

International Law -- War Crimes and Genocide

HITO 134 Winter 2010

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Office hours: Thur 8-9 pm (after class, in/outside HSS 1330); Wed 9-10 pm (in/outside Cog Sci 101); & by appt

Aims and Scope of the Course:

We will undertake a comparative study of genocide and war crimes, emphasizing historical precedents, legal concepts, and enforcement mechanisms for prevention and punishment. The course seeks to familiarize students with the chief problems that have emerged from ongoing efforts to prevent and punish genocidal killings, war crimes, and state-sponsored torture and to offer victims and survivors restitution and a sense that justice has been done. To this end, students will first undertake a thoroughgoing review of the definition and conceptualization of the primary phenomena under consideration here: using insights from law, history, political science, sociology, and anthropology, we will work to establish "genocide," "war crimes," "crimes against humanity," and "torture" as objects of study defined with sufficient precision to permit a rigorous, case-by-case examination that will yield meaningful and useful comparative analyses.

The class will then consider the implications of a number of episodes of mass killing in the 20th century and earlier, underscoring common dynamics while at the same time calling attention to the critical distinguishing particularities of each case. In the process, we will pay special attention to the importance of modern understandings of race, ethnicity, nationality, and religious belonging, the four foundational elements of the definition of "genocide" in the United Nations convention that establishes it as a crime punishable under international law. We will consider how the legal standards governing genocide emerged from the particular experience of the Nazi Holocaust against European Jews, and we will examine the relationship of those standards to other norms of international law, such as legal proscriptions against war crimes and other crimes against humanity. These additional provisions may offer protections to members of groups that have been or are likely to be targeted for murder or other crimes but appear to lie outside the scope of the law on genocide: e.g., political opponents, "common criminals," women, sexual minorities, the mentally disabled, non-combatant civilian populations of wartime enemy states, etc. In the latter weeks of the course, we will address the continuing political and legal difficulties that have surrounded attempts to back up the laws against genocide, war crimes, and torture with reliable and credible enforcement mechanisms, stressing the key role of the International Criminal Tribunal for Former Yugoslavia and the International Criminal Tribunal for Rwanda.

Course Requirements:

Eight weekly tests 60% [These will be given in weeks 3-10; the lowest two test scores will be dropped]
Final exam: 40%

****NOTE:** To pass this class you must reasonably satisfy *all* the course requirements with a reasonable and good-faith effort. Failure to satisfy *any* one of the course requirements will result in a grade of F for the course. While the lowest two test scores on the weekly exam will be dropped, the unexcused failure to take at least six of the weekly tests will result in an F for the course.

Exams: The final exam will include a substantial, wide-ranging essay or essays that will ask you to analyze the assigned course material in light of the major themes of the course, the varying methodological perspectives from which we will approach those issues, and the critical interpretative problems that we will study. Other elements such as short-answer questions or IDs may be included. I will discuss the exams in more detail in class.

****Make up exams:** Make-up exams will be given only in the case of a valid, documented excuse beyond the student's control (e.g., medical problems). Any make-up exam may be given in a different form and include different content. For example, the make-up test may be in the form of an oral exam!

****We cannot make arrangements for alternate exam times** due to multiple exams scheduled closely together, plans to leave campus early, etc. Check your exam schedule now -- they're available to you through StudentLink -- and make sure you've chosen a course schedule that you can live with throughout the course and at finals time!!

Academic Integrity and Plagiarism: It is your responsibility to know and observe all university rules concerning academic integrity and plagiarism. Any student found to have committed a substantial violation of the university rules concerning academic integrity will fail the entire course. I view it as one of my chief responsibilities to help each of you produce first-rate academic work that reflects your own original thinking about the course themes and material. If you have any questions whatsoever about what constitutes plagiarism, how to properly credit the work and ideas of others, how to evaluate sources for quality and reliability, and so forth, please feel free to talk to your TA and to come see me. I reserve the right to require students to submit any assignment to turnitin.com for investigation of possible plagiarism or other academic misconduct.

Required readings: Note: You should have read and thought about the course readings by the dates indicated. Books are available for purchase at the UCSD Bookstore and on reserve at Geisel Library.

