

University of Baltimore School of Law
Fall 2013

Course: International Criminal Law: Courts, Crimes & Defenses

Instructor: Professor Nienke Grossman
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Welcome to International Criminal Law. The information on this syllabus is vital to your success in this course. Please read it carefully.

Course Description:

International Criminal Law is concerned with defining and punishing behavior that the international community deems to violate fundamental human values. Some of these crimes include Genocide, War Crimes, and Crimes against Humanity. This course will explore the history and development of International Criminal Law, the courts and tribunals charged with interpreting it, the elements of international crimes, and potential defenses.

Course Objectives:

- To give students interested in international law topics the opportunity to delve into an area that has witnessed unprecedented expansion in recent years.
- To give students interested in criminal law topics the chance to learn about criminal law in the international context.
- To explore the theoretical bases for this field of the law.
- To consider contemporary transnational crime issues and to understand the concept of extraterritorial jurisdiction.
- To learn about the sources and relevant institutions and to acquire the vocabulary of this field of law.
- To be able to construct and critique arguments involving this field of law.
- To consider what ethical issues might arise in this field of the law.
- To perform well on an exam involving this field of law.

Course Materials:

The Casebook for this course is DAVID LUBAN, JULIE R. O'SULLIVAN, AND DAVID P. STEWART, INTERNATIONAL AND TRANSNATIONAL LAW (2010). In addition, this course has a TWEN site that includes the syllabus, announcements, forums, assignments, and other class materials. All students are required to register for the site. You are required to bring the casebook and any additional assigned materials with you to class each day.

Attendance and Preparation:

Like any ethical, competent and courteous lawyer, I expect you to be on time and prepared for every class. You may not leave the room during class time unless you are experiencing an emergency. Do not sign in if you are not prepared to participate. Your participation grade will suffer if you sign in when you are not prepared or if you are late to class.

Under UB's attendance policy, you are allowed a maximum of five absences. A student who is absent or unprepared for more than five classes may be compelled to withdraw from the course and barred from taking the final exam, resulting in an "F." UB's attendance policy is available for your reference at <http://law.ubalt.edu/template.cfm?page=267> .

Grades (Exam and Participation):

Your grade will be based on your exam and class participation. You will take a three-hour, closed book final exam. The examination will test your knowledge of the subjects covered in this course, as well as your critical thinking, legal analysis, and argument skills.

Your participation in class discussions may help or hurt your grade by up to one step (e.g., B+ to A-, or B- to C+). Participation will be graded by the quality of your contributions to class discussion. High quality participation shows that you have done the work assigned and reflected on the issues therein. Low quality participation shows that you have either not done the assignment or spent insufficient time reflecting on it before coming to class. Being late to class also constitutes low quality participation (because you can't participate if you are not there!).

Computers:

Laptops are permitted for the purpose of note-taking. On occasion, you may be required to close your laptop (e.g., if we are having a guest speaker or a simulation or debate). Consequently, you may want to bring some paper with you to class just in case.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the University is not closed, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation

of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. For your reference, the honor code is available at <http://law.ubalt.edu/template.cfm?page=477>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Interim Director of Disability Support Services at 410-837-4141 or via email at kschulz@ubalt.edu.

List of Course Topics:

The list of topics and assignments are *subject to change* to maximize student learning (and we may not cover every topic). I will make every effort to notify you a week in advance of any changes. All changes will be emailed to you and posted on the TWEN site in the Syllabus folder.

UNIT I. INTRODUCTION TO ICL

- A. What is international criminal law?
- B. International Law Preliminaries
- C. International Criminal Tribunals

UNIT II. SOME ISSUES IN TRANSNATIONAL PRACTICE

- A. Principles of Transnational Jurisdiction
- B. Comparative Criminal Procedure and Sentencing
- C. Immunities
- D. Extradition

UNIT III: THE INTERNATIONAL CRIMINAL COURT

UNIT IV: CRIMES, MENS REA, PARTICIPATION, AND DEFENSES

- A. Substantive Crimes
 - a. War Crimes
 - b. Crimes Against Humanity
 - c. Genocide
- B. Mens Rea
- C. Modes of Participation
- D. Defenses

INTERNATIONAL CRIMINAL LAW- LIST OF ASSIGNMENTS

“CB” means casebook. “TWEN” is the course website. Please note that this list of assignments is subject to change to further student learning.

UNIT I. INTRODUCTION TO ICL

A. What is international criminal law?

Class 1 (August 19): What is international criminal law? How is it different from domestic criminal law?

- CB: 1-8, 13-25
- Please fill out, print out, and bring to class the “Student Information Sheet” on the TWEN site under “Course Documents.”
- International/transnational criminal law is a rapidly evolving field and a lot has happened in the last year. Find a news article involving international or transnational criminal law from the last year. Which kind of law is at issue? What did you find interesting about the article? What questions did it raise for you? Be prepared to talk about it.

