This means that if a crime was not committed on the territory of a state party or by a national of a state party, the Court may prosecute it only if the UN Security Council provides the Court a mandate on crimes committed on a given territory during a given period. Subject to an application, each state may separately issue to the Court a mandate to investigate crimes committed on its territory or by its nationals.

ICC enthusiasts initially feared that such conditions would render the Court incapable of prosecuting any crimes as countries facing serious conflicts would never voluntarily subordinate to the Court. Those fears were proven unsubstantiated, at least in part. To the surprise of many, the Rome Statute was in early 2000s ratified by a number of countries with a recent history of armed conflict, including Fiji, Sierra Leone, Cambodia, Macedonia and DR Congo.

As of June 2011, the Statute had been ratified by 116 states, including Estonia in 2001. The ICC has so far opened six official investigations regarding events in Uganda, DR Congo, Central African Republic, Sudan's Darfur province, Kenya and Libya. As for Uganda, DR Congo, Central African Republic and Kenya, those states are parties to the Rome Statute and therefore subject to investigation. Sudan and Libya have not ratified the statute and the mandate to investigate crimes on their territories has been provided by the UN Security Council.

3.4. Basic principles of criminal law

This part of the background knowledge is not necessary to run a successful simulation. This is additional knowledge that the teacher of the course can choose to incorporate in the form of a lecture or workshop simply to give students a better understanding of criminal law. It is important to notice that during the simulation, cases from situations that happened before the founding of ICC are discussed as if they were under ICC jurisdiction, in other words as if they had happened today.

Presumption of innocence

Presumption of innocence is a fundamental principle of criminal law, which is generally accepted in Western countries and many others and is an essential requirement of what we call a fair judicial system.

Presumption of innocence means that no person may be convicted of an offence unless his/her guilt is beyond doubt.

An exhaustive definition of „beyond doubt" is, however, not possible. Any legal system always involves some compromise: if convicting is too easy, the risk of innocent people being punished becomes too great, yet if the prosecution's burden of proof becomes too heavy, too many criminals are left unpunished.

Presumption of innocence also represents the main difference of criminal proceedings from civil proceedings where all parties are equal. Prosecution must prove the guilt of the accused and the defence will only have to create reasonable doubt in order to avoid conviction. The defence does not even have to present the „facts of innocence", it is enough if it can undermine the prosecutions claim that such facts did not occur. In both cases, the court must accept the facts as true.

As a result, the prosecution's burden is much heavier than that of the defence. The prosecution must seek out the relevant provisions and present the evidence. The defence may remain silent at the trial. Of course, it does not have to, but in that case it does not have to prove innocence but merely cast reasonable doubt on the prosecutor's arguments.

Nullum crimen, nulla poena sine lege

(in latin, literally: no crime, no punishment without a law)

This is another principle deeply rooted in the Western legal systems and concepts of justice. This principle basically means that noone shall be punished for anything that was not prohibited by the law at the time.

Since Hitler and his *Nationalsozialistiche Deutsche Arbeitspartei (NSDAP)* committed the most heinous crimes, which were apparently in accordance with the laws of the time, the principles of natural law are being cited as a limitation of the maxim. In our era, for example, rape is deemed to be a punishable crime even in countries where a dictator has revoked the laws prohibiting it. Except for most serious crimes which directly breach the fundamental human rights like the right to life or human dignity, the *nullum crimen, nulla poena sine lege* principle is a citizen's safeguard against arbitrary prosecution.

The *nullum crimen, nulla poena sine lege* principle covers two main aspects:

first, the sources of criminal law, i.e. the provisions establishing which act is an offence, shall not apply retroactively. For example, if abortion was criminalised today, the law could not be used to punish persons who had it performed yesterday when the law did not exist and they could therefore not have foreseen the consequence.

The same principle applies to providing more severe punishments for existing crimes – in this case a person having committed the offence before the amendment should receive the less severe punishment stipulated in the law in force at the time of the offence. On the other hand, it has been accepted that retroactive application is obligatory in cases where the punishment for an offence has been reduced. Once it has been decided that an act should result in a lesser punishment, there is no reason to apply a more harsh punishment to some persons.

