

INTERNATIONAL CRIMINAL LAW – Spring 2010
UNLV Boyd School of Law
Professor Blakesley
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**TENTATIVE SYLLABUS &
Ruminations on the Nature of this Course**

Texts:

- **BLAKESLEY, INTERNATIONAL CRIMINAL LAW (Draft, 2010) in Pdf. Form.**
- **CARTER, BLAKESLEY, & HENNING, GLOBAL ISSUES IN CRIMINAL LAW (Thomson-West 2007)**
- **Christopher L. Blakesley, *Ruminations on Terrorism: Expiation and Exposition*, 10 New Crim L. Rev. 554 (Univ. California Press, Fall 2007) (pdf. Will be on our TWEN).**
- **Christopher L. Blakesley & Dan E. Stigall, *The Myopia of U.S. v. Martinelli: Extraterritorial Jurisdiction in the 21st Century*, 39 Geo. Wash. Int'l L. Rev. 1 (2007) (pdf. Will be on our TWEN).**
- **Dan E. Stigall, Christopher L. Blakesley, & Chris Jenks, *Human Rights and Military Decisions: Counterinsurgency and Trends in International Armed Conflict*, 30 U.Pa.J. Int'l Law 1367 (2009).**

Optional or possibly helpful, if you wish:

- **CHRISTOPHER L. BLAKESLEY, TERRORISM, DRUGS, INTERNATIONAL LAW & THE PROTECTION OF HUMAN LIBERTY (Transnational Publishers 1991)**
- **CHRISTOPHER L. BLAKESLEY, TERRORISM AND ANTI-TERRORISM: A NORMATIVE AND PRACTICAL ASSESSMENT (Transnational-Brill, Dec. 2006)**

ADMINISTRATION

Class TWEN Page

You are required to sign up for the class TWEN page. To do so, you will need to access the TWEN program using your Westlaw password. The TWEN page will contain the latest syllabus, relevant materials and readings that I want you to read or deem to be interesting and helpful. I will use the TWEN page to send announcements, information about the course, and modifications or additions to the syllabus as the semester proceeds.

The TWEN page includes a discussion student group option. This is completely voluntary for those who wish to participate. It is to discuss issues related to the course and class discussion. As in any such forum, please show mutual respect and be civil and be professional in your communications and discussion. Note that I will have access to this discussion forum and will check-in from time to time to see issues that might be interesting and helpful to address in class.

My **attendance policy** is that you be present, unless you have a valid excuse. It is difficult to receive a good grade in my courses if you are not in class, because this is where much of the subtlety and spontaneity in the course develops. Insight from these moments is often quite valuable. My purpose in the course, more than anything else, is to prompt students to think critically in the subject arena and to question their own predispositions. This is more important than providing simple rules. I will take attendance into account in relation to class participation. Also, I will take roll and **eight (8) absences** may result in being dropped from the class. I will use my discretion to determine whether an excused absence is warranted. Generally, only medical or family emergencies are deemed sufficient.

I take **class participation** into account in my grading to the following extent. I may increase or decrease your final grade up to one grade (e.g., from a B to an A, or from a B to a C or increments in between), as the circumstances warrant. If a person has shown the ability to analyze and solve problems in the subject matter to a degree *significantly better* in participation than shows-up in their examination, I will boost that person accordingly. This generally will occur when the person's raw-score is on the margin of a grade division. Obviously, engagement and thoughtful, respectful contribution is important to me and provides valuable insight and perspective in an arena that is volatile, emotionally engaging, and passionate. It prompts evaluation of one's own and society's values which play an important role in the law.

The examination: The final examination will be of a traditional law school type. Occasionally, I will include short-answer, true or false, or multiple-choice questions. Generally, you will solve one to several hypothetical problems in writing. Occasionally, I will include some short-answer questions. Our examination is currently scheduled for 9:00, a.m., on May 8, 2007. **What I expect you to learn – or some rumination on where we'll go, what we'll consider, and why.** The bulk of our time will be spent on learning how to think critically, in the arenas of International Law and International Criminal Law. This course helps you pursue an understanding of not only international law, generally, of international criminal and international humanitarian law, but also of the law in general, including issues such as what is law, whether international law is different from domestic (municipal), law the function of the U.S. Constitution, including the separation of powers, the war powers, some of the Bill of Rights and other constitutional principles as they relate to the international arena, the impact of international law on U.S. domestic law, and comparison of domestic and international crimes and their elements, and the international criminal courts. This will take place in an arena about which you likely will have strong feelings.

Papers in Lieu of Examination: You may write a paper in lieu of an examination, but I expect you to be prepared for class each day, as well. Papers should be at least twenty-five pages long. I will post a memorandum on our TWEN describing the obligations and requirements for papers.

