HSC legal studies – international crime

# Table of contents

[HSC legal studies – international crime 1](#_Toc73012667)

[Table of contents 2](#_Toc73012668)

[Aim 3](#_Toc73012669)

[Principal focus 3](#_Toc73012670)

[Themes and challenges 3](#_Toc73012671)

[Outcomes 3](#_Toc73012672)

[Learning sequence 6 – international crime 5](#_Toc73012673)

[Categories of international crime 6](#_Toc73012674)

[Dealing with international crime 7](#_Toc73012675)

[Domestic and international responses to transnational crime 7](#_Toc73012676)

[Domestic and international responses to crimes against the international community 10](#_Toc73012677)

# Aim

Legal studies develops students’ knowledge, understanding and critical thinking skills in relation to the legal system and its effectiveness in promoting a just and fair society, with a view to empowering students to participate effectively as responsible citizens at the local, national and international level.

# Principal focus

Through the use of a range of contemporary examples, students investigate criminal law, processes and institutions and the tension between community interests and individual rights and freedoms.

# Themes and challenges

* the role of discretion in the criminal justice system
* issues of compliance and non-compliance in regard to criminal law
* the extent to which law reflects moral and ethical standards
* the role of law reform in the criminal justice system
* the extent to which the law balances the rights of victims, offenders and society
* the effectiveness of legal and non-legal measures in achieving justice.

## Outcomes

A student:

* **H1** identifies and applies legal concepts and terminology
* **H2** describes and explains key features of and the relationship between Australian and international law
* **H3** analyses the operation of domestic and international legal systems
* **H4** evaluates the effectiveness of the legal system in addressing issues
* **H5** explains the role of law in encouraging cooperation and resolving conflict, as well as initiating and responding to change
* **H6** assesses the nature of the interrelationship between the legal system and society
* **H7** evaluates the effectiveness of the law in achieving justice
* **H8** locates, selects, organises, synthesises and analyses legal information from a variety of sources including legislation, cases, media, international instruments and documents
* **H9** communicates legal information using well-structured and logical arguments
* **H10** analyses differing perspectives and interpretations of legal information and issues.

Outcomes referred to in this document are from [Legal Studies Stage 6 Syllabus](https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies) © NSW Education Standards Authority (NESA) for and on behalf of the Crown in right of the State of New South Wales, 2009.

# Learning sequence 6 – international crime

|  |  |
| --- | --- |
| Students learn about: | Students learn to: |
| * categories of international crime, including:   + crimes against the international community   + transnational crimes * dealing with international crime:   + domestic and international measures   + limitations. | * define international crime * describe the various measures used to deal with international crime * evaluate the effectiveness of the domestic and international legal systems in dealing with international crime. |

## Categories of international crime

* Use online research or other school resources to complete definitions for the following terms:
  + international crime
  + transnational crime
  + crimes against the international community.
* Use [ICC: Trying individuals for genocide, war crimes, crimes against humanity, and aggression](https://www.icc-cpi.int/about/how-the-court-works) to define the 3 main categories of crimes against the international community into the table below:

|  |  |
| --- | --- |
| Category of crime | Definition and example |
| War crimes |  |
| Genocide |  |
| Crimes against humanity |  |

* Use ‘[Tackling transnational crime’](https://www.dfat.gov.au/sites/default/files/minisite/static/4ca0813c-585e-4fe1-86eb-de665e65001a/fpwhitepaper/foreign-policy-white-paper/chapter-five-keeping-australia-and-australians-safe-secure-and-free-1.html) to complete the following:
  + identify different types of transnational crime
  + outline why Australia is concerned about international crime
  + describe the increasing challenges in dealing with transnational crime.

## Dealing with international crime

**Teacher note – international crime is a complex area and a combination of domestic and international responses are used to try and manage the problem. We first evaluate domestic and international responses to transnational crime and then evaluate domestic and international responses to crimes against the international community.**

### Domestic and international responses to transnational crime

**Teacher note –** in this section we explore the use of co-operation between law enforcement agencies, extradition and treaties. As these have both international and domestic elements, these are both included in the activities.

