

Basic IHL & ICL Training Course

Lecture 1: IHL & ICL as Part of Public International Law

International humanitarian law (IHL) and international criminal law (ICL) are subfields of public international law (PIL). This lecture will begin by discussing the three formal sources of PIL: treaties, custom, and general principles of law. It will then explain how international and domestic courts use the formal sources to identify binding rules of IHL and ICL.

Topics

The use of public international law when applying IHL & ICL

The role and interpretation of treaties

Formation of customary international law

The use of general principles of law

Required Reading

Antonio Cassese et al., *International Criminal Law* (3rd ed. 2013) **(C)**, 3-18

Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (2016) **(M)**, 15-33

ICJ Statute, Art. 38

Lecture 2: Classification of Hostilities and Persons

The rules of IHL apply only in armed conflict. The first part of this lecture will discuss the two basic types of armed conflict – international (IAC) and non-international (NIAC) – with a particular emphasis on how to distinguish between NIAC and situations that, despite some violence, are still considered “peacetime.” The second part of the lecture will then explain how combatants and civilians are defined in IAC and NIAC and why the distinction matters in practice.

Topics

The importance of classifying armed conflict

Definition of IAC

Definitions of NIAC – Common Article 3 and AP II

Meaning of combatancy: combatant’s privilege and POW status

Combatants in IAC – regular and irregular armed forces

The challenges of classifying individuals in NIAC

Required Reading

M 51-57, 66-72, 80-85, 125-127

Geneva Conventions (GCs), Common Articles 1, 2, 3 and 9

Recommended Reading

M 60-66 (occupation)

Excerpts from *Prosecutor v. Dusko Tadić* (ICTY) (decisions on the existence of armed conflict)

Lecture 3: War Crimes

A war crime is a violation of a rule of IHL for which there is individual criminal responsibility. This lecture will begin by exploring which violations of IHL are war crimes in IAC and which are war crimes in NIAC. It will then discuss the basic categories of war crimes, focusing on those that are most relevant to the situation in Iraq, such as forcible transfer. The lecture will then conclude by discussing the mental states that war crimes require and problems of proof raised by those mental states, particularly the possibility of mistake of fact or mistake of law requiring acquittal.

Topics

Relationship between IHL and law of war crimes

Contextual element: armed conflict

Categories of war crimes

Torture as a war crime

Problems of proof regarding the required mental states

Mistake of fact and law

Required Reading

C 63-83, 134-136

Rome Statute, Art. 8

Lecture 4: Genocide

This lecture will provide a thorough overview of the basic elements of genocide. The lecture will begin by explaining how the four protected groups are defined and how international tribunals have taken a mixed objective/subjective approach to group membership. It will then distinguish the five forms of genocide, with a particular emphasis on those forms that do not require death. Finally, the lecture will spend considerable time exploring the meaning of, and evidentiary problems created by, the mental state required for genocide: namely, the specific intent to destroy the protected group.

Topics

Definition of protected groups

Five prohibited forms of genocide

Does genocide require a genocidal plan or policy?

The meaning of “specific intent to destroy” and how to prove it

Other modes of participation in genocide – incitement, conspiracy

Required Reading

C 110, 115-123, 125-130

Rome Statute, Art. 6

Recommended Reading

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Schabas, “Introductory Note to the Genocide Convention”

Lecture 5: Crimes Against Humanity I

Crimes against humanity have a dual structure, consisting of (1) a set of contextual elements that distinguish crimes against humanity from “ordinary” domestic crimes; and (2) the individual act that qualifies as a crime against humanity. This lecture will focus on the contextual elements. It will begin by explaining how crimes against humanity differ from genocide and war crimes. It will then define the contextual elements themselves, with a particular emphasis on what is meant by a “widespread or systematic” attack and whether crimes against humanity must be committed pursuant to a state or organizational policy.

Topics

Difference between crimes against humanity and genocide

Difference between crimes against humanity and war crimes.

The importance of the contextual elements

Definition of civilian population

Definition of “widespread and systematic”

The policy requirement at the ICC

Required nexus between perpetrator’s act and widespread and systematic attack

Required Reading

C 37-39, 55-58, 90-94, 98-100

Rome Statute, Art. 7

Recommended Reading

C 84-90 (history)

Lecture 6: Crimes Against Humanity II

This lecture will focus on the individual crimes against humanity. Initially, the lecture will explore the mental states that apply to crimes against humanity, particularly the genocide-like specific intent required for persecution. It will then explain the material elements of the crimes against humanity most relevant to the situation in Iraq, such as enslavement, torture, and the “catch-all” crime of other inhumane acts.

