Lecture Outline

1. The legal framework of international criminal procedure:
   1) Applicable law;
   2) Control over the applicable law by the ICTs;
   3) Participants in the proceedings.

2. Different perspectives on the int’l criminal justice system:
   1) Inquisitorial, adversarial or hybrid;
   2) Purpose of international criminal proceedings and interests:
      a) Crime control/deterrence/retribution;
      b) Fair trial (exposing the truth);
      c) Effective and expeditious proceedings;
      d) Victims’ participation;
      e) Protection of witnesses and victims;
      f) State sovereignty considerations;
      g) Protection of community interests.

3. Stages of the international criminal proceedings.

G. Zyberi, NCHR/ UiO, 23 March 2015
International Criminal Procedure (1)

- International criminal procedure is the set of rules governing the criminal proceedings through which substantive international criminal law is enforced before an international criminal court or tribunal (ICs).

- This part of the law is laid out in the Statute and Rules of Procedure and Evidence of the ICs.

- *Internal* (ICs procedures) and *external* procedural law (procedures on cooperation between the IC and States).
International Criminal Procedure (2)

• From Nuremberg to Rome:
  ➢ Quantitative and qualitative development in procedural law (elaborate RPEs);
  ➢ Differences between different ICs (ad hocs, ICC, hybrids);
  ➢ Prominence of fair trial and presumption of innocence;
  ➢ Emergence of victims’ participation with standing in international criminal proceedings.
Applicable Law

- A tribunal’s or court’s internal law
  - Statute;
  - Rules of procedure and evidence;
  - Elements of Crime;
  - Case law?

- External sources of law
  - Treaties, customary int’l law, general principles of law;
  - Case-law from other courts?

- IMT and *ad hoc* tribunals no explicit regulation

- ICC – article 21
Discuss the place/role in ICL

1. Judicial precedent/ *stare decisis*;
2. General principles of law;
3. Human rights rules and principles.
ICCSt. Art. 21: Applicable Law (1)

1. The Court shall apply:

(a) **In the first place**, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) **In the second place**, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, **general principles of law** derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.
ICs Control over Applicable Law

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<tr>
<th>The <em>ad hoc</em> tribunals</th>
<th>Founder of the tribunals: UNSC</th>
<th>Judges</th>
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Participants in the Proceedings

- Judges/Chambers (Trial/ Appeals);
- Prosecutor (Office of the Prosecutor);
- Defendant/suspect/person investigated - Defence counsel/defence team;
- Victims/victims’ representatives;
- Others?
Perspectives of ICL Procedure

1. Inquisitorial or adversarial system;

2. Civil law or common law (other legal traditions?);

3. Human rights approach (Zappalà, 2005);

4. Crime control vs. due process;

5. Balancing the interests of parties to the proceedings and considerations of international (criminal) justice.
Two Models

- **Adversarial**
  - Party-driven
  - “Two-case” approach
  - The Judge is the “finder of justice”

- **Inquisitorial**
  - Judge-driven
  - “One-case” approach
  - The Judge is the “finder of truth”
The Roles of the Judge and the Parties

Inquisitorial model

Adversarial model

JUDGE  DEFENCE  PROSECUTION  WITNESS

JUDGE  DEFENCE  PROSECUTION  WITNESS
International Criminal Trial

DEFENCE

PROSECUTION

WITNESS

WITNESS
(Competing) Interests in ICL Procedure

- Crime control/ Deterrence/ Retribution;
- Fair trial;
- Expeditious proceedings;
- Truth finding;
- Victims’ participation;
- Protection of victims and witnesses;
- State sovereignty and interests.
Presumption of Innocence

- **Statutory**: ICTY art 21(3); ICTR art. 20(3); ICC art. 66 (based on ICCPR art 14(2));

- Treatment of the individual;

- Burden of proof on the Prosecution (reversal?);

- *In dubio pro reo* principle;

- Standard of proof for guilt of the accused: Guilt beyond a reasonable doubt.
Fair Trial and Rights of the Accused

- Under the principle of the presumption of innocence the accused is entitled:
  - to be informed promptly and in detail of the nature, cause and content of the charge;
  - to have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing (confidentiality principle);
  - to be tried without undue delay;
  - to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf;
  - to remain silent;

Trial in absentia is not possible
**Proceedings at the ICC**

- **Pre-trial stage**
  Pre-Trial Chamber: issues orders, warrants, and summons during an investigation; protects evidence, victims and witnesses and ensures the interests of the defence.

