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17TH ANNUAL ANZSIL CONFERENCE: THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD

THIS ISSUE INCLUDES CONTRIBUTIONS BY:

His Excellency The Honourable Sir Anand Satyanand GNZM QSO
Andrew Byrnes
Andrea Durbach
Roger S Clark
Christopher C Joyner
Colin Keating
Christopher Michaelsen
Jacqueline Mowbray
Catherine Renshaw

Victoria
UNIVERSITY OF WELLINGTON
Te Whare Wānanga
o te Ūpoko o te Ika a Māui

FACULTY OF LAW
Te Kauhanganui Tātai Ture

Faculty of Law
Victoria University of Wellington
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Address for all other communications:

The Student Editor
New Zealand Journal of Public and International Law
Faculty of Law
Victoria University of Wellington
PO Box 600
Wellington
New Zealand
e-mail nzjpil-editor@vuw.ac.nz
fax +64 4 463 6365

THE INTERNATIONAL CRIMINAL LAW SYSTEM

Roger S Clark*

In this paper, Professor Clark considers the place of international criminal law as part of the modern multilateral agenda. The subject is surveyed under three broad headings: international crime stricto sensu*, suppression conventions and the Security Council as suppressor and norms and standards in crime prevention and criminal justice.*

The cover of the programme for the Australia and New Zealand Society of International Law Annual Conference 2009 featured a delightful photograph of a statue of the late Prime Minister, Peter Fraser. The statue stands at the entrance to this historic Government Building, which now houses the Law Faculty of my alma mater, Victoria University. He has his hat and coat in one hand and a characteristic briefcase in the other.

As I passed him on my way in, he said "Morning Roger, I understand that you are on your way to the Multilateralism Conference. Looks like a great event."

"Yes," I said, "but how do you know me, I was only a 10 year-old in Wanganui when you died."

"Ah," he responded, "I'm an immortal now – we can do those things."

We chatted for a while, as one does on such an occasion. I reminded him of his great moment of fame on the world stage at the San Francisco conference in 1945, which established the United Nations. He and the leader of the Australian delegation, Herbert Evatt, fought desperately against the inclusion of veto powers in the United Nations Charter.[1] "It wasn't to be," he said wistfully.

"Putting up with the veto was a serious blow to multilateralism, particularly mutual security. The United Nations is a very useful body, especially for trying to avoid conflict by fostering social

* Rutgers Law School, Camden, New Jersey.

1 See Michael Bassett and Michael King *Tomorrow Comes the Song: A Life of Peter Fraser* (Penguin Books, Auckland, 2000) 290-294; Hugh Templeton (ed) *Mr Ambassador: Memoirs of Sir Carl Berendsen* (Victoria University Press, Wellington, 2009) at 171-183.

development,[2] but we could have made it so much more powerful if we could have done it differently with the veto. And I wish we had been much more positive in pushing for an International Criminal Court later in the forties.[3] We rather dropped that ball. I'm glad it finally saw the light of day in 1998 – and that there is some progress in making aggression criminal, regardless of who does it.[4] One of my other regrets is that the Americans did not put the Japanese Emperor in the dock at the Tokyo Trial. We and the Australians wanted that too, but MacArthur would have none of it.[5] 'Realpolitik' it would have been called a bit later."

"Have you any advice for me?" I asked, thinking it time to make a polite departure.

"Yes," said he. "Stave off becoming immortal as long as you can – it can lead to too many regrets if you are no longer out there fighting the good fight!"

This is a Conference on the Future of Multilateralism. A reasonable question is whether multilateralism has a past or a present in International Criminal Law. With that answered, it might be possible to predict whether it has a future. I argue in what follows for the past, the present and the future. A second reasonable question is whether there is such a thing as "the international criminal law system". If there is, it is a pretty loose one. I think it is better to think of a *set* of overlapping multilateralism issues that hang loosely together under the rubric. I propose to survey the subject using three rough and ready categories which I'll call "International Crime *Stricto Sensu*", "Suppression Conventions and the Security Council as Suppressor" and "Norms and Standards in Crime Prevention and Criminal Justice". The "international community as a whole"[6] has a stake in each of these endeavours.

I International Crime Stricto Sensu

There is the most publicly visible material first, symbolised by Nuremberg and Tokyo and now the International Criminal Court: international tribunals to try the perpetrators of great evil for

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2 Most of the work of the United Nations in criminal justice fits loosely under the aegis of Article 55 of the Charter of the United Nations, notably its reference to social progress and development and to human rights and fundamental freedoms.

