

# USC GOULD SCHOOL OF LAW

**LAW 450: Law, Atrocity Crimes and Transitional Justice**

**Units: 4**

**Spring 2019—Tues. & Thurs. (110 minutes each day),**

**Time: 12-1:50pm**

**Location:** Musick Law Building, #TBA

**Instructor:** Professor Hannah Garry

**Office:** Musick Law Building, #442

**Office Hours:** Please see IV. below.

**Contact Info:** Email: [hgarry@law.usc.edu](mailto:hgarry@law.usc.edu), Tel.: 213-740-9154

**Teaching Assistant:** TBA

## I. COURSE DESCRIPTION & OBJECTIVES

This course is about the worst things people do to each other and what can be done about it under international law. Today, there are over 65 million people displaced from countries such as Syria, Myanmar and Sudan who are victims of the most serious human rights abuses also known as “mass atrocities”—genocide, war crimes, crimes against humanity and aggression. Since World War II, there have been thousands of trials of individuals responsible for these heinous crimes.

This course introduces students to international criminal law—its historical development from the Armenian Genocide and the Holocaust to the present, and how prosecutors bring a case against powerful government and civilian leaders such as Al Bashir and Assad. Students learn about international law and courts trying these cases, while also reflecting on whether criminal trials are the best response for bringing healing and reconciliation to affected societies, also known as “transitional justice”.

Specifically, students will explore the historical basis for the evolution of international legal norms applied in international criminal trials found in the law of armed conflict (also known as international humanitarian law), international human rights law, the 1948 Genocide Convention and law on the use of force by States under the UN Charter. Students will understand how and why some human rights abuses under international law are considered to be so grave that they are “atrocity crimes”. Students will also study how high level leaders are responsible for these abuses even though they did not personally commit them.

In addition, students will learn about the first international tribunals for Axis leaders post-World War II at Nuremberg and Tokyo, and how these served as a foundation for: 1) the growing number of international or quasi-international tribunals for mass atrocity situations in various countries from 1993 to the present, such as for the former Yugoslavia,

Rwanda, Sierra Leone, and Cambodia; and 2) the establishment of a permanent International Criminal Court in The Hague. As part of this study of the international framework for trials, students will learn how it interacts with domestic criminal justice systems.

In sum, the objectives of this course are: 1) to provide an overview of the field of international criminal law, the historical basis for its rapid development since the Cold War, and the importance of this law vis-a-vis current global events; 2) to foster a clear understanding of the substantive law applied and enforced in trials before international criminal tribunals; and 3) to analyze the future of international criminal law as an effective means for promoting transitional justice --namely peace, reconciliation and security—in conflict-ridden societies, particularly in light of current anti-globalization trends and world-wide instability.

## **II. COURSE STRUCTURE & REQUIREMENTS**

- **Lectures & Discussion**

This class meets on Tuesdays and Thursdays from 12 to 1:50pm in Room XX of the Musick Law Building beginning January 7th and ending Thursday, April 25. We will not meet the week of March 10-17 due to Spring Break.

During each class period, there will generally be an introductory lecture for the first 15-30 minutes of class followed by a mixture of lecture and discussion. For most classes, I will use power points and multi-media to enhance the lecture; following class, I will post any power point slides on Blackboard.

Students are advised that while this course is relevant and important for understanding how international law can be used to address the most serious human rights abuses, students should note that some of the cases studied involve intense facts that have been charged, describing some of the worst of the worst acts that human beings are capable of perpetrating against each other. These traumatic facts depict mass killings, sexual violence, torture, persecutions, and other acts of similar gravity. Students should consider whether they are prepared to be exposed to such facts.

In addition, this course's workload reflects the 4 units that are awarded. The course is a mix of international law and international relations all in one. The law is still evolving as politics change, which requires creative thinking to address unresolved issues. Students are expected to have read all of the assigned reading prior to class and to participate in in-depth discussion of the case studies each class period.

The finalized reading and assignments list for each day at VI. below, will be provided to enrolled students before the start of the semester. As indicated on the list, you will find other materials that I assign outside of the required texts for this course, posted on Blackboard under "Content".

The assigned reading for this course is that of international lawyers, in other words, international judicial decisions, treaties, United Nations resolutions and statutes of international tribunals. Students will also be assigned secondary materials to give context, and visual media such as documentaries and videos about international tribunals and events surrounding various serious human rights abuse situations around the globe as case studies for deepening their understanding of the subject matter.

