

International Criminal Law¹

Widespread violations of international humanitarian law had become a practice in the contemporary world. Thus, growing concerns of the international community resulted in a demand for international criminal prosecution before an international criminal tribunal for those who committed heinous crimes recognized under customary international law as a threat to international peace and security. The culture of impunity, which existed and still exist will be replaced by punishing those who are responsible for the commission of serious human rights and humanitarian law. The availability of a permanent international body with jurisdiction to punish those responsible for such violations may add a new substantial element in order to improve that regime. The aim of this course is to analyze the differences in the jurisdiction of the International Criminal Court and the jurisdictions of the International Criminal Tribunal for former Yugoslavia and the International Criminal Tribunal for Rwanda. A comprehensive analysis of all provisions and jurisprudence developed by the various tribunals will be discussed. Importance will be placed on the nature of the differing relations that exist between the ICC, ICTY and ICTR with national criminal courts. The topics are chosen carefully so that the students can be motivated to pursue their interest in the field of international criminal law and international humanitarian laws area.

Course Outline

Module –I

9 classes

1. Introduction : International Criminal Law
2. Individual Responsibility: Historical Development
 - (a) Treaty of Versailles, (b) Nuremberg & Tokyo Trials (c) Genocide Convention, 1948,
 - (d) Geneva Convention, 1949, ILC Draft Code of Crimes against the Peace and Security of Mankind
3. State Sovereignty and International Criminal Law
4. General Principles of International Criminal Law
5. Crimes and Elements of Crimes
 - (a) Genocide: Prosecutor V. Akayesu (ICTR 1998); Prosecutor v. Krstic (ICTY2004)
 - (a) Modes of Criminal Responsibility and Defences,

¹ Course Teacher: Prof. Manoj Kumar Sinha.

Prosecutor v Samuel Hinga Norman, Case No. SCSL-2004-14-AR729E, Prosecutor V. Blaskic, (ICTY 2004)

Module II : International Criminal Court and Tribunals

9 Classes

6. International Criminal Court
7. ICC Jurisdiction over the Nationals of Non-States parties
8. International Criminal Tribunal for Yugoslavia (ICTY)
9. International Criminal Tribunal for Rwanda (ICTR)

Module III:

10 Classes

10. The Iraqi Special Tribu
11. Universal Jurisdiction, Immunities
Ex parte Pinochet (UK House of Lords); Belgium's 1993 Universal Jurisdiction law; ICJ Arrest warrant of 2000 (Congo v .Belgium); Congo v. France; Decisions of the International Court of Justice Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) of 26 February 2007
12. Special Court for Sierra Leone
13. Extraordinary Court for Cambodia
14. Response of South Asian Countries to the ICC
15. Indian Perspectives on the ICC
16. The Future of International Criminal Law

Compulsory Readings:

Primary Sources

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Principles of International Co-operation in the Detection, Arrests, Extradition and Punishment of Persons Guilty of War Crimes, and Crimes against Humanity, 1973

Rome Statute of the International Criminal Court, 1998

Secondary Sources

Books

Cassese, Antonio, *International Criminal Law* (Oxford University Press, London, 2008) ed.2nd

Schabas, William A., *An Introduction to the International Criminal Court*, (Cambridge University Press, Cambridge, 2001)

Articles

Ambos, K., “General Principles of Criminal Law in Rome Statute” *Criminal Law Forum*, Vol.10, (1999), pp. 1-32.

Arnold, R., “The *Mens Rea* of Genocide under the Statute of the International Criminal Court” *Criminal Law Forum*, vol.14, n.2 (2003), pp. 127-151.

Arsanjani, Mahnoush H. , “ The Rome Statute of the International Criminal Court” *American Journal of International Law*, vol. 93, n.1 (1999),

Bassiouni, M.C., “From Versailles to Rwanda in Seventy Five Years: The Need to Establish a Permanent International Criminal Tribunal”, *Harvard Human Rights Journal*, vol.10 (1997), pp. 11-62.