3 He must have been referring to Justice Northcroft's "Need for a Permanent International Criminal Court" *Memorandum for the Prime Minister upon the Tokyo Trials 1946-1948* (17 March 1949).

4 He was referring to the Report of the ICC's Special Working Group on the Crime of Aggression which has proposed amendments to the Rome Statute of the International Criminal Court to enable the Court to exercise its jurisdiction over the crime of aggression: *Report of the Special Working Group on the Crime of Aggression*, ICC-ASP/7/SWGCA/2 (2009).

5 Neil Boister and Robert Cryer *The Tokyo International Tribunal: A Reappraisal* (Oxford University Press, Oxford, 2008) at 65-69.

6 Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2002) [Rome Statute], preamble.

"crimes under international law". Nuremberg[7] and Tokyo[8] spoke of crimes against peace (or "aggression"), war crimes and crimes against humanity. Genocide, enshrined in its own Convention in 1948,[9] was a spinoff of the "persecution" part of crimes against humanity. The Nuremberg and Tokyo models were utilised, minus the crime of aggression, under Security Council auspices, in the Tribunals for Former Yugoslavia[10] and Rwanda.[11] Those bodies are winding up what, ultimately, has been a fairly successful series of prosecutions of many of the leaders most responsible for the crimes committed there.[12]

Eleven years ago today, I had the honour to be in Rome for the Diplomatic Conference that finalised the Rome Statute of the International Criminal Court. Well, more or less finalised. While the crime of aggression is included in the Statute as one of the four crimes over which the Court has subject-matter jurisdiction (along with genocide, crimes against humanity and war crimes),[13] further work was required to define the crime and set out the conditions for the "exercise" of that jurisdiction.[14] That work is near completion[15] and will be presented at the Review Conference on the Statute that is scheduled for Kampala in June 2010. The political impact of bringing law to bear on those who would plan and execute the conquest of others is stunning and still has some detractors, especially among the larger powers. But it was exactly what Justice Robert Jackson had in mind for the future in his prosecution at Nuremberg.[16] In some form, I predict, the aggression provision will find its way into the Rome Statute.

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7 Charter of the Nuremberg International Military Tribunal, annexed to the 1945 London Agreement for the Establishment of an International Military Tribunal (8 August 1945) [Nuremberg Military Tribunal Charter], art 6.

8 Charter of the International Military Tribunal for the trial of the major war criminals in the Far East (19 January 1946) [Tokyo Military Tribunal Charter], art 6.

9 Convention on the Prevention and Punishment of the Crime of Genocide (opened for signature 9 December 1948, entered into force 12 January 1951).

10 Created by SC Res 827, S/Res/827 (1993).

11 Created by SC Res 935, S/Res/935 (1994).

12 William Schabas *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press, Cambridge, 2006).

13 Rome Statute, above n 6, art 5(1).

14 Rome Statute, above n 6, art 5(2).

15 *Report of the Special Working Group on the Crime of Aggression*, above n 4.

16 See Roger S Clark "Nuremberg and the Crime against Peace" (2007) 6 Wash U Global Stud L Rev at 527.

The Court is vigorously up and running; it has 108 States Parties – and counting;[17] the wheels of justice grind slowly, but it has its first cases; it has defendants in custody and some more are being sought. The way in which the Prosecutor has annoyed the President of Sudan by obtaining a warrant for his arrest[18] suggests that the Prosecutor, Luis Moreno Ocampo, is doing something right!

One significant (and under-predicted) impact of the Rome Statute's "complementarity" regime, which gives priority in the exercise of jurisdiction over the treaty crimes to states able and willing to do so,[19] is that many countries that had not adequately legislated these crimes into domestic law have now chosen to do so. New Zealand[20], Australia[21] and Samoa[22], all represented at this Conference, are good examples. The Court is here to stay; its crimes are being domesticated.

