

International Criminal Law in Context 15PLAH041

Syllabus

Term 2, 2013

Professor Chandra Lekha Sriram

photo of the Special Court for Sierra Leone, July 2004
Chandra Lekha Sriram



Main Aim(s) of the Module:

This module considers the development and application of international criminal accountability in contemporary armed conflicts. The course proceeds in three parts. It first considers the constraints that international humanitarian law and human rights law place upon actors in both internal and international armed conflict, and the development of individual criminal accountability for international crimes. This involves particular consideration of the challenges posed by internal armed conflict and non-state armed groups, where relatively little international law has direct effect. It second considers the scope and effects of violations of international humanitarian and human rights law in a number of contemporary armed conflicts, using recent and current case studies. It third considers the responses that have been taken in the wake of armed conflict to punish violations of human rights law and international humanitarian law, through prosecutions and other procedures in domestic courts of countries that have experienced conflict and distant countries, through ad hoc international criminal tribunals and hybrid war crimes tribunals. This final section concludes with a discussion of the early work of the International Criminal Court in countries such as Sudan, the Democratic Republic of Congo, and Kenya. The course design will build upon and be complementary to courses on the law of armed conflict, but will take a more interdisciplinary approach with an historical, political, and anthropological approach to the harms committed in specific conflicts and the myriad legal responses that have been designed to address those harms. The course will complement other offerings in the LLM and MA programmes in law, politics, and development studies on human rights and conflict resolution.

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a) number of weeks over which the course will be taught		10 weeks plus revision week
b) number of contact hours <i>per week</i> the student will spend in:		
	<i>Combined lectures/seminars</i>	2
a) Unseen written papers	<i>Number of papers</i>	0
	<i>Length in hours</i>	
	<i>% of total mark</i>	
b) Essays / reports 1	<i>Length in words</i>	5000
	<i>Date of submission</i>	Friday, week 1, term 3
	<i>% of total mark</i>	75%
	<i>Can this work be resubmitted (please indicate YES/NO)</i>	Y
Essays / reports 2	<i>Length in words</i>	1500
	<i>Date of submission</i>	Signup across term 2
	<i>% of total mark</i>	20%
	<i>Can this work be resubmitted (please indicate YES/NO)</i>	N
Essays / reports 3	<i>Length in words</i>	N/A
	<i>Date of submission</i>	
	<i>% of total mark</i>	
	<i>Can this work be resubmitted (please indicate YES/NO)</i>	
d) Seminar Participation (<i>may not exceed 10% unless it is recorded for External Examiners</i>)	<i>Give details</i>	Oral presentation in class of memos and responses.
	<i>% of total mark</i>	5%
	Can this element of assessment be repeated (other than by students repeating the course)?	No

Learning outcomes of the course

At the end of the course, a student should be able to demonstrate:

- 1) a clear understanding of the relevant international human rights and international humanitarian laws governing activities in armed conflict;
- 2) the ability to critically analyse existing and proposed international criminal law;
- 3) a clear understanding of the actual violations that occur in the context of contemporary armed conflicts;
- 4) apply the law to specific case studies, real and hypothetical;
- 5) a clear understanding of how violations are punished or otherwise addressed in practice before national, international, and hybrid courts;
- 6) the ability to present and defend an argument and debate it with colleagues.

Students will demonstrate this knowledge through written essays and memos, and class presentations of memos along with responses to other memos. Students will be encouraged to participate actively in class through those presentations and responses.

Administrative matters:

Office: Room 541

Telephone: +44 (0)207 898 4540

Email: chandra.sriram@soas.ac.uk

Office Hours: Monday 3-5

Class: Monday 5-7, B320

Academic matters

The syllabus offers a schedule of all of the topics covered in our course, the classes in which these are to be covered, as well as the specific readings for that class.

Classes will begin with lectures, but be followed by a dialogue. This means that you must come prepared to class, with relevant cases briefed and your own observations regarding the key disputes covered in the readings. This ought not be an onerous task, as your active participation should make the class more lively and interesting for all. This will comprise part of your class performance evaluation.