Required viewings: Video materials for the course may be watched via streaming video (go to the library's e-reserves page for the course, and follow the links for Digital Media) or in the Arts Library at Geisel. You will need to enter a password to view the films. The **password is PPHI** (The password is not case sensitive.) The following is a link to your course reserves:

<http://reserves.ucsd.edu/eres/coursepage.aspx?page=docs&return=courses.aspx&cid=15278>

If you are having trouble accessing the course link off-campus (or to connect to the UCSD network), you need to go to: <http://libraries.ucsd.edu/services/remote.html> . Students need to be connected to the UCSD network in order to access your course reserve page.

Required books include:

Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000). Paper | 2001 | \$22.95 ISBN: 0-691-09278-8

Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton: Princeton University Press, 2003). Paper | 2005 | \$19.95 ISBN: 0-691-12271-7

Slavenka Drakulić, *They Would Never Hurt a Fly: War Criminals on Trial in the Hague* (New York: Viking/Penguin, 2005) ISBN: 9780143035428

Also required: Course Reader -- The photocopied reader of additional assigned readings (listed in brief below) will be available from University Readers. Contact: www.universityreaders.com telephone: 800-200-3908

About e-mail correspondence:

1. E-mails to you: From time to time, we may send important course announcements to the class via e-mail. To do that, we will need to use your official UCSD e-mail address. Please be sure that your account is always in working order, and check it regularly. We cannot send these course e-mails to hotmail, yahoo, and similar accounts.

2. E-mails to me: Try to come talk with me instead! Please use e-mail only for scheduling and other very brief communications. E-mail is a great tool for that sort of message, but I just don't feel that I can respond properly to substantive questions about the course using it. I will very much enjoy talking with you about the course material and any questions or concerns you may have, and our discussions will be much more efficient, spontaneous, and helpful for you if you come to speak with me in person. I encourage all of you to visit during my office hours or, if that time does not work, to schedule a meeting with me.

Class 1 – Thursday, January 7

An Introduction to the Problem: Definitions, Conceptualizations, Cases

Readings:

Weitz, *A Century of Genocide*, pp. 8-52
("Genocides in the Twentieth Century," "Race and Nation: An Intellectual History")

David Campbell, "Atrocity, Memory, Photography: Imaging the Concentration Camps of Bosnia -- The Case of ITN versus Living Marxism, Part 1," *Journal of Human Rights* 1, no. (March 2002): 1-33, **and** Part 2, *Journal of Human Rights* 1, no. 2 (June 2002): 143-172.

Viewing: -- **to be completed in advance of class discussion in Class 2**
 -- **available via streaming video or may be viewed at Geisel Library**

Video: BBC documentary *Crimes Against Humanity: The Search for Justice*
Film and Video Library: MUSIC/FVL ConCirc FVLV 4484-3 vols 1, 2, 3
(view parts not shown in class: i.e., v. 1, The Quest for Truth, & v. 3, The Long Road to Reconciliation)

Class 2 – Thursday, January 14

What Is a War Crime? The Law and Morality of Violence in Historical Perspective

Readings:

Slavenka Drakulić, *They Would Never Hurt a Fly: War Criminals on Trial in the Hague* (New York: Viking/Penguin, 2005) -- read the entire book

Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, pp. 3-105
("Intro," "St. Helena," "Leipzig")

Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864,
and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 Aug 1949

Class 3 – Thursday, January 21 **NOTE: The weekly TESTS begin with this class session!**

The test includes the readings/assignments listed with the test date, i.e., read these in ADVANCE of class.

Crimes and Controversies:

The Armenian Genocide, the Turks and the Greeks of Anatolia, Stalin's Soviet Union, and What Counts Today

Readings:

Weitz, *A Century of Genocide*, pp. 1-7, 53-101
("An Armenian Prelude," "Nation, Race, and State Socialism: The Soviet Union under Lenin and Stalin")

Resat Kasaba, "Izmir 1922: A Port City Unravels," in Leila Fawaz and C. A. Bayly, eds., *Modernity and Culture from the Mediterranean to the Indian Ocean, 1890–1920* (New York: Columbia University Press, 2001), pp. 204-229.

Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, 106-146 ("Constantinople")

Kemal Karpat, review of *Justin McCarthy, Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922* (1995), in *International Migration Review* 31, no. 2 (Summer 1997): 470-473.

