

# Federal Law Academy International Criminal Law Course Day 1

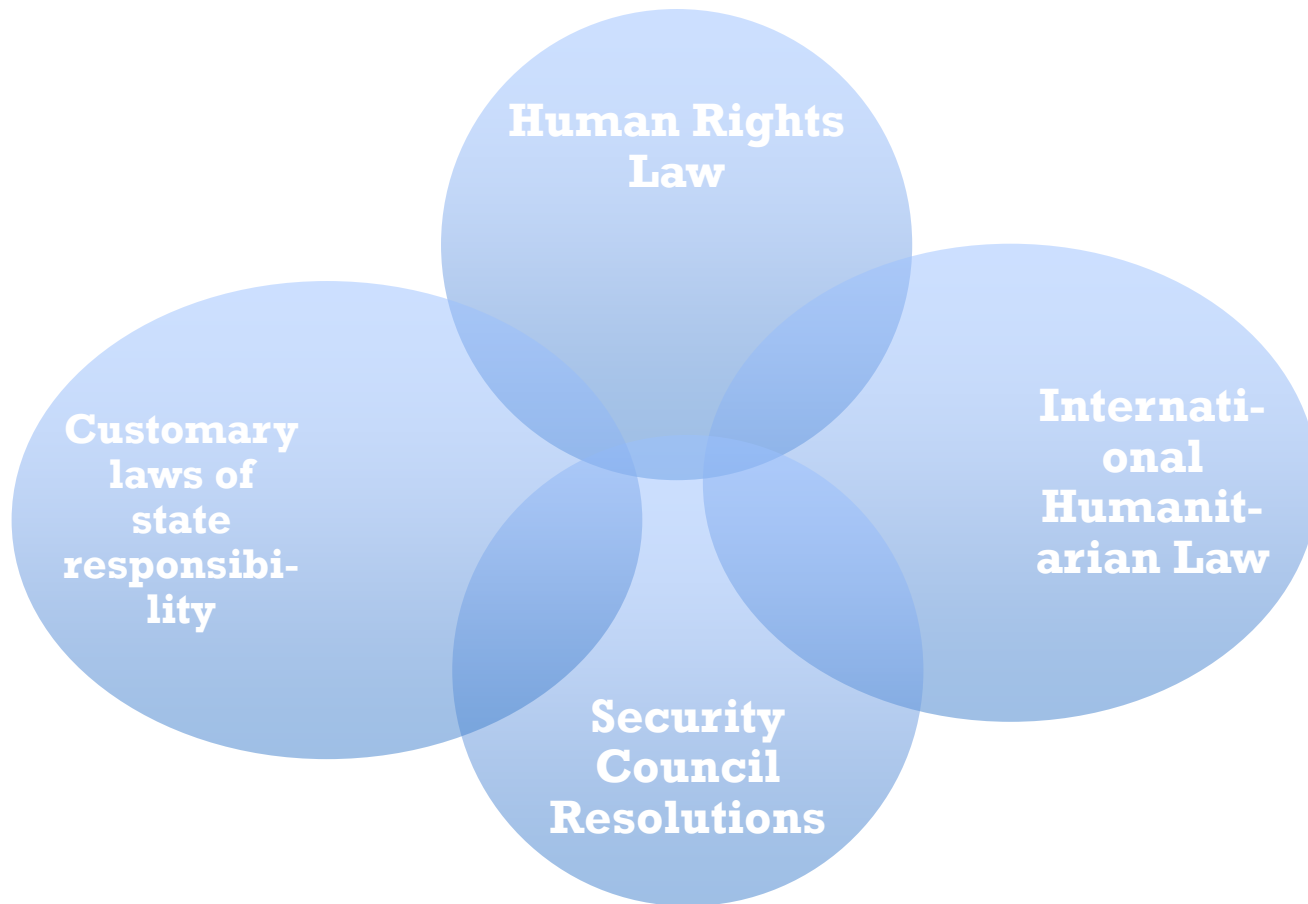
မင်္ဂလာပါ

Janet Benshoof  
President and Founder, Global Justice Center  
Mai Ja Yan, Kachin State  
September 2016

# About the Global Justice Center



# Enforcing International Law for Radical Change



# Vision

- A global rule of law based on human rights
- Enforceable by all people in national and international courts
- Gender equality in power as foundational to democracy and the rule of law

# Strategy

- Aggressive enforcement of international law
- Transform legal/political structures
- Increase access to justice
- Redefine equality

# GJC & Burma: 2005-2016

- Justice & Accountability for Myanmar's Breaches of Fundamental International Law
  - Individual criminal accountability—International Criminal Court & Universal Jurisdiction
  - Action from the international community focused on the duties of all States and the UN
  - UN human rights reviews: Universal Periodic Review, CEDAW Committee
- 2008 Constitution
  - Violations of international law including the UN Charter and women's rights to political equality
- Gender Equality & Ending Discrimination
  - Security Council Resolution 1325: Women's access to the peace process & justice sexual violence in conflict
  - Violence against women



**Constitution Drafting Workshop  
Chiang Mai, Thailand (2005)**

**Justice for Burma  
London (2007)**





**Seminar: Ending Impunity in Myanmar  
Bangkok (2009)**



**Professor Benshoof: International  
Law Workshop with Lawyers  
Yangon (2012)**



# Where Does International Criminal Law Fit Into International Law?

## Module 1

# Today, you will learn

- What is international law?
- Where does international law come from?
- What is international criminal law (ICL)?
- Who is responsible for international crimes?
  - States? Individuals?
- What are the differences between international & domestic criminal law?
- What are the venues for enforcing ICL?



