

**GLOBAL LAW AND COURTS  
POLIS\*4020****Adam Kochanski  
Winter 2023****SYLLABUS**

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<b>Meetings:</b>	Tuesdays, 19:00-21:50 CRSC 101
<b>Office Hours:</b>	Tuesdays, 12:00-13:00 (or by appointment) MCKN 532 <i>Please use Calendly to sign up: <a href="https://calendly.com/adam-kochanski">https://calendly.com/adam-kochanski</a> Please send me an e-mail to schedule a meeting outside my regular office hours</i>

Inquiries sent via e-mail will typically receive a response back within two working days (weekends excluded).

**COURSE DESCRIPTION**

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*"There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance"*

(Benjamin Ferencz, Prosecutor at the Nuremberg Trials)

This "capstone" seminar engages the historical, political, and legal dimensions of international criminal law. Following upon the introductory session, the remainder of the course is organized into three main sections:

- I. Conceptual and Historical Underpinnings
- II. Levels
- III. Emerging Issues, Anxieties and Possibilities

**Part I** of the course explores the conceptual and historical foundations of international criminal law. Key developments in the immediate post-World War II period to try core international crimes will be examined. The class will also assess different conceptions of justice that have emerged across time and space. **Part II** shifts to efforts to prosecute war crimes, crimes against humanity, and genocide across different levels. Our analysis will cover criminal proceedings in courts established at the international, regional, national and local levels. **Part III** investigates cross-cutting themes in international criminal law, including victim participation and the role of civil society, sexual and gender-based violence and open source information in human rights investigations.

Throughout the course, students will be encouraged to question dominant assumptions in the theory and practice of international criminal law, reflecting critically on both the prospects and limitations of this field. To animate key concepts, theories, and legal proceedings, the course will draw on a plethora of case studies from across the world, zooming in on tribunals that have been established to try core international crimes in Europe, Latin America, Southeast Asia and Africa.

## LEARNING OBJECTIVES

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*The main learning objective of this course is to provide an advanced theoretical, conceptual and empirical understanding of global law and courts, focusing on international criminal law.* Students will acquire knowledge about the conceptual and historical underpinnings of international criminal law, and how it has been theorized and practiced across time and space in various contexts to prosecute core international crimes. Students taking this course will (1) sharpen their academic writing and research skills, (2) refine their presentation and oral communication skills, (3) develop their critical thinking skills, (4) improve their global understanding by acquiring knowledge about an array of case studies and (5) be able to identify key academic and policy stakes, preparing them to undertake further scholarly research or professional training in this area.

## TEACHING METHODS

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This is a **seminar course**, meaning while there will be some formal instruction in certain weeks (~10 to 15 minutes max or as needed), the course is largely structured around weekly seminar discussions and group presentations facilitated by the professor and students centred on the required readings. Participation is an integral component of the course and its success depends on it. Students are expected to come prepared to the meetings having read all the assigned material. This is necessary for meaningful, critical and informed discussion and debate. At times, our weekly discussions may be animated by a guest speaker.

## READINGS

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All readings can be downloaded from CourseLink or via the University of Guelph's online library catalogue.

## SENSITIVE CONTENT STATEMENT

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International criminal law touches on numerous topics (war crimes, crimes against humanity, and genocide, which includes conflict-related sexual violence) that some students may find distressing. Nonetheless, these subjects have been included in the course materials because they reinforce the course's learning objectives.

## INCLUSIVE LEARNING ENVIRONMENT

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The University of Guelph strives to provide equal opportunity for academically qualified students with disabilities. As the instructor of this course, I work to create an inclusive learning environment that is free from learning barriers. If you experience any barriers and require accommodations, you are encouraged to contact [Student Accessibility Services](#) as early as possible to discuss your needs and academic background.

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## COURSE REQUIREMENTS

(In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme is subject to change.)

**Table 1. Components of the Final Grade**

Assessment	Weight	Due Date
Participation	20 %	Weekly as of Week 2
Reading Responses	10 %	Weekly as of Week 2
Presentation	30 %	Weekly as of Week 3
Essay	40 %	April 6

NOTE: All assignments must use Times New Roman, 12-point font and double-line spacing. All margins must be set to 2.54cm (“Normal”) and the page size to “US Letter”. Pages must be numbered. The use of condensed fonts is not permitted. Please submit all written assignments in PDF format. The [APA citation style](#) (in-text) must be used for assignments requiring citations/a bibliography (see [Department of Political Science Writing Guide](#)). Failure to adhere to these style and format guidelines may result in a %5 deduction.