- **Attendance and Participation Policies**

Please note that attendance is mandatory and attendance will be taken each day; however, absences will be excused for observance of any religious holidays or other such necessary absences such as illness.

Regular classroom participation will be factored in to the final grade. Falling behind in the reading or failing to attend class repeatedly will have negative repercussions on your grade because the material builds upon itself.

Students are expected to participate in the classroom discussion through volunteering or when called upon.

- **Grading**

**Participation (15%):**

Participation is required for this course. Participation will be assessed on the basis of your discussion in class as well as the quality and completeness of your representation of your 1-2 page analyses of the assigned casebook or current events problems that we will discuss.

**Assigned Casebook/Current Events Problems (20%):**

As noted above, for 3-5 of the class periods, you will be assigned case book/current events problems/fact patterns to read of 1-5 pages each, that we will analyze and discuss in class that day. For each of these problems you will be expected to write up 1-2 pages of analysis of the fact pattern answering the questions posed, which are to be posted to Blackboard by 9am, the day they are due. You should also bring your write-ups to class to facilitate participation in group analysis of the problem. Each analysis will be graded on the basis of its quality and completeness. They should be organized, concise and answer directly the call of the questions, demonstrating your understanding of the subject matter.

**Mid-Term Exam (15%):**

The mid-term will consist of an in-class multiple choice/true-false exam (10-20 questions).

**Final Evaluation (50%):**

The final will consist of an in-class multiple choice/true-false exam (20-25 questions) and one take-home essay exam analyzing a fact pattern provided by the professor and applying the law to the facts or a research paper on a topic chosen by the student among the topics covered in class (12-15 pages in length).

**III. REQUIRED TEXTS**  
**(to be confirmed before start of semester)**

Van Schaack, B. & R. Slye, *International Criminal Law & Its Enforcement: Cases and Materials*, 3d ed. (Foundation Press 2014)

Slye, Ronald C. & B. Van Schaack, *Essentials: International Criminal Law* (Aspen Publishers 2009) (excerpts will be posted on Blackboard)

#### IV. OFFICE HOURS

I operate under an “open-door” policy and am generally in office from Monday-Thursday, 10am-5:30pm. Please feel free to stop by anytime. That said, because I also direct the USC Gould International Human Rights Clinic, I may be in a student attorney supervision/client meeting. As such, I would recommend letting me know ahead of time in class or via email when you would like to drop by. Emails with questions are always welcome, and I will answer them as promptly as possible.

#### V. OTHER TEXTS & INFORMATION

The following resources are provided to enhance your understanding of the course—to be consulted at your discretion for purposes of developing paper topics, for example—but are not required.

##### A. Supplementary Texts

Bassiouni, M. Cherif, *Introduction to International Criminal Law*, 2d ed. (Martinus Nijhoff Publishers 2013).

Bederman, David J., *International Law Frameworks*, 3rd ed. (Foundation Press 2010).

Burgenthal, T. & Murphy, Sean D., *Public International Law in a Nutshell*, 4<sup>th</sup> ed. (Thomson/West Publishers 2007).

Cassese, A., *International Criminal Law*, 3rd ed. (Oxford University Press 2013).

Cassese, A. et al., *International Criminal Law: Cases & Commentary* (Oxford University Press 2011).

Cryer, Robert, et al., *An Introduction to International Criminal Law and Procedure*, 3rd ed. (Cambridge University Press 2014).

MacKenzie, Ruth et al., *The Manual on International Courts and Tribunals* (Oxford University Press 2010).

Romano, Cesare P.R., Nollkaemper, André & Kleffner, Jann K., *Internationalized Criminal Courts* (Oxford University Press 2004).

*Routledge Handbook of International Criminal Law*, William A. Schabas and Nadia Bernaz, eds. (Routledge 2011).

Sassòli, M. & Bouvier, Antoine A., *How Does Law Protect in War?*, 2<sup>nd</sup> ed., Vols. I & II (ICRC Geneva 2006).

Schabas, William A., *An Introduction to the International Criminal Court*, 4<sup>th</sup> ed. (Cambridge University Press 2011).

-----, *The UN International Criminal Tribunals* (Cambridge University Press 2006).

*The Oxford Companion to International Criminal Justice*, Antonio Cassese, Ed.-in-Chief (Oxford University Press 2009).

Werle, G., *Principles of International Criminal Law*, 3rd ed. (Oxford University Press 2014).

