

Course Outline

COURSE: LAWS 4903 C - Weapons of Mass Destruction and International Law

TERM: Fall 2010 (Sep-Dec)

PREREQUISITES: Fourth Year Honours Standing

CLASS: **Day & Time:** Monday 14:35-17:25
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: T. Ashtakala
(CONTRACT)

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"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 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

It is hard to understand how the most indiscriminate and disproportionate weapons for waging war could be regulated under the larger body of rules that also govern the normal interactions among States. Yet such armaments have profound implications for international law and relations: not only does the use of arms in conflict shape international law and practice, but the opposite is also true, in that grassroots efforts to eliminate such weapons depend upon the evolution of the law. In this regard, the adoption of a number of global treaties has contributed substantially to the rules of arms control and of armed conflict. This course will examine the major international instruments, as well as the negotiations and civil society advocacy campaigns, that have attempted to restrain and disarm countries of their arsenals of weapons that cause massive destruction.

The content of the course will help the student gain a better understanding of current situations in the news relating to WMD (such as the positions of North Korea and Iran with regard to nuclear proliferation, or the recent achievement of a universal ban on cluster munitions), and ultimately appreciate how international law offers the best means for preventing, regulating and eliminating such global confrontations; at the same time, the evaluation assignments will provide students with an opportunity to learn how to craft a persuasive legal argument on a topic with which most students have little familiarity. Thus, the course is as much an exercise in legal practice and policy formulation, as it is an introduction to the international law on weapons of mass destruction.

REQUIRED TEXTS

Some Required Readings are posted on WebCT, others have the online URL links indicated in each lecture in the Schedule below . Some additional articles, as well as the case study exercises, will be distributed in class.

EVALUATION

All 4 components of the evaluation must be completed in order to get a passing grade

This course has been described as an exercise in “advocacy for the advocate”: while the primary goal is to impart to the student a substantive knowledge of a specialized topic of international law, it also affords an introduction to legal practice, through a combination of fulfillment of the evidentiary burden and the use of persuasive techniques.

The main component of evaluation will be the production by the student of a campaign to advocate for the elimination (or promotion) of a particular weapon, comprising 1) a compelling, non-legal message, based on anecdotes, witness accounts, medical information, etc; 2) the legal arguments advocating for the elimination, restriction or use of a particular weapon; and 3) a practical and feasible plan detailed the steps that will be taken to effect the sought ban (or promotion).

The non-legal message should be conveyed through an audiovisual production (an **original** video or skit), then the legal arguments and Plan of Action should be explained in a verbal lecture (Power Point presentation) given by the student.

The student can draw inspiration from model campaigns undertaken by non-governmental organizations and other groups that have or are seeking to eliminate existing weapons of mass destruction; similarly, those students who choose to promote a weapon can refer to case studies of arms manufacturers and their promotional sales material.

(1) Presentation of advocacy piece - 50% of final mark

- topic for opinion and presentation must be selected by 27 September
- sign-up sheet for dates will be circulated at first class
- no less than 20 minutes in duration followed by 5 minutes Q&A
- you must respond to questions and comments of your colleagues after the presentation; if no one is saying anything, you are expected to generate discussion yourself, so it is in your interest to prepare your own questions for the class!
- audio-visual or other material is essential; you are invited to be as creative as possible!
- presentations will start on 4 October and finish by 29 November

(2) Legal opinion- 25% of final mark

- topic for opinion and presentation must be selected by 27 September
- paper due in class on 1 December
- Length: minimum 10 pages double-spaced, excluding bibliography
- Format: the paper will generally consist of two sections:
 - ◆ description of the existing legal regime regulating the weapon
 - ◆ deficiencies (or strengths) of the existing legal regime and what needs to be rectified to make the weapon illegal (or legal) under international law

(3) Weekly Quiz – 20% of final mark

- An open-book quiz on the preceding week’s lecture material will be held at the start of each class.

(4) Class participation - 5% of final mark

- Completion of the case study in each class will count for attendance.

SCHEDULE OF LECTURE TOPICS

- 13 September **Means and methods of warfare: the rules of International Humanitarian Law**
Assigned Reading:
- Sassoli, M. and Bouvier, M.A., How does Law Protect in War?, Geneva, ICRC, 2006, pp.218-226 at http://www.loc.gov/rr/frd/Military_Law/pdf/How-law-protect-in-war_Vol-I.pdf
- Meyrowitz, H. "The Principle of Superfluous Injury or Unnecessary Suffering: from the Declaration of St. Petersburg of 1868 to Additional Protocol I of 1977" in International Review of the Red Cross, No. 299, October 1994, pp.98-122 at http://www.loc.gov/rr/frd/Military_Law/pdf/RC_Mar-Apr-1994.pdf.
- 20 September **Means and methods of warfare: Arms Control and Disarmament Principles**
Assigned Reading:
- Fidler, David P. "Weapons of Mass Destruction and International Law", American Society of International Law, Electronic Publications, February 2003, at <http://www.asil.org/insigh97.cfm>.
- Fidler, David P. "International law and weapons of mass destruction: end of the arms control approach?". Duke Journal of Comparative & International Law 14.1 (Winter-Spring 2004): p39(50) (WebCT)
- 27 September **Nuclear Weapons and International Law:**
Assigned Reading:
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of the International Court of Justice, at <http://www.icj-cij.org/docket/files/95/7495.pdf>
- Doswald-Beck, Louise. "International humanitarian law and the Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons" in Special Issue: the Advisory Opinion of the International Court of Justice on the Legality of Nuclear Weapons and International Humanitarian Law". International Review of the Red Cross, no. 316, February 1997, at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNFM>
- 4 October **Nuclear Weapons and International Law (cont'd)**
Assigned Reading:
- Treaty on the Non-proliferation of Nuclear Weapons, at <http://www.un.org/en/conf/npt/2005/npptreaty.html>
- Abramowitz, M. and Laney, J. Meeting the North Korean nuclear challenge : report of an independent task force. New York: The Council on Foreign Relations, 2003, 59pp (WebCT)
- Krieger, D. "Iran, International Law and Nuclear Disarmament". Nuclear Age Peace Foundation, Feb. 2006. http://www.wagingpeace.org/articles/2006/02/00_krieger_iran-law-disarmament.htm
- 11 October **Thanksgiving Holiday, no class**
- 18 October **Biological Weapons**
Assigned Reading:
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, at <http://www.opbw.org/convention/conv.html>

