Syllabus – Advanced Topics in International Humanitarian Law (IHL)
Spring 2016

Course Description: This course will take a close look at key topics in international humanitarian law (IHL) (also known as the law of war (LOW) and the law of armed conflict (LOAC) – note that we will use LOW, LOAC and IHL interchangeably). We anticipate that students will come to the course with some background in this area of the law (either through study or prior experience), or in related fields. Building upon a foundation of assigned readings on core IHL topics, the professors and students will tailor classroom work to coincide with the students’ research and writing projects (see below). Students will be expected to participate actively in class and to share their own research during the semester with other students.

Prerequisites: A class in IHL, national security law, International Human Rights Law (IHRL) or the LOAC, knowledge from prior experience in one of these areas, or permission from the professors.

Research and Writing Projects: The course is intended to provide an opportunity for students to do extensive research on a particular IHL topic of their choosing and to use that research in writing a significant paper of publishable quality. The technical requirements for the paper include: (1) use of correct legal forms of citation (based on The Bluebook: A Uniform System of Citation); (2) timely submission of (i) a detailed outline and (ii) a first draft of at least 6,000 words (excluding footnotes or endnotes), in accordance with our instructions and schedule; and (3) submission of a revised final paper of at least 6,000 words (excluding footnotes or endnotes) based on the professor’s comments. All footnotes or endnotes must conform to The Bluebook: A Uniform System of Citation. More information about the Bluebook can be found at http://www.law.georgetown.edu/library/research/bluebook/.

Please use a 12 point font, double spaced, when submitting papers, and be sure to send all work in Word or other text format (not .pdf to both professors. The final paper must be submitted to the Registrar on the due date, however, in order to get credit for it although you also should submit a copy to both professors as well. The final paper will be due by 11:59 p.m. on May 6, 2016. We do not anticipate granting requests for extension except for health or similar reasons.

Papers of 6,000 words (excluding footnotes) in length are at least 25 typewritten pages using customary margins and spacing. All work must be that of the student in consultation with the supervising professor or must be cited for attribution to others. Students will receive a grade for both the course and the paper.

Grading: The course grade will reflect the timeliness and quality of (i) the outline (10%), (ii) the draft paper (40%); and (iii) the final paper (50%). Class participation will also be considered (see below).

Because a paper must be a product of the student’s own work in consultation with the supervising professor, students who are interested in using their final paper for other purposes (such as a law journal note or writing sample for a job application) may do so only: (1) after the paper has been submitted for grading; and (2) to the extent the student has not received
comments, edits, or other feedback on the paper from individuals other than their grading professor (or in connection with classroom discussion as overseen by such professor) prior to the time it is submitted for grading.

**Course Objective:** To provide you with an opportunity to explore in detail key topics in IHL and to translate your analysis of one key topic into a seminar paper of publishable quality.

**Class Participation:** IHL is a fascinating subject and susceptible to many points of view. You do not have to adopt our views on this subject, but we do require active participation in class discussions. Class participation will include (i) attendance and active participation in classroom discussion; and (ii) an oral presentation (supplemented if you wish with a few power point slides) to the class regarding the topic you choose to write on. We reserve the right to assign short out of class assignments if we believe it necessary to stimulate in class discussion.

**Attendance:** As you know, it is Law Center policy that students must regularly attend class. Per the Law Center *Bulletin* (page 18), “[a] student who … has not regularly attended and participated [in a course for which he or she is registered] may, at the professor’s option, be withdrawn, excluded from the course … or receive a lowered grade in the course.”

**Contacting Professor Schoettler:** In addition to emailing me at my GULC email address, you can also contact me at my office email. The office email is often best because I monitor it with my Blackberry. You can also telephone me at my office or, in an emergency only, at my home. Please call me before 10:00 PM.

