

# Video Transcript

## International Criminal Law – Gleider Hernández

Hello, and welcome to my mini-lecture on Chapter 17 of the book *International Law*, which is entitled 'International Criminal Law'.

Now, international criminal law is in news very often. We often see the prosecution of former heads of state or of high-ranking military officials and officials of state in a courtroom in Arusha or The Hague. And it's one of these sensationalist areas, or very much, as we would say, mediatised, in that it attracts a lot of attention. It is worthy of this attention because in many respects it's very different from traditional public international law. It's not concerned with obligations on states so much as it is concerned with obligations on the individuals. Now, one shouldn't overstate this, very often the very individuals that are being prosecuted are connected to a state or connected to an entity that is essentially exercising state-like functions in another territory. The apparatus of the state is apparent throughout and very often the higher the official, the more sensitive a criminal prosecution can become.

Nevertheless, until World War II, no permanent standing court could be created, and even after World War II it took until 1998 for there to be the International Criminal Court that has been existing in The Hague since 2002. Nevertheless, after World War II we saw the first fitful experiments: we saw the Nuremberg tribunal and the Tokyo tribunal that tried the major axis criminals, those connected to Germany and Japan in particular, that were prosecuted for crimes against the peace and various crimes against humanity. And there was a lot of development during these periods of what exactly the scope of these obligations was. Ultimately, these led to the emergence in the 1990s of tribunals in the former Yugoslavia, and after the genocide in Rwanda and after situations in Sierra Leone and Cambodia, where specialised tribunals, what we would call 'ad hoc' tribunals, were created in order to help to facilitate the resolution of conflicts on the ground in respect of a special area. And it was only in the 90s, when these tribunals were expanded and built and working that the impetus was found to create the International Criminal Court as a permanent body.

The principles underlying international criminal law are that states are ultimately a construction of individuals. This is, in some respects, a radical departure from the bulk of public international law. International criminal law is premised on the faith that punishing such officials leads to greater enforcement of international

law, especially in relation to various norms of *jus cogens*, of which International crimes are a reflection.

The chapter spends some time developing and explaining the various recognised international crimes, and as you can see, they're intimately related to the idea of peremptory norms of *jus cogens* in that they reflect the similar substantive value. There's an agreement that when committed by individuals, these crimes are so serious that they should be prosecuted on the international plane, and not merely on the domestic plane. These include genocide, the extermination of an entire group by reason of ethnicity or nationality; crimes against humanity, a wide variety of crimes that can be committed both in peacetime and in wartime including sexual slavery, the forcible deportation of populations, instances of inhuman and degrading treatment; and war crimes (or what they are more commonly known, technically, as 'grave breaches of the Geneva conventions', the obligations that we reviewed in Chapter 15) to uphold certain principles even in times of armed conflict; and finally the crime of aggression, which is the violation of the UN Charter by one state through the invasion of another state using force.

So the international crimes that we're discussing are very much tied to norms of *jus cogens*, and as such, international criminal law is developed as a subset of international law through which individuals, and not merely states, are held responsible for such breaches. With them, of course, being criminal trials where individuals are tried, procedure matters and especially principles of liability. So standards of proof, much of what one would find in domestic criminal law—well, international law has developed various modes (and these are explored in the textbook as well) through which liability can be imputed to an individual.

And finally, there's a brief discussion of the place of alternatives to international criminal justice, for example, what to do in situations where a state imposes an amnesty, or seeks to implement an alternative form of truth and reconciliation of transitional justice as a means of getting out of a conflict situation. These, and other considerations, are very much part of the international criminal justice debate, and in this chapter, which cannot be but an introduction to a very vibrant field, we seek to explore them.

Thank you.