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Prosecuting trafficking as a crime against humanity or a war crime under the Rome Statute

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Outline



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1. Approach to gender-related crimes in international law
2. What is international criminal law?
3. The jurisdiction of the International Criminal Court
4. Trafficking as a crime against humanity
5. Trafficking as a war crime

1. Approach to gender-related crimes in international law

- WW I and WW II



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A key area of concern from a feminist perspective is international crimes involving sexual violence, where the majority of victims are women.

Rape during war was publicly addressed in an international context during World War I in relation to rapes committed by German soldiers against Belgian women (ultimately the crimes went unpunished). After World War II, the international prosecution of war criminals did not include prosecution for the crime of rape.

1. Approach to gender-related crimes in international law

- the 1949 Geneva Conventions



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Geneva Convention IV

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.

/.../

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

1. Approach to gender-related crimes in international law

- the *ad hoc* tribunals



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The practice of the UN tribunals for former Yugoslavia and Rwanda, which have both recognized that forms of sexual violence can amount to

cruel treatment and outrages on personal dignity as a war crime, breaches of the Geneva Convention common Article 3 and violations of the laws and customs of war,

as well as torture and enslavement as a crimes against humanity;

and genocide.

1. Approach to gender-related crimes in international law

- the International Criminal Court



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The Trial Chamber in the *Bemba* case (Central African Republic)

Responsible as military commander of rape as a crime against humanity and rape as a war crime

Judgment 21 March 2016

The Pre-Trial Chamber in the *Ongwen* case (Northern Uganda)

Forced marriage can constitute a distinct crime against humanity

Decision on confirmation of charges 23 March 2016

2. International Criminal Law



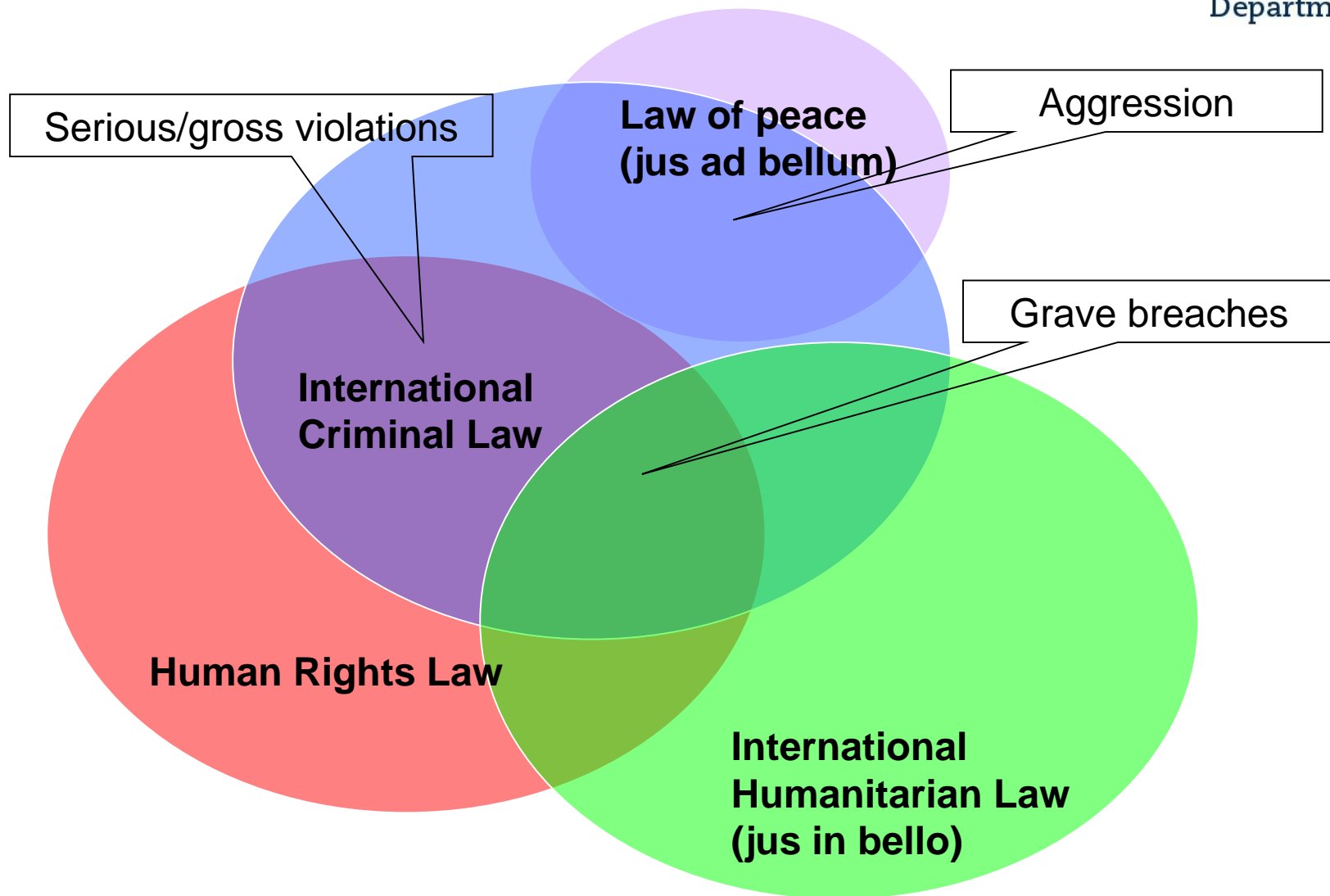
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International criminal law is a part of international law which deals with individual criminal responsibility for serious international crimes, more specifically: genocide, crimes against humanity and war crimes