**Contacting Professor Jackson:** The best contact for me is my personal email, ; I will pass on my GULC email when I get one assigned. For emergencies only, you can contact me at...
Advanced Topics in International Humanitarian Law (IHL)

Topics and Reading Assignments, Spring 2016

Notes:

We offer a Law of War Seminar in the LL.M Program and Professor Solis offers a Law of War Seminar in the J.D. Program. The Law of War Seminars give students a firm overview of IHL and have been well received both by students without prior knowledge of IHL, as well as those with prior training, including military officers and others with field experience.

This new course is intended to give students with an interest in IHL to explore key aspects of the subject and to pursue in-depth research on a topic of their choosing in collaboration with the professors. The course does include a set of readings for students, including a text book, as well as discussions in a classroom setting. However, students will have a voice in shaping the topics to be discussed during the semester, and in the concluding weeks of the class, will lead classroom discussion, and the syllabus will be adjusted accordingly.

Potential topics for discussion include U.S. interpretation of customary and treaty IHL, thresholds for the application of IHL, the minimum standards of protection of civilians and non-combatants from the effects of conflict, the interface of IHL with human rights law and domestic law, targeting under IHL, including the concept of direct participation of hostilities, the efficacy of IHL in current conflicts, remote warfare (including autonomous weapons and cyber warfare), the standards for detention under IHL, including both permissible duration and treatment, trial of detainees, and other topics.

The text for the course will be the second edition of Geoff Corn et al, The War on Terror and the Laws of War: A Military Perspective. The paperback version is available from Oxford University Press and is supposed to be for sale in the Law Center’s bookstore; a Kindle version also is on Amazon.com.

We supplement the text with other materials that we think will help your understanding, as well as some reference materials that we think are indispensable. These are available on Canvas. You are expected to do all the required readings and to be prepared to discuss them in class.

The treaties we will be working from can be found in the U.S. Army’s Law of Armed Conflict Documentary Supplement, which is available on Canvas and can be found on the Internet at LOAC treaties also are available on other Internet sites, including www.icrc.org.

The website of the International Committee of the Red Cross (ICRC) (www.icrc.org) contains a number of resources that we expect to use during the semester. You are encouraged to explore the ICRC’s website; you may find it useful in developing the topic for your paper. You may also find it fruitful to review a few of the key national security blogs, such as www.lawfareblog.com, www.justsecurity.org and www.opiniojuris.org.
Class 1: Jan. 25, 2016: Jus ad Bellum vs. Jus in Bello

Questions for Discussion:

1. What are the criteria for use of force under the jus ad bellum? What should be the criteria?

2. How does the jus in bello differ from the jus ad bellum?

3. How is “proportionality” used in each body of law?

4. How does a jus ad bellum “armed attack” differ from a jus in bello “attack”?

5. What is the interplay between the U.S. Constitution and questions of the application of the jus ad bellum/ jus in bello?

Required Reading:


Background Reading:


Class 2: Feb. 1, 2016: Triggering the Law of Armed Conflict

Questions for Discussion:

1. At what point does the IHL apply and what are the implications of its application?

2. Why has the IHL figured so importantly in U.S. counter-terrorism efforts against al Qaeda?

Required Readings:


Background Reading:


Class 3: Feb. 8, 2016: Application of Human Rights Law in Armed Conflict
(Students select paper topic by this date)

Questions for Discussion:

1. How is IHRL different than IHL?
2. Is IHL a *lex specialis* or does it supplant IHRL?
3. What it the U.S. position on the application of IHRL?
4. How has IHRL affected U.S. operations in armed conflict?

Required reading:


Background Reading:


Questions for Discussion:

1. Which rules of IHL depend on the “direct participation in hostilities” (DPH) concept?

2. How does DPH affect civilians working for or with the armed forces of a State during an armed conflict?

3. What are the outer limits of the concept? When are activities that assist a belligerent in an armed conflict too remote to be DPH?

