

1. Department

2. Faculty

Faculty of Legal Studies

3. Course code

4. Course Title

International Criminal Law

5. Number of Credits

4

6. Course objectives

The course structure is designed to cover origins of international criminal law, its progressive development in terms of substantive law since the Second World War, and the progress made towards the establishment of permanent International Criminal Court. It would comprehensively cover substantive aspects and crimes that constitute the core of the present international criminal law. South Asian experiences in terms of State practice constitute an important part of the discussion on all topics.

The course would involve 13/14 weeks of teaching. Each week there would be four hours of teaching, divided into two/three teaching sessions. Class room teaching involves lecture mode, case studies and presentations by students on selected topics of the week. Students are expected to come read the relevant portions of the compulsory readings every week.

The course is intended to give students a comprehensive understanding of international criminal law (ICL) and its broad interrelationship with some of the other branches of international law, particularly international humanitarian law and international human rights law.

7. Minimum prerequisites for taking this course, if any

8. Course structure with units if applicable**Week-1****Introduction**

This week's discussion would introduce students to the structure of the course along with providing a historical introduction to the concept of individual criminal responsibility under international law which would include developments within the League of Nations and the work of the International Law Commission. It would cover the notion of international crimes, individual criminal responsibility and sources of international criminal law. It would also focus on the distinction drawn by international law between state responsibility and individual criminal responsibility.

Week-2**Enforcement of International Criminal Law: Nuremberg and Tokyo tribunals**

This week would cover the establishment of the Nuremberg and Tokyo tribunals at the end of the Second World War, their contribution to the development of individual criminal responsibility under international law and their legacy for the future developments in the field of international criminal law.

Week-3

Adhoc and hybrid/mixed tribunals

In 1990s, after a long gap, a momentum was initiated in the field of international criminal law with the establishment of the adhoc tribunals to deal with the specific situations of former Yugoslavia and Rwanda. This topic would cover the establishment of the adhoc tribunals i.e., International Criminal Tribunal for former Yugoslavia (ICTY) and the International criminal Tribunal for Rwanda (ICTR), their statutes and jurisdiction. Apart from these international tribunals there are a few other tribunals which were established in the contexts of Sierra Leone, East Timor, Kosovo and Cambodia. These tribunals were established at the domestic level with certain international elements. The discussion on the topic would attempt to provide an understanding of the nature and functioning of these hybrid/mixed tribunals.

Week-4

International Criminal Court

This topic would cover the establishment of the court, structure and administration of the court, relationship with the United Nations, the Presidency, The chambers, office of the prosecutor, assembly of States parties and review conference. It would further cover, jurisdiction of the court, complementarity, admissibility, investigation, pretrial, trial, appeal and punishment and enforcement of punishments. It would also cover victims of crimes and their concerns.

Week-5

International Criminal Court (Contd.)

Week-6

War crimes

This topic would cover the nature of war crimes, the need for a link between the offence and the armed conflict, evolution of war crimes from Nuremberg Tribunal charter to the present, classification of armed conflicts, war crimes in internal armed conflicts.

Week-7

Crimes against humanity

The crime against humanity would be discussed from its initial conceptualization in the Nuremberg Tribunal charter, its incorporation in the ICTY and the ICTR Statutes and finally its inclusion in the ICC Statute. Its evolutionary growth and constitutive elements are elaborated. Work towards adopting a convention on crimes against humanity will be dealt with.

Week-8

Genocide

The notion of genocide, the 1948 convention on genocide, destruction of a group 'in whole or in part', the specific intent (*Dolus specialis*) required for genocide, acts constituting genocide, incitement to commit genocide and developments in the case law on genocide would be covered.

Week-9

Crime of aggression

The discussion would be focused on the crime of aggression as it evolved over a period of time, i.e., from its inclusion as crime against peace in the Nuremberg Tribunal charter till its inclusion in the Rome Statute of the International Criminal Court during the Statute's review conference in Kampala in 2010.

Week-10

Other international crimes

Apart from the crimes which have been criminalized by the ICC Statute, there are certain other acts which are criminalized by various other international treaties. These acts include torture, transnational organized crime and terrorism. This week's discussion will deal with these crimes.

Week-11

Modes of criminal liability

This week's discussion would include perpetration, co-perpetration, joint criminal enterprise, aiding and abetting, incitement, attempt, planning, conspiracy, ordering, inchoate crimes and superior and command responsibility.

