

Professor Dr Frank Meyer
Professor für Strafrecht

Professor Dr Andreas Schloenhardt
Professor of Criminal Law

Universität Zürich
Rechtswissenschaftliches Institut
Freiensteinstrasse 5
8032 Zürich
Schweiz

The University of Queensland
School of Law
Brisbane Qld 4072
Australia

International Crime and Comparative Law

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Organised Crime, Corruption, Smuggling of Migrants, Trafficking in Persons

Spring semester 2018 (UZH)/Semester 1, 2018 (UQ)

12–14 February 2018, Zurich, Switzerland

Syllabus

current as on 5 September 2017

Course description

The focus of this course is with the criminology of international crime, the theory and methodology of comparative law, the growing body of international criminal law conventions, and domestic efforts in common law and civil law jurisdictions to accede to and implement this body of law.

The course provides students with the opportunity to undertake directed, comparative research on selected issues on international crime and criminal justice, including domestic and international criminal laws, criminal procedure, law enforcement and judicial measures, and their application in real cases. It involves comparative analysis of international organisations, continental European and common law jurisdictions and their efforts to implement and enforce international obligations domestically (focusing specifically on Australia and Switzerland).

This course also provides students from the University of Queensland School of Law and the University of Zurich Faculty of Law with an opportunity to interact with one-another, engage in research-led learning, engage with experts, relevant organisations and other stakeholders in the field, and gain research and learning experiences in an international environment. Student involvement in this course combines independent research with team-based learning. The course involves frequent in-class debates, with students expected to lead discussions, present their findings, conduct peer review, and work closely in small teams towards common goals.

Course co-ordinators

Frank Meyer

Frank Meyer is Professor of Criminal Law and Procedure at the University of Zurich. He is also admitted to the Cologne Bar and practices as criminal defence lawyer and legal consultant in the chambers of Redeker Sellner Dahs. His main research interests lie in the fields of criminal law (with a

particular focus on EU criminal matters), procedural criminal law (including international cooperation), the protection of human rights in criminal proceedings and in comparative criminal law. Key focal points of his published research to date have been the emergence of criminal prohibitions in international organizations, new modes of governance in the area criminal justice, and the transnational dimension of fundamental and human rights. He is the author of several monographs, numerous book chapters, journal articles, expert opinions and commentaries. His most recent publications have focused on the conflicts of jurisdiction in criminal matters in the EU, on Article 6 of the *European Convention on Human Rights* as well as on confiscation.

Andreas Schloenhardt

Andreas Schloenhardt is Professor of Criminal Law in the School of Law at The University of Queensland in Brisbane, Australia and Professorial Research Fellow in the Faculty of Law, Department of Criminal Law and Criminology at the University of Vienna in Austria. He is also a consultant to the United Nations Office on Drugs and Crime (UNODC) and the Council of Europe, and a visiting professor at the University of Zurich and the University of St Gallen in Switzerland. Prior to his position at The University of Queensland, he was a lecturer at The University of Adelaide Law School. Andreas' principal areas of research include criminal law, organized crime, migrant smuggling, trafficking in persons, narco-trafficking, terrorism, criminology, and immigration and refugee law. At the University of Queensland, Andreas coordinates the Human Trafficking and Migrant Smuggling Working Groups.

Prerequisites and Selection Process

University of Zurich students:

Students must be enrolled in the Masters program.

The University of Queensland students:

Must be enrolled in a single or dual LLB degree and, at the time of application, must have completed LAWS2113 (Criminal Law & Criminal Procedure) with a grade 5 or higher.

Application and selection process

Enrolment in this course by application only. Short-listed applicants will be invited to a short interview and a planning meeting. The number of participating students is limited to 16.

