

**Course Outline**

**COURSE:** LAWS 4606B - International Law and Armed Conflict

**TERM:** Winter 2016

**PREREQUISITES:** Fourth-year honours standing and LAWS 2601

**CLASS:** **Day & Time:** Mondays 18:05 - 20:55  
**Room:** Please check with Carleton Central for current room location

**INSTRUCTOR:** Trevor Purvis

**CONTACT:** **Office:** Loeb D599  
**Office Hrs:** Wednesdays – 4:00-6:00  
**Telephone:** Ext. 3673  
**Email:** [trevor\\_purvis@carleton.ca](mailto:trevor_purvis@carleton.ca)

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**Academic Accommodations:**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

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Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original

source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://carleton.ca/studentaffairs/academic-integrity/>

### **Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

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### **Course Description**

The laws governing resort to the use of force (*ius ad bellum*) and the conduct of hostilities (*ius in bello*) have a long pedigree, each having been central to the emergence of what we have come to know as public international law. In the Western philosophical, theological, and legal traditions the principles governing the laws of war can be traced to Greek and Roman thought, and the early Christian Church. This course traces the development of each of these branches of the laws of war, from antiquity, through the ostensible efforts to "humanize" warfare that dominated the Eurocentric development of the laws of war through the 19th and 20th centuries. Central to our considerations will be the persistent counterpoint running through this evolution; a counterpoint struck by the dark "underbelly" of humanitarian law: the constant presence of those excluded from law's reach, from the barbarians at the margins of the "universal" empires of Rome and the Holy Roman Empire, to the "terrorist" outlaws of the 21st century.

The course is arranged as a weekly seminar. Students will be assigned readings from the course reading-list to present in class. Presentations should be brief. Their purpose is to draw out the principle points and/or problems/themes arising from the readings, and to create a foundation for broader class discussion of the reading materials.

Please note that this course has an extensive reading list, and while I don't expect people will be able to read everything each week, you should make every effort to cover as much of the material as you can each week and to participate in weekly discussion. The final take-home exam will require you to display a firm grasp of the materials from across the course, so if you aren't doing the readings you will find the course very difficult to do well in.

### **Required Texts**

This term we will be relying on an array of reading from various sources. All materials can be located through the library collection or over the Internet more generally.

### **Course Evaluation**

Class Participation - 20%

Take-home Exam - 40% (6,000 words) due April 23 by midnight (cuLearn Dropbox)

Term Paper - 40% (3,500-4,000 words) due April 8 by midnight (cuLearn Dropbox)

Students will be required to submit a brief paper proposal in class in Week 8 (the class of February 29). The proposal should consist of a working title and roughly a half-page (1-2 paragraph) description of how you envisage the paper developing.

(All components must be completed in order to get a passing grade)

## A Note on Resources

There are innumerable websites with a vast wealth of material that you could draw upon as background information and/or additional sources. Two of the most interesting and useful for our immediate purposes are:

The **website of the International Committee of the Red Cross** at <http://www.icrc.org/eng/index.jsp>. The legacy of Henri Dunant, the ICRC is a remarkable institution whose special neutral status has granted it unprecedented credibility and authority as an official exponent of the current status of the law of armed conflict. It has, in turn, gained a reputation as the principal frontline provider of services to those hors de combat in warzones internationally. If you want authoritative statements of the current status of the laws of armed conflict, this is an invaluable source of information. You should be particularly aware of the materials posted at [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha](http://www.icrc.org/customary-ihl/eng/docs/v1_cha). On this page are links to a series of brief, highly readable summaries of the current status of the laws of International Humanitarian Law as Customary International Law. Here you will find succinct formulations of such crucial concepts to the law of armed as “distinction”, “proportionality”, and “military necessity”, and much more as well. Much of what we will be reading this term is engaged directly with this orthodoxy, either arguing for its customary, universally binding character, or denying its continued relevance under conditions that render them no longer practicable or feasible (i.e. a post-Westphalian world order dominated by profound asymmetries of power and correspondingly disparate strategic approaches to conflict).

The Crimes of War Project, at <http://www.crimesofwar.org/>, that includes a glossary/dictionary of key concepts, as well as numerous brief articles on many facets of the law of armed conflict; an excellent resource.

In addition to these, JustWarTheory.com, <http://www.justwartheory.com/>, is a free, non-profit, critically annotated aid to philosophical studies of warfare. It is owned and maintained by Mark Rigstad, Associate Professor of Philosophy at Oakland University. His website is supported through the sale of JWT-shirts, and all profits go to UNICEF. While it may seem a bit content-intensive at first, Professor Rigstad has done an excellent job of assembling a wealth of material invaluable to the study of the law of armed conflict. Worth a look!