I encourage active participation and healthy debate. Please do not be afraid to raise questions, no matter how silly they may appear. Please do, however, try to remember boundaries of respectful debate, and avoid *ad hominem* or other comments towards one another, no matter how heated the debate.

Please turn off all mobile phones, beepers, PDAs, etc., before class begins.

Assessment and evaluation

Students will be required to submit **one discussion memo** of 1500 words, and present that memo in class. The memo should be written as an essay, not in bullet points or other shorthand. Students will also be required to **comment** once on the memo of another student. This memo will be worth

20% of the final mark. Questions for discussion will be provided for each week of signup, excepting week 1. **Memos must be distributed to all students by email by Friday at 5 pm the week before the week of the Monday presentation.** Late memos will be subject to penalties without exception, following the SOAS rule of a deduction of 2 points per day. Presentations and discussant roles are compulsory and are worth **5% of the total mark.**

Students will also be required to write a **5000 word research essay**, on one of the topics set by the module leader, or on another topic in agreement with the module leader. Topics must be agreed by week 3 (see topics and explanation at end of syllabus). Papers will be due on the Friday of the first week of term 3, and will be worth **70%.**

Tips for essay writing are at the end of this syllabus. Please read them closely.

Plagiarism and collusion:

You are reminded that it is a breach of assessment regulations to copy or use another person's work without proper acknowledgement. This includes using block quotes from another person's work without quotation marks, even if you put a footnote to that work somewhere in the text or even attached to that block of text. This also includes lifting arguments and article/chapter structure wholesale from another person's work without citation, even if language is changed to paraphrase. It is also an assessment offence for two or more students to present the same or substantially similar piece of work. Any student who is found to be in breach of assessment regulations will be subject to an appropriate penalty.

A breach of assessment regulations cannot be excused by ignorance or external pressures.

No part of your work, except where clearly quoted and referenced (ie: correct use of quotation marks and footnotes etc.), may be copied from material belonging to any other person. You should employ a consistent referencing system throughout your work. eg:

Books: author, title, place of publication, publisher and date

Articles: author, title, journal, volume, year and first and last page numbers

Edited works: author, title of chapter followed by "in" editor(s), name of the work, place of publication, publisher, date and first and last page numbers of the chapter

Quotations: require the above detail plus appropriate page numbers

Readings and sources

There is one text from which we have multiple required readings: Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights: Theory and Practice* (Routledge, 2009).

Required readings are available in several ways: many of the books are available through the library, and articles will be available in the library in journals or electronically. The syllabus includes links to specific articles from other sources, such as think tanks and NGOs. Please note that to open documents from the International Crisis Group, you will be required to register on their website, but thereafter the service is free.

In addition to required readings, background and recommended readings are listed in this syllabus. **You must complete all readings that are indicated to be required each week. You are expected to participate actively in class and demonstrate familiarity with the readings and key issues raised by them.** Additional supplemental readings will assist those writing the memo for the week, and should assist all students with background for their research papers.

A great number of resources are available online, particularly through the website of the American Society of International Law, www.asil.org. Students are strongly advised to read the news on a regular basis, such as the New York Times online www.nytimes.com, or on the BBC online: www.bbc.co.uk as well as to examine the websites of relevant international institutions closely, such as that of the United Nations: www.un.org; the Organization of American States: www.oas.org; the African Union: <http://www.africa-union.org/>; the *ad hoc* criminal tribunals for the former Yugoslavia and for Rwanda: <http://www.un.org/icty/> and <http://www.icttr.org/>; and the permanent International Criminal Court: <http://www.un.org/law/icc/>; to name a few. Relevant international NGOs will also have information of interest, such as Human Rights Watch: www.hrw.org, Amnesty International: www.amnesty.org, and the Coalition for An International Criminal Court: www.iccnw.org.

Required and recommended readings are listed below. In addition, a number of textbooks may prove useful in providing further detail or background. These include Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2008), Cryer, Robert, et al, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2007), Paust, Jordan, et al, *International Criminal Law: Cases and Materials* (Carolina Academic Press 2006), and Steiner and Alston, *International Human Rights Law in Context* (Oxford: Oxford University Press, 2007).

Weekly readings

A * denotes readings that are required. Others are strongly recommended and will provide useful resources for students writing the weekly memo or writing a research paper on the topic.

