

New York University
School of Professional Studies
M.S. in Global Affairs
International Justice
GLOB1-GC.2205.001

Instructor: Professor Trahan

Fall 2017, room 422

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office hours: Mon. 2:30-3:30 pm; Tues. 2:30-3:30 pm; Wed. 3-4pm
office #446

Course Description:

The course primarily examines the international and hybrid tribunals established to prosecute genocide, war crimes and crimes against humanity —providing background on each tribunal, key accomplishments (and shortcomings), and significant cases. The tribunals examined will include the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court and their predecessors – the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East (Tokyo). The course additionally examines the substantive law on genocide, war crimes and crimes against humanity, as well as individual and command responsibility. For contrast, we will also examine trials before the Iraqi High Tribunal (a domestic Iraqi court assisted by the U.S.) as well as Guantanamo Bay military commission trials. We additionally conduct a detailed study of the crimes committed in Darfur, Sudan. The course concludes with an introduction to additional techniques used in the field of transitional justice.

Course Prerequisites:

It is recommended that a student take the basic International Law course prior to taking this course.

Course Structure/Method:

The course will involve both lectures and discussion, delivered in person. Class assignments are contained below. Added handouts or clarifications will arrive via e-mail or will be distributed in class. Class sessions meet Mondays, 3:30-6:10 pm.

The course will require students to complete a mid-term exam, and write a 20-25 page research paper; class participation will also form a component of the grade.

Course Learning Outcomes:

By the end of this course, students will have a basic familiarity with the international and hybrid tribunals for prosecuting atrocity crimes and some of their key decisions, as well as detailed knowledge of the elements of the crimes of genocide, war crimes and crimes against humanity. Students will be encouraged to read legal decisions in detail, and critically, and should be able to discuss them persuasively. Familiarity with the readings in the first half of the course will be tested during the mid-term exam. Precision of

writing, research technique and the ability to write persuasively and logically will be tested in the final paper.

Communication Policy:

The professor will be available via e-mail and will also communicate through NYU Classes. Credits students must use your NYU e-mail addresses to communicate. NYU Classes course-mail supports student privacy and FERPA guidelines. All e-mails will be responded to promptly.

Course Expectations:

Please complete the first reading for the first class.

Mid-Term Exam:

There will be an in-class midterm examination on **October 30**. The midterm exam will be short-answer/essay format and will test your knowledge of the concepts discussed in class and from the assigned reading.

Final Paper:

You will need to submit a research paper of approximately 25 pages, examining an issue of international or transitional justice. All paper topics must be pre-approved by the professor. The proposed paper topic is due **September 25**. An outline of the paper is due on **October 9**. The research paper, which is due on the last class (**December 12**), must contain footnotes; no bibliography is required. All students will also need to give a short presentation (approximately 10-15 minutes) of their research to the class during the last class. Students are encouraged to meet with the professor during the semester to discuss progress on the paper.

Participation:

Students should arrive to class having read the materials and prepared to discuss them. Additionally, there will be **two days that require in-class participation of the entire class**, the classes covering the International Criminal Court (Class 9) and Darfur (Class 11). Additional instructions on those classes will be provided.

Required Reading Material:

The following materials are required and the first two are on order at the NYU Book Center (18 Washington Place):

- Gary Bass, “Stay The Hand of Vengeance: The Politics of International War Crimes Tribunals,” currently \$37.95 on Amazon
- “Genocide, War Crimes and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal for Rwanda” (Human Rights Watch 2010), currently \$ 50.00, sold by Human Rights Watch.
- Martha Minnow, “Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence,” currently \$17.46 on Amazon

Assessment Strategy:

Your grade will be based on the following:

- class preparation and participation, and presentation of research (10%)
- midterm exam (40%)
- research paper (50%)

Policies for missed or late assignments:

Students are expected to complete the mid-term exam on the day it is given and turn in their final paper on the last day of class.