Schedule and timetable

Preparation and planning meetings

University of Queensland:

Thursday, 21 September 2017 2:00pm outside room W469, Forgan Smith

Monday, 15 January 2018 2:00pm outside room W469, Forgan Smith

University of Zurich:

Monday, 9 October 12:15pm Seminar room, Freiensteinstrasse 5

Main teaching days

Monday, 12 February 2018

9:00am Welcome and introduction
9:30am Setting the scene
10:15am Coffee break
10:30am Student presentation #1
11:20am Student presentation #2
12:10am Lunch break
1:10pm Student presentation #3
2:00pm Student presentation #4
7:00pm Course dinner

Tuesday, 13 February 2018

8:45am Background briefing and discussion
10:00am Coffee break
10:15am Student presentation #5
11:05am Student presentation #6
11:55am Lunch break
1:00pm Student presentation #7
1:50pm Student presentation #8
2:40pm Coffee break
3:00pm Student presentation #9
3:50pm Student presentation #10

Wednesday, 14 February 2018

8:45am Background briefing and discussion
10:00am Coffee break
10:15am Student presentation #11
11:05am Student presentation #12
11:55am Lunch break
1:00pm Student presentation #13
1:50pm Student presentation #14
2:40pm Coffee break
3:00pm Student presentation #15
3:50pm Student presentation #16

Assessment

Presentation 40% of final grade

All students must work on a designated research topic and present their research findings in class. Students can choose their research topic from a set list that will be available prior to the first planning meeting. Each topic will be assigned a specific presentation date and time; these are not negotiable.

Additional information about the projects and modes of presentation (PowerPoint, handouts) will be supplied prior to the beginning of the course. Students will be presenting their projects in a 20-minute presentation, followed by 15 minutes of discussion and feedback. Presentations will be held in English only.

Grading criteria:

- Outline, introduce, explain the research topic;
- Critically analyse and explore relevant issues;
- Structure and weight relevant issues;
- Develop alternative strategies and recommendation for reform;
- Visualise and communicate research outcomes clearly;
- Discuss topical issues in an open forum; and
- Conduct in-depth research using information and literature of highest quality.

Research paper 60% of final grade

Each student must submit an individual, written summary of his/her research topic (fully footnoted and referenced according to the Law School Citation). The research paper accounts for 60% of the final grade (and is not redeemable). All papers must have an introduction, conclusion and a bibliography. The word limit for the papers is 7,000 words. The assessment is, however, based on quality, not quantity. Research papers must be written in English.

Grading Criteria:

- Identify, scope, introduce, and state the significance of the research project;
- Critically analyse and explore relevant issues;
- Structure and weight relevant issues;
- Develop alternative strategies and recommendation for reform;
- Communicate clearly and efficiently in a written paper; and
- Conduct in-depth research using information and literature of highest quality.

Due date: UQ: 30 March 2018, 12:00pm

UZH: 30 April 2018, 12:00pm

Instructions about how to submit your paper will be communicated by the course-coordinators closer to the respective due dates.

Discussant

Each student will act as the discussant of another student's research project. The role of the discussant is to offer support and feedback and provide some peer review of draft research papers.

The discussant will provide oral feedback on the presentation of the research project and provide written feedback on a draft of the research paper. Discussants will be assigned after the planning meetings.

Research topics

Students can choose from a set list of topics and are required to present their research finding in class during the course days in February 2018 and submit a written, fully referenced summary of their research at the completion of the course.

Theme #1 International Crime and International Organisations

Note: Students are expected to pay attention to the role comparative law plays in the context of law-making in international organizations.

#1: The United Nations criminal justice system in the suppression of international crime

This project critically examines the role of the United Nations in combatting international crime. Specific attention will be drawn to the work of the United Nations Office on Drugs and Crime (UNODC, formerly UNODCCP and CICP), the Commission on Crime Prevention and Criminal Justice, and the Congresses on Crime Prevention and Criminal Justice.

#2: The European Union and the suppression of international crime

This project examines the role of the European Union and its agencies in combatting international crime.

3: The Council of Europe and the suppression of international crime

This project examines the role of the Council of Europe in combatting international crime.

#4: Regional initiatives in Southeast Asia relating to the suppression of international crime

This project examines the role the Association of Southeast Asian Nations (ASEAN) combatting international crime.

#5: International police cooperation against organized crime

This project examines organizational and legislative measures to enable and facilitate international law enforcement cooperation against organized crime. This involves, in particular, a critical analysis of the relevant work of the International Criminal Police Organization (ICPO-Interpol), Europol etc.

#6: International judicial cooperation in criminal matters relating to organized crime

This project examines the range of 'tools' and mechanisms for judicial cooperation in criminal matters relating to organized crime. Particular attention will be drawn to the provisions under Articles 16, 18 of the *Convention against Transnational Organized Crime* as well as Conventions of the Council of Europe.

