This course will examine how international law deals with the tension between two highly prominent concerns of the early twenty-first century: protecting national security and protecting human rights. We begin with an overview of U.S. domestic legal authority for national security activities. We then move to a broad overview of international law that includes discussion of treaties, customary international law, the United Nations, and enforcement of international law.

The course then focuses on the regime of international law that is devoted to the protection of human rights. This includes treaties dealing with human rights in general; those that address specific subjects, such as genocide and torture; customary international law; and international criminal law. After a class devoted to review of the material we have covered thus far, we move to international humanitarian law, which is the legal regime that governs the use of force in armed conflict. This includes provisions that relate both to when parties may resort to the use of force, and how they must conduct themselves when they do so. We then devote a class session to review of this topic.

The course next turns to counterterrorism as a vehicle for exploring the interaction of human rights and humanitarian law. To what extent does counterterrorism have features of law enforcement, in which case human rights law governs, and to what extent does it draw on the idea that we are engaged in armed conflict, in which case humanitarian law provides guidance? If it has elements of both, what should be the respective roles of human rights and humanitarian law in regulating counterterrorism? We will focus in depth on four topics that raise these questions: covert and special operations, targeted killing, cyber operations, and prosecution of material support for terrorism.

The course will include extensive use of case studies and problems to explore the complex legal, political, and moral questions that arise with respect to the issues we discuss. In addition, events in the news are sure to provide constant vivid examples of the significance of the concepts that we will be discussing throughout the course. In these ways, the course will provide students with a practical understanding of international law through an in-depth examination of how it operates in a particular field.
The grade in the course will be based on a final examination, but class contributions can help boost your course grade. I expect all students to attend every class, and to let me know in advance if they must miss a class. The class will be recorded on Echo 360, with recordings automatically available to students.

Course Material

Note: Although casebooks assignments below refer to the Fifth Edition and supplement, we will be using the 2016 Sixth Edition of the casebook

Dycus, Banks, Raven-Hansen & Vladeck 2015-2016 CB Supplement (CB Supp.)
Additional Material on Canvas

I. BASIC FOUNDATIONS

An understanding of the international issues regarding national security and human rights requires a basic understanding of the sources of national security authority for the executive, legislative, and judicial branches under U.S. law. The first three classes provide this foundation, which reflects the tensions and ambiguities in determining the scope of executive vis-à-vis legislative authority, as well as the difficulties in using judicial review to hold officials accountable. The next four classes provide an overview of basic principles of international law, dealing with treaties, customary law, and the ways in which such law is incorporated into domestic legal systems; as well as with the United Nations, the most prominent international organization.

Domestic National Security Authority

Class 1: Presidential Power (33 pages)

Constitution, Article II, §§1 (Oath), 2, 3; Article IV §4 (Canvas)
CB, 68-70; 72-76; Supplemental excerpt from Little v. Barreme (Canvas); 78-79; 25-37
CB Supp. 5-18
CB 368-369 (include Hostage Act)

Class 2: Congressional Power (32 pages)

Constitution, Article I §§8-9 (Canvas)
CB 90-96; Authorization for the Use of Military Force, September 18, 2001 (Canvas)
107-111; 307-312; 315(c)(2); 317(d); 320(h)-322
Testimony by Harold Koh on Libya and War Powers before the Senate Foreign Relations Committee, June 28, 2011 (Canvas)
Class 3: The Courts (31 pages)

Constitution Article III §2
CB 123-133; 274 (Tonkin Gulf Resolution); 286-289
CB 142-155

International Law: Basic Concepts

Class 4: Sources and Institutions of International Law (22 pages)

Restatement (Third) of the Law of Foreign Relations of the U.S., §102(1) (Canvas)
Statute of the International Court of Justice (ICJ) Art. 38 (Canvas)
Constitution, Art. VI ¶2 (Canvas)

The United Nations

UN General Assembly: UN Charter Chapters I, IV (Canvas)
UN Security Council: UN Charter Chapter V, VI, VII (Arts. 39-43) (Canvas)
ICJ: UN Charter Arts. 7(1), Articles 92-96; Statute of the ICJ, Selected Articles (Canvas)