#### Co-operation between law enforcement agencies

* Use AFP 2019, [Drug routes out of the golden triangle](https://teams.microsoft.com/l/file/F830D6A5-6123-4A9C-9EC0-5E8411252DC5?tenantId=05a0e69a-418a-47c1-9c25-9387261bf991&fileType=dotx&objectUrl=https%3A%2F%2Fschoolsnsw.sharepoint.com%2Fsites%2FHSIETeam609%2FShared%20Documents%2FResource%20projects%2FLegal%20Studies%20Frameworks%2FHSC%20Crime%20all%20topics%2F3.%20Criminal%20trial%20process%2C%20Topic%203%20Crime.dotx&baseUrl=https%3A%2F%2Fschoolsnsw.sharepoint.com%2Fsites%2FHSIETeam609&serviceName=teams&threadId=19:1029ba9325254afe920fbb06cec82437@thread.tacv2&groupId=4358f259-8f7b-42e8-aa8b-19877b684145) and AFP 2019, [Trio charged over Australia’s largest onshore ice seizure](https://www.afp.gov.au/news-media/media-releases/trio-charged-over-australia%E2%80%99s-largest-onshore-ice-seizure) to complete the following:
  + explain the extent of the transnational drug trafficking problem
  + explain how cooperation between international and domestic agencies led to the conviction of 3 Victorians for drug trafficking
  + identify challenges for law enforcement in detecting and disrupting transnational drug trafficking.
* Research the INTERPOL Operation Turquesa II at ‘[INTERPOL operation targets migrant smuggling and human trafficking’](https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-operation-targets-migrant-smuggling-and-human-trafficking) and complete the following:
  + explain the role and structure of Interpol
  + outline how international cooperation in Operation Turquesa II led to more than 200 arrests.
* Write one paragraph explaining the importance of cooperation between domestic and international law enforcement agencies in responding to transnational crime. In the response, refer to both domestic and international examples.

#### Extradition

* Use the resources below or your own research, to complete the following:
  + define extradition
  + outline how the extradition process works
  + identify 3 countries with which the Australian government does not have an extradition treaty
  + describe the benefits of extradition between countries
  + outline challenges associated with extradition
  + evaluate the effectiveness of extradition as a response to transnational crime.
* Resources for this task:
  + **The Conversation 2019, ‘**[Explainer: what is extradition between countries and how does it work?](https://theconversation.com/explainer-what-is-extradition-between-countries-and-how-does-it-work-124637)**’**
  + **Attorney General’s Department,** [‘Extradition’](https://www.ag.gov.au/international-relations/international-crime-cooperation-arrangements/extradition) and [Fact sheet: The extradition process](https://www.ag.gov.au/international-relations/publications/fact-sheet-overview-extradition-process)
  + **Attorney General’s department,** [‘Australia’s international crime cooperation relationships’](https://www.ag.gov.au/international-relations/publications/australias-international-crime-cooperation-relationships)
  + ABC, ‘Neil Prakash: [Turkish court rejects request to extradite Australian Islamic State terrorist’](https://www.abc.net.au/news/2018-07-20/islamic-state-terrorist-neil-prakash-could-be-released-from-jail/10016444)
  + ABC news 2018 '[Asia's El Chapo' Tse Chi Lop arrested at Amsterdam airport, Australian police to request extradition](https://www.abc.net.au/news/2021-01-24/afp-seek-extradition-of-tse-chi-lop-asian-el-chapo-arrested/13086838).

#### International laws and treaties (and domestic enforcement)

**Teacher note** – In this section we explore one significant international Protocol that Australia has agreed to be a part of, the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol). In Australia this law has been integrated into our domestic laws and used in the conviction of Wei Tang in** *R v Wei Tang* 2009 23 VR 332. **It is important for students to understand that state sovereignty is a limitation of international law as it means that not all countries have to agree to be a part of international laws or enforce them domestically.**

* Use Rule of Law, [‘Explainer – the treaty process’](https://www.ruleoflaw.org.au/treaty-explainer/), to complete the following:
  + define the terms treaty and state sovereignty
  + outline what is required for ratification of a treaty at domestic level
  + explain when an international treaty becomes part of law in Australia’s dualist system
  + suggest how state sovereignty may prevent participation by all nations in international law.
* Read Article 2 of the [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx) **(the Trafficking Protocol)** and identify the 3 purposes of the Protocol
* Use Department of Home Affairs, [Criminal justice,](https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/human-trafficking) to identify 3 changes made in Divisions 270 and 271 of the *Criminal Code Act* 1995 as part of ratifying the Trafficking Protocol**.**
* Use UNODOC, [‘Case law database’](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/aus/2009/r_v_wei_tang_2009_23_vr_332.html?lng=en&tmpl=htms) or other school resources, to assist in preparing a brief case summary of the first Australian conviction under the reformed *Criminal Code Act* 1995 (*R v Wei Tang* 2009 23 VR 332).
* With reference to the case of *R v Wei Tang* 2009, explain how international and domestic law have been effective in responding to the transnational crime of human trafficking.

