University of Alabama Law School  
Law 624  

International Criminal Law Seminar

2 credit hours, Fall 2012  
Meetings on: Sept. 4-7; October 8-12

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This interdisciplinary seminar will introduce students to the core principles of international criminal law, including the substantive law concerning genocide, crimes against humanity, war crimes, aggressive war, and terrorism. The seminar will examine international courts, customary forms of dispute resolution, truth commissions, the sources of mass atrocity, the psychology of perpetrators, and reparations. Specific attention will be oriented towards child soldiering and international crimes committed by and against youth under the age of eighteen. This issue is particularly topical in light of the Kony2012 campaign and recent international convictions on charges of illicit recruitment of child soldiers.

Among the seminar's multiple aims is to think about the role of law and legal institutions in societies that have suffered systemic human rights violations. We will discuss examples from Nazi Germany, the former Yugoslavia, Rwanda, Sudan, Iraq, Uganda, Cambodia, South Africa, Sierra Leone, Congo, and the United States.

Evaluation: Students will prepare and present (to the class) a research thought-piece paper (25 pages). Students also are expected to contribute to class discussions. The paper will satisfy the seminar requirement for graduation and will be evaluated pursuant to those conditions.

Readings will be specified for every class. Some will be handed out as we go along. There will be some documentary and cinema presentations.

The due date for the paper is ___. There are no extensions. The paper is to be sent to me by email attachment to the following account: drumblm@wlu.edu. The attached policy on plagiarism applies to the submission of the research paper.
Required Texts:


I may distribute other readings prior to the class in which they are to be discussed, or provide hyperlinks.
SYLLABUS

Please keep an eye on periodicals and newspapers; feel free to bring articles of interest to class, where we can discuss them.

You will find below a detailed schedule of all of the issues covered in our seminar. READINGS ARE TO BE COMPLETED PRIOR TO THE CLASS HELD ON THAT DATE. Class involves a dialogue between and among students and faculty. This means active participation on your part.

Class 1: Tuesday September 4 (AM: 8:30-10:35)

Introduction and Overview

Ordinary Domestic Crimes and Extraordinary International Crimes.

What is justice? Guilt?

Modalities of Justice: Criminal trials, truth commissions, reparations.

Readings: Atrocity, Punishment, and International Law, ch. 1 (to be distributed electronically)

Class 2: September 4 (PM: 3:30 – 5:20)

Collective and Social Psychology of Atrocity

Readings: http://en.wikipedia.org/wiki/Milgram_experiment
Drumbl Chapter 1 (child soldiers)

Video – Cry Freetown

Discussion of child soldiers: Introduction
Class 3: September 5 (AM)

Introduction to International Law. Sources of International Law: treaty and custom (*jus cogens*). Principles of International Criminal Law

**Readings:**  
Handout (*necessary for those who haven’t taken public international law*): *What Is International Law?*

*Rome Statute of the International Criminal Court, arts. 5, 6, 7, 8 (pp. 317-323 of HUMAN RIGHTS MODULE), proposed aggression amendment.*

*HUMAN RIGHTS MODULE, 4-28, 42-45, 50-55, 83-86*

Class 4: September 6 (AM)

Genocide, crimes against humanity, aggression, war crimes, terrorism.

**Readings:**  
Reread *Rome Statute of the International Criminal Court, arts. 6, 7, 8.*

*Hannum article in the HUMAN RIGHTS MODULE, pp. 89-93 (Cambodia)*

**Article:**
http://www.foreignaffairs.org/20050101faessay84111/scott-strauss/darfur-and-the-genocide-debate.html (Sudan)

Institutions Enforcing International Criminal Law.


**Readings:**  
Skim *HUMAN RIGHTS MODULE, 298-318, 324-332, 357-358; particular attention to Rome Statute arts. 12, 13, 14, 15, 16, 17*
Class 5: September 6 (PM)


On Incitement, Prosecutor v. Bikindi, ICTR
http://www.ictr.org/ENGLISH/cases/Bikindi/judgement/081202eSummary.pdf

Video on Gacaca

Alternative modalities of justice

Class 6: September 7 (AM)

Sentencing

Child Soldiers

Readings: Drumbl Chapter 2, 3

PLEASE SUBMIT A DRAFT OF YOUR PAPER TO ME BY OCTOBER 1. I WILL RETURN TO YOU WITH FEEDBACK BY OCTOBER 8.

