



## **LL.B. IV TERM**

### **LB-4035-HUMANITARIAN LAW AND REFUGEE LAW**

**Course materials Selected and Edited by**

*Suman*

*Anita Yadav*

**FACULTY OF LAW  
UNIVERSITY OF DELHI, DELHI- 110007  
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#### **Course Objective:**

This course is divided into two parts - Part A and Part B. Part A dealing with Humanitarian Law consists of five topics, its aim remains on the development of International Humanitarian law and protection of victims of armed conflict. Further, it discusses the rules on legality of warfare (*jus ad bellum*), but the main emphasis is on the rules that are to be followed when the armed conflict is going on (*jus in bello*). Apart from this, an analysis of the jurisprudence developed by the international criminal tribunal leading to the development of principles of IHL and its ability to cope up with upcoming challenges has been undertaken.

Part –B relating to Refugee law divided into five topics, delineates the conceptual dimensions of refugees and various international instruments relating to the status of refugees including the United Nations 1951 Refugee Convention, the 1967 Protocol and the UN High Commission for Refugees (UNHCR). This apart, an analysis of the standard treatment of refugees in India and the role of National Human Rights Commission and Judiciary in interpreting and protecting the rights of refugee in India has been discussed.

### **Part A**

#### **(Humanitarian Law)**

#### **Topic I : Introduction**

1. Origin and Development of International Humanitarian Law
2. Geneva Conventions and Additional Protocols
3. Meaning of “armed conflict” – Common Article 2
4. Non-international armed conflict - Common Article 3 and Additional Protocol II of the Geneva Convention
5. *Jus ad bellum* and *jus in bello*
6. *Martens* Clause
7. Interface between International Humanitarian Law (IHL) and International Human Rights Law (IHRL)
8. Indian Perspectives with regard to Geneva Conventions and its Additional Protocols-The Geneva Conventions Act, 1960

## Topic II : Protection of Defenceless

1. *Hors de combat*, wounded, sick (both in field and sea) and Shipwrecked Members of Armed Forces
2. Prisoners of War (POW)
  - i. Who are Prisoners of War?
  - ii. Protection of Prisoners of War
  - iii. Repatriation and Release of POW
3. Protection of Civilian Person in Times of war

## Topic III : Methods and Means of Warfare

1. General Limitations on the Conduct of War— Limits on the Choice of Methods and Means of Warfare
  - i. The principle of prohibition on causing unnecessary suffering, Military Necessity
  - ii. Rule of Proportionality
  - iii. Principle of Distinction
  - iv. Prohibition on the Use of Certain Weapons- Conventional, Chemical, Biological Weapons and Land Mines
2. Contemporary Challenges in IHL

## Topic IV: Criminal Tribunals

1. International Military Tribunal at Nuremberg
2. International Military Tribunal for the Far East (Tokyo)
3. International Criminal Tribunal for the Former Yugoslavia (ICTY)
4. International Criminal Tribunal for Rwanda (ICTR)
5. Special Court for Sierra Leone
6. Proposed *Ad hoc* Hybrid Special Court for Sri Lanka

## Topic V: International Criminal Court (ICC)

1. International Criminal Court (ICC): Overview
  - i. Jurisdiction with respect to Crimes – (i) Genocide; (ii) Crimes against Humanity; (iii) War Crimes; (iv) Aggression
  - ii. Basis of Jurisdiction – (i) Jurisdiction *ratione materiae*; (ii) Jurisdiction *ratione temporis*; (iii) Jurisdiction *ratione loci*; (iv) Jurisdiction *ratione personae*
  - iii. General Principles of Criminal Law - (i) *Nullum crimen sine lege*; (ii) *Nulla poena sine lege*; (iii) Non-retroactivity *ratione personae*; (iv) Individual criminal responsibility; (v) Exclusion of jurisdiction over persons under eighteen; (vi) Irrelevance of official capacity; (vii) Responsibility of

- commanders and other superiors; (viii) Non-applicability of statute of limitations; (ix) Mental element
- iv. Defences/Grounds for excluding criminal responsibility - (i) Mental incapacity; (ii) Intoxication; (iii) Self-defence; (iv) Duress and necessity; (v) Mistake of fact or mistake of law; (vi) Superior orders and prescription of law.
- 2. India's Stand on the ICC