#### Domestic courts

* Use your case summary of *R v Wei Tang* 2009 23 VR 332 to explain the role domestic courts play in enforcing international law.

#### Limitations of responses to transnational crime

* Use your notes and the resource below to identify 3 challenges for law enforcement bodies in disrupting the transnational crime
  + Resource for this task: UNODC,”[Organized Crime Has Globalized and Turned into a Security Threat](https://www.unodc.org/unodc/en/press/releases/2010/June/organized-crime-has-globalized-and-turned-into-a-security-threat.html).”

#### Evaluating the effectiveness of domestic and international legal systems in dealing with transnational crime

* In small teams, collaboratively complete the following table. This can be done in person or using online platforms like Google docs or a [Padlet](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/592#.YG-50fHekpE.link).

**Measures for dealing with transnational crime**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Response | Description | Cases, legislation | Evaluation | |
| Co-operation between law enforcement agencies |  |  |  |
| Extradition |  |  |  |
| International laws and treaties |  |  |  |
| Domestic courts |  |  |  |

* Use your notes, and the summary table above, to assist you to write an essay responding to the following question:

‘Evaluate the effectiveness of domestic and international legal systems in dealing with transnational crime.’

* Swap your essay with another person and use a [ladder of feedback](https://education.nsw.gov.au/teaching-and-learning/professional-learning/teacher-quality-and-accreditation/strong-start-great-teachers/refining-practice/peer-and-self-assessment-for-students/strategies-for-student-peer-assessment) peer review strategy to assess it against the following criteria:
  + presents a logical and cohesive argument
  + includes a topic sentence with supporting arguments and evidence
  + integrates relevant legislation, cases and media
  + demonstrates extensive knowledge of responses to transnational crime
  + makes clear judgement(s).

### Domestic and international responses to crimes against the international community

**Teacher note –** in this section, students explore the role of the International Criminal Court (ICC), tribunals, domestic courts and extradition in responding to crimes against the international community.

#### International Criminal Court (ICC)

* Use ICC, ‘[Trying individuals for genocide, war crimes, crimes against humanity, and aggression](https://www.icc-cpi.int/about)’ or school resources to complete brief written responses to the following:
  + describe the role of the International Criminal Court
  + outline what is meant by the term ‘court of last resort’
  + identify how many convictions have been achieved since the ICC commenced operation.
* Use a [jigsaw strategy](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/546#.YG-b5ItOtAY.link) to research the strengths and weaknesses of the ICC. Expert groups should research their assigned area before returning to the home group to explain this and have the group complete the summary table below:
  + expert group 1**:** successful prosecutions by the ICC, for example Thomas Lubanga
  + expert group 2: state sovereignty and not all countries being party to the Rome Statute
  + expert group 3: problems apprehending offenders, for example Al Bashir
  + expert group 4: disproportionate focus on Africa
  + expert group 5: low conviction rate relative to cost
  + expert group 6**:** the symbolic statement the existence of this court makes.
* Resources for this task:
  + Council on Foreign Relations, ‘[Backgrounder – role of the International Criminal Court’](https://www.cfr.org/backgrounder/role-international-criminal-court)
  + ICC, [‘Trying individuals for genocide, war crimes, crimes against humanity and aggression – case’](https://www.icc-cpi.int/Pages/cases.aspx)
* The Conversation, ‘[Why Sudan won’t hand over former president al-Bashir to the International Criminal Court](https://theconversation.com/why-sudan-wont-hand-over-former-president-al-bashir-to-the-international-criminal-court-117810)
* ABC 2013, [‘Accused of war crimes, Kenya's leaders cry racism](https://www.abc.net.au/news/2013-11-13/winsor-kenya-war-crimes/5088072).

|  |  |  |
| --- | --- | --- |
| Strengths of the ICC | Limitations of the ICC | |
|  |  |

* Use the table of information to complete a 1 to 2 paragraph response to the following question:

‘Evaluate the effectiveness of the ICC in dealing with international crime.’

