Course Outline

Course: LAWS 4606 A - International Law of Armed Conflict

TERM: Fall 2009-10
PREREQUISITES: LAWS 3603

CLASS: Day & Time: Wednesday 1805-2055

Room: Please check with Carleton Central for current room location

INSTRUCTOR: Professor Trevor Purvis

CONTACT: Office: D599 Loeb

Office Hrs: Mondays, 2:45-5:45

Telephone: ext. 3673

Email: <u>tpurvis@ccs.carleton.ca</u>

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 16, 2009 for December examinations and March 12, 2010 for April examinations.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

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 of **October 21**). 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.

Wk 1 Sep 16 Introduction

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

Wk 2 Sep 23 From Antiquity to the Margins of Modernity

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

Kelsay, J. 2003. 'Al-Shaybani and the Islamic Law of War'. *Journal of Military Ethics* 2: 63-75. Johnson, J.T. 2005. Just War, As It Was and Is: First Things. Online at http://www.firstthings.com/print/article/2007/01/just-waras-it-was-and-is-2?keepThis=true

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.

Draper, G. I. A. D. (1992) Grotius' Place in the Development of Legal Ideas about War, in Bull, H., Kingsbury, B., & Roberts, A. (Eds.), *Hugo Grotius and International Relations*. Oxford: Oxford University Press.

Supplementary Reading

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

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

Bellamy, A.J. (2006). Just Wars: From Cicero to Iraq (Cambridge: Polity Press, 2006).

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.

Tuck, R. (1999). The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant. Oxford: Oxford University Press.

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.

Wk 3 Sep 30 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.

Doty, G.R.C. (1998). The United States and the Development of The Laws Of Land Warfare. *Military Law Review* 156: 224-255.

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

Wk 4 Oct 7 The 20th Century: Civilizing Barbarity?

Colby, E. (1927). How to Fight Savage Tribes. *American Journal of International Law* 21(2)279-288. Wright, Q. 1926. 'The Bombardment of Damascus'. *American Journal of International Law* 20: 263-280. Lippman, M. 1993. 'War Crimes: The My Lai Massacre And The Vietnam War'. San Diego Justice Journal 1.

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

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

Supplementary Reading

- Greenwood, C. (1987). The Concept of War in Modern International Law. *International & Comparative Law Quarterly*, 36(2), 283-306.
- Farrer, J.A. (1880). Savage and Civilized Warfare. *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 9: 358-369.
- 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. Rutherford, K. (1999). The Hague and Ottawa Conventions: a Model for Future Weapon Ban Regimes? *The Nonproliferation Review*(Spring-Summer), 36-50.

Wk 5 Oct 14 Ad Hoc Tribunals

- Koskenniemi, M. (2002). Between Impunity and Show Trials. *Max Planck Yearbook of United Nations Law, 6,* 1-35.
- 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

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.

Wk 6 Oct 21 The International Criminal Court: Universal and Concurrent Jurisdiction

- Arbour, Louise (2001) Litigation Before the ICC: Not If and When, But How? 40 Columbia Journal of Transnational Law 1.
- Bishai, L.S. (2008). Leaving Nuremberg: America's love/hate relationship with international law. *Review of International Studies* 34: 425-443.
- Bolton, J.R. 2001. The Risks and Weaknesses of the International Criminal Court from America's Perspective. *Law and Contemporary Problems* 64: 167-180.
- Conso, G. 2005. The Basic Reasons for US Hostility to the ICC in Light of the Negotiating History of the Rome Statute. *Journal of International Criminal Justice* 3: 314-322.
- Kissinger, H. (2001). The Pitfalls of Universal Jurisdiction: Risking Judicial Tyranny, *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.
- Pittman, T.W. and Heaphy, M. (2008). Does the United States Really Prosecute Its Service Members for War Crimes? Implications for Complementarity before the International Criminal Court. *Leiden Journal of International Law* 21: 165-183.
- Ralph, J. (2003). Between Cosmopolitan and American Democracy: Understanding US Opposition to the International Criminal Court. *International Relations*, 17(2), 195-211.
- 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

- 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.
- Feldstein, S. (2004). Applying the Rome Statute of the International Criminal Court: A Case Study of Henry Kissinger. *California Law Review* 92: 1663-1727.

- Heller, K. J. (2007). Retreat from Nuremberg: The Leadership Requirement in the Crime of Aggression. *European Journal of International Law, 18*(3), 477-497.
- Hurwitz, D.R. (2008). Universal Jurisdiction and the Dilemmas of International Criminal Justice: The Sabra and Shatila Case in Belgium, in Hurwitz, D.R., Satterthwaite, M.L. and Ford, D. (eds.) *Human Rights Advocacy Stories*. Eagan: Foundation Press.
- 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.
- The Redress Trust (2006). Victims, Perpetrators or Heroes? Child Soldiers before the International Criminal Court. London: The Redress Trust.
- Sriram, C. L. (2002). Exercising Universal Jurisdiction: Contemporary Disparate Practice. *The International Journal of Human Rights, 6*(4), 29-48.
- Wedgwood, R. (1999). The International Criminal Court: An American View. *European Journal of International Law, 10*(1), 93-107.
- Wilke, C. (2005). A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts. *Constellations*, 12(1), 83-102.

Wk 7 Oct 28 War and the Most Vulnerable - Women, Children, Refugees

- Amnesty International. (2004). Lives blown apart: Crimes against women in times of conflict. Oxford: Alden Press.
- 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.
- 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.
- Fox, M.-J. (2004). Girl Soldiers: Human Security and Gendered Insecurity. *Security Dialogue* 35: 465-479.
- Rosen, D.M. (2008). 'Child Soldiers, International Humanitarian Law, and the Globalization of Childhood'. *American Anthropologist* 109: 296-306.
- Wuerzner, C. (2008). Mission impossible? Bringing charges for the crime of attacking civilians or civilian objects before international criminal tribunals. *International Review of the Red Cross* 90: 907-930.

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.

Wk 8 Nov 4 '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.

Wk 9 Nov 11 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.

Koskenniemi, 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.

Wk 10 Nov 11 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.

W 11 Nov 18 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.

Bassiouni, M.C. (2005). The Institutionalization of Torture Under the Bush Administration. *Case Western Reserve Journal of International Law* 37: 389-425.

Brown, M. (2005). "Setting the Conditions" for Abu Ghraib: The Prison Nation Abroad. *American Quarterly*, *57*(3), 973-997.

The Center for Economic and Social Rights (2002). *Tearing Up The Rules: The Illegality of Invading Iraq.* http://www.cesr.org/article.php?list=type&type=43

Danner, M. (2008). The Red Cross Torture Report: What It Means. New York Review of Books.

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.

- Wilson, R.J. (2009). Children in Armed Conflict: The Detention of Children at Guantanamo Bay, and the Trial for War Crimes by Military Commission of Omar Khadr, A Child. Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, February 2009.
- 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.

Wk 12 Nov 25 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, *TheTyee.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 http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf
- Kheiltash, G. (2006). 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.
- Pope, K.S. and Gutheil, T.G. (2009). Psychologists abandon the Nuremberg ethic: Concerns for detainee interrogations. *International Journal of Law and Psychiatry* 32: 161-166.
- 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.
- Bowden, B. (2007). 'Civilization and Savagery in the Crucible of War'. *Global Change, Peace & Security* 19: 3-16.