

# Jurisprudence of International Criminal Tribunals

2011-2012

Professor Chandra Lekha Sriram



*Photo of the International Criminal Court, the Hague, July 2010, Chandra Lekha Sriram*

<p><b>Syllabus and objectives of the course</b></p>	<p>The course will complement my existing course on international criminal law in practice, which emphasize similar legal principles. However, this course is distinct in that it also addresses particular areas of substantive and procedural case law. It will complement courses in the school of law taught by other faculty members, on post-conflict reconciliation and peacebuilding as well as broader classes on international humanitarian law and public international law. It will also complement offerings on post-conflict justice offered in the department of politics and international studies.</p> <p>The course will benefit from the expertise of presentations by practitioners of international criminal law as well as experts from elsewhere in SOAS.</p> <p><b>Term 1</b></p> <ol style="list-style-type: none"> <li>1. What is international criminal law? A brief history</li> <li>2. Core legal principles: international humanitarian and human rights law</li> <li>3. Procedural issues: sources of law and jurisdictional issues</li> <li>4. Early practice: the Nuremberg and Tokyo tribunals</li> <li>5. Procedural issues: command responsibility, retroactivity, and superior orders</li> <li>6. The 1990s: the ICTY and ICTR</li> <li>7. Jurisdictional issues: international and non-international armed conflicts</li> <li>8. The development of hybrid tribunals: An overview</li> <li>9. The Special Court for Sierra Leone: The model and its limits</li> <li>10. Substantive legal developments: Sexual and gender based violence, and children in armed conflict</li> </ol> <p><b>Term 2</b></p> <ol style="list-style-type: none"> <li>1. Procedural issues: Amnesties and official immunities before international and national courts</li> <li>2. Procedural issues: Joint criminal enterprise and complicity</li> <li>3. Universal jurisdiction: Rise and fall?</li> <li>4. The International Criminal Court: History, mandate, and jurisdiction</li> <li>5. Admissibility before the ICC: Gravity and complementarity</li> <li>6. State cooperation, prosecution of heads of state, and positive complementarity before the ICC</li> <li>7. Evolving practice: victims and witnesses before international and internationalized criminal tribunals.</li> <li>8. The defence: Rights of the accused, substantive defences, and penalties</li> <li>9. Other crimes: Aggression, terrorism, and economic crimes outside wartime</li> <li>10. Beyond the law: Political will and international criminal law</li> </ol> <p>Revision session</p>
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<b>Learning outcomes of the course</b>	<b>At the end of the course, a student should be able to demonstrate</b> <ol style="list-style-type: none"> <li>1) A clear understanding of the history and evolution of international criminal law.</li> <li>2) A clear understanding of the substantive rules of international criminal law.</li> <li>3) Knowledge of the major international and internationalized criminal tribunals, both ad hoc and permanent, established since 1945.</li> <li>4) A clear understanding of the major procedural issues before international and internationalized criminal tribunals.</li> <li>5) The capacity to apply the law to specific situations, whether real or hypothetical</li> <li>6) The ability to present and defend an argument and debate it with fellow students.</li> </ol> <p>Students will demonstrate this knowledge through written essays and memos, and class presentations of memos along with responses to other memos. Students will be encouraged to participate actively in class through those presentations and responses.</p>	
<b>a) number of weeks over which the course will be taught</b> <b>b) number of contact hours <i>per week</i> the student will spend in:</b> <i>Combined lectures/ seminars</i> <b>a) Unseen written papers</b> <b>b) Essays / reports 1</b>	<b>20 + RW + 1 revision in 3rd term</b>  <div style="text-align: right; margin-right: 20px;"> <b>2</b>  <i>Number of papers</i>  <b>1</b>  <i>Length in hours</i>  <b>2</b>  <i>% of total mark</i>  <b>5000</b>  <i>Length in words</i>  <b>Friday, week 1, term 3</b>  <i>Date of submission</i>  <b>35%</b>  <i>% of total mark</i> </div>	
<i>Can this work be resubmitted (please indicate YES/NO)</i> <b>Essays / reports 2</b> <i>Can this work be resubmitted (please indicate YES/NO)</i> <b>Essays / reports 3</b> <i>Can this work be resubmitted (please indicate YES/NO)</i> <b>d) Seminar</b>	<b>Y</b>  <i>Length in words</i> <i>Date of submission</i> <b>1500</b> <i>% of total mark</i> <b>Signup across term 1</b> <b>10%</b>  <b>Y</b> <b>1500</b> <i>Length in words</i>	

<b>Participation</b> ( <i>may not exceed 10% unless it is recorded for External Examiners</i> ) Can this element of assessment be repeated (other than by students repeating the course)?	<i>Date of submission</i>	<b>Signup across term 2</b> <i>% of total mark</i>	
	<b>Y</b> <i>Give details</i> <i>% of total mark</i>	<b>Oral presentation in class of memos and responses. One presentation per term. 10 (5% per presentation)</b> <b>No</b>	<b>10%</b>
<b>16. Resources</b>	Please specify in detail what resources are available for this course, the grounds on which you think that they are adequate and <b><i>any extra resources which are required:</i></b>		
<i>a) Teaching staff</i>	<b>Chandra Lekha Sriram</b>		
<i>b) Library resources</i>	<b>Existing library resources—books and e-journals</b>		
<i>c) Computing resources</i>			
<i>d) Other resources (e.g. tapes, slides, videos, instruments)</i>			

**Administrative matters:**

**Office: Room 541**

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**Office Hours: Tuesdays 3-5 pm**

**Class: Mondays 5-7, Room 373 Main Building**

***Academic matters***

The syllabus offers a schedule of all of the topics covered in our course, the classes in which these are to be covered, as well as the specific readings for that class.

Classes will begin with very short lectures, followed by a dialogue. This means that you must come prepared to class, with relevant cases briefed and your own observations regarding the key disputes covered in the readings. This ought not be an onerous task, as your active participation should make the class more lively and interesting for all. This will comprise part of your class performance evaluation.

I encourage active participation and healthy debate. Please do not be afraid to raise questions, no matter how silly they may appear. Please do, however, try to remember boundaries of respectful debate, and avoid *ad hominem* or other comments towards one another, no matter how heated the debate.

Please turn off all mobile phones, beepers, PDAs, etc., before class begins.