## **Part B**

### **(Refugee Law)**

#### **Topic I: Introduction**

1. Historical Background and development of Refugee Law
2. Meaning of Refugee under various International Instruments - Convention relating to the Status of Refugees, 1951 and Protocol Relating to the Status of Refugees, 1967; Bangkok Principles on the Status and Treatment of Refugees 1966; Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969; Cartagena Declaration, 1984
3. Refugee Law, Human Rights and Humanitarian Law: Co-relation
4. Contemporary Challenges in Refugee Law- Asylum-Seekers, Migrants, Stateless persons, Internally Displaced Persons, Exclusion of Refugee status.
5. Principle of Non-refoulement

#### **Topic II: Protection of Refugees under 1951 Convention**

1. Rights and Duties of Refugees
2. Welfare measures for Refugees
3. Administrative measures for the benefits of Refugee

#### **Topic III: Solution to Refugee's Problem**

1. Burden Sharing
2. Extradition of Refugee
3. Voluntary Repatriation,
4. Naturalization
5. Re-settlement in Third Country

#### **Topic IV: Role of UNHCR**

1. Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), 1950
2. Role of UNHCR



## Topic V: Refugee Protection in India

1. Constitution of India
2. Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948
3. Role of National Human Rights Commission (NHRC)
4. Judicial decisions interpreting rights of refugees in India
5. India's Position regarding 1951 Convention on Refugees

S No.	Readings List	Page No.
1.	A.H. Robertson & J.G. Merills- Human Rights in the World: An Introduction to the study of the international protection of human rights. Universal (2005 ) p. 299 to 324	8
2.	Md Jahid Hossain et al., International Humanitarian Law - An Anthology, Chapter on Protection of Civilain, Wondede, Sick and Shipwrecked, Prisoners of War, LexisNexis Butterworths (2009) p. 103 to153	22
3.	Md Jahid Hossain et al., International Humanitarian Law - An Anthology, Chapter on Individual Criminal responsibilty for Violation of International Humanitarian law by Dr. V Seshaiiah Shasthri, LexisNexis Butterworths (2009) p. 103 to 153	48
4.	Hector Gros Espiell, Humanitarian Law and Human Rights 2000 p. 345 to 356	61
5.	Rupert Ticehurst, The Martens Clause and the Laws of Armed Conflict-V.S.Mani (ed.), Handbook of International Humanitarian Law in South Asia (2007)	73
6.	Humanitarian Crimes and Human Rights Violations-Judith Blau and Alberto Moncada, Human Rights: A Primer (2007) p. 107 to 118	82
7.	Ravindra Pratap, International Humanitarian Law, India's Attitude – V.S Mani, Handbook of International Humanitarian Law in South Asia, Oxford University Press (2007).	95
8.	Indian Society of International Law (ISIL), A report of the Committee of Expert on Protocols Additional to the Geneva Conventions 1949 (Delhi 2012) p. 2 to 11	108
9.	B. S. Chimni, From resettlement to involuntary repatriation: Towards a critical history of durable solutions to refugee problems, Refugee Survey Quarterly, Volume 23, Issue 3, October (2004) p.55–73	120
10.	J.N, Saxena, Problems of refugees in Developing Countries and Need for International Burden- sharing, in K.P. Saksena, (ed.), Human Rights: Perspective and Challenges, Lancers Books, New Delhi (1994) p. 352 to 368	139
11.	V.K. Ahuja, The Public International Law, Chapter on International Criminal Court, Lexis Nexis, (2016) p .296 to 333	154
12.	Dilip Lahari, 'The International Criminal Court Reaches a milestone: Should India Continue to stay Out'? (July -September, 2010) 50, Indian	174