Cryer, Robert, “International Criminal Law vs State Sovereignty: Another Round?”*The European Journal of International Law*, Vol. 16 No. 5, 979–1000.

Cassese, Antonio, *International Criminal Law*, (Oxford University Press, London,2008), ed.2.

-----, “ The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia” *The European Journal of International Law* Vol. 18 no. 4, pp.649-668.

Elsa, Jennifer K., “U.S. Policy Regarding the International Criminal Court” available at <http://www.fas.org.pdf>

Graefrath, Bernhard, “Universal Criminal Jurisdiction and International Criminal Court”, *European Journal of International Law*, vol.1 (1990), pp.67-88.

Greppi, E., "The Evolution of Individual Criminal Responsibility under International Law" *Review of the International Committee of the Red Cross*, n.835 (1999), pp.531-553.

Helen Duffy, "National Constitutional Compatibility and the International Criminal Court," *Duke Journal of Comparative and International Law*, vol.11, n.5 (2001), pp. 6-38.

Heyder, Corrina, "The UN Security Council's Referral of the Crimes in Darfur to the International Criminal Court in the Light of U.S. Opposition to the Court: Implications for the International Criminal Court's Functions and Status", *Berkeley Journal of International Law*, vol. 24(2006).

Jamison, Sandra L., "A Permanent International Criminal Court: A Proposal that Overcomes Past Objections", *Denver Journal of International Law and Policy*, n.23 (1995).

Maogoto, Jackson Nyamuya, "War Crimes and Real Polititick: International Justice from World War I to the 21st Century" available at <http://www.rienner.com>

Mutua, Makau, "America and the International Criminal Court" available at <http://www.globalpolicy.org/intljustice.htm>

Nsereko, Daniel D. Ntanda, "The International Criminal Court: Jurisdictional and Related Issues" *Criminal Law Forum*, vol.10, n.1(1999), pp. 87-120

Ramji, Jaya, "A Collective Responses to Mass Violence: Reparation and Healing in Cambodia, in Bringing the Khmer Rogue to Justice: Prosecuting Mass Violence before the Cambodian Courts", *Santa Clara University School of Law*, Working Paper No. 06-02, August 2006.

Schabas, William A., *An Introduction to the International Criminal Court*, (Cambridge University Press, Cambridge, 2001)

....., "Justice, Democracy, and Impunity in Post-genocide Rwanda: Searching for Solutions to Impossible Problems", *Criminal Law Forum*, vol.7 (1996).

....., "United States Hostility to the International Criminal Court: It's All About the Security Council", *European Journal of International Law*, vol.15, n.4 (2004), pp.701-720.

Tallgren, I., "The Sensibility and the Sense of International Criminal Law" *European Journal of International Law*, vol.13 (2002), pp. 561-595.

Optional Readings

Ambos, Kai, "The Role of the Prosecutor of an International Criminal Court from a Comparative Perspective", *Review International Commission Jurists*, 1997

Askin, Kelly, "Crimes Within the Jurisdiction of the International Criminal Court" *Criminal Law Forum*, vol.10, n.1 (1999), pp. 33-59.

Dadrian, Vahakn N., "Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications", *Yale Journal of International Law*, vol. 14 (1989).

Meron, Theodor, "International Criminalization of Internal Conflicts", *American Journal of International Law*, vol.89 (1995), pp. 554–574.

Schabas, William, "The Jelesic Case and the Mens Rea of the Crime of Genocide", *Leiden Journal of International Law*, vol. 14 (2001), pp.125.

Vyver, Johann Van der, "Prosecution and Punishment of the Crime of Genocide", *Fordham International Law Journal*, vol. 23 (1999)

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Observations from an International Criminal Law Viewpoint" [http: www.ejil.org](http://www.ejil.org)

United States v. Eisentrager et al., (1948) 15 L.R.T.W.C. 8 (United States Military Commission), at 15.

A.G. Israel v. Eichmann, (1968) 36 I.L.R. 18 (District Court, Jerusalem), at 50.