

THE CONCEPT OF INTERNATIONAL CRIMINAL LAW AND ITS RELATIONSHIP WITH TRANSNATIONAL CRIMINAL LAW AND CONFLICT OF LAWS

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ABSTRACT: Adapted from a recent lecture, this paper provides an historical and analytical overview of the development of the discipline of International Criminal Law identifying links and points of distinction from the cognate disciplines of Transnational Criminal Law and Conflict of Laws.

Key words:

- International criminal law
- International law of jurisdiction
- Conflict of laws
- Suppression conventions

1. INTRODUCTION

The distinguished editors of a 2021 collection of essays on the history of Transnational Criminal Law (to which I contributed) offer some definitions in their Introduction.^{1,2} They distinguish between a narrow group of ‘crimes under international law’ and a broader category which includes ‘transnational criminal law:’

Crimes under international law (core crimes) ‘are any crimes that involve direct responsibility under international law.’³ These so-called ‘core crimes’⁴ genocide, crimes against humanity, war crimes and aggression, are the ‘most serious crimes of concern to the international community.’⁵ In contrast, the term ‘international crime’ is best reserved to include all crimes with an international element, no matter how peripheral.⁶

International Criminal Law (*lato sensu*) means all norms of criminal law that have some relationship with an international or foreign law norm whether direct or indirect

* Board of Governors Professor Emeritus, Rutgers Law School. This essay is based on a lecture delivered virtually at the International Nuremberg Principles Academy, 1 August 2022.

¹ Neil Boister, Sabine Gless and Florian Jeßberger (eds), *Histories of Transnational Criminal Law* (OUP 2021).

² *ibid* 4.

³ The reference here is to Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law* (4th edn, OUP 2020) para 97.

⁴ An ‘inter alia’ reference here is to Bruce Broomhall, *International Justice and the International Criminal Court* (OUP 2004) 10.

⁵ The reference here is to the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, Preamble (4), (9) and art 5.

⁶ A footnote here refers to ‘[a] number of writers [who] distinguish between international crimes in the narrow sense (crimes under international law) and in the broad sense.’

Smiths Review Conflict Of Laws

Joacim Rocklöv



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