

International Criminal Law
LAW 360
Syllabus

Instructor: Dr. Shannon Fyfe
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Class Meetings: Mondays and Wednesdays, 4PM – 5:25PM

Office Hours: By appointment. Because my office is on the Fairfax campus, I will not hold regular office hours in Arlington. I will often be available before or after class to meet in person, or we can meet over Zoom – please email me to schedule either. You are also welcome at my regular office hours if you happen to be in Fairfax (Thursdays, 11:30AM – 1PM, Horizon Hall 6253).

Course Description:

This course will focus on the prosecution of international crimes, including genocide, crimes against humanity, war crimes, and aggression. We will study the development of the law of these crimes, including jurisdiction, the elements of crimes, modes of liability, and defenses, as well as the institutional, political, logistical, and procedural challenges faced by prosecutors, defense lawyers, and judges who adjudicate these crimes. Students will be expected to engage throughout with the question of whether, and if so to what extent, individual criminal prosecution by international criminal courts and tribunals is a legitimate and effective tool for addressing mass human rights violations during or after conflict.

Learning Outcomes:

- By the end of the course, students will be able to demonstrate knowledge of the international and transnational criminal legal options for addressing atrocity crimes
- Students will analyze the current substantive and procedural barriers to seeking justice for atrocity crimes through the criminal law
- Students will develop concrete skills in legal analysis and research

Texts:

- Luban, O'Sullivan, Stewart, and Jain, *International and Transnational Criminal Law* (Aspen Casebook), 3rd Edition, 2018.
- Other readings will be posted on Blackboard.

Grades:

Your primary assignment will be a final term paper of 5,000-7,000 words, not including footnotes. This will fulfill the Law School writing requirement. You should submit (1) a paper topic by March 10, (2) a paper outline by April 3, and (3) the final paper by May 1. You should consult with me about your topic either in office hours or via email. I will provide prompt feedback on the paper outline. The final paper should be double-spaced with one-inch margins. I will be glad to read full rough drafts submitted by April 24 (as Word documents so that I can provide comments). All submissions should be made via email. In case of emergency, you must

obtain the permission of Christina Malone, Director of Student Academic Affairs, to obtain an extension.

Your final course grade can be adjusted by a single increment either upward or downward (e.g., from B to B+) based on class participation.

School in the Time of a Pandemic:

Given our global and individual circumstances, I want to encourage everyone to:

1. Be patient and kind with yourself and with each other.
2. Communicate openly and clearly about expectations, concerns, and goals. Tell me what you need, and I'll tell you how I can help.
3. Be flexible, as circumstances may change over the course of the semester.

Attendance:

Attendance is mandatory and necessary for performing well in this course. Here are some reasons why:

1. The School of Law's academic regulations require regular and punctual class preparation and attendance for academic credit to be earned. If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. This means that if you miss more than two classes, you may not be eligible for credit in the course.
2. If you miss class, you will not benefit from the ideas of your colleagues or your instructor.
3. As noted above, your final grade will be impacted by your participation in class, class discussion, and class activities.

Date	<p style="text-align: center;">ASSIGNMENTS (subject to change)</p>
	<p style="text-align: center;">You should do the assigned reading before class. Everything other than readings from INTERNATIONAL AND TRANSNATIONAL CRIMINAL LAW (ITCL) will be posted on Blackboard.</p>
January 18	<p style="text-align: center;">The Idea of International and Transnational Criminal Law; International Law Preliminaries</p> <p style="text-align: center;">Required Reading: ITCL 3-74</p>
<p>January 23</p> <p>January 25</p>	<p style="text-align: center;">Finish International Law Preliminaries</p> <p style="text-align: center;">International Criminal Legal History and Mechanisms</p> <p style="text-align: center;">Required Reading: ITCL 75-129</p> <p style="text-align: center;">Skim: Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/25704 at 36, annex (1993) and S/25704/Add.1 (1993), adopted by Security Council on 25 May 1993, U.N. Doc. S/RES/827 (1993).</p> <p style="text-align: center;">Skim: United Nations, <i>Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea</i>, 6 June 2003.</p>
<p>January 30</p> <p>February 1</p>	<p style="text-align: center;">Principles of Jurisdiction</p> <p style="text-align: center;">Required Reading: ITCL 173-227</p>
<p>February 6</p> <p>February 8</p>	<p style="text-align: center;">The International Criminal Court</p> <p style="text-align: center;">Required Reading: ITCL 719-806</p>
<p>February 13</p> <p>February 15</p>	<p style="text-align: center;">Genocide</p> <p style="text-align: center;">Required Reading: ITCL: 965-1014</p>
<p>February 20</p> <p>February 22</p>	<p style="text-align: center;">Crimes Against Humanity</p> <p style="text-align: center;">Required Reading: ITCL: 925-964</p>