A few years ago I was wont to predict that the Security Council would create no new ad hoc tribunals, but like most of my predictions in this area, I was wrong, and the Hariri Tribunal for Lebanon came into being.[23] Hybrid tribunals (of a mixed national and international nature) are apparently also here to stay.[24]

II Suppression Conventions and the Security Council as Suppressor

Neil Boister has written about the concept of suppression conventions,[25] treaties under which the parties obligate themselves to criminalise, and otherwise suppress, activities that the parties agree should be criminalised in domestic law, if they are not already. There is a history to such efforts, but its provenance has burgeoned since 1945. I have written elsewhere of the British efforts to obtain agreement to the criminalisation of the slave trade at the Congress of Vienna in 1815,[26] efforts that were not immediately totally successful. But, in a pattern that has been repeated in other areas, the British managed to achieve their suppression goals (at least at the level of the law-in-the-

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17 Chile and the Czech Republic ratified soon after the Australian and New Zealand Society of International Law Conference, bringing the tally to 110.

18 For developments, see "Updates - Darfur, Sudan" ICC <www.icc-cpi.int>.

19 Rome Statute, above n 6, preamble, art 1 and art 17.

20 International Crimes and International Criminal Court Act 2000.

21 International Criminal Court Act 2002 (Aus).

22 International Criminal Court Act 2007 (Samoa).

23 SC Res 1757, S/Res/1757 (2007). Unlike other ad hoc tribunals that apply international law, this one will apply solely domestic (Lebanese) law. See James Cockayne "Foreword" (2007) 5 JICJ 1061.

24 See Anees Ahmed "Making hybrid criminal tribunals a better solution for post-conflict societies" (paper presented to ANZSIL Conference, Victoria University of Wellington, Wellington, July 2009).

25 Neil Boister "Human Rights Protections in the Suppression Conventions" (2002) 2 H R L Rev 199.

26 Roger S Clark "Steven Spielberg's *Amistad* and Other things I have Thought About in the Past Forty Years: International (Criminal) Law, Conflict of Laws, Insurance and Slavery" (1999) 30 Rutgers LJ 371 at 397.

books) by bilateral agreements with Portugal, Spain and later many others, including a number of what the Consolidated Treaty Series calls "African Potentates". Multilateral agreements followed. The multilateral-treaty-as-promise-to-make-criminal (regularly, but not invariably, followed by appropriate legislation)[27] has since been a feature of international life. Suppression treaties deal both with the mundane, such as damage to submarine cables,[28] the counterfeiting of (foreign) currency,[29] drugs,[30] pornography,[31] and the traffic in persons,[32] and the exotic, such as war crimes,[33] genocide,[34] torture[35] and the disappearance of persons.[36] A particularly interesting subset of these

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27 Perhaps the most important feature of such treaties is that the ratification process generates attention to the suppression features of domestic law. Much of the modern suppression traffic has been generated by the United States which has used such treaties as a vehicle to export to other legal systems such concepts as ancillary offences like money laundering, prosecutorial techniques like controlled delivery and "mini-MLATs" – stripped down mutual legal assistance agreements, specific to the particular topic (especially drugs).

28 Convention for the Protection of Submarine Telegraph Cables (opened for signature 14 March 1884, entered into force 1 May 1888).

29 International Convention for the Suppression of Counterfeiting Currency (opened for signature 20 April 1929, entered into force 22 February 1931).

30 Beginning with the International Opium Convention, The Hague, 23 January 1912, and continuing, for example, with the Single Convention on Narcotic Drugs (opened for signature 30 March 1972, entered into force 8 August 1975), and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (opened for signature 20 December 1988, entered into force 11 November 1990).

31 Beginning with the Agreement for the Repression of Obscene Publications (opened for signature 4 May 1910, entered into force 15 September 1911).

32 International Convention for the Suppression of the White Slave Traffic (opened for signature 4 May 1910, entered into force 21 June 1951). See also Convention on the Traffic in Persons and the Exploitation of the Prostitution of Others (opened for signature 2 December 1949, entered into force 25 July 1951) GA Res 317, UN GOAR, 4th sess, 264th plen mtg (1949); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (opened for signature 15 November 2000, entered into force 25 December 2003); GA Res 55/25, A/Res/55/25 (2000).

33 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (opened for signature 12 August 1949, entered into force 21 October 1950); Geneva Convention relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (opened for signature 12 August 1949, entered into force 21 October 1950); Geneva Convention relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950) and the Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International and Non-International Armed Conflicts (Protocols I and II) (opened for signature 8 June 1977, entered into force 7 December 1978).