## ASSESSMENT METHODS

### *Participation (20%)*

Participation will be assessed based on your active and informed involvement in class discussions. You are expected to complete all the assigned material before each class and to be an active participant in debate and discussion on the weekly themes. The *quality* of your comments will be given the most weight. A quality contribution demonstrates familiarity with the course readings, critical engagement with themes and respect for others’ opinions. The professor will regularly make use of roundtables in order to give each student an opportunity to raise a question or issue relating to the readings. This means having completed the reading response question for that week and having at least one or two questions about the readings ready for the beginning of every class. I will grade your participation for each seminar out of 10 starting in **Week 2** using the grading criteria in the rubric below.

**Table 2. Seminar Participation Grading Criteria**

Grade	Participation	Discussion	Reading
8-10	Always	Excellent—leads debate; offers critical and original analysis and comments; uses assigned readings to back up arguments; actively listens to peers.	Clearly has done and understands virtually all readings; intelligently uses this understanding in discussion.
7-8	Almost always	Good—thoughtful and original comments for the most part; willing, able and frequent contributor.	Has done most reading; provides competent analysis of reading when prompted.
6-7	Frequent	Acceptable—has basic grasp of key concepts; arguments sporadic and at times incomplete or largely opinion-based and poorly supported by assigned readings.	Displays familiarity with most reading but tends not to analyze it or explore connections between different sources.
5-6	Occasional	Minimally acceptable—remarks in class marred by misunderstanding of key concepts; only occasionally offers comments or opinions.	Actual knowledge of material is outweighed by improvised comments and remarks.
0-5	Rare	Insufficient—rarely speaks; restates readings without offering any original analysis.	Little to no apparent familiarity with assigned material.

Your participation grade will be the **average of your grades from Weeks 2 to 13** (because things happen, your lowest grade will be dropped).

### *Reading Responses (10%)*

Reading responses will often form the basis of our seminar discussions. For this assignment, you are tasked with identifying ONE question that cuts across the assigned readings. You are then to submit a short and thoughtful response to your question (~250 words). The response must explicitly engage with topics and/or concepts raised in that week’s assigned material. No citations or bibliography is required given that you will be drawing only on the readings in the syllabus. Please upload your responses via CourseLink on Mondays by 23:59 EST. They will receive a pass/fail grade (pass for completing the response; fail for late submissions or not submitting at all). The goal is to encourage students to think critically about the readings before class.

There will be 11 opportunities to submit reading responses starting in **Week 2**. Like above, **you may miss one response without being penalized**.

Examples of effective reading response questions are:

- How has the theory and practice of international criminal law been shaped by its historical origins and political contexts?
- To what extent was Author X's and Author Y's argument compelling?
- How does the story told through this week's assigned readings relate back to the first part of the course?
- To what extent is the ICC an effective institution given its reliance on state compliance?
- Are international tribunals inherently biased courts and Western impositions on non-Western countries?

#### *Presentation (30%)*

At the start of the semester, I will circulate a list of case studies that students will be able to sign up for (one to two cases each week starting in **Week 3**). Your task is to prepare a (maximum) 15-minute presentation. The presentation will offer a concise and engaging report of the country's experience with armed conflict. Given that 15 minutes is not a lot of time, each word should be chosen with purpose and intention. Your sentences should be crisp and delivered with purpose. You may or may not decide to supplement your oral remarks with some visual aids, such as a few PowerPoint slides or similar. Students may even decide to pre-record their presentation and play it in class. I will post additional tips for this assignment on CourseLink. The presentations will be scheduled for the first hour of class. In weeks when there are two presentations, the other will follow immediately after the break. The presentations will be followed by a 10 to 15-minute Q&A. You will be assessed on the content and delivery of the presentation, and ability to answer questions. In addition to the presentation, you are required to submit a 1-page (max) bibliography listing your sources. Your presentation should:

- Provide a brief, high-level overview of the country and the nature of the armed conflict (careful: do not get bogged down in detail – max 3-4 min).
- Give a synopsis of criminal proceedings that have been pursued or not and relate the case study to that week's readings (this is the heart of the presentation, avoid summarizing the articles – about 6-7 min).
- Provide an analysis of the strengths or weaknesses of the approach taken in that specific context (in the remaining time, feel free to be prescriptive in terms of the policy or normative implications of the case).

