

Interdisciplinary Programmes

Academic year 2019-2020

War

IA100 - Autumn - 6 ECTS

Wednesday 14h15 - 16h00

Course Description

This course will cover the laws of war (understood as covering recourse to force, neutrality and the law of armed conflict). The first sessions will deal with the influence of the concept of war and ask what role is left for the legal status of war. The thresholds for the applications of the law of armed conflict and the laws of neutrality will be examined with particular attention on the role that the concept of war can play. Then the focus will shift to the rules on resort to war and the use of force, the laws of war themselves with emphasis on the principles of necessity and distinction, as well on the emerging rules concerning the post-conflict period, in particular the law relating to war crimes and amnesties. There will also be an emphasis on the regulation of the arms trade and future forms of warfare, including the issue of autonomous weapons (killer robots), the use of drones, and the new thinking about cyber-warfare.

> PROFESSOR

[Andrew Clapham](#)

[Office hours](#)

> ASSISTANT

[Bianca Maganza](#)

[Office hours](#)

Syllabus

This class is open to MINT students, MIL students, and PhD students.

Course Requirements

The class will take place on Wednesdays from 14.15 to 16.00. Students are asked to prepare each class by reading the relevant chapters and materials. The Additional Readings are optional. Active participation in class is expected. Evaluation is by a final test.

Materials

This is a complex area of law and we will rely on two books in order to gain an overall understanding of the field:

- R. Kolb, *Advanced Introduction to International Humanitarian Law* (Cheltenham: Elgar, 2014) – the whole book is available on the Moodle page of the class.
- Chapters from A. Clapham and P. Gaeta (eds), [*The Oxford Handbook of International Law in Armed Conflict*](#), (Oxford: OUP, 2014) - the book started out as lectures in Geneva and many of the original lectures can be viewed [here](#). Some extra material will be used and posted on the Moodle page of the class.

Most of the cases will be referenced to the online version of M. Sassòli, A.A. Bouvier, and A. Quintin, [*How Does Law Protect in War?*](#) Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law, 3rd edn, (Geneva: ICRC, 2011).

[An online introduction, available free in English, French, Russian and Arabic, with useful links is](#) Nils Melzer's *International Humanitarian Law: A Comprehensive Introduction* (Geneva: ICRC, 2016).

Final evaluation

The final evaluation will consist of a written test. In the written test students will have to answer an essay question and a legal opinion based on a set of imagined facts. The exam will take place on Wednesday, 18 December 2019 (our last session) and will be organized as follows:

- Students will have two hours to answer the questions.
- Among the options provided, students will have to answer both one essay question and one scenario where they will be asked to write a legal opinion.
- Bilingual language dictionaries are allowed (not law dictionaries etc).
- The answers may be written either in English or in French.

Further details on the exam will be provided during the year.

The syllabus week by week

Class 1 18 September 2019

The Concept of War, the Legal Significance of War and the Thresholds for the Beginning and End of International and Non-International Armed Conflict

Compulsory:

- The White House, [Remarks by President Obama at the National Defense University](#), 23 May 2013.
- French Ministry of Foreign Affairs, [Speech by President Hollande before a Joint Session of Parliament](#), 13 November 2015 [consider and compare the use of the word “war” in the two instances].
- Andrew Clapham, “The Concept of International Armed Conflict”, in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds.), *The 1949 Geneva Conventions: A Commentary* (Oxford, Oxford University Press, 2015.)
- Jonathan Horowitz, [“Laws of War: Humanitarian Stallion or Trojan Horse?”](#), 3 November 2016, *Just Security*.
- Edward Luttwak, [“Give War a Chance”](#), in *Foreign Affairs* (July/August 1999 issue).

Optional:

- International Committee of the Red Cross, [How is the Term "Armed Conflict" Defined in International Humanitarian Law?](#), Opinion paper (March 2008)
- Robert Kolb and Richard Hyde, *An Introduction to the international law of armed conflicts*, (Oxford Hart Publishing 2008), Chapter 10 "International and Non-International Armed Conflicts", pp. 65-72.
- *Prosecutor v Boškoski* (ICTY) excerpted in [How does Law Protect in War?](#) as case 220 at page 2015 of volume III.
- Marija Sulce '[The Syrian Armed Conflict: Nearing the End](#)' in A. Bellal, *The War Report, Armed Conflict in 2018*, Geneva Academy of International Humanitarian Law and Human Rights (January 2019).