Nature of the Subject: The course is more intimate and personal than you would expect, plus it addresses much more wide-ranging and different material than most people think. We often have complex and sometimes contradictory (yet nearly always passionate) reactions to issues that are raised. I appreciate and welcome these. The course has to do with law and its impact on each of our personal well being and the nature of our and international society. In addition to international law, the course deals with the question of what law is, both domestically and internationally. In fact, it prompts us to consider what sort of human beings we are.

The actual substantive and procedural subject matter generally is quite extensive and sometimes a bit complex, but it is certainly current, even crucial, because of the difficult times that we and the rest of the world face at the moment. The complexity is made manageable, perhaps even intriguing, because of the empathetic nature of the issues. Problems that go to the core of our sense of morality and nature are good catalysts for a deeper and clearer understanding of issues that occasionally might seem very abstract. Here, they are personal. Some think that international law, let alone international criminal law does not exist or that it is exotic, at best. When seen in light of our cultural or social philosophies, the domestic

law, our Constitution and that of other countries, however, International Criminal Law becomes quite interesting and extremely practical. The impact of violations of what we generally consider to be fundamental organic law including violations of our or other humans' well-being and to the continued viability of our safe and civilized life and the rule of law increases the value.

Thus, the course provides a wonderful opportunity for us to challenge our own prejudices and predispositions. This helps us to think more clearly while we learn not only international law, but also more about our own law, philosophy, morality, and constitutional principles. We will study such important and currently debated principles as the nature of law and international law, the sources of legal authority, both domestically and internationally, the "players," subjects of international law, the structure of domestic and international institutions that deal with international crime, the elements of several international crimes, the role of domestic institutions, jurisdiction, and rules in relation to international crime, including the War Powers, Separation and Sharing of Powers, the Treaty Power, Self-Executing Treaties, the Supremacy Clause, even Due Process, Equal Protection (and their analogues in the international system). We will address the application or applicability of these basic principles both domestically and internationally. This class provides an opportunity better to understand. This is accomplished in a manageable context that is one for which we have such empathy that the ideas become more real and understandable, because we care deeply about them.

You have already figured out that becoming a lawyer is a process, not a magical or mystical event. It is a process of becoming. If any of you have become fluent in a language different from your native tongue, you have already experienced a similar process. Victor Hugo said that learning a new language gives one a new personality. I have found that this is true. Well, becoming a lawyer is really quite analogous. International criminal law adds an additional layer. You do need to immerse yourselves in the process of becoming. On the more physical side, becoming a lawyer is also analogous to becoming a marathon runner. Trying to become someone fluent in a new language or trying to become a marathon runner by taking shortcuts only thwarts the process. You prevent yourselves from taking the steps required to become something or someone different from what you were before. You are capable of speaking a foreign tongue or of running a marathon, because you have taken the required, specific steps to *become one*. This course just provides you the rudiments, but it, like the rest of law school, will also give you the means to continue your development throughout your life.

My method: The process in law school and in this course is one of both cognitive learning and experimental learning. You certainly must learn the "rules," such as they might be, pertinent to International Law or whatever class you may take. This is the extent of what most people think that the law is. But it is the easy part. We are not involved in learning by rote merely to regurgitate, although gaining cognition of the "law" is necessary, but not sufficient. In reality, however, one cannot really know what a "rule" or "law" is, until one understands how it works. Thinking out loud, together, is how we make it work. Thus we run a gauntlet to become a person who thinks critically.

You will need to be prepared (fully and carefully) prior to class. This is the initial cognitive learning. Then, we together in class will challenge all of what you have "learned." That is, we will stretch and pull at the concepts. We will see how they work in similar, but different situations. We will do what is necessary for you to develop your own understanding of the boundaries of the "rules." I will not hide my own biases and occasionally I will take positions that I may not actually believe. This will be to pique your interest, understanding and conscience. I hope that I will be able to get you worked-up enough to think deeply about the issues we consider and your own place in the world.

In essence, we will take you to look at what you originally may have felt that you had "learned" and help you to look at it through a prism placed at a different angle. This way, you will have "experimented" with the cognitive knowledge to gain a sense of what it really means in the legal context. I am going to raise seemingly "controversial" issues and I will try to challenge your sensibilities (whatever they are), not for the purpose of controversy, but to enable us all to consider issues in depth and to allow us to break

beyond our preconceived notions to develop an analytical skill that will allow us to promote whatever values we hold. To shy away from this is too timid to allow quality learning.