Topics

Mental states in ICL

Problems of proof for required mental states

Extermination

Enslavement

Torture

Deportation and forcible transfer

Sexual violence

Persecution

Enforced disappearance

Other inhumane acts

Required Reading

C 39-43, 94-98, 100-108

Recommended Reading

C 43-55 (mental states)

Lecture 7: Modes of Participation in International Crimes

This lecture will explain the wide variety of ways an individual can be held responsible for an international crime that he does not personally commit. The discussion will focus on both modes of participation that are considered liability as a principal, such as co-perpetration, and modes that are considered liability as an accessory, such as ordering an international crime. The lecture will pay particular attention to modes of participation where the ICC definition differs significantly from the definition adopted by the ICTY and ICTR, most notably aiding and abetting.

Topics

Principal vs accessorial liability

Collective criminality – co-perpetration and common plan vs joint criminal enterprise

Ordering

Instigating, soliciting, inducing and inciting

Aiding and abetting – the Rome Statute vs customary international law

Attempt

Required Reading

C 161-164, 175-179, 193-205

Recommended Reading

C 164-175 (JCE)

Lecture 8: Superior Responsibility for International Crimes

This lecture, which supplements the previous one, will provide a comprehensive overview of superior responsibility, whereby military and civilian superiors are held responsible for international crimes committed by their subordinates. It will begin by explaining the essential elements of command responsibility: the superior/subordinate relationship, the requisite mental state, and the failure to exercise proper control. It will then discuss the difference between command responsibility and aiding and abetting, which is often unclear in situations involving a superior's failure to act.

Topics

Superior/subordinate relationship

Knowledge vs negligence and the duty to inquire

The failure to prevent or punish

Causation

Distinguishing command responsibility from aiding and abetting

Required Reading

C 180-192

Recommended Reading

ICRC, “Command Responsibility and the Failure to Act”

Lecture 9: Fair Trial Rights Under International Law

IHRL requires all defendants to receive a fair trial. This lecture will explain what a fair trial requires, from the principle of legality to the right to confront witnesses, with a particular emphasis on what IHRL means by judicial independence and impartiality. It will also discuss the war crime of denying a fair trial, which requires judges adjudicating cases in armed conflict to ensure defendants receive all the rights that IHRL guarantees them.

Topics

Conventional sources: ICCPR, Geneva Conventions, Additional Protocols

Principle of legality and non-retroactivity

Meaning of “a court offering the essential guarantees of independence and impartiality”

Presumption of innocence and right against self-incrimination

Right to notice of charges

Right to counsel

Right to confront witnesses

Right to judicial review

The war crime of denying a fair trial

Required Reading

C 27-36, 347-362

ICCPR, Art. 9

Recommended Reading

C 329-340 (adversarial trials)

Lecture 10: Islamic Law of War and Islamic Criminal Law

This lecture will examine the Islamic law of armed conflict and international crimes. It will begin with a discussion of the primary and secondary sources of Islamic law and the concept of equity under the *Shari‘a*. General principles of Islamic public international law, including relations within and outside of the Islamic caliphate, will also be discussed. The lecture will then examine classical Islamic rules providing protection to certain persons and objects and regulating certain means and methods of warfare in order to ascertain their compatibility with IHL and to identify specific challenges concerning their application in IAC and NIAC. Finally, the lecture will discuss the distinction between the use of legitimate force and terrorism (both domestic and international) under Islamic law. Examples of views and interpretations of contemporary militant groups, as well as responses to those views, will be discussed throughout.

Topics

Islamic public international law: sources and principles

Classical division of the world: *dār al-islām*, *dār al-ṣulḥ* and *dār al-ḥarb*

Classical Islamic *jus in bello*

Bifurcation of world: *dār al-islām* and *dār al-ḥarb*

Rights and duties of temporary non-Muslim residents of the Islamic state (*musta'min*) and contracts of quarter/safe passage (*amān*)

Militant *jihādī* jurisprudence (*fiqh*) and contemporary responses

Condemnation of terrorism under Islamic law

Required Reading

Bassiouni, *The Sharī'a and Islamic Criminal Justice in Time of War and Peace* (2014) 118-120, 150-159

Al-Dawoody, *Islamic Law of War: Justifications and Regulations* (2011) 107-119

Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles" (2017) 995–1018

Bhala, *Understanding Islamic Law (Shari'a)* (2011) 1359-1363

Recommended Reading

Abu Zahra, *International Relations in Islam: A Comparison with Modern International Law* (1995)

ICRC, "The Islamic Shari'a and International Humanitarian Law" (2018)

Al-Dawoody, *IHL and Islamic Law in Contemporary Armed Conflicts* (2019)

El Zamaly, *Articles of International Humanitarian Law and Islam*