



# *The Hebrew University of Jerusalem*

## *Syllabus*

### *INTERNATIONAL CRIMINAL LAW - 62585*

*Last update 05-02-2019*

*HU Credits: 2*

*Degree/Cycle: 2nd degree (Master)*

*Responsible Department: Law*

*Academic year: 0*

*Semester: 2nd Semester*

*Teaching Languages: English*

*Campus: Mt. Scopus*

*Course/Module Coordinator: Dr. Gilad Noam*

*Coordinator Email: [gilad.noam@gmail.com](mailto:gilad.noam@gmail.com)*

*Coordinator Office Hours: Tuesday, 20:00-21:00 by appointment*

*Teaching Staff:*

Course/Module description:

International criminal law (ICL) went through remarkable developments since the 1990s. These developments include the establishment of various international criminal courts and tribunals, most notably the establishment of the International Criminal Court (ICC). The establishment of a permanent international criminal judiciary has posed numerous challenges to the international community and to international criminal law lawyers. The course addresses the main challenges faced by the newly created international criminal law system.

The course consists of three parts. The first lessons are devoted to substantive norms of international criminal law, including an examination of the concept of "international crime", and an analysis of the three principal categories of international crimes: war crimes, genocide, and crimes against humanity. The second part of the course is dedicated to discussion of the institutional aspects of international criminal law, including an examination of the unique characteristics of the various forums (domestic and international) in which international criminal adjudication takes place. The last part of the course includes selective issues, such as international immunities, the controversies surrounding the crime of aggression, and certain modes of criminal liability.

Course/Module aims:

The course addresses the main normative and institutional features of the international criminal law system, and some of the contemporary issues and challenges that it faces.

Learning outcomes - On successful completion of this module, students should be able to:

1. To distinguish between the various categories of international crimes.
2. To identify international crimes that were allegedly committed in a given scenario.
3. To analyze basic elements of international crimes within a given factual scenario.
4. To distinguish between the various domestic and international forums that are relevant for the enforcement of international criminal law.
5. To derive conclusions as to issues of jurisdiction and admissibility of cases in the relevant forums in a given factual scenario.
6. To identify questions relating to international criminal liability, such as immunities and responsibility of co-perpetrators, and discuss these questions in the context in which they arise.

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Attendance requirements(%):  
75%

*Teaching arrangement and method of instruction: Lectures*

Course/Module Content:

1. Introduction to ICL
2. War Crimes
3. Genocide and Crimes against Humanity.
4. Enforcement of ICL by National Courts
5. Enforcement of ICL by International Criminal Courts and Tribunals, and the Jurisdiction of the ICC
6. Admissibility Issues in International Criminal Tribunals, and the Allocation of Jurisdiction between National Jurisdictions and International Criminal Tribunals
7. Immunities
8. Additional International Crimes: Torture, Aggression and Terrorism
9. Modes of Criminal Liability

Required Reading:

*Classes' Topics and Reading Materials*

*Two books will be used extensively during the course:*

1. Cassese's *International Criminal Law* 3rd ed. Revised by Antonio Cassese, Paola Gaeta, Laurel Baig, Mary Fan, Christopher Gosnell and Alex Whiting (Oxford University Press, 2013) ("Cassese") - The book can be found in the reserved books section at the Law Library.
2. W. Schabas, *An Introduction to the International Criminal Court* (3rd ed., 2007) ("Schabas") - The book can be accessed electronically through the Law Library's catalogue.

*The other items listed below can be accessed online through the 'Moodle' system.*

*Reading materials that are marked with \* are non-mandatory.*

1. Introduction to ICL
  - Cassese, 3-21.

*Part I: The Legal Norms*

2. War Crimes
  - Cassese, 63-83.

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- *Rome Statute of the International Criminal Court*, Articles 5, 8.
  - *Resolution RC/Res. 5 Amendments to Article 8 of the Rome Statute* (10 June 2010).
  - *The Public Commission to Examine the Maritime Incident of 31 May 2010 – The Turkel Commission*, Second Report (February, 2013), pp. 94-99 (paras. 39-45).
  - \* Harmen Van derWilt, "War Crimes and the Requirement of a Nexus With an Armed Conflict" 10 *Journal of International Criminal Justice* (2012) 1113-1128.

### 3. Genocide and Crimes against Humanity

- *Rome Statute of the International Criminal Court*, Articles 6, 7.
- *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948.
- *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, paras. 142-149, 186-201.
- Cassese, 84-108, 123-128.
- *Case No. ICC-01/09 Situation in the Republic of Kenya: Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya* (31 March, 2010), paras. 70-138; *Dissenting Opinion of Judge Hans-Peter Kaul*, paras. 33-44, 51-70, 148-153.

- \* David Luban, "A Theory of Crimes against Humanity" 29 *Yale J. Int'l L.* (2004) 85.
- \* Micaela Frulli, "Are Crimes Against Humanity More Serious than War Crimes?" 12 *European Journal of International Law* (2001) 329.
- \* Payam Akhavan, "Reconciling Crimes Against Humanity with the Laws of War: Human Rights, Armed Conflict, and the Limits of Progressive Jurisprudence" 6 *Journal of International Criminal Justice* (2008) 21.
- \* Marjolein Cupido, "The Policy underlying Crimes against Humanity: Practical Reflections on a Theoretical Debate" 22 *Criminal Law Forum* (2011) 275-309.