2. Interrelated spheres of international law



3. The Court



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Picture: International Criminal Court

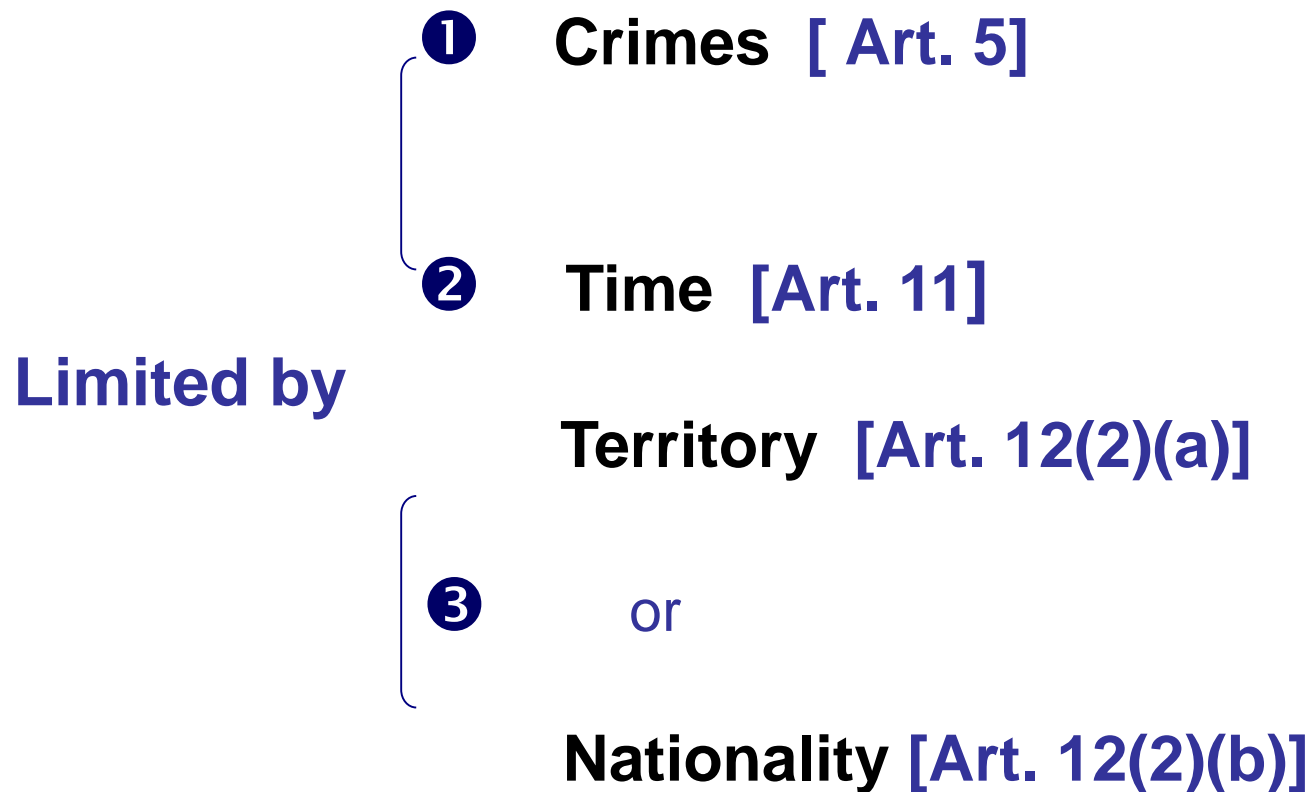
3. Jurisdiction of the Court

- conditions to the exercise of jurisdiction



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3. Jurisdiction of the Court

- exercise of jurisdiction: triggering mechanism



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- 1 Referral to the Prosecutor by a **State Party**
[Arts. 13(a) & Art. 14]
- 2 Referral to the Prosecutor by the **Security Council**
[Art. 13(b)]
- 3 **Prosecutor** acting *proprio motu* with authorization
from the Pre-Trial Chamber [Arts. 13(c) & Art. 15]

3. Jurisdiction of the Court

- Principle of complementarity



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- 1 The ICC will only investigate or prosecute, if a State is **unwilling** or **unable** to do so.
- 2 The ICC is a court of last resort.

4. Trafficking as a crime against humanity

- Article 7 of the Rome Statute



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Article 7 Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

/.../

(c) Enslavement;

/.../

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

/.../

4. Trafficking as a crime against humanity

- Elements of crime, enslavement as a crime against humanity



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1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.^[11]

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

4. Trafficking as a crime against humanity

- Elements of crime, enslavement as a crime against humanity

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[11]

[11] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

5. Trafficking as a war crime

- Article 8 of the Rome Statute



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Article 8 War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

/.../

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

5. Trafficking as a war crime

- Elements of crime – sexual slavery as a war crime



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1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[53]
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

5. Trafficking as a war crime

- Elements of crime – sexual slavery as a war crime



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1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[53]

[53] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.



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Questions?



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Thank you!

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