1. Contemporary conflicts and legal responses to abuses: overview and general issues

Questions:

- Reflect on the dynamic relationship between violent conflict and violations of international humanitarian law and international human rights law
- How might such legal violations engender conflict?
- How does conflict engender legal violations?

*Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, *War, Conflict, and Human Rights*, (London: Routledge, 2009), Chapters 1 and 2.

Bell, Christine, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2003), chapters 1, 2, and 10, and Appendix: A Decade of Peace Agreements.

Human Rights Watch, *Human Rights and Armed Conflict* (2004) at <http://hrw.org/wr2k4/>, especially “Africa on Its Own,” and “Right Side Up”.

2. Legal violations in armed conflict: overview of relevant international humanitarian and international human rights law

Questions:

- What are the key distinctions between International Human Rights Law (IHRL) and international humanitarian law (IHL)? How do they vary in terms of purpose and subjects, and applicability?
- What are the key human rights protections that may be of interest during armed conflict? How might these rights be affected by conflict?
- Discuss the conventions and custom that together comprise international humanitarian law. What do they regulate, and how do they work?
- Upon whom are IHL obligations imposed and how? States or individuals? State responsibility or individual criminal liability?
- "...while international bodies have given due consideration to accountability of individual leaders of armed opposition groups, they have so far largely ignored the accountability of the groups in favour of the accountability of individual members." Comment.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapters 3 and 4.

*Antonio Cassese, *International Criminal Law*, chapter 2.

- Key human rights conventions and declarations

*[Universal Declaration of Human Rights](#).

*[International Covenant on Civil and Political Rights](#)

*[International Covenant on Economic, Social, and Cultural Rights](#)

*[Torture Convention](#)

*[Genocide Convention](#)

[Convention for the Elimination of Discrimination against Women](#)

[Convention on the Rights of the Child](#)

[Convention for the Elimination of all forms of Racial Discrimination](#)

- Key international humanitarian law documents:

*Geneva Conventions (1949) on the laws of war, all four ([I](#), [II](#), [III](#), [IV](#))

*Additional Protocols to the Geneva Conventions (1977), both. ([I](#), [II](#))

Status of ratifications of key human rights instruments: <http://www.unhchr.ch/pdf/report.pdf>

Zegveld, Liesbeth, *Accountability of armed opposition groups in international law* (Cambridge: Cambridge University Press, 2002), chapters 1, 3, and 4.

Dawn Steinhoff, "Talking to the enemy: State legitimacy concerns with engaging non-state armed groups," *Texas International Law Journal* vol. 45 (2009-2010), at 297.

Andreopoulos, George, "The International Legal Framework and Armed Groups,"

http://www.armedgroups.org/images/stories/pdfs/andreopoulos_paper2.pdf

Sriram, Chandra, "Achieving Accountability for Non-State Armed Groups," http://www.armedgroups.org/images/stories/pdfs/sriram_paper.pdf.

Ratner, Steven R., and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law and Practice* (Oxford: Oxford University Press, 2001).

Aksar, Yusuf, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge, 2004)

3. Case study in conflict and international crimes: Sierra Leone

Questions:

- What violations of international humanitarian law arose as a result of the conflict?
- Who might be considered responsible for specific crimes committed during the conflict?
- Discuss options for accountability for specific actors for specific acts which might constitute crimes, and where trials might or might not be viable.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapter 6.

*Hirsch, John, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder, CO: Lynne Rienner, 2001).

*Sriram, Chandra Lekha, and Zoe Nielsen, eds., *Exploring subregional conflict: opportunities for conflict prevention* (Boulder, CO: Lynne Rienner, 2005), West Africa chapter.

Reno, William, *Warlord Politics and African States* (Boulder, CO: Lynne Rienner, 1999).

Pugh, Michael, and Neil Cooper, with Jonathan Goodhand, *War Economies in Regional Context* (Boulder, CO: Lynne Rienner 2004), Sierra Leone in West Africa chapter.