*Additional international crimes (aggression, torture, terrorism) will be addressed in the third part of the course ('selective issues').*

### Part II: Issues of Jurisdiction and Institutions

#### 4. Enforcement of ICL by National Courts

- CA 336/61 *Eichmann v. Attorney General*, paras. 10-12.
- *Council of the European Union*, Doc. 8672/1/09, Rev. 1, "AU-EU Report of the Technical Ad Hoc Expert Group on the Principle of Universal Jurisdiction" (16 April 2009).
- *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of the International Court of Justice (20 July, 2012), paras. 15-41, 70-77, 119.
- *Security Council Resolution 1976* (2011), Preamble and paras. 13-28.

\* Harmen van der Wilt, "Universal Jurisdiction under Attack: An Assessment of African Misgivings towards International Criminal Justice as Administered

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By Western States" 9 *Journal of International Criminal Justice* (2011), 1043-1066.

\* Maximo Langer, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" 105 *AJIL* (2011) 1-49.

#### 5. Enforcement of ICL by International Criminal Courts and Tribunals, and the Jurisdiction of the ICC

- Cassese, 253-270.
- Rome Statute of the International Criminal Court, Articles 5, 12-15.
- Schabas, 58-81.
- Decision of the Prosecutor of the ICC not to proceed with the preliminary examination of the situation in Palestine, 3 April 2012.

\* Parinaz Kermani Mendez, "The New Wave of Hybrid Tribunals: A Sophisticated Approach to Enforcing International Humanitarian Law or an Idealistic Solution with Empty Promises?" 20 *Criminal Law Forum* (2009) 53-95.

\* Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements in <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/summary%20of%20submissions%20on%20whether%20the%20declaration%20lodged%20by%20the%20palestinian%20national%20authority%20meets>

#### 6. Admissibility Issues in International Criminal Tribunals, and the Allocation of Jurisdiction between National Jurisdictions and International Criminal Tribunals

- Rome Statute of the International Criminal Court, Articles 1, 17-20, 53.
- Schabas, 171-193
- ICC: Paper on Some Policy Issues Before the Office of the Prosecutor (September 2003).
- Resolution RC/Res. 1 Complementarity (14 June, 2010).
- Case No. ICC-01/09-02/11 OA, SITUATION IN THE REPUBLIC OF KENYA: THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI KENYATTA and MOHAMMED HUSSEIN ALI,

Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute' (30 August, 2011), paras. 25-83, 97-99 (pages 9-31, 36), and Dissenting Opinion of Judge Anita Usacka (20 September, 2011).

\* Case No. ICC-01/11-01/11, SITUATION IN LIBYA: IN THE CASE OF THE PROSECUTOR v. SAIFAL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI, Decision on the admissibility of the case against Abdullah Al-Senussi (11 October 2013).

\* Case No. ICC-01/11-01/11, SITUATION IN LIBYA: IN THE CASE OF THE PROSECUTOR v. SAIFAL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI, Decision on the admissibility of the case against Saif Al-Islam Gaddafi (31 May 2013).

\* William W. Burke-White, "Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice" 49 *Harv. Int'l*

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L. J. (2008) 53.

\* Case No. ICC-01/04-01/06 *The Prosecutor v. Thomas Lubanga Dyilo*, Decision of Pre-Trial Chamber I of 24 February 2006, Para. 29-75 (pages 19-37)

\* Case No. ICC-01/04-01/07 OA8 *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment of the Appeal Chamber on the Admissibility of the Case (25 September 2009), para. 58-60, 73-88, 96-100, 111-113.

\* Prof. Claus Kres, "The Principle of Complementarity under the Rome Statute of the International Criminal Court: A Legal Opinion Submitted to the Israeli Independent Public Commission to Examine the Maritime Incident of 31 May 2010, headed by Supreme Court Justice Jacob Turkel", 16 August 2011.

### *Part III: Selective Issues*

#### *7. Immunities*

- Rome Statute of the International Criminal Court, Articles 27, 98.

- Special Court for Sierra-Leone, *Prosecutor v. Charles Taylor – Decision on Immunity from Jurisdiction* (31 May 2004), Paras. 20, 34-54, 59.

- Case No. ICC-02/05-01/09 SITUATION IN DARFUR, SUDAN: THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR: Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir (12 December, 2011).

#### *8. Additional International Crimes: Torture, Aggression and Terrorism*

- Cassese 131-158

- Case No. STL-11-01/I INTERLOCUTORY DECISION ON THE APPLICABLE LAW: TERRORISM, CONSPIRACY, HOMICIDE, PERPETRATION, CUMULATIVE CHARGING (16 February, 2011), paras. 83-113 (pages 49-74).

- Resolution RC/Res. 6 The Crime of Aggression (11 June, 2010).

#### *9. The scope of Criminal Liability: Modes of Criminal Liability*

- Rome Statute of the International Criminal Court, Articles 25, 28.

- Cassese 161-175; 180-192; 193-196.

- \* Judgment, Charles Ghankay Taylor (SCSL-03-01-A), Appeals Chamber, 26 September 2013, paras. 353-354, 357-395, 401-402.

- \* ICTY Case No. IT-04-81-A *Prosecutor v. Perisic* (Judgment of 28 February 2013), paras. 13-74

### *Additional Reading Material:*

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Course/Module evaluation:

End of year written/oral examination 100 %

Presentation 0 %

Participation in Tutorials 0 %

Project work 0 %

Assignments 0 %

Reports 0 %

Research project 0 %

Quizzes 0 %

Other 0 %

Additional information:

The final exam is a home exam.

Extra credit (up to five points added to the final grade) may be given for active participation and involvement in the course that reflects knowledge and understanding of the reading materials and the issues discussed orally.