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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N°5: WHAT IS INTERNATIONAL CRIMINAL LAW ?

International Criminal Law is a branch of law which developed in particular with the creation of the two International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the International Criminal Court (in The Hague). International Criminal Law is part of Public International Law. It has a dual nature, as it is concerned both with international law and criminal law.

International Law is a system of rudimentary law. Indeed, when compared to a system of national law, there is no central body for establishing laws. Prior to the 20th century, international criminal law referred to the legal rules aimed at the repression of crimes « of an international nature », such as piracy, slavery, white slavery, which subsequently became trafficking in women, and trafficking in children, the distribution of obscene publications, counterfeiting, and trading in dangerous drugs, amongst other crimes. These are crimes against law of peoples (*jus gentium*), which infringe upon States or which constitute an offence against international morality. All these crimes are offences under national laws and have been subsequently the subject of international conventions. These crimes became part of international legal system following the convergence of national criminal legislation relating to the incrimination and repression of certain behaviours which are considered contrary to universal morality.

The distinctive feature of international criminal law as opposed to public international law is that it makes the individual solely the subject of an international offence to the exclusion of the State.

However, the international criminalisation of certain behaviours has long been purely prescriptive, i.e. without being accompanied by international repression mechanisms. Only national courts were competent to judge perpetrators of these crimes. The offence was defined at international level, but was punishable at national level. The creation in 1998 of the International Criminal Court (ICC) was the culmination of a series of attempts aimed at setting up a permanent court with powers to judge perpetrators of the most serious international crimes. Until then, it was on an « as and when required » basis, in the context of specific conflicts that «ad hoc» courts were set up to judge criminals identified by the international community.

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