## Class Schedule

### Week 1 – January 11, 2016

#### Introduction

### Week 2 – January 18, 2016

#### Theoretical Considerations

Jochnick, C. A., & Normand, R. (1994). The Legitimation of Violence: A Critical History of the Laws of War. *Harvard International Law Journal*, 35, 49-94.

Mégret, F. (2006). From “Savages” to “Unlawful Combatants”: A Postcolonial Look at International Humanitarian Law’s “Other”. In A. Orford (Ed.), *International Law and Its Others* (pp. 265-317). Cambridge: Cambridge University Press.

Solis, G.D. (2010) Law of Armed Conflict’s Four Core Principles. In G.D Solis *The Law of Armed Conflict: International Humanitarian Law in War* (pp. 250-285). Cambridge: Cambridge University Press.

### Week 3 – January 25, 2016

#### Justice and War? Antiquity’s Bequest

Thucydides (1910). The Melian Conference. In *The History of the Peloponnesian War* (R. Crawley, Trans.). London: J.M. Dent & Sons Ltd., pp.300-306. Available online at

<http://www.wellesley.edu/ClassicalStudies/CLCV102/Thucydides--MelianDialogue.html>

Anghie, A. (1996). Francisco de Vitoria and the Colonial Origins of International Law. *Social & Legal Studies*, 5(4), 321-336.

Coverdale, J.F. (2004). An Introduction to the Just War Tradition, 16 *Pace International Law Review*. 221-277.

Online at: <http://digitalcommons.pace.edu/pilr/vol16/iss2/1>

Myers, R.J. (1996). Notes on the Just War Theory: Whose Justice, Which Wars? *Ethics & International Affairs*, 10(1), 115-130.

### Week 4 – February 1, 2016

### **“Exterminate all the brutes” - Missions civilizatrice and the “White man's Burden”**

Anghie, A. (1999). Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law. *Harvard International Law Journal*, 40(1), 1-66.

Colby, E. (1927). How to Fight Savage Tribes. *American Journal of International Law* 21(2)279-288.

Ward, T. (2005). State Crime in the Heart of Darkness. *British Journal of Criminology* 45(4): 434-445.

Wright, Q. (1926). The Bombardment of Damascus. *American Journal of International Law* 20: 263-280.

### **Week 5 – February 8, 2016**

#### **Civilizing the Un-Civilizable?**

Carnahan, B. M. (1998). Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity. *American Journal of International Law*, 92(2), 213-231.

Davies, N.J.S. (2009). The Caroline Case and American Drone Strikes in Pakistan. *Peace Review: A Journal of Social Justice*, 21(4), 429-436.

Meron, T. (1987). The Geneva Conventions as Customary Law. *American Journal of International Law*, 81(2), 348-370.

Roscher, B. (2002). The “Renunciation of War as an Instrument of National Policy”. *Journal of the History of International Law*, 4, 293-309.

Zulaika J. (1998). Tropics of Terror: From Guernica's 'Natives' to Global 'Terrorists'. *Social Identities* 1:93-108.

### **Week 6 – February 15, 2016**

#### **No Class – Reading Week**

### **Week 7 – February 22, 2016**

#### **From Nuremberg to Vietnam**

Hitchins, C. (2001). The Case Against Henry Kissinger, Part One: The Making of A War Criminal. *Harpers Magazine*. February. Available online at: [www.icaonline.org/files/hitchens\\_harpers\\_kissinger.pdf](http://www.icaonline.org/files/hitchens_harpers_kissinger.pdf). Read from ‘Dress Rehearsal: The Secret of ‘68’ up to, but not including, ‘Chile Part I: Statesman as Hitman’.

Lippman, M. (1993). War Crimes: The My Lai Massacre And The Vietnam War’. *San Diego Justice Journal* 1.

Nagel, T. (1972). War and Massacre. *Philosophy and Public Affairs*, 1(2), 123-144.

Prévost, A.M. (1992). Race and War Crimes: The 1945 War Crimes Trial of General Tomoyuki Yamashita. *Human Rights Quarterly*, 14(3), 303-338.

Ryan, A. (2007). Nuremberg’s Contributions to International Law. *Boston College International & Comparative Law Review* 30, 55-89. Online at <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/5>

### **Week 8 – February 29, 2016**

#### **“The Responsibility to Protect” or “The Burden” Revisited?**

Bellamy, A.J. (2005). Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs*, 19(2), 31-54.

Branch, A. (2005). American Morality over International Law: Origins in UN Military Interventions, 1991-1995. *Constellations*, 12(1), 103-127.

MacFarlane, N.S., Thielking, C.J. and Weiss, T.G. (2004). "The responsibility to protect": Is anyone interested in humanitarian intervention?. *Third World Quarterly* 25: 977-992.