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13.	Rajeev Dhawan, Refugee Law and Policy in India PILSARC, pp 32 to 79 (2004)	181
14.	Dabiru Sridhar Patnaik; Nizamuddin Ahmad Siddiqui, Problems of Refugee Protection in International Law: An Assessment through the Rohingya Refugee Crisis in India, 14 Socio-Legal Rev. 1 (2018) p. 2 to 29	206
	<p><b><u>Case Laws</u></b></p> <ol style="list-style-type: none"> <li>1. Nicaragua v. United States of America) [1986] ICJ</li> <li>2. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) 2004</li> <li>3. The Prosecutor v Duško Tadić (Jurisdiction) International Criminal Tribunal for the Former Yugoslavia (ICTY) [1995]</li> <li>4. Rev. Mons. Sebastian Francisco Xavier Dos Remedios Monterio v. State of Goa reported in MANU/SC/0140/[1969].</li> <li>5. National Human Rights Commission v. State Of Arunachal Pradesh &amp; Another, 1996 AIR 1234, 1996 SCC (1) 742</li> <li>6. State Of Arunachal Pradesh v. Khudiram Chakma, 1994 AIR 1461, 1993 SCR</li> <li>7. Sarbananda Sonowal v. Union of India (2005) SCC 665</li> </ol> <p><b><u>UN Resolution</u></b></p> <p>United Nations Security Council resolution (UNSC Res 1540), ‘Non-proliferation of weapons of mass destruction’ (28 April 2004) UN Doc S/RES/1540 (2004).</p>	

### **Suggested Readings**

1. Marco Sassòli, et al, How does law protect in war? Outline of International Humanitarian Law, Vol. I, 3<sup>rd</sup> ed. ICRC
2. ICRC, Summary of the Geneva Conventions of 12 August 1949 and their Additional Protocols (Second Edition, 2012)
3. Andrew Clapham and Paola Gaeta, The Oxford Handbook of International Law in Armed Conflict (Oxford University Press 2014)
4. Robert Kolb, Advanced Introduction to International Humanitarian Law, [chapter on International International Armed Conflict and Non- International Armed Conflict] (Edward Elgar 2014) pp 22 to 47
5. Theodor Meron, # The Martens Clause, Principles of Humanity, and Dictates of Public Conscience , The American Journal of International Law, Vol. 94, No. 1 (Jan., 2000), pp. 78-89
6. Lindsay Moir, “The Historical Development of the Application of Humanitarian Law in Non-International Armed Conflicts to 1949”, Vol. 47 International and Comparative Law Quarterly 337-61 (1998)
7. Neeru Chadha, Protection Of Cultural Property During Armed Conflict: Recent Developments, ISIL Yearbook of International Humanitarian & Refugee Laws, vol. 1, (2001)
8. Manoj Kumar Sinha, “Protection of Environment During Armed Conflicts: A Case Study of Kosovo” ISIL Yearbook of International Humanitarian & Refugee Laws, vol. 1, 2001, pp. 230-250.
9. Francis Grimal and Jae Sundaram, Combat Drones: Hives, Swarms, and Autonomous Action? Journal of Conflict & Security Law , Oxford University Press page 105 to 135 (2018)

10. Parvathi Menon ,International Crimes Tribunal in Bangladesh, Max Planck Institute Luxembourg. Department of International Law and Dispute Resolution, p 1 to 15 (2016)
11. Benarji Chakka, Evolving International Criminal Jurisprudence through Ad hoc International Criminal Tribunals: A case study of ICTY ISIL Yearbook of International Humanitarian and Refugee Law
12. V.S Mani, 'Effectuation of International Law in the Municipal Legal Order : The Law and Practice in India' (1997) 5 Asian Year Book of International Law
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14. B.S Chimni, ed. International Refugee Law: A Reader (2000)
15. Ilias Bantekas, International Criminal Law, 4<sup>th</sup> ed., Oxford and Portland Oregon, 2010.
16. Usha Ramanathan, Combating Impunity, A compilation of the Articles on the International Criminal court and its relevance to India, Women's Research & Action Group, April 2003.
17. William A. Schabas, An Introduction to the International Criminal Court, Cambridge University Press (2012).
18. Guy Goodwin-Gill and Jane McAdam, The Refugee in International Law (2007)
19. James C. Hathaway, The Rights of Refugees Under International Law (2005)