***Assessment and evaluation***

Students will be required to submit **two discussion memos**, each of about 1500 words, and present that memo in class. The memo should be written as an essay, not in bullet points or other shorthand. Students will also be required to **comment** once on the memo of another student. Each memo will be worth **10%** of the total mark; presentations are worth a total of **10%**. A question or two for discussion will be provided for each week of signup, excepting week 1. **Memos must be distributed to all students by email by Friday at 5 pm the week before the week of the Monday presentation.** Late memos will be subject to penalties without exception.

Students will also be required to write a **5000 word research essay**, on one of the topics set by the module leader, or on another topic in agreement with the module leader. Topics must be agreed by week 10 term 1 (topics at end of syllabus). Papers will be due at the end of the year, and are worth **35%**.

Finally, there will be an examination worth **35%**.

Tips for essay writing are at the end of this syllabus. Please read them closely.

***Plagiarism and collusion:***

You are reminded that it is a breach of assessment regulations to copy or use another person's work without proper acknowledgement. This includes using block quotes from another person's work without quotation marks, even if you put a footnote to that work somewhere in the text or even attached to that block of text. This also includes lifting arguments and article/chapter structure wholesale from another person's work without citation, even if language is changed to paraphrase. It is also an assessment offence for two or more students to present the same or substantially similar piece of work. Any student who is found to be in breach of assessment regulations will be subject to an appropriate penalty.

A breach of assessment regulations cannot be excused by ignorance or external pressures.

No part of your work, except where clearly quoted and referenced (ie: correct use of quotation marks and footnotes etc.), may be copied from material belonging to any other person. You should employ a consistent referencing system throughout your work. eg:

Books: author, title, place of publication, publisher and date  
Articles: author, title, journal, volume, year and first and last page numbers  
Edited works: author, title of chapter followed by "in" editor(s), name of the work, place of publication, publisher, date and first and last page numbers of the chapter  
Quotations: require the above detail plus appropriate page numbers

## Readings and sources

There is no single required text for this course, but there are required readings in the form of articles and book chapters from various texts.

Required readings are available in several ways: many of the books are available through the library, and articles will be available in the library in journals or electronically. The syllabus includes links to specific articles from other sources, such as think tanks and NGOs.

In addition to required readings, background and recommended readings are listed in this syllabus.

**You must complete all readings that are indicated to be required each week. You are expected to participate actively in class and demonstrate familiarity with the readings and key issues raised by them.** Additional supplemental readings will assist those writing the memo for the week, and should assist all students with background for their research papers.

A great number of resources are available online, particularly through the website of the American Society of International Law, [www.asil.org](http://www.asil.org). Students are strongly advised to read the news on a regular basis, such as the New York Times online [www.nytimes.com](http://www.nytimes.com), or on the BBC online: [www.bbc.co.uk](http://www.bbc.co.uk) as well as to examine the websites of relevant international institutions closely, such as that of the United Nations: [www.un.org](http://www.un.org); the Organization of American States: [www.oas.org](http://www.oas.org); the African Union: <http://www.africa-union.org/>; the *ad hoc* criminal tribunals for the former Yugoslavia and for Rwanda: <http://www.un.org/icty/> and <http://www.ictt.org/>; and the permanent International Criminal Court: <http://www.un.org/law/icc/>; to name a few. Relevant international NGOs will also have information of interest, such as Human Rights Watch: [www.hrw.org](http://www.hrw.org), Amnesty International: [www.amnesty.org](http://www.amnesty.org), and the Coalition for An International Criminal Court: [www.iccnw.org](http://www.iccnw.org).

Required and recommended readings are listed below. In addition, a number of textbooks may prove useful in providing further detail or background. These include Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2008), Cryer, Robert, et al, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2007), Paust, Jordan, et al, *International Criminal*

*Law: Cases and Materials* (Carolina Academic Press 2006), Bantekas, Ilias, *International Criminal Law* (Hart 2010) and Grant, John P., and J. Craig Barker, *International Criminal Law Deskbook* (Cavendish 2006).  
**Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

### **Weekly readings**

**A \* denotes readings that are required.** Others are strongly recommended and will provide useful resources for students writing the weekly memo or writing a research paper on the topic.

### **Term 1**

#### **1. What is international criminal law? A brief history**

#### **Questions:**

- What is international criminal law and where does it come from?
- To whom does international criminal law apply?
- What types of acts constitute international crimes and why?

\*Cassese, *International criminal law* chapter 2.

\*Anderson, Kenneth, "The Rise of International Criminal Law: Intended and Unintended Consequence," *European Journal of International Law* vol. 20 no. 2 (2009) at <http://ejil.oxfordjournals.org/content/20/2/331.full.pdf+html>.

Sands, Philippe, ed., *From Nuremberg to the Hague: The Future of International Criminal Justice* (Cambridge University Press, 2003).

Crimes of War Website, Timeline of International Humanitarian Law at <http://www.globalpolicy.org/component/content/article/163/28204.html>.

Ratner, Steven R., and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law and Practice* (Oxford: Oxford University Press, 2001).

Aksar, Yusuf, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge, 2004).

Langer, Maximo, "Trends and tensions in international criminal procedure: A symposium," *UCLA Journal of International Law and Foreign Affairs* vol. 14 (2009), pp. 1-18.

Nino, Carlos S., "The Duty to Punish Past Human Rights Violations Put into Context: The Case of Argentina," *100 Yale Law Journal* 2619-2641 (1991).

Orentlicher, Diane, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *100 Yale Law Journal* 2537 (1991).

Koskenniemi, Martti, "Between impunity and show trials," <http://www.unesco-phil.uni-bremen.de/dokumente/Institutionen/20040805Koskenniemi.pdf>

## 2. Core legal principles: international humanitarian and human rights law

### Questions:

- What are the key distinctions between international human rights law and international humanitarian law? What does each protect or regulate?
- Upon whom are international humanitarian law obligations imposed?
- What is the distinction between international and non-international armed conflicts?

\* Cassese, Antonio, *International Criminal Law* chapters 3-6.

\*Sriram, Chandra Lekha, Olga Martin-Ortega, and Johanna Herman, *War, Conflict, and Human Rights* chapter 4.

Key international humanitarian law documents:

\*Geneva Conventions (1949) on the laws of war, all four ([I](#), [II](#), [III](#), [IV](#))

\*Additional Protocols to the Geneva Conventions (1977), both. ([I](#), [II](#))

Key human rights conventions and declarations

\*[Universal Declaration of Human Rights](#).

