INTERNATIONAL CRIMINAL LAW OUTLINE

IMPORTANT CONCEPTS

International criminal law is different from international law because it imposes obligations on people and states instead of granting them rights.

** enforcing international law restricts hegemonic power.

Martens Clause – comes 1907 Hague Convention (part of the Werementry argument) ... this Convention is not the final complete code but is a step in that direction and that code will evolve. ... anytime you want to give something an expansive reading, you would reference this clause.

Joint criminal responsibility – this is the international version of conspiracy where many people are implicated in some way to violate and international law – basically everyone is liable for some part of the crime and they are jointly liable for its commission.

The class is all about figuring out if there are things on the international level that are justiciable instead of purely political concerns. If there are justiciable questions then that clearly means there are laws and rules that apply to them.

Werementry v. Lotus

With the Treaty of Westphalia, a new concept developed of how states relates to each other

- Werementry thinks that international law is a cohesive legal regime based on natural law and universal rules. (a residual natural law that supercedes all treaties)
- this concept helps empower small states and enhances their sovereignty by globally limiting things that they cannot accomplish anyway (brings larger more powerful states down to their level)

Unit 1 – GENERAL ISSUES

- Often international law creates a framework for prosecutions in national courts. – constantly interacts with national laws.
- International law stems from 3 places:
  o International agreements (Treaties – they are primary sources)
    ▪ These are binding only on the signatories to the agreement
    ▪ If a majority of countries sign the treaty it may exhibit customary principle norms – Marten’s Clause
  o Customary international law
    ▪ These are practices generally accepted as law. – comes from the UN, but more often from judge’s decisions and scholars.
It doesn’t need to be unanimously held, but the majority of states must apply the practice.

You need *state action* and *opinion juris*

If a country consistently acts contrary to the practice, especially during the formulation of the rule, then it is considered a **persistent objector** to that law. Ex.) US with land mines

Just because you break a rule doesn’t make it legal – Ex) committing murder doesn’t make it legal

- **General Opinions**
  - “*Gap-fillers*” are detailed aspects of international law that are adapted during the application of the law.
    - For example – What are the rules of evidence used during international prosecutions?
    - They are filled in by surveying national legal systems.
  - **Judicial Decisions** – they are not binding law on the international level as there is no *stare decisis*, but they are very persuasive sources as to what the law should be.
  - **International Court of Justice** – it is a UN organization that settles disputes (primarily civil) between countries.
    - The ICJ issues advisory opinions as to what the rules should be and are given considerable weight.
- **General Practices** (very similar to customary definition)
  - The US does not apply international criminal law – it has to be adopted by Congress into our legal system.
  - *Jus cogens norms* – these are crimes that everyone accepts that you cannot do, and you cannot enter into a treaty to get around them.
    - Ex.) Genocide – everyone agrees that you cannot commit genocide, even if you enter into a treaty saying that it is ok.
    - These cannot be changed by custom.
  - **International Crimes**
    - Violations of rules defined by international law – crimes the international community may prosecute
  - **Transnational Crimes**
    - Violations of national laws that have international effects
      - Drug trafficking is an example
    - Terrorism is quickly becoming an international crime instead of a transnational crime.

**Unit 2 – JURISDICTION**

- All countries reserve the right to exercise jurisdiction over their nationals traveling abroad, but those nationals must follow the rules of the country they are in. – HOWEVER often times leaders are not held accountable in their own country.
• Basis for Jurisdiction:
  o Universal
    ▪ Allows nation-state competence whenever an alleged offender is found within the state’s territory.
      • It does not matter where the crime occurred, who the victims were, or what contacts the state may have with the case. *Erga omnes* – an obligation to everyone.
      • It is enforcement on behalf of the international community
    ▪ This jurisdiction is established in two way:
      • Treaty – all states who are party to the treaty agree to extradite an accused person in their territory regardless of that person’s nationality (consensual jurisdiction)
        o This is a problem because not all states ratify the treaty, placing them outside the concept of “no safe-haven”
      • Customary International Law
        o These are “crimes so heinous that they shock the conscious of human kind”
        o Ex) slave trade, piracy, attacks on aircraft, genocide. – i.e. *jus cogens crimes*
  o Territory
    ▪ You are able to exercise jurisdiction if the accused is in your territory or some aspect of the crime occurred in your territory.
    ▪ This is the strongest jurisdiction principle
  o Protective
    ▪ There is an overriding national interest at stake
    ▪ This is very controversial
  o Passive
    ▪ The nationality of he victims grants jurisdiction
    ▪ Problem: all the evidence and the witnesses are in another country (territory)
    ▪ The US doesn’t like this because if a US citizen kills a foreigner, it allows for him to be tried outside the US --- we like to use it in terrorism though
  o Criminal nationality
    ▪ The nationality of the criminal
• *S.S. Lotus* (The Classic Approach)
  o “restrictions upon the independence of States cannot ... be presumed” because international law emanates from States’ free will and what they establish between each other.
  o A state cannot exercise jurisdiction outside its territory except by a permissive rule derived from international custom or treaty.
  o Apart from special cases defined by international law, vessels on the high seas are subject only to the authority of the State whose flag they fly.
    ▪ It does not follow that a country can never exert jurisdiction over something that happened onboard a foreign ship on the high seas.
What happens on a ship on the high seas can be regarded as having occurred on the territory of that country.

