This is the branch of international law that is designed to hold individuals who are responsible for particularly serious violations of international law to account before the law. The idea that individuals, and not only States, could be found responsible for such violations started to gain ground after World War II with the establishment of the Nuremberg and Tokyo tribunals, which were set up to prosecute persons responsible for atrocious crimes.

This branch of public international law deals with international crimes: i.e., war crimes, crimes against humanity, genocide and potentially, aggression. One of the legal consequences of framing an act as an international crime is that states must prosecute and punish for its commission, including through the exercise of universal jurisdiction, which allows - or even obliges - any State to try alleged perpetrators present on a territory under its jurisdiction, even in the absence of any link between the accused and the State exercising jurisdiction.

The Geneva Conventions and Additional Protocol I establish that certain violations of IHL are to be considered “grave breaches”, and they must be prosecuted by High Contracting Parties on the basis of the principle of universal jurisdiction. Other serious violations of IHL are established by customary international law and by international criminal law treaties. Such serious violations of IHL, together with grave breaches, constitute war crimes.
IHL also contains certain rules which belong materially to international criminal law (e.g. Arts 86(2) and 87 of AP I on command responsibility [8] and Art. 87 of AP I on mutual assistance in criminal matters).

The jurisprudence of international criminal tribunals has greatly contributed to clarifying many IHL issues. For instance, the Tadic decision handed down by the International Criminal Tribunal for the former Yugoslavia [9] consolidated the criteria based upon which a situation may be classified as a non-international armed conflict [10].

The current system of international criminal law is implemented through national systems (military tribunals and ordinary courts) as well as international ad hoc tribunals, internationalized or mixed tribunals and the International Criminal Court [11].

See Individual criminal responsibility [12]; Genocide [4]; War crimes [13]; Crimes against humanity [3]; International Criminal Court [11]; International Criminal Tribunal for the former Yugoslavia (ICTY) [9]; International Criminal Tribunal for Rwanda (ICTR) [14];

### OUTLINE

- Chapter 13, Violations by individuals
- Chapter 1, Definition of Crimes [16]
- Chapter 4, The repression of war crimes [17]
- Chapter 5, The international criminal courts

### CASES
• Mali, Accountability for the Destruction of Cultural Heritage [18]
• El Salvador, Supreme Court Judgment on the Unconstitutionality of the Amnesty Law [19]
• ICC, Confirmation of Charges against LRA Leader [20]
• Spain, Universal Jurisdiction over Grave Breaches of the Geneva Conventions [21]
• International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo [22]
• Belgium, Prosecution of Terrorist Crimes in the context of Armed Conflict [23]
• South Sudan, Activities of Oil Companies [24]

LEGAL SOURCES

Grave Breaches

GC I, Art. 50 [25] (see ICRC updated Commentary [26])

GC II, Art. 52 [27] (see ICRC updated Commentary [28])

GC III, Art. 130 [29]

GC IV, Art. 147 [30]

AP I, Art. 85 [31]

Fundamental Guarantees
Mutual assistance in criminal matters

Penal prosecutions of criminal offences related to the armed conflict

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suggested readings:


DAVID Éric, Eléments de droit pénal international et européen, Brussels,
Further readings:


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Links