## **B. Leading Journals**

American Journal of International Law  
Criminal Law Forum  
International Criminal Law Review  
Journal of Conflict and Security Law  
Journal of International Criminal Justice  
Leiden Journal of International Law  
The Law and Practice of International Courts and Tribunals

## **C. Useful Websites**

**Extraordinary Chambers in the Courts of Cambodia:** [www.eccc.gov.kh/english/](http://www.eccc.gov.kh/english/)  
**International Committee of the Red Cross:** [www.icrc.org](http://www.icrc.org)  
**International Court of Justice:** [www.icj-cij.org](http://www.icj-cij.org)  
**International Criminal Tribunal for the former Yugoslavia:** <http://www.icty.org/>  
**International Criminal Tribunal for Rwanda:** [www.icttr.org](http://www.icttr.org)  
**International Criminal Court:** [www.icc-cpi.int](http://www.icc-cpi.int)  
**Nuremburg International Military Tribunal:**  
[http://avalon.law.yale.edu/subject\\_menus/imt.asp](http://avalon.law.yale.edu/subject_menus/imt.asp)  
**Nuremburg Military Tribunals:** [www.mazal.org/nmt-home.htm](http://www.mazal.org/nmt-home.htm)  
**Special Court for Sierra Leone:** [www.sc-sl.org](http://www.sc-sl.org)  
**Special Panels for Serious Crimes in East Timor:** [www.jsmp.minihub.org](http://www.jsmp.minihub.org)  
**Special Tribunal for Lebanon:** <http://www.stl-tsl.org/>  
**Special War Crimes Chamber in the Court of Bosnia & Herzegovina:**  
<http://www.sudbih.gov.ba/?jezik=e>  
**UNAKRT (UN Assistance to the Khmer Rouge Trials):** <http://www.unakrt-online.org/>  
**War Crimes Prosecution Watch:**  
<http://www.publicinternationallaw.org/warcrimeswatch/>

## **V. ACADEMIC CONDUCT AND SUPPORT SYSTEMS**

### **Academic Conduct**

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Section 11, *Behavior Violating University Standards* <https://scampus.usc.edu/1100-behavior-violating-university-standards-and-appropriate-sanctions/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct/>.

Discrimination, sexual assault, and harassment are not tolerated by the university. You are encouraged to report any incidents to the *Office of Equity and Diversity* <http://equity.usc.edu/> or to the *Department of Public Safety* <http://capsnet.usc.edu/departments/departments-public-safety/online-forms/contact-us>. This is important for the safety whole USC community. Another member of the university community – such as a friend, classmate, advisor, or faculty member – can help initiate the report, or can initiate the report on behalf of another person. *The Center for Women and Men* <http://www.usc.edu/student-affairs/cwm/> provides 24/7 confidential support, and the sexual assault resource center webpage [sarc@usc.edu](mailto:sarc@usc.edu) describes reporting options and other resources.

### **Support Systems**

A number of USC’s schools provide support for students who need help with scholarly writing. Check with your advisor or program staff to find out more. Students whose primary language is not English should check with the *American Language Institute* <http://dornsife.usc.edu/ali>, which sponsors courses and workshops specifically for international graduate students. *The Office of Disability Services* and *Programs* [http://sait.usc.edu/academicsupport/centerprograms/dsp/home\\_index.html](http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html) provides certification for students with disabilities and helps arrange the relevant accommodations. If an officially declared emergency makes travel to campus infeasible, *USC Emergency Information* <http://emergency.usc.edu/> will provide safety and other updates, including ways in which instruction will be continued by means of blackboard, teleconferencing, and other technology.

**VI. COURSE SCHEDULE & ASSIGNMENTS**  
**Law, Atrocity Crimes & Transitional Justice**  
**(Draft—text and pages assigned for reading to be confirmed before start of semester)**

\*Please note that on some class days, you are assigned fact patterns to analyze prior to class discussion. **For each assignment in bold below, please post your 2-3 pages of typewritten answers by 9am on the due date indicated below onto Blackboard and bring with you to class for discussion.** Prof. Garry will provide you, in advance, with any special instructions regarding the analysis you are to undertake with respect to the assigned fact patterns.