Armenian Assembly of America, "Armenian Assembly Welcomes Introduction of Armenian Genocide Resolution," [press release] with full text of H. Res. 106, 110th Congress, U.S. House of Representatives, 1st session, 30 January 2007 [Resolution calling on the President to conduct foreign policy with appropriate sensitivity to the Armenian Genocide -- Rep. Adam Schiff (D-CA), primary sponsor], from www.aaainc.org, posted 30 January 2007.

Jackson Diehl, "The House's Ottoman Agenda," *Washington Post*, 5 March 2007, downloaded from www.washingtonpost.com

Bruno Waterfield, "EU Plans Far-reaching 'Genocide Denial' Law," *Telegraph*, 4 February 2007, online at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/02/02/weu02.xml>

"Turkish Politician Fined Over Genocide Denial," [swissinfo.org](http://www.swissinfo.org), 9 March 2007, www.swissinfo.org/eng/swissinfo.html?siteSect=105&sid=7603245

Viewing: -- to be completed in advance of class discussion in Class 4
-- available via streaming video or may be viewed at Geisel Library

Video: *Verdict on Auschwitz, The Frankfurt Auschwitz Trial 1963-65* (Original Title: Strafsache 4 Ks 2/63)
Assigned: only the 60-minute short version is required (on disk 2) (the whole, three-part series is *optional*)
Germany, 1993/2005 Director: Dietrich Wagner, Rolf Bickel
Film and Video Library: MUSIC/FVL ConCirc FVL DV-4305-2

Class 4 – Thursday, January 28

Never Again . . . The Lessons of the Holocaust for Criminal Justice

Readings:

Weitz, *A Century of Genocide*, pp. 102-143 ("The Primacy of Race: Nazi Germany")

Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, pp. 147-205 ("Nuremberg")

Raphael Lemkin, "Genocide," in Alexander Laban Hinton, ed., *Genocide: An Anthropological Reader*, pp. 27-42

[video to be viewed *in class*: *The Nuremberg Trial*, writer/producer Anne Dorfman, Court TV, FVLV 4183-1]

Class 5 – Thursday, February 4

The United Nations and the International Law of Human Rights

Readings:

United Nations Universal Declaration on Human Rights, 10 December 1948

UN Convention on the Prevention and Punishment of the Crime of Genocide, December 1948 [effective Jan.1951]

Helen Fein, "Genocide: A Sociological Perspective," in Alexander Laban Hinton, ed., *Genocide: An Anthropological Reader*, pp. 74-90.

Leo Kuper, "Genocide: Its Political Use in the Twentieth Century," in Alexander Laban Hinton, ed., *Genocide: An Anthropological Reader*, pp.48-73

Samantha Power, "Rwanda: 'Mostly in a Listening Mode'," in Samantha Power, *"A Problem from Hell": America and the Age of Genocide*, pp. 329-389.

Viewing: -- to be completed in advance of discussion in Week 6
-- available via streaming video or may be viewed at Geisel Library

film: *The Killing Fields* (1984), dir. Roland Joffé (1984), running time 141 min. FVL DV 6421-1

Class 6 – Thursday, February 11

The Ends of Justice:

The Rule of Law and the Role of Law in Prevention, Punishment, Reparation, and Reconciliation

Readings:

Weitz, *A Century of Genocide*, pp. 144-189 ("Racial Communism: Cambodia under the Khmer Rouge")

William Schabas, "Cambodia: Was it Really Genocide?" *Human Rights Quarterly* 23, no. 2 (May 2001): 470-477.

Mark Osiel, "Why Prosecute? Critics of Punishment for Mass Atrocity," *Human Rights Quarterly* 22, Number 1, February 2000): 118-147.

Jack Donnelly, "Humanitarian Intervention against Genocide," in Donnelly, *Universal Human Rights in Theory and Practice*, 2d ed. pp. 242-260.

