

A. SEMINAR CENTRED ON PENAL ASPECTS

(14 three-hour meetings)

1. Programme

Meeting No. 1:

- Introduction of participants to each other
- Presentation of the course
- Introduction to IHL, 1st part:
 - Definition, ambition and limitations
 - IHL as a branch of international law
 - Field of application

Meeting No. 2:

- Allocation of presentations, discussions and analyses
- Introduction to IHL, 2nd part:
 - Background, historical overview
 - Sources
 - Distinction between civilians and combatants
 - Combatants and prisoners of war
 - The wounded, sick and shipwrecked
 - Protection of civilians

Meeting No. 3:

- Introduction to IHL, 3rd part:
 - Conduct of hostilities
 - Non-international armed conflicts
 - Implementation

Meeting No. 4:

Decision by the International Criminal Tribunal for the former Yugoslavia (ICTY) in Tadic, jurisdiction

[Case No. 211, ICTY, The Prosecutor v. Tadic [See A]]

One student presents the decision and three others discuss it using the questions asked at the end of the case.

Meeting No. 5:

Tadic decision, merits

[Case No. 211, ICTY, The Prosecutor v. Tadic [See B and C]]

One student presents the decision and three others discuss it using the questions asked at the end of the case.

Meeting No. 6:

Intervention of the United States in Afghanistan

[Case No. 253, Afghanistan, Operation “Enduring Freedom”, and Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base]

One student presents each case and two others discuss it using the questions asked at the end of the case.

Meeting No. 7:

The ad hoc international criminal tribunals

Two students present the Statutes of the ICTY [Case No. 210, UN, Statute of the ICTY] and the International Criminal Tribunal for Rwanda (ICTR) [Case No. 230, UN, Statute of the ICTR].

[Case No. 230, UN, Statute of the ICTR] and two others discuss them using the questions asked at the end of the case.

Meeting No. 8:

The International Criminal Court (ICC)

One student presents the ICC Statute [Case No. 23, The International Criminal Court] and three others discuss it using the questions asked at the end of the case.

Meeting No. 9:

Niyonteze decision and the decision of the International Court of Justice (ICJ) in Democratic Republic of the Congo v. Belgium

[Case No. 241, Switzerland, The Niyonteze Case and Case No. 242, ICJ, Democratic Republic of the Congo v. Belgium]

One student presents each case and two others discuss them using the questions asked at the end of the cases.

Meeting No. 10:

Decision of the Military Court at Ramallah in Military Prosecutor v. Kassem and the Ajuri decision of the Israeli High Court of Justice

[Case No. 126, Israel, Military Prosecutor v. Kassem and Others and Case No. 133, Israel, Ajuri v. IDF Commander]

One student presents each case and two others discuss them using the questions asked at the end of the cases.

Meeting No. 11:

Belgian paratroopers before the Military Court at Brussels

[Case No. 198, Belgium, Belgian Soldiers in Somalia]

One student presents the case and two others discuss it using the questions asked at the end of the case.

Meeting No. 12:

Canadian paratroopers before the Court Martial Appeal Court of Canada

[Case No. 199, Canada, R. v. Brocklebank]

One student presents the decisions and three others discuss them using the questions asked at the end of the case.

Meeting No. 13:

Two students present opposing views, one for and the other against the applicability of IHL; plenary discussion.

Meeting No. 14:

Evaluation of the course and of IHL in the contemporary world

All participants discuss:

- The criminalization of armed conflicts
- Failed States
- Conflicts involving “ethnic cleansing”
- The conduct of hostilities against a post-modern society
- Arms proliferation and armed conflict
- Pitfalls for humanitarian organizations

2. Mode of assessment

50% for oral performance, 50% for written papers of about 15 pages on theoretical subjects

3. Suggested research topics (relating to the material covered in the seminar):

1. Is the ICTY a regularly constituted court?
2. The ICTY Statute and the non-retroactivity of penal law
3. Mandatory universal jurisdiction and permissive universal jurisdiction as regards offences against IHL
4. Offences against IHL in non-international armed conflicts and their repression
5. Determining the legal nature of the conflicts in the former Yugoslavia under IHL
6. The notion of protected person in IHL
7. The notion and prosecution of crimes against humanity in customary international law and under the ICTY Statute
8. Attributing a violation of IHL to a State
9. Attributing crimes committed by rebels to a State supporting those rebels with a view to establishing the State's international responsibility and to determining the legal nature of the conflict under IHL
10. A combatant's responsibility for crimes committed by other combatants
11. The role of the Security Council in the ICC Statute
12. The ICTY, ICTR and ICC Statutes: development of IHL or implementing mechanisms?
13. Peace-making and repression of war crimes
14. Application of the Additional Protocols by the ICTY and the ICC
15. Who are the addressees of the IHL of non-international armed conflicts?
16. Convention IV's applicability to the territories occupied by Israel
17. Torture: absolutely prohibited by international law?
18. The obligation to prosecute or extradite in IHL

