LL.B. IV TERM

LB-4035-HUMANITARIAN LAW AND REFUGEE LAW

Course materials Selected and Edited by

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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
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
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

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

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<td>Dilip Lahari, ‘The International Criminal Court Reaches a milestone: Should India Continue to stay Out’? (July -September, 2010) 50, Indian</td>
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**Case Laws**

1. Nicaragua v. United States of America) [1986] ICJ
2. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) 2004
3. The Prosecutor v Duško Tadić (Jurisdiction) International Criminal Tribunal for the Former Yugoslavia (ICTY) [1995]
7. Sarbananda Sonowal v. Union of India (2005) SCC 665

**UN Resolution**


**Suggested Readings**

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


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


