

International Criminal Law: the International Criminal Court

C. Jackson Turbo Courses 2021

About the Course: Since the turn of the century, the International Criminal Court has operated out of The Hague Netherlands as a sort of “Supreme Criminal Court”. But unlike criminal judicial procedures in national states, its focus is on a handful of particularly egregious crimes committed by individuals, groups, and nation states: genocide, war crimes, crimes against humanity and the crime of aggression. These are massive crimes around which a legal specialty, international humanitarian law, developed following World War II along with international human rights, as a result of the human degradation brought by Nazi aggression and the Holocaust. IHL is a branch of International Criminal Law, the former applying during times of conflict and the latter covers all each of the massive crimes listed without regard to whether the crimes were committed during armed conflict.

The Course will develop themes of substantive and procedural law as well as a general overview of core international law rules for those who have never taken the core course. Using the ICC as our platform we will look at several case studies of situations currently before the Court at various levels. We will examine the underlying law involved as well as the procedure for submitting perpetrators to justice through the Court. The policies and practical considerations that inform the enforcement of law against those committing these massive crimes will be examined as well.

Much of the focus of this course will be based on events and cases from the continent of Africa. A bit of background is in order. Up until the last half decade, the vast majority, of not all, of the cases before the ICC were from the Continent. Though this fact is more than a little controversial, Africa does have at least its share, if not more than its share, of conflict and massive crime commission of the sort the ICC was designed to investigate, prosecute, and punish. There is the fact that horrible crimes are committed elsewhere as well and the ICC has been expanding its focus to other areas of the globe.

This is also a multimedia course in which we will use film and video to analyze the rule of law, why it fails, how to prevent violations and to punish violators. In addition to video of ICC hearings, we will also view the 2004 film “Hotel Rwanda”, and the 2012 British film “I am Slave”. You will be asked to identify issues surrounding the rules about which we are learning during this course.

Online information: We will meet on Bluejeans. My course page is on Westlaw/TWEN. The course page has all of the information needed for this course.

Assessment: There will be a single exam given during the exam period for the Turbo Courses. It will be an essay examination based on a rubric that will be developed as we go through the various case studies.

Availability: I am available everyday after class from 11:30 to 12:30 and from 1:30 to 2:30. In addition I will be setting up a forum link for further questions and discussion.

Class requirements: Attendance is required. Each class is equivalent to three classes during the normal semester. Attendance rules for a 2 hour course will be applied including penalties for excessive absence. Since this is an online course, all students will be expected to have their videos turned on and roll will be automatically recorded in the Blackboard program that will be used in the course. This course carries a rather substantial reading list and students will be expected to have reviewed the assigned material before each class and class participation is expected during lecture.

Skills and Competencies Developed:

- A core understanding of the breadth of coverage of International Law to include international criminal law
- Basic competence in International Law methods of research and discovery with regard to a specialized area of the general area of international law.
- An understanding and ability to analyze functions of the International Criminal Court, its subject matter jurisdiction, methods of operation.
- To develop a significant appreciation for the role of courts in the international system and the obstacles to enforcement.
- The role of state sovereignty in frustrating the goals of the International Criminal Court.
- The nature of crimes under international criminal law as distinguished from other international human rights and other areas addressing state responsibility toward individuals.
- The ability to critically analyze the effectiveness of indictments, issuance of arrest warrants, and enforcement of the rule of law within the international criminal law context as seen from the standpoint of international tribunals with main emphasis on

the ICC (with reference to the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda).

- The skill to make a case for or against the prosecution of parties accused of ICL violations under international law procedures.

Day One: About the Course; Review of Course Website, Website of the ICC.

Video: Law of War the Creation of the ICC (on Web Links-Videos)

The ICC overview

Overview of international crimes in Africa—from the ICC website: The Sudan, Burundi, Cote d'Ivoire, Libya.

Readings: Jalloh, Africa and the International Criminal Court: Collision Course or Cooperation (under Course Materials);

The ICC elsewhere

The ICC and Palestine, US/Afghanistan, UK/Iraq

Film: Hotel Rwanda (2004) starring Don Cheadle, Sophie Okonedo, Nick Nolte, Joaquin Phoenix. (On Web Links—Videos)

Day Two:

We will continue viewing the film and continue discussing the Jalloh article

Ford: A Hierarchy of Goals (Under Course Materials)

What is International Law?

