

# INTRODUCTION TO INTERNATIONAL CRIMINAL LAW

Jo Stigen, 27 January 2014

- What is *International criminal law*?
  - The substantial and procedural law on the prosecution of international crimes
  - Substantial ICL:
    - Which behaviour constitutes an international crime?
    - Which elements must be proven in order to convict a person for an international crime?
  - Procedural ICL
    - The “machinery” for enforcing ICL
    - The rules governing the procedure of a criminal court courts
    - The relationship between courts
    - The competence of courts
      - Jurisdiction
      - Immunities
    - The relationship between different courts
      - Horizontally – between national systems
      - Vertically – between national and international levels

- What is an *international crime*?

From *List and others* (Hostages case), US Military Tribunal, Nuremberg, 1948

“An international crime is such act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstances.”

- Not a fixed list of crimes
- What are the “core crimes”?
- Which crimes are sufficiently grave?
- Why can some crimes not be left exclusively within the national sphere?
- What *else* distinguishes international crimes from ordinary crimes?
  - The context of the crimes
  - The persons that are targeted for prosecution
- So, what do we discuss in ICL?
  - Criminal law:
    - *Actus reus*
    - *Mens rea*
    - Defences
  - International law:
    - Jurisdiction
    - Immunity
    - Interpretation of treaties and customary international law

- Cooperation between states
- Politics
  - Selectivity
  - Power
- Where can international crimes be prosecuted?
  - National courts
  - International courts
- Jurisdiction of national criminal courts
  - Territorial state
  - Home state of perpetrator
  - Home state of victim
  - Third state
- Which international criminal courts have existed?
  - IMT
  - IMTFE
  - ICTY
  - ICTR
  - ICC
- What is the relationship between ICL and
  - Human rights?
  - International humanitarian law?
  - Rules on state responsibility?

- How has the concept of international criminal law changed international law?
  - The subjects of international law
  - State sovereignty
  - The responsibility of individuals

From the Nuremberg Trial:

“Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”

- The sources of international criminal law
  - National law
    - National legislation
    - National jurisprudence
  - International law
    - Treaties defining international crimes
    - Treaties creating international tribunals (e.g. statutes of IMT, IMTFE, ICTY, ICTR, ICC)
    - Customary international law
    - General principles of law
    - Jurisprudence of international tribunals
    - Teachings of highly qualified publicists

- The principle of legality:
  - The ICTY in the *Celebici* case:
 

“The principle of legality aims at preventing the prosecution and punishment of an individual for acts which he reasonably believed to be lawful at the time of their commission.”
  - From the Nuremberg Trial:
 

“[I]n such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished.”

“[T]hey must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone it would appear that the maxim [of the legality principle] has no application to the present facts.”
  - In principle no requirement of *written* law (in contrast to most national law)
  
- Who should study ICL?
  
- What are the possible effects of ICL?
  - Deterrence
  - Reconciliation
  - Rule of law
  - Other effects?
  
- The legitimacy of international criminal courts
  - Why is legitimacy important?
  - The significance of how the court is established
  - The significance of how situations/cases are selected
  - Political independence
  - Impact of international courts
  
- The legitimacy of universal jurisdiction

- Which are the alternative responses to prosecution of international crimes?
  - Prosecution
  - *De facto* amnesties (“Let’s not talk about it”)
  - *De jure* amnesties (“You will not be punished”)
  - Truth and reconciliation commissions (“Tell us the truth and we will forgive”)
  
- How the teaching will be
  - Different teachers different styles
  - Reading outline for each lecture
  - Cassese’s textbook
  - The articles
  - Judgments
  - Student groups
  - The mock exam

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# COURSE OUTLINE

## *INTERNATIONAL CRIMINAL LAW- SPRING 2014*

Monday 27 January	Introduction to ICL (Jo Stigen)
Monday 3 February	National Criminal Jurisdiction (Jo Stigen)
Monday 10 February	International Criminal Jurisdiction (Sofie Høgestøl)
Monday 24 February	<i>Mens Rea</i> and Defences in ICL (Jo Stigen)
Monday 3 March	War Crimes (Jo Stigen)
Monday 10 March	ICL Procedure (Gentian Zyberi)
Monday 17 March	Genocide and Interpretation in ICL (Morten Bergsmo)
Monday 24 March	Command Responsibility (Arne-Willy Dahl)
Monday 31 March	Crimes against Humanity; Co-perpetration in ICL (S. Høgestøl)
Monday 7 April	Immunity and State Responsibility (Jo Stigen)
Monday 28 April	Mock Exam (Jo Stigen)

All lectures are at 10:15 – 12:00 at Auditorium 6 (Domus Academica)

NB: The order of some of the lectures might be changed.

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