

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), 4th Edition, 2023.
- 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 11, (2) a paper outline or abstract by April 4, and (3) the final paper by April 30. These submissions should be made by 11:59 PM on their respective due dates via Blackboard.

While you may write about a topic of your choice, the term paper must reflect significant engagement with the course material. You should consult with me about your topic either in office hours or via email. I will provide prompt feedback on the paper outline/abstract. The final paper should be double-spaced with one-inch margins.

I will be glad to read full rough drafts submitted by April 22 (as Word documents so that I can provide comments). Rough draft submissions should be made via email.

In case of emergency, you must obtain the permission of Christine 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.

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.

Class Sessions:

At least at the beginning of the semester, during portions of class sessions, I will "cold call" on students from one of two groups defined below.

Group A	On call during odd-numbered class sessions: Class 1, Class 3, etc.	Last names A to L
Group B	On call during even-numbered class sessions: Class 2, Class 4, etc.	Last names M to Z

Please note, however, that I expect everyone to be prepared for each class session. We will have group discussion components that will require all students to be prepared. This will also make classes more interesting and better aligned with your individual interests.

Date	ASSIGNMENTS (subject to change)
	<p>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>
(1) January 17	<p>The Idea of International and Transnational Criminal Law; International Law Preliminaries Required Reading: ITCL 3-56, 68-72 (skip “Treaty Law in U.S. Law”)</p>
(2) January 22 (3) January 24	<p>Finish International Law Preliminaries International Criminal Legal History and Mechanisms Required Reading: ITCL 73-125 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). 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>
(4) January 29 (5) January 31	<p>Principles of Jurisdiction Required Reading: ITCL 167-209</p>
(6) February 5 (7) February 7	<p>The International Criminal Court Required Reading: ITCL 673-733</p>
(8) February 12 (9) February 14	<p>Genocide Required Reading: ITCL: 891-942</p>
(10) February 19 (11) February 21	<p>Crimes Against Humanity Required Reading: ITCL: 855-890</p>

(12) February 26 (13) February 28	<p style="text-align: center;">War Crimes and Aggression</p> <p style="text-align: center;">Required Reading: ITCL: 943-1025</p>
March 4-8	Spring Break
March 11	*Final Paper Topics Due After Spring Break*
(14) March 11 (15) March 15 (16) March 18	<p style="text-align: center;">Finish War Crimes and Aggression, if necessary</p> <p style="text-align: center;">Modes of Participation</p> <p style="text-align: center;">Required Reading: ITCL 743-814</p>
(17) March 20 (18) March 25	<p style="text-align: center;">Defenses</p> <p style="text-align: center;">Required Reading: ITCL 815-854</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>
(19) March 27 (20) April 1	<p style="text-align: center;">Challenges for the International Criminal Court: Procedure</p> <p style="text-align: center;">Required Reading: Bertram Schmitt, <i>Legal Diversity at the International Criminal Court: Reflections of a Judge</i>, 19 J. INT'L CRIM. JUST. 485 (2021).</p> <p style="text-align: center;">Required Reading: Tanja Altunjan, <i>The International Criminal Court and Sexual Violence: Between Aspirations and Reality</i>, 22 GERM. L.J. 878 (2021).</p> <p style="text-align: center;">Required Reading: Lindsay Freeman & Raquel Vazquez Llorente, <i>Finding the Signal in the Noise: International Criminal Evidence and Procedure in the Digital Age</i>, 19 J. INT'L CRIM. JUST. 163 (2021).</p> <p style="text-align: center;">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>(21) April 3</p>	<p align="center">Challenges for the International Criminal Court: States and the UNSC</p> <p>Required Reading: Jeremy Sarkin, <i>Reforming the International Criminal Court (ICC) to Achieve Increased State Cooperation in Investigations and Prosecutions of International Crimes</i>, 9 INT'L HUM. RTS. L. REV. 27 (2020).</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 (2019).</p>
<p align="center">April 4</p>	<p align="center">*Final Paper Outlines Due*</p>
<p>(22) April 8</p>	<p align="center">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 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 (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 (2016).</p>
<p>(23) April 10</p> <p>(24) April 15</p>	<p 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, in 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 align="center">April 22</p>	<p align="center">*Optional: Full Drafts Due*</p>

<p>(25) April 17</p> <p>(26) April 22</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>Optional Reading: Martha Minow, <i>Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court</i>, 60 HARV. INT'L L.J. 1 (2019).</p>
<p>April 30</p>	<p style="text-align: center;">*Final Papers Due*</p>