Week-12

Victim participation in international criminal proceedings

Victims can send information to the Prosecutor of the ICC for initiating an investigation. ICC system also provides for the victim participation in two important ways. For the first time in the history of international criminal justice, victims have the right to participate in proceedings and request reparations. This means that victims' role is not just confined to being witnesses, but they may also present their views and concerns at different stages of the proceedings. This week's discussion will focus on the participation of victims in international criminal proceedings in general with a special focus on the ICC system.

Week-13

National jurisdiction on international crimes, amnesties, other forms of justice and immunities

Individual criminal responsibility in South Asia

This topic would cover the issues relating to the prosecution of international crimes by national jurisdictions, dispensability of criminal accountability model and the adoption of truth commissions and amnesties with a view to establishing restorative justice in a post conflict reconstruction process. The discussion would also cover the functional and personal immunities provided for in customary international law and lifting of functional immunities with respect to international crimes. The discussion would primarily focus on South Asian experiences in dealing with grave crimes.

Week-14

Critical evaluation of international criminal justice system and contemporary challenges

International criminal justice system through individual criminal responsibility under international law gained momentum in the recent past. There has been a considerable scholarship critically evaluating the legal framework dealing with individual criminal responsibility in its conceptual and practical dimensions. Thus, the discussion would focus on certain critical perspectives of international criminal law. The discussion would also extend to

the challenges posed to the international criminal justice in the form of recent attempts by some States to withdraw from the Rome Statute.

9. Reading suggestions: Text Books/Web-resources/other

BOOKS

Compulsory reading (Relevant chapters)

Bantekas, Ilias, *International Criminal Law* (Hart Publishing, 2010)

Cassese, Antonio, *International Criminal Law*, (OUP, 2008)

Heller, Kevin Jon, et al, *The Oxford Handbook of International Criminal Law* (OUP, 2020)

Schabas, William A., *An Introduction to the International Criminal Court* (CUP, 2017)

Recommended reading

Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin, 2006)

Cassese, Antonio, *International Criminal Law: Cases and Commentary* (OUP, 2011)

Schabas, William A. and Bernaz, Nadia, *Routledge Handbook of International Criminal Law* (Routledge, 2011)

Sliedregt, Elies Van, *Individual Criminal Responsibility in International Law* (OUP, 2012)

ARTICLES (Weekly reading and presentations)

Week-1

Introduction

Cassese, Antonio, "On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law", *European Journal of International Law*, vol. 9, no. 1, (1998), pp. 2-17.

Christie, H, "The Poisoned Chalice: Imperial Justice, Moral Relativism, and the Origins of International Criminal Law", *University of Pittsburgh Law Review*, vol. 72, no. 2, (2010), pp. 361-388.

Djuro Degan, Vladimir, "On the Sources of International Criminal Law", *Chinese Journal of International Law*, vol. 4, no. 1, (2005), pp. 45-83.

Heller, Kevin Jon, "What Is an International Crime: (A Revisionist History)," *Harvard International Law Journal*, vol. 58, no. 2, (2017), pp. 353-420.

Meron, Theodor, "Is International Law Moving towards Criminalization?", *European Journal of International Law*, vol. 9, no. 1, (1998), pp. 18-31.

Sliedregt, Elies Van, "International Criminal Law: Over-studied and Underachieving?" *Leiden Journal of International Law*, vol. 29, no. 1, (2016), pp. 1-12.

Week-2

Enforcement of International Criminal Law: Nuremberg and Tokyo tribunals

Charney, Jonathan I., "Progress in International Criminal Law?", *American Journal of International Law*, vol. 93, no. 2, (1999), pp.452-464.

Kauffmann, Kurt, "The Nuremberg Trial in Retrospect", *Whittier Law Review*, vol. 9, no. 3, (1987), pp. 537-552.

Kaufman, Zachary D., "The Nuremberg Tribunal V. the Tokyo Tribunal: Designs, Staffs, and Operations", *John Marshall Law Review*, vol. 43, no. 3, (2010), pp. 753-768.

Sellers, Kirsten "Imperfect Justice at Nuremberg and Tokyo", *European Journal of International Law*, vol. 21 no. 4 (2010), pp. 1085–1102.

Varadarajan, Latha "The Trials of Imperialism: Radhabinod Pal's Dissent at the Tokyo Tribunal", *European Journal of International Relations*, vol. 21, no.4, (2015), pp. 793-815.

Schabas, William. "The Contribution of the Eichmann Trial to International Law" *Leiden Journal of International Law*, vol. 26, no. 3, (2013), pp. 667-700.

