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Report of the ABA Task Froce on Teaching International Criminal Law

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American Bar Association Section of International Law and Practice Section of Criminal Justice

Report of the ABA Task Force on Teaching International Criminal Law

INTRODUCTION

Increasingly, modern crime is international crime. The study of international criminal law is therefore becoming an important component of the education of tomorrow's prosecutors and defense attorneys. Unfamiliarity with international crimes and defenses, procedures for obtaining evidence and other forms of legal assistance from foreign countries, extradition law, application of the Constitution to law enforcement activities abroad, and the principles of extraterritorial jurisdiction (and limits thereto) may lead to disastrous consequences for attorneys and their clients.

In recognition of the growing importance of the field of international criminal law, courses in the subject are appearing in the curriculum of an increasing number of North American law schools. In an effort to gauge this field, in the Spring of 1993, the International Law Committees of the ABA Section of Criminal Justice and the ABA Section of International Law and Practice jointly established an ad hoc Task Force on Teaching International Criminal Law.

The mandate of the Task Force was to determine via survey: (1) the extent to which international criminal law is now being taught as a discrete course in American law schools; (2) the organization and content of courses on international criminal law; (3) the need for a new case book on international criminal law; and (4) the reasons why a discrete course in international criminal law should or should not be offered as part of the curricula in American Law Schools.

Through use of an initial questionnaire sent to the 2,000 members of the International Law Committee of the ABA Section of International Law and Practice, thirty-six individuals in the United States and Canada were identified as currently teaching or having recently taught courses focusing in whole or in substantial

part on international criminal law. Of these, 20 professors completed and returned a five-page survey and agreed to participate as members of the Task Force in the drafting of this report.

SURVEY RESULTS

I. Number of Law Schools that Have Offered International Criminal Law Courses

As indicated in Table 1 below, twenty-two American law schools have offered courses focusing exclusively on international criminal law. The titles of such courses include "International Criminal Law," "International Criminal Law and Procedure," "International and Comparative Criminal Law," "Terrorism," "International Narcotics Control," and "International Criminal Business Law." About two-thirds of the schools listed are offering an international criminal law course during the current academic year. Several of these schools offer multiple courses in the area and some of the professors are teaching the course at more than one law school. In addition, *all* twenty of the professors responding to the survey indicated that when teaching courses such as public international law, human rights law or national security law, they spend a substantial (and increasing) amount of time on international criminal law issues.

II. Organization and Content of International Criminal Law Courses

About half of the professors teaching international criminal law indicated that their courses have a primarily United States (or, in one case, Canadian) focus. Several had a mixed U.S. and comparative law focus, and one professor said he focussed mainly on the United Nations' new international criminal law program.

Two-thirds of the courses in international criminal law were taught as seminars, with a paper or an option to write a paper or take a final exam; one-third were taught in lecture format, with a final exam and no paper option. The average number of students taking each course was 25.

The survey included a list of topic areas related to international criminal law and asked the respondents to indicate which are the most important areas to be covered in an international criminal law course or case book. The results are contained in Table 2 below.

III. Need for a New International Criminal Law Case Book

At present, there exists no law school case book devoted primarily to the subject of international criminal law. Consequently, professors teaching the subject must undertake the difficult and time consuming task of compiling their

Table 1
North American Law Schools That Have Offered
Courses in International Criminal Law

School	Professor/Course Title
American University College of Law	Robert J. Boylan (Int'l Criminal Law and Procedure) Nicholas Kittrie (Political Crime and Terrorism)
Benjamin N. Cardozo School of Law	Malvina Halberstam (Terrorism)
Catholic University Columbus School of Law	Thomas Snow (Int'l Criminal Law)
University of Detroit Law School	Allen Sultan (Int'l Criminal Law)
DePaul University College of Law	M. Charif Bassiouni (Int'l Criminal Law)
Duke University School of Law	Ken Pye (Terrorism)
Fordham University School of Law	Bruce Zagaris (Int'l Crim. Business Law) Abraham Abramovsky (Int'l Criminal Law)
Georgetown University Law Center	David Stewart (Int'l Criminal Law)
George Washington University National Law Center	David Stewart (Int'l Criminal Law)
University of Houston Law School	Jordan Paust (Int'l Criminal Law)
Louisiana State University Law Center	Christopher Blakesley (Int'l Criminal Law)
Loyola Law School (Taught course at St. Mary's of San Antonio School of Law Summer Institute in Innsbruck)	Alan Raphael (Terrorism)
Universidad de Puerto Rico—Escuela de Derechos	Jaime Granados-Pena (Int'l Criminal Law)
Naval War College	John Murphy (Int'l Criminal Law)
New England School of Law	Michael Scharf (Int'l Criminal Law)
Osgoode Hall Law School	Sharon Williams (Int'l Criminal Law)
Rutgers School of Law—Camden	Roger Clark (Int'l Criminal Law)
Southern Methodist University School of Law	Ken Pye (Terrorism)
Temple University Law School (Semester abroad in Tokyo)	Roger Clark (Int'l Criminal Law)
University of Virginia Law School	David Stewart (Int'l Criminal Law)
Washington College of Law	Bruce Zagaris (Int'l Narcotics Control)
Wayne State University School of Law	Edward Wise (Int'l and Comp. Crim. Law)