#### *Essay (40%)*

This ~15-17-page paper (no title page, page count does not include the bibliography) will give students an opportunity to delve deeper into the work of a specific tribunal or issue relating to global law and courts – whether conceptually or theoretically, or historically or empirically through a case study (students can either expand on one of the case studies discussed in class or use the essay as an opportunity to explore another case study or body of literature that interests them). While writing styles differ, the hallmark of a good essay is a well-structured paper with a clear and identifiable question and argument. Students are encouraged to **discuss their essay idea with me before** starting their research in **Weeks 8 or 9** of the course (or earlier). Things to run by me: (1) the rationale, (2) research question(s), (3) argument, (4) theoretical framework, and (5) implications. Please submit your essay via CourseLink by 23:59 EST on **April 6**.

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## ASSESSMENT POLICIES AND ADDITIONAL INFORMATION

### POLICY ON LATE SUBMISSIONS

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There is a penalty for late submissions. Exceptions may be made for illness (supported by a medical note), or other extenuating circumstances deemed as such by the professor.

*Presentations:* This is a time-sensitive assignment – your peers are counting on you to be ready to go on time for class. Presentations not delivered during the meeting they were scheduled will receive a grade of 0 (zero).

### *Written Assignments:*

- Reading responses received by 23:59 EST will receive a pass/fail grade. Responses not received by that time will receive a 0 grade.
- Late final essays will be accepted up to one week after the original deadline with a 15% deduction. Final essays will not be accepted after that time (23:59 EST on **April 13**).

## **RESEARCH ETHICS AND ACADEMIC DISHONESTY**

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Academic integrity is fundamental to the University of Guelph's educational mission. Trust in the integrity of scholarly work is the foundation of academic life and the value of our university's degrees. Students are responsible for knowing the meaning of and penalties for cheating, plagiarism and other academic offences outlined in the University's Code of Ethics. *The onus is on students to read and comply with the University's [Statement on Academic Integrity](#).*

The ethical student does not:

- Claim credit for the work of another
- Falsify documents
- Obstruct another person's ability to perform academic tasks in order to gain an unfair advantage
- Disobey the rules of ethical research, or improperly obtain access to privileged information or disseminate that information
- Submit the same assignment in more than one course without obtaining the written consent of the professors concerned

Work submitted for this course may be checked with text matching/plagiarism software.

## **LANGUAGE QUALITY**

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While the content of written assignments will ultimately be the main determinant in assessments, the quality of writing will inevitably play a role. Students who are not proficient in the English language are encouraged to take advantage of McLaughlin Library's [Writing Services](#) and [Learning Services](#).

## **HOW TO READ AND PREPARE FOR THIS COURSE**

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This is a challenging, reading-intensive course. Students are expected to come to class prepared to discuss the materials. As a guide, you might ask yourself some of the following questions when you have finished each reading:

1. The author's argument is ...
2. The following are the key concepts and terms that I noticed were in the reading ...  
Are any of these unclear?
3. Has this article introduced any new ideas or made me think differently about a particular topic?
4. Do I agree or disagree with the argument? Why or why not?
5. What additional questions does the article raise?
6. How does this reading relate to the other assigned readings and/or concepts discussed in class?
7. How does the author support their conclusions? Is their evidence convincing?
8. What are the implications of the article for research and practice?
9. The key takeaway from the reading is ...

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## COURSE OUTLINE

### Week 1      January 10

#### *Introduction to the Course*

Antonio Cassese, *Cassese's International Criminal Law*, 3rd ed. (Oxford: Oxford University Press, 2013), Chapter 1 "Fundamentals of International Criminal Law."

## I. Conceptual and Historical Underpinnings

### Week 2      January 17

#### *History and Sources of International Criminal Law*

Benjamin N. Schiff, *Building the International Criminal Court* (Cambridge University Press, 2008), Chapter 2 "River of Justice."

Dapo Akande, "Sources of International Criminal Law," in *The Oxford Companion to International Criminal Justice*, ed. Antonio Cassese (Oxford University Press, 2009), 41–53.

Christian Tomuschat, "The Legacy of Nuremberg," *Journal of International Criminal Justice* 4 (4) (2006): 830–844.

