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DIPL 4198 NA International Criminal Law

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INTERNATIONAL CRIMINAL LAW
DIPL 4198-NA 2011
Whitehead School of Diplomacy and International Relations
Seton Hall University

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This class meets each Thursday from **6:15 pm – 8:25 pm** in Duffy Hall Room 61. The readings for this course will consist of:

(1) A volume entitled "A Problem from Hell" America and the Age of Genocide by Samantha Power (hereafter "Power");

(2) A volume entitled We Wish To Inform You That Tomorrow We Will Be Killed With Our Families: Stories from Rwanda by Philip Gourevitch (hereafter "Gourevitch");

(3) A supplement article to "Gourevitch" entitled "The Life After" available on Blackboard in Word format;

(4) A volume entitled "Divided They Fall: The Fragmentation of Darfur's Rebel Groups" by Victor Tanner and Jerome Tubiana (hereafter Tanner and Tubiana). This volume is available in .pdf format online at:

Divided They Fall: The Fragmentation of Darfur's Rebel Groups

File Format: PDF/Adobe Acrobat - View as HTML

Divided They Fall: The Fragmentation of Darfur's Rebel Groups The other Darfur rebel group to emerge in 2003, the Justice and Equality Move- ...
www.humansecuritygateway.info/documents/

(5) A Binder which contains a numbered set of handouts (hereafter Binder);

(6) The Assembly of States Parties "Report of the Special Working Group on the Crime of Aggression" (ICC-ASP/7/20/Add.1, Annex II) available in PDF format on Blackboard;

(7) Report published by African Rights and REDRESS issued in November 2008 entitled "Survivors and Post-Genocide Justice in Rwanda: Their Experiences, Perspectives, and Hopes" available in PDF format on Blackboard or at
<http://www.redress.org/reports/Rwanda%20Survivors%2031%20Oct%2008.pdf> (hereafter REDRESS Report);

(8) A small number of Supplemental Handouts to be supplied; and

(9) The Rome Statute (ICC Treaty). You are to download a copy of the statute and have it available at each class for referrals to same. The statute is available at the ICC website . You can print the statute and keep the hardcopy with you or download it to a laptop that you plan on having in class with you. You can also obtain the Rome Statute at .

We expect you to bring all material to each class and to keep up with the assigned reading. It is also required that you read the New York Times *each day*. It is available free of charge online at <http://www.nytimes.com/pages/todayspaper/index.html?src=hp1-0-P>, specifically the "International" section.

A Note About Class Requirements

We reserve the right to have a **Midterm Exam**, **Final Exam**, and, depending on the final number of students in class, a required **in-class oral presentation** with or without written

materials/exhibits, each of which will constitute some portion of your grade. A **Final Paper** is OPTIONAL. An additional consideration for your final grade will be based on attendance and the quality of your class participation. **The schedule of readings and class discussion topics follows. However, start reading the Power and Gourevitch (read entire volume for the class as a great introduction to the structure and issues concerning Ad Hoc Tribunals) books NOW. Purchase/Order your binder from the bookstore NOW by going there or online at www.shu.bkstr.com so that you can begin the CLASS 1 reading.**

A Note for Students with Disabilities

If you have a documented disability, or think you might have one, you may be eligible for accommodations in academic classes, the residence halls, food service areas, etc., under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Disabilities may include those that are permanent or temporary and include, but are not limited to: learning disabilities, ADHD, medical issues, psychological or psychiatric problems, limited mobility, low vision or blindness, and hearing impairments. Students are not permitted to negotiate accommodations directly with professors. To receive special accommodations or assistance, please self-identify at the Office for Disability Support Services (DSS), Duffy Hall, Room 67 at the beginning of the semester. For more information or to register for services, contact Linda Walter, Director of DSS, at (973) 313-6003.

CLASS 1: INTRODUCTION & CURRENT DEVELOPMENTS

Binder

Prosecutor's (OTP) Request for Warrant of Arrest of Omar Hassan Ahmed Al-Bashir, [President of the Government of Sudan] Pursuant to Article 58 (2)(a) of the Rome Statute, 14 July 2008.

Handout # 12 Scot Free PEOPLE MAGAZINE, September 28, 1998

ROME STATUTE FOR THE ICC

Read the following sections of the Rome Statute [in bold print]

Re OTP v Bashir-These are the references to specific articles of the Rome Statute that are found in the ICC website's description of the charges against the Sudanese President.

Article 58

The warrants of arrest for Al Bashir list ten counts on the basis of his individual criminal responsibility under **Article 25(3)(a)** of the Rome Statute as an indirect (co) perpetrator including:

- five counts of crimes against humanity: murder - **Article 7(1)(a)**; extermination - **Article 7(1)(b)**; forcible transfer - **Article 7(1)(d)**; torture - **Article 7(1)(f)**; and rape - **Article 7(1)(g)**;
- two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities -**Article 8(2)(e)(i)**; and pillaging - **Article 8(2)(e)(v)**.
- Three counts of genocide: genocide by killing (article **6-a**), genocide by causing serious bodily or mental harm (article **6-b**) and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction (article **6-c**).

Re OTP v Lubanga-Counts

M. Lubanga is allegedly responsible, as co-perpetrator, of war crimes consisting of:

- Enlisting and conscripting of children under the age of 15 years into the Forces patriotiques pour la libération du Congo [Patriotic Forces for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an international armed conflict from early September 2002 to 2 June 2003 (punishable under article **8(2)(b)(xxvi) of the Rome Statute**);
- Enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 2 June 2003 to 13 August 2003 (punishable under article **8(2)(e)(vii) of the Rome Statute**).

