

Course Outline

COURSE:	LAWS 4606 A - INTERNATIONAL LAW OF ARMED CONFLICT
TERM:	Fall 2008/09
PREREQUISITES:	LAWS 3603
CLASS:	Day & Time: Tuesday - 11:35am – 2:25 pm Room: 431 TB (Tory)
INSTRUCTOR:	Professor Trevor Purvis
CONTACT:	Office: D599 LA (Loeb) Office Hrs: Tuesday - 2:45-5:45 pm Telephone: 613-520-2600 x. 3673 Email: tpurvis@ccs.carleton.ca

"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/pmc/students/accom_policy.html

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.

COURSE ASSESSMENT

Class Participation - 30%
Final Term Paper - 70%

Students will be required to submit a brief paper proposal in class in Week 6 (the class before Reading Week). The proposal should consist of a working title and roughly a half-page (1-2 paragraph) description of how you envisage the paper developing.

Note: All course components must be completed in order to get a passing grade.

Note: Students are strongly encouraged to check WebCT each week before class for any last-minute announcements.

Week 1 Introduction

Crimes of War Project. (2001). *Timeline of International Humanitarian Law*.

Week 2 From Antiquity to the Margins of Modernity

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

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

Meron, T. (1992). Shakespeare's Henry the Fifth and the Law of War. *The American Journal of International Law*, 86(1), 1-45.

Bull, H., Kingsbury, B., & Roberts, A. (Eds.). (1992). *Hugo Grotius and International Relations*. Oxford: Oxford University Press.

Best, G. (1994). *War and Law Since 1945*. Oxford: Oxford University Press. Chapter 1.

Supplementary Reading

Aquinas, *Summa Theologica* II-II, Question 40 'On War'

Vitoria, F. (1991). *Political Writings*. Cambridge: Cambridge University Press. Pp.293-338

von Elbe, J. (1939). The Evolution of the Concept of the Just War in International Law. *The American Journal of International Law*, 33(4), 665-688.

Tully, J. (1993). *An approach to political philosophy: Locke in contexts*. Cambridge: Cambridge University Press. Chapter 5, 'Rediscovering America: The Two Treatises and Aboriginal Rights.'

Week 3 19th Century Innovations: *ius in bello*, *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), 1-80.

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.

Jennings, R. Y. (1938). The *Caroline* and *McLeod* Cases. *The American Journal of International Law*, 32(1), 82-99.

Meron, T. (2000). The Martens Clause, Principles of Humanity, and Dictates of Public Conscience. *American Journal of International Law*, 94(1), 78-89.

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

Supplementary Reading

Rudyard Kipling, The White Man's Burden, at

http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_2/kipling.html

Week 4 The 20th Century: Civilizing Barbarity?

Amnesty International. (2004). *Lives blown apart: Crimes against women in times of conflict*. Oxford: Alden Press.

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

Greenwood, C. (1987). The Concept of War in Modern International Law. *International & Comparative Law Quarterly*, 36(2), 283-306.

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

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

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

Wasserstrom, R. (1971). The Relevance of Nuremberg. *Philosophy and Public Affairs*, 1(1), 22-46.

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

Wright, Q. (1947). The Law of the Nuremberg Trial. *American Journal of International Law*, 41(1), 38-72.

Rutherford, K. (1999). The Hague and Ottawa Conventions: a Model for Future Weapon Ban Regimes? *The Nonproliferation Review*(Spring-Summer), 36-50.

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

Supplementary Reading

- Ferren, J. M. (2003). General Yamashita and Justice Rutledge. *Journal of Supreme Court History*, 28(1), 54-80.
- Finch, G. A. (1947). The Nuremberg Trial and International Law. *The American Journal of International Law*, 41(1), 20-37.
- Hockett, J. D. (1990). Justice Robert H. Jackson, the Supreme Court, and the Nuremberg Trial. *The Supreme Court Review, 1990*, 257-299.
- Levinson, S. (1973). Responsibility for Crimes of War. *Philosophy and Public Affairs*, 2(3), 244-273.

Week 5 Ad Hoc Tribunals

- Fitzgerald, K. (1997). Problems of Prosecution and Adjudication of Rape and Other Sexual Assaults under International Law. *European Journal of International Law*, 8(4), 638-663.
- Meernik, J. (2003). Victor's Justice or the Law? Judging And Punishing At The International Criminal Tribunal For The Former Yugoslavia. *Journal of Conflict Resolution*, 47(2), 140-162.
- Peskin, V. (2005). Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Journal of Human Rights*, 4(2), 213-231.
- Pfaff, W. (2000). Judging war crimes. *Survival*, 42, 46-58.
- Zacklin, R. (2004). The Failings of Ad Hoc International Tribunals. *Journal of International Criminal Justice*, 2(2), 541-545.