International Crisis Group, "Sierra Leone: The State of Security and Governance," (2 September 2003) http://www.crisisgroup.org/library/documents/report_archive/A401113_02092003.pdf

4. Case study in conflict and international crimes: Democratic Republic of Congo

Questions:

- What violations of international humanitarian law arose as a result of the conflict?
- Who might be considered responsible for specific crimes committed during the conflict? Are there specific additional actors to be considered, such as multinational corporations, and if so how might their responsibility differ?
- Discuss options for accountability for specific actors for specific acts which might constitute crimes, and where trials might or might not be viable.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapter 7.

*Clark, P., "Ethnicity, Leadership and Conflict Mediation in Eastern Democratic Republic of Congo: The Case of the Barza Inter-Communaute," *Journal of Eastern African Studies*, vol. 2, no. 1 (March 2008), pp.1-17.

* Martin-Ortega, Olga, "Business and Human Rights in Conflict," *Ethics and International Affairs*, vol. 22, No. 3, (2008) pp. 173-183.

Breytenbach, W., D. Chilemba, T. Brown, C. Plantive, "Conflicts in the Congo: from Kivu to Kabila," *African Security Review*, vol. 8, no. 5 (1999) at <http://www.iss.co.za/pubs/ASR/8No5/ConflictsInTheCongo.html>.

Prunier, G., *From Genocide to Continental War: the 'Congolese' Conflict and the Crisis of Contemporary Africa*, (Hurst, 2009), chapters 1-4.

Vlassenroot, K. and C. Huggins, "Land, Migration and Conflict in Eastern DRC" in C. Huggins and J. Glover (eds.), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, Nairobi: Institute for Security Studies (June 2005), pp. 115-194.

Human Rights Watch, Briefing Papers on DRC, including "The Curse of Gold," "Covered in Blood: Ethnically Targeted Violence in Northern DRC," and "War Crimes in Kisangani," http://www.hrw.org/doc/?t=africa_pub&c=congo [note—some of the reports are available for purchase, but all those listed here and many other useful ones may be downloaded for free].

Borello, Federico, "A First Few Steps: The Long Road to a Just and Democratic Peace in the Democratic Republic of Congo" (October 2004) <http://www.ictj.org/downloads/ICTJ.DRC.Eng.pdf>

Burke-White, W., "Complementarity in Practice: the International Criminal Court as Part of a System of Multi-Level Global Governance in the Democratic Republic of Congo," *Leiden Journal of International Law*, vol. 18 (2005), pp.557-590.

5. Case study in political violence and international crimes: Kenya

Questions:

- What types of abuses took place during the post-election violence in Kenya and which ones might be international crimes?
- Describe and assess the impact of the key recommendations of the "Waki commission"
- Based on what you know about the post-election violence, what mechanism(s) would you propose to pursue accountability, and for what crimes? Who might be prosecuted?

*Situation in the Republic of Kenya. Request for the opening of an investigation pursuant to Article 15 No. ICC-01/09 (26 November 2009), available at <http://www.icc-cpi.int/iccdocs/doc/doc785972.pdf> (last visited August 29, 2010).

* Mueller, Susanne D., *The Political Economy of Kenya's Crisis*, *Journal of East African Studies* vol. 2, (2008), pp.185-210.

* *Report of the Commission of Inquiry into Post-Election Violence* {Waki Commission} (2008) at <http://www.dialoguekenya.org/docs/PEV%20Report.pdf>.

Korir Sing'Oei Abraham, "The ICC as arbiter in Kenya's post-electoral violence," *Minnesota Journal of International Law* vol. 19 (2010) at 6.

Journal of Contemporary African Studies. 2009. Special issue on "Africa's Uncertain Democracies: The 2008 Crisis in Kenya," vol. 27, no. 3 (July), pp. 257-461.

Journal of Eastern African Studies. 2008. Special issue on "Election Fever: Kenya's Crisis," vol. 2, no. 2, pp. 165-367.

6. Promoting accountability transnationally: universal jurisdiction

Questions:

- Explain the principle of universal jurisdiction, and the types of crimes for which states might exercise it.
- Discuss the limitations upon universal jurisdiction imposed by the ICJ in the *DRC v Belgium* case and other potential limitations.
- Discuss the distinction between universal jurisdiction and other forms of extraterritorial jurisdiction.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapter 11.

