IGA-106M


Harvard Kennedy School, January Term 2016

(updated December 22, 2015)

Mon-Tues-Wed-Thurs-Friday January 5- 15, 2016

9 am – 12:30 pm

Location: L130

Instructors:

Kathryn Sikkink
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Faculty Assistant:

Derya Honça
Course Description

The establishment of the permanent International Criminal Court (“ICC”) by the Rome Statute was an unprecedented development in international politics and in international law. This course will explore the origins, functioning and effectiveness of the ICC, with particular emphasis on its interactions with the UN Security Council. In only 10 years, the system established by the Rome Statute was set in motion. States parties have been financing the operations of the Court, cooperating with investigations, protecting witnesses and executing arrest warrants. Overall, the Court opened investigations in eight different situations, indicted more than 30 persons including three heads of state and concluded its first trials. In addition, without changing the UN Charter, the Rome Statute system has contributed to development of international law by the UN Security Council. The Court’s intervention was imposed in Darfur and Libya but there was no agreement to do the same in relation to Palestine or Syria.

This course will first provide a brief introduction into international law on the use of force, international criminal law and to the politics of the United Nations Security Council. It will explore the emergence of doctrine of Responsibility to Protect (“R2P”) and its impact on the emerging Security Council action in these cases. The course will use a series of cases simulate discussions involving the students on international political and legal developments. It will explore unresolved crisis like Libya, Syria, Ukraine and Palestine.

Class Participation

You are expected to come to each session prepared to discuss the day’s assignment, readings and cases, and to make thoughtful contributions to the learning of your classmates. Class participation will account for 20% of your grade. Evaluation of participation will be based on attendance, your comments in class, and your active participation in group exercises, such as the role-play, simulation, and case discussions. Being in class and talking is a necessary part of class participation, but it is only a starting point – the quality of your participation also matters. One way to make sure your participation in of high quality is to complete all reading before class. Comments informed by the reading, including when you express disagreement with the reading, is one way to have high quality participation. Another way is to ask good questions, not only of your professors but also of your fellow students. If you ask questions of your fellow students or respond to their comments, it will allow us to have a better discussion. Because this is such a short, intense, participation-based class, we take attendance, but there will not be any excused absences for class attendance. You are welcome to tell us if you have to miss class, but we will not be granting excused absences. You have many opportunities for participation, and if you have to miss a class, you can compensate for it by more extensive participation in other ways, such as in role-plays.
Assessment

The assessment will be based on attendance, class participation, position papers for simulations and role-plays, and on the completion a final essay of up to 10 pages on a topic discussed in class that will be assigned.

Class participation and activity: 20%
Position papers for simulations and case discussions: 30%
Final paper: 50%

Grading

The HKS Academic Council has issued recommendations on grading policy, which include the following curve: A (10-15%), A- (20-25%), B+ (30-40%), B (20-25%), B- (5-10%). The faculty will grade with an eye to meeting the Academic council recommendations.

Academic Integrity

Students are expected to express all their ideas in their own words. Any action that fails to credit the original author of an idea or argument is plagiarism – whether blatant (like copying on a test) or more subtle (like failing to cite someone else's work) – and is unethical and often illegal. The best way to avoid plagiarizing others' ideas or words is to properly acknowledge them with citations, and to avoid excessive quotation. Anything that does need to be quoted must be placed in quotation marks, with a bibliographic reference immediately following the passage. Great care must be taken not to paraphrase another's argument by simply changing a few words without acknowledging that the ideas belong originally to someone else. This is the most common form of plagiarism, especially among those who are new to a field of discussion.

In general, one should cite others' arguments when they are strikingly different from the common perspective or not generally accepted. If information is considered to be common knowledge, it is usually not necessary to provide a citation. A good way to know what is considered to be common knowledge is by its appearance in several assigned class readings.

