Politics 321
Seminar in International Politics: International Criminal Law
Fall, 2011

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 (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 16

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](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](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](http://muse.jhu.edu/journals/hrq)

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


**ICTR** website: [http://69.94.11.53/default.htm](http://69.94.11.53/default.htm)

**ICTY** webpage: [http://www.icty.org/](http://www.icty.org/)

**ICC** website: [http://www.icc-cpi.int/Menus/ICC/Home](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](http://www.haguejusticeportal.net/eCache/DEF/2.html)

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


**JSTOR** (Journal Storage) retrieval site. **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.

**Special Court for Sierra Leone** [http://www.sc-sl.org/](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](http://fletcher.tufts.edu/multi/warfare.html)


Schedule

1. September 7: Introduction

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

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


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].

Discussion: Mutual introductions, basic international law.

2. September 14: 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]
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


3. September 21: International jurisdiction and crimes


Documents
Available at Yale University Law School Avalon Project: Laws of War
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 28: 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 on 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


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)

http://journals.ohiolink.edu/ejc/pdf.cgi/Scholem_Gershom.pdf?issn=14781387&issue=v04i0004&article=859_osepd

*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 5: Universal Jurisdiction and other national alternatives


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:**

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


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

**Alien Tort Claims litigation**

*Filartiga* summary: http://www.pbs.org/wnet/justice/law_background_filartiga.html

**ATCA used by NGOs** for environmental and other suits against corporations: [http://www.earthrights.org/legal/](http://www.earthrights.org/legal/)


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**6. October 12:** International Criminal Tribunals

**Read:** Cassese, 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 19: International Criminal Court as an organization and among organizations


Discussion: How political is international justice?

* * * * PRELIMINARY BIBLIOGRAPHY DUE October 21 * * * *

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8. November 2: Truth Commissions


Recommended:

Hayner Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions 2nd

Student presentations


*Sierra Leone: http://www.trcsierraleone.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 9: Class Debate

Possible topic:

Extension of the ICC Statute to permit exercise of jurisdiction over an individual crime of aggression will unavoidably politicize the Court and diminish its legitimacy.

* * * * * RESEARCH PAPER PROGRESS REPORT DUE November 11 * * * * *
10. November 16: Torture

Read the Torture Convention again.


1. "Torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
2. "Severe mental pain or suffering" means the prolonged mental harm caused by or resulting from -
   1. the intentional infliction or threatened infliction of severe physical pain or suffering;
   2. the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
   3. the threat of imminent death; or
   4. the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.


Habeas Corpus:


11. Monday, Nov. 21: student presentations (room TBA)

12. Wednesday, Nov. 30 – student research presentations

13. Wednesday, Dec. 7 – student research presentations

[14. Monday, Dec. 12 – student research presentations]

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