Milena Sterio, "The Yugoslavia and Rwanda Tribunals: A Legacy of Human Rights Protection and Contribution to International Criminal Justice," in *The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments*, eds. Milena Sterio and Michael Scharf (Cambridge University Press, 2019), 11–24.

#### Recommended:

Gerry Simpson, "The Conscience of Civilisation, and Its Discontents: A Counter History of International Criminal Law," in *International Criminal Law in Context*, ed. Philipp Kastner (Routledge, 2017), 11–27.

### Week 3      January 24

#### *International Crimes*

Alejandro Chehtman, "A Theory of International Crimes: Conceptual and Normative Issues," in *The Oxford Handbook of International Criminal Law*, eds. Kevin Heller, Frédéric Mégret, Sarah Nouwen, Jens Ohlin, and Darryl Robinson (Oxford University Press, 2020), 317–340.

Paola Gaeta, "War Crimes and Other International 'Core' Crimes," in *The Oxford Handbook of International Law in Armed Conflict*, eds. Andrew Clapham and Paola Gaeta (Oxford University Press, 2014), 737–765.

Claus Kreß, "On the Activation of ICC Jurisdiction over the Crime of Aggression," *Journal of International Criminal Justice* 16 (1) (2018): 1–17.

Samuel Moyn, "From Aggression to Atrocity Rethinking the History of International Criminal Law," in *The Oxford Handbook of International Criminal Law*, eds. Kevin Heller, Frédéric Mégret, Sarah Nouwen, Jens Ohlin, and Darryl Robinson (Oxford University Press, 2020), 341–360.

Case studies available for presentations: Germany and Japan

### Week 4      January 31

#### *Responsibility and Impunity*

Frédéric Mégret, "The Subjects of International Criminal Law," in *International Criminal Law in Context*, ed. Philipp Kastner (Routledge, 2017), 28–45.

Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press, 2019), Chapter 2 "Individual and Collective Responsibility."

Mark A. Drumbl, “Impunities,” in *The Oxford Handbook of International Criminal Law*, eds. Kevin Heller, Frédéric Mégret, Sarah Nouwen, Jens Ohlin, and Darryl Robinson (Oxford University Press, 2020), 238–260.

Case studies available for presentations: Former Yugoslavia and Rwanda

## II. Levels

### Week 5 February 7

#### *International Courts*

David Scheffer, “The International Criminal Court,” in *Routledge Handbook of International Criminal Law*, eds. William A. Schabas and Nadia Bernaz (Routledge, 2011), 67–83.

William A. Schabas, *An Introduction to the International Criminal Court*, 6th ed. (Cambridge University Press, 2020), Chapter 4 “Triggering the Jurisdiction.”

Kirsten Ainley, “The International Criminal Court on trial,” *Cambridge Review of International Affairs* 24 (3) (2011): 309–333.

#### Recommended:

International Criminal Court, “Rome Statute of the International Criminal Court,” A/CONF.183/9, New York, 17 July 1998.

Case studies available for presentations: Kenya and Libya

### Week 6 February 14

#### *Hybrid Courts*

Philipp Kastner, “Hybrid Tribunals: Institutional Experiments and the Potential for Creativity within International Criminal Law,” in *International Criminal Law in Context*, ed. Philipp Kastner (Routledge, 2017), 221–239.

Mark Kersten, “As the pendulum swings – the revival of the hybrid tribunal,” in *International Practices of Criminal Justice: Social and Legal Perspectives*, eds. Mikkel Jarle Christensen and Ron Levi (Routledge, 2017), 251–273.

Mohamed A. Bangura, “Delivering International Criminal Justice at the Special Court for Sierra Leone: How Much Is Enough?” in *The Sierra Leone Special Court and its Legacy: The Impact for Africa and International Criminal Law*, ed. Charles C. Jalloh (Cambridge University Press, 2014), 692–723.

Case studies available for presentations: Sierra Leone and Chad

### Week 7 February 21

#### *Reading Week (no class)*

### Week 8 February 28

#### *Regional Courts*

James A. Sweeney, *The European Court of Human Rights in the Post-Cold War Era: Universality in Transition* (Routledge, 2013), Chapter 2 “Transitional criminal justice: Prosecution and amnesty.”

Wayne Sandholtz and Mariana Rangel Padilla, “Law and Politics in the Inter-American System: The Amnesty Cases,” *Journal of Law and Courts* 8 (1) (2020): 151–175.

