International Criminal Law (ICL) deals with individual (as opposed to state) crimes such as genocide, crimes against humanity, and war crimes. Along with related domestic legal and quasi-legal innovations, ICL is evolving rapidly. Its ancient precedents indicate a continuing human belief that, even in the context of the most violent of clashes, some behavioral standards exist. Following the end of the Cold War, there has been an explosion in the institutionalization of ICL. The international criminal tribunals for Yugoslavia and Rwanda, the International Criminal Court, mixed international-domestic courts in Sierra Leone and Cambodia, and quasi-legal institutions such as the South African Truth and Reconciliation Commission are parts of this phenomenon. With time passing, skeptics have begun challenging optimistic prognostications for the growth and effects of these “transitional justice” mechanisms.

ICL operates in grey areas of law spanning domestic and international jurisdiction. This course explores the sources and development of ICL, the dilemmas it presents for enforcement, for sovereignty, for justice, reconciliation, and political efficacy. Students will pursue related topics in extended research papers.

Course objectives:

To acquaint students with international criminal law from a political and legal standpoint, and to provide experience in making oral presentations and developing large research papers.

Course requirements:

We meet weekly on Wednesday evenings at 7:30 (there may be some changes).

Readings will be assigned for, and discussed at these meetings. Individual class members will be responsible for materials to be covered in discussions.

During the semester research papers will be developed in a series of steps with deadlines. Progress on the papers will be discussed individually with the instructor.

A class debate will take place on November 12.

Students will present and discuss their research at the last three meetings of the seminar.

Honor Code: Oberlin College students are on their honor to uphold a high degree of academic integrity. All work that students submit is expected to be of their own creation and give proper credit to the ideas and work of others. When students write and sign the Honor Pledge, they are affirming that they have not cheated, plagiarized, fabricated, or falsified information, nor assisted others in these actions.
**Honor Pledge:** “I have adhered to the Honor Code in this assignment.” The default assumption covering all academic exercises is that students are required to do their own work only utilizing the help and resources considered appropriate for each academic exercise, including sources of assistance routinely offered by the college to students, such as reference librarians and writing tutors.

For more information on the honor code, consult the Student Regulations. For questions about the Code’s application to Politics 321, please consult Mr. Schiff.

**Grades:**

Course grades will be based upon the research paper, including the interim assignments, and upon participation in class. **Interim assignments must be completed on time for full credit and must be submitted (as must the final paper, of course) for a passing grade in the class.**

**The following book is required and available at the bookstore:**


**Documents for the course available on the Web:**


**Other documents cited in the syllabus:**

International Human Rights Instruments available at the UN High Commissioner for Human Rights website: [http://www2.ohchr.org/english/law/](http://www2.ohchr.org/english/law/)


Additional reading material available on the web or on Blackboard is included in the weekly assignments.

**Useful websites:**

American Civil Liberties Union (ACLU) torture web page [https://www.aclu.org/accountability-torture](https://www.aclu.org/accountability-torture)

American Society for International Law website. This includes a “topics” page with further links: [http://www.asil.org/topics](http://www.asil.org/topics)

American University Washington College of Law War Crimes Research Office (WCRO) [http://www.wcl.american.edu/warcrimes/](http://www.wcl.american.edu/warcrimes/) reports on many aspects of ICL implementation, tribunals, etc. including excellent materials on the ICC.

The American University, Washington College of Law, Center for Human Rights and Humanitarian Law, links to further organizations: [http://www.wcl.american.edu/pub/humright/sites/sites.html](http://www.wcl.american.edu/pub/humright/sites/sites.html)


The Avalon Project at Yale Law School: Documents in Law, History, and Diplomacy:
http://avalon.law.yale.edu/default.asp

Center for Constitutional Rights http://ccrjustice.org/

Center for the Study of Violence and Reconciliation (South Africa) http://www.csvr.org.za/

Court of Bosnia and Herzegovina: domestic court whose jurisdiction includes “...to issue practical directions on the application of substantive criminal laws of Bosnia and Herzegovina falling within the competence of the Court, pertaining to genocide, crimes against humanity, war crimes and violations of the laws and customs of warfare, and individual criminal responsibility related to those crimes...” http://www.sudbih.gov.ba/?opcija=bio&jezik=e

Extraordinary Chambers in the Courts of Cambodia http://www.eccc.gov.kh/en

The Frederick K. Cox International Law Center, Case Western Reserve University, War Crimes Research Portal, bi-weekly “war crimes prosecution watch” http://publicinternationallawandpolicygroup.org/library/watches/war-crimes-prosecution-watch/

Global Policy Forum Very useful information source and further links on international justice: https://www.globalpolicy.org/international-justice.html.