CB 163-164(A)(1))
Vienna Convention on the Law of Treaties (excerpt) (Canvas)

Class 5: Treaties: Reservations and Domestic Effect (20 pages)

International Court of Justice, Reservations to The Convention on the Prevention and Punishment of the Crime of Genocide (excerpt) (Canvas)
United States, Declarations and Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Canvas)
Self-Executing Treaties: US v. Medellin (excerpt) (Canvas)
CB 171-173, Notes & Questions

Class 6: Customary International Law (26 pages)

Restatement (Third) of the Law of Foreign Relations of the U.S., §102(2)-(4) and Comment (Canvas)
Paquete Habana (Canvas)
CB 185-187
United States v. PLO (excerpt) (Canvas)
CB 189-195
Customary v. Treaty law: Nicaragua v. US: CB 218-219 (up to ¶106); 220-223 (up to ¶193)
II. INTERNATIONAL HUMAN RIGHTS LAW

The next three classes focus on the sources of law that comprise the international system for the protection of human rights. These include treaties that deal with human rights in general, those that address specific issues, and customary international law known as *jus cogens*. We also discuss the system of international criminal law that is designed to provide redress for serious violations of human rights.

Class 8: Human Rights Treaties Part 1 (30 pages)

UN Charter, Articles 1(3), 55, 56 (Canvas)
United Nations Universal Declaration of Human Rights, Preamble (Canvas)
International Covenant on Civil and Political Rights (ICCPR), Art. 1-21, 24-28, 40-44 (Canvas)
U.S. Reservations, Declarations, and Understandings, ICCPR (Canvas)
(First) Optional Protocol to the ICCPR (Canvas)
Nature of the Obligations under the ICCPR: Human Rights Council (HRC)

Class 9: Human Rights Treaties Part 2 (29 pages)

Convention against Torture (excerpt) (Canvas)
US Reservations to Convention against Torture (Canvas); US Torture Statute (Canvas)
CB 914-916 (Note 3); 900-903
BBC, What a Waterboarding Reconstruction Looks Like, https://www.youtube.com/watch?v=CCze9AMPRLc
Office of Legal Counsel, Torture Statute Opinion, pp. 1-13 (Canvas)
CB 921-922 (Note 3: Army Field Manual)
CB 922-924 (Executive Order 13,491)
Interview with Philip Zimbardo on Abu Ghraib, https://www.youtube.com/watch?v=vAjJooreaic
McCann v. United Kingdom, CB 380-385
Class 10: *Jus Cogens* and Criminal Law (26 pages)

Restatement of Foreign Relations (Third) Sections 701-702 (Canvas)
*Filartiga v. Pena* (Canvas)
UN Charter, Arts. 39-42 (Canvas)
International Criminal Tribunal for the Former Yugoslavia (ICTY) Statute (excerpt) (Canvas)
ICTY, Appeals Chamber, *Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, Excerpt 1, (Canvas)
Rome ICC Statute, (excerpt) (Canvas)

Class 11: Review Session on International Law and International Human Rights Problems (To be posted on Canvas)

III. INTERNATIONAL HUMANITARIAN LAW

The next nine classes deal with international law that governs the resort to and use of force, and its relationship to international human rights law in times of armed conflict.

**Resorting to Force: Jus ad Bellum**

Class 12: Self-Defense under the UN Charter and Customary International Law (22 pages)

CB 210-213, 218-230
CB 354-360

Class 13: Collective Self-Defense (18 pages)

CB 323-326; CB Supp. 64-73; 78-81
UN Security Council Resolution 2249 (Canvas)

Class 14: Humanitarian and Peacekeeping Operations (23 pages)

Map of Yugoslavia Pre- and Post-1991 (Canvas)
CB 336-337 (NATO)
NATO, *NATO's Role in Relation to the Conflict in Kosovo* (Canvas)
Chinkin, *The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law* (excerpt) (Canvas)
CB 431-437