Class 2 25 September 2019

War as a Contemporary Legal Concept in International and National Law

Compulsory:

- Christopher Greenwood, "The Concept of War in Modern International Law", 36 *ICLQ* (1987), pp. 283-306.
- Harold H. Koh, "The War Powers and Humanitarian Intervention" 53 *Houston Law Review* (2016), pp. 971-1033 (we will only cover 971-998; the second half will be for the following week 998-1033).
- *Dalmia Cement Ltd v National Bank of Pakistan*, Award, Case No 1512, (1984) 67 ILR 611, 18 December 1976.
- WTO Panel, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R, 5 April 2019.
- *Amin v Brown*, Decision on preliminary question, [2005] EWHC 1670 (Ch), ILDC 375 (UK 2005), 27 July 2005, United Kingdom; England and Wales; High Court [EWHC]; Chancery Division [ChD], [available here](#), paragraphs 21ff.
- *United States of America and State of California, v Shell Oil Company*, No 00-55027, United States Court of Appeals, Ninth Circuit, 294 F.3rd 1045 (2002) [paragraphs 75-82](#)
- *Re September 11 Litigation*, Docket 10-4197, United States Court of Appeals for the Second Circuit (2014), [available here](#)
- Hague Convention (III) on the Opening of Hostilities of 1907, [available here](#)
- Institut de Droit International, [1906 Resolution on the declaration of war](#)
- [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty \(1989\), available here](#)

Optional:

- [Declarations of War](#) and Authorizations for the Use of Military Force: Historical Background and Legal Implications Jennifer K. Elsea and Matthew C. Weed (2014) (US Law).
- Sandra Dieterich, Hartwig Hummel and Stefan Marschall, [Parliamentary War Powers: A Survey of 25 European Parliaments](#), (DCAF, Geneva, 2010).
- House of Lords of the United Kingdom, [Waging war: Parliament's role and responsibility](#), 2005 (especially Appendix 4: Parliamentary Oversight of the Deployment Power: International Comparisons).
- Frédéric Mégret, ["War"? Legal Semantics and the Move to Violence](#), 13 *EJIL* (2002), pp. 361-399.
- Scott R Anderson, When Does the President Think He Can Go to War With Iran?, 24 June 2019 (<https://www.lawfareblog.com/when-does-president-think-he-can-go-war-iran>)

- Brian Egan and Tess Bridgeman, Top Experts' Backgrounder: Military Action Against Iran and US Domestic Law, June 21, 2019 (<https://www.justsecurity.org/64645/top-experts-backgrounder-military-action-against-iran-and-us-domestic-law/>)

Class 3 2 October 2019

Outlawing War and the Resort to Force Between States

Compulsory:

- Chapter IX "Resort to Force" in *Brierly's Law of Nations* (7th edn, Oxford University Press 2012), pp. 450-505.
- Chapter 5 'The crime of aggression' in Yoram Dinstein, *War, Aggression and Self-Defence*, (6th edn) (Cambridge, Cambridge University Press, 2017).
- Harold H. Koh, "The War Powers and Humanitarian Intervention", 53 *Houston Law Review* (2016), pp. 971-1033 (pages 998-1033).

Optional:

- Giovanni Distefano, "Use of Force", in the A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- C. Kreß, 'On the Activation of the ICC Jurisdiction over the Crime of Aggression', vol. 16 *JICJ* (2018) 1-17.
- James A. Green, Christopher Waters, "Military Targeting in the Context of Self-Defence [Actions](#)", 84 *Nordic Journal of International Law* (2015), pp. 3-28.
- Monika Hakimi, Jacob Kogan, "The Two Codes on the Use of Force", 27 *EJIL* (2016), pp. 257-291.
- Michael Reisman, "[Reflections on the Judicialization of Aggression](#)", in (2014) *Faculty Scholarship Series*, paper 4926

Class 4 9 October 2019

Privileged Belligerents and the Act of Being an Unprivileged Enemy Belligerent

Compulsory:

- Draft chapter from Professor Clapham's book on War

Class 5 16 October 2019

Laws of War (I) LOAC Distinction; Proportionality; Necessity

Compulsory:

- Nils Melzer, "The Principle of Distinction between Combatants and Non-combatants", in the A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).

