**Armed Conflict and International Law**

**Professor Kate Jastram**

**Preliminary Syllabus Fall 2014: First Two Weeks**

**Tuesdays & Thursdays, 8:35am – 9:50am, Boalt Hall 134**

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Office Hours: Thursdays 10:00 – 11:00 or by appointment

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# *“Inter arma silent leges.”* [[1]](#footnote-1)

# *“If international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously, at the vanishing point of international law.”[[2]](#footnote-2)*

*“I didn’t know what the parameters of the law were anymore.”* [[3]](#footnote-3)

***Overview***

Law and war have been intertwined for centuries. Both the *jus ad bellum*, which governs the legitimacy of resort to armed force, and the *jus in bello*, which addresses the conduct of hostilities, have been debated in many cultures and by people from all walks of life. Most of our current international law relating to armed conflict was codified in the aftermath of the Second World War, with the signing of the UN Charter in 1945 and the revision of the Geneva Conventions in 1949.

The 1945 UN Charter outlaws the threat or use of force, with two important exceptions for Security Council authorization, and for actions taken in self-defense. We will discuss these exceptions and current issues such as the responsibility to protect (R2P), the crime of aggression, and the relationship between the Security Council and the International Criminal Court.

The four 1949 Geneva Conventions and their two 1977 Additional Protocols are the heart of International Humanitarian Law (IHL), also known as the Law of Armed Conflict (LOAC). They seek to limit the effects of war by protecting persons who are not, or are no longer, participating in the hostilities - such as civilians and prisoners of war -- and by restricting the means and methods of warfare. We will discuss questions such as IHL’s applicability to non-international armed conflict, to the “war on terror”, and to new technologies, as well as its responsiveness to issues of gender. We will examine means of implementation and enforcement, including the work of the International Committee of the Red Cross and the International Criminal Court. We will also discuss the relationship of IHL to other areas of public international law such as human rights and refugee law.

***Course Materials***

* Course reader. Section numbers given in the reading assignments refer to the course reader.
* ICRC, *The Geneva Conventions of August 12, 1949*. Available from instructor.
* ICRC, *Protocols Additional to the Geneva Conventions of August 12, 1949*. Available from instructor.
* bCourse. The course reader will also be posted, by section numbers, on bCourse.

***Books and films on reserve***

* *Nuremberg: Tyranny on Trial* (1995). (50 min)
* *The Reckoning: The Battle for the International Criminal Court* (2009). (100 min)
* *Taxi to the Dark Side* (2007). (106 min)
* Begg, *Enemy Combatant: My Imprisonment at Guantanamo, Bagram and Kandahar* (2006).
* Lagouranis & Mikaelian, *Fear Up Harsh*: *An Army Interrogator’s Dark Journey Through Iraq* (2007).
* Lewis, ed., *The War on Terror and the Laws of War: A Military Perspective* (2009).
* Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (2010).
* Verri, *Dictionary of the International Law of Armed Conflict* (1992).
* Wright, *Generation Kill: Devil Dogs, Iceman, Captain America, and the New Face of American War* (2004).
* Yoo, *War by Other Means: An Insider’s Account of the War on Terror* (2006).

***Evaluation***

Grades will be based on class participation (20%) and on a final exam *or* research paper *or* oral presentation to the class (80%).

**Class participation:** The benefit you derive from this class is in direct proportion to your active engagement in it. I expect you to attend class, to be prepared, and to participate with questions and comments. If you must miss class, e-mail me in advance, or as soon as possible afterwards in the event of a sudden conflict. Depending on the circumstances, we can discuss how you can make up for the missed class (20% of grade).

**Exam/paper/presentation options (80% of grade):**

**OPTION ONE Final exam:** You may choose a final exam, which is an open-book four-hour take-home, which can be completed at any time during the exam period;

***OR***

**OPTION TWO Research paper**: You may choose a 20-page research paper on an approved topic related to armed conflict and international law;

**Writing requirement option:** If your seminar paper will serve as your writing requirement, it must be 30 pages and you may take one additional (299) unit for the course. The writing requirement process requires the early submission of at least one draft, review by the faculty advisor, feedback from the advisor to the student, and then revision of the paper, in whole or in part, by the student (Academic Rules, Appendix B). *See also*, Leah Granger, *[Research Guide: J.D. Writing Requirement and Seminar Papers](http://libguides.law.berkeley.edu/content.php?pid=289765)* [(last updated 16 June 2012).](http://libguides.law.berkeley.edu/content.php?pid=289765)

***OR*

OPTION THREE Oral presentation on research:** You may choose to present a 20 minute oral report to the class on a current or historical issue or event in armed conflict and international law, with an analysis of the governing legal framework and policy issues. You can look at a *jus ad bellum* issue, a *jus in bello* issue, or a specific armed conflict.

*For the presentations* -- My goals are for you to (1) learn more about a situation that is of interest to you by having to teach it to others, (2) become familiar with the relevant research resources available, and (3) work on your oral presentation skills. This is not intended to be an exhaustive original research assignment but rather an effort to make a succinct presentation for the class based on what you can synthesize from available information.