**Conduct During Armed Conflict: Jus in Bello**

Class 15: Basic Principles (29 pages)
Prosecutor v. Tadic, Excerpt 2 (Canvas)  
CB 234-250; 252 n. 3; 253, Note 6  
Geneva Convention IV, Arts. 68, 76 & 78 (Canvas)  
Additional Protocol I to the Geneva Conventions, Article 52: Civilian Objects  
Additional Protocol II to the Geneva Conventions (excerpt) (Canvas)  
International Committee of the Red Cross, Direct Participation in Hostilities, Section II (1), pp. 27-30 (Canvas)  
U.S. War Crimes Statute, 18 USC §2241 (Canvas)  

Class 16: Protecting Civilians (25 pages)  

ICRC, Explosive Weapons in Populated Areas: The Consequences for Civilians  
Blank & Guiora, Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflict in New Warfare (excerpt) (Canvas)  
International Committee of the Red Cross, Direct Participation in Hostilities, pp. 15-17, 30 (State armed forces)-36: 51-58, 65-68, 70-73 (Canvas)  
Filkins, The Forever War (excerpt) (Canvas)  

Class 17: Detention under IHL (27 pages)  

CB 236-237, Geneva Convention III, Common Articles 2 and 3, Article 4  
CB 1065-1075 (up to Hamdan)  
Office of Legal Counsel, Application of Treaties and Laws to al Qaeda and Taliban Detainees (excerpt) (Canvas)  
Uniform Code of Military Justice Articles 21 & 36 (Canvas)  
CB 1075 (Hamdan facts); 1081 (Part VI)-1087  
CB Supp. 298-301  

Class 18: Detention under Human Rights Law (28 pages)  

European Convention on Human Rights, Art. 5 (Canvas)  
UK Court of Appeal, Serdar Mohammed v. Ministry of Defence (excerpt) (Canvas)  

Class 19: Human Rights Law in Armed Conflict (23 pages)  

International Court of Justice, Legality of the Threat or Use of Nuclear Weapons (excerpt) (Canvas)  
United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Canvas)  
International Committee of the Red Cross, Direct Participation in Hostilities International Committee of the Red Cross, Direct Participation in Hostilities, pp. 77-82
Lubell, *Challenges in Applying Human Rights Law to Armed Conflict*, pp. 737-750, 753-754 (Conclusion) (Canvas)

**Class 20: Review Session on International Humanitarian Law**

**Problems (To be posted on Canvas)**

**IV. COUNTER-TERRORISM**

Counter-terrorism is now a major focus of U.S. national security policy. In the remainder of the course we will examine the extent to which counterterrorism initiatives have features of both law enforcement and armed conflict, and the implications of this for the role of human rights law and humanitarian law in regulating these activities. After one class devoted to an overview of the basic issues, we will focus on four topics in depth: covert and special operations, targeted killing, cyber operations, and prosecution for material support for terrorism.

**Class 21: Counter-Terrorism: Law Enforcement or Warfare? (24 pages)**

Ambassador Negroponte Letter to UN Security Council (Canvas)
Blank, *What's in a Word: War, Law, and Counterterrorism* (Canvas)
International Law Association, *Final Report on the Meaning of Armed Conflict in International Law* (excerpts) (Canvas)

**Class 22: Covert and Special Operations (20 pages)**

CB 446-447: (b) The CIA
CB 456: (a) The Central Intelligence Agency
CB 460: 3.5(b): Covert Action
CB 477-479; 485-487; 505-508
Senate Select Committee on Intelligence, Krass Nomination Questions (Canvas)
Gallagher, *Welcome to the Age of the Commando* (Canvas)

**Class 23: Targeting Killing: Part One (28 pages)**

CB 403-407; 397-399
CB Supp. 95-116

**Class 24: Targeted Killing: Part Two (16 pages)**

UN Special Rapporteur, *Extrajudicial, Summary, or Arbitrary Executions* (Canvas)
CB 387-397

**Class 25: Cyber Operations (17 pages; Video: about 85 minutes)**
CNN Cyber Shockwave: We Were Warned, Parts 1-9
https://www.youtube.com/watch?v=02_z0dA3FKq
Schmitt, The Law of Cyber Warfare: Quo Vadis (Excerpt) (Canvas)
Article 19, ICCPR (Canvas)

Class 26: Prosecuting Material Support for Terrorism (19 pages)

CB 988-1006