Class 7: October 8 (AM)

Child Soldiers: Legal Responsibility for their conduct

Readings: Drumbl Chapters 4, 6

Class 8: October 9 (AM)

Child Soldiers: Legal Responsibility for Illicit Recruitment, Conscription, Abduction

Readings: Drumbl Chapter 5
Class 9: October 9 (PM)

Case Study

One or Two of:

* Former Yugoslavia: Gender-Based Violence and Criminal and Civil Sanctions
* International Terrorism, Non-State Actors, and Humanitarian Law
* Sierra Leone and Congo: Natural Resources and Atrocity
* South Africa and Truth Commissions

Or of a topic of your choice

Class 10: October 10 (AM)

Case-Study OR Student Paper Presentations

Class 11: October 11 (AM)

Student Paper Presentations

Class 12: October 11 (PM)

Student Paper presentations

Class 13: TBA

FOLLOWING COMMENTS FROM FELLOW STUDENTS AND ME AT THE PRESENTATION, STUDENTS WILL FINALIZE THEIR RESEARCH PAPER.
Possible Writing Topics (you are free to propose any topic, but here are some ideas)

Is joint criminal enterprise, which has become a favored basis for liability in the international criminal tribunals, a suitable mechanism to deal with individual action amid collective forces? What about conspiracy?

What do you make of the move by national courts to utilize theories of liability such as joint criminal enterprise developed under international criminal law to prosecute our “wars”, such as the war on terrorism and the war on drugs?


Command responsibility: Should individual soldiers following orders be found guilty?

Abu Ghraib: Just the Bad Behavior of a Few?

In Musema, the ICTR held that the director of a tea factory can be held liable under theories of command responsibility for the acts of his employees. Does such an extension of command responsibility outside of the military context strike you as warranted?

Should the dissemination and publishing of hate literature and genocidal propaganda be prohibited? Or does this infringe freedom of expression? Note that the national radio station – called Radio Télévision Libre des Milles Collines – played a catalytic role in the Rwandan genocide by serving as a conduit for anti-Hutu hate propaganda. Analyze the decision by the ICTR in the Barayagwiza et al. (media) (2007) case? Or the 2008 Bikindi case, where a Rwandan pop singer was sentenced to 15 years for inter alia genocide but the ICTR Trial Chamber did not base the conviction on the songs themselves.

Do the pressures of obtaining convictions in international criminal law coax judges and prosecutors to act in manners that may run afoul of human rights law? That said, is there any doubt that Saddam Hussein or Pol Pot, for example, are guilty? Consider the March 31, 2000 decision by the ICTR to reconsider its previous decision to quash the indictment against Jean-Bosco Barayagwiza owing to violations of the defendant’s due process rights.

Discuss any aspect of the Saddam Hussein Trial before the Iraqi High Criminal Court.

To what extent do the Statute of the Iraqi Special Tribunal (December 10, 2003, which became the Iraqi High Criminal Court) and the rules for the Guantanamo Bay military commissions derive from principles of international criminal law? Does this suggest the internalization by the US of many more of these principles than might be apparent at first blush? Or does it suggest that US concerns with the framework of international criminal law have little to do with the substance of
that law but, rather, the chance that US officials may become subject to it? On this latter note, to what extent might the commissions deviate from international humanitarian law?

What does “ethnicity” mean?


Discuss the judgment of the Supreme Court of Canada in Musesera.

General Augusto Pinochet – should he have been be tried, or should the past be forgotten? Is there any philosophical justification for passing amnesties?

What is the role of a domestic court in prosecuting someone for international crimes? Should all war crimes prosecutions occur internationally, or should one nation have a right to try former leaders of another nation for war crimes? Compare the House of Lords decision in Pinochet with the International Court of Justice Decision in Belgium v. Congo (2002).