February 27 March 1	<p style="text-align: center;">War Crimes and Aggression</p> <p style="text-align: center;">Required Reading: ITCL: 1015-1090</p>
March 6 March 8	<p style="text-align: center;">Modes of Participation</p> <p style="text-align: center;">Required Reading: ITCL 807-884</p>
March 10	*Final Paper Topics Due Prior to Spring Break*
March 13-17	Spring Break
March 20 March 22	<p style="text-align: center;">Defenses</p> <p style="text-align: center;">Required Reading: ITCL 885-924</p> <p style="text-align: center;">Required Reading: <i>Prosecutor v. Erdemović</i>, Joint Separate Opinion of Judge McDonald and Judge Vohrah, IT-96-22, ICTY Appeals Chamber (Oct. 7, 1997) (excerpt).</p> <p style="text-align: center;">Required Reading: <i>Prosecutor v. Erdemović</i>, Separate and Dissenting Opinion of Judge Cassese, IT-96-22, ICTY Appeals Chamber (Oct. 7, 1997) (excerpt).</p> <p style="text-align: center;">Required Reading: <i>Prosecutor v. Erdemović</i>, Separate and Dissenting Opinion of Judge Stephen, IT-96-22, ICTY Appeals Chamber (Oct. 7, 1997) (excerpt).</p>
March 27 March 29	<p style="text-align: center;">Sexual Violence</p> <p style="text-align: center;">Required Reading: ITCL 1175-1226</p> <p style="text-align: center;">Required Reading: Tanja Altunjan, <i>The International Criminal Court and Sexual Violence: Between Aspirations and Reality</i>, 11 GER. L. J. 878-893 (2021).</p>
April 3	*Final Paper Outlines Due*

<p>April 3</p> <p>April 5 (No Class, Video Lecture Will Be Posted)</p>	<p style="text-align: center;">Procedural Challenges for the International Criminal Court</p> <p>Required Reading: Stephen Oola, <i>In the Shadow of Kwoyelo's Trial: The ICC and Complementarity in Uganda</i>, in <i>Contested Justice: The Politics and Practice of International Criminal Court Interventions</i> 147 (Christian de Vos, Sara Kendall & Carsten Stahn eds., 2015).</p> <p>Required Reading: Göran Sluiter, <i>Enforcing Cooperation: Did the Drafters Approach It the Wrong Way?</i>, 16 J. INT'L CRIM. JUST. 383-402 (2018).</p> <p>Required Reading: Nada Ali, <i>Through a Glass Darkly: The ICC, the UNSC and the Quest for Justice in International Law</i>, 19 INT'L CRIM. L. REV. 669-697 (2019).</p>
<p>April 10</p>	<p style="text-align: center;">Procedural Challenges for the International Criminal Court: Child Soldiers</p> <p>Required Reading: Rome Statute Art. 8(2)(b)(xxvi); Art. 8(2)(e)(vii); Art. 26</p> <p style="text-align: center;">Required Reading: Ongwen Case Information Sheet</p> <p>Required Reading: Mark Drumbl, <i>Victims Who Victimise</i>, 4 LONDON REV. INT'L L. 217-246 (2016).</p> <p>Required Reading: Jill Stauffer, <i>Law, Politics, the Age of Responsibility, and the Problem of Child Soldiers</i>, 16 LAW CULTURE & HUMAN. 42-52 (2016).</p>
<p>April 13</p> <p>April 17</p>	<p style="text-align: center;">Geopolitics, Power, and International Criminal Justice</p> <p>Required Reading: Fatou Bensouda, <i>International Justice and Diplomacy</i>, N.Y. TIMES, Mar. 19, 2013.</p> <p>Required Reading: Oumar Ba, <i>International Justice and the Post-Colonial Condition</i>, 63 AFRICA TODAY 45 (2017).</p> <p>Required Reading: Manisuli Ssenyonjo, <i>The Implementation of Proprio Motu Authority of the Prosecutor in Africa</i>, in <i>The International Criminal Court and Africa</i> 38 (Charles Chernor Jalloh & Ilias Bantekas eds., 2017).</p> <p>Required Reading: Jane Stromseth, <i>The United States and the International Criminal Court: Why Undermining the ICC Undercuts U.S. Interests</i>, 47 GA. J. INT'L & COMP. L. 639 (2019).</p>
<p>April 24</p>	<p style="text-align: center;">*Optional: Full Drafts Due*</p>

<p>April 19</p> <p>April 24</p>	<p style="text-align: center;">Alternatives to Prosecution After Atrocity</p> <p style="text-align: center;">Required Reading: ITCL 1227-1260</p> <p>Required Reading: Erin K. Baines, <i>The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda</i>, 1 INT'L J. TRANS. JUST. 91 (2007).</p> <p>Required Reading: Lucy Allais, <i>Restorative Justice, Retributive Justice, and the South African Truth and Reconciliation Commission</i>, 39 PHIL. & PUB. AFF. 331 (2012).</p> <p>Required Reading: Jacob Childers, <i>Amnesty, Revenge, and the Threat of Conflict Relapse</i>, 14 INT'L CRIM. L. REV. 1095 (2014).</p>
<p>May 1</p>	<p style="text-align: center;">*Final Papers Due*</p>