Theory of International Law—Power Point: The Nature of International Law

Sources of International Law

Readings: Mark Janis International Law materials (Under Course Materials), chapter 1, chapter 2, Chapter 3 43- 46, 53-55; 57-65.

The Paquete Habana 175 U.S. 677 (1900) (under Course Materials, skim)

Statute of the International Court of Justice Article 38

What is International Criminal Law?

Theory of International Criminal Law

Sources of ICL: The Statute of the International Criminal Court
Article 21 (online).

Readings: Meron: International Criminalization of Internal Atrocities

Day Three: Meron Continued.

Genesis and Structure of the International Criminal Court

Genesis, Criminal Jurisdiction, Structure

Readings:

Schabas, Introduction to the International Criminal Court, Pages 36-66

United States and Republic of the Congo Article 98 Agreement. (Course Materials)

How the ICC Works (Web Links)

The Rome Statute Parts II, III, and V

Elements of Crimes (Course materials, articles 6, 7 and 8)

Day Four:

Continue with Structure

Review of basic International Law, ICL, and ICC materials discussed during the week.

The International Criminal Court--Listing of Situations and Cases before the Court.

Readings: The ICC Website: "Situations and Cases" read summaries of the Sudan (Darfur), Libya, cases before the Court either as investigation, pending trial, or actual trial.

Note and Comment: Discretion and State Influence at the International Criminal Court

Film: I am Slave

Day Five: Emerging Case Studies: **The Crisis in Burundi**

Readings:

Report on Preliminary Investigations 2017 pages 62-67 (Course Materials)

The Burundi Crisis (3 web links under Web Links-Video; read material and view the videos)

Venezuela I

Readings: Referral to the Prosecutor of the ICC

Statement of the Chief Prosecutor

Report on Preliminary examinations 2018 pages 19-29

(All in Course Materials)

Ukraine

Report on Preliminary Examinations 2018 pages 29-35

Day Six: Emerging Case Studies: Palestine

Readings: Referral by Palestine to ICC

Preliminary Examination

Report on Preliminary Examinations 2018 pages 63-71

(All under Course Materials)

Afghanistan/The United States of America

Readings: Request by Prosecutor to open an investigation Afghanistan-US

Decision Not to Investigate—ICC

What Motivated fellow SEALS to dime out Eddie Gallagher?

Amman, the United States and the ICC

The US should not join the ICC—Heritage foundation

(All under Course Materials)

Day 7: The United States of America Continued

Cases in litigation

Cote d'Ivoire

Readings: Arrest Warrant for Laurent Gbagbo (Course Materials)

Hearing acquitting Laurent Gbagbo and Charles Blé Goudé of all charges
(video, under Web Links—Videos)

Mali

Readings: Situation in Mali, Judgment and Sentence sections I and II.
(Under Course Materials)

Video on Mali (Under Web Links—Video)

Day Eight: The Sudan

Readings: Situation in Darfur Sudan (Information Sheet and Video
under WebLinks—Videos)

First Indictment of President Bashir (Under Course Materials).

The Debate over Genocide in Darfur Sudan (Under Course Materials)

Whats Next for Omar al-Bashir (Under Course Materials)

(suggested) Barnes, *THE INTERNATIONAL CRIMINAL COURT'S
INEFFECTIVE ENFORCEMENT MECHANISMS: THE INDICTMENT
OF PRESIDENT OMAR AL BASHIR* (under Weblinks).

Day Nine: The Sudan Cont'd; Libya

Genocide workshop: We will use the tools gathered so far to make the case against Omar al-Bashir and a case in defense of Bashir. We will look at the indictment, the second indictment, the elements of the crimes, the subject matter jurisdiction of the ICC, as well as his status as a fugitive, particularly in light of his overthrow in the Sudan. In light of the fact that he is no longer in power, we will discuss whether Sudan has any obligations with regard to the Court and with regard to the former president. Crucial to that will be a discussion of the circumstances in Libya and the issue of complementarity in that case.

Suggested Readings Sudan:

Luban: Calling Genocide by its Rightful Name
(Weblinks)

The Second Indictment of President Bashir (in
Course Materials)

Readings Libya: Senussi Case (Weblinks-Videos)

Senussi Defense appeal

Suggested Readings Libya:

Angela Walker, ICC and Libya: How to end the cycle of Impunity for Atrocity Crimes by protecting Due Process, 18 UCLA J. Int'l L. and For. Aff. 303.

Day Ten: Review