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Introducing modern technology in the search for war criminals

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Summary

After World War II, a dual system of laws were created in order to deter future conflicts and to protect human dignity. While the Universal Declaration of Human Rights developed responsibilities for states, the tribunals in Nuremberg and Tokyo established individual responsibility for core international crimes. During the years of the cold war, efforts to establish individual accountability were effectively blocked. After the fall of the Berlin wall, however, new institutions with limited territorial and temporal jurisdiction were established. Following the inauguration of the permanent International Criminal Court in The Hague in 2002, a project was initiated using information technology to improve work processes investigating and prosecuting complex and fact-rich cases. The legal tools aspire to equip users, inside and outside of the Court, with the legal information, commentaries and software required to work effectively with international criminal law and seek to serve as a complete virtual library on international criminal law and justice. The article explains in more details the components of the Legal tools Project, and how it has potential to assist national prosecutions of international crimes.

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Development of International Criminal Law

Formation of the dual system

On January 6th 1941, President Franklin D. Roosevelt presented his State of the Union address to the US Congress envisaging a world founded upon four essential human freedoms; freedom of speech and expression, freedom to worship God, freedom from want and freedom from fear. After the death of Roosevelt, the concept was brought to the newly founded United Nations by his wife Eleanor Roosevelt, and became a foundation for the Universal Declaration of Human Rights.

While efforts were underway to create a system of responsibility for states to protect their citizens, a parallel system was conceived with the aim of punishing individuals having committed war crimes. As early as in January 1942, nine occupied countries issued a resolution on German war crimes stating their intention to: “place amongst their principal war aims punishment through the channel of organized justice of those guilty and responsible for these crimes”. A United Nations War Crimes Commission was established following discussions between representatives of the Allied powers in London, and first met in January 1944 with a mandate to collect and investigate evidence of war crimes and to report to the governments concerned all instances in which a prima facie case existed.

A breakthrough in the discussions came in London on 8th of August 1945 with the drafting of the Charter of the International Military Tribunal (IMT) and the subsequent trial against the major war criminals in the Nuremberg Palace of Justice. By the time the Universal Declaration of Human Rights was adopted on 10th of December 1948, the trials against the 22 indicted persons had already been completed in Nuremberg and against 25 before the International Military Tribunal for the Far East (IMTFE). A large number of countries had in addition either finalised or were about to finalise national prosecutions.

While the Universal Declaration of Human Rights initiated a process of both normative foundation and national implementation, the rise of the cold war blocked further developments within the field of individual criminal justice for atrocities. Apart from a handful of national prosecutions, mainly related to World War II, the years from 1955 until the fall of the Berlin wall in 1989 have been described as the “Years of Silence”.

The rise of the international criminal courts

After the end of the cold war, efforts commenced to revive the work of the International Law Commission on drafting a statute for a permanent international criminal court. At the same time, the outbreak of wars in the West Balkans eventually led to the establishment of the first international criminal court since the war crimes courts in Nuremberg and Tokyo. The United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) was established by a Security Council resolution adopted in 1993 and again a year later they adopted a resolution establishing the International Criminal Tribunal for Rwanda as a response to the

genocide that had taken place earlier in 1994. Both Courts have the jurisdiction to try war crimes, crimes against humanity and genocide committed on the territory of former Yugoslavia for the ICTY and in Rwanda for ICTR.

The impact of the two Ad Hoc Courts have been questioned in relation to their relatively large budgets compared the judicial outcome. The tribunals have been situated outside the territories in which the crimes occurred, and have by many been accused of being biased based on their selection of individuals for prosecution. Partly based on this criticism, the UN Security Council has blocked several new attempts at establishing new, ad-hoc international tribunals. In the mid 1990s two new options were instead explored: first the International Law Commission in 1994 presented their final draft statute for a permanent international criminal court to the UN General Assembly; second, several hybrid or internationalised courts were established in synergy between the countries where the crimes were committed and international assistance, to various degrees. Courts include the Extraordinary Chambers in the Courts of Cambodia, the Special Panels for Serious Crimes in East Timor, the Special Court for Sierra Leone, the Bosnian War Crimes Chambers and the Regulation 64 Panels in Kosovo.

As for the work on a permanent international court, the last amendments were made on the statute in 1998, and in Rome on the 17th of July, the Statute of the International Criminal Court was adopted. It entered into force with the 60th ratification on the 1st of July 2002.

According to the Court's statute, it has jurisdiction over crimes against humanity, genocide and war crimes. For the crime of aggression, the Court will only be able to exercise its jurisdiction upon agreement on a definition of the crime.

