

Procedure Before International Criminal Courts LW530 - Semester 2 (5 ECTS)

Course Outline 2024/2025

Objective	The course introduces students to the laws of procedure and evidence before international criminal courts and tribunals, with particular emphasis on the International Criminal Court. It explores the rights of the accused and the procedural law of the International Criminal Court at the pre-trial, trial, appeal and sentencing stages.								
Lecturer	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Office</th> <th style="text-align: left;">Ext</th> <th style="text-align: left;">E-mail</th> </tr> </thead> <tbody> <tr> <td colspan="4">Tbd</td> </tr> </tbody> </table>	Name	Office	Ext	E-mail	Tbd			
Name	Office	Ext	E-mail						
Tbd									
Lectures Times	Semester 2, Time tbc, Seminar Room, Irish Centre for Human rights								
Learning Outcomes	<p>On successful completion of this course, students will be able to:</p> <ul style="list-style-type: none"> • research the documentation and jurisprudence of the international criminal tribunals and the International Criminal Court on issues of procedure and evidence • identify and explain the law of procedure in international criminal law • discuss and evaluate the scope and content of the rights of accused, victims and suspected persons before international criminal courts • analyse topical issues of procedure and evidence before international criminal courts at all stages • appreciate the primary interests to be balanced when considering procedural issues 								
Format	The course will be taught in four weekly seminars, each three hours in length. Students are to read all prescribed readings in advance of each seminar, thus requiring independent study of 8-10 hours each week, and will be expected to engage actively in discussion and to participate in various in-class activities. Classes are held in-person.								
Course Material	Syllabus will be available on the website of the Irish Centre for Human Rights (www.nuigalway.ie/human_rights) and can be downloaded from Blackboard at http://blackboard.nuigalway.ie .								
Texts	<p>Required:</p> <ul style="list-style-type: none"> • Robert Cryer, Darryl Robinson and Sergey Vasiliev, <i>An Introduction to International Criminal Law and Procedure</i>, 4th edn., Cambridge University Press, 2019. • International Criminal Court, Statute and <i>Rules of Procedure and Evidence</i>, ICC/ASP/1/3 (2002) available at: http://www.icc-cpi.int (students should have access to these in class each week) 								

	<p>Recommended</p> <ul style="list-style-type: none"> • Linda Carter (ed), <i>International Criminal Procedure</i>, Edward Elgar Publishers, 2013. • Göran Sluiter et. al., <i>International Criminal Procedure: Rules and Principles</i>, Oxford University Press, 2013. • Antonio Cassese and Paola Gaeta, <i>Cassese's International Criminal Law</i>, 3rd ed., Oxford University Press, 2013 • Yvonne McDermott, <i>Fairness in International Criminal Law</i>, Oxford University Press, 2016. • Christoph M. Safferling, <i>International Criminal Procedure</i>, Oxford University Press, 2012. • William A. Schabas, <i>Introduction to the International Criminal Court</i>, 6th ed., Cambridge: Cambridge University Press, 2020 • William A. Schabas, <i>The International Criminal Court: A Commentary on the Rome Statute</i>, 2nd edition, Oxford University Press, 2016. • Carsten Stahn, <i>A Critical Introduction to International Criminal Law</i>, Cambridge University Press, 2019.
<p>Resources</p>	<p>Blackboard Course syllabus and certain materials will be posted at http://blackboard.nuigalway.ie. Books are available in the library and most other materials are available online.</p> <p>Journals <i>Journal of International Criminal Justice, Criminal Law Forum, International Criminal Law Review, Yearbook of International Humanitarian Law, Journal of Conflict and Security Law etc.</i></p> <p>Websites Website of the International Criminal Court: www.icc-cpi.int Website of the Mechanism of International Criminal Tribunals: https://www.irmct.org/en Website of the International Criminal Tribunal for the former Yugoslavia: www.icty.org Website of the International Criminal Tribunal for Rwanda: www.icttr.org Website of the Special Court for Sierra Leone: www.sc-sl.org Website of the Special Tribunal for Lebanon: www.stl-tsl.org Website of the Extraordinary Chambers in the courts of Cambodia: www.eccc.gov.kh Oxford Reports on International Criminal Law: www.oxfordlawreports.com Oxford Scholarship Online: www.oxfordscholarship.com</p>
	<p>Evaluation is undertaken through the submission of a written essay (2,500 words including footnotes, but excluding table of contents,</p>

Assessment	bibliography etc.). Essays should demonstrate significant research, familiarity with the literature, independent thought and critical analysis. Essays are to be submitted in hardcopy and electronically via Blackboard. Submission date is set out in the general 'Guidelines for LLM students'.
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Course Outline

Topic 1: Introduction

This session introduces the law of procedure and evidence in international criminal law, and outlines the various stages of proceedings in international trials. There will be a focus on pre-trial matters, including indictments and confirmations of charges hearings, and the rights of accused persons.

Required Reading

- Cryer *et al*, *An Introduction to International Criminal Law and Procedure*, Chapter 17.
- William A. Schabas, *Introduction to the International Criminal Court*, 6th ed., Cambridge: Cambridge University Press, 2020, Chapter 7.
- Megan Fairlie, 'The Unlikely Prospects of Non-Adversarial Trials at the International Criminal Court', *Journal of International Criminal Justice* 16 (2018) 295.

