

JAMR38, The International Law Commission and Individual Accountability for International Crimes, 7.5 credits

*FN:s folkrättskommission och individuellt straffansvar för
folkrättsbrott, 7,5 högskolepoäng*
Second Cycle / Avancerad nivå

Details of approval

The syllabus was approved by Faculty of Law Board of education at undergraduate and postgraduate levels on 2019-03-18 to be valid from 2019-03-18, spring semester 2019.

General Information

The course The International Law Commission and Individual Accountability for International Crimes is an elective course within the Master's Programme in International Human Rights Law at the Faculty of Law. The course is open to students on the programme leading to a Swedish Professional Law degree with a specialization in International Human Rights Law.

Language of instruction: English

Learning outcomes

Knowledge and understanding

To pass the examination the student shall be able to demonstrate

- an understanding of the theoretical justification of codification and progressive development of international law, including antecedents to the modern "codification movement"
- a thorough understanding of the mandate and role of the International Law Commission as a subsidiary body of the General Assembly charged with initiating studies and making recommendations for the purpose of promoting the progressive development of international law and its codification
- knowledge of the organization, structure and working methods of the Commission
- a deep understanding of the contributions of the Commission to the field of international criminal law

- an in-depth knowledge of the topics currently being contemplated by the Commission focusing on those relating to the concept of individual criminal responsibility for serious crimes under international law, especially crimes against humanity, immunity of state officials from foreign criminal jurisdiction and universal criminal jurisdiction and their implications for the development of the field
- a strong familiarity with the challenges currently facing the Commission and its role in the modern development of international (criminal) law.

Competence and skills

To pass the examination the student shall be able to demonstrate

- the ability to critically analyze law making and norm development processes at the international level through the lens of codification and progressive development of international (criminal) law within the United Nations system
- the ability to identify, research and critique international legal issues in diverse areas of public international law including jurisdiction, theories of criminal responsibility and substantive crimes in international criminal law
- the ability to engage in focused research on a specific project and to present the result in scholarly writing and in oral presentations
- the ability to negotiate and solve complex legal problems concerning the concept of individual criminal responsibility at the international level in a multicultural legal environment taking into account the diversity of principal legal systems of the world
- the ability to work both individually and in groups to deliver persuasive legal and policy arguments.

Judgement and approach

To pass the examination the student shall be able to demonstrate

- the ability to articulate the theoretical justification and normative basis for codification and the progressive development of international criminal law
- the ability to distinguish between legal arguments and normative arguments based on political, policy or other considerations
- insight into the constraints on codifying and progressively developing the law of individual criminal responsibility in a State centric and sovereignty conscious world
- the ability to critically assess the role of independent legal experts and technocratic institutions in the development of international (criminal) law.

Course content

The International Law Commission (ILC) is the only subsidiary organ within the United Nations system that was mandated by the Member States to assist the General Assembly in discharging its task under the United Nations Charter to “initiate studies and make recommendations for the purpose of ...encouraging the progressive development of international law and its codification”. Comprised of 34 legal experts, nominated and elected by States but serving in their personal capacity, the ILC is one of the pre-eminent institutions of international law having played a key role in the development of field and thereby contributed to the peaceful and orderly conduct of international relations. As this course examines both the ILC as an institution as well as its substantive contributions in the area of international criminal law, it will be structured into three main parts.

First, the course will explore the notion of codification starting with private efforts such as the Utopian vision of Jeremy Bentham before turning to the early inter-

governmental conferences of the 19th century through to the establishment of the precursor to the ILC under the League of Nations and then moving on to the origins, mandate, structure and working methods of the ILC and its role in the establishment of a rule based international legal order.

The second part deals with various topics that the Commission has completed in the area of individual accountability for international crimes, their present status, as well as normative contributions to the development of the field. In this regard, the following six instruments will be studied, which are not typically taught in a regular international criminal law course but constitute part of the foundational edifice of the concept of individual responsibility for international crimes at the international level:

1. The Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal
2. The Question of International Criminal Jurisdiction
3. The Draft Code of Crimes Against the Peace and Security of Mankind, 1954 and 1996
4. The Question of Defining Aggression
5. The Draft Statute for an International Criminal Court
6. The Obligation to Prosecute or Extradite

The third and final part of the course will explore the ILC's current topics focusing in particular on 1. Crimes against humanity; 2. Immunity of State Officials from Foreign Criminal Jurisdiction and 3. Universal Criminal Jurisdiction. In relation to each of these, their origins, present status, and future direction will be critically analysed, as well as their potential normative contribution(s) to the field of international criminal law.