B. International Law Preliminaries

Class 2 (August 21): International Law Preliminaries

- CB: 27-50
- TWEN: Rome Statute, Article 21 (Applicable Law)
 - The Rome Statute is the treaty that created the International Criminal Court. How do the sources of law listed differ from the International Court of Justice’s Article 38?

C. International Criminal Tribunals: From Nuremburg to the Hague and Beyond

Class 3 (August 26): Nuremburg and Tokyo

- CB: 71-93

Class 4 (August 28): ICTY

- CB: 95-110
- ICTY Statute, at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf (pages 1-16).
- For students whose last names start with A thru J: Go to the ICTY Website and find something that interests you about the ICTY to share with the class: <http://www.icty.org/>.
Some possibilities:
 - Read through one of the cases and be prepared to share a summary with the class.
 - Figure out what the “completion strategy” is about and what challenges it presents to the functioning of the ICTY.
 - What’s the outreach program about? What’s its purpose?
 - Click on “Legal Library” and choose one of the key legal documents, like the Statute, Rules of Procedure, or Practice Directions:
 - What stands out to you?
 - Consider as possibilities: treatment of victims and witnesses, issues that might come up for defense counsel or the prosecution, sentencing, etc...
- TWEN: ICTY Letter from Danish Judge
- Case Information Sheet for Biljana Plavsic, http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf - pages 1-4

September 2 – Labor Day – No Class

Class 5 (September 4): “The Reckoning”

- CB: 771-76
- Surf the website of the International Criminal Court and write a paragraph or two (maximum one page) detailing something you learned about the Court. This is to be turned in on September 9th.
 - Some possibilities include:
 - summarize a pending case or situation before the Court,
 - something you found interesting in the Rules of Professional Responsibility
 - how the Court treats witnesses or victims
 - anything else you found interesting
- As you watch the film in class, consider what challenges does the ICC face in accomplishing its mission? What are the challenges the Prosecutor faces?

Class 6 (September 9): ICTR, Hybrid Tribunals

- CB: 111-132
- TWEN: ICTR Statute, or you can find it at <http://69.94.11.53/ENGLISH/basicdocs/statute.html>
- For students whose last names end in K through Z: Go to the website of the Sierra Leone, Cambodia or Lebanon Tribunals: <http://www.sc-sl.org/>, <http://www.eccc.gov.kh/english/default.aspx>, or <http://www.stl-tsl.org/action/home>.
 - Be prepared to share with the class something interesting you found on one of these websites.
 - In addition, tell us one way in which the tribunal you are investigating is different from the ICTY/ICTR model.
 - Alternatively, find a law review article that discusses an issue relevant to one of these tribunals and share a summary with the class.
- Reading questions:
 - What are the differences between these different kinds of tribunals? What are the pros and cons to different kinds of tribunals? In what instances is a hybrid tribunal preferable to a purely international tribunal like the ICTY or the ICTR? What about leaving it to local justice?
 - How are the ICTY and the ICTR different? For example, how does jurisdiction differ? How do the crimes in the respective statutes differ?
- TWEN: Read Mardelva Case Study

UNIT II. SOME ISSUES IN TRANSNATIONAL PRACTICE

A. Principles of Transnational Jurisdiction

Class 7 (September 11): Overview of Jurisdiction, Territorial, Nationality

- CB: 169-173 (up to Report on Extraterritorial Crime)
- CB: 179-185 (up to US v. Ricardo)
- CB: 193-201

Class 8 (September 16): Passive Personality, Protective Jurisdiction, Begin UJ

- CB: 201-12
 - In *Prosecutor v. Eichmann*, what is the state interest that the Court says justifies Israel's application of its law to *Eichmann*? Are you convinced by the Court's reasoning?
- Convention against Torture, at <http://www2.ohchr.org/english/law/cat.htm>. Look at the Preamble and articles 1 through 7.
- What is the difference between subsidiary and pure universal jurisdiction? What kind of jurisdiction does the Convention Against Torture require states to exercise?
- TWEN: Materials on Hissène Habré case

Class 9 (September 18): Universal Jurisdiction

- CB: 212-231 (Universal Jurisdiction)
 - In *Case Concerning the Arrest Warrant of 11 April 2000 (DRC v. Belgium)*, what is each judge's opinion on whether Belgium may apply its laws to Yerodia? Why or why not? Which view is most persuasive to you?

B. Comparative Criminal Procedure and Sentencing

Class 10 (September 23): Comparative Criminal Procedure and Sentencing

- CB: 135-67
- TWEN: Wall Street Journal Article on Plea Bargaining in US

C. Immunities

Class 11 (September 25): Immunity I

- CB:257-83 (Immunity: Diplomatic, Consular, International Organizations)
- Vienna Convention on Diplomatic Relations, at http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf
 - Read Preamble, articles 1(e), 29-32
- *Pinochet case*: Where does Head of State Immunity come from? Why should former Heads-of-State get immunity? How did the Law Lords respond to the question whether acts of torture are official acts? Why is this case important?