Any essay prepared for a class must include a complete bibliography of the student’s sources. Sources include those works with passages directly quoted in one’s essay, as well as works that influenced one’s thoughts and arguments, from which one formulated one’s own views.
Finally, while collaboration with other students is encouraged in studying and assignments, all student work must be written by the individual himself or herself.

Failure to maintain academic integrity in any portion of work for the course shall be
grounds for awarding a grade of F for that assignment.

Written Assignments

Written Self-Introductions:

By January 4, 2016: (night before the first day of class) In no more than one page (12 pt type), please introduce yourself to the faculty and fellow students. Specifically, what experience in your life, either directly or indirectly, has brought you to take this class? What do you hope to learn and what do you hope to do with what you learn in this class? What history do you have, intellectually or practically, with human rights, international law, criminal law, or transitional justice issues? (It is not a prerequisite for this class to have any previous experience in these areas, but we do want to learn about the backgrounds of the students and tap into your expertise when appropriate.) Please upload it to the assignment section of the course page. If you cannot upload the self-introduction, please email it to Derya Honça, the Faculty Assistant, who can post it for you, before the beginning of class. This will give us a chance to consider your interests before class begins.

Final Assignment: Due January 21, 2016: In no more than 10 pages excluding footnotes (12 pt type), the students are expected to submit by the 21 January 2016 a final policy memo worth 50% of the grade. The legal policy memo will make the arguments as to (1) why a situation should or should not be considered by the Office of the Prosecutor for opening an investigation under the proprio motu powers of the Prosecutor; or (2) a situation should be referred by the UN Security Council to the ICC.

Course Meeting Pattern

The course will consist of series of nine days of classes of three and a half hours each over two weeks (Tuesday through Friday the first week, Monday through Friday the second week) from January 5 to 15. During the first hour the instructors or a special guest will give a lecture that will be discussed. The rest of the class will be devoted to simulations and role playing. We will take breaks when appropriate during this period. During the remaining part of the day when not in class, students will expected to complete readings, and prepare with discussions of case studies and simulations during which they will be expected to argue positions of stakeholders in critical international peace and justice negotiations.

About the Professors:

Kathryn Sikkink is the Ryan Family Professor of Human Rights Policy at HKS and the Carol K. Pforzheimer Professor at the Radcliffe Institute for Advanced Study. Sikkink works on international norms and institutions, transnational advocacy networks, the impact of human rights law and policies, and transitional justice. Her publications include: The
Sikkink holds an MA and Ph.D. from Columbia University. She has been a Fulbright Scholar in Argentina and a Guggenheim fellow. She is a member of the American Philosophical Society, the American Academy of Arts and Sciences and the Council on Foreign Relations, and a member of the editorial board of the International Studies Quarterly, International Organization, and the American Political Science Review.

Luis Moreno Ocampo is currently responsible for global practice at Getnick & Getnick LLP in New York and is an Associate to the Carr Center for Human Rights policy, Kennedy School, Harvard University. As the first Chief Prosecutor of the International Criminal Court (2003-2012), he established the institutional basis of the Office of the Prosecutor and managed investigations and prosecutions in seven situations. During his mandate, he interacted with states both parties and non-parties to the Rome Statute, regional organizations like African Union, Arab League, European Union, local and international NGOs and briefed the UN Security Council regularly during his tenure as Chief Prosecutor of the ICC.

He previously had a key role as Prosecutor in Argentina in one of the first transitional justice models developed in the world (1985-92). As Deputy Prosecutor, he was in charge of investigations during the Junta Trial (1985) working very closely with CONADEP, one of the first Truth Commission. He was also involved in the cases against Junta’s subordinate commanders and officers (1986-87) and led the prosecution of two military rebellion cases (1988 and 1990) and a military mal practice case against the top Army commanders in the Malvinas- Falkland war (1988).

He has a JD from Buenos Aires University and was the Deputy-Director of its Law School Research Center and an Associate Professor (1983-84), a Visiting Professor at Stanford University (2002) and at Harvard University (2003) and a Distinguished Visiting Fellow at NYU Law School (2013) and a Senior Fellow at Jackson Institute for Global Affairs at Yale University (2014-15).