Table 2
A Ranking of Topic Areas

Rank	No. of times selected	Topic Area
1	14	Jurisdiction (nationality, territorial protective, passive personality, universal)
2	13	Limits to extraterritorial jurisdiction (act of state, interest-balancing, immunities)
2	13	Terrorism
2	13	Extradition
2	13	War Crimes
2	13	Crimes against humanity
2	13	Irregular rendition (snatching)
7	12	Creation of an international criminal court
8	11	Genocide
8	11	Torture
8	11	Mutual Legal Assistance
8	11	Narcotics trafficking
8	11	Creation of an ad hoc war crimes tribunal
8	11	Enforcing foreign penal judgments
8	11	Transfer of criminal proceedings/prisoners/witnesses
15	10	Money laundering
16	9	Application of US constitution abroad
16	9	Int'l Rights of Criminal Defendants
18	7	Search and seizure
18	7	Double jeopardy
18	7	Trial by jury
18	7	Piracy
18	7	Bank secrecy
18	7	Maritime/aviation
18	7	Foreign Corrupt Practices Act
25	6	Death penalty
25	6	Assets forfeiture
25	6	Computer crimes
25	6	Right to counsel
29	5	Environmental crimes
29	5	Organized crime/RICO
29	5	Export controls/Technology transfer
29	5	Apartheid
33	3	Securities
33	3	Antitrust
33	3	Customs (border searches)
33	3	Tax crimes
33	3	Investigative techniques (controlled delivery)
38	2	Commodities
39	1	Labor/employment
39	1	Systematic rape
39	1	Disappearances
39	1	Fraud
39	1	Slavery
39	1	UN Crime Program
39	1	Granting amnesty to int'l criminals
39	1	Obligations toward ethnic minorities
39	1	Military courts vs civilian courts

own teaching materials. This is the most significant obstacle to expanding the number of law schools offering the course. Indeed, given the difficulties in assembling a course in international criminal law without a case book, it is surprising that so many law schools have been able to offer the course. (Several professors indicated that they have provided their international criminal law course syllabus to other professors to assist them in preparing to teach international criminal law.)

Although they do not provide enough material for an entire course in international criminal law, the two most recently published public international law case books—Henkin, Pugh, Schachter, and Smit, *International Law: Cases and Materials* (West 1993); and Carter and Trimble, *International Law* (Little, Brown and Co. 1991)—have devoted much more attention to international criminal law issues than had previous public international law texts. Professor Ethan Nadelmann's recent book, *Cops Across Borders* (Penn State Press 1993) can also be utilized in a course on international criminal law. In addition, Professor Anthony D'Amato's recent *International Law Anthology* (Anderson 1994) contains a chapter devoted to international criminal law.

There are several other excellent books and anthologies in the field, although none are written or intended as a law school text:

- Bassiouni & Nanda eds., *A Treatise on International Criminal Law* (Charles C. Thomas Publisher 1973)
- Bassiouni ed., *International Criminal Law* (Transnational Publishers 1986)
- Blakesley, *Terrorism, Drugs, International Law and the Protection of Human Liberty* (Transnational Publishers, Inc. 1992).
- Mueller and Wise eds., *International Criminal Law* (Sweet and Maxwell and Fred B. Rothman and Co. 1965)
- Nanda & Bassiouni, *International Criminal Law: A Guide to U.S Practice and Procedure* (PLI, 1987)
- Ristau and Abbell, *International Judicial Assistance* (1990).
- Williams and Castel, *Canadian Criminal Law: International and Transnational Aspects* (Butterworths 1981)

In addition, there are two publications that are particularly useful to professors wishing to keep abreast of recent developments in international criminal law:

- *Criminal Law Forum: An International Journal* (published three times a year by Rutgers University School of Law—Camden and the Society for the Reform of Criminal Law)
- *International Enforcement Law Reporter* (published monthly by Bruce Zagaris)

Nineteen of the twenty professors responding to the survey indicated that there is a real need for one *or more* new law school case books devoted solely to international criminal law. According to Professor Malvina Halberstam of the Benjamin N. Cardozo School of Law: "A good case book would stimulate teaching of international criminal law and I am all for it. Indeed, some col-

leagues and I have discussed putting one together, but have thus far not found the time.” Professor John Murphy of Villanova Law School adds: “most of the texts in this area are already out of date; there is a tremendous need for a current text.” Part of the reason for the lack of a law school text in this field, according to Professor Jordan Paust of University of Houston Law Center, is that “publishers consider this a limited market area, so I think that this survey will help.” Several of the survey respondents indicated that they were currently in the process of writing an international criminal law case book based on their course materials.

IV. Why Teach International Criminal Law?

The survey asked the respondents to describe why they believe international criminal law should be offered as a discrete course as part of the curriculum in American Law Schools. A sample of the answers follows:

“With the explosive proliferation of transboundary criminal activity, international criminal law is taking on increasing importance to the day-to-day practice of many American attorneys. U.S. litigators, in particular, are faced ever more frequently with cases involving some aspect of international criminal law. Consequently, it is imperative that attorneys come away from law school with a basic knowledge of the substance, procedures, and mechanisms of international criminal law.”

“Crime is no longer a local, or even a national phenomenon; it is international. From the practitioner’s perspective (prosecution and defense lawyers), courses focussing on international criminal law are necessary to more effectively handle their cases. From the academic’s perspective, such courses cover some of the most interesting and novel issues of constitutional, international, and comparative law and criminal procedure.”

“International Criminal Law provides a vigorous and interesting vehicle to teach most of the basics of public international law.”

“International Criminal Law is one of the most exciting and controversial subjects in all of public international law. Yet the typical introductory international law course cannot cover international criminal law in much depth, simply because so much else must be discussed in a survey course.”

“International Criminal Law makes a great second public international law course.”

“A course in International Criminal Law will fit comfortably into recent normative developments in other traditional areas of international law like Responsibility of States and Treaties. When viewed inductively, these developments constitute the normative base of a newly emerging International Constitutional Law.”

“Although this might not be a core course in the curricula, it is of keen interest to students of international and comparative law, as well as students focusing their studies on criminal law.”

“In my experience, I found that few defense lawyers or prosecutors know enough about extradition and international criminal law to effectively practice in the area. A course devoted entirely to international criminal law would help immensely.”

“International criminal law is increasingly of practical as well as of intellectual interest and presents challenges for the students in the class room.”

CONCLUSIONS

- (1) Law schools across the country are beginning to offer International Criminal Law as a discrete course in their curriculum at the J.D and graduate levels. In addition, international law professors are devoting an increasing portion of other international law courses to the subject of international criminal law.
- (2) In today's world, a course in international criminal law can be an important component in the education of students wishing to become prosecutors or defense attorneys. Because of its exciting and provocative content, the course also appeals to students of constitutional, international, and comparative law.
- (3) There are a multitude of interesting topics that can be covered in a course in international criminal law. The most important are: (a) extraterritorial jurisdiction and limits thereto; (b) extradition and obtaining evidence from abroad; (c) international offenses including terrorism, war crimes, genocide, narcotics trafficking, money laundering and torture; (d) the application of the U.S. constitution to law enforcement activities abroad; (e) irregular rendition (snatching); (f) enforcing foreign penal judgments and transfer of prisoners; and (g) the Yugoslavia War Crimes Tribunal and creation of a permanent international criminal court.
- (4) There is a great need for a new law school case book in the area of international criminal law. Currently, professors teach from their own materials or portions of several books that were not specifically written as a law school text.

RECOMMENDATIONS

- (1) The Task Force Report should be mailed to law school deans to encourage continued expansion in the number of law schools offering courses in international criminal law.
- (2) The Task Force Report should be widely disseminated and published in various fora to encourage law professors to consider teaching a course devoted solely to international criminal law.
- (3) The Task Force should conduct a similar survey of professors who teach international criminal law at foreign law schools.
- (4) The members of the Task Force and other professors teaching courses in international criminal law should meet periodically to exchange ideas and

materials. (The International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia is sponsoring the first such workshop on the teaching of international criminal law in Vancouver from April 5-9, 1994.)

ABA Task Force on
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January 21, 1994

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