Each presenter will need to (1) prepare a brief summary (no more than 5pp) to hand out in connection with your presentation, including a map and a list of the relevant international instruments ratified by the country(ies) in question (the map and list do not count toward the 5pp). Consider whether other visual aids such as Powerpoint would be useful, although they are not required. In addition, (2) submit an annotated bibliography to me (not necessary to share with the class), so that I can see the sources you have consulted. Samples of written materials from past presentations are on bCourse.

 **DUE DATE** *–* Tell me which option (final exam *or* paper *or* presentation) you are selecting by Thursday 4 September (4th class). If you choose the research paper option, submit a topic paragraph by Tuesday 16 September (7th class). Similarly, if you choose the presentation option, tell me the armed conflict topic you will be researching by Tuesday 16 September (7th class). I anticipate that presentations will be given toward the end of the semester but that depends on our speaker schedule and the number of presentations to be given – in other words, you may be assigned to give your presentation earlier than you may wish.

**Class sessions**

**Week One**

1. **Tues 26 Aug: Introduction--Why study Armed Conflict and International Law?**

**Goals for the course (mine and yours) and course requirements**

**Reading: POSTED ON bCOURSE.** Erna Paris, [“The global rule of law is under fire”,*The Globe and Mail,*](http://www.theglobeandmail.com/globe-debate/the-global-rule-of-law-is-under-fire/article19969874/)9 August 2014.

**About the reading**: A continuing theme of this course will be to examine critiques of international law in relation to armed conflict. One powerful criticism is that it does not exist at all – see the quote from Cicero at the top of this syllabus. What do you think Lauterpacht meant (quote also at the top of the syllabus) by saying that the law of war was at the vanishing point of international law?

Today’s reading is a recent op-ed piece. It may be too early in the semester for you to assess Paris’ thesis as a matter of law or history, but are you inclined to agree? Does the state of respect for international law seem worse now, or are there so many examples of violations that it seems there was never much respect? How does Paris address the latter point? *Nota bene:* Paris is wrong on two points of 19th century history with respect to the Geneva Conventions. I’ll point these out in class, and we’ll revisit this history when we take up the *jus in bello* later in the semester.

1. **Thur 28 Aug*: Nuremberg: Tyranny on Trial* (1995)**

This short (45 min) film will be screened in class. Please be aware that it contains

graphic footage of World War II atrocities.

**Reading:** **SECTION 2.** Istvan Deak, “Misjudgment at Nuremberg,” *New York Review of Books,* 7 Oct 1993, parts 2 through 4.

**About the reading:** It’s impossible to talk about either the *jus ad bellum* or the *jus in bello* without talking about the Nuremberg Trials. This film is intended to give you an introduction to some of the issues and personalities on both sides. Deak’s article is a book review of Telford Taylor’s *The Anatomy of the Nuremberg Trials: A Personal Memoir,* (Taylor was a principal prosecutor for the U.S. at Nuremberg). Deak’s piece was written shortlyafter the International Criminal Tribunal for the Former Yugoslavia had been proposed.

**Questions, based on reading and film**:

1. What options were considered for the Nazi leadership after surrender? What was considered to be the value of holding a trial? Do you agree?
2. How were they able to prosecute leaders who had not personally carried out

atrocities? What might be another option?

1. What crimes were they charged with? What legal theory was used? Does this

seem persuasive to you?

1. What kind, or structure, of court was the International Military Tribunal? What do you think were its strengths and weaknesses?
2. What evidentiary issues/decisions did prosecutors face and how did they affect

their strategy in court?

1. What were two of the primary defenses offered? Do you agree with the

Tribunal’s disposition of them?

1. Writing in 1993, at the dawn of the modern era of international criminal law, Deak concluded that the lesson of Nuremberg was that there should be no other trials following its model. What was wrong with the Nuremberg model? Has the international community avoided the flaws that Deak saw?

**Week Two**

1. **Tues 2 Sep: How to Research the Law of Armed Conflict**

**Speaker: Marci Hoffman, Foreign and International Law Librarian, Berkeley Law**

**Reading: POSTED ON bCOURSE.** Marci Hoffman, Edna Lewis,[*Research Guide: International Humanitarian Law*](http://libguides.law.berkeley.edu/internationalhumanitarianlaw) (last updated 18 August 2014).

One recent news article for the in-class exercise on Thursday will be provided in class today.

1. **Thurs 4 Sept: Finding the Law: Spot the Armed Conflict Issue, Locate a Relevant Treaty Provision**

**Reading:** Instructions for today’s in-class exercise will be provided in class today.

1. Cicero,*Pro Milone* (52 BCE). Usually translated as “in times of war, the law falls silent.” [↑](#footnote-ref-1)
2. ## 2 Hersch Lauterpacht, “The Problem of the Revision of the Law of War”, 29 British Yearbook of International Law 382 (1952).

 [↑](#footnote-ref-2)
3. Moazzam Begg, after signing a confession obtained by torture, in *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar* , p. 200 (2006). [↑](#footnote-ref-3)