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 ways in which international law is enforced.

The course then focuses on the regime of international law that is devoted to the protection of human rights. This includes international and regional treaties dealing with human rights in general, such as the International Covenant on Civil and Political and Rights and the European Convention on Human Rights; those that address specific subjects, such as genocide and torture; human rights with respect to the deprivation of life and liberty; and means of protecting and enforcing human rights. We will then devote a class to a review session on the material we have covered thus far in the course.

We move next to the law governing the use of military force. This includes the law on (1) what is known as *jus ad bellum*, relates to when states may resort to the use of military force, and (2) *jus in bello*, reflected in international humanitarian law (IHL), which regulates they must conduct themselves when using such force. At the end of eight classes on the law governing resort to and use of military force, we will devote a class to a review session on this subject.

We then turn to national security concerns that provide an opportunity to explore the interaction of human rights and the law on military force. These will focus mainly on terrorism, and the extent to which it resembles criminal activity properly addressed by law enforcement operations and governed by human rights law, and to what extent it resembles warfare, in which the law regulating military force applies. If a threat has features of both criminal activity and warfare, what should be the respective roles of these bodies of law in regulating security operations? We will focus in depth on law enforcement responses to terrorism,
targeted killing, covert and special operations, and cyber operations as examples of activities that call for creative approaches to this question.

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. We will also be working with statutes that relate to various types of national security issues. 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 you 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.

Learning objectives for the course are:

(1) For you to become familiar with basic concepts in international law, especially with regard to treaties, customary law, and how international law interacts with domestic law in the United States.

(2) For you to become familiar with basic concepts in international human rights law, United Nations and European Conventions on basic human rights, and their impacts on domestic law.

(3) For you to become familiar with the basic provisions of international law that deal with when states may use military force, and that govern how such force may be used in armed conflict.

(4) Based on your understanding of the subjects described above, for you to appreciate how many contemporary national security concerns present challenges for which neither human rights law nor the law on military force is fully adequate -- which means that creative thinking is necessary in addressing these concerns.

Course Material

Casebook Supplement (CB Supp)
Additional Material on Canvas
UN Charter:  

International Covenant on Political and Civil Rights:  
http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

European Convention on Human Rights:  
http://www.echr.coe.int/Documents/Convention_ENG.pdf

Geneva Conventions and Additional Protocols  

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-a-vis legislative authority, as well as the difficulties in using judicial review to hold officials accountable. This will focus on both Constitutional and statutory law.

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 an overview of the United Nations, the most prominent international organization.

Domestic National Security Authority

Class 1: Presidential Power

Constitution, Article II, §§1 (Oath), 2, 3; Article IV §4 (Canvas)
Constitution, Article I, §8 ¶11 (Congress’s authority to declare war)
CB 81-85; 87; 364-366 (Korean War)
Supplemental excerpt from Little v. Barreme (Canvas)
CB 89-92; 412-414

Class 2: Congressional Power

Constitution, Article I §§8-9 (Canvas)
CB 105-107 (through Note 3); 109-111; 375 (Authorization for the Use of Military Force, September 18, 2001)
CB 120-123 (Appropriations)
CB 26-39 (through Justice Jackson concurrence)
CB 349-354; (Notes 1-2); 359-360 (Notes 1-3)
Testimony by Harold Koh on Libya and War Powers before the Senate Foreign Relations Committee, June 28, 2011 (Canvas)

Class 3: The Courts

Constitution Article III §2
CB 135-136 (through Section A)
*El-Shifa Pharmaceutical Industries Co. v. US* (Canvas)
*Washington v. Trump* CB Supp. 1-4
CB 321 (Tonkin Gulf Resolution); 332-335
CB 161-170

**International Law: Basic Concepts**

Class 4: Treaties

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)
CB 178
Vienna Convention on the Law of Treaties (excerpt) (Canvas)
Restatement (Third) of the Law of Foreign Relations of the U.S, §§ 302-303 (Canvas)
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)