Further Reading

- Paola Gaeta *et al* (eds.), *Cassese's International Criminal Law*, 3rd ed., Oxford University Press, 2013, Chapter 20;
- Wolfgang Schomburg, 'The role of International Criminal Tribunals in Promoting Respect for Fair Trial Rights', 8 *Northwestern Journal of International Human Rights* 1 (2009), pp. 1-29.
- Yvonne McDermott, *Fairness in International Criminal Law*, Oxford University Press, 2016.

Topic 2: Trial Procedure & Evidence

This session examines the procedural law and practice relating to the trial stage, with a particular focus on evidence. Issues covered will include the disclosure regime for evidence and admissibility. Consideration will also be given to 'no case to answer motions', and the use of Regulation 55 before the International Criminal Court.

Required Reading

- William A. Schabas, *Introduction to the International Criminal Court*, 6th ed., Cambridge: Cambridge University Press, 2020, Chapter 8.
- Nancy Amoury Combs, 'Grave Crimes and Weak Evidence: A Fact-Finding Evolution in International Criminal Law', *Harvard International Law Journal* 58(1) (2017) 47.
- ICC, *Prosecutor v Ruto & Sang*, [Decision on Defence Applications for Judgements of Acquittal](#), 5 April 2016 (pp. 8-10 and 114-134);
- ICC, *Prosecutor v. Katanga*, [Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons](#), 21 November 2012.
- ICC, *Prosecutor v. Ongwen*, [Decision on the Decision on the "Prosecution application for the Pre-Trial Chamber to preserve evidence and take measures under article 56 of](#)

[the Rome Statute](#)", 23 March 2016.

- ICC, *Prosecutor v Gbagbo and Goudé*, [Appeal Judgment: Dissenting Opinion of Judge Bossa](#), 21 March 2021.

Further Reading

- Nancy Combs, *Fact-Finding without Facts; The Uncertain Evidentiary Foundations of International Criminal Convictions*, Cambridge University Press, 2010.
- Stefania Negri, 'The Principle of "Equality of Arms" and the Evolving Law of International Criminal Procedure', 5 *International Criminal Law Review* (2005), pp. 513-571.
- Alexander Zahar and Göran Sluiter, *International Criminal Law*, Oxford/New York: Oxford University Press, 2008, Chapter 10.

Topic 3: Guilty Pleas, Appeals & Sentencing

This session considers the law and practice in international criminal law relating to sentencing and punishment. We will also discuss the procedural law governing guilty pleas and appeals at the International Criminal Court, and the emerging practice to date on these matters.

Required Reading

- Cryer *et al*, *An Introduction to International Criminal Law and Procedure*, Chapter 19.
- Paola Gaeta *et al* (eds.), *Cassese's International Criminal Law*, 3rd ed., Oxford University Press, 2013, Chapter 21;
- Mark Harmon and Fergal Gaynor, 'Ordinary Sentences for Extraordinary Crimes', 5 *Journal of International Criminal Justice* (2007), pp. 683-712.
- ICC, *Prosecutor v Lubanga*, [Decision on Sentence pursuant to article 76 of the Statute](#), 10 July 2012 (pp.14-39).

Further Reading

- Silvia D'Ascoli, *Sentencing in International Criminal Law: the UN ad hoc tribunals and future perspectives for the ICC*, Hart Publishing, 2011.
- Alan Tieger and Milbert Shin, 'Plea Agreements in the ICTY; Purpose, Effects and Propriety', 3 *Journal of International Criminal Justice* (2005), pp. 666-679;
- B. Hola, 'Sentencing of international crimes at the ICTY and ICTR', *Amsterdam Law Forum* 4(4) (2012) 3-24.

Topic 4: Victim Participation & Reparations

The participation of victims in international criminal proceedings is explored in the final session. There will be a discussion of the rights of victims as laid out in the Rome Statute and Rules of Procedure and Evidence, and consideration of how victims' rights to participation and reparation have been applied at the International Criminal Court.

Required Reading

- Cryer *et al*, *An Introduction to International Criminal Law and Procedure*, Chapter 18.
- S. Zappalà; The Rights of Victims v. the Rights of the Accused, *Journal of International Criminal Justice*, Volume 8, Issue 1 (March 2010) 137-164.
- William A. Schabas, *Introduction to the International Criminal Court*, 6th ed.,

Cambridge: Cambridge University Press, 2020, Chapter 10.

- Luke Moffett, 'Reparations for victims at the International Criminal Court: a new way forward?' *The International Journal of Human Rights*, Vol. 21, Issue 9 (2017) 1204-1222.

Further Reading

- A. Poes, 'A Victim's Right to a Fair Trial at the International Criminal Court?: Reflections on Article 68(3), *Journal of International Criminal Justice*, 13(5) (2015) 951–972;
- E. Baines, 'Complex Political Perpetrators: Reflections on Dominic Ongwen" Vol. 47(2) *The Journal of Modern African Studies* (2009) 163.
- Mark A. Drumbl, 'Victims who victimise', *London Review of International Law*, Volume 4, Issue 2 (July 2016) 217–246.