Exclusive jurisdiction is not universally accepted. – this is a case of concurrent jurisdiction

- *** basic idea: everything under international law that is not prohibited is permitted. – Positivist Theory
- *** The Lotus Dissent discusses international law more of a normative system of unwritten rules and customs that all nations should and usually do follow.

- Tribunals: ICTY and ICTR have primacy over national courts to overcome the danger of international crimes being categorized as ‘ordinary crimes,” proceedings being designed to shield the accused, or cases not being diligently prosecuted.

- **Terrorism** has not been universally accepted as having universal jurisdiction because the definition of terrorism has not been agreed to.

- **Adjudication:** enforcement is where countries are the most reluctant to exercise power – can limit adjudication through **comity** – a court declines to hear a case because certain facts are missing or adjudication would create a serious problem.
  - the international community has been happy with prescriptive solutions but less adjudication and even less enforcement.

- **United States v. Yunis.**
  - In the US, unless there is an expressed intent of Congress to act extraterritorially, then it is assumed the law is only to apply within the US.
  - In *Yunis* the Hostage Taking Act meets this requirement.
    - Indicates jurisdiction and purpose.

**Unit 3 – INDIVIDUAL RESPONSIBILITY**

a. **Individual Responsibility**

- Nuremberg is the birthplace of individual responsibility.
  - Crimes are committed by men, not abstract entities.

- International law imposes duties on individuals and well as States. – **ratione personae** (personal jurisdiction)
  - An individual's official position should not free them completely from responsibility or mitigation of punishment (like heads of state) – stated in Nuremberg Charter

- **ICC Article 25**
  - Under the ICC, a person is individually criminally liable if he:
    - Commits a crime or is jointly criminally responsible.
    - Orders a crime be committed
    - Aids, abets or assists the commission of a crime
    - Contributes to a person or group with the aim of furthering their criminal activity or has knowledge that the group intends to commit the crime
    - Incites others to commit genocide.

b. **Command Responsibility**

- There are two types; (comes from *Delalic*)
A person of superior authority should be held individually responsible for giving an unlawful order – criminal liability

- held responsible for failure to prevent a crime to deter the unlawful behavior of his subordinates. – criminal responsibility
  - This includes omissions where there is a duty to act.
  - This comes out of military law, but has bled into civilian law where heads of state are also criminally liable (form of vicarious liability)
    - See the Pinochet case
    - “superior” mean be *de facto* or *de jure*
      - this means that the superior really is in charge of the subordinate or in name only. (by fact / by law)

ICTY Requirements Article 7: ICC Article 28 says essentially the same

- Superior-subordinate relationship between the person accused and the perpetrator
- The superior knew or had reason to know that the crime was to be committed or had been committed
- The superior did not take all the necessary and reasonable measures to prevent the crime or punish the perpetrator – must have had effective control to prevent the crime.
  - **** basically this requires actual knowledge and wrongful failure to act.

b. Other General Defenses

- **Tu Quo Que** – You did it too – this doesn’t work as there is a significant power imbalance (does undermine the fairness in a legal proceeding)
  - This is the Victor’s Justice Problem
- **Duress** – this is not a complete defense to the commission of crimes, as found by the ICTY, but it can be used to mitigate the sentence. (*Erdemovic*)
  - there is always going to be some level of punishment for disobeying orders – the law has to set a standard.
- **Military Necessity** – no.
- **Willful Blindness** – not a defense.
- **Following Orders** – this does not relieve someone of individual criminal responsibility. An order must relate to a military duty.
  - To use this as a defense you must how that a reasonable man would apprehend that he was in such imminent physical peril as to deprive him from the freedom to choose right from wrong. – Moral Choice
  - In other words, you must show that the harm caused by obeying the illegal order is not greater than the harm caused from not following the order.
    - *Erdemovic* – show that following orders under duress can be a mitigating factor.
- **Domestic Law** – this does not shield someone from liability – the universal need for justice and recognition of human rights takes precedence over national sovereignty (ICTY)
- **Grounds for Defense (ICC Article 31)**
  - Mental disease
Involuntary intoxication
- Self-defense of others and property (including military necessity)
- Duress of imminent death or great bodily harm as long as it the action does not create a greater harm than the duress.
- Mistake of fact as long as it negates the mental element.