This is necessary for you to become a *complete lawyer* — *this is not a misspelling, but a good word*. Sometimes, as we rise the upper division in law school, we develop a sense that philosophical, policy or other in-depth discussions are irrelevant or that the professor engages in “hiding the ball.” We may have deluded ourselves that there is a simple rule to solve the problem at hand. And we just “want the rule.” Well, there is no simple rule and to search for a magical rule will only thwart development of the capacity to solve difficult issues. Good lawyers are those who can address and resolve difficult cases. Anyone can win an easy case. Your medium is ambiguity; language, even legal language is inherently ambiguous. The classroom discussion is the arena in which you may ruminate on the subtleties of law’s application to a difficult situation. You owe it to yourselves and to your future clients to think deeply about the issues presented and to go through the process. You may find that it is intellectually empowering and will provide you with an intellectual and problem solving capacity that is most fulfilling.

Your “STANDING ASSIGNMENT” is generally to stay 20-25 pages ahead of where we left off on the previous class. Some days it will take longer to cover pages, because the material teaches something that is tougher to incorporate or because we get into an interesting and worthwhile discussion. As we get on in the semester, more and more of the skills (and the basic principles) will be developed and will apply to new material, so we will be able to move faster.

Disabilities. The Disability Resource Center (DRC) coordinates all academic accommodations for students with documented disabilities. The DRC is the official office to review and house disability documentation for students, and to provide them with an official Academic Accommodation Plan to present to the faculty if an accommodation is warranted. Faculty should not provide students accommodations without being in receipt of this plan.

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The DRC is located in the Student Services Complex (SSC), Room 143, and the contact numbers are: Voice (702) 895-0866, TTY (702) 895-0652, fax (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>.

Syllabus

Tentative Syllabus or order of reading: The following tentative syllabus is set up by subject and reading sections. You will be better off to read at least the indicated portion at one sitting and we will discuss the topic, as much as possible, not necessarily in one class, but as an entity. **We will certainly modify this syllabus as we go along. We will cover as much as we can.** The indicated coverage is quite optimistic to think that we might make it in a detailed way to the end, but we'll try.

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Professor Blakesley, Spring 2010
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INTRODUCTION & APPLICATION OF PUBLIC INTERNATIONAL LAW

We will cover some of the basics of international law, if needs be, for those who have not taken the basic course.

- Global Issues in Criminal Law --- pp. 1-7
- Int'l Criminal Law Materials, from The International Legal System, Ch. 1 --- pp. 1-25
- Sources of law are presented at pp. 3-25 in The International Legal System part & in GICL, pp. 17-21
- Some players or actors in international law – International Legal System, pp. 26-34

This includes: Executive Opposition to Legislation in violation of Int'l Law

Inferred Legislative Intent (MAXIM to follow Int'l Law)
Standing Instructions & Military Regs.
Legal Advisers
Executive Opposition to Legislation in violation of Int'l Law
Executive Opposition to Legislation in violation of Int'l Law
Inferred Legislative Intent (MAXIM to follow Int'l Law)
Standing Instructions & Military Regs.

- National Apology for violation of Int'l Law – Rainbow Warrior Situation pp. 34-36
- Diplomatic Practice pp. 37-40
- Application in International Tribunals (Adjudication) pp. 40; 50-60

SUBJECTS OF INTERNATIONAL LAW

Ch. 2. Subjects of International Law (briefly for background)

GICL pp. 10-17; International Legal System, pp. 78-87, 89-92, 94-98, 104-97

JURISDICTION

Ch. 3. Jurisdiction

GICL pp. 17-21;
International Legal System -- pages and order to be indicated in due course

- Dan E. Stigall, Christopher L. Blakesley, & Chris Jenks, *Human Rights and Military Decisions: Counterinsurgency and Trends in International Armed Conflict*, 30 U.Pa.J. Int'l Law 1367, 1371-1376 (2009).
- Christopher L. Blakelsey & Dan E. Stigall, *The Myopia of U.S. v. Martinelli: Extraterritorial Jurisdiction in the 21st Century*, 39 Geo. Wash. Int'l L. Rev. 1 (2007).

INTERNATIONAL (& TRANSNATIONAL) CRIMINAL LAW

Ch. 16. International (& Transnational) Criminal Law pp. 1253-1430

- Christopher L. Blakesley, *Ruminations on Terrorism: Expiation and Exposition*, 10 New Crim L. Rev. 554 (Univ. Calif. Press, Fall 2007) (in electronic form).
- GICL pp. 96-109
- GICL pp. 72-96

During Ch. 16, we may add some pages from Ch. 9, Human Rights & State Responsibility to Individuals –

pp. 639-654, 657-659, 665-677, 680-83,
690-703, 718-725 (*Filartiga*), 733-749 (*Pinochet*)

In addition, if we have time, we will address some additional chapters. Also, during discussion of each chapter, we may also consider a few pages from other chapters that help to elucidate principles in the chapter being discussed.