The Court does not exercise universal jurisdiction, but may only investigate and prosecute if:

- The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;
- The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or
- The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.

It can only try crimes committed after the 1st of July 2002, although it has been argued that this limitation does not apply in case of Security Council referrals.

The Court works according to a principle of complementarity. This implies that it may only hear cases if the states are either unwilling or unable to investigate and prosecute. In addition, a case will be inadmissible if it is not of sufficient gravity to justify further action by the Court.

The Court has since 2002 opened investigations in four situations; the Democratic Republic of Congo, Uganda, the Central African Republic and Darfur in Sudan. The Pre-Trial Chambers have issued twelve arrest warrants and five persons are currently in detention awaiting either pre-trial hearings or trial.

The development of a new discipline of law

Although the concept of laws of war is not new, criminalisation of acts were only effectively implemented after World War II in parallel to the development of the Universal Declaration of Human Rights. The statutes and jurisprudence of the international tribunals established in the 1990s have helped shape a new and highly specialised discipline of law – international criminal law. In contrast to national crimes, the context in which international crimes are committed makes them both legally and factually complex and resource intensive to investigate. Most international crimes are committed within an armed conflict and include a large number of victims and offenders. They are committed across large geographical areas, often including direct or indirect support of governments in planning and providing logistical support for attacks. Due to the security situation and lack of cooperation from states, crime scenes are seldom investigated and witnesses are not interviewed until weeks, months or years have passed.

The complexity of crimes has required the expertise of highly qualified and specialised professionals. When the tribunals were first established in the 1990s, most lawyers and investigators brought with them working practice and methodology from their respective national jurisdictions. Electronic tools introduced at the tribunals, like the Case Map analysing system, had been developed and applied with national crimes in mind. Towards the end of the 1990s, there were shifts in staffing at the Courts, and it became more common that personnel had specialised within the field of international criminal law during their studies and gained practical experience from one or several of the international or internationalised courts.

The International Criminal Court (ICC) and the Legal Tools Project

Shortly after the establishment of the ICC in 2002, analyses were made of work procedures both at the international tribunals and with several larger national prosecution agencies. The aim was to reveal weaknesses in the processes and develop strategies and tools tailored for the investigation and prosecution of complex international crimes. This process eventually resulted in the development of the Legal Tools Project at the Office of the Prosecutor of the ICC. The project was initially designed and supervised by the head of the Legal Advisory Section, Norwegian lawyer Morten Bergsmo, with the assistance of fifteen legal assistants and interns. In 2005, the ICC Prosecutor decided to share the services comprising the legal tools with the entire Court and, to the extent feasible, with the general public. As a consequence, a court-wide Legal Tools Advisory Committee (LTAC) was established to provide operational guidance on the development of the tools.

The legal tools aspire to equip users, inside and outside of the Court, with the legal information, commentaries and software required to work effectively with international criminal law as well as seeking to serve as a complete virtual library on international criminal law and justice. The end result is expected to harmonize implementation, understanding and application of international criminal law at all levels and in all countries. The Tools will also facilitate research in this new area of international law which draws on multiple legal subjects including international humanitarian law and human rights law.

The project currently comprises three main categories of legal tools:

- a. The Legal Tools Database
- b. Legal commentaries;

- c. The case management system *Case Matrix*.

The Legal Tools Database

Although legal methodology may differ, all practitioners of law are required to apply valid legal sources when solving legal questions. Within national legal systems, the central legal sources are most often accessible through either print collections or increasingly through electronic publishing.

Within the field of international law, however, the situation is more complex. Relevant legal sources are published by a number of different institutions, in different countries, format and languages. Unless source documents are made available in central collections, legal practitioners will have problems gaining access to relevant sources and diverging legal doctrines may develop. Collecting international legal sources are time and resource demanding leading to high subscription rates or purchase costs through private databases or publishing houses.

Numbers of judicial institutions and practitioners working within the field of international criminal law are increasing rapidly. Internal armed conflicts with serious human rights violations, the promotion of the principle of universal jurisdiction and the establishment of the ICC are all factors requiring accessibility of relevant legal sources.

The Legal Tools Database of the ICC is the first and most complete database containing relevant legal sources of international criminal law. It consists of 13 different categories of documents, including international legal instruments, judicial decisions from international and national courts and academic articles. Currently more than 40,000 documents have been collected, and together these comprise a unique collection of legal reference material in international criminal law.

Documents have been collected and registered by institutions having signed individual co-operation agreements with the ICC. These include the Norwegian Centre for Human Rights, the International Research and Documentation Centre for War Crimes Trials at the University of Marburg in Germany, the Non Governmental Organisation TRIAL based in Switzerland, the University of Graz in Austria, the Hague Institute for the Internationalisation of Law (HiiL) and the T.M.C. Asser Institute, both in the Netherlands and the Human Rights Law Centre at the University of Nottingham in the United Kingdom.

