JCE IN INTERNATIONAL LAW

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- UN Security Council Resolution 827 (1993)

  - approved report S/25704 of UN Secretary General, with the Statute of the International Tribunal as an annex, establishing the International Tribunal for the Former Yugoslavia (ICTY)

- Statute of the ICTY (Arts. 2-5)

  - grave breaches of the Geneva conventions of 1949.

  - violations of the laws or customs of war

  - genocide

  - crimes against humanity

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■ Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993) (S/25704, 3 May 1993), para.34:

" In the view of the Secretary-General, the application of the principle nullum crimen sine lege requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law."

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■ Tadic Case: The Judgement Of The ICTY Appeals Chamber, 15 July 1999. para. 220:

   JCE is firmly established in customary international law and in addition is upheld, albeit implicitly, in the Statute of the International Tribunal.

   This claim the Appeal Chamber based on:

   a) cases: Essen Lynching (British military tribunal), Kurt Goebel et al. (BorkumIsland) the USA Military tribunal, D'Ottavio et al.;

   b) conventions: International Convention for the Suppression of Terrorist Bombing, 1997, Art. 2, para.3c , Statute of the International Criminal Court, 1999 ("Rome Statute"), Article 25.

   c) national laws

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■ Pursuant to Article 2(3)(c) of the Convention for the Suppression of Terrorist Bombing, 1997 offences envisaged in the Convention may be committed by any person who:

"..[i]n any other way [other than participating as an accomplice, or organising or directing others to commit an offence] contributes to the commission of one or more offences asset forth in paragraphs 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned."

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■ Pursuant to Art.25 of the Rome Statute, para.3 d:

"[In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ...]

(d) In any other way [other than aiding and abetting or otherwise assisting in the commission or attempted commission of a crime] contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

ii. Be made in the knowledge of the intention of the group to commit the crime.

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■ The Rome Statute Article 21. Applicable law

1.   The Court shall apply:

(a)   In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b)   In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

c)   Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

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- 2. The Court may apply principles and rules of law as interpreted in its previous decisions.

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Thank you for your attention!