Week-3

Adhoc and hybrid/mixed tribunals

Carolant, Robert F., "An Examination of the Role of Hybrid International Tribunals in Prosecuting War Crimes and Developing Independent Domestic Court Systems: The Kosovo Experiment", *Transnational Law & Contemporary Problems*, vol. 17, no. 1, (2008), pp. 9-29.

Karnavas, Michael G., "The ICTY Legacy: A Defense Counsel's Perspective", *Goettingen Journal of International Law*, vol. 3, no. 3, (2011), pp. 1053-1092.

Megret, Frederic, "In Defense of Hybridity: Towards a Representational Theory of International Criminal Justice", *Cornell International Law Journal*, vol. 38, no. 3, (2005), pp. 725-751.

Skinnider, Eileen, Experiences and Lessons from "Hybrid" Tribunals: Sierra Leone, East Timor and Cambodia, International Centre for Criminal Law Reform and Criminal Justice Policy.

Week-4

International Criminal Court

Informal expert paper: "The Principle of Complementarity in Practice", ICC-01/04-01/07-1008 AnxA 30-03-2009 2/37 CB T.

Jackson, Miles, "Regional Complementarity: The Rome Statute and Public International Law", *Journal of International Criminal Justice*, vol. 14, no. 5, (2016), pp. 1061–1072.

Labuda' Patryk I., "The Flipside of Complementarity: Double Jeopardy at the International Criminal Court", *Journal of International Criminal Justice*, vol. 17, no. 2, 2019, pp. 369-390.

Muller, Andreas Th., and Stegmiller, Ignaz, "Self-Referrals on Trial: From Panacea to Patient", *Journal of International Criminal Justice*, vol. 8, no. 5, (2010), pp. 1267-1294.

Stahn, Carsten, "Libya, the International Criminal Court and Complementarity: A Test for 'Shared Responsibility'", *Journal of International Criminal Justice*, vol. 10, no. 2, (2012), pp. 325-349.

Yang, Lijun, "On the Principle of Complementarity in the Rome Statute of the International Criminal Court", *Chinese Journal of International Law*, vol. 4, no. 1, (2005), pp. 121-132.

Week-5

International Criminal Court (Contd.)

DeGuzman, Margaret M., "Choosing to Prosecute: Expressive Selection at the International Criminal Court", *Michigan Journal of International Law*, vol.33, no. 2, (2012), pp. 265-320.

Dias, Talita de Souza, "The Nature of the Rome Statute and the Place of International Law before the International Criminal Court", *Journal of International Criminal Justice*, vol. no. 1, 2019, 1-29.

Nouwen, Sarah M. H. and Werner, Wouter G., "Doing Justice to the Political: The International Criminal Court in Uganda and Sudan", *European Journal of International Law*, vol. 21 no. 4, (2010), pp. 941-965.

Thompson-Flores, Thomas, "The International Criminal Court: Will it Succeed or Fail? Determinative Factors and Case Study on this Question", *Loyola University Chicago International Law Review*, vol. 8, no. 1, (2010), pp.57-82.

Week-6

War crimes

Alamuddin, Amal and Webb, Philippa, "Expanding Jurisdiction over War Crimes under Article 8 of the ICC Statute", *Journal of International Criminal Justice*, vol. 8, no. 5, (2010), 1219-1243.

De Beco, Gauthier, "War Crimes in International Versus Non-International Armed Conflicts: "New Wine in Old Wineskins"?", *International Criminal Law Review*, vol. 8, no. 1-2, (2008), pp. 319-330.

Dormann, Knut, "War Crimes under the Rome Statute of the International Criminal Court, with a Special Focus on the Negotiations on the Elements of Crimes", *Max Planck Yearbook of United Nations Law*, vol. 7, (2003), 341-407.

Meron, Theodor, "Reflections on the Prosecution of War Crimes by International Tribunals", *American Journal of International Law*, vol. 100, no. 3, (2006), pp. 551-579.

Tabak, Shana, "Article 124, War Crimes, and the Development of The Rome Statute", *Georgetown Journal of International Law*, vol. 40, no. 3, (2009), pp.1069-1099.

Van derWilt, Harmen, "War Crimes and the Requirement of a Nexus with an Armed Conflict", *Journal of International Criminal Justice*, vol. 10, no. 5, (2012), pp. 1113-1128.