Class 12 (September 30): Immunity II/Begin International Extradition

- CB: 283-95
 - *Arrest Warrant case*: Why is Yerodia entitled to immunity in the Court's majority opinion? What is Van den Wyngaert's critique of the Court's approach? Is her argument convincing to you?
- CB, 389-92

Class 13 (October 2): International Extradition and Its Alternatives I

- CB: 392-403, 411-19

Class 14 (October 7): International Extradition and Its Alternatives II

- CB, 419-39

Class 15 (October 9): TBD

UNIT III: THE INTERNATIONAL CRIMINAL COURT

Class 16 (October 14): ICC I

- CB: 771-82 (do not read Note 1); 785 (starting at Note 2) - 89
- On Course Website: ICC Statute, Articles 1 to 24

Class 17 (October 16): ICC II

- CB: 789-812
- Be sure to look up relevant articles in the Rome Statute as you read.

Class 18 (October 21): ICC III

- CB: 812-27
- Be sure to look up relevant articles in the Rome Statute as you read.
- TWEN: John Bolton, “Speech Two: Reject and Oppose the International Criminal Court”
- TWEN: Beyond Kampala – ASIL Discussion Paper
 - Read only “State Cooperation and the International Criminal Court: A Role for the United States?” (pages 3 to 12)

UNIT IV: CRIMES, MENS REA, PARTICIPATION AND DEFENSES

A. Substantive Crimes

Class 19 (October 23): War Crimes I

- CB: 1037-1060
- TWEN: Rome Statute, article 8
- TWEN: Elements of Crimes, Article 8 (skim to get a sense of war crimes)
- Go to <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp> for more information about the Geneva Conventions and the ICRC, the organizations called the “Guardian of International Humanitarian Law”

Class 20 (October 28): War Crimes II

- CB: 1060-75
- “CIA seeks to expand drone fleet, officials say,” Washington Post (October 18, 2012)
- http://www.washingtonpost.com/world/national-security/cia-seeks-to-expand-drone-fleet-officials-say/2012/10/18/01149a8c-1949-11e2-bd10-5ff056538b7c_print.html.

Class 21 (October 30): Crimes Against Humanity

- CB: 955-73
- TWEN: Rome Statute, articles 7 and 9
- TWEN: Elements of Crimes, article 7, Introduction, 7(1)(a), 7(1)(h)
- TWEN: Updates to Chapter 19
- Consider: What are the majority and the dissent in the Situation in Kenya case disagreeing about? Who is right? In Kupreskic, what kinds of conduct qualify as the Crime Against Humanity of Persecution? What *mens rea* does it require?

Class 22 (November 4): Genocide I

- CB: 985-1006
- TWEN: Rome Statute: Article 6
- TWEN: Elements of Crimes, Article 6 (skim to get a sense of elements)

Class 23 (November 6): No Class

- Because we will have no class on Wednesday, November 6, class may run over by up to fifteen minutes for the remaining class sessions of the semester to make up for the time.

A. Mens Rea and Modes of Participation

Class 24 (November 11): Genocide II/Mens Rea I

- CB: 1006-12
- What are the different tests for determining whether a group is covered by the Genocide Convention? Which test makes the most sense to you and why?
- CB: 857-71
- What's the difference between recklessness and *dolus eventualis*? Should *dolus eventualis* be used for international crimes?
- TWEN: Rome Statute, articles 25, 28, 30

Class 25 (November 13): Mens Rea II/Modes of Participation (Joint Criminal Enterprise, Conspiracy vs. JCE, Attempts, Integral Part Test, ICC Article 25)

- CB: 907-916 (read 907-916 first!); 873-90
- TWEN: ICC Statute, Articles 25, 28, 30
- What are the different kinds of JCE liability? Is it fair to assign individual criminal responsibility based on JCE?
- How do the approaches to modes of participation differ? Which make the most sense to you and why? Which best capture those who are morally culpable?

Class 26 (November 18): Modes of Participation Cont'd/Command Responsibility

- CB: 894-907
- TWEN: Handout on Command Responsibility
- TWEN: ICC Statute, Articles 25, 28, 30

B. Defenses

Class 27 (November 20): Defenses I

- CB: 917-35
- On Course Website: Rome Statute, Articles 31-33
- Turn in review questions by Sunday, November 24 at 11:59 pm for November 27 review session.

Class 28 (November 25): Defenses II; Wrap Up and Review Session

- Review CB: 935-48; Rome Statute, Articles 31-33

FINAL EXAM:

You will be allowed to bring in one piece of regular-sized (8.5X11) paper with whatever you want on it. You are allowed to use both sides. You must turn in your piece of paper with your exam. You will be provided with the Rome Statute in its entirety.