Grading Scale:

Grade	Meaning	GPA Conversion
A	Exceptional; superior effort	4.0
A-	Excellent	3.7
B+	Very good	3.3
B	Good; meets program standards	3.0
B-	Meets program standards in most respects	2.7
C+	Requires moderate improvement	2.3
C	Requires significant improvement	2.0
C-	Requires extensive improvement	1.7
F	Fail – Did not meet minimal course requirements	0

NYUSPS Grading Policies can found here:

<http://sps.nyu.edu/academics/academic-policies-and-procedures/graduate-academic-policies-and-procedures.html#Grades>

NYUSPS Policies:

NYUSPS policies regarding the Family Educational Rights and Privacy Act (FERPA), Academic Integrity and Plagiarism, Students with Disabilities Statement, and Standards of Classroom Behavior among others can be found on the NYU Classes Academic Policies tab for all course sites as well as on the University and NYUSPS websites. Every student is responsible for reading, understanding, and complying with all of these policies.

The full list of policies can be found at the web links below:

- University: <http://www.nyu.edu/about/policies-guidelines-compliance.html>
- NYUSPS: <http://sps.nyu.edu/academics/academic-policies-and-procedures.html>

Additional Policies

- **Attendance and Lateness policy:** All students must attend class regularly. Your contribution to classroom learning is essential to the success of the course. Any more than two (2) absences (other than for verifiable medical or similar reasons) during the Fall and Spring and one (1) absence during the summer may lead to a need to

withdraw from the course or negatively impact your final grade.

- **Incomplete policy:** Incompletes are only granted in extreme cases such as illness or other family emergency and only where almost all work for the semester has been successfully completed and the basis for the Incomplete can be verified. A student's procrastination in completing his/her paper is not a basis for an Incomplete.
- **Submission of work:** All written work must be submitted via the Assignment Tool on NYU Classes; student work will be scanned by Turnitin plagiarism-detection software.
- **Statement on Academic Integrity and Plagiarism:** *Plagiarism is presenting someone else's work as though it were one's own. More specifically, plagiarism is to present as one's own a sequence of words quoted without quotation marks from another writer; a paraphrased passage from another writer's work; creative images, artwork, or design; or facts or ideas gathered, organized, and reported by someone else, orally and/or in writing and not providing proper attribution. Since **plagiarism is a matter of fact, not of the student's intention**, it is crucial that acknowledgement of the sources be accurate and complete. Even where there is no conscious intention to deceive, the failure to make appropriate acknowledgment constitutes plagiarism. Penalties for plagiarism range from automatic failure for a paper or course to dismissal from the University.*
- **Accommodations for Disabilities:** Any student who needs a reasonable accommodation based on a qualified disability is required to register with the Moses Center for Student Disabilities for assistance (<http://www.nyu.edu/students/communities-and-groups/students-with-disabilities.html>).

Class 1 (September 11): Introduction

- Beyond the Hague: The Challenges of International Justice, Richard Dicker & Elise Keppler (Human Rights Watch, World Report 2004)
<http://hrw.org/wr2k4/10.htm> (download)
- Neil Kritz, "Where We Are and How We Got Here: An Overview of Developments in the Search for Justice & Reconciliation," from The Legacy of Abuse: Confronting the Past, Facing the Future (The Aspen Institute 2002) (will be circulated electronically)
- errata sheets for both readings, updating the figures in them
- recommended: Jennifer Trahan, "Reflections on the Difficulties of Enforcing International Justice," 30 U. Penn. J of Int'l L 1187 (2009), at <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1850&context=jil>

Class 2 (September 18): The International Military Tribunal at Nuremberg/ The International Military Tribunal for the Far East (Tokyo)

- Gary Bass, "Stay The Hand of Vengeance: The Politics of International War Crimes Tribunals, pp. 147-205 (purchase)
- Matthew Lippman, "Nuremberg: Forty Five Years Later," 7 Conn. J. Int'l L. 1, skim pp. 1-11; read 11-19; skim 19-21 (to be provided electronically).