Week-7

Crimes against humanity

Akhavan, Payam, "Reconciling Crimes Against Humanity with the Laws of War: Human Rights, Armed Conflict, and the Limits of Progressive Jurisprudence", *Journal of International Criminal Justice*, vol. 6, no. 1, (2008), pp. 21-37.

Luban, David, "A Theory of Crimes Against Humanity", *Yale Journal of International Law*, vol. 29, no. 1, (2004), pp.85-167.

Sadat, Leila Nadya, "A Contextual and Historical Analysis of the International Law Commission's 2017 Draft Articles for a New Global Treaty on Crimes Against Humanity", *Journal of International Criminal Justice*, vol. 16, no. 4, 2018, 683-704.

Schabas, William A., Prevention of Crimes Against Humanity, *Journal of International Criminal Justice*, vol. 16, no. 4, 2018, 705-728.

Shenkman, Carey, "Catalyzing National Judicial Capacity: The ICC's First Crimes against Humanity outside Armed Conflict", *New York University Law Review*, vol. 87, no. 4, (2012), pp. 1210-1248.

Werle, Gerhard and Burghardt, Boris, "Do Crimes Against Humanity Require the Participation of a State or a 'State-like' Organization?", *Journal of International Criminal Justice*, vol. 10, no. 5, (2012), pp.1151-1170.

Week-8

Genocide

Akhavan, Payam, "The Crime of Genocide in the ICTR Jurisprudence", *Journal of International Criminal Justice*, vol. 3, no. 4, (2005), pp.989-1006.

Anderson, Kjell, "Judicial Inference of the 'Intent to Destroy': A Critical, Socio-legal Analysis" *Journal of International Criminal Justice*, vol. 17, no. 1, 2019, pp. 125-150.

Malliaris, Stylianos, "Assessing the ICTY Jurisprudence in Defining the Elements of the Crime of Genocide: The Need for a 'Plan'", *Review of International Law and Politics*, vol. 5, no. 20, (2009), pp. 105-127.

Miller, Alexandra A., "From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape", *Penn State Law Review*, vol. 108, no. 1, (2003), pp. 349-373.

Ruebner, Ralph, "The Evolving Nature of the Crime of Genocide", *The John Marshall Law Review*, vol. 38, no. 4, (2005), pp.1227-1236.

Schaack, Beth Van, "Determining the Commission of Genocide in Myanmar: Legal and Policy Considerations", *Journal of International Criminal Justice*, Volume 17, no. 2, (2019), pp. 285-323.

Week-9

Crime of aggression

Creagan, Erin, "Justified Uses of Force and the Crime of Aggression", *Journal of International Criminal Justice*, vol. 10, no. (2012), pp. 59-82.

Hartig, Annegret, "Post Kampala: The Early Implementers of the Crime of Aggression", *Journal of International Criminal Justice*, vol. , no., 2019, pp. 1-9.

Jon Heller, Kevin, "The Uncertain Legal Status of the Aggression Understandings", *Journal of International Criminal Justice*, vol. 10, no. 1, (2012), pp.229-248.

O'Connell, Mary Ellen and Niyazmatov, Mirakmal, "What is Aggression?: Comparing the Jus ad Bellum and the ICC Statute", *Journal of International Criminal Justice*, vol. 10, no. 1, (2012), pp. 189-207.

Politi, Mauro, "The ICC and the Crime of Aggression A Dream that Came Through and the Reality Ahead", *Journal of International Criminal Justice*, vol. 10, no. , (2012), pp. 267-288.

Sellars, Kirsten, "Delegitimizing Aggression: First Steps and False Starts after the First World War", *Journal of International Criminal Justice*, vol. 10, no.1, (2012), pp. 7-40.

Week-10

Other international crimes

Boister, Neil, "'Transnational Criminal Law'?", *European Journal of International Law*, vol. 14, no. 5, (2003), pp. 953-976.

Edwards, Adam and Gill, Pete, "Crime as enterprise? - The case of "transnational organized crime"", *Crime, Law and Social Change*, vol. 37, no. 3, (2002), pp. 203-223.

Van der Wilt, Harmen, "Trafficking in human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts", *Chinese Journal of International Law*, vol. 13, no. 2, (2014), pp. 297-334.

Week-11

Modes of criminal liability

Cassese, Antonio, "The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise", *Journal of International Criminal Justice*, vol. 5, no. 1, (2007), pp. 109-133.

Manacorda, Stefano and Meloni, Chantal, "Indirect Perpetration versus Joint Criminal Enterprise: Concurring Approaches in the Practice of International Criminal Law?", *Journal of International Criminal Justice*, vol. 9, no. 1, (2011), pp.159-178.