Charles C. Jalloh, “The Place of the African Court of Justice and Human and Peoples’ Rights in the Prosecution of Serious Crimes in Africa,” in *The African Court of Justice and Human and Peoples’ Rights in Context: Development and Challenges*, eds. Charles C. Jalloh, Kamari M. Clarke, and Vincent O. Nmeielle (Cambridge University Press, 2019), 57–108.

Case studies available for presentations: Latvia (*Kononov v. Latvia*) and Peru (*Barrios Altos v. Peru*)

**Week 9            March 7**

*National Courts and Universal Jurisdiction*

- Naomi Roht-Arriaza, “Just a ‘Bubble’? Perspectives on the Enforcement of International Criminal Law by National Courts,” *Journal of International Criminal Justice* 11 (3) (2013): 537–543.
- Susan Kemp, “Guatemala Prosecutes former President Ríos Montt: New Perspectives on Genocide and Domestic Criminal Justice,” *Journal of International Criminal Justice* 12 (1) (2014): 133–156.
- Máximo Langer and Mackenzie Eason, “The Quiet Expansion of Universal Jurisdiction,” *European Journal of International Law* 30 (3) (2019): 779–817.
- Wolfgang Kaleck and Patrick Kroker, “Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?” *Journal of International Criminal Justice* 16 (1) (2018): 165–191.

Case studies available for presentations: Chile and Guatemala

**Week 10            March 14**

*Local Courts and Legal Pluralism*

- Kamari M. Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge University Press, 2009), Chapter 3 “Multiple Spaces of Justice: Uganda, the International Criminal Court, and the Politics of Inequality.”
- Susan Thomson and Rosemary Nagy, “Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda’s *Gacaca* Courts,” *International Journal of Transitional Justice* 5 (1) (2011): 11–30.
- Victor Igreja, “Traditional Courts and the Struggle against State Impunity for Civil Wartime Offences in Mozambique,” *Journal of African Law* 54 (1) (2010): 51–73.

Case studies available for presentations: Mozambique and Uganda

**III. Emerging Issues, Anxieties and Possibilities**

**Week 11            March 21**

*Prosecuting Sexual and Gender-Based Violence*

- Rosemary Grey and Louise Chappell, “Prosecuting Sexual and Gender-Based Crimes in the International Criminal Court,” in *Gender and War: International and Transitional Justice Perspectives*, eds. Solange Mouthaan and Olga Jurasz (Intersentia, 2019), 209–234.
- Aisling Swaine, *Conflict-Related Violence Against Women: Transforming Transition* (Cambridge University Press, 2018), Chapter 4, “Beyond Strategic Rape: Expanding Conflict-Related Violence Against Women.”
- Rachel Killean, “An Incomplete Narrative: Prosecuting Sexual Violence Crimes at the Extraordinary Chambers in the Courts of Cambodia,” *Journal of International Criminal Justice* 13 (2) (2015): 331–352.

Case studies available for presentations: Cambodia and DRC (*The Prosecutor v. Jean-Pierre Bemba Gombo*)

**Week 12            March 28**

*Victim Participation and the Role of Civil Society*

- Mina Rauschenbach and Damien Scalia, “Victims and international criminal justice: a vexed question?” *International Review of the Red Cross* 90 (870) (2008): 441–459.
- Mariana Pena and Gaelle Carayon, “Is the ICC Making the Most of Victim Participation?” *International Journal of Transitional Justice* 7 (3) (2013): 518–535.
- Marlies Glasius, “The ICC, Victims, and Civil Society in the Central African Republic,” *African Affairs* 108 (430) (2009): 49–67.

Case studies available for presentations: Central African Republic and Colombia



**Week 13      April 4**

*New Technologies and Open Source Information*

Federica D'Alessandra and Kirsty Sutherland, "The Promise and Challenges of New Actors and New Technologies in International Justice," *Journal of International Criminal Justice* 19 (1) (2021): 9–34.

Michelle Burgis-Kasthala, "Assembling Atrocity Archives for Syria: Assessing the Work of the CIJA and the IIIM," *Journal of International Criminal Justice* 19 (5) (2020): 1193–1220.

Henning Lahmann, "Ukraine, Open-Source Investigations, and the Future of International Legal Discourse," *American Journal of International Law* 116 (4) (2022): 810–820.

Case studies available for presentations: Syria and Ukraine