34 Convention on the Prevention and Punishment of the Crime of Genocide, above n 9.

35 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) GA Res 39/46, A/Res/39/46 (1984).

treaties includes the United Nations Convention against Transnational Organized Crime and its Protocols[37] and the Convention against Corruption[38]. These are aimed at major crime and its accompanying corruption. Members of another striking subset are the terrorism treaties, beginning with the Hague Hijacking Convention in 1970[39] and culminating more recently in the Convention against Nuclear Terrorism[40]. These all proceeded on the basis that, while we cannot agree on exactly what terrorism is, we can agree that there are some manifestations of it like blowing up aircraft,[41] seizing ships[42] and taking hostages[43] that are unacceptable.

The Security Council has in the past decade entered the field as lawmaker. Christopher Michaelsen has spoken on the Council's Resolution 1267 sanctions regime against the Taliban.[44] It has gone on from there in what has to be a dubious exercise of its Chapter VII powers[45] to instruct

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36 International Convention for the Protection of All Persons from Enforced Disappearances (opened for signature 20 December 2006, not yet in force) GA Res 61/177, A/Res/ 61/177 (2006).

37 United Nations Convention Against Transnational Organized Crime (opened for signature 15 November 2000, entered into force 29 September 2003); GA Res 55/25, A/Res/55/25 (2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, annex II (opened for signature 15 November 2000, entered into for 29 September 2003); Protocol against the Smuggling of Migrants by Land, Sea and Air, annex III (opened for signature 15 November 2000, entered into force 28 January 2004); Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (opened for signature 31 May 2001, entered into force 3 July 2005), GA Res 55/255, A/Res/55/255 (2001).

38 United Nations Convention Against Corruption (opened for signature 31 October 2003, entered into force 14 December 2005); GA Res 58/4, A/Res/58/4 (2003).

39 Convention for the Suppression of Unlawful Seizure of Aircraft (opened for signature 16 December 1970, entered into force 14 October 1971).

40 International Convention for the Suppression of Acts of Nuclear Terrorism (opened for signature 13 April 2005, entered into force 7 July 2007); GA Res 59/290, A/Res/59/290 (2005).

41 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (opened for signature 23 September 1971, entered into force 26 January 1973).

42 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, entered into force 1 March 1992) together with Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (opened for signature 10 March 1988, entered into force 1 March 1992). See Maritime Crimes Act 1999.

43 International Convention against the Taking of Hostages (opened for signature 17 December 1979, entered into force 3 June 1983). See Crimes (Internationally Protected Persons and Hostages) Act 1980.

44 Christopher Michaelsen "The Security Council's Al Queda and Taliban Sanctions Regime: 'Essential Tool' or Increasing Liability for the UN's Counterterrorism Efforts?" (2010) 33(5) Studies in Conflict and Terrorism at 448.

45 See generally Craig Forcese "Hegemonic Federalism: The Democratic Implications of the UN Security Council's 'Legislative' Phase" (2007) 15 VUWLR at 175; Axel Marschik "Legislative Powers of the

states to take legislative and executive action in areas which would normally have awaited the slow accretion of treaty ratifications and implementing legislation. Security Council Resolution 1373, for example, insisted that Member States take actions that were cannibalised from the Convention against the Financing of Terrorism.[46] Many obeyed. And the Council set up a regime designed to at least monitor performance.[47] If these activities should now be regarded as intra vires the Council, and I have my doubts, they represent a significant example of "subsequent practice" in creatively expanding a constitutional instrument.[48]

Some, or all, of the suppression conventions can usefully be described, at least for pedagogical purposes, as examples of "transnational" criminal law, by way of distinction from the more "properly" described "international" ones like genocide and aggression.[49] They are perhaps crimes "of concern" to international law rather than crimes "under" international law. Yet they are not necessarily different in some intrinsic way from the others and there seems no reason why, with the passage of time, a particular prohibition could not find itself "up-graded" to the "international" category. I am reminded of the debate in Rome about including "drugs and terrorism" within the jurisdiction of the Court as among the "most serious crimes of concern to the international community as a whole".[50] That proposal made a lot of sense to a small country with limited prosecutorial resources, and Trinidad and Tobago had a lot of small state support for its proposals to that effect. The much-touted "problem" of defining terrorism was easily solved for these purposes (as the International Law Commission suggested) by incorporating by name a list of the then existing terrorism conventions and having a procedure to add more.[51] But the larger powers were not enthusiastic – the solution of domestic prosecution is working well, as they saw it, and the ICC would be a body with limited resources. In one of my more cynical moments at Rome, I commented to an observer that the big powers were serious about drugs and terror – they were determined to put

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Security Council", in Ronald St John Macdonald and Douglas M Johnston (eds) *Towards World Constitutionalism* (Brill Academic Publishers, Leiden, 2005) at 457.

