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 was 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 13.

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.

**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://global.oup.com/uk/orc/law/criminal/casseseicl2e/](http://global.oup.com/uk/orc/law/criminal/casseseicl2e/) (The keyed links for the Third Edition were not posted as of the composition of this syllabus. I’ve used the old site for the links – if and when the Third Edition site is fully updated, I may issue a revision).

**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:**

ACLU Torture Database [http://www.thetorturedatabase.org/search/apachesolr_search](http://www.thetorturedatabase.org/search/apachesolr_search)

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)

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. Its director, Susana SáCouto, has produced fabulous materials on the ICC.

The American University, Center for Human Rights and Humanitarian Law Washington College of 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](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/

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

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/

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

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

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


JSTOR (Journal Storage) retrieval site (often does not have latest editions of journals). 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](http://fletcher.tufts.edu-multi-warfare.html)


**U.N. High Commissioner for Human Rights Website:** documents and much more: [http://www.ohchr.org/EN/Pages/WelcomePage.aspx](http://www.ohchr.org/EN/Pages/WelcomePage.aspx)

Schedule

1. September 4:  Introduction

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


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


**Discussion:** Mutual introductions, basic international law.

2. September 11: Basic International Criminal Law


Documents on Cassese ch. 1 site
http://global.oup.com/uk/orc/law/criminal/casseseic12e/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**, Preamble (“We the Peoples . . .”), 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

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 18: International jurisdiction and crimes


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

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 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

1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity http://www1.umn.edu/humanrts/instree/x4cnaslw.htm


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 25: Criminal liability, national prosecutions

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

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.


Student briefs:*  

Military courts

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

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

Charles Graner, Lynndie England (Abu Ghraiib) courts martial

Haditha massacre (Iraq)

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:

http://jicj.oxfordjournals.org/content/vol5/issue2/index.dtl

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_wshe ;


*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 2: 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.


**Student briefs:**

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


**Alien Tort Claims litigation**

*Filartiga* summary: [link](http://www.pbs.org/wnet/justice/law_background_filartiga.html)


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


Drummond Coal (of Alabama) accused of hiring paramilitaries to kill union


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

6. October 9: International Criminal Tribunals

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


Documents: (We’ll talk about what articles of these to read)


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, 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 16: International Criminal Court as an organization and among organizations


Discussion: How political is international justice?

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

** * * * Fall Break: Oct. 19-27 * * * **

8. October 30: Truth Commissions and tribunal victim orientation


Brahm “Judging Truth: The Contributions of Truth Commissions in Post-Conflict


**Recommended:**


**Student presentations**

*El Salvador:* USIP website, El Salvador UN Truth Commission Report  


*Argentina:* USIP website, Argentina truth commission.  

*East Timor:* site includes link to final report: Chega!  

*Guatemala:* USIP website, Guatemala truth commission.  

*Sierra Leone:*  

*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 6: Torture

http://codes.lp.findlaw.com/uscode/18/1/113C/2340 provides definitions.

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


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 13: Class Debate

The ICC Prosecutor should explicitly 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. 20 – additional topic or day off: options to be considered

12. Wednesday, Nov. 27 – date change to be considered (Thanksgiving) – student research presentations

13. Wednesday, Dec. 4 – student research presentations

14. Wednesday, Dec. 11 – student research presentations

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