- **Basically** – in all these defenses, the state or the head of state cannot be the scapegoat, as the acts were done by individual people who knew better because international law takes precedence over a national agenda. The “State” is an inanimate, intangible thing that cannot act for itself.

c. Immunities
- The head of state is afforded the same immunity as the state itself. – immunity for acts done in performance of their respective functions while in office.  
  Ratione materiae (Act of State Doctrine)

    ***** the concept is that head of state has ratione personae while in office, protecting him from almost anything, but when he leaves office, he has ratione materiae, protecting only his official acts while in office. (this is mostly in national courts)

- There is a head of state immunity ratione personae but it has 2 exceptions
  (Pinochet case)
  - Criminal acts committed for personal gain under the color of his authority as the head of state
  - The commission of a jus cogens crime.
  - ICC Article 27 says no immunity or reduction in sentence for a head of state

- Immunity does not equal impunity – i.e. jurisdictional immunity is procedural, but criminal responsibility is a question of substantive law (Congo v Belgium)
  - After you are out of office, they can try you for offenses you committed while in office but acting in a private capacity or international criminal courts.

- A civilian leader who knows of atrocities and feels he cannot stop them is obligated to resign his post
  - There is no liability if the position really is powerless to do anything –like a commander, you must possess effective control to prevent the crime.

Abstensia – the state is sending its process out and into other nations – the country is seeking to apply its law to a case that is outside that country. (like in Congo v. Belgium)

Unit 4 – PRESENCE OF THE ACCUSED

a. Extradition
- Extradition is the official and correct way to get control over an individual in another State’s territory.
  - Uses diplomatic channels to get the other State to send the criminal here – this is called rendering the criminal.

  - Rendition – surrendering of the suspect
When an international legal right applies, it supercedes national laws. – applicable under its own force

Extradition Standards:
- Is this the person the country is seeking?
- Is there double criminality? (is the offense a crime in both countries involved)
- Does the evidence presented by the requesting nation establish probable cause?
- Are there any grounds for denial of extradition?
  - Political offense
  - Extradition treaty in place

A suspect can only be tried for the offenses listed in the extradition request – the requesting nation cannot tack on more offenses after it gets him. (Specialty Rule)
- In the US the Secretary of State can veto an extradition – this is a legal determination followed by a political determination ** very important aspect

Abduction
- Abduction is a self-help method of obtaining a suspect that is a transition from luring (which countries frown upon but accept)
  - If a criminal suspect is apprehended by another state’s law enforcement officers, it is a violation of the home state’s sovereignty.
  - Unconsented arrests violate the principle of territorial integrity.
  - In Europe, abductions are a violation of human rights by arbitrarily depriving the suspect of liberty.
- Important to remember that you cannot use the Armed Forces to execute laws except for acts authorized by the Constitution or Congress.
- Exceptions in the General View (Non-US)
  - Reasonable necessary criminal napping – when after balance it is not cruel, arbitrary, unjust, or unlawful.
  - Capture of a dictator
  - Self-defense under UN Charter Article 51 – rescuing nationals
  - Permissible actions under Chapter VII and VIII of the UN Charter
- The US views abductions as legal under domestic laws and vital to national security – especially with terrorism.
  - The US executive branch may depart from international law, under the Constitution, to follow domestic law.
  - This notion also views international law as an evolving set of principles founded on common principles, and necessarily so, some nations depart from these principles.
  - Abduction is justified when:
    - Actual or threatened terrorist attack
    - Large scale drug traffickers
    - Self-defense under Article 51 of the UN Charter
- *** a lot of times the host nation just wants an apology; prosecute the criminal anyway – US Canada; Nazis in Argentina – other -- there needs to be a formal protest by the country.