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
1.	<b><u>Overview of Course and International Criminal Law I:</u></b> What is International Criminal Law (“ICL”)?; history of ICL	<ul style="list-style-type: none"> <li>• Essentials, pp. 7-47 (<b>all Essentials readings on Blackboard</b>)</li> <li>• Casebook, pp. 1-3</li> </ul>
2.	<b><u>Overview of ICL II:</u></b> What is a “Transitional Justice Mechanism”? ICL as a tool for transitional justice mechanism vs. other transitional justice mechanisms and the case of Afghanistan, which mechanism is best?	<ul style="list-style-type: none"> <li>• Casebook, pp. 4-26</li> <li>• Essentials, pp. 295-321</li> </ul>
3.	<b><u>Jurisdictions I:</u></b> International tribunals: Nuremberg & Tokyo	<ul style="list-style-type: none"> <li>• Casebook, pp. 27-65</li> <li>• International Criminal Tribunals: Overview &amp; Statutes (<b>On Blackboard; also, hard copies of spiral bound handbook will be</b></li> </ul>



<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
		<p><b>provided previously in class—use as a reference throughout the course)</b></p> <ul style="list-style-type: none"> <li>Documentary: “Nuremberg: Its Lesson for Today”</li> </ul>
4.	<b><u>Jurisdictions II:</u></b> International Tribunals: International Criminal Tribunals for the former Yugoslavia & Rwanda	<ul style="list-style-type: none"> <li>Casebook, pp. 65-74</li> <li>Documentary: “Ghosts of Rwanda”</li> </ul>
5.	<b><u>Jurisdictions III:</u></b> International Courts: International Criminal Court, Part I	<ul style="list-style-type: none"> <li>Casebook, pp. 81-96</li> <li>Documentary short: “Law or War: Creation of the International Criminal Court”</li> </ul>
6.	<b><u>Jurisdictions IV:</u></b> International Courts: International Criminal Court, Part II	<ul style="list-style-type: none"> <li>Casebook, pp. 81-96</li> </ul>
7.	<p><b><u>Jurisdictions V:</u></b> International Courts: International Criminal Court, Part III</p> <p>Case Study: the relationship of the U.S. to the International Criminal Court &amp; investigations against U.S. citizens for torture</p>	<ul style="list-style-type: none"> <li>TBD</li> </ul>
8.	<b><u>Jurisdictions VI:</u></b> Hybrid Courts: Extraordinary Chambers in the Courts of Cambodia	<ul style="list-style-type: none"> <li>Casebook, pp. 161-170; 174-188</li> </ul>

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
		<ul style="list-style-type: none"> <li>• Hammer, Joshua, “The Very Tricky Trial of the Khmer Rouge”, <i>The New York Review of Books</i>, May 21, 2015 (<b>reading posted on Blackboard</b>)</li> </ul>
9.	<b><u>Jurisdictions VII:</u></b> Hybrid Courts: the Special Court for Sierra Leone	<ul style="list-style-type: none"> <li>• Casebook, pp. 161-170; 174-188</li> <li>• Documentary: “War Don Don”</li> </ul>
10.	<b><u>Substantive ICL I:</u></b> The making of ICL—international and domestic sources of the law	<ul style="list-style-type: none"> <li>• Essentials, pp. 85-106</li> </ul>
11.	<b><u>Substantive ICL II:</u></b> War Crimes: Historical basis; When does International Humanitarian Law Apply? Existence of an armed conflict requirement	<ul style="list-style-type: none"> <li>• Casebook, pp. 203-239</li> </ul>
12.	<b><u>Substantive ICL III:</u></b> War Crimes: When does International Humanitarian Law Apply? International vs. non-international armed conflict	<ul style="list-style-type: none"> <li>• Casebook, pp. 239-250</li> </ul>
13.	<b><u>Substantive ICL IV:</u></b> War Crimes: When does International Humanitarian Law Apply? Internationalization of an armed	<ul style="list-style-type: none"> <li>• Casebook, pp. 253-264</li> </ul>