Human Rights Treaties compiled at the University of Minnesota: http://www1.umn.edu/humanrts/instree/ainstls1.htm (complete list) http://www1.umn.edu/humanrts/instree/ainstls2.htm (by topic)


International Center for Transitional Justice (ICTJ, an NGO promoting truth commissions) website includes information on current country activities: http://www.ictj.org/

International Crimes Database http://www.internationalcrimesdatabase.org/Home maintained by the T.M.C. Asser Institute and the International Centre for Counter-Terrorism in The Hague. Current information (and further links) on incidents and trials relating to torture, terrorism, war crimes, etc.


ICC website: http://www.ice-cpi.int/EN_Menus/icc/Pages/default.aspx

ICCForum.com: UCLA-based blog on the ICC with interviews and commentary by experts on the Court http://iccforum.com/home

ICTR website: http://www.unictr.org/

ICTY webpage: http://www.icty.org/

Institute for War and Peace Reporting news site on conflict, conflict management, and international
justice issues [http://iwpr.net/](http://iwpr.net/)

**IntLawGrrls**: a very useful site that “. . . aims to give voice to women scholars, lawyers, policymakers, leaders, activists, on issues related to international law, policy and practice, from arbitration to human rights to trade, among other topics. . . .” [http://ilg2.org/](http://ilg2.org/)


**JSTOR** (Journal Storage) retrieval site (often does not have latest editions of journals). **Search** for your topic: [http://www.jstor.org/](http://www.jstor.org/)


**Leiden Journal of International Law** [http://journals.ohiolink.edu/ejc/journal.cgi?issn=09221565](http://journals.ohiolink.edu/ejc/journal.cgi?issn=09221565)

**NGO Coalition for the International Criminal Court**: [http://www.iccnow.org/](http://www.iccnow.org/)

**No Peace Without Justice**, an Italian-based NGO with useful website and operational projects assisting nascent truth commissions (such as in Sierra Leone): [http://www.npwj.org/index.php](http://www.npwj.org/index.php)

**Ohiolink journals** [http://journals.ohiolink.edu/ejc/](http://journals.ohiolink.edu/ejc/)

**Peace Palace plinklet** - the reference search site of the library of the International Court of Justice and the International Court of Arbitration in The Hague. It maintains very current listings of materials relevant to international law in general. Use the subject search to find references, then hunt for them through Ohiolink, JSTOR, etc., to find the full texts. [http://catalogue.ppl.nl/IMPLAND=Y/SRT=YOP/LNG=EN/](http://catalogue.ppl.nl/IMPLAND=Y/SRT=YOP/LNG=EN/)

**Residual Special Court for Sierra Leone** [http://www.rscsl.org/](http://www.rscsl.org/)


Schedule

1. September 3: Introduction


If you have not taken International Law (or need a quick refresher)


Discussion: Mutual introductions, interests, aims of the course, basic international law.

2. September 10: Basic International Criminal Law


Documents on Cassese ch. 1 site

[http://global.oup.com/uk/orc/law/criminal/casseseicl3e/resources/cases/ch01/](http://global.oup.com/uk/orc/law/criminal/casseseicl3e/resources/cases/ch01/)

- 1863 Laws of War: General Orders No. 100 (Lieber Code);

- 1945 Charter of the International Military Tribunal for the Far East, OR
  1945 Nuremberg Trial Proceedings, Charter of the International Military Tribunal;

- 1948 Universal Declaration of Human Rights;

- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Documents on other sites:

- [UN Charter](http://www.yale.edu/lawweb/avalon/un/unchart.htm), Preamble (“We the Peoples . . .”), and Articles 1, 2, 10, 12, 13, 55c, 92-96

- International Covenant on Civil and Political Rights 1966

Recommended (on the Cassese site):

- 1969 American Convention on Human Rights "Pact of San Jose, Costa Rica"

- 1970 Declaration on Principles of International Law Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations

Discussions:
Where are the boundaries between politics and law? Why do people (and states) seek to create law around these kinds of transgressions, when they are so clearly politically motivated? What is the difference between criminalization at the domestic level and criminalization internationally? How do you think such declarations and law might (if at all) actually change behavior?

3. September 17: International jurisdiction, war and “atrocities” crimes


Power A Problem from Hell, 1-85 (Rafael Lemkin and the Convention against Genocide) [Blackboard].