\*[International Covenant on Civil and Political Rights](#)

\*[International Covenant on Economic, Social, and Cultural Rights](#)

\*[Torture Convention](#)

\*[Genocide Convention](#)

[Convention for the Elimination of Discrimination against Women](#)

[Convention on the Rights of the Child](#)

[Convention for the Elimination of all forms of Racial Discrimination](#)

Hansen, Thomas Obel, "The policy requirement in crimes against humanity: Lessons from and for the case of Kenya," at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1894246&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1894246&download=yes).

## 3. Procedural issues: sources of law and jurisdictional issues

### Questions:

- Discuss the sources of international law, conventional and customary
- What are traditionally the primary subjects of international law?
- Discuss jurisdiction from the perspective of territorial limitation, either for national or international courts

\*Cassese, Antonio, *International Criminal Law* chapter 2.

\*Statute of the International Court of Justice, esp Article 38

\*Thirlway, Hugh, "The sources of international law," in Malcom D Evans, ed., *International Law* chapter 4.

\*Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press) chapter 1.3 and chapter 3.1-3.4.

\*Lowe, Vaughan, "Jurisdiction," in Evans, ed., *International Law*, chapter 10.



Akande, Dapo, "The jurisdiction of the International Criminal Court over nationals of non-parties: Legal basis and limits," *Journal of International Criminal Justice* vol. 1 (2003), pp. 618-650, at <http://jicj.oxfordjournals.org/content/1/3/618.full.pdf+html>.

Law Professors' *amicus* brief in *Rasul v Bush* at

[http://www.jenner.com/files/tbl\\_s69NewsDocumentOrder/FileUpload500/106/AmiciCuriae\\_International\\_Law\\_Jurisdiction\\_Prof.pdf](http://www.jenner.com/files/tbl_s69NewsDocumentOrder/FileUpload500/106/AmiciCuriae_International_Law_Jurisdiction_Prof.pdf) for implications and extension of jurisdiction over extraterritorial activities.

#### 4. Early practice: the Nuremberg and Tokyo tribunals

##### Questions:

- What is novel about the Nuremberg and Tokyo Tribunals, in terms of jurisdiction and substantive crimes?
- Discuss the advance of Nuremberg in affirming the principle of direct individual criminal liability.
- What are some of the legal objections which might be raised to either tribunal? How for example did the Nuremberg Tribunal deal with the principle of *nullem crimen sine lege*?

\*Cassese, Antonio, *International Criminal Law* chapter 18.2/16.2 **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Cryer, Robert, et al, *An Introduction to International Criminal Law and Procedure* chapter 6.

\*Meron, Theodor, "War crimes law comes of age," *American Journal of International Law* vol. 92, no. 3 (July 1998), at <http://www.jstor.org/stable/2997918?origin=JSTOR-pdf>.

\*Wright, Quincy, "The Law of the Nuremberg Trial," *American Journal of International Law* vol. 41 (1947) at 38, at [http://heinonline.org/HOL/Page?handle=hein.journals/ajil41&div=6&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/ajil41&div=6&g_sent=1&collection=journals)

Finch, George A., "The Nuremberg Trial and International Law," *American Journal of International Law* vol. 41 (1947), p. 20, at [http://heinonline.org/HOL/Page?handle=hein.journals/ajil41&div=6&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/ajil41&div=6&g_sent=1&collection=journals)

\_\_\_\_\_ "The Martens Clause, Principles of Humanity and Dictates of Public Conscience," *American Journal of International Law* vol. 94, no. 1 (January 2000) at <http://www.jstor.org/stable/2555232>.

\_\_\_\_\_ *War Crimes Law Comes of Age* (Oxford: Oxford University Press, 1999).

#### 5. Procedural issues: command responsibility, retroactivity, and superior orders

## Questions:

- Discuss the defense of superior orders in customary international law and at the ICC
- Discuss command responsibility at the ICC
- Discuss the principle of *nullem crimen sine lege*, at Nuremberg and today

\*Cassese, *International Criminal Law* chapter 13

\*Vetter, Greg, "Command responsibility of non-military superiors in the International Criminal Court," *Yale Journal of International Law* vol. 25 (2000) at 89, at [http://heinonline.org/HOL/Page?handle=hein.journals/yjil25&div=8&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/yjil25&div=8&g_sent=1&collection=journals)

\*Jeschek, Hans-Heinrich, "The general principles of international criminal law set out in Nuremberg, as mirrored in the ICC Statute," *Journal of International Criminal Justice* vol. 2 (2004) at [http://heinonline.org/HOL/Page?handle=hein.journals/jicj2&div=14&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/jicj2&div=14&g_sent=1&collection=journals)

Gaeta, Paola, "The defence of superior orders: The Statute of the International Criminal Court versus customary international law," *European Journal of International Law* vol. 10 (1999), pp172-191 at <http://ejil.oxfordjournals.org/content/10/1/172.full.pdf+html>.

Danner, Alison Marsden, and Jenny S Martinez, "Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law," *California Law Review* vol. 93 (2005) at 75, at [http://heinonline.org/HOL/Page?handle=hein.journals/calr93&div=10&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/calr93&div=10&g_sent=1&collection=journals). *Focus on command responsibility; the JCE issues will be relevant when we reach that topic in term 2.*

## 6. The 1990s: the ICTY and ICTR

### Questions:

- Discuss the reason for, and mode of creation of, the ICTY and ICTR
- Discuss the debates over, and treatment of, genocide, in the *Krstic* Appeal Judgment, and/or the treatment of joint criminal enterprise in the same decision
- What was the critical legal advancement of the *Akayesu* decision?

\*Cassese, Antonio, *International Criminal Law* chapter 18.3/16.7 and 15.4 **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Sriram et al, *War, conflict, and human rights* chapter 10.

\*Bassiouni, M. Cherif, "From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court," *Harvard Human Rights Journal* vol. 10 (1997), pp. 11-62.

\*International Criminal Tribunal for the Former Yugoslavia, *Krstic* Appeal judgment (re Srebrenica genocide charges) (19 April 2004) <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>, focus on part II, re genocide charges, and Judge Shahabuddeen's dissent.

\* International Criminal Tribunal for Rwanda, PROSECUTOR V. AKAYESU *International Legal Materials*, Vol. 37, No. 6 (NOVEMBER 1998), pp. 1399-1410. At <http://www.jstor.org/stable/pdfplus/20698852.pdf?acceptTC=true>.