*Reydams, Luc, *Universal Jurisdiction: international and municipal legal perspectives* (Oxford University Press, 2003), introduction.

*O'Keefe, Roger, "Universal Jurisdiction: Clarifying the basic concept," *Journal of International Criminal Justice* vol. 2 (2004), pp. 735-760, at <http://jicj.oxfordjournals.org/content/2/3/735.full.pdf>.

*Naomi Roht-Arriaza, *The Pinochet Effect: Transnational justice in the age of human rights* (University of Pennsylvania Press, 2005) chapter 7.

Sriram, Chandra Lekha, *Globalizing Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005), chapter 1.

Macedo, Stephen, ed., *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law* (Philadelphia, PA: University of Pennsylvania Press, 2004).

7. Promoting accountability transnationally: civil accountability

Questions:

- Explain the history and purpose of the Alien Tort Claims Act, and its relatively recent use in addressing violations of international law including international humanitarian and international human rights law.
- Discuss the use of the ATCA to address corporate complicity in violations, including standards of complicity, and limitations such as immunities to cases against states and their agents.
- Consider whether/how complicity standards may or may not differ from JCE standards in criminal trials.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights*, Chapter 11.

*Alien Tort Claims Act, Title 28, Part IV Chp. 85, Sec. 1350
<http://www4.law.cornell.edu/uscode/28/1350.html>

**Filartiga v Pena Irala*: <http://homepage.ntlworld.com/jksonc/docs/filartiga-630F2d876.html>

**Doe v. Unocal* <http://www.elaw.org/system/files/Unocal.case.pdf>

**Presbyterian Church of Sudan v. Talisman Energy* (2 October 2009) at
http://www.ca2.uscourts.gov/decisions/isysquery/fa0db23d-6de5-4fed-acdc-24b6911c7089/1/doc/07-0016-cv_opn.pdf focusing on complicity standard.

**Sosa v. Alvarez-Machain*
<http://a257.g.akamaitech.net/7/257/2422/29june20041115/www.supremecourtus.gov/opinions/03pdf/03-339.pdf> focusing on purpose of ATCA.

Aceves, William J. “*Doe v. Unocal* 963 F. Supp. 880,” *American Journal of International Law* vol. 92, no. 2 (April 1998).

Wiva v Royal Dutch Shell <http://www.derechos.org/nizkor/econ/shell28feb02.html>

Burley, Anne-Marie, “The Alien Tort Claims Statute and Judiciary Act of 1789: A Badge of Honor,” 83 *American Journal of International Law* 461 (1989).

Lucien J. Dhooze, “Accessorial Liability of Transnational Corporations Pursuant to the Alien Tort Statute: The South African Apartheid Litigation and the Lessons of *Central Bank*,” *Transnational Law and Contemporary Problems* vol. 18 (2009) at 247.

Sriram, *Globalizing justice for mass atrocities* (2005) pp. 61-78.

8. Promoting accountability in the zone of (post) conflict: mixed or hybrid tribunals

Questions:

- What are the potential virtues and limitations of hybrid tribunals? What should their relationship be to other accountability processes?
- Explain the difference between tribunals that are largely national, with international elements grafted on, and the reverse.
- Discuss one or more of the specific legal objections that have been raised at the SCSL, such as amnesty, immunity, and legality of institution.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights* Chapter 12.

*Cockayne, James, "The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals," *Fordham International Law Journal* vol. 28 (February 2005) at 615.

*Sriram, Chandra Lekha, "Wrong-sizing international justice? The hybrid tribunal in Sierra Leone," *Fordham International Law Journal* vol. 29 (2005) at 472.

Dougherty, Beth, "Right-sizing international criminal justice: The hybrid experiment at the Special Court for Sierra Leone," *International Affairs* vol. 80, no. 1 (March 2004), pp. 311-28

Human Rights Watch, "DR Congo: Commentary on Draft legislation to establish specialized chambers for prosecution of international crimes," (11 March 2011)

<http://www.hrw.org/news/2011/03/11/dr-congo-commentary-draft-legislation-establish-specialized-chambers-prosecution-int>.