Supplementary Reading

- Chinkin, C. (1994). Rape and Sexual Abuse of Women in International Law. *European Journal of International Law*, 5(1), 326-341.
- Dixon, R. (2002). Rape as a Crime in International Humanitarian Law: Where to from Here? *European Journal of International Law*, 13(3), 697-719.
- Koskeniemi, M. (2002). Between Impunity and Show Trials. *Max Planck Yearbook of United Nations Law*, 6, 1-35.
- Martinez, J. S. (2007). Understanding Mens Rea in Command Responsibility: From Yamashita to Blaskic and Beyond. *Journal of International Criminal Justice*, 5(3), 638-664.
- Meron, T. (1993). Rape as a Crime Under International Humanitarian Law. *The American Journal of International Law*, 87(3), 424-428.

Week 6 The International Criminal Court: Universal and Concurrent Jurisdiction

- Bedont, B. C. (1999). Gender-Specific Provisions in the Statute of the ICC. In F. Lattanzi & W. Schabab (Eds.), *Essays on the Rome Statute of the ICC*. Naples: Editoriale Scientifica.
- Cassese, A. (1998). On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law. *European Journal of International Law*, 9(1), 2-17.
- Kissinger, H. (2001). The Pitfalls of Universal Jurisdiction: Risking Judicial Tryanny, *Foreign Affairs* (Vol. July / August).
- Nsereko, D. D. N. (2002). Aggression under the Rome Statute of the International Criminal Court. *Nordic Journal of International Law*, 71(4), 497-521.
- Ralph, J. (2003). Between Cosmopolitan and American Democracy: Understanding US Opposition to the International Criminal Court. *International Relations*, 17(2), 195-211.
- Wedgwood, R. (1999). The International Criminal Court: An American View. *European Journal of International Law*, 10(1), 93-107.
- Zwanenburg, M. (1999). The Statute for an International Criminal Court and the United States: Peacekeepers under Fire? *European Journal of International Law*, 10(1), 124-143.

Supplementary Reading

- Heller, K. J. (2007). Retreat from Nuremberg: The Leadership Requirement in the Crime of Aggression. *European Journal of International Law*, 18(3), 477-497.
- Kramer, R. C., & Michalowski, R. J. (2005). War, Aggression and State Crime: A Criminological Analysis of the Invasion and Occupation of Iraq. *British Journal of Criminology*, 45(4), 446-469.
- Ongena, T., & Van Daele, I. (2002). Universal Jurisdiction for International Core Crimes: Recent Developments in Belgium. *Leiden Journal of International Law*, 15(3), 687-701.
- Sriram, C. L. (2002). Exercising Universal Jurisdiction: Contemporary Disparate Practice. *The International Journal of Human Rights*, 6(4), 29-48.
- Wilke, C. (2005). A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts. *Constellations*, 12(1), 83-102.

Week 7 Reading Week/No Class**Week 8 '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.
- Ignatieff, M. (2003, January 5, 2003). The Burden. *New York Times Magazine*.
- Orford, A. (1999). Muscular Humanitarianism: Reading the Narratives of the New Interventionism. *European Journal of International Law*, 10(4), 679-711.
- Stahn, C. (2007). Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *The American Journal of International Law*, 101(1), 99-120.

Supplementary Reading

- Holzgrefe, J.L. & Keohane, R.O. (Eds.) (2003). *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge: Cambridge University Press.
- International Commission on Intervention and State Sovereignty. (2001). *The Responsibility To Protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre.

Week 9 Fighting the 'Good Fight' - Kosovo and the Just Cause

- Buchanan, A. (2001). From Nuremburg to Kosovo: The Morality of Illegal International Legal Reform. *Ethics*, 111(4), 673-705.
- Byers, M., & Chesterman, S. (2003). Changing the Rules About Rules?: Unilateral Humanitarian Intervention and the Future of International Law. In J.L. Holzgrefe and R.O. Keohane (Eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge: Cambridge University Press.
- Chandler, D. (2000). International Justice. *New Left Review*, 6(Nov/Dec), 55-66.
- Zolo, D. (2002). *Invoking Humanity: War, Law and Global Order* (Frederico & G. Poole, Trans.). London & New York: Continuum. Chapter 3.
- Koskeniemi, M. (2002). 'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law. *Modern Law Review*, 65(2), 159-175.
- Blockmans, S. (2004). *Moving Into UNchartered Waters: An Emerging Right of Unilateral Humanitarian Intervention?* (Vol. 12): Cambridge Journals Online.

Week 10 Imperial Outposts Amidst the Barbarians

- Bellamy, A. J. (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.
- Brunnee, J., & Toope, S. J. (2004). The Use of Force: International Law After Iraq. *International & Comparative Law Quarterly*, 53(4), 785-806.
- Elshtain, J. B. (2002). *A Just War?*, from 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.
- United States Department of Defense (2005). *The National Defense Strategy of The United States of America*.
- Wedgwood, R. (2003) Legal Authority Exists For A Strike on Iraq, Expert Says. <http://usinfo.state.gov/dhr/Archive/2003/Oct/09-823433.html>

Supplementary Reading

- Calhoun, L. (2001). The Metaethical Paradox of Just War Theory. *Ethical Theory and Moral Practice*, 4, 41-58.
- Greenwood, C. (2003). International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq. *San Diego International Law Journal*, 4(7), 8-37.
- Rengger, N. (2002). On the just war tradition in the twenty-first century. *International Affairs*, 78(2), 353-363.
- Gordon, A. F. (2006). Abu Ghraib: Imprisonment and the War on Terror. *Race & Class*, 48(1), 42-59.