In addition, he was one of the six founders of the Argentine NGO Poder Ciudadano (1987-2003) and member of the Board of international NGOs including Transparency International (1995-2003) and New Tactics for Human Rights (1998-2003). He is a member of the steering committee of the initiative led by the UK’s Minister of Foreign Affairs on the prevention of sexual violence in conflict (2013-14). He was awarded the order of merit of the “Chevalier of the Legion of Honor” by France for the outstanding performance of his duties and his contribution to international justice (2014).
Required Course Texts

The readings for each class are indicated below. Students are expected to keep up on the reading assignments to integrate both theory and practice materials. The readings and course materials will be available on the course website. The instructors urge that students begin to read these texts during the holiday period.

The students will also be required to search the internet for information to assist them to define their arguments and positions for the case studies and simulations. In doing so, the websites of the United Nations Security Council (http://www.un.org/en/sc/) and of Security Council Report (http://www.securitycouncilreport.org/index.php) may be helpful, using in particular the “Country and Regional Issues” index and the corresponding “Chronology of Events” and “Key UN documents” relating to the country or region of choice.

Detailed Schedule of Themes and Classes  (All readings are posted on the Canvas course page)

Day 1, Tuesday, January 5: The UN framework based on relations between sovereign states and its evolution

Invited (but not yet confirmed) guest: Stephen Walt

Readings:

(1) The United Nations Charter (Preamble and Chapters I, V, VI, and VII), http://www1.umn.edu/humanrts/ (posted on course page)


(4) Luis Moreno Ocampo, “The UN Security Council Norm Protecting Individuals”, Draft chapter from an unpublished manuscript, pp.1-22. (posted on course page)

Day 2, Wednesday, January 6: The Justice Cascade. From Nuremberg to The Hague.
National, International and foreign prosecutions.
Proposed guest: Philippe Kirsch or Christian Wenawesser.

Readings:


(2) David Schaeffer; Chapter 7 and 8 in All the Missing Souls, Princeton, Princeton University Press, 2012, pp.163-226. (posted on course page)

(3) Case Study: Leonard, Eric K., “Establishing an International Criminal Court: The Emergence of a New Global Authority” Pew Case Studies in International Affairs #258. (posted on course page)


(5) “The Rome Conference key debate: the role of the Prosecutor,” Luis Moreno Ocampo, Draft chapter from an unpublished manuscript, (posted on course page)

Simulation: each student will represent a country at the Rome Conference

Day 3, Thursday, January 7: Setting up the Prosecutor’s Office at the ICC in the context of post 9/11 change of paradigm. How to select the first situation to investigate?

Proposed guest: Christine Chung

Reading:

(1) Sean Murphy, Principles of International Law, Chapter 13, “International Criminal Law” (West, 2012), pp. 453-490. (posted on course page)

(2) Office of the Prosecutor: Policy paper on preliminary examination. (posted on course page)

(3) John R. Bolton, “American Justice and the International Criminal Court,” Remarks at the American Enterprise Institute, 3 November 2003, pp.1-6. (posted on course page)
(4) Kathryn Sikkink, “The selection of cases by the Office of the Prosecutor of the ICC.” *(posted on course page)*

(5) Luis Moreno Ocampo: The first days as the Prosecutor. Luis Moreno Ocampo, Draft chapter from an unpublished manuscript.

**Simulation:** Using the HKS multi-media case, “The Prosecutor selection of the first situations at the ICC.
Each student will play a role of a member of the Jurisdiction Division of the ICC and propose to select a situation in 2003 and to define the triggering mechanism.