Note that War Crimes are defined under the Geneva Conventions, Genocide by the Convention Against Genocide, Torture by Convention (links below), but there is no convention on Crimes Against Humanity (or ethnic cleansing) or against Aggression. Efforts are underway to extend the legal framework:


The state crime of Aggression defined by 1974 UN General Assembly Resolution 3314 (XXIX) http://www.un-documents.net/a29r3314.htm and is by implication made illegal by the UN Charter’s limits on when force is legal (in self defense or under a UN Security Council finding under Chapter VII)

and the individual crime has now been defined (for ICC parties, at least) by amendment to the ICC Statute (but it cannot yet be prosecuted) http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf


Geneva Conventions 1949:

I – Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field http://avalon.law.yale.edu/20th_century/geneva05.asp

II – Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea http://avalon.law.yale.edu/20th_century/geneva06.asp

III – Convention relative to the Treatment of Prisoners of War http://avalon.law.yale.edu/20th_century/geneva03.asp
IV – Convention relative to the Protection of Civilian Persons in Time of War
http://avalon.law.yale.edu/20th_century/geneva07.asp

Protocols to Geneva Conventions 1977:

I – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolI.aspx

II – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolII.aspx

http://www1.umn.edu/humanrts/instree/x1cppcg.htm

Convention on Torture 1984
http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

Discussion: What is it about these crimes that makes them “shocking to the conscience of mankind?” Do these crimes entail individual culpability in their conventional (treaty) forms? What if any mechanisms for enforcement and/or adjudication do the treaties include or imply? Is there a common core characteristic of the crimes? Does the crime of genocide still makes sense?

4. September 24: Criminal liability, national prosecutions

Read: Cassese Section II Modes of Criminal Liability, ch. 9 “Perpetration: In Particular, Joint and Indirect Perpetration,” ch. 10 “Omission Liability and Superior Responsibility,” ch. 11 “Other Modes of Criminal Liability and Inchoate Crimes” 161-204.


Ch. 15, “Repression of International Crimes in Domestic Courts” 271-290.


Student briefs:

Israel tries Adolf Eichmann for Nazi crimes (lots of references in OBIS)

http://journals.ohiolink.edu/ejc/pdf.cgi/Jaspers_Karl.pdf?issn=14781387&issue=v04i004&article=853_wshle ;

Politics 321 Syllabus, 2014

U.S. military courts

Son My (Mylai, US Lt. William Calley and Ernest Medina):
http://law2.umkc.edu/faculty/projects/ftrials/mylai/mylai.htm

Investigative reporter Seymour Hersh’s original exposé:

Note the article on Lt. Calley, “William Calley apologizes for My Lai massacre,”
Columbus Ledger-Enquirer, August 21, 2009,

Abu Ghraib (Charles Graner, Lynndie England courts martial)


Haditha massacre (Iraq)

http://www.expose-the-war-profiteers.org/DOD/iraq_II/haditha.htm

Iraq High Tribunal (IHT)

Dujail trial (Saddam Hussein) See Journal of International Criminal Justice, Vol. 5, No. 2 (May, 2007) for a symposium on this topic:
http://jicj.oxfordjournals.org/content/vol5/issue2/index.dtl

*Briefly describe the events in question and the content, course, and significance of the case. For discussion, how far can and should national jurisdiction over international crimes go? What would a prosecutor have to show in order to have a defendant found guilty of these crimes?

5. October 1: Universal Jurisdiction and (US) Alien Tort Claims


U.S. Alien Tort Claims Act (1789). Here’s the entire text:

US Code Title 28 - Judiciary and Judicial Procedure. Part IV - Jurisdiction and Venue. Chapter 85 - District Courts: Jurisdiction. Sec. 1350 - Alien's action for tort: The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

Julian Ku and John Yoo, “Supreme Court Unanimously Rejects Universal Jurisdiction,” Forbes (4/21/2013)


Student briefs:

Pinochet case


http://journals.ohiolink.edu/ejc/pdf.cgi/Carnero_Rojo_Enrique.pdf?issn=14781387&issue=v09i0003&article=699 nlpftppoicis

Alien Tort Claims litigation

Filartiga summary
http://www.internationalcrimesdatabase.org/Case/995/Filartiga-v-Pe%C3%B1a-Irala/

The longer story: Richard Alan White, Breaking Silence: The Case that Changed the Face of Human Rights (Georgetown University Press, 2004).