Murphy, Sean D., "Progress and jurisprudence of the International Criminal Tribunal for the former Yugoslavia," *American Journal of International Law* vol. 93, no. 1 (January 1999), pp. 57-97 at <http://www.jstor.org/stable/2997956>.

Akhavan, Payam, "The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment," *American Journal of International Law* vol. 90, no. 3 (July 1996), pp. 501-510, at <http://www.jstor.org/stable/2204076>.

Shraga, Daphna, and Ralph Zacklin, "The International Criminal Tribunal for the Former Yugoslavia," *European Journal of International Law* vol. 5 (1994), pp. 360-380, at [http://heinonline.org/HOL/Page?handle=hein.journals/eurint5&div=36&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/eurint5&div=36&g_sent=1&collection=journals).

Swart, Bert, Alexander Zahar, and Göran Sluiter, *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (Oxford University Press, 2011), chapters 8-10.

Human Rights Watch, Genocide, *War Crimes and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal for Rwanda* (2010) at <http://www.hrw.org/sites/default/files/reports/ict0110webwcover.pdf>.

## 7. Jurisdictional issues: international and non-international armed conflicts

### Questions:

- What effect does the distinction between international and non-international armed conflicts have in IHL?
- Consider the way in which the *Tadic* jurisdiction decision dealt with the character of the conflict in the former Yugoslavia
- Are there particular challenges in addressing non-state actors in non-international conflicts?

\*Forsyth, David P., "Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts," *American Journal of International Law* vol. 72, no. 2 (April 1978), pp. 272-295, at <http://www.jstor.org/stable/2199956>.

\*International Criminal Tribunal for the Former Yugoslavia, *Tadic* jurisdiction decision (2 October 1995) at <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.

\*Gasser, Hans-Peter, "Internationalized non-international armed conflicts: Case studies of Afghanistan, Kampuchea, and Lebanon," *American University Law Review* vol. 33 (1983-1984), pp. 145-161, at [http://heinonline.org/HOL/Page?handle=hein.journals/aulr33&div=18&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/aulr33&div=18&g_sent=1&collection=journals).

\*Schabas, William A., "The punishment of non-state actors in non-international armed conflict," *Fordham International Law Journal* vol. 26 (2002-2003) pp. 907-933 at [http://heinonline.org/HOL/Page?handle=hein.journals/frdint26&div=41&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/frdint26&div=41&g_sent=1&collection=journals).

Solf, Waldemar A., "The Status of Combatants in Non-International Armed Conflicts under Domestic Law and Transnational Practice," *American University Law Review* vol. 33 (1983-1984), pp. 53-65 at [http://heinonline.org/HOL/Page?handle=hein.journals/aulr33&div=12&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/aulr33&div=12&g_sent=1&collection=journals).

Zegveld, Liesbeth, *Accountability of armed opposition groups in international law* (Cambridge: Cambridge University Press, 2002), chapter 1.

Miller, David M., "Non-international armed conflicts," *American University Law Review* vol. 31 (1981-1982) pp. 897-933 at [http://heinonline.org/HOL/Page?handle=hein.journals/aulr31&div=43&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/aulr31&div=43&g_sent=1&collection=journals).

## 8. The development of hybrid tribunals: An overview

### Questions:

- Discuss the unique nature of mixed or hybrid tribunals in terms of applicable law, participation, and location
- Discuss the rationale for hybrid courts and the criticisms of existing mechanisms which they were intended to address
- Discuss the diverse forms which hybrid tribunals have taken, and possible reasons for and effects of different structures

### *Visiting practitioner commentator: David Hooper, QC, 25 Bedford Row Chambers*

\*Cassese, Antonio, *International Criminal Law* chapter 18.6/15.6. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Laura A. Dickinson, "[The Promise of Hybrid Courts](#)" *American Journal of International Law* vol. 97 (2003) at 295.

\*Cockayne, James, "The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals," *Fordham International Law Journal* vol. 28 (February 2005) at 615.

Strohmeier, Hansjörg, "Making Multilateral Interventions Work: The UN and the Creation of Transitional Justice Systems in Kosovo and East Timor," *Fletcher Forum of World Affairs* vol. 25 (2001), at 107.

Suzanne Katzenstein, "[Hybrid Tribunals: Searching for Justice in East Timor](#)" *Harvard Human Rights Journal* vol 16 (2003) at 245.

Frédéric Mégret, "[In Defense of Hybridity: Towards a Representational Theory of International Criminal Justice](#)" *Cornell International Law Journal* vol. 38 (2005) at 725.

Sriram et al, *War, conflict, and human rights* chapter 12.

Romano, Cesare, Andre Nollkaemper, Jann Kleffner, eds., *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004).

Mundis, Daryl A. "New Mechanisms for the Enforcement of International Humanitarian Law," *American Journal of International Law* vol. 95 (2001), at 931.

## 9. The Special Court for Sierra Leone: The model and its limits

### Questions:

- Discuss the development of the SCSL: why was it created as a hybrid and what was it empowered to do?
- Discuss criticisms of the court in terms of its jurisprudence and/or wider impact
- Describe ways in which the hybrid model might be improved upon, based upon experiences with the SCSL in the context of other hybrid mechanisms

\*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights* Chapter 12.

\*Sriram, Chandra Lekha, “Wrong-sizing international justice? The hybrid tribunal in Sierra Leone,” *Fordham International Law Journal* vol. 29 (2005) at 472 at [http://heinonline.org/HOL/Page?handle=hein.journals/frdint29&div=21&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/frdint29&div=21&g_sent=1&collection=journals).

\*Dougherty, Beth, “Right-sizing international criminal justice: The hybrid experiment at the Special Court for Sierra Leone,” *International Affairs* vol. 80, no. 1 (March 2004), pp. 311-28 at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2004.00385.x/pdf>.

Jessica Lincoln, “The Special Court for Sierra Leone: Outreach, legacy, and impact,” (2007), at <http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/wc/slInterimreport.pdf>.

Nicole Fritz and Alison Smith, “Current Apathy for Coming Anarchy: Building the Special Court for Sierra Leone,” *Fordham International Law Journal* vol. 25 (2002) at [http://heinonline.org/HOL/Page?handle=hein.journals/frdint25&div=21&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/frdint25&div=21&g_sent=1&collection=journals).

### 10. Substantive legal developments: Sexual and gender based violence, and children in armed conflict

#### Questions:

- Discuss the development of jurisprudence with regard to sexual and gender-based violence in international criminal tribunals
- Discuss criticisms of the treatment of sexual and gender-based violence
- Discuss the existing decisions and potential conflicts them with regard to forcible and non-forcible child recruitment and age limits.