# What is International Law?

- **Regulates** the legal relationship among states
- **Defines** international obligations of states
- **Governs** the conduct of states
- Two major areas:
  - Public international law
    - Subjects and objects of laws are states
  - Private international law
    - Subjects are states, objects can be businesses, etc.

# The Increasing Importance of International Law

- Globalization, economic interdependence & technology
- Universal acceptance of human rights norms
- Increased enforcement of international law by the UN and international & national courts
- Powerful global civil society/ women's rights movement



# Example: East Timor Constitution Article 9

1. The legal system of East Timor shall **adopt the general or common principles of international law**
2. Norms provided for in international conventions, treaties and agreements **shall apply in the internal legal system of East Timor** following their approval, ratification or accession...
3. **All norms that are contrary** to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor **are invalid.**



# Sources of International Law

- International Conventions (Treaties)
- Customary International Law
- General Principles
- Judicial Decisions & Scholarly Writings
  - International Law Commission
  - International Court of Justice
  - International Criminal Court & Ad-hoc Tribunals
- Other: Security Council Resolutions



# Areas of Public International Law

- International Human Rights Law (IHRL)
- International Humanitarian Law (IHL)
- International Criminal Law (ILC)
- Laws of International Bodies (e.g. UN Charter)
- Other: Trade, Diplomatic & Consular Relations, Laws of the Sea, Law of Treaties

# International Law is Based on States

- Under international law every state is a single legal entity
- Solely responsible for its international law obligations
- Having “sovereign equality”: all states have the same legal rights





# Relationship between International Law and National Law

- International law and national law are two different legal systems with different:
  - Sources;
  - Institutions;
  - enforcement mechanisms.
- National laws, including constitutions, **cannot** excuse a state's failure to comply with its international obligations

# International Criminal Law



# What is International Criminal Law?

- Defines, prohibits and punishes acts that are crimes under international law
  - Serious atrocity crimes: war crimes, crimes against humanity, genocide & aggression
  - Other: piracy, terrorism, slavery, trafficking
- Provides for individual criminal liability for these crimes
  - Often focused on holding those “most responsible” accountable, i.e. heads of states & commanders
- Definitions of crimes & procedures are frequently different than those under domestic law
  - Ex. crimes of rape and sexual violence

# State Responsibility to Prosecute & Redress International Crimes

- International laws define states' obligations, e.g. international humanitarian law, Genocide Convention
- International law requires states to:
  - **prosecute** perpetrators
  - provide **redress & reparations** for victims of international crimes

# Goals of International Criminal Law

- Punish individual perpetrators
- Deliver justice to victims, including reparations
- Deter States from endorsing/condoning crimes
- Build a global rule of law (no safe haven)
- Face history:
  - Acknowledge crimes;
  - seek the truth;
  - restore peace;
  - help communities reconcile



# General Principles of International Criminal Law

- Statutory limitations
  - Do not apply to many **international crimes**: war crimes, crimes against humanity & genocide
- *Nullum crimen, nulla poena sine lege*
  - One cannot be punished for something that is not prohibited by law
  - Atrocity crimes are now prohibited even if not specifically criminalized under domestic law
- *Ne bis in idem* (no double jeopardy)
  - Exception: sham domestic prosecutions cannot be used to shield perpetrators from international prosecutions
- Personal & functional immunity
  - Certain people have limited immunity **while in office** or for the perpetration of **certain acts**

# Jurisdiction & Venues for Prosecuting International Crimes

## National

### At-home prosecutions

- Ex. Iraqi High Tribunal (law incorporated the Rome Statute), Bosnia War Crimes Tribunal

### Universal jurisdiction (extraterritorial)

- Ex. Hissène Habré, Augusto Pinochet

## International

### Rome Statute of the International Criminal Court

### Ad-hoc & hybrid tribunal statutes

- Ex. International Criminal Tribunal for Rwanda, Extraordinary Chambers in the Courts of Cambodia

# Nuremberg Trials (1945)

- Tried individuals for the crimes of Nazi Germany
- First time individuals were held criminally accountable for international crimes
- Allowed for the prosecution of state officials
- First time crimes against humanity were prosecuted
- Contributed to the establishment of the 1948 Genocide Convention





# Advances in International Criminal Law

- After WWII, important advances made in codifying and prosecuting international crimes:
  - 1949—The Geneva Conventions grave breaches regimes provided the modern basis for war crimes
  - 1990s—The Security Council enforced ICL by creating ad-hoc tribunals for crimes committed in Rwanda and the former Yugoslavia
    - Tribunals advanced definitions and interpretations of crimes, in particular crimes against women
  - 1998—International Criminal Court established

# What do you hope to learn in this course?

In small groups, make a list of  
specific topics & issues for  
Professor Benshoof.