Viewing: -- to be completed in advance of discussion in Week 7
-- streaming video or available at Geisel Library

video: BBC mini-series *Yugoslavia: Death of a Nation*, segments 1-3 (on first 2 cassettes; 150 minutes total)
Film and Video Library reserves: MUSIC/FVL ConCirc FVLV 3663-3 pt. 1 and pt. 2

Class 7 – Thursday, February 18

... Again: War Crimes, Genocide, and Torture in the Yugoslav Conflict

Readings:

Weitz, *A Century of Genocide*, pp. 190-235 ("National Communism: Serbia and the Bosnian War")

Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, pp. 206-275 ("The Hague")

Viewing: -- to be completed in advance of discussion in Week 8
-- streaming video or available at Geisel Library

video: BBC mini-series *Yugoslavia: Death of a Nation*, segments 5 & 6 (on last cassette (pt. 3); 100 minutes total)
Film and Video Library reserves: MUSIC/FVL ConCirc FVLV 3663-3 pt. 3

Class 8 – Thursday, February 25

Justice Delivered or Justice Denied? Criminal Trials for Genocide, War Crimes, and Torture

Readings:

Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, pp. 276-310
("Conclusion," "Epilogue")

Robert M. Hayden, "Schindler's Fate: Genocide, Ethnic Cleansing, and Population Transfers," *Slavic Review* 55, no. 4 (Winter 1996): 727-748.

Carol S. Lilly, "Amoral Realism or Immoral Obfuscation," *Slavic Review* 55, no. 4 (Winter 1996): 749-754.

Susan L. Woodward, "Genocide or Partition: Two Faces of the Same Coin?" *Slavic Review* 55, no. 4 (Winter 1996): 755-761.

Paul Wallace, "The Costs of Partition in Europe: A South Asian Perspective," *Slavic Review* 55, no. 4 (Winter 1996): 762-766.

Robert M. Hayden, "Reply," *Slavic Review* 55, no. 4 (Winter 1996): 767-778.

Robert M. Hayden, "UN War Crimes Tribunal Delivers a Travesty of Justice," 4 May 2000, from <http://emperors-clothes.com/analysis/unwar2.htm>

Viewing: -- to be completed in advance of discussion in Week 9
-- streaming video or available at Geisel Library

1. Film: *Hotel Rwanda*, dir. Terry George (2004), running time 110 min. FVLVDV 5450-1
2. Frontline video *Ghosts of Rwanda*, dir. Greg Barker (2004) FVLV 5701-1

Class 9 – Thursday, March 4

The Law of Genocide and War Crimes: Prevailing Standards and Emerging Issues

Readings:

- Weitz, *A Century of Genocide*, pp. 236-254 ("Conclusion")
- John R. Bowen, "The Myth of Global Ethnic Conflict," in Alexander Laban Hinton, ed., *Genocide: An Anthropological Reader*, pp. 334-343.
- Samantha Power, "Iraq: 'Human Rights and Chemical Weapons Use Aside'," in Power, *"A Problem from Hell": America and the Age of Genocide*, pp. 171-245
- Rome Statute of the International Criminal Court, opened for signature July 1998, effective 1 July 2002, excerpts (full text available at [http://www.un.org/law/icc/statute/english/rome_statute\(e\).pdf](http://www.un.org/law/icc/statute/english/rome_statute(e).pdf))
- Steven R. Ratner, "Belgium's War Crimes Statute: A Postmortem," *The American Journal of International Law* 97, No. 4. (October 2003), pp. 888-897.

Viewing: -- to be completed in advance of discussion in Week 10
-- streaming video or available at Geisel Library

1. Film: *Taxi to the Dark Side*, dir. Alex Gibney (2008), Arts Library FVLVDV 6950-1
2. Abu Ghraib photographic evidence, available on the course web site

Class 10 – Thursday, March 11

State-Sponsored Torture: Prevailing Standards and Emerging Issues

Readings:

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984
- Alberto R. Gonzales, Memorandum for the President, Decision re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban, 25 January 2002.
- United States Department of Justice, Office of Legal Counsel, Memorandum for Alberto Gonzales, Counsel to the President, re Standards of Conduct for Interrogation under 18 U.S.C. sections 2340-2340a, 1 August 2002
- Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, 295-345. [not in the Course Reader; available via e-reserves]
- Glenn Greenwald, "A Historian's Account of Democrats and Bush-Era War Crimes," Salon.com, 8 October 2009, <http://www.salon.com/opinion/greenwald/2009/10/08/photos/print.html>
- Richard B. Bilder and Detlev F. Vagts, "Editorial Comment: Speaking Law to Power: Lawyers and Torture," *The American Journal of International Law* 98 (October 2004): 689-695.

Final Exam: Thursday, 18 March, 7:00pm – 10:00pm – be sure to check the room on StudentLink, however!