

Course Outline

COURSE:	LAWS 4606 B - International Law and Armed Conflict
TERM:	Winter 2011-12
PREREQUISITES:	LAWS 2601 or LAWS 3603
CLASS:	Day & Time: Wednesdays, 6:05 pm - 8:55 pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Trevor Purvis
CONTACT:	Office: Loeb D499 Office Hrs: Wednesdays – 3:00-6:00 Telephone: ext. 3673 Email: trevor_purvis@carleton.ca

"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://www2.carleton.ca/pmc/students/accommodations>. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 7 March 2012 for April exams. 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.

Required Texts

This term we will be relying on an array of reading from various sources. The one required book is:

Horowitz, A., Ratner, L. and Weiss, P. (eds.) (2011). *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict*. New York: Nation Books.

Justice Richard Goldstone's report on Israel's assault on Gaza from December 27, 2008 to January 17, 2009 is an excellent resource for our purposes. It illustrates, in a highly readable text, the nature of war crimes and the sorts of difficulties confronting those tasked with investigating allegations thereof.

Course Evaluation

Class Participation - 15%

Journal - 25%

Final Term Paper - 60%

Students will be required to submit a brief paper proposal in class in Week 7 (the class of February 15). 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. A few of the most interesting and useful 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. 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.

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. Professor Rigstad has done an excellent job of assembling a wealth of material invaluable to the study of the law of armed conflict.

A Note on Journals and Weekly Entry Submissions

Students will be required to keep an electronic journal of their reflections on readings and the class. At the end of term you will be required to submit your complete journal to me electronically.

Each week's journal entry should be comprised of roughly one-and-a-half to two pages (single space) of reflections on the assigned readings and class discussion thereof. There will be a weekly assignment drop-box on WebCT. Your weekly submission should be received no later than the beginning of class.

As you will note, there is a very large reading list associated with this course. It is not my expectation that you will have time to read everything on the list. It is, however, expected that you will indeed read as much as you can and be able to engage thoughtfully with the material in class and in your journal.

It is imperative that you back this file up **REGULARLY**. Disk crashes will not be an adequate excuse for missing journals at the end of term.

Class Schedule

Week 1 – January 4, 2012 **Introduction**

Week 2 – January 11, 2012 **Theoretical Foundations**

- Bugnion, F. 2002. 'Just war, war of aggression and international humanitarian law'. *International Review of the Red Cross* No. 847, p. 523-546.
- Denike, M. 'The Human Rights of Others: Sovereignty, Legitimacy, and "Just Causes" for the "War on Terror"'. *Hypatia* 23: 95-121.
- 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.

Week 3 – January 18, 2012 **Justice and War? Antiquity's Bequest**

- Anghie, A. (1996). Francisco de Vitoria and the Colonial Origins of International Law. *Social & Legal Studies*, 5(4), 321-336.
- Elshtain, J. B. (2002). A Just War? Online at: http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm.
- Johnson, J.T. (2005). Just War, As It Was and Is. *First Things*. Online at <http://www.firstthings.com/print/article/2007/01/just-war-as-it-was-and-is-2?keepThis=true&>.
- Myers, R. J. (1996). Notes on the Just War Theory: Whose Justice, Which Wars? *Ethics & International Affairs*, 10(1), 115-130.
- Oberleitner, G. (2004). A just war against terror? *Peace Review*, 16(3), 263-268.
- 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>

Week 4 – January 25, 2012 **"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), 1-71.
- 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 1, 2012

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 8, 2012

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. Read from 'Dress Rehearsal: The Secret of '68' to '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 7 - February 15, 2012

"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.

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.

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 8 – February 22, 2012

Winter Break, classes suspended

Week 9 - February 29, 2012

Imperial Outposts Amidst the Barbarians

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?list=type&type=43>.

Kramer, R. C., & Michalowski, R. J. (2005). War, Aggression and State Crime. *British Journal of Criminology*, 45, 446-469.

Roberts, A. (2003). The law and the use of force after Iraq. *Survival*, 45(2), 31-56.

Week 10 – March 7, 2012

Gaza and the Goldstone Commission

Horowitz, A., Ratner, L. and Weiss, P. (eds.) (2011). *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict*. New York: Nation Books.

Week 11- March 14, 2012

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

- 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.
- (2009). 'Israel & the Rules of War': An Exchange, *The New York Review of Books*, 56(10). Retrieved from <http://www.nybooks.com/articles/22761>.
- Kasher, A. et al (2009) 'Israel & the Rules of War' - An Exchange [cont]. *The New York Review of Books*.
- Walzer, M. & Margalit, A. (2009). 'Israel: Civilians & Combatants': An Exchange. *The New York Review of Books*, 56(8). Retrieved from <http://www.nybooks.com/articles/22979>.
- Weizman, E. (2010). Legislative Attack. *Theory, Culture & Society* 27(6): 11-32

Week 12 - March 21, 2012

What about Fallujah? ... Sri Lanka? ...

- Brussels Tribunal - *Remembering Fallujah - A dossier of The BRussels Tribunal* Online at <http://www.brussellstribunal.org/pdf/Fallujah.pdf>.
- O'Huiginn, D. (2004). *Denial Of Water To Iraqi Cities*. Cambridge Solidarity with Iraq (CASI). Online at <http://www.fredsakademiet.dk/library/water.htm>.
- 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>.

Week 13 - March 28, 2012

... 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.
- Brown, M. (2005). “Setting the Conditions” for Abu Ghraib: The Prison Nation Abroad. *American Quarterly*, 57(3), 973-997.
- Danner, M. (2008). The Red Cross Torture Report: What It Means. *New York Review of Books*.
- 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.