia, on 5–7 September 2007 and hosted by the Corruption Eradication Commission, Indonesia, published by Asian Development Bank Organization for Economic Co-operation and Development in cooperation with the Basel Institute on Governance, 2008.
[114] Letter Rogatory generally are customary method for obtaining assistance from a foreign country in the absence of treaty or agreement. It is a request by a judge to the court of a foreign country seeking the performance of a certain act through diplomatic channel. The old customary method of Letter Rogatory has been replaced by a modern notion called "Legal assistance". *See for details on Letter Rogatory* https://www.justice.gov/usam/criminal-resource-manual-275-letters-rogatory.
[115] See Bassiouni, International Criminal Law, 504.
[116] *See e.g.* T. Markus Funk, "Mutual Legal Assistance Treaties and Letters Rogatory: A Guide for Judges", Federal Judicial Center International Litigation Guide (2014), https://www.fjc.gov/sites/default/files/2017/MLAT-LR-Guide-Funk-FJC-2014.pdf; Vincent M. de Grandpré and Alyssa Brierley, "What You Should Know About Enforcing Foreign Letters Rogatory In Canada", http://www.cba.org/cba/cle/PDF/IP10_deGrandpre_paper.pdf.
[117] The practice under "Letters Rogatory" was extended by few states of sending a "Commission Rogatory", for conducting investigation on the territory of another state and was based on agreements between the states. As a custom, a judge or a prosecutor was to conduct investigation, inquiry, or interrogation of a witness as a commission under this practice. Later on, the practice of many states (within Europe, Latin America, the United States and Canada) transformed into bilateral mutual legal assistance treaties. Similarly, the Council of Europe, the Organization of American States, and the League of Arab States adopted regional multilateral treaties on mutual legal assistance. *See e.g.* "the United Nations Office on Drugs and Crimes Manual on Mutual Legal Assistance and Extradition", United Nations Office, Vienna (2012), https://www.unodc.org/documents/organizedcrime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf; *See for example* Treaty Between Australia And The Republic Of The Philippines On Mutual Assistance In Criminal Matters, 1988; Treaty Between The United States Of America and The Russian Federation on Mutual Legal Assistance, 1999, https://www.state.gov/documents/organization/123676.pdf; *see also* European Convention on

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Mutual Assistance in Criminal Matters Treaty No. 030 of 20th April, 1959; Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Treaty No. 099 of 17th March, 1978; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Treaty No. 182 of 08th November, 2001, https://www.coe.int/en/web/transnational-criminal-justice-pcoc/MLA-council-of-europe-standards. Moreover, the 1990 UN Model Treaty on Mutual Assistance in Criminal matters do exists, providing guidelines for states negotiating bilateral or multilateral agreements. This type of legal assistance is dependent on the extension of cooperation by states. See Bantekas and Nash, International Criminal Law, 233; *see also* Giuseppe Nesi, ed, International Cooperation in Counter-terrorism: The United Nations and Regional Organizations in the Fight against Terrorism (England: Ashgate Publishing Limited, 2006).

[118] *See on the execution of letter rogatory* Execution of Letters Rogatory, the Exchange of Notes between the Union of Soviet Socialist Republics and the United States of America on November 22, 1935, https://www.loc.gov/law/help/us-treaties/bevans/b-su-ust000011-1262.pdf.

[119] *See* David Vaida, "Treaties– Mexican-American Treaty on the Execution of Penal Sentences– Custody of a Prisoner Under the Mexican-American Treaty is Unlawful When Consent to the Transfer is Coerced," Fordham International Law Journal 3: 1 (1979): 107-119, http://ir.lawnet.fordham.edu/ilj/vol3/iss1/5/.

[120] See. M. Cherif Bassiouni, eds, International Criminal Law: International Enforcement, Vol. 3, 3rd ed. (Martinus Nijhoff Publishers, 2008), 533-554.

[121] Convention on the Transfer of Sentenced Persons, 1983. https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/112 ; *See also* "the United Nations Office on Drugs and Crimes Handbook on the International Transfer of Sentenced Persons", *United Nations Office, Vienna* (2012), https://www.unodc.org/documents/organizedcrime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf

[122] In compliance with the European Convention on the Transfer of Sentenced Persons, 1983, the Ireland has adopted the Transfer of Sentenced Persons Act, 1995 aiming on extension of legal assistance in respect of transferring sentenced persons. *See e.g.* http://www.irishstatutebook.ie/eli/1995/act/16/enacted/en/print.html

[123] *See* Michael Quilling, "The Recognition and Enforcement of Foreign Country Judgments and Arbitral Awards: A North-South Perspective", Georgia Journal of International and Comparative Law 11: 3 (1981): 635-667, http://digitalcommons.law.uga.edu/gjicl/vol11/iss3/11.

