Politics 321  
Seminar in International Politics: International Criminal Law  
Fall, 2010  

Syllabus  

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. Especially since 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.

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 and for political efficacy. Students will pursue questions about ICL in the context of concrete cases 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.

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 17.

Students will present their research to each other 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 <https://oncampus.oberlin.edu/webapps/portal/frameset.jsp>. 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.

**The following books are required and available at the bookstore:**


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

Keyed to the chapters of Cassese, [http://www.oup.com/uk/orc/bin/9780199203109/](http://www.oup.com/uk/orc/bin/9780199203109/)

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 Society for International Law website on electronic resources in international law: [http://www.asil.org/resource/crim1.htm](http://www.asil.org/resource/crim1.htm)


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

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

Center for Constitutional Rights [http://ccrjustice.org/](http://ccrjustice.org/)


The Frederick K. Cox International Law Center War Crimes Research Portal (Case Western Reserve University): http://www.law.case.edu/war-crimes-research-portal – a massive and useful set of further links arranged by subject.

Global Policy Forum (international justice materials) http://www.globalpolicy.org/wldcourt/index.htm
Very useful information source and further links.

Project Muse electronic journals site for Human Rights Quarterly: http://muse.jhu.edu/journals/hrq

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)

Human Rights Watch http://www.hrw.org/

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

ICTR website: http://69.94.11.53/default.htm

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

ICC website: http://www.icc-cpi.int/Menus/ICC/Home

Hague Justice Portal current news on international law related to the Hague institutions http://www.haguejusticeportal.net/eCache/DEF/2.html

Radio Netherlands International Justice webpage
http://mail.google.com/a/oberlin.edu/#search/radio+netherlands/1230dc229125a373


JSTOR (Journal Storage) retrieval site. Search for your topic: http://www.jstor.org/

Leiden Journal of International Law http://journals.ohiolink.edu/ejc/journal.cgi?issn=09221565

NGO Coalition for the International Criminal Court: 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

Ohiolink journals 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/

Special Court for Sierra Leone http://www.sc-sl.org/

Texts of multilateral international humanitarian law instruments from the Fletcher School of Law and Diplomacy Multilateral Project: http://fletcher.tufts.edu/multi/warfare.html


Schedule

1. September 8: Introduction

Read: Schiff, Introduction, ch. 1, “River of Justice” 1-41.

Recommended: Cassese, ch. 17, 353-366, outlines features of adversarial and inquisitorial (common law versus civil law) procedures.

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

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


Discussion: Mutual introductions, basic international law.

2. September 15: Basic International Criminal Law


Documents on Cassese ch. 1 site

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, Preamble, Articles 1, 2, 10, 12, 13, 55c, 92-96 [http://www.yale.edu/lawweb/avalon/un/unchart.htm]

International Covenant on Civil and Political Rights 1966 [http://www2.ohchr.org/english/law/cescr.htm]
Optional (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


Documents Available at Yale University Law School Avalon Project: Laws of War [http://avalon.law.yale.edu/subject_menus/lawwar.asp](http://avalon.law.yale.edu/subject_menus/lawwar.asp) and at U.N. Office of the High Commissioner for Human Rights

- Geneva Conventions 1949
  - I – Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
  - II – Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
  - III – Convention relative to the Treatment of Prisoners of War
  - IV – Convention relative to the Protection of Civilian Persons in Time of War

- 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
  - II – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts

Document on Cassese web site, ch. 6:


Document on Cassese web sites, ch. 1 and 7:

Convention on Torture 1984

Discussion: What is it about these crimes that makes them “shocking to the conscience of mankind,” etc.? Can making them illegal help? 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? What are core aspects of the crimes?
4. September 29: Criminal liability, national prosecutions

**Read:**

- Cassese, Substantive Criminal Law II: Modes of Criminal Liability, ch. 9 “Perpetration and Joint Criminal Enterprise,” ch. 10 “Other Modes of Liability” 187-254, ch. 11 “Criminal Liability for Omissions,”

**Documents**

- Cassese chapter 14 site:
  - 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
  - 1976 U.S. Foreign Sovereign Immunities Act (FISA)

**Recommended**

- Cassese ch. 12 “Justifications and Excuses” 256-267.

**Student briefs:**

- **Military courts**

  - **Son My** (Mylai, US Lt. William Calley and Ernest Medina):

  - **Special national tribunal: 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:

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

*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 6: Universal Jurisdiction and other national alternatives

Read:  


Student briefs:

**Pinochet case in the U.K.:**


**Rumsfeld and others, Germany and Spain** (updates)

Read:  
**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.


Student briefs:

**Filartiga** summary:  


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


* * * * * * RESEARCH PROPOSALS DUE October 8 * * * * * *

6. October 13: International Criminal Tribunals

Read: Cassese III: Prosecution and Punishment by International Courts, ch. 16 “International versus National Jurisdiction” 336-352


Documents: Cassese ch. 1 site


1998 Rome Statute of the International Criminal Court (ICC)

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, 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?)

**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 20:** International Criminal Court as an organization and among organizations


**Discussion:** How political is international justice?

* * * * * PRELIMINARY BIBLIOGRAPHY DUE October 22 * * * *

* * * * Fall Break: Oct. 23-31 * * * *

8. **November 3:** Truth Commissions


**Recommended:** Hayner *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* 2nd edition (Routledge, 2010).

Hayner “Fifteen Truth Commissions 1974-1994, a Comparative Study” *Human
Student presentations


*Sierra Leone: http://www.tresierraleone.org/drwebsite/publish/index.shtml

*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 10: Share student research proposals

10. November 17: Class Debate

Possible topic: Resolved: The Assembly of States Parties to the ICC should amend ICC Statute Article 16 to enable the General Assembly to suspend ICC proceedings as proposed by the African Union.

11-13: November 23 or 24, December 1, December 8: student research presentations.

* * * * * * FINAL RESEARCH PAPERS DUE Saturday, December 22, 11:00 a.m. * * * * * *