- **Investigation**

- **Preliminary examination by the Prosecutor**

- **Request for authorization to start an investigation by the Prosecutor**

- **Confirmation of the charges**

- **Appeals stage**
  Triggered at any time in the case of interlocutory or other appeals.
  Appeals Chamber: reverses or amends acquittals, convictions or sentences and orders new trials.

- **Revision stage**
  Appeals Chamber: revises convictions and/or sentences and orders new trials.

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- **Trial stage**
  Trial Chamber: conducts a fair and expeditious trial; convicts or acquits and imposes sentences.

- **In case of a State or SC referral there is no need to request authorization**
Stages of the Proceedings

- **Pre-trial stage:**
  - Investigations;
  - Arrest/detention;
  - Disclosure;
  - Confirmation of charges/indictment;
  - Status conferences.

- **Trial stage:**
  - Status conferences;
  - Presentation of evidence (prosecution/defence);
  - Deliberation/ rendering of the judgment.

- **Appeal stage (and revision)**
- **Post-conviction stage (enforcement of sentences)**
Segments of ICL Procedure (1)

  
  (i) the initiation of investigation and selection of cases;
  
  (ii) the conduct of investigation, including the issues raised by the application of coercive measures and effecting arrest and surrender to the international tribunals, and remedies for procedural violations;
  
  (iii) the charging document (indictment) and charges, along with the, at times, transstadal procedures for bringing, confirming, amending, withdrawing, deciding on the charges and related topics of ne bis in idem, res judicata, lis pendens, and jura novit curia;
Segments of ICL Procedure (2)

• (iv) the trial stage, including the chronological progression of trial proceedings and factors affecting that chronology; cross-cutting and residual issues concerning the role and legal status at trial of some procedural actors not examined by other working groups (namely, judges and witnesses);
• (v) appeals, revision, reconsideration, and other avenues for a court to review the previous decisions of its various organs;
• (vi) the law of evidence, including issues of admissibility of various types of evidence, disclosure of, or access to, evidence by the parties, matters not requiring proof, and the standards of proof at different procedural stages;
Segments of ICL Procedure (3)

• (vii) deliberation, dissent, and judgment, including the procedural aspects of judicial decision-making, deliberation, and judgment-drafting in the tribunals (both interlocutory decisions, final pre-trial decisions, and trial and appellate judgments);

• (viii) defence issues, including the (trans-stadal) issues of representation by counsel, self-representation, and other forms of legal assistance; vetting of counsel’s qualifications and effective representation; the structural organization of the defence, remuneration of counsel; matters of legal aid; and professional regulation and discipline of counsel;

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Segments of ICL Procedure (4)

• (ix) victims’ role and status in the proceedings, including participation, protection, reparations, and special assistance for victims, with protection of victims in their capacity as witnesses being covered under (iv);

• (x) negotiated justice, including the parameters and implications of the validity of guilty pleas and admissions of guilt.
Concluding Remarks (1)

- International Criminal Procedural Law has developed considerably, especially during the last two decades (ad hocs, ICC, and hybrids).
- Development has been marked by a strong influence of the human rights standards of due process and fair trial.
- Questions still remain whether the system created under the ICC Statute will prove workable (state cooperation, victims’ participation rights, reparations system, and so on).
Concluding Remarks (2)

- ICPL is meant to serve and ensure the **integrity** of int’l criminal proceedings.
- Balancing the participants’ different interests in the law governing international criminal proceedings is not easy or straightforward:
  - The accused;
  - The victims;
  - The international community as a whole.
Relevant Literature (1)


Relevant Literature (2)