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
	conflict and nexus—the case of the former Yugoslavia	
14.	<b>Substantive ICL V:</b> War Crimes: Hague Law: Regulation of means & methods of armed conflict	<ul style="list-style-type: none"> <li>• Casebook, pp. 265-280 (up to “Problem”)</li> </ul>
15.	<b>Substantive ICL VI:</b> War Crimes: Geneva Law: Combatants & civilians as protected persons, Part I	<ul style="list-style-type: none"> <li>• Casebook, pp. 292-315 (up to Note 5)</li> </ul>
16.	<b>Substantive ICL VII:</b> War Crimes: Geneva Law: Combatants & civilians as protected persons, Part II, and war crimes perpetrated in Syria’s war since 2011	<ul style="list-style-type: none"> <li>• Casebook, pp. 292-315 (up to Note 5)</li> <li>• <b>Assignment: Case Study--Syria’s war (reading posted on Blackboard)</b></li> </ul>
17.	<b>Substantive ICL VIII:</b> Aggression: Historical basis and codification as a crime at the International Criminal Court	<ul style="list-style-type: none"> <li>• Casebook, pp. 347-373; 376-387 (up to Note 8)</li> <li>• “Aggression is now a Crime”, Op-Ed by David Scheffer in the NYTimes, July 1, 2010. (<b>posted on Blackboard</b>)</li> <li>•</li> </ul>
18.	<b>Substantive ICL IX:</b> Aggression: Codification as a crime at the International Criminal Court and Russia’s annexation of the Crimea	<ul style="list-style-type: none"> <li>• The definition of the crime of aggression adopted by the Rome Statute Review Conference on June 11, 2010 (on Blackboard)</li> <li>• <b>Assignment: Case Study--Ukraine and the Crimea (reading posted on Blackboard)</b></li> </ul>

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
19.	<b><u>Substantive ICL X:</u></b> Crimes Against Humanity: historical basis and widespread or systematic attack	<ul style="list-style-type: none"> <li>• Casebook, pp. 390-415</li> </ul>
20.	<b><u>Substantive ICL XI:</u></b> Crimes Against Humanity: attack directed against any civilian population and nexus of acts to the attack	<ul style="list-style-type: none"> <li>• Casebook, pp. 415-440</li> </ul>
21.	<b><u>Substantive ICL XII:</u></b> Crimes Against Humanity: underlying acts—extermination, other inhumane acts, and persecution	<ul style="list-style-type: none"> <li>• Casebook, pp. 440-444 (up through note 2)</li> </ul>
22.	<b><u>Substantive ICL XIII:</u></b> Genocide: protected groups; specific intent to destroy & the case of Cambodia under the Khmer Rouge—was this genocide?	<ul style="list-style-type: none"> <li>• Casebook, pp. 449-484</li> <li>• Documentary: “Enemies of the People”</li> </ul>
23.	<b><u>Substantive ICL XIV:</u></b> Genocide: “in whole or in part”	<ul style="list-style-type: none"> <li>• Casebook, pp. 484-502</li> </ul>
24.	<b><u>Substantive ICL XV:</u></b> Genocide: acts that qualify as genocidal acts	<ul style="list-style-type: none"> <li>• Casebook, pp. 503-516 (up to note 12)</li> <li>• <b>Assignment: Case Study: Genocide in Myanmar (reading posted on Blackboard)</b></li> </ul>

<u>Date</u>	<u>Lecture Topic</u>	<u>Reading Assignments</u>
25.	<b><u>The “Internationalization” of Atrocity Crimes:</u></b> Why only “core international crimes”? What about terrorism or human trafficking?	<ul style="list-style-type: none"> <li>• Essentials, pp. 107-119</li> <li>• Casebook, pp. 615-624; 636-653 (up to note 5)</li> </ul>
26.	<b><u>Individual Criminal Theories of Responsibility I:</u></b> Ordering	<ul style="list-style-type: none"> <li>• Casebook, pp. 681-692</li> </ul>
27.	<b><u>Individual Criminal Theories of Responsibility II:</u></b> Superior Responsibility	<ul style="list-style-type: none"> <li>• Casebook, pp. 692-695; 711-726; 736-749 (up to note 4); 751-780 (up to note 7)</li> </ul>
28.	<b><u>Individual Criminal Theories of Responsibility III:</u></b> Joint Criminal Enterprise and group liability (for corporations, e.g.) vs. individual criminal liability	<ul style="list-style-type: none"> <li>• Casebook, pp. 815-832</li> </ul>
29.	<b><u>Defenses under ICL I:</u></b> Head of State immunity; amnesty	<ul style="list-style-type: none"> <li>• Casebook, pp. 968-990 (up to Note 4)</li> <li>• Documentary: “War Don Don”</li> </ul>
30.	<b><u>A Critical Assessment of the Future of International Criminal Law:</u></b> where are we at and where are we going?	<ul style="list-style-type: none"> <li>• TBD Documentary: “The Reckoning: the Battle for the International Criminal Court”</li> </ul>