International Crisis Group, *The Special Court for Sierra Leone: Promises and Pitfalls of a 'New Model'* (2003) at http://www.crisisgroup.org/library/documents/report_archive/A401076_04082003.pdf.

Human Rights Watch, "Justice in Motion: The Trial Phase of the Special Court for Sierra Leone," (October 2005) <http://hrw.org/reports/2005/sierraleone1105/sierraleone1105.pdf>, especially part VI.

Sriram, Chandra Lekha, "New Mechanisms, Old Problems: Recent Books on Universal Jurisdiction and Mixed Tribunals," *International Affairs* vol. 80, no. 5 (2004) pp. 979- 987.

Daryl A. Mundis, "New Mechanisms for the Enforcement of International Humanitarian Law," *American Journal of International Law* vol. 95 (2001), at 931.

Strohmeier, Hansjörg, "Making Multilateral Interventions Work: The UN and the Creation of Transitional Justice Systems in Kosovo and East Timor," *Fletcher Forum of World Affairs* vol. 25 (2001), at 107.

Romano, Cesare, Andre Nollkaemper, Jann Kleffner, eds., *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004).

*PROSECUTOR V. ISSA HASSAN SESAY, MORRIS KALLON & AUGUSTINE GBAO. Case No. SCSL-04-15-T At <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/TrialChamberJudgment/tabid/215/Default.aspx>.

*Special Court for Sierra Leone, Trial Chamber I, March 2, 2009.
PROSECUTOR V. ISSA HASSAN SESAY, MORRIS KALLON & AUGUSTINE GBAO. Case No. SCSL-04-15-A. At <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/AppealJudgment/tabid/218/Default.aspx>. Special Court for Sierra Leone, Appeals Chamber, October 26, 2009,

And related casenote to SCSL cases in *American Journal of International Law* vol. 104 (2010), at 73.

9. The ICC: Mandate, powers, and limitations

Questions:

- What are some of the novel aspects of the ICC's powers? What are the extent and limits of its (temporal, territorial, personal, and subject-matter) jurisdiction?
- Explain gravity and complementarity criteria for admissibility.
- Discuss the ways in which cases may reach the ICC.

*Sriram, Martin-Ortega, and Herman, *War, Conflict, and Human Rights* Chapters 10 and 13.

*Burke-White, William W., "Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice," *Harvard International Law Journal* vol. 49, no. 1 (Winter 2008), pp. 53-108.

*Sácouto, Susana, and Katherine Cleary, "The gravity threshold of the International Criminal Court," *American University International Law Review* vol. 23 (2007-2008)

*Sácouto, Susana, and Katherine Cleary, "The *Katanga* Complementarity Decisions: Sound Law but Flawed Policy," *Leiden Journal of International Law* vol. 23 (2010), pp. 363-374.

Sadat, Leila Nadya, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*.

Sriram, Chandra Lekha, and Amy Ross, "Geographies of crime and justice: contemporary transitional justice and the creation of 'zones of impunity' *International Journal of Transitional Justice* vol. 1, no. 1 (February 2007), pp. 45-65.

deGuzman, Margaret M., "Gravity and the legitimacy of the International Criminal Court," *Fordham International Law Journal* vol. 32, no. 5 (May 2009)

Stahn, Carsten, and Goran Sluiter, eds, *The emerging practice of the international criminal court* (Leiden: Martinus Nijhoff, 2009).

Broomhall, Bruce, *International justice and the international criminal court* (Oxford: Oxford University Press, 2004).

10. The ICC's caseload: lessons to date

Questions:

- Discuss the basis in the ICC statute for the UNSC referral of the situation in Sudan. Upon whom does it confer obligations? To do what?
- Can a sitting head of state be prosecuted at the ICC? Compare this to the bar on similar prosecutions by national courts.
- Make a case for the prosecution of one individual (Bashir, Harun, or others) based upon relevant evidence and law.

*Cassese, *International Criminal Law* chapter 14.