Required reading:


Background reading:


Questions for Discussion:

1. What can we realistically expect IHL to do to protect civilians?

2. Has the past decade of contingency operations eroded the protection afforded by IHL?

3. Do you believe proportionality or any of the other principles of the IHL need to be modified?

Required Reading:


Background Reading:


Israel Ministry of Foreign Affairs, * Strikes on houses in Gaza used for military purposes – Legal aspects* (July 11, 2014), [http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Strikes-on-houses-in-Gaza-used-for-military-purposes---Legal-aspects.aspx](http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Strikes-on-houses-in-Gaza-used-for-military-purposes---Legal-aspects.aspx)


Questions for Discussion:

1. Do any weapons on the horizon present new problems for the application of IHL?

2. If yes, which new rulers are needed?

3. If no, do these weapons present any challenges to the application of existing rules, and how can such challenges be mitigated?

4. What IHL-based tests should these new weapons be required to pass in order to be fielded?

Required Reading:


Background Reading:


Class 7: March 7, 2016: Detention in International and Non-International Armed Conflict
(Professor will return outline with comments by March 13, 2016)

Questions for Discussion:

1. What type(s) of due process is guaranteed under IHL for the determination of detainability?

2. Why has the U.S. government increasingly adopted the GCIV/ security detention model?

3. What are the potential weaknesses of this model?

4. What additional due process protections would you recommend?

5. How do IHL due process protections compare with U.S. domestic protections? Are the differences meaningful in terms of outcome?

Required Reading:


Background Reading:


Jeff A. Bovarnik, Detainee Review Boards in Afghanistan: From Strategic Liability to Legitimacy, ARMY LAW., June 2010, at 9

Class 8: March 14, 2016: Treatment of Detainees

Questions for Discussion:

1. How did the US Government ever get into the business of torture?

2. What were the flaws in the John Yoo and Diane Beaver Memos?

3. What did the Detainee Treatment Act prohibit?

4. How do you interpret “torture” and “torture light,” or cruel, inhuman and degrading treatment?

5. What is the treatment standard now for US detainees?

Required Reading:


Background Reading:


Questions for Discussion:

1. What is the jurisdiction of the Military Commissions? Why not use the UCMJ?

2. Has BG Martins made the case for a “Reformed Military Commission”?

3. What aspects of the Military Commissions violate art. 75 of Additional Protocol I?

4. What jurisprudence for the law of armed conflict is likely to be derived from the Military Commissions?

Required Reading:


Background Reading:

Browse the Military Commissions website – look at some motions filed by both sides, e.g., the motion on the use of perfidy in the Al Nashiri case.
Class 10: April 4, 2016: Trial of Detainees

(All Students turn in draft paper by this date; in addition student panelists for this day must submit two page summary of their paper with short list of key sources by April 1, 2016; after review, Professors will distribute to all on April 3, 2016)

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*NOTE: Each panelist should clearly state his or her thesis topic and conclusion up front and then explain the analysis that led to the conclusion. If the panelist thinks there are areas where the class could help him or her regarding the paper, the panelist may finish his or her remarks with a question about these areas.

**NOTE: All students are to provide feedback to each panelist, but discussant will lead off comments for his or her panelist. Comments might be framed around what discussant liked or did not like about the paper, what parts of the presentation the discussant did not understand and what improvements to the topic that the discussant might recommend. Discussants should take no more than 5 minutes to give others a chance to respond.
Class 11: April 11, 2016:  Student Presentations and Discussion

(Student panelists for this day must submit two page summary of their paper with short list of key sources by April 8, 2016; after review, Professors will distribute to all on April 10, 2016)

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*See note on page 13.
Class 12: April 18, 2016: Student Presentations and Discussion

(Student panelists for this day must submit two page summary of their paper with short list of key sources by April 15, 2016; after review, Professors will distribute to all on April 17, 2016)

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*See note on page 13
Class 13: April 25, 2016: Student Presentations and Discussion
(Professor returns draft paper with comments by April 26, 2016; final paper is due by 11:59 p.m. on May 6, 2016)

(Student panelists for this day must submit two page summary of their paper with short list of key sources by April 22, 2016; after review, Professors will distribute to all on April 24, 2016)

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