Ohlin, Jens David, "Three Conceptual Problems with the Doctrine of Joint Criminal Enterprise", *Journal of International Criminal Justice*, Vol. 5, no. 1, (2007), pp. 69-90.

Spadaro, Alessandra, "Punish and Be Punished? The Paradox of Command Responsibility in Armed Groups", *Journal of International Criminal Justice*, vol. 18, no. 1, (2020), pp. 1-30.

Van der Wilt, Harmen, "Joint Criminal Enterprise: Possibilities and Limitations", *Journal of International Criminal Justice*, vol. 5, no. 1, (2007), pp. 91-108.

Week-12

Victim participation in international criminal proceedings

Findlay, Mark, "Activating a Victim Constituency in International Criminal Justice", *International Journal of Transitional Justice*, Vol. 3, no. 2, (2009), pp. 183–206.

Kendall, Sarah and Nouwen, Sarah, "Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood", *Law and Contemporary Problems*, vol. 76, no. 3, (2013), pp. 235-262.

Mcasey, Bridie, "Victim Participation at the International Criminal Court and its Impact on Procedural Fairness", *Australian International Law Journal*, vol.18, (2011), pp. 105-125.

Moffett, Luke, "Meaningful and Effective? Considering Victims' Interests through Participation at the International Criminal Court", *Criminal Law Forum*, vol. 26, no. 2, (2015), pp. 255–289.

Pena, Mariana and Carayon, Gaelle, "Is the ICC Making the Most of Victim Participation?", *International Journal of Transitional Justice*, vol. 7, no.3, (2013), pp. 518-535.

Week-13

National jurisdiction on international crimes, amnesties, other forms of justice and immunities

Bisset, Alison, "Rethinking the Powers of Truth Commissions in Light of the ICC Statute", *Journal of International Criminal Justice*, vol. 7, no. 5, (2009), pp. 963-982.

Clark, Janine Natalya, "The Limits of Retributive Justice Findings of an Empirical Study in Bosnia and Hercegovina", *Journal of International Criminal Justice*, vol. 7, no. 3, (2009), pp. 463-487.

Kiyani, Asad G., "Al-Bashir & the ICC: The Problem of Head of State Immunity", *Chinese Journal of International Law*, vol. 12, no.3, (2013), pp. 467-508.

Reiter, Andrew G, Examining the Use of Amnesties and Pardons as a Response to Internal Armed Conflict, *Israel Law Review*, vol. 47, no.1, (2014), pp. 133-147.

Stahn, Carsten, "Complementarity, Amnesties and Alternative Forms of Justice: Some Interpretative Guidelines for the International Criminal Court", *Journal of International Criminal Justice*, vol. 3, no. 3, (2005), pp.695-720.

Week-14

Critical evaluation of international criminal justice system

Cowell, Frederick, "Inherent Imperialism: Understanding the Legal Roots of Anti-imperialist Criticism of the International Criminal Court", *Journal of International Criminal Justice*, vol. 15, no. 4, 2017, 667-687.

Kendall, Sara, "Donors' Justice: Recasting International Criminal Accountability", *Leiden Journal of International Law*, vol. 24, no. 3, (2011), pp. 585-606.

Keydar, Renana, "'Lessons in Humanity': Re-evaluating International Criminal Law's Narrative of Progress in the Post 9/11 Era", *Journal of International Criminal Justice*, Volume 17, no. 2, (2019), pp. 229-257.

Koskenniemi, Martti, "Between Impunity and Show Trials", *Max Planck Yearbook of United Nations Law*, vol. 6, (2002), pp.1-35.

Krever, Tor, "International Criminal Law: An Ideology Critique", *Leiden Journal of International Law*, vol. 26, no. 3, (2013), pp. 701-723.

Megret, Frederic, "The Politics of International Criminal Justice", *European Journal of International Law*, vol. 13, no. 5, (2002), pp.1261-1284.

Reynolds, John and Xavier, Sujith, "'The Dark Corners of the World': TWAIL and International Criminal Justice" *Journal of International Criminal Justice*, Volume 14, Issue 4, (2016),pp. 959-983.

Ssenyonjo, Manisuli, "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia", *Criminal Law Forum*, (2017), pp. 1-57.

10. Evaluation and Weightage of different components of evaluation

Evaluation/Grading is based on student performance in assessment tasks/activities/exams/presentations/class participation/viva voce test/regular attendance.