*Case materials on the following cases: Prosecutor v. Ahmad Muhammad Harun "Ahmad Harun" and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") at <http://www.icc-cpi.int/cases.html>
UN Security Council Resolution 1593 referring the situation in Darfur to the International Criminal Court.
<http://www.iccnw.org/documents/declarationsresolutions/unbodies/1593/SC1593.31March05.pdf>

*Prosecutor v Omar Hassan Ahmad Al Bashir ("Omar Al Bashir"), Case No. ICC-02/05-01/09-304-03-2009 5/146 CB PT, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (March 4, 2009).

*Sriram, Chandra Lekha, and Stephen Brown, "Kenya in the shadow of the ICC: Gravity, complementarity and Impact," *International Criminal Law Review* vol. 12, no. 2 (2012), pp. 1-26.

Oette, Lutz (2010) [Peace and Justice, or Neither?: The Repercussions of the al-Bashir Case for International Criminal Justice in Africa and Beyond](#), *Journal of International Criminal Justice*, vol. 8, no. 2, pp. 345-364.

Akande, Dapo, "The Legal Nature of Security Council Referrals to the ICC and its Impact on Al Bashir's Immunities," *Journal of International Criminal Justice* vol. 7, no. 2 (2009), pp. 333-352.

Cayley, Andrew T., "The Prosecutor's Strategy in Seeking the Arrest of Sudanese President Al Bashir," *Journal of International Criminal Justice* vol. 6, no. 5 (2008), pp. 829-840.

Case materials regarding Kenya, including admissibility and indictments, at <http://www.icc-cpi.int/cases.html>.

Hansen, Thomas Obel, "The Policy Requirement in Crimes Against Humanity: Lessons From and For the Case of Kenya," at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1894246&download=yes.

Pre-Trial Chamber II, *Decision pursuant to article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya* No. ICC-01/09 (31 March 2010), at <http://www.icc-cpi.int/cases.html>.

Striram, Chandra Lekha, and Stephen Brown, “Kenya in the Shadow of the ICC: Gravity, Complementarity, and Impact” (manuscript, 2011; photocopy to be provided).

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11.Revision

Essay topics

You are required to write one 5000-word substantive essay, which will constitute 75% of the final grade. Set topics are provided below; if students wish to deviate from those topics they may do so after consultation by third week. ***All students, whether they are writing to a set paper question or one of their own device, must submit an essay plan (1-2 pages) by 5 PM Monday of week 3 which includes a bibliography.***

1. Use a specific country experience to analyze the violations of IHL and IHRL within conflict, and options for and limitations to specific legal responses. Be specific about the nature of the conflict, IHL and IHRL violations, the process of negotiations, and legal responses that could have been and/or were devised.
2. What is the purpose of legal accountability for past human rights violations or violations of IHL? Consider the rationales frequently offered and assess whether these are met contemporary practice.
3. Consider several venues for the prosecution of gross human rights violations and/or violations of international humanitarian law. Describe the work of each, and consider its

efficacy. Examples may include the hybrid tribunals, transnational justice, the ICC, etc. Be clear about your basis for assessing efficacy, and use specific examples.

4. What are some of the specific legal obstacles to pursuing criminal cases against sitting heads of state? Discuss the issues with reference to existing experience and caselaw.

Tips for essay writing

General structure

It may appear obvious or slightly repetitive, but a clear essay will tell people what you plan to say, then say it, then tell them what you have said. This approach should help you to shape your introduction, main text, and conclusion, respectively.

The introduction

An introduction ought to be clear about what it is that your essay will do. It should do the following:

- Indicate what question(s) you seek to answer
- Identify why these questions arise. Do they come from a specific literature or from real world events? You should provide a context that helps to make clear not only what your questions are, but why they matter.
- Indicate what answers you will offer to the questions.
- Indicate how you will reach the answers. This should make clear your sources, methods, and evidence.
- Offer an overview/roadmap which makes clear your plan for the remainder of the paper.

The paper

The body of the paper will offer your argument and evidence. It is important therefore that you offer clear lines of argument, and well-sourced evidence. It is equally important that you write clearly, and edit carefully.

Argumentation

You must be careful to offer reasoned arguments that support your initial thesis and answer the questions that you pose.