ATCA used by NGOs for environmental and other suits against corporations:

http://journals.ohiolink.edu/ejc/pdf.cgi/Gallagher_Katherine.pdf?issn=14781387&issue=v08i0003&article=745_clatb

Some examples:

Drummond Coal (of Alabama) accused of hiring paramilitaries to kill union organizers. Summary and updates:
http://business-humanrights.org/en/drummond-lawsuit-re-colombia#c9319

Chiquita Brands accused of supporting paramilitaries to attack anti-corporate activists. Reuters, “Colombians sue banana producer for funding guerrillas,” July 19, 2007
Summary and updates:
http://www.business-humanrights.org/Categories/Law/lawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ChiquitalawsuitsreColombia

Shell Oil in Nigeria: Wall Street Journal, “Shell settles Nigeria case Oil Giant to Pay

And their seeming defeat: Supreme Court of the United States *Kiobel decision* http://www.supremecourt.gov/opinions/12pdf/10-1491_l6gn.pdf


* * * * * * RESEARCH PROPOSALS DUE October 4 * * * * * *

6. October 8: International Criminal Tribunals


**Documents:**


AND


**Student briefs** (purpose, instigators, structure, general outcomes, critiques, significance):

**International Military Tribunal (Nuremberg)**

Summarize one case (Goebbels, Doenitz, etc.)

**International Military Tribunal for the Far East** (IMTFE)

Summarize one case
The Special Court for Sierra Leone

Cambodia Extraordinary Chambers

Lebanon Special Tribunal

ICTR: Akayesu (genocide), Nahimana, Barayagwiza, Ngweza (“the media case”)

ICTY: Erdemovic (a case where the perpetrator was coerced into crime?)
Milosevic (were 66 charges too many; did Milosevic exploit the Court?)

ICC: Lubanga (rocky shakedown cruise of the new vessel of justice?)
Ongoing Kenya cases – Kenyatta and Ruto – have become a huge mess.

Discussion: How far can and should international jurisdiction of international judicial bodies go? Is there any reason that these can be considered compelling in a world of sovereign states?

7. October 15: International Criminal Court: operational organization and political football

Read: Flint and de Waal,
“Case Closed: A Prosecutor Without Borders” World Affairs (Spring, 2009)
http://www.worldaffairsjournal.org/article/case-closed-prosecutor-without-borders

Berkeley Human Rights Center,
“Beyond a Reasonable Doubt: Using Scientific Evidence to Advance Prosecutions at the International Criminal Court,” (October, 2012)
http://www.law.berkeley.edu/files/HRC/HRC_Beyond_Reasonable_Doubt_FINAL.pdf


http://journals.ohiolink.edu/ejc/pdf.cgi?issn=14781387&issue=v12i0003(article=437_jaadblap

Discussion: How political is international justice?

* * * * PRELIMINARY BIBLIOGRAPHY DUE October 18 * * * *

* * * * Fall Break: Oct. 18-26 * * * *
8. October 29:  Truth Commissions and tribunal victim orientation

**Read:**
- Berkeley Human Rights Center,  “Bearing Witness at the International Criminal Court: an interview survey of 109 witnesses” (June, 2014) [Blackboard]  

**Recommended:**

**Student presentations**

*El Salvador:* USIP website, El Salvador UN Truth Commission Report  
http://www.usip.org/publications/truth-commission-el-salvador

*Chile:* http://www.usip.org/publications/truth-commission-chile-90  


*Argentina*: USIP website, Argentina truth commission.  
http://www.usip.org/publications/truth-commission-argentina

*East Timor*: site includes link to final report: Chega!  http://www.cavr-timorleste.org/

*Guatemala*: USIP website, Guatemala truth commission.  
http://www.usip.org/publications/truth-commission-guatemala

*Sierra Leone*:  http://www.sierraleonetcrc.org/

*Students will take responsibility for these individual instances, for explication in discussion: What can truth commissions do?  Can/should they be substitutes for judicial process?*

9. **November 5: Torture**

US Code definition of torture:  

http://www.vanityfair.com/politics/features/2008/05/guantanamo200805?printable=true&currentPage=all


Ambos, “May a State Torture Suspects to Save the Life of Innocents?”  
http://journals.ohiolink.edu/ejc/pdf.cgi/Ambos_Kai.pdf?issn=14781387&issue=v06i0002&article=261_mastststloi

** * * * * * RESEARCH PAPER PROGRESS REPORT DUE November 8 * * * * * **

10. **November 12: Class Debate**

The ICC Prosecutor should take into consideration the possible effects of issuing warrants for arrest upon peace negotiations when deciding to request such warrants from the Pre-Trial Chambers.

11. **Wednesday, Nov. 19 – additional topic or day off: options to be considered**

12. **Wednesday, Nov. 26 – date change to be considered (Thanksgiving) – student research presentations**

13. **Wednesday, Dec. 3 – student research presentations**

14. **Wednesday, Dec. 10 – student research presentations**

** * * * * * FINAL RESEARCH PAPERS DUE Sunday, December 21, 11:00 a.m. * * * * * **