Orford, A. (1999). Muscular Humanitarianism: Reading the Narratives of the New Interventionism. *European Journal of International Law*, 10(4), 679-711.

### **Week 9 – March 7, 2016**

#### **Imperial Outposts Amidst the Barbarians**

Bellamy (2004). Ethics and Intervention: The “Humanitarian Exception” and the Problem of Abuse in the Case of Iraq. *Journal of Peace Research*, 41(2), 131-147.

Bhuta, N. (2003). A Global State of Exception? The United States and World Order. *Constellations*, 10(3), 371-391.

Center for Economic and Social Rights (2002). Tearing Up The Rules: The Illegality of Invading Iraq.

<http://www.cesr.org/article.php?id=1087>.

Elshtain, J.B. (2002). A Just War? Online at:

[http://www.boston.com/news/packages/iraq/globe\\_stories/100602\\_justwar.htm](http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm).

Oberleitner, G. (2004). A just war against terror? *Peace Review*, 16(3), 263-268.  
Roberts, A. (2003). The law and the use of force after Iraq. *Survival*, 45(2), 31-56.

#### **Week 10 – March 14, 2016**

##### **Distinction, Proportionality and Military Necessity Under conditions of Dramatic Asymmetry: Three Case Studies**

Brussels Tribunal - Remembering Fallujah - A dossier of The BRussels Tribunal Online at <http://www.brussellstribunal.org/pdf/Fallujah.pdf>.  
International Crisis Group (2010) War Crimes in Sri Lanka - Asia Report N°191. May 2010. Online at <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/191%20War%20Crimes%20in%20Sri%20Lanka.pdf>.  
The Goldstone Report (excerpts) *Journal of Palestine Studies*, Vol. 39, No. 2 (Winter 2010), pp. 60-121 (especially pp. 72-117)  
O'Huiginn, D. (2004). Denial of Water to Iraqi Cities. *Cambridge Solidarity with Iraq* (CASI). Online at <http://www.fredsakademiet.dk/library/water.htm>

#### **Week 11 – March 21, 2016**

##### **New Wars, New Rules and an Enemy Unlike Others - The “Exceptionality” of Terrorism**

Gross, M. L. (2006). Assassination and Targeted Killing: Law Enforcement, Execution or Self-Defence? *Journal of Applied Philosophy* 23(3): 323-335.  
Halper, J. (2010) The Second Battle of Gaza: Israel's Undermining of International Law. *Monthly Review*. Online at <http://mrzine.monthlyreview.org/2010/halper260210.html> .  
Kasher, A. (2009). Operation Cast Lead and the Ethics of Just War: Was Israel's conduct in its campaign against Hamas morally justified? *Azure* 37.  
Kasher, A. and Yadlin, A. (2005). Military Ethics of Fighting Terror: An Israeli Perspective. *Journal of Military Ethics* 4: 3-32.  
---- (2005). Military Ethics of Fighting Terror: Response. *Journal of Military Ethics* 4: 60-70.  
Weizman, E. (2010). Legislative Attack. *Theory, Culture & Society* 27(6): 11-32

#### **Week 12 – March 28, 2016**

##### **Feminist Reflections on the Law of Armed Conflict**

Copelon, R. (2000-2001) Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law. *McGill Law Journal* 46(1) 217-240.  
Denike, M. (2008) The Human Rights of Others: Sovereignty, Legitimacy, and “Just Causes” for the “War on Terror”. *Hypatia* 23: 95-121.  
Gardam, J. (1997). Women and the Law of Armed Conflict: Why the Silence? *The International and Comparative Law Quarterly* 46(1): 55-80.  
Philipose, L. (1996). "The Laws of War and Women's Human Rights." *Hypatia* 11(4): 46-62.

#### **Week 13 – April 4, 2015**

##### **... Medieval Methods**

Bassiouni, M.C. (2005). The Institutionalization of Torture Under the Bush Administration. *Case Western Reserve Journal of International Law* 37: 389-425.  
Bellamy, A.J. 2006. 'No pain, no gain. Torture and ethics in the war on terror'. *International Affairs* 82, 121-148.  
Michaelsen, S. & Shershow, S.C. (2004). Beyond and before the law at Guantanamo. *Peace Review* 16(3), 293-303.  
Post, J.M., & Panis, L. K. (2005). Crimes of Obedience. *Democracy and Security* 1(1), 33-40.  
Vöneky, S.N.U. (2007). Response – The Fight against Terrorism and the Rules of International Law – Comment on Papers and Speeches of John B. Bellinger, Chief Legal Advisor to the United States State Department. *German Law Journal* 8(7), 747-759.