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The Rome Statute as Evidence of Customary International Law

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Propositions relating to the dissertation

The Rome Statute as Evidence of Customary International Law

by Yudan Tan

1. Customary international law continues to play a role in the International Criminal Court framework.
2. A flexible formula of this two-element approach (general practice and *opinio juris*) is acceptable for identifying custom in the field of international criminal law.
3. Practice includes practice of international organisations acting as independent entities.
4. Statements relating to a treaty rule either indicate State practice or illustrate *opinio juris*.
5. Articles 8(2)(c) and (e) of the Rome Statute were and are declaratory of custom concerning war crimes in non-international armed conflict.
6. Article 7(1) of the Rome Statute was and is declaratory of custom on the absence of a nexus with an armed conflict and article 7(2)(a) of the Statute was and is declaratory of custom with regard to the policy requirement.
7. Article 25(3)(a) of the Rome Statute neither was nor is declaratory of a customary rule with respect to indirect co-perpetration.
8. No rule existed with an exception to absolute personal immunity before the adoption of the Rome Statute. There is also not sufficient evidence to demonstrate a trend of an exception to personal immunity for the commission of international crimes. Article 27(2) of the Rome Statute neither was of a declaratory nature nor is declaratory of a customary rule respecting personal immunity.
9. Provisions of the Rome Statute were partly declaratory of custom when adopted in 1998, and they are also partly declaratory of custom at the present time.