\*Paola Konge, “International crimes and child soldiers,” *Southwestern Journal of International Law* vol. 16 (2010) at 41.

\*van Schaack, Beth, “Prosecuting sexual and gender-based crimes before international/ized criminal courts: Obstacles on the road to gender justice,” *American University Journal of Gender Social Policy and Law* vol. 17 (2009) at 361.

\*Oosterveld, “The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments,” *Cornell International Law Journal* vol. 44 (Winter 2011).

\*Happold, Matthew, “International humanitarian law, war criminality, and child recruitment: The Special Court for Sierra Leone’s Decision in *Prosecutor v. Samuel Hinga Norman*,” *Leiden Journal of International Law* vol. 18 (2005), pp. 283-297.

Halley, Janey, "Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law," *Michigan Journal of International Law* vol. 30 (2009) at <http://students.law.umich.edu/mjil/uploads/articles/v30n1-halley.pdf>.

Buss, Doris E., "The curious visibility of wartime rape: Gender and ethnicity in international criminal law," *Windsor Yearbook of Access to Justice* vol. 25 (2007), at 3.

Chinkin, Christine, "Women's international tribunal on Japanese military sexual slavery," *American Journal of International Law* vol. 95 (2001), at 335.

De Brouwer, Anne-Marie L.M., *Supranational criminal prosecution of sexual violence: The ICC and the practice of the ICTY and ITCR* (Intersentia 2005).

*Paris principles on children associated with armed forces or armed groups* (2007) at [http://www.un.org/children/conflict/documents/parisprinciples/ParisPrinciples\\_EN.pdf](http://www.un.org/children/conflict/documents/parisprinciples/ParisPrinciples_EN.pdf).

Optional protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, <http://www2.ohchr.org/english/law/crc-conflict.htm>.

United Nations: Children and Armed Conflict website, International Law, <http://www.un.org/children/conflict/english/internationallaw.html>.

## Term 2

### 1. Procedural issues: Amnesties and official immunities before international and national courts

#### Questions:

- Are official immunities and domestic amnesties applicable in international courts and tribunals?
- What amnesties might be respected in international law? Discuss the debates about the legality and legitimacy of amnesties
- 

\*Cassese, *International Criminal Law* chapters 14 and 17/14 only. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Akande, Dapo, "International Law Immunities and the International Criminal Court," *American Journal of International Law* vol. 98, no. 3 (2004), pp. 407-433.

\*International Court of Justice *Case concerning the Arrest Warrant of 11 April 2000, Judgment of 14 February 2002 (DRC v Belgium)* <http://www.icj-cij.org/docket/files/121/8126.pdf>.

\* King, Elizabeth B. Ludwin, "Amnesties in a time of transition," *The George Washington International Law Review* vol. 41 (2011), pp. 577-618.

Koller, David S., "Immunities of Foreign Ministers: Paragraph 61 of the *Yerodia* Judgment as it pertains to the Security Council and the International Criminal Court," *American University International Law Review* vol. 20, no. 7 (2004) pp. 7-42. <http://www.auilr.org/pdf/20/20-1-3.pdf>

*Prosecutor v Charles Ghankey Taylor*, Case Number SCSL-2003-01-I, Decision on Immunity from Jurisdiction, (31 May 2004). <http://www.sc-sl.org/SCSL-03-01-I-059.pdf>.

Broomhall, Bruce, *International justice and the International Criminal Court* chapter 7.

Jalloh, C., "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone," *ASIL Insights* (2004) at <http://www.asil.org/insigh145.cfm>.

Akande, Dapo, "Immunity and International Criminal Tribunals," *EJIL Talk!* (2008) at <http://www.ejiltalk.org/immunity-and-international-criminal-tribunals/>.

Akande, Dapo, "The Legal Nature of Security Council Referrals to the ICC and its Impact on Al Bashir's Immunities," *Journal of International Criminal Justice* vol. 7, no. 2 (2009), pp. 333-352.

Freeman, Mark, *Necessary Evils: Amnesties and the Search for Justice* (Cambridge, Cambridge University Press, 2010).

## 2. Procedural issues: Joint criminal enterprise and complicity

### Questions:

- Discuss the concept of joint criminal enterprise generally
- Discuss the wider concept of JCE as developed by the SCSL and Cassese's objections to it.

\*Cassese, *International Criminal Law* chapter 9.

\*Cassese, Antonio, "The proper limits of individual responsibility under the doctrine of Joint Criminal Enterprise," *Journal of International Criminal Justice* vol. 5 (2007), pp. 109-133.

\*Sanders, Anna, "New Frontiers in the ATS: Conspiracy and Joint Criminal Enterprise Liability after *Sosa*," *Berkeley Journal of International Law* vol. 28 (2010) pp. 619-639.

Dhooge, Lucien J, "Accessorial Liability of Transnational Corporations Pursuant to the Alien Tort Statute: The South African Apartheid Litigation and the Lessons of *Central Bank*," *Transnational Law and Contemporary Problems* vol. 18 (2009), pp. 247-294.

Piacente, Nicola, "The importance of the Joint Criminal Enterprise Doctrine for the ICTY Prosecutorial Policy," *Journal of International Criminal Justice* vol. 2, no. 2 (2004) pp. 446-454.

*Doe v. Unocal* <http://www.elaw.org/system/files/Unocal.case.pdf>

*Presbyterian Church of Sudan v. Talisman Energy* (2 October 2009) at [http://www.ca2.uscourts.gov/decisions/isysquery/fa0db23d-6de5-4fed-acdc-24b6911c7089/1/doc/07-0016-cv\\_opn.pdf](http://www.ca2.uscourts.gov/decisions/isysquery/fa0db23d-6de5-4fed-acdc-24b6911c7089/1/doc/07-0016-cv_opn.pdf)

Ralby, Ian M., "Joint Criminal Enterprise Liability in the Iraqi High Tribunal," *Boston University International Law Journal* vol. 28 (2010), pp. 281-2010.

## 3. Universal jurisdiction: Rise and fall?

Visiting practitioner commentator: Keren Adams, Leigh, Day and Associates

### Questions:

- Explain the difference between the international jurisdiction exercised by the ICC and universal jurisdiction
- Explain the legal content and application of universal jurisdiction
- How does universal jurisdiction differ from other forms of extraterritorial jurisdiction?
- Discuss the political and legal controversies over the exercise of universal jurisdiction as well as moves to limit its scope

\*Cryer et al., *An Introduction to International Criminal Law and Procedure* chapter 3.5.1-3.6.