19. The IHL applicable to United Nations forces
20. The IHL applicable to international forces intervening to stop an internal conflict
21. The IHL applicable to multinational forces engaged in an international armed conflict
22. Applicability of IHL to UNOSOM (United Nations Operation in Somalia) forces
23. Applicability of IHL and International Human Rights Law to the use of firearms
24. Precautions in military attacks and in police operations
25. Superior orders and command responsibility under IHL
26. Implementation of IHL under your country's national legislation
27. The responsibility of detaining States and individuals with regard to the treatment of prisoners under IHL

B. SEMINAR CENTRED ON THE SUBSTANTIVE RULES OF INTERNATIONAL HUMANITARIAN LAW

(13 three-hour meetings)

1. Programme

[The figures in brackets refer to the relevant chapters of Part I. of *How Does Law Protect in War?*]

Meeting No. 1:

- Introduction of participants to each other
 - Presentation of the course and subject matter
 - Discussion of the method of assessment
 - Teacher's introduction, 1st part:
 - Notion, objectives and problems of IHL [Ch. 1]
 - IHL, a branch of public international law [Ch. 2.I]
 - Fundamental distinction between *jus ad bellum* (the legality of resorting to force) and *jus in bello* (humanitarian rules applicable in the event of war) [Ch. 2.II]
 - IHL: a branch of international law governing the conduct of States and individuals [Ch. 2.III]

Meeting No. 2:

- Allocation of presentations, discussions and analyses
- Teacher's introduction, 2nd part:
 - Fundamental distinction between civilians and combatants [Ch. 5]
 - International and non-international armed conflict [Ch. 12]

Meeting No. 3:

- Teacher's introduction, 3rd part:
 - Implementation of IHL [Ch. 13]
 - IHL and human rights [Ch. 14]
 - The ICRC [Ch. 15]

Meeting No. 4:

The Tadic case (jurisdiction and merits)

[Case No. 211, ICTY, The Prosecutor v. Tadic]

- *Presentation 1:*
 - The legality of establishing the ICTY
 - The IHL applicable to non-international armed conflicts
 - Criminalization of violations of the IHL applicable to non-international armed conflicts
- *Presentation 2:*
 - Determining the legal nature of the armed conflicts in the former Yugoslavia
 - Notion of protected person
 - A combatant's criminal responsibility for violations committed by another combatant
- *Summary* by the teacher: determining the legal nature of armed conflicts

Meeting No. 5:

Conflicts in the former Yugoslavia I

- *Presentation 3:*
 - The conflict in Croatia: points 2, 4 and 8 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Presentation 4:*
 - The siege of Sarajevo and exchanges of prisoners: points 13 and 18 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: humanitarian assistance [Ch. 9.IV]

Meeting No. 6:

Conflicts in the former Yugoslavia II

- *Presentation 5:*
 - Blue helmets and missing persons: points 19 and 22 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Presentation 6:*
 - Kosovo and the NATO intervention: points 23, 24, 26 and 29 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: IHL's applicability to United Nations forces

Meeting No. 7:

Conflicts in the former Yugoslavia III

- *Presentation 7:*
 - The NATO air strikes: points 27 and 28 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia; see also Case No. 226, Federal Republic of Yugoslavia, NATO Intervention, and Case No. 227, ECHR, Bankovic and Others v. Belgium and 16 other States]
- *Presentation 8:*
 - Kosovo under international administration, Presevo and the former Yugoslav Republic of Macedonia: points 33-36 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: protecting the civilian population against the effects of hostilities [Ch. 9.II]

Meeting No. 8:

The Middle East conflict I

- *Presentation 9:*
- The applicability of Conventions III and IV to the territories occupied by Israel
 - Israel's position on the applicability of Convention IV to the Palestinian territories [Case No. 125, Israel, Applicability of the Fourth Convention to Occupied Territories]
 - Israeli Military Court at Ramallah, Decision in Prosecutor v. Omar Mahmud Kassem and Others [Case No. 126, Israel, Military Prosecutor v. Kassem and Others]
- *Presentation 10:*
- Rulings of Israel's High Court of Justice on the legality of settlements and the blockade of the Gaza Strip
 - *Ayub v. Minister of Defence* [Case No. 127, Israel, Ayub v. Minister of Defence]
 - *Jaber Al-Bassiouni Ahmed and others v. Prime Minister and Minister of Defence* [Case No. 137, Israel, Power Cuts in Gaza]
- *Summary* by the teacher: Convention IV's applicability to the occupied territories [Ch. 8.IV]

Meeting No. 9:

Humanitarian diplomacy

- Discussion with a guest speaker active in civil society, government or international service, or the army
- Discussion of the role of third States and the United Nations in implementing IHL

Meeting No. 10:

The Middle East conflict II

- *Presentation 11:*
- Rulings of Israel's High Court of Justice on deportations and on ICRC visits to administrative detainees or hostages
 - *Cheikh Obeid et al v. Ministry of Security* [Case No. 131, Israel, Cheikh Obeid et al. v. Ministry of Security]

- *Judgement on deportation cases* [Case No. 132, Israel, Cases Concerning Deportation Orders]
- *Presentation 12:*
- The taking of Jenin: massacre or military operation?
 - Report of the United Nations Secretary-General on Jenin, Document A/ES-10/186, available at <https://undocs.org/A/ES-10/186>
 - Israel's High Court of Justice, decision in Barakeh and Others v. Minister of Defence [Case No. 134, Israel, Evacuation of Bodies in Jenin]
- *Summary* by the teacher: the protection of civilians in the power of the enemy [Ch. 8]

Meeting No. 11:

The conflict in Sierra Leone, Liberia and Guinea

[Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea]

- *Presentation 13:*
- Rules of IHL applicable to the multitude of actors
- *Presentation 14:*
- Violations of IHL
- *Summary* by the teacher: the protection of the wounded, sick and shipwrecked [Ch. 7]

Meeting No. 12:

The war in Afghanistan and the detainees in Guantánamo

- *Presentation 15:*
- The conduct of hostilities in Afghanistan [Case No. 253, Afghanistan, Operation “Enduring Freedom”]
- *Presentation 16:*
- The detainees in Guantanamo and in the United States [Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base, and Case No. 264, United States, Trial of John Philip Walker Lindh]
- *Summary* by the teacher: the status and treatment of prisoners of war [Ch. 6]

Meeting No. 13:

The conflict in Cyprus and the Canadian soldiers in Somalia

- *Presentation 17:*
- The decision of the European Court of Human Rights (ECHR) in Cyprus v. Turkey [Case No. 151, ECHR, Cyprus v. Turkey]
- *Presentation 18:*
- Canadian paratroopers tried for the torture of a Somali by the Court Martial Appeal Court of Canada [Case No. 199, Canada, R. v. Brocklebank, to Case No. 201 Canada, R. v. Seward]

- *Summary* by the teacher: the differences between police operations and military operations
- Evaluation of the course

2. Proposed method of assessment

- 30%: a 20-minute oral presentation on the legal aspects of a case. (In the present work, each case is followed by a “Discussion” consisting of questions suggested by the teacher, which should be used to discuss the case from the standpoint of IHL. It is neither necessary nor desirable, however, to answer these questions one by one or in order. The questions are asked to make it easier for students to recognize the legal problems involved in each case. In their oral presentations, the students must identify and address the main IHL issues in the case they are dealing with. They should not address problems that have already been identified and handled by other participants in previous oral presentations. They should expect, however, that all numbered questions in the discussion may be raised in class (if necessary, by the teacher) following their presentation.)
- 20%: responses to questions on the case presented and asked by the participants and the teacher after the presentation (which may concern all questions in the “Discussion” of the case chosen).
- 50%: a research paper (the main legal issue in the case chosen for the oral presentation cannot be chosen as the research topic).

3. List of proposed research topics

1. The absolute distinction between *jus ad bellum* and *jus in bello* – necessary or outmoded?
2. Mandatory and permissive universal jurisdiction as regards offences against IHL
3. Enforcement of IHL in non-international armed conflicts
4. Determining the legal nature of conflicts under IHL
5. The IHL applicable to the “war on terrorism”
6. The notion of protected person in IHL
7. Attributing a violation of IHL to a State
8. Attributing crimes committed by rebels to a State supporting those rebels with a view to establishing the State’s international responsibility and to determining the legal nature of the conflict under IHL
9. A combatant’s responsibility for crimes committed by other combatants
10. The role of the Security Council in the ICC Statute
11. The Statutes of the international criminal tribunals: development of IHL or implementing mechanisms?
12. Advantages and disadvantages for implementing IHL of the establishment of the international criminal tribunals
13. Peace-making and repression of war crimes
14. Application of the Additional Protocols by the ICTY and the ICC
15. Who are the addressees of the IHL of non-international armed conflicts?
16. Convention IV’s applicability to the occupied and autonomous Palestinian territories
17. The IHL applicable to United Nations forces
18. The IHL applicable to a NATO military intervention
19. The status and treatment of captured combatants not recognized as prisoners of war
20. Applicability of IHL and International Human Rights Law to the use of firearms
21. Implementation of IHL under your country’s national legislation
22. The responsibility of detaining States and individuals with regard to the treatment of prisoners under IHL

23. End of applicability of IHL

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