Theme #2 Corruption and Money Laundering

#7: Fighting Corruption with International Law

This project outlines and critically analyses the most important international anti-corruption regimes and the offences they establish, namely UNCAC, the universal international instrument to criminalise corruption, Council of Europe conventions, EU law and others.

#8: Criminalising corruption in Australian federal law

This project critically examines the offences relating to corruption and bribery under the *Criminal Code* (Cth) and other relevant federal statutes. This involves an analysis of the evolution and background of these offences, their elements, application, and interpretation by the courts. The influence of international obligations on national law and practice is also considered.

#9: Criminalising corruption in Swiss law

This project provides an analysis of offences relating to corruption and bribery under Swiss federal law both in the public and private sector, especially Articles 322ter–322decies of the *Criminal Code*. This includes an analysis of the evolution of these laws, their elements and, in particular, current practices with regard to their enforcement. The influence of international obligations on national law and practice is also considered.

#10: Corruption and corporate criminal liability

Many international and European conventions include obligations to adopt legislative and other measures to ensure that legal persons can be held liable for the criminal offences, for instance Article 26 of the *UN Convention against Corruption*, Article 18 of the Council of Europe *Criminal Law Convention on Corruption*, and various EU instruments. This project critically explores the significance, background, operation, and interpretation of these obligations. The project may also compare pertinent national implementations.

#11: An independent federal anti-corruption agency for Australia?

Many critics argue that Australia is merely paying lip service to combatting corruption and criticise the Australian Government for failing to establish an federal anti-corruption commission. This project explores the background and context of this debate along with proposals for (and objections to) the creation of a federal anti-corruption body.

#12: Criminalising money laundering in Australian federal law

This project critically examines the offences relating to money laundering under the *Criminal Code* (Cth). This involves an analysis of the evolution and background of these offences, their elements, application, and interpretation by the courts. The influence of international obligations on national law and practice is also considered.

#13: Criminalising money laundering in Swiss law

This project critically examines the offences of money laundering under Swiss law (in particular through Article 305bis of the *Criminal Code*) as well as the role of the *Anti-Money Laundering Act*. The analysis includes a close look at the general regulatory approach, the elements of the various offences, the evolution of these laws and the influence of international efforts of combatting money

laundering. Attention will also be given to current practices with regard to enforcing these laws. The influence of international obligations on national law and practice is also considered.

Theme #3: *Smuggling of migrants and trafficking in persons*

#14: *Corruption and the smuggling of migrants*

The literature frequently notes how migrant smuggling thrives because of corruption of and collusion with government officials, especially those working in immigration departments, at border control points, or with law enforcement agencies. Using available case law, reports, and scholarship, this project examines the levels and patterns of the nexus between corruption and smuggling of migrants and develops a typology of corruption and collusion in this context.

#15: *Modern Slavery Act – UK perspectives*

in 2015, the United Kingdom passed the *Modern Slavery Act* to combat trafficking in persons and to consolidate previous offences relating to trafficking in persons and slavery. Focussing specifically on criminal offences, this project explores the background, content, and operation of this Act and highlights the main differences to offences in operation prior to 2015.

#16: *Modern Slavery Laws – Australian perspectives*

Following the UK example, Australia is presently debating the introduction of “modern slavery laws”. This project explores the background of this debate, current proposals and draft legislation, and highlights the main differences to existing offences relating to trafficking in persons and slavery in Australia.

#17: *Criminalising exploitation – Swiss perspectives*

This project explores the offences concerning exploitation (and slavery-like situations) in Swiss criminal law and analyzes a possible need for reform based on positive obligations.

#18: *Trafficking in persons and forced marriage – Australian perspectives*

Although the UN *Trafficking in Persons Protocol* does not directly deal with forced marriages as type of trafficking in persons, many countries, including Australia, have introduced special offences to criminalise this phenomenon. This project explores the context, background, interpretation, and application of offences relating to forced marriages in Australia.

#19: *Trafficking for the purpose of organ removal – Australian perspectives*

The phenomenon of trafficking in persons for the purpose of organ removal is not well researched and remains shrouded in mystery. Much of the available literature refers to manifestations of the problem in developing countries, but there is little information about the extent and characteristics of this problem in Australia. This project explores the levels and patterns of trafficking in persons for the purpose of organ removal in Australia along with the application of specific federal offences criminalising this phenomenon.