[124] *See* Ralf Michaels, "Recognition and Enforcement of Foreign Judgments", Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press (2009), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2699&context=faculty_scholarship.

[125] Bassiouni, International Criminal Law, 511-518.

[126]Ibid, 509.

[127] Bassiouni, International Extradition, 461-510.

[128] *See* Yuliya Zeynalova, "The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?", Berkeley Journal of International Law 31:1 (2013): 150-205, https://scholarship.law.berkeley.edu/bjil/vol31/iss1/4/.

[129] European Convention on the International Validity of Criminal Judgments, Treaty No. 070 of 28th May, 1970, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/070.

[130] *See* Ralitsa Voynova, "The Basics Of The Procedure For Transfer Of Criminal Proceedings By The Bulgarian Criminal Procedure Code," Electronic Journal of Law, Politics, Administration 1:1 (2014), http://www.lpajournal.com/en/volume-1-issue-1-2014/; *see also* Ralitsa Voynova, "Comparison Of The Transfer Of Criminal Proceeding With Other Forms Of International Legal Cooperation In Criminal Matters", De Gruyter Publishers, International conference Knowledge-Based Organization 21:2 (2015): Pages 532-540, https://www.degruyter.com/downloadpdf/j/kbo.2015.21.issue-2/kbo-2015-0091/kbo-2015-0091.pdf; *See also* Ralitsa Voynova, "Conflicts of Jurisdiction in Criminal Proceedings – Preconditions and Possible Solutions" De Gruyter Publishers, International conference Knowledge-Based Organization 23: 2 (2015): Pages 227-232, https://www.degruyter.com/downloadpdf/j/kbo.2017.23.issue-2/kbo-2017-0118/kbo-2017-0118.pdf.

[131] *See* European Convention on the Transfer of Proceedings in Criminal Matters, 1972.

[132] Article 8 of Italian Penal Code (Coordinated and updated text of the Royal Decree of 19 October 1930, No. 1398) provides for the punishment of political crimes committed abroad. The political crimes are defined by the code as: "…..For the purposes of criminal law, every crime is a political offense, which offends a political interest of the state, or a political right of the citizen. It is also considered political crime to be the common crime determined, in whole or in part, by political reasons." Similarly, under article 13 the extradition of Italian citizen

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is not allowed unless expressly permitted in international law. The code define the Italian citizens under article 4 as: "….For the purposes of the penal law, citizens of the colonies, the colonial subjects, the members by origin or by election to places subject to the sovereignty of the State and stateless persons residing in the territory of the State are considered Italian citizens." Moreover, article 9 deals with the common crimes of the citizen abroad. http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale.

[133] See Bassiouni, International Criminal Law, 511; *See* Bruce Zagaris, "Developments in International Judicial Assistance and Related Matters", DENV. J. INT'L L. & Pol'y 18 (1990): 339; *See also* Peter Metis, "International Judicial Assistance: Does 28 U.S.C. §1782 Contain an Implicit Discoverability Requirement", Fordham International Law Journal, 1:1 (1994), https://pdfs.semanticscholar.org/5918/94acb4e3dec95a76b9a5efc4ae6404173314.pdf.

[134] *See* Nicholas Kaye, "Freezing And Confiscation Of Criminal Proceeds", International Review of Penal Law *77,* (2006): 323-331, https://www.cairn.info/revue-internationale-de-droit-penal-2006-1-page-323.htm ; *See also* the United Nations Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime, *United Nations Office, New York* (2012), https://www.unodc.org/documents/organized-crime/Publications/Confiscation_Manual_Ebook_E.pdf; International Criminal Court booklet on Financial investigations and recovery of assets, https://www.icc-cpi.int/iccdocs/other/Freezing_Assets_Eng_Web.pdf.

[135] Bassiouni, International Criminal Law, 507. In 1980s, international community agreed to develop a framework for the confiscation, seizure, and freezing of assets those belonging to criminals. Consequently, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in 1988, which has several provisions dealing with freezing and seizing of assets. Similarly, the Council of Europe adopted the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime in 1991. Unlike the UN Convention of 1988 which only deals with drug trafficking as the predicate offense, the Council of Europe's Convention of 1991 consider any crime as predicate offense. Moreover, in 1991 Financial Action Task Forces (FATF) were established by the European Community Council and as well by the Caribbean countries. The aim of the FATFs were to suppress money laundering and freezing of bank accounts those used in drugs trafficking or other crimes, or belonging to criminals. *See* James K. Jackson, "The Financial Action Task Force: An Overview", *Congressional Research Service* (2017), https://fas.org/sgp/crs/misc/RS21904.pdf.

[136] United Nations Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999.

