

Seminar on International Criminal Justice

Modul 1260: International Law and International Politics in Practice

Language: English

Lecturer: Prof. Dr. Christina Binder (in cooperation with Prof. Gerhard Hafner, Prof. Frank Höpfel, Prof. Ursula Kriebaum (University of Vienna), Prof. Gerhard Fiolka (Université de Fribourg))

Number of ECTS Credits: 7

Workload: 210 h; Teaching hours 48h, Self-study 162h

Teaching hours per week during the trimester: 4 teaching hours

GENERAL INFORMATION

The seminar "International Criminal Justice" will be held in collaboration with the *University of Vienna* and the *Université de Fribourg*.

Preliminary Seminar meeting: Tuesday, **4 April 2023**, 5-6 pm

- Distribution of topics (own suggestions are very welcome)
- Further procedure (specifications for seminar paper, presentation, ...)
- Arrangement of further dates for intermediate meeting
- Organizational issues

Intermediate date: beginning of **May 2023** (exact date will be fixed in the preliminary meeting)

Discussion of the work progress (short overview presentation about the work, max. 5 minutes, writing of an excerpt)

Excursion to Vienna: **24 to 26 May 2023 (9 am to 5 pm)**

Seminar at the Juridicum of the *University of Vienna* & excursion to the United Nations in Vienna.

Requirements for the excerpt:

- The excerpt should be max. 2 pages long and provide an overview (similar to a table of contents) of your seminar paper, as well as a bibliography.
- The excerpt is to be submitted by **8 May 2023** at the latest, by e-mail to c.binder@unibw.de.

Requirements for the seminar paper

- The seminar paper can be written in German. However, please note that the presentation and the handout (see below) must be written in English.
- The draft of the paper must be submitted electronically by **15 May 2023** at the latest (c.binder@unibw.de). The paper, including the bibliography (and footnotes), should be approximately **3500-4500 words**.
- The final version of the paper will be submitted no later than **15 June 2023**. This is to give you time to revise your seminar paper based on the suggestions received at the main deadline.

Requirements for the presentation:

- The presentation should last approx. 15 minutes, followed by a discussion.
- In addition to the presentation, a handout must be prepared.

- Both the paper and the handout must be written in English.
- PowerPoint presentation is desirable, but not obligatory.

Compulsory attendance

Teaching Objectives:

The seminar is offered jointly with the University of Vienna; it is held in English. Participants will be offered in-depth knowledge of international criminal law from an international law, criminal law and human rights perspective. An excursion to the United Nations in Vienna will demonstrate the practical relevance of the topic. In this context, representatives of international organisations and institutions (UNODC, etc.) active in the practice of international law will report on current issues from their field of activity.

Proofs of Performance:

Presentation (30%), excerpt & written seminar paper (70%), active participation in the excursion to the United Nations in Vienna.

Bibliography

Treaties:

- Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3
- Relationship Agreement Between the United Nations and the International Criminal Court (adopted and entered into force 4 October 2004) 2283 UNTS 195.

Literature:

- Ambos K and Triffterer O (eds), *The Rome Statute of the International Criminal Court: A Commentary* (4th edn, Beck 2021)
- Bolton J, 'The Weaknesses and Risks of the International Criminal Court from an American Perspective' (2000) 41 *Virginia Journal of International Law* 186
- Broomhall B, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (OUP 2003)
- Cassese A, Gaeta P and Jones JRWD (eds), *The Rome Statute of the International Criminal Court: A Commentary* (OUP 2002)
- Clarke KM, *Fictions of Justice: The International Criminal Court and the Problem of Legal Pluralism in Sub-Saharan Africa* (CUP 2012)
- Cryer R, *An Introduction to International Criminal Law and Procedure* (4th edn, CUP 2019)
- Guilfoyle D, 'Lacking Conviction: Is the International Criminal Court Broken? An Organizational Failure Analysis' (2019) 20 *Melbourne Journal of International Law* 1
- Jalloh C and Bantekas I (eds), *The International Criminal Court and Africa* (OUP 2017)
- Kersten M, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (OUP 2016)
- Lee R (ed), *The International Criminal Court: The Making of the Rome Statute* (Kluwer 1999)
- McCarthy C, *Reparations and Victim Support in the International Criminal Court* (CUP 2012)
- Nouwen S, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (CUP 2013)
- Poes A, *Prosecutorial Discretion at the International Criminal Court* (Bloomsbury 2020)
- Robinson D, 'Inescapable Dyads: Why the International Criminal Court Cannot Win' (2015) 28 *Leiden Journal of International Law* 323
- Sadat L, *The International Criminal Court and the Transformation of International Law* (Transnational 2002)
- Safferling C, *International Criminal Procedure* (OUP 2012)
- Schabas W, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn, OUP 2016)

- id., *An Introduction to the International Criminal Court* (6th edn, CUP 2020)
- Stahn C, *The Law and Practice of the International Criminal Court* (OUP 2015)
- Werle G and Jessberger F, *Principles of International Criminal Law* (4th edn, OUP 2020)
- Kattan V, 'The ICC and the Saga of the Mavi Marmara' (2020) 18 *Palestine Yearbook of International Law Online* 53 <https://doi.org/10.1163/22116141_018010004> accessed 5 May 2021.

