COURSE SYLLABUS

ATROCITY CRIMES AND INTERNATIONAL LAW

RUTGERS UNIVERSITY, DIVISION OF GLOBAL AFFAIRS
Dr. Richard M. O’Meara
SUMMER SESSION, ON-LINE
26:478:523: HS
JULY 6-AUGUST 12, 2015
Course Essentials

General description: The international Criminal Court is neither the beginning nor the end of attempts by the international community to regulate the conduct of belligerents, civilians and military, and obtain international justice. This course will examine the concept of international justice as it relates to atrocity crimes specifically and war crimes generally. The nature of the problem, the reasons atrocity crimes occur, and the means available to mitigate the worst of their ramifications will be examined.

Objectives:

1. To understand the multiple uses of force as they relate to atrocity crimes;
2. To be able to analyze a conflict, that is to determine its historical antecedents, the groups who have an interest in the conflict, the ramifications of the conflict, what a successful outcome looks like, and the tools and methodologies available to accomplish that outcome.
3. To recognize the concepts of power, ethics, and the law as human tools to regulate and stop atrocity crimes;
4. To examine the reasons for atrocity crimes;
5. To encourage critical thinking and reading; and
6. To improve writing through the assignment of article analysis and case studies.

Course materials:

Books:

Articles:
- R.M. O’Meara, “Jus Post Bellum, Reflections on the Right Way to End a War,” *Journal on Terrorism & Security Analysis* (Syracuse University: Spring, 2011)
http://www.hawaii.edu/powerkills/NOTES.HTM
- J.L. Goldsmith, E. A. Posner *The Limits of International Law*, “Chapter 4 “Human Rights”  

**Video: Slide Presentations**

- PBS, D. Goldhagen, “Worse Than War”, retrieved from You Tube  
- Frontline, “The Ghosts of Rwanda” retrieved from You Tube  

**RECOMMENDED READING:**


• "International Criminal Jurisdiction". International Committee of the Red Cross.

• "Cambodia Tribunal Monitor". Northwestern University School of Law Center for International Human Rights and Documentation Center of Cambodia. Retrieved December 17, 2008.


• "**Video: Not a War Criminal**". Retrieved December 17, 2008.

- War Crimes: Responsibility and the Psychology of Atrocity
- Human Rights First; Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan
- Crimes of War Project
- Rome Treaty of the International Criminal Court
- Special Court for Sierra Leone
- UN International Criminal Tribunal for the Former Yugoslavia
- UN International Criminal Tribunal for Rwanda
- Ad-Hoc Court for East Timor
- Lanka's Killing Fields: War Crimes Unpunished
- Texts and Commentaries of 1949 Geneva Conventions & Additional Protocols

**Communication:** Please communicate with Professor using his private e-mail address, omezar@msn.com I will not be using my Rutgers account during the summer.

**Course structure:** The purpose of this course is to review the nature and extent of atrocity crimes, identify the issues which surround the reasons for their occurrence and consider the attempts which humanity has made to mitigate their effects. Students are required to review literature, film and other source material; answer a series of questions in weekly written assignments (four assignments/ five pages each) ; prepare a research paper on a selected issue (twenty pages) and complete a written final examination (ten pages). On-line courses are by their nature short and require a particular focus during their duration. Assignments must be completed on-time in order for the learning process to proceed in an orderly fashion. Students are encouraged to use outside sources as they wrestle with the issues presented and to communicate freely with the Professor, on-line at omezar@msn.com
WRITTEN ASSIGNMENTS

**Weekly Assignments:** There are four written assignments dealing with various aspects of the subject matter. Students should review the materials referenced, consult other sources where appropriate, respond to the questions asked in a timely manner and be prepared to incorporate what has been learned into the final examination exercise.