- Potential Negative Implications
  - High risks to US agents, both from danger in action and possible punishment from the host state.
    - No POW status to captured agents
    - Extradition requests for the agents once they get back to the US
    - Cessation of extradition with that or other countries.
    - Lawsuits in that other nation – in front of the ICJ for example
    - Adverse political situations for future interactions
    - Others would act in a similar manner on US soil.

- Adjudication
  - The US, Canadian, and UK view is that the criminal should stand trial, no matter how he came to be in that jurisdiction – *mala captus bene detenus* (tough luck rule) – this doesn’t work when a treaty is violated.
  - There is an exception – is the fugitive is apprehended in a manner that “shocks the conscious of the court” -- *Toscanino Exception*
  - *Ker-Frisbie Rule* – due process guarantees a fair trial, it doesn’t guarantee how the suspect was brought into the jurisdiction

** laws regarding abduction, like many international oriented laws all statutes are enacted with an eye towards the legal system as a whole .... now is international law different? You come up with very different answers depending on whether customary international law is a backdrop for all international law versus it just being a set of rules.

Unit 5 – INTERNATIONAL PROSECUTIONS

a. Early Experiences
  - Most trials were done in domestic courts.
  - WWI Germans were tried in German courts as a compromise because the peace delegation refused to accept the extradition list.
    - Only 12 went to trial, all on treatment of shipwreck survivors and POWs. Very light sentences.
  - WWII – The Nuremberg Trial sought to prosecute the following crimes:
    - Crimes Against Peace – waging aggressive war in violation of international treaties
    - War Crimes – violations of the laws and customs of war (like murder, slave labor, deportation of civilian populations, ill-treatment of POWs, killing hostages, plundering public and private property, and wanton destruction of towns, and devastation not justified by military necessity
    - Crimes Against Humanity – murder, extermination, enslavement, deportation, other inhumane acts against civilian populations. OR persecutions on political, racial or religious grounds in execution of or in connection with any other crime within the tribunal’s jurisdiction.
• *Jus ad bellum* – regarding the legality of the war itself (and the decision to go to war)
• *Jus ad bello* – the conduct of parties in the war
• Sovereignty provides an defense, in that a sovereign state is the highest entity and is separate from everything else
  o This is a reality in that usually only the losing nation gets prosecuted by the winners.

b. ICTY
• The UN Security Council felt the situation in Yugoslavia was a threat to international peace and security and they established the ICTY to bring justice and restore and maintain peace.
  o Established with Resolution 808 in 1993 under Chapter VII of the UN Charter
  o Normally the tribunal is established through a Treaty, which allows for a detailed examination and elaboration of the issues and allows the States participating to fully exercise sovereignty.
    ▪ Disadvantages: long time, may not get signatories of important countries
• The ICTY includes crimes under:
  o War Crimes
    ▪ The 1907 Hague Convention
    ▪ The Nuremburg Tribunals war crimes
    ▪ 1949 Geneva Conventions
  o Genocide
    ▪ Using the 1948 Genocide Convention
  o Crimes Against Humanity
    ▪ Aim at civilian populations and prohibited whether part of an armed international conflict or an internal conflict.
    ▪ “inhumane acts ... such as willful killing, torture, or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds”
• The ICTY’s subject matter jurisdiction was granted by the Security Council, and the tribunal does not have the authority to review the Council.

c. ICTR
• Genocide – Article 2
• Crimes Against Humanity – Article 3
• Incorporation of Article 3 of the Geneva Conventions through Article 4
• *** multiple offenses may be charged on the basis of the same acts in order to capture the full extent of the crimes committed.

d. ICC
• The International Criminal Court was created by the Rome Statute.
  • More restrictive than ICTR and ICTY
• The US doesn’t like it because they see it as a practical way to circumvent the UN and avoid that power structure.
• It is NOT a UN organ – it is a freestanding treaty court
Allowed the court to be created without amending the UN charter
However, this also deprives the court a level of universality that would be nice.
- States have to consent to the court’s jurisdiction by being signatories to the treaty
  - It is a court of last resort between nations or individuals.
  - A state can divest the ICC of jurisdiction in a case merely by opening up an investigation of the situation – HOWEVER, the ICC can look into whether it is a real investigation or not.
- How Does a Case Get Referred to the ICC?
  - The UN Security Council
  - The ICC Prosecutor
  - State Party to the Treaty
- How does the ICC Get Jurisdiction?
  - Limited to crimes that occurred after the court came into force (prospective and not retrospective jurisdiction)
  - Geographic jurisdiction is based on how the case gets to the court:
    - Referred by a State Party or initiated by the Prosecutor: jurisdiction extends to a non-party state only if that state consents to the Court’s jurisdiction AND the acts were committed in that state or the accused is a national of that State.
  - Personal Jurisdiction: limited to individuals – no juris. over organizations or states.
    - 18 years or older.
  - Subject Matter Jurisdiction: Over 4 Crimes
    1. genocide
    2. crimes against humanity
    3. war crimes
    4. aggression
      a. jurisdiction is without reservation except for 2 exceptions:
        i. a State may opt out of war crimes jurisdiction in regards to its nationals or crimes committed on its territory for 7 years after the Statue enters into force.
        ii. The ICC does not define aggression – the ICC will exercise jurisdiction once it has been defined.
- Who can Appeal an ICC Decision?
  - Prosecutor (decision, sentence, other)
  - Convicted person (decision, sentence, Other, reparations)
  - Victim’s legal representative (reparations)
  - Owner of property who is adversely affected (reparations)