\*Cassese, *International Criminal Law* 15.5/n/a. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Reydams, Luc, *Universal Jurisdiction: international and municipal legal perspectives* (Oxford University Press, 2003), introduction.

\*Alain Winants, "The *Yerodia* ruling of the International court of Justice and the 1993/1999 Belgian law on universal jurisdiction," *Leiden Journal of International Law* vol. 16 (2003), pp. 491-509.  
<http://journals.cambridge.org/action/displayFulltext?type=1&fid=182246&jid=LJL&volumeId=16&issueId=03&aid=182245>.

\*O'Keefe, Roger, "Universal Jurisdiction: Clarifying the basic concept," *Journal of International Criminal Justice* vol. 2 (2004), pp. 735-760, at <http://jicj.oxfordjournals.org/content/2/3/735.full.pdf>.

Broomhall, Bruce, *International justice and the International Criminal Court* (Oxford 2003), chapter 6.

Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapter 11.

Macedo, Stephen, ed., *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law* (Philadelphia, PA: University of Pennsylvania Press, 2004).

Sriram, Chandra Lekha, *Globalizing Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005), chapter 1.

## 4. The International Criminal Court: History, mandate, and jurisdiction

**Visiting practitioner commentator: Clive Baldwin, Senior Legal Advisor, Human Rights Watch**

### Questions:

- Discuss the territorial and temporal limitations of the ICC's jurisdiction
- Over what crimes and what actors does the ICC have jurisdiction?
- Discuss how a case may reach the ICC

\*Cassese, *International Criminal Law* 18.5/15.5.

\*Sriram, et al, *War, Conflict, and Human Rights* chapter 13.



\*Broomhall, Bruce, *International justice and the international criminal court* (Oxford: Oxford University Press, 2004), chapter 4.

Stahn, Carsten, and Goran Sluiter, eds, *The emerging practice of the international criminal court* (Leiden: Martinus Nijhoff, 2009).

Submissions regarding the declaration of the Palestine National Authority seeking to accede to the ICC's jurisdiction: <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>.

Cerone, John, "Palestine and the UN System" *ASIL Insights* (13 September 2011) at <http://www.asil.org/pdfs/insights/insight110913.pdf>.

Sadat, Leila Nadya, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (2000).

Schabas, William A., *An Introduction to the International Criminal Court* (Oxford: 2011).

## 5. Admissibility before the ICC: Gravity and complementarity

### Questions:

- Discuss the key elements of admissibility before the ICC
- Discuss the evolving criteria of gravity, in the text of the statute and as developed by the Office of the Prosecutor and judges
- Discuss the evolving criteria of gravity, in the text of the statute and as developed by the Office of the Prosecutor and judges

\*Cassese, *International Criminal Law* 19.1-19.4/16.1-16.4. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*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.

\*Sacuteo, Susana, and Katherine Cleary, "The gravity threshold of the International Criminal Court," *American University International Law Review* vol. 23 (2007-2008)

\*Sacuteo, Susana, and Katherine Cleary, "The *Katanga* Complementarity Decisions: Sound Law but Flawed Policy," *Leiden Journal of International Law* vol. 23 (2010), pp. 363-374.

Focus on gravity or complementarity issues in recent decisions in any of the following cases: The Prosecutor vs. Thomas Lubanga Dyilo; The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui; and the Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"); also Pre-Trial Chamber II, *Decision pursuant to article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya* No. ICC-01/09 (31 March 2010), at <http://www.icc-cpi.int/cases.html>.

Sriram, Chandra Lekha, and Stephen Brown, "Kenya in the Shadow of the ICC: Gravity, Complementarity, and Impact" (manuscript, 2011; photocopy to be provided).

## 6. State cooperation, prosecution of heads of state, and positive complementarity before the ICC

Visiting practitioner commentator: Steven Kay, QC, 9 Bedford Row

### Questions:

- What are some of the key challenges to prosecuting heads of state? Discuss with reference to concrete examples
- What does the concept of positive complementarity entail and how might it work?

\*Cassese, *International Criminal Law* 19.5-19.9/16.5-16.9. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*Broomhall, Bruce, *International justice and the international criminal court* chapter 8.

\*Burke-White, William W., "Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice," *Harvard International Law Journal* vol. 49, no. 1 (Winter 2008), pp. 53-108.

Stahn, Carsten, "Complementarity: A Tale of Two Notions," *Criminal Law Forum* vol. 19 (2008), pp. 87-113 at <https://openaccess.leidenuniv.nl/bitstream/handle/1887/13539/carsten+stahn+-+complementary+a+tale+of+two+notions.pdf;jsessionid=7C818BCE3C0637A63FF554D91A384653?sequence=1>.

Open Society Justice Initiative, "Putting Complementarity into Practice: Domestic Justice for International Crimes in DRC, Uganda, and Kenya (2011) at [http://www.soros.org/initiatives/justice/articles\\_publications/publications/complementarity-in-practice-20110119/putting-complementarity-into-practice-20110120.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/complementarity-in-practice-20110119/putting-complementarity-into-practice-20110120.pdf).

Cayley, Andrew T., "The Prosecutor's Strategy in Seeking the Arrest of Sudanese President Al Bashir," *Journal of International Criminal Justice* vol. 6, no. 5 (2008), pp. 829-840.

Cryer et al, *An Introduction to International Criminal Law and Procedure* chapter 19.

Ambos, Kai, *The Colombian Peace Process and the Principle of Complementarity of the International Criminal Court* (Springer 2010).

## 7. Evolving practice: victims and witnesses before international and internationalized criminal tribunals

### Questions:

- Discuss the increased role for victims in many international courts and tribunals as a general trend, and with reference to practice in one or more court
- Discuss witness protection at international courts, in relation to both the rights of the witness and of the accused.

\*Cassese, *International Criminal Law* 20.1 and 20.2.7/19.11. **Please note re the Cassese textbook that the library will have multiple copies of the 2003 as well as the 2008 version. There have been structural changes. I have indicated throughout preferred chapters in the 2003/2008 editions accordingly.**

\*McGonigle, Brianne N., "Two for the Price of One: Attempts by the Extraordinary Chambers in the Courts of Cambodia to Combine Retributive and Restorative Justice Principles," *Leiden Journal of International Law* vol. 22 (2009), pp. 127-149, at <http://journals.cambridge.org/action/displayFulltext?type=1&fid=3627844&jid=LJL&volumeId=22&issueId=01&aid=3627836&bodyId=&membershipNumber=&societyETOCSession=>.