46 International Convention for the Suppression of Financing of Terrorism (opened for signature 9 December 1999, entered into force 10 April 2002).

47 Eric Rosand "The Security Council's Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism" (2003) 97 Am J Int'l L at 333.

48 See Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980), art 31(3): "There shall be taken into account, together with the context … (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."

49 The best discussion is Neil Boister "Transnational Criminal Law?" (2003) 14 EJIL 953.

50 Rome Statute, above n 6, preamble, at [4].

51 See draft Statute sent to Rome by Preparatory Committee on the Establishment of an International Criminal Court A/CONF.183/2 (1998), art 33 [draft Statute].

plenty of resources into the national criminal justice systems dealing with them. Genocide and crimes against humanity could safely be left to an under-resourced international body that could be whipped piously from time to time.

This experience with the "treaty crimes" and the Rome Statute perhaps underscores the difference between "international" and "transnational" crimes – for the international ones, there is a consensus that an international (or hybrid) tribunal is appropriate; for transnational ones the object is to have as many countries as possible with a legislative claim to jurisdiction so that there will be no safe havens.[52]

In recent months, in light of events on the high seas off the coasts of Somalia, I have been hearing suggestions at conferences that piracy should be added to the jurisdiction of the ICC. Piracy is supposedly the paradigm case of a crime under international law, but I know of no international tribunal ever set up to try pirates. Nevertheless, there are multilateral efforts afoot, under the auspices of the Security Council,[53] to work together on the enforcement side, to capture the miscreants and, in the absence of a better option, deliver them to the apparently willing Kenyans.[54] We all[55] agree that there is universal jurisdiction over pirates operating on the high seas and that is more or less confirmed in the Montego Bay Convention.[56] Actual legislation (New Zealand excepted)[57] is often lacking. I amuse myself on occasions when the matter is raised by noting that the ILC proposals before the Rome Conference included references to the Hostage Taking Convention (adopted in light of the hostage killings at the Munich Olympics), and the IMO Convention on Unlawful Acts against the Safety of Maritime Navigation (adopted after the terrorist

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52 See Roger S Clark "Offenses of International Concern: Multilateral State Treaty Practice in the Forty Years Since Nuremberg" (1988) 57 Nordic J Int'l L 49 at 51-63.

53 SC Res 1846, S/Res/1826 (2008); SC Res 1851, S/Res/1851 (2008). See Eugene Kontorovich "International Legal Responses to Piracy off the Coast of Somalia" (2009) 13(2) ASIL Insight <www.asil.org>.

54 See "Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer" (2009) 79 Official Journal of the European Union 49. The United States apparently has a similar understanding. Section 69(1) of the Kenya Penal Code states that: "Any person who, in territorial waters or upon the high seas, commits any act of piracy *jure gentium* is guilty of the offence of piracy." It is not clear whose territorial waters the statute encompasses, but most of the Somali piracy has been taking place well out on the high seas.

55 Or, nearly all. Professor Rubin has been a lone dissenter. See Alfred P Rubin *The Law of Piracy* (2nd ed, Irvington-on-Hudson, New York, 1998).

56 United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994), arts 101-107.

57 Crimes Act 1961, s 92 ("any act amounting to piracy by the law of nations").

sinking of the *Rainbow Warrior* and the hijacking of the *Achille Lauro*),[58] two instruments that are perfectly serviceable vehicles for the prosecution of modern pirates.[59] Alas, they are not within the Court's jurisdiction, and there is no concrete proposal on the table to add them at the Kampala Conference in 2010.[60] Be that as it may, multilateralism is alive and well in the suppression area too.

III Norms and Standards in Crime Prevention and Criminal Justice[61]

Vienna is the home of a part of the United Nations Secretariat now known as the United Nations Office on Drugs and Crime. It deals (particularly by discussion, norm-creation and facilitation of technical assistance) with a large range of criminal justice issues, including treatment of prisoners, restorative justice, drugs, terrorism, organised crime, corruption and good governance and the traffic in persons. It has ventured into the sponsorship of suppression conventions on drugs, organised crime and corruption.