Unit 6 – WAR CRIMES
- Different efforts have been made to lessen the unnecessary deaths in war: -- the purpose of the codes is to try and find some common humanity
  - 1907 Hague Convention
o 1863 Lieber Code
  ▪ created in the US Civil War
o 1949 Geneva Conventions

a. Geneva Law
  • 4 Geneva Conventions: -- limit military necessity as part of the professionalism of war.
    o Wounded and Sick
    o Wounded and Sick at Sea
    o Prisoners of War
    o Civilians
  • 2 Protocols
  • even if the opposing party in a conflict is not bound by the Geneva Convention, all signatories must still follow it.
  • applying Common Article 3 does not constitute recognition by the de jure gov’t of the adverse party or limits its ability to suppress a rebellion.
  • Geneva Law complements its implementation by dissemination through military and civilian instruction (training), individual penal

b. Types of War Crimes
  • War Crimes are any crimes that violate the laws of war
  • Grave Breaches are committed against the people and property protected in the Geneva Conventions:
    o Grave breaches provisions create universal mandatory criminal jurisdiction among contracting States. --- only applies when the conflict is international.
    o Under GWS and GWS Sea -- willful killing, torture, inhumane treatment, biological experiments, willfully causing great bodily harm or suffering, extensive destruction and appropriation of property.
    o Under GPW -- willful killing, torture, inhumane treatment, biological experiments, willfully causing great bodily harm or suffering, compelling a POW to serve in the forces of a hostile power, willfully depriving a POW of the rights of a fair and regular trial.
      ▪ POWs must be humanly treated and protected at all times, particularly against acts of violence, intimidation, and degradation.
      ▪ Article 4 defines exactly who is protected.
    o Under GC -- willful killing, torture, inhumane treatment, biological experiments, willfully causing great bodily harm or suffering, unlawful deportation, unlawful confinement, compelling someone to serve in the forces of a hostile power, taking hostages, extensive destruction and appropriation of property.
    o Other War Crimes
- Using poisoned or forbidden arms or ammunition
- Treacherous request for quarter
- Maltreatment of dead bodies
- Firing on undefended localities without military significance
- Abuse or firing on the flag of truce
- Misuse of the Red Cross emblem
- Using civilian cloths to conceal troops’ military character
- Improper use of buildings for military purposes
- Poisoning wells and streams
- Pillaging or purposeless destruction
- Slave labor (POWs or civilians)
- Killing spies or hostiles without a trial
- Violation of surrender terms.

- Civilians can be held responsible for violations too (they must be connected in some way to the armed conflict)
- Combatants have the right to kill other combatants and to some collateral damage.
- There is a big push to make environmental damage a war crime – but it isn’t yet ..... natural resources are civilian objects
- Criminal responsibility for air targeting carries a *mens rea*: intention or recklessness, not negligence.
- Must also consider the “military advantage test” – 1) is it a legitimate military target 2) were civilian damages disproportionate to the military advantage gained
  - **Per se illegal weapons** – must be specifically banned under treaties.
    - Dum-dum bullets
    - Poison arrows
    - Asphyxiating gases
  
-c. Nuclear Weapons and Proliferation
  - The use or threatening to use nuclear weapons is generally against the laws of war, but are not *per se* illegal. (says the ICJ)
    - Their use may be illegal as a disproportionate use of force
    - This opinion is persuasive but not binding
    - The *mens rea* for using nuclear weapons has 2 parts:
      - Intent to use the weapon
      - Intent to wipe out the population
      - .... the second part has to be specific, instead of intent to win the war.
  - **Nuclear Nonproliferation Treaty**
    - This does not eliminate nuclear weapons, but it says that the nations that have them will not help other nations from getting them (the 5 Great Powers)
    - The 5 Great Powers act as a check on each other
    - The 5 Power monitor non-nuclear states to make sure they don’t develop nuclear weapons – they can use it for power though.