**Day 4, Friday, January 8:** Breakthrough: the UN SC refer Darfur to the International Criminal Court

**Proposed guest:** John Bellinger III or Jack Goldschmidt

**Reading:**

(1) Carrie Booth Walling, *All Necessary Measures*, Chapter 7 “Complex Conflicts and Obstacles to Rescue in Darfur, Sudan,” pp. 185-212. *(posted on course page)*

(2) “Support War Crimes Trials for Darfur”, By Jack Goldsmith, Washington Post, January 24, 2005 *(posted on course page)*

(3) Selections from Colin Powell speech on genocide, UN Commission of Enquiry Report.

**Simulation:** The UN Security Council Resolution referring Darfur will be simulated.

Each student will do specific reading and research on their country position in the Security Council during the specific Security Council meeting to prepare for the simulation: *Start with* the UN Security Council record of the 5158th meeting on 31st March 2005 during which the resolution 1593 (2005) was adopted (Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5158) The students should also consult the Security Council Report website http://www.securitycouncilreport.org/index.php for a Chronology of events and other documents relating to the situation and continue with press reports, etc.

**Day 5, Monday, January 11:** The moment of world consensus: Gaddafi case.

**Proposed guest:** Ibrahim Dabbashi, Libyan Ambassador to the UN or Lebanese Ambassador

**Reading:**


Simulation: UN Security Council referring Libya by consensus to the ICC. Each student will do specific reading and research on their country position in the Security Council during the specific Security Council meeting to prepare for the simulation, consult the Security Council Report website http://www.securitycouncilreport.org/index.php for a chronology of events and other documents relating to the situation and continue with press reports, etc.

Day 6, Tuesday, January 12: The UN Security Council and the authorization of military intervention

Guest: Captain Voss.

Reading:


(3) Rosa Brooks, “So You Want to Intervene in Syria without Breaking the Law?” Foreign Policy, June 20, 2013, http://www.foreignpolicy.com/articles/2013/06/20/so_you_want_to_intervene_in_syrria_with_out_breaking_the_law (posted on course page)


(5) Paper on UN SC reform.

Simulation: The students will discuss different type of military intervention to be adopted by the UN Security Council in Syria and Iraq. Captain Voss will present options.

Each student will do specific reading and research on their country position in the

Day 7, Wednesday, January 13: Peace and justice: the relation between peace negotiations and justice efforts in Darfur and Colombia

Proposed Guest: Dire Tladi, Former Legal Advisor for the South African UN mission or Colombian Ambassador before the UN

Reading:

(1) Luis Moreno Ocampo, “Peace and justice: the relation between peace negotiations and justice efforts in Darfur”, Draft chapter from an unpublished manuscript including the failure by South Africa to arrest Bashir.

(2) Luis Moreno Ocampo, “Peace and justice: the relation between peace negotiations and justice efforts in Colombia”, Draft chapter from an unpublished manuscript

(3) Policy paper on the interest of justice, Office of the Prosecutor, pp. 1-9. (posted on course page)


(6) Rethinking the Tension Between Peace and Justice: The International Criminal Prosecutor as Diplomat. Robert H. Mnookin & William Marra (posted on course page)

Simulation: Colombia peace discussion at La Havana 2013/2016.

Day 8, Thursday, January 14: Israel/Palestine case
Guests: Jennifer Fenton (Al Jazeera Producer)

**Reading:**


(2) The Palestine case 2015

(3) Summary of the decision of the ICC’s Pre Trial Chamber I, Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation, 16 July 2015, ICC-01/13-34.

**Simulation:** What Should the ICC Prosecutor does in 2016 in the Palestine situation?

Day 9, Friday, January 15: The Effectiveness of Individual Criminal Accountability in State and Non-State Parties

**Proposed guests: Beth Simmons**

**Reading:**


(2) Hyeran Jo and Beth Simmons, “Can the International Criminal Court Deter Atrocity? An Analysis of Violence against Civilians in Civil Wars” (manuscript) ([posted on course page](#))

(3) Florencia Montal and Geoff Dancy, “On the Impact of Positive Complementarity: The ICC and Domestic Criminal Prosecution” (manuscript) ([posted on course page](#))


Discussion on new situations to be examined by the Office of the Prosecutor.