CLASS 2: CONSCIENCE OF MANKIND & SOURCES OF LAW

ROME STATUTE FOR THE ICC

Preamble
Article 68

Handout # 1 Discourse on International Law & American Legitimacy

“Section E” in the Course Binder | Into Thou: American Resistance To Narratives Of International Humanitarian Law Violations
Raymond M. Brown 28 T. Jefferson L. Rev. 1, Summer 2005

Handout # 10 Security Council Resolution 1593 (2005) (Darfur Referral)

Power

"About the Author"

Preface I-XXI

Chapter 9 Bosnia: "No More than Witnesses at a Funeral"

Chapter 11 Srebrenica: "Getting Creamed"

CLASS 3: SOURCES & ELEMENTS OF INTERNATIONAL CRIMINAL LAW & HOW TO READ A CASE

ROME STATUTE FOR THE ICC

Articles 21-24 & 30

Binder

Handout # 21 *Read through Section C entitled The Leipzig Trials in "From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court" Bassiouni, M. Cherif Harvard Human Rights Journal Spring 1997 (This article is good background story/narrative for pre-ICC era.)*

Handout # 18 Laws And Customs Of War On Land (Hague, IV) [Excerpts]

Handout # 17 Instructions For The Government Of Armies Of The United States In The Field [Lieber Code] [Excerpts]

Handout # 13 Statute of the International Court of Justice - Article 38

Handout #14 The Paquete Habana

Handout # 15 US Constitution [Excerpts]

Handout # 16 25 Categories Of International Criminal Law

Handout #35 (We will revisit this handout throughout the semester.)

A) Situation in Darfur, Sudan Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 (Pre-Trial Chamber I, 6 December 2007)

B) Situation in Darfur, Sudan Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07 (Pre-Trial Chamber I, 14 December 2007)

Power

Chapter 1 "Race Murder"

Chapter 2 "Crime Without a Name"

CLASS 4: THE ARMENIAN 'GENOCIDE' & LEIPZIG"

ROME STATUTE FOR THE ICC

Articles 25, 27 & 28

Binder

Handout # 25 "International Regulation of Armed Conflict" Leslie C. Green [Excerpt]

Handout # 27 Leipzig Note [Dover Castle & Landover Castle cases] [Excerpts]

Handout # 28 Versailles Treaty [Excerpts]

Handout # 26 "Crimes Against Humanity" Bassiouni [Excerpt]

Handout # 23 The Case of The SS Lotus France v Turkey [Excerpts]

CLASS 5: "THE NUREMBERG TRIAL"

ROME STATUTE FOR THE ICC

Article 7

Binder

Handout # 21 *Read through Section H. The Far Eastern Commission and the International Military Tribunal for the Far East at Tokyo* in

"From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court" Bassiouni, M. Cherif Harvard Human Rights Journal Spring 1997

Handout # 4 Charter of the International Military Tribunal [London Charter] [Excerpts]

Handout # 29 IMT "Sentencing Chart"

Handout # 30 Anatomy of the Nuremberg Trials Taylor, Telford 1-115

Handout #32 – "The American Perspective on Nuremberg: A Case of Cascading Ironies"
Raymond M. Brown

Handout # 24 "The Crime Against Peace" Bassiouni & Ferencz [Excerpts]

Power

Chapter 3 "Crime With a Name"

CLASS 6: "THE NUREMBERG LEGACY"Binder

Handout # 8 Geneva Conventions of 1949 [Excerpts] and Protocols Additional I and II

Handout # 5 Telford Taylor, Final Report to the Secretary of the Army on the Nuremberg War Crimes Trials under Council Control Law No 10 (1949) [Excerpt]

Handout # 3 Charter of the United Nations [Excerpts]

The Assembly of States Parties "Report of the Special Working Group on the Crime of Aggression" (ICC-ASP/7/20/Add.1, Annex II)

CLASS 7: "HUMAN RIGHTS" & "INTERNATIONAL HUMANITARIAN LAW"Binder

Handout # 33 Universal Declaration of Human Rights (Excerpts)

CLASS 8: IN CLASS - MID TERM EXAMINATION-(APPROXIMATE TIMING ONLY)**CLASS 9: "THE AD HOC TRIBUNALS" & "MIXED TRIBUNALS" ["HYBRID COURTS"]**

Binder

Handout # 21 *Read through the end*

"From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court" Bassiouni, M. Cherif Harvard Human Rights Journal Spring 1997

Handout #31 – "Justice on the Cheap" Wanda M. Akin, 28 T. Jefferson L. Rev. 19, Summer 2005

Power

Chapter 10 Rwanda: "Mostly in a Listening Mode"

Gourevitch and "The Life After" supplemental article

REDRESS Report "Survivors and Post-Genocide Justice in Rwanda: Their Experiences, Perspectives, and Hopes"

CLASS 10: "THE INTERNATIONAL CRIMINAL COURT"

Supplemental Handout

TBD

Power

Chapter 8 Iraq: "Human Rights and Chemical Weapons Use Aside"

CLASS 11: "WHAT IS 'TERRORISM'?"

"Defining Terror" Johnathan Weinberger, Seton Hall Journal of Diplomacy and International Relations, Winter/Spring 2003

Supplemental Handout [To Be Supplied]

CLASS 12: THE FUTURE

Handout # 2 The UN's Discourse at a "Fork in the Road"

A More Secure World: Our Shared Responsibility
Report of the Secretary-General's High-Level Panel on Treats, Challenges
& Change 2004 [Excerpts]

In Larger Freedom: Towards Development, Security, and Human Rights for All Report
of the Secretary-General 3-21-05 [Excerpts]

Handout # 20 "In Larger Freedom": Decision Time at the UN By Kofi Annan, Foreign Affairs,
May/June 2005

Supplemental Handout [To Be Supplied]