Week 11 New Wars, New Rules ... Medieval Methods

- Arnold, R. (2004). The Abu Ghraib Misdeeds: Will There Be Justice in the Name of the Geneva Conventions? *Journal of International Criminal Justice*, 2(4), 999-1006.
- Brown, M. (2005). "Setting the Conditions" for Abu Ghraib: The Prison Nation Abroad. *American Quarterly*, 57(3), 973-997.
- Dworkin, A. (2003) *Rethinking the Geneva Conventions*.
<http://www.crimesofwar.org/print/expert/gc-intro-print.html>
- Hersh, S. M. (2004, May 10). Torture at Abu Ghraib: American soldiers brutalized Iraqis. How far up does the responsibility go? *The New Yorker*.
- Jain, N. (2005). A Separate Law for Peacekeepers: The Clash between the Security Council and the International Criminal Court. *European Journal of International Law*, 16(2), 239-254.
- Kretzmer, D. (2005). Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence? *European Journal of International Law*, 16(2), 171-212.
- 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.
- van Aggelen, J. (2005). A Response to John C. Yoo: The Status of Soldiers and Terrorists under the Geneva Conventions. *Chinese Journal of International Law* 4(1): 167-181.
- Yoo, J.C. (2004). The Status of Soldiers and Terrorists under the Geneva Conventions. *Chinese Journal of International Law* 3(1): 135-150.

Supplementary Reading

- Butler, J. (2004) "Guantanamo Limbo". *The Nation* (April)
- Butler, J. (2004) *Precarious Life: The Powers of Mourning and Violence*. London: Verso.
- Hope, D. (2004). Torture. *International & Comparative Law Quarterly*, 53(4), 807-832.
- Jinks, D. (2006). *The Rules of War: The Geneva Conventions in the Age of Terror*. Oxford: Oxford University Press..
- Jinks, D., & Sloss, D. (2004). Is the President Bound by the Geneva Conventions? *Cornell Law Review* 90(1): 97.
- Greenberg K.J. & Dratel J.L. (Eds.) (2005). *The Torture Papers: The Road to Abu Ghraib*. 2005. New York: Cambridge University Press. (available as electronic resource through Carleton Library)
- Smith, Thomas W. (2002). The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence," *International Studies Quarterly* 46(3) , 355-374.
- Stewart, J. G. (2006). Rethinking Guantanamo: Unlawful Confinement as Applied in International Criminal Law. *Journal of International Criminal Justice*, 4(1), 12-30.
- Roth, K. (2004). The Law of War in the War on Terror, *Foreign Affairs* (Vol. January/February).
- Vierucci, L. (2004). Is the Geneva Convention on Prisoners of War Obsolete?: The Views of the Counsel to the US President on the Application of International Law to the Afghan Conflict. *Journal of International Criminal Justice* 2(3): 866-871.
- Welch, M. (2007). 'Sovereign Impunity in America's War on Terror: Examining Reconfigured Power and the Absence of Accountability'. *Crime, Law and Social Change* 47: 135-150.
- Wilke, C. (2005). War v. Justice: Terrorism Cases, Enemy Combatants, and Political Justice in U.S. Courts. *Politics Society*, 33(4), 637-669.

Week 12 Taliban, Al Qaida, and other assorted 'Scumbags' - Humanity and Its 'Others'

- Amnesty International. (2007). *Afghanistan: Detainees transferred to torture: ISAF complicity? - Amnesty International*.
- Byers, M. (2002). Terrorism, the Use of Force and International Law after 11 September. *International and Comparative Law Quarterly*, 51(2), 401-414.
- Byers, M., & Schabas, W. (2007). Canadian War Criminals? Experts want top officials investigated, *The Tyee.ca*. <http://thetyee.ca/Views/2007/04/27/WarCrime/print.html>
- International Criminal Court, Office of the Prosecutor (2006). Correspondence from Chief Prosecutor rejecting call for investigation into allegations of coalition abuses, at www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf
- Kheiltash, G. - Ocampo Turns Down Iraq Case: Implications for the US. *Global Policy Forum*, at <http://www.globalpolicy.org/intljustice/icc/2006/02ocampo.htm>
- 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.

- Myers, R. J. (1996). Notes on the Just War Theory: Whose Justice, Which Wars? *Ethics & International Affairs*, 10(1), 115-130.
- Sadat, Leila. (2006). Ghost Prisoners and Black Sites: Extraordinary Rendition Under International Law. *Case Western Reserve Journal of International Law* 37(2/3). 309-342.
- Stahn, C. (2006). 'Jus ad bellum', 'jus in bello' . . . 'jus post bellum'? -Rethinking the Conception of the Law of Armed Force. *European Journal of International Law* 17(5), 921-943.
- 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.