- Charter of the International Military Tribunal, <http://avalon.law.yale.edu/imt/imtconst.asp>
- Elizabeth S. Kopelman, “Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial,” 23 N.Y.U. J. Int’l L. & Pol. 373 (to be provided)
- recommended: Maria Hsia Chang & Robert P. Baker, “Victor’s Justice & Japan’s Amnesia: The Tokyo War Crimes Trial Reconsidered,” in *The Search for Justice: Japanese War Crimes* (Peter Li, ed.) (to be provided)
- in-class discussion of possible paper topics

Class 3 (September 25): The International Criminal Tribunal for the former Yugoslavia

- Gary Bass (above), pp. 206-75 (purchase)
- ICTY Statute, at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf
- *Prosecutor v. Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995) at <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm> (majority opinion only, ¶¶ 1-48) (download)
- Film: “Calling the Ghosts: A story about rape, war and women”
- **Paper topics due**

Class 4 (October 2): The International Tribunal for the former Yugoslavia (finish); the International Criminal Tribunal for Rwanda (start)

- *Prosecutor v. Erdemovic*, Case No. IT-96-22 (Appeals Chamber), October 7, 1997 (duress) majority opinion, paras. 1-10, 17 to end <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aj971007e.pdf>; Li opinion, paras. 1-12, 27; Joint Opinion of McDonald and Vohrah, paras. 55, 66, 72, 75, 88, 89 (Li and McDonald/Vohrah opinions to be provided)
- Additional reading on Erdemovic (to be provided)
- ICTR Statute, at http://unictr.unmict.org/sites/unictr.org/files/legal-library/100131_Statute_en_fr_0.pdf [start at p 65] (download)
- *Prosecutor v. Akayesu*, ICTR-96-4-T (Sept. 2, 1998) (Trial Chamber) (download), ¶¶ 1-6; skim indictment; ¶¶ 112-129; ¶¶ 170-72; ¶¶ 495-96; ¶ 491; ¶¶ 686-88; ¶¶ 701-02 [to download, go to ICTR.org; select English; select case; select status of cases; scroll down to completed cases; select Akayesu] <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>
- *Prosecutor v. Nahimana, Barayagwiza & Ngeze*, ICTR-99-52-T (Dec. 3, 2003) (Trial Chamber), SUMMARY: ¶¶ 1-34; ¶¶ 63-106; skim remainder http://hrlibrary.umn.edu/instree/ICTR/BARAYAGWIZA_ICTR-99-52/TRIAL_CHAMBER_Summary.html

NO CLASS OCTOBER 9

- **Outline due by e-mail**

Class 5 (October 16): The International Criminal Tribunal for Rwanda (finish)

- “Prosecuting Genocide in Rwanda: The Gacaca System and the International Criminal Tribunal for Rwanda,” The Norwegian Helsinki Committee, Report II/2002, focus on pp. 18-23 (The Gacaca System); and pp. 24-31 (The International Criminal Tribunal for Rwanda), at <http://www.essex.ac.uk/armedcon/themes/education/thegacacasystemrwanda.pdf>
- Film: “Shake Hands with the Devil: The Journey of Roméo Dallaire”

Class 6 (October 23): Genocide, Crimes Against Humanity and War Crimes

- Rome Statute of the International Criminal Court, Articles 6, 7, 8, found at <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf> (download);
- Genocide, War Crimes and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal for Rwanda (Human Rights Watch 2010), found at <https://www.hrw.org/sites/default/files/reports/ictr0110webwcover.pdf>
Chapter I (genocide), read pp. 15-48, skim pp. 49-82;
Chapter II (crimes against humanity), read pp. 82-103, skim pp. 103-146;
Chapter III (war crimes), read pp. 146-162, skim pp. 162-167.
- *Prosecutor v. Krstic*, IT-98-33-A (Appeals Chamber, April 19 2004), at <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>, ¶¶ 1-38.
- William A. Schabas, “Universal Jurisdiction: Myths, Realities, and Prospects: Problems of International Codification – Were the Atrocities in Cambodia and Kosovo Genocide?” 35 *New Eng. L. Rev.* 287 (Winter 2001) (to be provided electronically), read pp. 289-93 [start at the heading Cambodia: what is the group; stop before the heading on Kosovo].
- “Covered in Blood: Ethnically Targeted Violence in Northeastern DR Congo” pp. 1-4 (summary) & pp. 30-35 (read “Nyakunde massacre” only) <https://www.hrw.org/sites/default/files/reports/DRC0703.pdf>