Class 5: Customary International Law

RESTATEMENT (THIRD) OF THE LAW OF FOREIGN RELATIONS OF THE U.S., §102(2)-(4) and Comment (Canvas)
Henckaerts, *Study on Customary International Humanitarian Law* (Canvas)
*Paquete Habana* (Canvas)
*Sosa v. Alvarez-Machain* (Canvas)

Class 6: Domestic Effect of International Law

Constitution, Art. VI ¶2 (Canvas)
Restatement (Third) of the Law of Foreign Relations of the U.S., §§111, 907, & 115, and Comment and Reporters’ Notes (Canvas)
Class 7: International Remedies

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)

II. INTERNATIONAL HUMAN RIGHTS LAW

The next four 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.

Class 8: The UN Human Rights System

UN Charter, Articles 1(3), 55, 56
United Nations Universal Declaration of Human Rights, Preamble (Canvas)
International Covenant on Civil and Political Rights (ICCPR)
   Art. 2-4 (State Responsibilities)
   Art. 6 (Right to Life)
   Art. 7 (Torture)
   Art. 9 (Liberty)
   Art. 17 (Privacy)
   Arts. 28, 40, 41, 42, 45 (Human Rights Committee)
   Skim remaining articles
U.S. Reservations, Declarations, and Understandings, ICCPR (Canvas)
(First) Optional Protocol to the ICCPR
Nature of the Obligations under the ICCPR: Human Rights Council (HRC)
General Comment 31 (Canvas)
States of Emergency: HRC General Comment 29 (Canvas)
Restatement of Foreign Relations (Third) Sections 701-702 (Canvas)

Class 9: European Convention on Human Rights

European Convention on Human Rights
   Art. 1 (Obligations)
Art. 2 (Right to Life)
Art. 3 (Torture)
Art. 5 (Liberty and Security)
Art. 8 (Privacy)
Art. 15 (Derogation)
Arts. 19, 32-35, 46 (European Court of Human Rights)
UK 1998 Human Rights Act Overview (Canvas)

Deprivation of Life and Liberty under Human Rights Law

UN Principles on Detention or Imprisonment (Canvas)
International Committee of the Red Cross, *The Use of Force in Law Enforcement Operations* (Canvas)
CB 421-423: Case Study: The Gibraltar Killings

Class 10: The Convention against Torture

Constitution against Torture (Canvas)
US Reservations to Convention against Torture (Canvas)
US Torture Statute (Canvas)
CB 994-998
BBC, What a Waterboarding Reconstruction Looks Like,
https://www.youtube.com/watch?v=CCze9AMPRLc
Office of Legal Counsel, Torture Statute Opinion, pp. 1-6, 39-41 (Canvas)
CB 1041-1042: Domestic Law

Class 11: Protecting and Enforcing Human Rights

Hathaway, *What Realists Don’t Understand about Law* (Canvas)
Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law* (Canvas)
Suzuki, *Seeking ‘Legitimate’ Great Power Status in Post-Cold War International Society: China’s and Japan’s Participation in UN Peacekeeping Operations* (Canvas)

Class 12: Review Session on International Law and International Human Rights

Problems (To be posted on Canvas)
III. THE LAW GOVERNING USE OF MILITARY FORCE

The next eight 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 13: Self-Defense Part One

CB 254-256; 260-270
The *Caroline* Self-Defense Standard (Canvas)

Class 14: Self-Defense Part Two

2002 National Security Strategy of the United States (Canvas)
Egan, *International Law, Legal Diplomacy, and the Counter-ISIL Campaign* (Canvas)
CB 393-399; 401-402; 404-409 (Syria and ISIL)

Class 15: Evolving Jus ad Bellum

Deeks, *Multi-Part Tests in the Jus ad Bellum* (Canvas)
The bin Laden Mission (Canvas)

Wednesday, March 28: Humanitarian and Peacekeeping Operations

Map of Yugoslavia Pre- and Post-1991 (Canvas)
CB 377-380 (NATO)
UN Security Council Resolution 1203
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 479-485
Becker & Shane, Hillary Clinton, “Smart Power,” and a Dictator’s Fall
International Humanitarian Law: *Jus in Bello*