The database has been designed by the Institute of Informatics and Law at the University of Saarland in Germany, and is available free to the public at <http://www.legal-tools.org> .

The Commentaries

Upon collection, all documents are reviewed, registered and analysed. The most relevant passages of the most significant texts are extracted and used as a basis for developing legal commentaries which will guide the readers on the law and on evidence. There are currently two commentaries, both of which draw on jurisprudence from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The commentaries contain more than 7000 pages of digestions of jurisprudence relevant to the elements of crimes (the Elements Commentary) and on evidence applied to prove the elements (Means of Proof document). While the legal texts are made

available to the general public through the web based Legal Tools Database, the commentaries are available to users of the Case Matrix application.

The Case Matrix

Investigating serious violations of human rights and crimes under international law is usually both time and resource demanding. The cases become fact-rich, and unless evidence is organised and structured, loss of case oversight becomes a risk.

The Case Matrix is a law-driven case management application, made for the investigation, prosecution, defence and adjudication of factually complex cases such as core international crimes cases. The application can be adapted to any criminal justice system and to different user groups such as judges, investigators, prosecutors, defence counsel, victim's representatives and NGOs.

The Case Matrix has three main functions: first it contains an electronic compressed library of relevant legal sources such as treaties, legislation, indictments and judgments from both national and international institutions; second it incorporates the two legal commentaries on the elements of crimes of the ICC and on evidence; third, the Matrix provides a database service to organise and present information and potential evidence in core international crime cases. This gives an "x-ray" overview of the evidentiary status of a case at any stage from investigation through appeals and judicial review. Evidence is easily included through hyperlinks and text. The database can be customised to meet the needs of various user groups.

The Case Matrix has been designed on an open source platform using Apache and MySQL. Technical development has been implemented by the Institute of Informatics and Law at the University of Saarland in Germany. It has been created not only for use within the ICC, but also for practitioners outside the Court and is distributed free of charge subject to signing a case matrix understanding with the ICC. By making the Case Matrix available outside the ICC, selected users will receive a cost-effective tool which improves work processes relating to fact-finding, documentation, investigation and prosecution of serious human rights violations and international crimes.

In 2008, the designers of the Case Matrix, Morten Bergsmo and Ralph Hecksteden, were granted the international 'Dieter Meurer Prize for Legal Informatics' by the German Association for Computing in the Judiciary and the German-language legal information service provider 'juris GmbH'.

Strengthening the national judicial systems

Focus has since the 1990s been on international institutions, such as the ICTY, ICTR and the ICC. The two Ad Hoc courts are currently in a process of implementing a completion strategy, and plan to end all proceedings by 2012. In a similar way, the Special Court for Sierra Leone is downsizing and the Extraordinary Chambers in the Courts of Cambodia may finalise all cases by the end of 2010. Although international institutions are slowly winding down, the situation is quite the opposite within national jurisdictions. The complementarity principle guiding the ICC requires states to investigate and prosecute. In parallel, globalisation and migration across borders increase the likelihood of war criminals seeking refuge in countries other than where the crimes were committed. As a consequence, several countries have established national units to investigate and prosecute potential war criminals resident within its territory. In many countries, immigration authorities are also establishing

routines in order to detect persons that may have committed serious crimes among asylum seekers.

The shift of focus from the international to the national level has generated a need to train and support practitioners outside the international institutions. Taking this into consideration, the ICC Legal Tools Project of the ICC has been designed with national users in mind. All tools are provided for free, installation and training are provided to users and technical solutions are developed to also assist those with little or no experience in international criminal law. Over the last few years, the Case Matrix has been installed with a large number of users, both at the international and national level. It has so far been translated into Bahasa Indonesia for use in Indonesia, Khmer for use in Cambodia and is currently undergoing translation into Bosnian/Croatian/Serbian for use in the Western Balkans. Users include judges, prosecutors, defence council and NGOs.

One of the most interesting new developments of the Case Matrix is the introduction of a new fact analysing tool. The tool will enable the user to document human rights violations and classify them in a way that will assist investigators and prosecutors in analysing what type of crimes may have occurred and possible systematic characters of attacks. The new function symbolically illustrates the linkages between international criminal law and human rights law, and between state responsibility as envisaged in the Universal Declaration of Human Rights and individual responsibility for core international crimes.

In order to find more information and access to the tools, you may go to the pages of the ICC: http://www.icc-cpi.int/legal_tools.html