Goldblat, J. "The Biological Weapons Convention: an overview". International Review of the Red Cross, No. 318, May-June 1997, pp. 251-265, at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNPA>

Kellman, H. "Biological Terrorism: Legal Measures for Preventing Catastrophe", Harvard J. of Law and Public Policy Vol 24/2, 2001, p.417-488 (WebCT)

25 October

Chemical Weapons*Assigned Reading:*

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. United Nations, *Treaty Series*, vol. 1974, p. 45, at <http://www.fas.harvard.edu/~hsp/cwc/cwc.html>

The Chemical Weapons Convention: implementation, challenges and opportunities. Thakur, R. and Haru, E. eds. Tokyo/New York: United Nations University Press, 2006, 190pp. at <http://www.loc.gov/catdir/toc/ecip0612/2006012156.html>

1 November

Land Mines and the Ottawa Treaty*Assigned Reading:*

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, United Nations, *Treaty Series*, vol. 2056, p. 211, at http://www.un.org/Depts/mine/UNDocs/ban_trty.htm

"Landmines and International Law: Ratification and National Implementation", at http://www.the-monitor.org/index.php/publications/display?url=lm/1999/appendices/international_law.html

Anderson, Kenneth. "The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society", European Journal of International Law, EJIL 11 (2000), 91-120, at <http://www.ejil.org/pdfs/11/1/523.pdf>

8 November

Conventional Weapons:

- The Conventional Weapons Convention
- Explosive Remnants of War and Cluster Munitions

Assigned Reading:

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, United Nations, *Treaty Series*, vol.1342, p.137, at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/40BDE99D98467348C12571DE0060141E/\\$file/CCW+text.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/40BDE99D98467348C12571DE0060141E/$file/CCW+text.pdf)

The Convention on Cluster Munitions, at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/CE9E6C29A6941AF1C12574F7004D3A5C/\\$file/ccm77_english.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/CE9E6C29A6941AF1C12574F7004D3A5C/$file/ccm77_english.pdf)

Kalshoven, F. "The Conventional Weapons Convention: Underlying Legal Principles". International Review of the Red Cross, No. 279, 1990, 510-520, at http://www.loc.gov/rr/frd/Military_Law/pdf/RC_Nov-Dec-1990.pdf at p.48

"Cluster munitions treaty – a milestone, but a long way to go", at <http://blogs.reuters.com/great-debate-uk/2010/08/01/cluster-munitions-treaty-a-milestone-but-a-long-way-to-go/>

15 November Small Arms: the Real WMD*Assigned Reading:*

Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, UN Document A/CONF.192/15, at <http://disarmament.un.org/cab/poa.html>

Florquin, Nicolas. 2006. '[The Illicit Trade in Small Arms and Light Weapons.](#)' International Institute for Asian Studies. Newsletter 42. October, at http://www.smallarmssurvey.org/files/sas/publications/external_pdf/external_IIAS.pdf

Reference re Firearms Act (Can.), 2000 SCC 31, [2000] 1 S.C.R. 783 Date: June 15, 2000, at <http://scc.lexum.umontreal.ca/en/2000/2000scc31/2000scc31.html>

22 November Old Dogs and New Tricks: the legality of new uses of old weapons*Assigned Reading:*

Daoust, I, Coupland, R and Ishoey, R. "New wars, new weapons? The obligation of States to assess the legality of means and methods of warfare". International Review of the Red Cross, June 2002 Vol. 84 No 846

<http://www.youtube.com/watch?v=zU9g3jdlpu0>

29 November Cyber warfare, the weaponization of space and the future of weapons use*Assigned Reading:*

Kelsey, Jeffrey T.G. " Hacking into international humanitarian law: the principles of distinction and neutrality in the age of cyber warfare, Michigan Law Review, May 01, 2008 (WebCT).

Heere, Wybo P. "Essential Air and Space Law, vol. 2, Space Law: Current Problems and Perspectives for Future Regulation." *Air and Space Law* 31.2 (2006): 152+.(WebCT)

6 December Legal Opinion due in class; Review and celebration