

# **JUR-3626 International Criminal Law, Atrocity Crimes, and Transitional Justice - 15 ECTS**

## **The course is provided by**

The Faculty of Law, UiT The Arctic University of Norway

## **Place of study**

Tromsø

## **Type of course**

Master level. The course is offered during the autumn term.

## **Admission requirements**

Students must be at the master's level and have basic knowledge of Public International Law, Human Rights Law, and Criminal Law.

For students in the integrated master's degree programme in law at Tromsø, the course builds on their knowledge of Public International Law, Criminal Law, and Human Rights Law, acquired during their first and fourth years of study. Students in the integrated master's degree programme in law may choose this course in partial fulfillment of the requirements for the elective part of the programme's fifth year, cf. Programme Specification for the Master's Degree in Jurisprudence at the University of Tromsø (Studieplan for graden Master i rettsvitenskap ved Universitetet i Tromsø), Sec. 4.

Other students (such as exchange students) may also elect this course, cf. Regulations for the Elective Component in the Master's Degree Programme in Jurisprudence (Reglement for den valgfrie delen av masterstudiet i rettsvitenskap) (Regulation), provided the necessary application and admissions process was successfully completed.

Others than students at Faculty of Law must contact the Faculty for information about required qualifications and the application procedure for this course.

## **Course contents**

International and national armed conflicts, mass violence, terrorism, organised crime, large-scale environmental crimes, etc. are a permanent threat to mankind and the entire planet. One way to respond to these threats is the creation of criminal responsibility for individuals (and corporations). Typically, criminal law is considered the manifestation of the ultima ratio application of the monopoly of power by national states. But in a globalised world and the transnational crime associated with it, criminal law leaves the strict boundaries of the national state and its territory aside to form a new subcategory of law: International Criminal Law. The examination, the deeper understanding, and the application of this legal subsystem are the primary goals/objectives of this course. To generate a better understanding of the functions and the logic of this system of international criminal law and how it interacts with other legal and non-legal systems (such as truth commissions, customary procedures, etc.), this course is divided into three main parts:

1. General concepts of international criminal law: Four categories
2. 'Atrocity crimes': International Criminal Law *strictu sensu*

### 3. Transitional Justice: Plurality of legal, quasi-legal, and non-legal responses to mass violence and large-scale conflicts.

The *first part* of the course introduces the general concepts and instruments of ‘international criminal law’ for a deeper understanding of the extraterritorial impact of international criminal law and for the application of the legal frameworks of these different subsystems. Thus, the *first part* is divided into four sections mirroring the four principal subcategories of international criminal law (ICL-EPIL):

1. International Criminal Law as the law governing the criminal jurisdiction of sovereign states that continues to be used to denote the national laws that govern the (extra-) territorial scope of criminal law. The constitutive principles of international criminal law in this category are: the principle of territoriality, the principle of personality, the protective principle, the principle of criminal jurisdiction by representation, and the principle of universal jurisdiction.
2. International Criminal Law as the law of international cooperation in criminal matters. International cooperation in criminal matters is support for criminal proceedings in a different forum. It encompasses the extradition of a person for prosecution or enforcement of a sentence, the transit of a person from the extraditing state to the state seeking extradition through a third state, and mutual legal assistance. This second category also includes the cooperation between states and international/hybrid criminal courts and tribunals.
3. International Criminal Law as Transnational Criminal Law. International criminal law also incorporates international treaties on crimes of a transnational nature (piracy, terrorism, slavery, organised crime, cybercrime, corruption, environmental pollution, etc.). Key components of such treaties are the duties of state parties to criminalise the conduct prohibited under their national laws and either to investigate and prosecute or extradite the suspect of those crimes (*aut dedere aut iudicare*).
4. Supranational Criminal Law and International Criminal Law *stricto sensu*. International criminal law *stricto sensu* is characterised by the creation of direct individual criminal responsibility under international law. This legal subsystem protects fundamental values shared by the international legal community, such as international peace and security but also the protection of international human rights. This category of international criminal law focuses mainly on four ‘core crimes’: genocide, crimes against humanity, war crimes, and the crime of aggression. These crimes are also called ‘*atrocities crimes*’. A new trend that may currently be observed is to expand this category and include other crimes to protect additional fundamental values such as the environment (crime of ecocide) and the international economy (crime of grand corruption, organised crime).

The *second part* of the course will offer an overview of international criminal law *strictu sensu* and its focus on ‘atrocities crimes’, including its origins and current trends. This part will address the legal regimes of international/hybrid criminal courts and tribunals and will cover the core substantive crimes (genocide, crimes against humanity, war crimes, and crimes of aggression). The possible extension of the jurisdiction *materiae* to include ecocide, economic crimes, piracy, human trafficking, and terrorism will be discussed as well. The role of the prosecution, the basic

rights of the defendant, and the role of victims will be examined, with special focus on the United Nations ad hoc tribunals and the International Criminal Court. Jurisprudence of international criminal courts and tribunals will serve to illustrate the foundations and the procedure. Issues that tend to arise in practising international criminal law will be the subject of discussions, and the primary interests that need to be balanced when considering procedural issues will be taken into account. The end of the *second part* will link up with the *first part* of the course in order to show how state cooperation with international tribunals works and how it impacts national jurisdictions.