#### Domestic courts

* Division 268 of the *Criminal Code Act 1995* (Cth) gives Australia the ability to try individuals suspected of committing crimes against the international community, but in spite of this there are very few convictions. Use the resources below to identify 3 barriers to the prosecution of war criminals through domestic courts.
* Resources:
  + The Conversation, ‘[Inconsistency bedevils Australia’s prosecution of war criminals’](https://theconversation.com/inconsistency-bedevils-australias-prosecution-of-war-criminals-66039)
  + ABC, [‘Ivan Polyukhovich: How an alleged Nazi war criminal was acquitted by an Australian court](https://www.abc.net.au/news/2018-05-20/nazi-war-criminals-in-australia-and-the-case-of-polyukhovich/9756454).’

#### International tribunals

**Teacher note –** in this activity the tribunal response to the Rwandan massacre is explored. The strengths of the International Criminal Tribunal for Rwanda include its ability to convict high profile politicians as well as media for their role in inciting violence. Weaknesses include challenges to locate witnesses to the events of the day.

Video footage of this massacre should not be played for classes as this would give a history focus that is not necessary for the curriculum. The curriculum relevance lies in the establishment of the tribunal after events on the day. Should any aspect of the content cause students to experience any distress, the lesson should be halted immediately and school executive consulted about appropriate welfare management for the student(s).

* Use UN, ‘[The ICTR in brief](https://unictr.irmct.org/en/tribunal)’ to research the response of the International Criminal Tribunal for Rwanda (ICTR) following the Rwandan massacre in 1994:
  + identify the types of high-profile offenders and institutions prosecuted by the International Criminal Tribunal for Rwanda (ICTR)
  + identify the numbers of offenders indicted and sentenced by the ICTR for violations of the Geneva Convention.
* Research an individual case involving a successful conviction by the ICTR, for example, the [Prosecutor v Jean-Paul Akayesu](http://www.internationalcrimesdatabase.org/Case/50/Akayesu/). Complete a brief case summary that covers the following:
  + the crimes committed
  + the sentence applied.
* Evaluate the effectiveness of international tribunals like the ICTR in dealing with crimes against the international community.

#### Extradition treaties

* With reference to an example, explain the benefits and challenges of international extradition treaties in dealing with crimes against the international community
  + Resource for this task: The Guardian 2015, ‘[Australian Dragan Vasiljkovic extradited to Croatia on war crimes charges](https://www.theguardian.com/australia-news/2015/jul/08/captain-dragan-vasiljkovic-extradited-australia-croatia-war-crimes-charges)’.

### ****Summary****

* Complete the following table to summarise the measures for dealing with crimes against the international community.

**Measures for dealing with crimes against the international community**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Response | Description | Cases, legislation | Evaluation | |
| International Criminal Court |  |  |  |
| Tribunals, for example the ICTR |  |  |  |
| Domestic courts |  |  |  |
| Extradition |  |  |  |

### Linking course content to the themes and challenges

**Teacher note** – whilst the themes and challenges of the HSC Legal Studies course are regularly explored as part of teaching activities, it is important that students are able to write essays that link the themes and challenges to the content. In the following activity, the class should be broken into 4 groups, with each group assigned one of the questions.

* In small groups, collaboratively prepare an essay plan that includes a summary of 5 big ideas that would be used to respond to the assigned question:
  + To what extent is compliance an issue in responding to crimes against the international community?
  + Evaluate how well international and domestic legal systems embody moral and ethical standards of society.
  + Assess the effectiveness of law reform in responding to crimes against the international community.
  + Evaluate the extent to which international and domestic legal systems balance the rights of victims, offenders and society.
* Complete a [+1 routine](https://pz.harvard.edu/node/773277) where each team passes their essay plan to the right for the next team to elaborate on the ideas or add a new point.
* When the notes return to the original group, hold a class discussion on the 5 best ideas to answer each of the questions and summarise this into the table below:

|  |  |
| --- | --- |
| Essay question - theme | 5 big ideas for an essay |
| Compliance |  |
| Embodiment of moral and ethical standards |  |
| Law reform |  |
| Balance between victims, offenders and society |  |