[137] Resolution 1373 (2001) adopted by the Security Council at its 4385th meeting, on 28 September 2001. Clause 1(a) of the Resolution provides for preventing and suppressing of terrorist acts; clause 1(b) provides for "…..Criminalizing the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts"; and clause 1(c) provides for freezing of assets.

[138] Legislative enactments reported to the committee are found on the website of the International Money Laundering Information Network, http://imolin.org/index.html.

[139] *See* Transparency International's Policy paper on Confiscation of Criminal and Illegal Assets: European Perspectives in Combat against Serious Crime, http://www.confiscation.eu/site/wp-content/uploads/2015/03/Policy_Paper_EN_web.pdf.

[140] *See* John A. E. Vervaele, "Terrorism and information sharing between the intelligence and law enforcement communities in the US and the Netherlands: emergency criminal law?" Utrecht Law Review 1:1 (September, 2005), http://www.utrechtlawreview.org/; *see on detail analysis of intelligence sharing and information* David L. Carter, Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies, 2nd ed. (USA: Community Oriented Policing Services, US Department of Justice, 2009), https://it.ojp.gov/documents/d/e050919201-IntelGuide_web.pdf .

[141] *See* Brian A. Jackson, "How Do We Know What Information Sharing Is Really Worth? Exploring Methodologies to Measure the Value of Information Sharing and Fusion Efforts", RAND Corporation (2014).

[142] Bassiouni, International Criminal Law, 525. Notwithstanding the selective and secretive nature of the inter-state information sharing, a slight reference can be made to the United Nations Convention against Transnational Organized Crimes, 2000, which deals in part, but doesn't regulate the question of inter-state law enforcement and intelligence cooperation. Article 27 of the Convention, however, provides for law enforcement cooperation such as encouraging bilateral and multilateral agreements on the subject of joint investigations.

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[143] On the basis of cultural, legal, political and economic affinities, some regions and sub-regions have established regional organizations and sub-regional cooperative system. These regional and sub-regional arrangements include: the Council of Europe, the European Union, the Organization of American States, the League of Arab States, the Organization of African Unity, and the Commonwealth Secretariat; the sub regional organization includes: states from Scandinavia, Baltic States, the Benelux Countries, the Andean Countries and others. *See* Bassiouni, International Criminal Law, 527. *See also* David P. Warner, "Law Enforcement Cooperation in the Organization of American States: A Focus on REMJA", University of Miami Inter-American Law Review (2015): 387-419, *see also* United Nations Office on Drugs and Crimes Regional Programme for the Arab States (2016-2021): To Prevent and Combat Crime, Terrorism and Health Threats and Strengthen Criminal Justice Systems in Line with International Human Rights Standards,

[144] The regional and sub-regional organizations have established a framework in shape of agreements for the regulation of international cooperation in penal matters. In this connection, the Council of Europe has sponsored over 24 conventions in inter-state cooperation in penal matters. Similarly, the OAS, the League of Arab States and the Commonwealth Secretariat stand on the same footings. In addition to, a regional system for cooperation in penal matters has also been developed by the Benelux and Nordic countries. For instance the Council of Europe has adopted the following multilateral treaties on the subject: European Convention on Extradition, 1957; Additional Protocol to the European Convention on Extradition, 1975; Second Additional Protocol to the European Convention on Extradition, 1978; Third Additional Protocol to the European Convention on Extradition, 2010; Fourth Additional Protocol to the European Convention on Extradition, 2010; European Convention on Mutual Assistance in Criminal Matters, 1959; Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 1978; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 2001; European Convention on the International Validity of Criminal Judgments, 1970; European Convention on the Transfer of Proceedings in Criminal Matters, 1972; Convention on the Transfer of Sentenced Persons, 1983; Additional Protocol to the Convention on the Transfer of Sentenced Persons, 1997; Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons, 2017; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.

[145] *See* M. Cherif Bassiouni, "Policy Considerations on Interstate Cooperations in Criminal Matters", Pace International Law Review 4: 1 (January 1992): 123-145, http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1102&context=pilr ; *See also* Report of the Commission on Crime Prevention and Criminal Justice, 1992, United Nations Economic and Social Council Official Records, Supplement No. 10, United Nations New York, 1996, http://www.legal-tools.org/doc/4d74fd/pdf/

[146] *See* Due Process of Law Foundation, Digest Of Latin American Jurisprudence On International Crimes (Washington D.C.: Due Process of Law Foundation, 2010), http://dplf.org/sites/default/files/digestenglishs.pdf; *see also the* German Act on International Cooperation in Criminal Matters of 23 December 1982 (Federal Law Gazette I page 2071), as last amended by Article 1 of the Act of 21 July 2012, Bundesgesetzblatt I 2012, https://www.gesetze-im-internet.de/englisch_irg/englisch_irg.html.