**Monday, April 2: Basic Principles**

CB 277-282  
CB 283-284 (Geneva III Arts. 1-4, 87)  
CB 285-286 (Geneva IV Arts. 4-5, 49, 146, 147)  
Geneva IV Arts. 68, 76, 78  
CB 287-292 (Additional Protocol I Arts. 1, 41, 43, 44, 48, 50, 51, 57, 85)  
International Law Association, *Final Report on the Meaning of Armed Conflict in International Law* (Canvas)  
U.S. War Crimes Statute, 18 USC §2241 (Canvas)

**Wednesday, April 4: Non-International Armed Conflicts**

Additional Protocol II (Canvas)  
Blank & Guiora, *Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflict in New Warfare* (excerpt) (Canvas)  
CB 300-309  
International Committee of the Red Cross, *Direct Participation in Hostilities*, pp. 15-17, 27-36; 51-58, 65-68, 70-73 (Canvas)  
US Department of Defense Law of War Manual, Non-State Combatants (Canvas)  
Filkins, *The Forever War* (excerpt) (Canvas)

**Monday, April 9: Detention**

Geneva Convention III, Article 4, CB 283-284  
AP I, Article 50, CB 290-291  
CB 1161-1162 (up to Part A)  
CB 898-901 (up to Part III)  
Military Commissions Act of 2009, selected sections (Canvas)  
CB 924-932  
CB 940-944; 954  
Geneva Convention IV, Article 78  
AP I, Article 75(3)

**Wednesday, April 11: Human Rights Law in Armed Conflict**

International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Canvas)
Lubell, *Challenges in Applying Human Rights Law to Armed Conflict*, pp. 737-750, 753-754 (Conclusion) (Canvas)
Miko, *Al-Skeini v. United Kingdom and Extraterritorial Jurisdiction under the European Convention for Human Rights* (Canvas)
ICRC, *Interpretive Guidance on Direct Participation in Hostilities*, Restraints on the Use of Force in Direct Attack, pp. 77-82 (Canvas)

**Monday, April 16: Review Session on International Humanitarian Law**

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

**IV. GRAY ZONES: HUMAN RIGHTS AND NATIONAL SECURITY**

In the remainder of the course we will examine the extent to which responses to contemporary national security threats 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.

**Wednesday, April 18: Counterterrorism as Criminal Law Enforcement**

Steinberg & Estrin, *Harmonizing Policy and Principle: A Hybrid Model for Counterterrorism* (Canvas)
CB 1064-1081 (Material Support through *Holder*)
CB 1084-1090 (*Bin Laden*)
1100-1103 (*Abdulmullatab*); FBI Interrogation Guidance (Canvas)

**Wednesday, April 18, 3:30-4:55 pm, Room 206: Targeted Killing**

CB 430 (Executive Order 12,333)
Parks Memo on Executive Order 12,333 (Canvas)

**Monday, April 23: Covert Action and Special Operations**

CB 505-506: (b) The CIA
CB 523: §1.7(a) The Central Intelligence Agency
CB 528: §3.5(a)-(b)
CB 549-551; 564-568
Legislative History, Traditional Military Activities (Canvas)
Grant & Huntley, “Legal Issues in Special Operations” 553-62, 567-70, 575-83, 592-95 (Canvas)
10 USC 167 (special operations)
10 USC 130f (oversight of sensitive military operations)

Wednesday, April 25: Cyber Operations (Video: about 85 minutes)

National Research Council of the National Academies, At the Nexus of Cybersecurity and Public Policy (Canvas)
Schmitt, The Law of Cyber Warfare: Quo Vadis (Canvas)
Indictment, United States v. Internet Research Agency, LLC (Canvas)
18 USC §1030: Fraud and Related Activity in Connection with Computers (Canvas)
Article 19, ICCPR (Canvas)
Article 10, ECHR