Class 7 (October 30): mid-term examination (in class)

Class 8 (November 6): Individual and Command Responsibility

- Rome Statute of the International Criminal Court (above), Articles 25, 28;
- Genocide, War Crimes and Crimes Against Humanity (above), Chapter IV (individual responsibility), Chapter V (command responsibility).

Class 9 (November 13): The International Criminal Court

- Rome Statute of the International Criminal Court (above), focus on Articles 1-33, 53, 62-67; 98; skim remainder.
- Packet of materials (to be provided)
- **Participation required: students will be assigned to debate either for or against the US becoming a State Party to the ICC’s Rome Statute.**

Class 10 (November 20): The Sierra Leone Special Court

- Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S/2000/915 (Oct. 4, 2000), read ¶¶ 1-48, <http://www.rscsl.org/Documents/Establishment/S-2000-915.pdf>

- Statute of the Special Court for Sierra Leone,
<http://www.rscsl.org/Documents/scsl-statute.pdf> [Don't read Statute appended to S/2000/915]
- *Prosecutor v. Kallon*, Case No. SCSL-2004-15-AR72(E) (March 13, 2004)
Decision on Challenge to Jurisdiction: Lomé Accord Amnesty.
<http://www.scsl-docs.org/documents/view/1307-4> AND
<http://www.scsl-docs.org/documents/view/1307-4200> Read ¶¶ 1-21, ¶¶ 36-50, ¶¶ 61-91
- *Prosecutor v. Charles Taylor*, Case No. SCSL-2003-01-I (May 31, 2004)
Decision on Immunity from Jurisdiction. Go to
<http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/059/SCSL-03-01-I-059.pdf> and print decision SCSL-03-01-I-59(not the summary). Read ¶¶ 1-5, ¶¶ 34-59

Class 11 (November 27): Interactive Exercise – Justice for Darfur

Participation required: Each student will be responsible for presenting specific, assigned pages from the following readings. The student should then explain whether those pages reveal information relevant to the crime of genocide.

- “Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan,” Human Rights Watch Report, Vol.16, No. 6(A), May 2004, pp. 5-39, 42-50, at <http://www.hrw.org/en/reports/2004/05/06/darfur-destroyed>
- “Darfur Documents Confirm Government Policy of Militia Support,” A Human Rights Watch Briefing Paper, July 20, 2004,
<http://hrw.org/backgrounder/africa/072004darfur.pdf>
- “Entrenching Impunity: Government Responsibility for International Crimes in Darfur,” at <http://www.hrw.org/en/reports/2005/12/08/entrenching-impunity>

Class 12 (December 4): Justice related to Iraq

- Justice for Iraq, A Human Rights Watch Policy Paper (Human Rights Watch December 2002), at <http://www.hrw.org/backgrounder/mena/iraq1217bg.htm> (download)
- ICTJ Briefing Paper: “Dujail: Trial and Error?” (International Center for Transitional Justice November 2006) at <http://ictj.org/sites/default/files/ICTJ-Iraq-Dujail-Trial-English-2006.pdf>
- *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006) (majority opinion) (to be distributed electronically)
- Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan (Human Rights First), pp. 1-11, 29-44, at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/06221-etn-hrf-dic-rep-web.pdf>

Class 13 (December 11): Response to mass atrocities other than prosecution

- Martha Minnow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (purchase)

Class 14 (TUESDAY, December 12): Papers due & presentation of papers to the class