- ICJ
The ICJ operates using advisory opinions.
- It blends continental and common law courts, but has dissenting opinions
  - this introduces ambiguity into the interpretation of the law.
- Any use or threat of use of force is illegal under the UN charter unless it is done in self-defense.

**Unit 7 – CRIMES AGAINST HUMANITY**

**Murder Type Crimes** – before or during the war (could be argued that they happen during peace time).
- murder
- extermination
- enslavement
- deportation
- other inhuman acts against any civilian population

**Persecution Type Crimes**
- persecution on political, racial, or religious ground.

a. **Nuremburg**
   - Crimes against humanity first surfaced at Nuremburg – different from war crimes because they are targeted solely at civilians.
   - IMT Article 6(c) said you have to have an armed conflict to get crimes against humanity. Crimes against the peace can count towards this and get you into CAH. but you also had to commit a CAH in connection with some other crime under the IMT’s jurisdiction (war crimes or crimes against the peace)
   - IMT also said that government participation is a material element of CAH because only when organs of a sovereign state participate in atrocities does it assume international proportions. – requires state action
   - genocide does not
   - Breaks down Crimes against humanity into Murder type Crimes and Persecution Type Crimes.

b. **Domestic Prosecutions**
   - The definitions of CAH aren’t arbitrarily set down by the victors but represent the expression of international law at the time the IMT was created. (same for other treaties and tribunals)
   - The criminal act of incitement to commit genocide has 2 parts:
     - The act of incitement must be direct and public
       - Words must be clear enough to be understood by the audience
       - *Mens rea* is the intent to directly provoke another to commit genocide
       - Also must have specific intent to commit genocide, and this can be inferred from the circumstances
   - Canadian Code definition of CAH has 3 parts:
     - One of the proscribed acts is committed
o The act occurs as part of a widespread of systematic attack
o The attack is directed against any civilian population or identifiable group
c. ICC, ICTR, ICTY
• ICC
  o CAH is one of the enumerated when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.
  o Uses the IMT list, but includes: imprisonment, torture, rape, enforced disappearance of persons, and apartheid. It also includes persecution crime for gender.
• ICTY – in the *Tadic* case, the court found that CAH did not require a connection to an international conflict, and could occur during peace time; like genocide and apartheid. – the Security Council defined it too narrowly.
• ICTY Requirements:
  o Committed in an armed conflict (internal or international)
  o Directed against civilians
  o Persecution only on “political, racial, and religious” grounds.
• ICTR CAH Requirements
  o Acts must be inhumane in nature and character as to cause great suffering or serious injury to body or to mental or physical health.
  o The acts must be part of a widespread or systematic attack (not necessarily violate – like apartheid)
  o Must be committed against civilians
  o Must committed on one or more discriminatory grounds namely: national, political, racial, or religious.
  o Must have actual or constructive knowledge of the attack
  o *** does not have to be state action – just must be some preconceived plan or policy.

Unit 8 – GENOCIDE

a. The Convention
• Article 1 – genocide can happen in peace or war
• Article 2 -- “Genocide means any of the following acts committed with an intent to destroy, in whole or in part, a national ethnical, racial, or religious group.”
  o Killing members of the group
  o Serious bodily or mental harm
  o Deliberate infliction on the group conditions of life calculated to bring about the group’s physical destruction
  o Preventing births within the group
  o Forcibly transferring children.
• Article 3 – the following acts are punishable
  o genocide
- conspiracy to commit genocide
- direct and public incitement to commit genocide
- attempt to commit genocide
- complicity in genocide
  a. doesn’t need intent
- The protected group is limited to “national, ethnical, racial, or religious” – excluding social and political groups and gender (these are “mobile groups”)
- The convention also requires specific intent – this makes it difficult to prosecute the people actually carrying out the killing, as he needs knowledge that he is carrying out a genocidal policy.
  o Intent can be inferred from circumstances and presumptions like the scale of the attack, and their nature.
- Multiple convictions for the same act are possible (cumulative charges)

b. International Prosecutions
- Joint criminal enterprise doctrine – not conspiracy, but a form of participation.
- **Defense** – it isn’t genocide if you aren’t trying to destroy a group and you are just trying to move them out of a specific area.

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