- Use clear evidence to support any claims that you make. This may be empirical, offering facts, statistics, historical narrative, or it may be theoretical and deductive, offering an elaboration of theoretical claims and their implications
- Be clear about what claims your evidence supports, and how. Simple statements of fact do not automatically support a claim
- Avoid making arguments that are tautological—your evidence must prove that something is the case, rather than be definitional. An argument that demonstrates that democracies engage in citizen representation is not of particular interest
- Consider the counter-arguments. Be certain to raise real objections that might be raised by a skeptic, and not simply straw men that are easy to destroy. Straw men do not pose real tests for your thesis
- Document your claims with clear footnotes. Footnotes should certainly be offered to support specific factual claims (e.g. ‘no modern democracies have gone to war against other

modern democracies’). They should also be offered to support key arguments or claims where they have been made by others. Failure to do so is a form of plagiarism. However, simply telling the reader that someone has said *x* is insufficient—that proves they said it and nothing more. You should also make clear what the reasoning is behind someone else’s claim, if you are using it to bolster your argument. Footnotes should be clear and complete—I find *Chicago manual of style* is preferable, but the important thing is to use a consistent recognized citation style. Using footnotes rather than in-text citations keeps the text clean and readable.

Writing

It is very important that the structure of your argument be clear, and that your writing be clear and grammatically correct. A number of steps can be taken to ensure this:

- Make only one or two clear points in your paper, and organize the paper simply and clearly. Try to avoid adding numerous ancillary points, no matter how interesting, if they do not contribute to your core inquiry
- Create clear headings for sections, with clear signposting for each section and transition; try to avoid excess subsections and subheadings
- Each section should offer the:
 - Argument of the section
 - Supporting evidence
 - Counterarguments or limitations to the argument
- Writing from an outline will help you to follow the structure suggested here
- Begin each paragraph with a topic sentence
- Write clear, declarative sentences
- Avoid the passive voice. Use of it makes your argument less clear, as it often obscures who is actually doing the acting. It also makes it sound as though you are unclear or indecisive yourself as to what has taken place and why.
- Avoid run-on sentences. Do not try to pack too much into any given sentence, as it is liable to confuse the reader or conflate several issues
- Don’t clutter the text with information that is not directly relevant. It is not necessary to write ‘Professor Thomas Franck, an international law expert and Professor at New York University, has argued that there is an emerging right to democratic governance’ when you can write ‘Some have argued there is an emerging right to democratic governance’ and footnote the book by Franck. Clearly, the exception will be where another author is your main object of inquiry—if you are talking about a specific judicial opinion, majority or dissent, of a court, or any situation where the status of the author provides specific additional weight to your argument (eg academic articles by a scholar who is now a judge on the International Court of Justice).
- Don’t use excessive direct quotations. Where possible, paraphrase the arguments of others, and footnote the relevant page(s). Use quotations where they are particularly apt only. If they run more than three lines, indent the quote, offset it from the text, and single space it.

- Be very cautious about spelling, grammar, and style. Poor grammar and poor spelling makes you look sloppy and casts doubt upon the general quality of your scholarship. MS Word and other programmes help with this, marking spelling and grammar queries—*pay attention to these*. Sloppy style and inconsistency also undermines your argument. Common errors include:
 - Confusing its and it's. The former is the possessive of it, while the latter is a contraction of it is.
 - Confusing homonyms. Their, there, and they're are different.
- Pay attention to sentence parallelism. Make sure that not only do subjects and verbs agree, but that each agreement is consistent in a list of things. For example, 'It is vital for a law to be effective that it is *passed*, that it is *published*, and that it is *enforced*.'
- Be consistent about use of language. This holds for terminology and style. If you are using a term of art that is specific to a literature, define it according to the rules of that literature, and follow it consistently. Similarly, if you choose to capitalize or otherwise use specific notation for a term, use it consistently. Some international lawyers may capitalize *States*, but most international relations scholars use the lowercase *states*. If you use one or the other, stick with it throughout.
- You can ensure that your paper is clear and readable by vetting it—have a friend read it through before turning it in.

The conclusion

The conclusion should follow all of the rules indicated above. If your introduction was thorough and your structure clear, a long conclusion will not be necessary. You should still, however, recapitulate your argument and the key support for it. You may then turn to the implications of your findings, be they policy implications or theoretical ones.