\*Chinkin, Christine, "Due process and witness anonymity," *American Journal of International Law* vol. 91, no. 1 (1997) pp. 75-79 at <http://www.jstor.org/stable/2954142>.

Trumbull, Charles P. IV, "Victims of Victim Participation in International Criminal Proceedings," *Michigan Journal of International Law* vol. 29 (2007-2008) at 777, at [http://heinonline.org/HOL/Page?handle=hein.journals/mjil29&div=24&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/mjil29&div=24&g_sent=1&collection=journals).

McDermott, Yvonne, "Victims and International Law: Remedies in the Courtroom?" *Hague Justice Journal* vol.4, no. 3 (2009), pp. 199-213 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1616742&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1616742&download=yes).

International Criminal Court website, victims and witnesses protection and support page, at <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Protection/Victims+and+witnesses+protection.htm>.

de Vos, Christian M., "'Someone who comes between one person and another': *Lubanga*, local cooperation, and the right to a fair trial" *Melbourne Journal of International Law* vol 12 issue 1 (2011), pp. 217-236.

## 8. The defence: Rights of the accused, substantive defences, and penalties

Visiting practitioner commentator: Sareta Ashraph, Garden Court Chambers

### Questions:

- Discuss the key protections of the rights of the accused before international criminal tribunals
- Discuss two substantive defences in international criminal law and their extent and limitations

\*Cassese, *International Criminal Law* chapter 12, 13.

\*Cryer et al, *An Introduction to International Criminal Law and Procedure* 15.8, 16, and 18.

\*Creta, Vincent M., "The search for justice in the former Yugoslavia and beyond: Analyzing the rights of the accused under the statute and the rules of procedure and evidence of the International Criminal Tribunal for the former Yugoslavia," *Houston Journal of International Law* vol. 20 (1997-1998), pp. 381-420, at [http://heinonline.org/HOL/Page?handle=hein.journals/hujil20&div=17&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/hujil20&div=17&g_sent=1&collection=journals).

Johnson, Scott T., "On the road to disaster: The rights of the accused and the International Criminal Tribunal for the Former Yugoslavia," *International Legal Perspectives* vol. 10 (1998), pp. 111-192, at [http://heinonline.org/HOL/Page?handle=hein.journals/intlegp10&div=8&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/intlegp10&div=8&g_sent=1&collection=journals).

Knoops, Geert-Jan Alexander, *Defenses in Contemporary International Criminal Law* (Brill 2008).

Danner, Alison Marsden, "Constructing a hierarchy of crimes in international criminal law sentencing," *Virginia Law Review* vol. 87, no. 3 (May 2001) pp. 415-501 at <http://www.jstor.org/stable/1073864?seq=1>.

## 9. Other crimes: Aggression, terrorism, and economic crimes outside wartime

### Questions:

- Discuss the challenges, historical and contemporary, in defining aggression as an international crime
- Discuss possible *legal* definitions of terrorism in international criminal law. Should it be a crime prosecutable by international courts such as the ICC?

\*Cryer et al, *An Introduction to International Criminal Law and Procedure* chapters 13 and 14.

\*Cassese, Antonio, "Terrorism is also disrupting some crucial categories of international law," *European Journal of International Law* vol. 12, no. 5 (2001), pp. 993-1001.

\*Scharf, Michael P., "Defining terrorism as the peacetime equivalent of war crimes," *ILSA Journal of International and Comparative Law* vol. 7 (2000-2001), pp. 391-398. At [http://heinonline.org/HOL/Page?handle=hein.journals/ilsaic7&div=31&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/ilsaic7&div=31&g_sent=1&collection=journals).

Guillaume, Gilbert, "Terrorism and International Law," *International and Comparative Law Quarterly* vol. 53 (July 2004), pp. 537-548 at [http://journals.cambridge.org/download.php?file=%2FILQ%2FILQ53\\_03%2FS0020589300067890a.pdf&code=ddad8eda42bb33323a840b894cced959](http://journals.cambridge.org/download.php?file=%2FILQ%2FILQ53_03%2FS0020589300067890a.pdf&code=ddad8eda42bb33323a840b894cced959).

Wise, Edward M., "Terrorism and the problems of an international criminal law," *Connecticut Law Review* vol. 19 (1986-1987), pp. 799-830, at [http://heinonline.org/HOL/Page?handle=hein.journals/conlr19&div=37&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/conlr19&div=37&g_sent=1&collection=journals).

Kofele-Kale, "Patrimonicide: The International Economic Crime of Indigenous Spoliation," *Vanderbilt Journal of Transnational Law* vol. 28 (1995), pp. 45- 118 at <http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/vantl28&div=10&id=&page=>.

Therien, Jean-Philippe, and Vincent Pouliot, "The Global Compact: Shifting the Politics of International Development?" *Global Governance* vol. 12 (2006), pp. 55-75 at <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/glogo12&div=13&id=&page>.

## 10. Beyond the law: Political will and international criminal law

## Visiting practitioner commentator: Deval Desai, SOAS Visiting Research Associate

### Questions:

- To what degree do international and domestic politics shape options for international criminal accountability?
- How does the pursuit of accountability affect domestic politics? The ability of international humanitarian or development actors to engage?

\*Biersteker, Thomas, Peter Spiro, Chandra Lekha Sriram, and Veronica Raffo, eds., *International Law and International Relations: Bridging Theory and Practice* (Routledge 2007), at least two of chapters 11-15.

\*Duthie, Roger, "Towards a development-sensitive approach to transitional justice," *International Journal of Transitional Justice* vol. 2 (2008) pp. 292-309, at <http://ijtj.oxfordjournals.org/content/2/3/292.full.pdf+html>.

UNITAR, "A humanitarian dilemma: Protecting civilians and promoting justice" (2007) at <http://www.unitar.org/ny/node/59>.

Wedgwood, Ruth, "The International Criminal Court: An American View," *European Journal of International Law* vol. 10 (1999), pp 93-107 at <http://ijtj.oxfordjournals.org/content/2/3/292.full.pdf+html>.

Scheffer, David, "The United States and the International Criminal Court," *American Journal of International Law* vol. 93, no. 1 (1999), pp. 12-22 at <http://www.jstor.org/stable/pdfplus/2997953.pdf?acceptTC=true>.