**Research Project:** The research project (twenty pages) requires the student to tackle a specific research issue, do a literature review which should be comprehensive, demonstrate identification of various points of view and come to some conclusions. The project should have at its basis a research question, e.g. ‘what does the Holocaust teach us about modern man’s ability to do evil?’ or ‘what responsibilities should states have, if any, when faced with mass atrocities?’ Each project requires a fairly lengthy history of the issue, a description of what commentators have said about the issue and a discussion of where mankind appears to be headed as we confront atrocity crimes in the 21st century. Issues of Power, Ethics and the Law must be considered. Research questions will be assigned in the first week based on suggestions by the student and approval by the Professor.

**Examination:** A ten page final examination is assigned in the last week of the course which should tie together the various issues which have been reviewed during the preceding four weeks. This should be the easiest of the tasks to be performed if the student has kept up with the reading and other assignments during the course.

**Statement About Cheating/Plagiarism:** All students are expected to abide by the University’s policy on academic honesty. Cheating and plagiarism are unacceptable and will be punished.

**Late Submissions:** Given the nature of the course (online and short) written work must be submitted not later than the due date listed in the written assignment section. Late work will result in a deduction of 10 points on that assignment’s grade.

**Grading:**

- A-90-100
- B+-87-89
- B-84-86
- B-80-3
- C+-78-79
- C-70-77
- D-65-69
- F-64/below

Written Assignments: 40%
Research Project: 40%
Final examination: 20%

**Strategies for Success: Focus.** This is a short course which requires a good deal of work right from the beginning. **All written material should demonstrate that the literature and video reviews have been done.** As with all university work, CORE principles are helpful. C=cite to the documents (demonstrates to the reader that Student has, indeed, done the work. Footnotes are important as are quotation marks); O=organize before you write (there is an old bumper sticker in writing which works well for short papers as well as legal briefs and books, ‘tell ‘em what you are going to tell ‘em, tell ‘em, and tell ‘em what you told ‘em.’ A good introduction requires the writer to commit to the subject of the paper, excising what the writer believes to be irrelevant etc. The conclusion makes the writer review what she/he has written and decide whether she/he has delivered on the promises made in the introduction); R=respond to all parts of question. (We tend to write well at the beginning of a work but trail off as we get to the end. All parts need to be equally strong) Edit-shouldn’t have to say this but a poorly written paper is a demonstration that there was minimal focus and no review of what is written. Perhaps the most important part of the process is reading the document (out loud?) to insure that it is not only well thought out but properly communicated.

**COURSE CALENDAR**

**Week One (ends July 12) The Nature of the Problem**

Atrocity crimes have existed in human history seemingly *ad nauseum*. They are chronicled in the Bible, the reports of violent activities between Greek states, the Roman Empire and ‘barbarians’ on all continents and in all eras. Given the ability of human kind to marshal technology and organizational tools, however, atrocity crimes appear to present new issues; they are, for example, globally reported; they appear to carry with them particular and seemingly gratuitous violence; and they confront relatively new standards of articulated ethical and legal behavior (Human Rights, IHL, and International Justice Systems). Goldhagen tends to use an expanded definition of genocide and ultimately conflates all mass violence with *eliminationism*. O’Meara notes some positives and negatives of the uses of power, ethics and the law. Rummel provides the facts to support his argument that power kills. Review the following and outside sources where appropriate and answer the following questions.

1. What are atrocity crimes? How do they differ from the normal violence which has traditionally been found in warfare and other state activities?
2. How bad is the problem? Do atrocity crimes present a discreet set of activities in the modern age (1900 forward) or are they merely better advertised etc.?
3. What are the various names/definitions which we give to these crimes, how do they differ, and why is it important as a legal, ethical matter to differentiate them?
4. Review and describe three examples and discuss their similarities and differences.

Review specifically, D. Goldhagen, “Worse Than War”
R.M O’Meara, “How to Stop the Violence” Slides
R.J. Rummel, STATISTICS ON DEMOCIDE
Power, A Problem From Hell

Due: NLT July 12, 2015

Week Two (ends July 19) What is war? What is conflict? The nature of war crimes?