The *third part* of the course will provide a more general approach to the topic of post-conflict justice and transitional justice. Aside from the duty to satisfy the needs of the individual victims of mass violence, the state—as well as the international community as a whole—has an obligation not only to prevent this type of crimes but to guarantee a peaceful coexistence and to generate legal expectations within its boundaries. As a result, the state is obliged to introduce reforms and to establish different mechanisms aimed at reestablishing trust in the authorities of the state and to reconcile society. The plurality of these different mechanisms may be labeled ‘Transitional Justice’. Transitional justice may be understood as a ‘conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes’ (Teitel 2003 p. 69). In a report by the Secretary-General of the United Nations concerning ‘the rule of law and transitional justice in conflict and post-conflict societies’, the Secretary-General states that ‘[t] herefore the notion of transitional justice (...) comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’ (UN S/2004/616 vom 23, 2004). Over the years a plurality of transitional justice models and mechanisms are developed with different aims and goals. These models were based on different modules and legal procedures, including procedures of a national, non-national, or mixed national and non-national nature. Still, all these models share the following problems:

- the immense quantity of potential perpetrators;
- the lack of resources and infrastructure in war-torn countries;
- the need to create accountability in order to overcome impunity; and
- the need to establish mechanisms for reconciliation at national and individual levels.

This *third part* will examine pertinent mechanisms, such as Truth and Reconciliation Commissions, Alternative/Customary Conflict Resolution Mechanisms, Memorials, Lustration, etc. and will discuss their use in the aftermath of mass violence and state crimes.

This course provides students with the requisite knowledge and a solid understanding of the basic rules and principles of international criminal law and transitional justice. The course further aims to provide not only advanced knowledge of the relevant legal regimes and rules but also an understanding of their interplay and how to critically challenge them. This involves analysing and challenging the assumptions on which the rules are based and critically analysing the interaction of law and other social systems to guarantee social order and peace.

## **Objectives of the course**

### *Knowledge:*

Having passed the exam, the student shall have acquired:

- advanced knowledge of the rationale of international criminal law and its challenges;
- advanced knowledge of the basic concepts of international criminal law;
- advanced knowledge of the legal system of the International Criminal Court;
- advanced knowledge of the basic ideas and mechanisms of transitional justice;
- good knowledge of the interplay between international and national systems in international criminal law;
- good knowledge of the interplay between legal, quasi-legal, and non-legal bodies in post-conflict situations;
- good knowledge of the exchange of different law enforcement agencies to combat transnational crime;
- knowledge of the role of the national states within the system of international criminal justice;
- knowledge of socio-legal observations in transitional justice and post-conflict situations;
- knowledge of the relevant Norwegian rules regarding the system of international criminal law.

*Skills:*

Having passed the exam, the student is able to:

- have a thorough grasp of the rationale of international criminal law;
- understand the role of international criminal law within the global legal landscape;
- identify relevant challenges of a national legal system in dealing with transnational crime;
- identify and analyse challenges of a theoretical and practical nature regarding the legal response to transnational crime and atrocity crimes;
- independently and critically interpret and apply relevant sources of international criminal law;
- identify and discuss the limits of the law regarding transnational crime and post-conflict situations;
- use English terminology applicable to this field of law.

*General Competence:*

Having passed the exam, the student can:

- apply the knowledge and skills obtained in the field of international criminal law to new legal situations, tasks, and projects, where relevant;
- analyse legal situations involving transnational crime, argue for different potential solutions, and arrive at a reasoned balancing of relevant legal arguments;
- communicate his or her reasoning in the field of international criminal law in a clear and precise manner, orally and in writing, to the academic community and the general public;
- identify and reflect on social and ethical dilemmas that may arise in the field of transitional justice and deal with these in a responsible and comprehensive manner;
- master the English language and terminology in this field of law.

**Language of instruction**

This course will be held in English. More specifically, any communication during the lectures/seminars will be in English as well as the literature and any auxiliary material. The written exam is also in English.

## **Teaching methods**

The course will consist of a combination of lectures and seminars, for a total of 30 hours. Students are expected to come prepared for lectures and seminars and to participate actively by discussing legal approaches to the issues at hand. Student participation is sought through discussions and voluntary case law interpretation. Independent study is expected in times when no lectures or seminars are held. Students are free to use the literature offered in the curriculum but are encouraged to search for additional literature in academic books and journals.

## **Assessment**

### **1. Work requirement**

Prior to the exam, the students are required to hand in a mid-term paper. The paper must be approved for the students to be able to take the final exam.

The paper shall not exceed 5 pages. Students may choose their topic from those covered in the course. All students will be given the opportunity to present and discuss their paper in class prior to submission.

Approval of the mid-term paper is based on the following criteria:

- Identification, formulation, and discussion of the research question
- Critical and independent use of legal sources
- Presentation and communication of legal arguments in a clear and precise manner
- Command of a particular topic covered in the course.

The evaluation of whether the mid-term paper can be approved is based on an overall assessment of these criteria.

### **2. Final assessment**

The course is assessed based on a six-hour, closed book, written exam. The exam may include theoretical and/or practical scenario questions.

Students may bring a dictionary, as long as it provides no definitions, merely translations. The Faculty must approve each student's exam resources prior to the examination.

The grading scale is from A to F, with F for fail. Students who fail their examination are entitled to resit the examination, cf. Regulations for examinations at the University of Tromsø Sec. 22.

## **Date for examination**

The date of the exam will be announced in the UiT web pages and on Studentweb.

## **Course overlap**

The course builds on the students' knowledge of public international law, criminal law, and human rights law acquired during their first and fourth years of study but entails no overlap with courses at the Faculty of Law.

## **Recommended reading/syllabus**

[ettersendes]

In total: app. xx pp.

The recommended reading list is subject to change until the beginning of the semester.

**Lectures and seminars**

Associate Professor Nandor Knust