

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
LL.M. IN CRIMINAL JUSTICE ADMINISTRATION - LEVEL 8
FINAL EXAMINATION – 2015



LWP 2210. - INTERNATIONAL CRIMINAL LAW

DURATION – 03 HOURS

Date : 08th November 2015

Time: 10.00 a.m. – 1.00 p.m.

Total number of questions 6

Answer FOUR (04) questions only. Each question carries 25 marks

Candidates will be penalized for illegible handwriting.

1. International Criminal Law implicates the principle of legality (*nullum crimen sine lege*). It asserts in essence the *ex post facto* prohibition - conduct must be criminalized and penalties fixed in advance of any criminal prosecution. *Nullum crimen sine lege* is supplemented by two corollary legislative and interpretive principles compelling criminal statutes to be drafted with precision (the principle of specificity) and interpreted in favor of the accused (the rule of lenity).

Discuss.

2. War crimes are serious violations of customary or treaty rules belonging to International Humanitarian Law (IHL), also called International Law of armed conflict. As the Appeals Chamber of the ICTY stated in Tadic (Interlocutory Appeal) war crimes
 - (i) must consist of ' a serious infringement ' of an international rule that is to say, 'must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim';
 - (ii) the rule violated must either belong to the corpus of customary law or be part of an applicable treaty; and
 - (iii) 'the violation must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule'

Discuss.

3. (a) What, if any, connection must exist between the acts that comprise the widespread or systematic attack on the civilian population and the alleged individual perpetrator's crimes? What if the broader attack was largely comprised of property crimes, while the individual engaged in a violent act such as rape or murder?

Set out your views in an analytical manner.

- (b) Article 7 of the ICC Statute contemplates crime against humanity as one of the categories of criminal conduct over which the court has jurisdiction. A comparison between this provision and customary international law shows that by and large the former is based on the latter. However, there are many differences. In some respects, Article 7 elaborates upon and clarifies; in other respects it is narrower than customary international law; in others, it instead broadens customary rules.

Comment.

4. (a) The second category of joint criminal enterprise liability (JCE II) involves criminal responsibility for participation in a criminal design that is implemented in an institution such as an internment, detention or concentration camp. Here proof of an express or implied agreement to commit a crime is not required, but the proof of the accused's participation in the system of ill-treatment serves the same legal function as an agreement

Comment

- (b) The third ('extended') form of Joint criminal enterprise (JCE III) essentially requires the intent to participate in and further the criminal purpose of, the joint criminal enterprise and the acceptance of the risk that a foreseeable crime might be perpetrated by members of the group.

Does this amount to 'guilt by association'? Is it fair to impute criminal liability in this type of situation?

5. 'Superior responsibility is an innovation of international criminal law to address the culpability of superiors who fail to prevent or punish the commission of international crimes by their subordinates. While criminal acts typically involve affirmative commission, superior responsibility criminalizes omissions. Omission is only criminalized when the law imposes a clear obligation to act and the person fails to do what is legally required'.

Discuss with reference to decided cases in the international criminal tribunals.

6. (a) 'The principle of territoriality, the principle of active nationality, the principle of passive nationality and the principle of universality are the important principles of criminal jurisdiction adopted in international criminal law.

Critically express your views on their usefulness and deficiencies.

- (b) 'The ICTY and ICTR share concurrent jurisdiction with national courts, but also by statute enjoy primacy over those courts and can therefore assert exclusive jurisdiction over any case that falls within their mandates. At the ICC the situation is reversed and primacy rests with the national courts in accordance with the principle of complementarity enshrined in Article 17 of the Rome Statute.

Analytically discuss the above statement.

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