War has, seemingly, been with us forever. Anthropologists argue over the issue of war as part of the human condition. Is mankind ever at war with peace breaking out now and then or is peace the norm and war breaks out? One aspect of atrocity crimes, yet not the only one, is the crimes conducted in periods of conflict between states and now between states and non-state actors. A good deal of the legal regimes and ethical work that has been done to constrain the conduct of war struggles with the nature (and changing nature) of the activity. Bartov notes that discipline became so degraded on the Eastern front that the German Army became inefficient even as it defended the homeland from the existential threat of Soviet communism. Anderson provides three theories to explain the massacre at My Lai, yet Tim O’Brien notes that he was present in substantially the same place and time and did not experience the same degradation. Paul Thompson at the Stockton Center struggles with what went wrong at My Lai and why he chose to act honorably. Nash speaks to what effective training can do to guard against breakdown, Petraeus talks about the soldier ethic, and Hoffman provides a discussion of what happens when legal definitions are ignored in policy and political debates.

Review the following and outside sources and answer the following questions.

1. How should we define war from a legal and ethical perspective? Does it make a difference what definition we use?
2. What types of violence is condoned (soldier immunity, military necessity etc.) and what type of violence is punished? What are the theories we use to make these distinctions?
3. What are war crimes and why do soldiers commit them?
4. Why it is appropriate to regulate the conduct of war and what goes wrong when soldiers are permitted to behave in unregulated ways. (‘All’s fair in love and war’...‘They do it, why can’t we?) See especially Bartov and Andersons’ theories in this regard.

Review specifically

-Bartov, Hitler’s Army
-Anderson Facing My Lai
-R.M. O’Meara “Jus Post Bellum, Reflections on the Right Way to End a War”
-W.L. Nash, “the Laws of War: A Military View”
-D.L. Petraeus, “Letter to Soldiers...”
-V.D. Hansen, Carnage and Culture, Chpt 1
-The Stockdale center “Moral Courage in Combat...”
-M.H. Hoffman, “Rescuing the Law of War...”

Due: NLT 19 July, 2015.

Week Three (ends July 26) The Nature of Genocide

Genocide is a very particular crime that has its articulated basis in the Holocaust and the nationalist movements of the 20th century. It has a very specific legal definition which reflects the compromises which needed to occur to insure that an international consensus could be reached. Since WW11, the term has been co-opted by anthropologists and others to describe mass killings in a wide range of scenarios. It has also found its way into the public discourse to discuss mass killings of many kinds without regard to distinctions regarding intent, methodologies, etc. Goldhagen demonstrates an impatience with the specificity of definitions, Chalk and Johnson speak to the multiple reasons why genocide has occurred, Power describes the compromises necessary to obtain a workable legal definition, and Arendt speaks eloquently regarding the ramifications of genocidal activity and the need for justice. The Ghosts of Rwanda provides one more case study and speaks to the responsibilities of the International Community. Review the following and outside sources and answer the following questions:

1. Demonstrate your knowledge of the various definitions that exist regarding the term and discuss why they matter, if at all?
2. What were the compromises that occurred to reach the legal definition?
3. How and why is the crime of genocide rooted in concepts of the nation and nationalism?
4. Why does genocide occur?

Review specifically:

-PBS, D. Goldhagen “Worse Than War”
Week Four (ends August 2) International law as a constraint to atrocities in conflict

International law assumes actors, especially state actors, can find consensus on how their agents should treat citizens, combatants and non-combatants. It further assumes that the international community can produce through IGOs, NGOs and other modalities sufficient enforcement mechanisms to provide justice and deterrence. These assumptions are hotly contested and many of the most derelict perpetrators of atrocity crimes have ignored them. Yet international law has moved from its birth in the early 20th century to a degree of maturity. Included in this growth are the Hague and Geneva Conventions, The Nuremberg Trials, the Human Rights Regime, various international courts and ultimately the International Criminal Court. The Nuremberg film, for all its made-for-tv drama, demonstrates the very human project of making international law where none has existed before. Arendt speaks to the victim’s need for justice, Power describes the intersection between policy (national interest) and justice, and Goldsmith explains a realist critique regarding the Human Rights Regime.

Review the following material and outside materials as appropriate and answer the following questions.