Course design

Students will obtain the knowledge and competences discussed above through active engagement with the material and participation in the various components of the course. The course consists of a mix of interactive lectures, a modified Socratic method (spontaneous questions and answers), and problem based simulations drawn from the ILC's current work. The interactive lectures will use Power Points, short video or audio clips, and focused group discussions.

Assessment

The students are assessed on the basis of three elements: 1. a take home examination (70% of the grade) which will be administered at the end of the course; 2. class presentation/simulation(s) (20%); and 3. class participation generally and in the Socratic dialogues (10%). Students must pass each of the take home exam, simulation and class participation to pass the course. Failed participation can be compensated with written tasks.

The take-home exam will have a word limit and must be a reflection of individual effort, not a result of any collaboration with someone in the course or outside of it. The simulation and participation grades should reflect substantive knowledge of the assigned readings. Students must demonstrate the ability to critically engage with and evaluate the material under study. The ability to develop and defend original arguments, based on the relevant authorities, will be rewarded.

The examiner, in consultation with Disability Support Services, may deviate from the regular form of examination in order to provide a permanently disabled student with a form of examination equivalent to that of a student without a disability.

Subcourses that are part of this course can be found in an appendix at the end of this document.

Grades

Marking scale: Fail, Pass, Pass with credit, Pass with distinction.

B – Pass

In order to pass, the student must have a basic knowledge and understanding of the course material. A good understanding of the nature and role of the ILC and its mandate and structure as well as working methods as it discharges its mandate to assist States in the progressive development and codification of international law will be required. This must be matched by a good knowledge of the substantive contributions of the ILC in advancing the concept of individual criminal responsibility in international criminal law, starting from the Nuremberg Principles through to the Draft Statute of the International Criminal Court. Finally, students must demonstrate the basic knowledge of the three main topics in the ILC's current programme of work, their origins, current status and future direction.

BA – Pass with credit

In order to achieve BA, the student must, in addition to what is required to achieve the grade of B, show a broad as well as deep knowledge of substantive international criminal law instruments that have been the objective of the ILC's work and a solid knowledge of concepts of individual criminal responsibility including their normative impact at the national and international levels; a good understanding of the theoretical and practical challenges of the process of progressive development of international criminal law and its codification; the ability to respond to questions and interact with other students at presentations and seminars; the ability to carry out assignments in a timely manner and a good command of presentation and communication skills. The student must demonstrate a strong ability to identify and critically analyse relevant instruments and case law in the area of international criminal law that has relied upon the ILC's work; to prepare legal memos/legal arguments; to show good command of oral and argumentative skills; and to work both individually and in groups.

AB – Pass with distinction

To achieve the highest grade, the student must, in addition to the general knowledge and skill in the overall subject of the role of the Commission required for the grade of B and BA, be able to demonstrate in-depth knowledge of both the promising and not so promising aspects of the current topics on the ILC's short-term work program in relation to crimes against humanity, immunity of state officials from foreign criminal jurisdiction and universal criminal jurisdiction. The student's command of the assigned materials should be scientifically motivated and must demonstrate an excellent ability to make nuanced legal and policy arguments on aspects of the work that might need to be improved, and if so, why and how. The student must demonstrate excellence in ability to identify and critically analyse relevant instruments and case law in the area of international criminal law and to use those to articulate a reasoned critique; to prepare legal memos; to show excellent command of oral and argumentative skills; and an ability to work both individually and in groups.

Entry requirements

Passed examination in courses corresponding to the first term of the Master's programme equivalent to 30 credits.

Further information

The University views plagiarism as a very serious academic offence, and will take disciplinary actions against students for any kind of attempted malpractice in connection with examinations and assessments. The penalty that may be imposed for this, and other unfair practice in examinations or assessments, includes suspension from the University.

Subcourses in JAMR38, The International Law Commission and Individual Accountability for International Crimes

Applies from V19

1901 The International Law Commission, 7,5 hp
Grading scale: Fail, Pass, Pass with credit, Pass with distinction