The other aspect of *nullum crimen, nulla poena sine lege* is the principle of specification. This means that punishable acts ***must be clearly defined in the law.***

For example, the Soviet-era Civil Code provided criminal punishment for acts harmful to the society. Such a vague formulation paved the way for massive judicial abuse by apparently legal means. The principle of specification includes the prohibition of the use of analogy in criminal proceedings. In civil proceedings, a judge may fill legal gaps by means of analogy, i.e. conclude that although a law does not provide the rule for a specific case, its circumstances are equivalent to some other case and the provisions regarding the other case may therefore be applied. In criminal proceedings, punishing a person on the basis of analogy is excluded because people cannot be expected to foresee such analogies. A punishment may only be applied if an act is expressly prohibited.

It may sometimes be hard to adhere to the principle of specification – the world is complex and detailed description of all possible circumstances may not be possible. Generalisations are unavoidable.

The *nulla poena, nullum crimen sine lege* principle not only limits punishment to the specific acts provided in the law but also the measure of punishment. This means that an accused person may only receive a punishment expressly provided in the law.

During MICC cases are discussed hypothetically as if they had happened today, after the founding of ICC and entering into force of the Rome Statute. If the ICC was to try cases that happened before 2002 in real life, it would be a clear breach of the *nullum crimen, nulla poena sine lege* principle as it would then apply a statute that was adopted after the crimes were committed.

Ne bis in idem

(literally: not twice in the same)

This principle means that a person shall not be tried for the same offence twice. Like the previous one, it also covers two main aspects.

First, if a person has been prosecuted, he/she shall not be prosecuted for the same cause again. This means the prosecution will only have one chance to bring the charges. Other circumstances established at a later stage which might change the judgment to the detriment of the convict will not have any effect. An exception to this is the case of circumstances which could not have been revealed earlier.

This principle is increasingly important in today's international law as national courts exist side by side with new international courts and the jurisdiction of the two may sometimes be overlapping. An international court cannot assign a punishment to persons already punished by national courts. However, international courts may serve as courts of appeal for the judgments of national courts. In such case, an international court may issue a ruling on the correctness of the previous judgment.

The International Criminal Court also follows the principle of reviewing only those criminal matters which the involved state/states are unable or unwilling to prosecute. In this context „unwillingness" shall cover not only the lack of an appropriate judicial institution but also cases where criminal proceedings in a state lead to an obviously incorrect punishment.

If, however, a person is convicted in both national and international courts, the latter's punishment shall be reduced by the time already served. For example, if a genocide convict is sentenced to 2 years of imprisonment at an unfair trial and the International Criminal Court imposes a 10-year prison sentence, the person will have to serve 8 additional years.

The other important aspect of ne bis in idem is that a person shall not be punished for several crimes if he/she actually committed only one act. For instance, if a person stabs another in the back, causing an internal bleeding which leads to the victim's death the next day, this act includes the elements of physical abuse, causing severe health damage and manslaughter. The punishments for those crimes will not be summarised and the most serious charge – killing – will include the other two. Thus, the person shall only be punished for manslaughter.

Right to fair trial

All the principles of criminal law are aimed at achieving fairness in the judicial system – a state should not abuse any person by arbitrary actions or acts which are otherwise contrary to public sense of justice. The right to fair trial is provided additionally as a separate principle. This covers the formalities of judicial proceedings which have to be carried out in a fair manner. This principle relates to several aspects:

- Each person has a ***right to defence***. For persons who are unable to procure legal aid, a public defence counsel will be provided in most countries.

- ***The judge must be independent***. This means that he/she must not have a personal conflict of interest. In the Republic of Estonia, this is safeguarded by judges' salary, which significantly exceeds the average, and the prohibition of certain activities (for example, judges may not belong to political parties or own or manage companies). The requirements on judges' education are strict and each judge must complete an obligatory special training programme. All this is to guarantee that judgments reflect applicable law and not the personal opinion of an average person.

- Another aspect of the right to fair trial is ***the right of appeal***. Estonia has a three-level judiciary system: – county courts, circuit courts and Supreme Court. If the Supreme Court decides to review a case, it may revoke the earlier judgment and return the case to the previous instance or reject the appeal after initial review. Judgments of the Supreme Court may be appealed on European level.