CONTENT:

This seminar covers different aspects of international criminal law.

Students will be provided with the list of possible topics via E-Mail already before the preliminary meeting. The final program depends on their choice.

List of Possible Topics:

1. The International Criminal Court

a. Situations and Cases

1. The ICC and Ukraine: recent developments
2. Bangladesh/Myanmar and the ICC (The Situation concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh + recent developments in Myanmar)
3. ICC and Sudan – Topical Problems including the problem of enforcing arrest warrants
4. The decisions of the ICC regarding Malawi, Chad and South Africa
5. ICC and Uganda – Serving as an Example for Difficulties with Amnesty Laws
6. Legal Aspects of the Case Against Jean-Pierre Bemba
7. ICC Timbuktu destruction case (Mali)
8. The interplay of the ICC and the UN: Should persons be brought before the ICC and become object of targeted sanctions of the UN?
9. In the interest of justice? The start of investigations on the Situation in the Islamic Republic of Afghanistan
10. Palestine and the ICC
11. Georgia and the ICC

b. Gender Issues in International Criminal Law

12. The Crime of Forced Pregnancy Under the Rome Statute
13. A “gender-sensitive” International Criminal Court? – The Protection of Victims and Witnesses of Sexual or Gender Violence in the Proceedings

c. The Kampala Review Conference 2010

14. The Definition of the Crime of Aggression After Kampala
15. The Jurisdiction of the Court in Relation to the Crime of Aggression

d. Miscellaneous

16. Examining and prosecuting war crimes in Syria in national and international proceedings
17. The Prerequisites for Reparations Under the ICC Statute

18. The Declarations to the Rome Statute in Light of the Prohibition of Reservations to the Statute (Art 120 RS)
19. The Use of Illicit Weapons Under the Rome Statute
20. The Crime of Torture in International Humanitarian Law, War Crimes and Crimes Against Humanity
21. The applicable law (Article 21 Rome Statute)
22. The increased reservations of African states towards the ICC including the experience of the Extraordinary African Chambers in Dakar (the case against Hissène Habré)
23. The responsibility of commanders and other superiors (Article 28 RS), in comparison with Article 7 (3) ICTY Statute
24. Article 97 Rome Statute: the present discussions
25. Amici curiae before the ICC and experience of the ICTY
26. The issue of immunities in connection with the proceedings before the ICC and the present request for an advisory opinion of the International Court of Justice
27. The amendments to the Rome Statute by Belgium and the proposed amendment by Switzerland

2. The *ad hoc* Criminal Tribunals: ICTY, ICTR, and the Residual Mechanism

a. Substantive Law

28. War Crimes in Non-International Armed Conflicts in the ICTY Case-law, including the Criteria for an “Armed Conflict”
29. Modes of Participation, including the Forms of Joint Criminal Enterprise (“JCE”), in the Jurisprudence of the *ad hoc* Tribunals

b. Procedural Issues

30. Standard of Proof in International Criminal Justice: Proof of Guilt Beyond Reasonable Doubt – with Special Consideration of Issues of Recognition and Identification
31. Plea Bargaining (“Plea Agreements”) in Proceedings before the ICTY
32. Completion Strategy: The Residual Mechanism and the Interplay Between the ICTY / ICTR and National Courts
33. Sentencing Principles and Practice, including Questions of Early Release

3. Internationalized (“Hybrid”) Courts: Sierra Leone, East Timor, Cambodia, Lebanon and Kosovo

34. The Kosovo Specialist Chambers & Specialist Prosecutor’s Office in The Hague on the background of the ICTY experience with particular regard to witness protection
35. The Experience of the ECCC (the “Cambodia Tribunal”)
36. Sierra Leone and East Timor: The Co-existence of Criminal Courts (“SCSL”, East Timor) and Truth and Reconciliation Commissions (“TRCs”)
37. Child Soldiers in the Case Law of the SCSL and the ICC
38. Trials in Absentia (The example of the Special Tribunal for Lebanon – STL)

4. Other Issues in International Criminal Law

39. The definition of the crime of genocide in the practice of the International Court of Justice (The case Croatia v. Serbia)
40. The Srebrenica case before the courts in the Netherlands
41. The Application of the Principle of Universal Jurisdiction
42. The Liability of Legal Persons in International Criminal Law – from Nuremberg to the ICC including recent developments at the Special Tribunal for Lebanon
43. Individual Criminal Accountability of Business Leaders for Human Rights Violations
44. Contempt of Court as Measure to Protect Witnesses
45. Terrorism as an International Crime including the Interlocutory Decision of 16 February 2011 of the Special Tribunal of Lebanon
46. The Austrian criminal law on international crimes: a comparison with the ICC Statute
47. Acceptance and Criminalisation of IS fighters in Austria returning from Syria