Should crimes motivated by racial, ethnic or gender hatred be more severely punished?

Nationalism, patriotism, and propaganda: what is the relationship of each of these to authoritarianism and/or mass violence, if any? Why do people take pride in the country in which they are born given the fact they have no control over where they are born in the first place?

Why do people hate based on ethnic or religious factors?

Daniel Goldhagen has written a controversial book – Hitler’s Willing Executioners – which concludes that the average German knew the Holocaust was occurring and did nothing to stop it because he or she did not want to stop it. If this is true, how do we hold the average citizen accountable for this complicity in the Holocaust? Do you think the same is true in other genocidal societies? What about Rwanda?

Gendered war crimes: Rape, forced pregnancy, forced sterilization, coerced marriage: Can these constitute genocide? What should be the appropriate legal responses? How should prosecuting these crimes make allowances to facilitate witness or victim testimony but still maintain the accused’s right to a fair trial?

Look more specifically at definitions of rape and sexual violence in the Akayesu (ICTR) and ICTY decisions. How do these compare? How did the tribunals reach their decision. What was the involvement of not-for-profit groups – see The Amicus Brief Regarding Rape in Rwanda in the Trial Chamber of the International Criminal Tribunal for Rwanda (<http://www.hri.ca/doccentre/violence/amicus-brief.shtml>)
Discuss a case-study not covered in the course. These can be contemporary (Guatemala, Tibet) or historical (Stalin’s purges, Armenia-Turkey, First Nations peoples in Latin or North America).

September 11 – discuss any aspect. Is this war? An armed attack? Or a criminal attack? What should happen to Al-Qaeda members? Who should try them? Where? Or should they simply be incapacitated or eliminated?

September 11 – What is the relationship between fear and security?

What are the advantages and disadvantages, challenges and successes of the methods and means chosen to respond to the 9/11 attacks?

Were the Kosovo bombings legal? Morally justifiable? Legitimate? What about the invasion of Iraq?

What do you think of U.S. opposition to the ICC? What is the effect of this opposition in the post-September 11 context?

Are individual trials for systemic human rights abusers convenient for covering up the role of the great powers in propping up abusive governments? Consider Makau Mutua’s “savages” and “saviors” thesis.

Alien Tort Claims Act – what do you make of civil remedies to respond to human rights violations? What about when those civil remedies are sought in foreign courts? Discuss the lawsuit filed against a Canadian company, Talisman, in New York for its alleged complicity in systematic human rights abuses in the Sudan.

Discuss civil and declaratory remedies, and restorative justice, as alternatives to criminal prosecution and punishment in the context of transitional justice.

Punishment and sanction: how should a génocidaire be punished?

Law and Literature - discuss Schlink’s Der Vorleser (The Reader), about a relationship between a young lawyer and a former Auschwitz camp guard.

Any aspect of the child soldier conundrum.

What do victims’ rights mean in the international criminal law context?
PLAGIARISM

The submission, grading, and preparation of your research paper will be subject to the following policy on plagiarism. I urge you to carefully familiarize yourself with this policy. I reserve the right to issue a failing grade in this course should I find the research paper you submit to evidence plagiarism as defined according to any of the nine elements of the following policy.

PLAGIARISM IS:

1. Word-for-word lifting of ten consecutive words or more, without quotation marks.
2. Word-for word lifting of ten consecutive words or more, without quotation marks, and without proper attribution to the actual source, nor the source cited by that source, if any.
3. Word-for word lifting of ten consecutive words or more, without quotation marks, with attribution to a source which was not the original source from which the passage was actually lifted, but was a source cited by that original source.
4. Word-for word lifting of ten consecutive words or more, without quotation marks or block quotations, with attribution to the original source from which the original passage was lifted, but without indication that these are the words of another.
5. Attributing a quoted passage to a source that does not contain that quoted passage.
6. Attributing material to a source that does not support the passage for which it is cited.
7. The substitution of one’s own words for selected words in a lifted passage, while retaining the basic thought, order, and syntax of the original.
8. Paraphrasing important concepts without acknowledging the source.
9. The utilization of language, ideas, concepts, or statements of another.