## 11. Revision session (term 3)

### *Essay Questions*

You are required to write one 5000-word substantive essay, which will constitute 35% of the final grade. Set topics are provided below; if students wish to deviate from those topics they may do so after consultation by third week. ***All students, whether they are writing to a set paper question or one of their own device, must submit an essay plan (1-2 pages) by 5 PM Monday of week 10, term 1 which includes a bibliography.***

1. Pick any country which is not a state party to the ICC statute, but in which you think crimes otherwise falling under its jurisdiction have occurred. Discuss the acts which might constitute crimes, using evidence to support a legal case, and how the ICC might assert jurisdiction.
2. Take any country situation currently before the ICC, and discuss challenges of complementarity in respect of potential or actual cases.

3. You are the defence attorney for Muammar al-Gaddafi. What substantive defences might you raise in relation to his prosecution? What other issues might you raise in relation to his sentencing, if he is convicted?
4. Discuss the evolution of international criminal justice since 1945 with reference to specific tribunals and cases. You may select any aspect of its development, but must make an argument about developing jurisprudence.

### ***Tips for essay writing***

#### *General structure*

**It may appear obvious or slightly repetitive, but a clear essay will tell people what you plan to say, then say it, then tell them what you have said. This approach should help you to shape your introduction, main text, and conclusion, respectively.**

#### *The introduction*

An introduction ought to be clear about what it is that your essay will do. It should do the following:

- Indicate what question(s) you seek to answer
- Identify why these questions arise. Do they come from a specific literature or from real world events? You should provide a context that helps to make clear not only what your questions are, but why they matter.
- Indicate what answers you will offer to the questions.
- Indicate how you will reach the answers. This should make clear your sources, methods, and evidence.
- Offer an overview/roadmap which makes clear your plan for the remainder of the paper.

#### *The paper*

The body of the paper will offer your argument and evidence. It is important therefore that you offer clear lines of argument, and well-sourced evidence. It is equally important that you write clearly, and edit carefully.

#### *Argumentation*

You must be careful to offer reasoned arguments that support your initial thesis and answer the questions that you pose.

- Use clear evidence to support any claims that you make. This may be empirical, offering facts, statistics, historical narrative, or it may be theoretical and deductive, offering an elaboration of theoretical claims and their implications
- Be clear about what claims your evidence supports, and how. Simple statements of fact do not automatically support a claim

- Avoid making arguments that are tautological—your evidence must prove that something is the case, rather than be definitional. An argument that demonstrates that democracies engage in citizen representation is not of particular interest
- Consider the counter-arguments. Be certain to raise real objections that might be raised by a skeptic, and not simply straw men that are easy to destroy. Straw men do not pose real tests for your thesis
- Document your claims with clear footnotes. Footnotes should certainly be offered to support specific factual claims (e.g. ‘no modern democracies have gone to war against other modern democracies’). They should also be offered to support key arguments or claims where they have been made by others. Failure to do so is a form of plagiarism. However, simply telling the reader that someone has said  $x$  is insufficient—that proves they said it and nothing more. You should also make clear what the reasoning is behind someone else’s claim, if you are using it to bolster your argument. Footnotes should be clear and complete—*Chicago manual of style* is preferable. Using footnotes rather than in-text citations keeps the text clean and readable.

### *Writing*

It is very important that the structure of your argument be clear, and that your writing be clear and grammatically correct. A number of steps can be taken to ensure this:

- Make only one or two clear points in your paper, and organize the paper simply and clearly. Try to avoid adding numerous ancillary points, no matter how interesting, if they do not contribute to your core inquiry.
- Create clear headings for sections, with clear signposting for each section and transition; try to avoid excess subsections and subheadings.
- Each section should offer the:
  - Argument of the section
  - Supporting evidence
  - Counterarguments or limitations to the argument
- Writing from an outline will help you to follow the structure suggested here
- Begin each paragraph with a topic sentence
- Write clear, declarative sentences
- Avoid the passive voice. Use of it makes your argument less clear, as it often obscures who is actually doing the acting. It also makes it sound as though you are unclear or indecisive yourself as to what has taken place and why.
- Avoid run-on sentences. Do not try to pack too much into any given sentence, as it is liable to confuse the reader or conflate several issues
- Don’t clutter the text with information that is not directly relevant. It is not necessary to write ‘Professor Thomas Franck, an international law expert and Professor at New York University, has argued that there is an emerging right to democratic governance’ when you can write ‘Some have argued there is an emerging right to democratic governance’ and footnote the book by Franck. Clearly, the exception will be where another author is your main object of inquiry—if you are talking about a specific judicial opinion, majority or dissent, of a court, or any situation where the status of the author provides specific additional weight to your argument (eg academic articles by a scholar who is now a judge on the International Court of Justice).

- Don't use excessive direct quotations. Where possible, paraphrase the arguments of others, and footnote the relevant page(s). Use quotations where they are particularly apt only. If they run more than three lines, indent the quote, offset it from the text, and single space it.
- Be very cautious about spelling, grammar, and style. Poor grammar and poor spelling makes you look sloppy and casts doubt upon the general quality of your scholarship. MS Word and other programmes help with this, marking spelling and grammar queries—*pay attention to these*. Sloppy style and inconsistency also undermines your argument. Common errors include:
  - Confusing its and it's. The former is the possessive of it, while the latter is a contraction of it is.
  - Confusing homonyms. Their, there, and they're are different.
- Pay attention to sentence parallelism. Make sure that not only do subjects and verbs agree, but that each agreement is consistent in a list of things. For example, 'It is vital for a law to be effective that it is *passed*, that it is *published*, and that it is *enforced*.'
- Be consistent about use of language. This holds for terminology and style. If you are using a term of art that is specific to a literature, define it according to the rules of that literature, and follow it consistently. Similarly, if you choose to capitalize or otherwise use specific notation for a term, use it consistently. Some international lawyers may capitalize *States*, but most international relations scholars use the lowercase *states*. If you use one or the other, stick with it throughout.
- You can ensure that your paper is clear and readable by vetting it—have a friend read it through before turning it in.

### *The conclusion*

The conclusion should follow all of the rules indicated above. If your introduction was thorough and your structure clear, a long conclusion will not be necessary. You should still, however, recapitulate your argument and the key support for it. You may then turn to the implications of your findings, be they policy implications or theoretical ones.