

Justifying punishment in International Criminal Law

The applicability of domestic principles to international crimes

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Abstract

The most salient characteristic of International Criminal Law (ICL) is its ability to inflict punishment on individuals. As punishment always requires justification, this study investigates what justifications ICL uses. Having concluded that ICL has heavily borrowed from domestic criminal law, chapter two outlines the various domestic justifications for punishment. Chapter three identifies retribution and deterrence as the main justifications of punishment in ICL. In chapter four and five the applicability of these two justifications for ICL is analyzed. It is found that the notion of individual moral culpability, so essential for the retributive justification, poses problems due to the collective nature and specific social environment of international crimes. These same circumstances also mean that a deterrent effect is hard to establish. However, political and military leaders are found to be more culpable and operate more rational, which means that punishment might have a deterrent effect on them. It is therefore concluded that ICL's current focus on those bearing the greatest responsibility, born out of necessity, should be sustained for reasons of justifiability.

List of abbreviations

ICC	International Criminal Court
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission
IMT	International Military Tribunal (Nuremberg)
IMTFE	International Military Tribunal for the Far East
JCE	Joint Criminal Enterprise
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

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