1. What was the purpose of the Nuremberg trials; how was it a new institution, what legal principles did it establish and what was its legacy?
2. What is the critique which argues that the Human Rights regime is nothing more than a wish list of Western philosophers/policy-makers (idealists)?
3. Where has international law been useful and where has it failed? Discuss what it has intended to accomplish and use that as a metric to determine if it has succeeded—two examples.

Review specifically
- Arendt, Eichmann in Jerusalem
- Power, a Problem From Hell
- Goldsmith, The Limits of International Law, “Chapter 4 “Human Rights”
- Hoffman, “Rescuing the Law of War...”
- PBS, D. Goldhagen, “Worse Than War”,
- Frontline, “The Ghosts of Rwanda”

Due: NLT 2 August 2015.

**Week Five (ends August 9)** Use this week to finish up your research project and final examination (provided on August 9, 2015.)

Research project due on August 9, 2015
Final Examination due on August 12, 2015

**Suggested Research Projects:** These topics are merely suggestions. If a Student has another topic she/he wishes to pursue, suggest it to the Professor for approval during the first week.

1. What does the Holocaust teach us about modern man’s ability to do evil? Requires a comparison with other atrocity crimes.
2. What responsibilities should states have, if any, when faced with mass atrocities? Discussion of R2P articulation and logic are important here. Plusses and minuses?
3. Boko Haram, the Nigerian fundamentalist group which has, among other activities, taken to kidnapping female children, has embarked on conflict as a way to achieve its political, social and economic goals. What choices has it made in this regard, how do they reflect on their view of IHL and Human Rights law and ethical principles. Are these types of activities consistent with any moral/ethical principles?
4. My Lai represents a particular although not completely aberrant set of activities by a trained and relatively educated group of soldiers. What happened, why did some choose to act outside the group (honourably?) and what affect did it have on the culture of the United States and the culture of the U.S. military going forward?
5. Abu Ghraib represents a case study of what can happen when soldiers are placed in chaotic circumstances, with poor leadership, and confusing (official and unofficial) goals to perform. Review the various investigations done including but not limited to the AR 15-6 Investigation by MG Taguba and The Schlesinger Report. How do these facts track with the readings provided? What, if anything, can be done to insure that this type of activity does not happen again?
6. One of the problems with conflict is the manner in which it ends. What happens to the soldiers who are, in many cases, children and are routinely uneducated with no means to return to civilian life and lead productive lives. DDR programs, amongst others, exist within the UN structure to deal with these issues. Are they effective? If not, why not? Where do the majority of soldiers go after a conflict ceases to provide soldiers with group solidarity and a livelihood?
7. There is a suggestion in the literature that conflict violence has taken on a new characteristic, that is the inclusion of gratuitous violence, massive rape, torture, cannibalism, and other arbitrary conduct towards the most vulnerable on a battlefield. Review the literature, in this regard, determine whether there is, indeed, a change in the manner in which conflict is carried out and describe the various explanations which are given for this type of activity. The Congo, Bosnia, Sierra Leone, Sri Lanka, and CAR would appear to provide relevant case studies.

8. What is warrior culture? Does it provide constraints on the level of violence on the battlefield? Review examples from Hindu, Confucian, Western, and Muslim traditions to answer this question.

9. The legal definition of the battlefield appears to have changed since 9/11. Review the concept of battlefield as it has been articulated in IHL from WW1, through WW11, into the Cold War and, now, in the post-Cold War/post-9/11 era. How has technology, especially the submarine, airplane, robotics, intelligence, and cyber changed the definition? Has the law kept up with the changing definitions of battlefield; if not, what are its deficiencies?

10. The International Criminal Court is the most recent attempt by the international community to provide an efficient mechanism for the articulation of international criminal law regarding conflict. It seeks to remedy the procedural problems of past courts and struggles to provide legitimacy for the idea that international criminal conduct in conflict is regulated by universal principles and that the international community is capable of enforcing proscriptions and deterring such activity. It has multiple detractors. Describe the history of the court, review the literature regarding its activities since inception and consider its successes and failures.