From the foundation of the organisation, the United Nations had bureaucratic and "law-making" organs devoted to the control of narcotic drugs (and later psychotropic substances). In 1950, it expanded its horizons when it took over the functions of the International Penal and Penitentiary Commission (IPPC). During the League of Nations period, the IPPC, an informally organised international organisation, had been a prototype for what were to become the United Nations Specialized Agencies. The most notable of the Commission's functions since 1885 had been holding international congresses in the correctional field where views were shared and standards developed. They took place every five years unless European wars precluded the meetings. Since 1955, the United Nations has continued this tradition.[62] Under the aegis of these meetings, the expert bodies that shaped them, and, in recent years, the annual meeting of the Commission on Crime Prevention and Criminal Justice, the organisation has developed a body of standards in criminal justice. The

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58 Draft Statute, above n 51.

59 The United States brought one alleged pirate for trial in New York. The indictment alleges piracy on the high seas as well as breaches of the legislation giving effect to the Conventions against Hostage Taking and against Illicit Acts against the Safety of Maritime Navigation. See "Indictment of Piracy Suspect from Somalia" Slideshare <www.slideshare.net>.

60 See Resolution "E" of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, annex I, A/CONF.183/10, which "*[r]ecommends* that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court consider the crime of terrorism and drug crimes with a view to arriving as an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court. "A" review is not necessarily the first one in 2010!

61 See generally Roger S Clark *The United Nations Crime Prevention and Criminal Justice Program: Formulation of Standards and Efforts at their Implementation* (Procedural Aspects of International Law Institute, Washington DC, 1994). For a summary of its current activities, see United Nations Office on Drugs and Crime *Annual Report 2009* <www.unodc.org>.

62 The next Congress is scheduled to take place in 2010 in Brazil.

early instruments emerging from the system were technically non-binding but nevertheless persuasive resolutions setting out standards of achievement. Many of them have wended their way into the fabric of international customary law. For example, the First Congress in 1955 agreed to the text of the Standard Minimum Rules for the Treatment of Prisoners,[63] modernising principles developed under the auspices of IPPC and endorsed by the League of Nations. The Fifth Congress, in 1975, agreed on the text of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[64] This became the basis for the drafting of the later Convention against Torture.[65] Model Treaties on Prisoner Transfer,[66] Extradition[67] and Mutual Legal Assistance[68] were aimed at encouraging States to modernise their arrangements, both bilateral and multilateral, in those areas. Another instrument of particular significance emerging from this process was the 1985 Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power,[69] important chunks of which migrated into later treaty instruments, including the Rome Statute of the International Criminal Court[70] and the Convention on Transnational Organized Crime.[71]

More recently, indeed, this part of the United Nations system has been going beyond soft-law instruments and producing "framework" treaties like those on Transnational Crime[72] and Corruption.[73] That is to say, treaties that in addition to requiring penal suppression of certain activities obligate the parties to cooperate generally in a programmatic way and to move control of the issue forward at the Commission, the Congresses and meetings of States Parties to the treaties.

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63 ESC Res 663 (XXIV) C, UN ESCOR, 24th sess, Sup No 1, E/3048 (1957).

64 GA Res 3452, UN GOAR. 30th sess, 2433rd plen mtg (1975).

65 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, above n 35.

66 *Model Agreement on the Transfer of Foreign Prisoners* A/CONF/121/22/Rev/1 (1986).

67 *Model Treaty on Extradition* GA Res 45/116, A/Res/45/116 (1990), as amended by GA Res 52/88, A/Res/52/88 (1997).

68 *Model Treaty on Mutual Assistance in Criminal Matters* GA Res 45/117, A/Res/45/117 (1990).

69 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* GA Res 40/34, A/Res/40/34 (1985).

70 Rome Statute, above n 6. The extent to which victims are to be represented in the proceedings of the ICC – and the costs of such representation to the States Parties – are questions that are being painfully explored in early decisions of the Court. Like so much else about the Court, this is relatively new territory.

71 United Nations Convention on Transnational Organized Crime, above n 37.

72 Ibid.

73 United Nations Convention against Corruption, above n 38.

Here too, as in the case of international criminal law *stricto sensu* and the crafting of suppression conventions, multilateralism is alive and well.

IV Conclusion

Peter Fraser did not study law – he trained as a carpenter. Had he studied law, in his time, he would not have been offered a course in International Criminal Law, just as I was not offered one here at Victoria in the late 1950s and early 1960s. There were no such courses. But Fraser did have a great grasp of multilateralism. Perhaps the moral is that our students should study carpentry instead of listening to us. But, rather than conceding that, I prefer simply to make the point that International Criminal Law, in areas such as the three I have suggested, is a significant part of the modern multilateral agenda.