- Enzo Cannizzaro, "Proportionality in the Law of Armed Conflict", in the A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- Mary Ellen O'Connell in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 3rd edition, paras 132-4.
- Chapter 2 of UK Ministry of Defence, [The Manual of the Law of Armed Conflict](#) (Oxford, Oxford University Press, 2004) as [amended in 2010](#) consider the amendment to para 2.2.
- Robert Kolb and Richard Hyde, *An Introduction to the international law of armed conflicts*, (Oxford Hart Publishing 2008), Chapter 7 "Basic Principles of the LOAC", pp. 43-51.
- Jann K. Kleffner, "[Section IX of the ICRC Interpretive Guidance on Direct Participation in Hostilities: The End of Jus in Bello Proportionality as We Know It?](#)", 45 *Israel Law Review* (2012), pp. 35-52.
- Jennifer O'Connor, "[Applying the Law of Targeting to the Modern Battlefield](#)", lecture at NYU (Nov 2016)

Optional (the controversy over war sustaining economies is ongoing):

- Ryan Goodman, "The Power to Kill or Capture Enemy Combatants", 24 *EJIL* (2013), pp. 819-853.
- Michael N. Schmitt, "[Wound, Capture, or Kill: A Reply to Ryan Goodman's 'The Power to Kill or Capture Enemy Combatants'](#)", 24 *EJIL* (2013), pp. 855-861.
- Chapters 4, 7 and 12 of Michael Newton, Larry May, *Proportionality in International Law* (Oxford, Oxford University Press, 2014).
- "Targeting" in Emily Crawford, Alison Pert, *International Humanitarian Law* (Cambridge, Cambridge University Press, 2015), pp. 163-194.
- Kenneth Watkin, "Targeting 'Islamic State' Oil Facilities", 90 *International Law Studies* (2016), pp. 499-513.
- Ryan Goodman, "The Obama Administration and Targeting "War-Sustaining" Objects in Non-International Armed Conflict", 110 (4) *AJIL* (2016), pp. 663-679.

Class 6 23 October 2019

Laws of War (II) LOAC Prohibited Weapons: Indiscriminate Use of Weapons; Superfluous Injury and Unnecessary Suffering

Compulsory:

- Steven Haines, "The Developing Law of Weapons: Humanity, Distinctions, and Precautions in Attacks", in the A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- Chapter 6 on "weapons" in the [UK Manual of the Law of Armed Conflict](#).
- "Means and Methods of Warfare" in Emily Crawford, Alison Pert, *International Humanitarian Law* (Cambridge, Cambridge University Press, 2015), pp. 195-234.

Optional:

- [SirUS Project](#) "Towards a determination of which weapons cause 'superfluous injury or unnecessary suffering'".
- Chapters 14 and 19 in Stuart Casey-Maslen (ed.), *Weapons Under International Human Rights Law* (Cambridge, Cambridge University Press, 2014).
- Beth Van Schaak, "Mapping War Crimes in Syria", 92 *International Legal Studies* (2016), pp. 281-339.

Class 7 30 October 2019

Laws of War (Victims of War I) IHL and the Victims of Armed Conflict

- Protected Persons
- The Wounded, Sick and Shipwrecked
- Prisoners of War
- Civilians
 - Under Occupation
 - Aliens in the Territory of the Enemy
 - In Unoccupied Territory Undergoing Hostilities
 - In a Non-International Armed Conflict
- 🕒 The ICRC and the Emblem

Compulsory:

- Chapters 5,6,7 in the Oxford Handbook [*this represents a lot of reading, students may wish to read some chapters over the rest of term as we will not be able to cover everything in one session. Make sure you choose at least one of the chapters, covering either land, air or maritime warfare*]. The [Video](#) of the chapter on maritime warfare may also be of interest as may be the [video](#) on air warfare.
- Amnesty International, "[Syrian and Russian Forces Targeting Hospitals as a Strategy of War](#)", released March 2016.
- Aeyal Gross, "The Righting of the Law of Occupation, in Nehal Bhuta (ed), "The Frontiers of Human Rights" (Oxford Scholarship, 2016)
- Yutaka Arai-Takahashi, Preoccupied with occupation: critical examinations of the historical development of the law of occupation, 94 *International Review of the Red Cross* (2012) pp. 51-80

Optional:

- Adam Roberts, "[Transformative Military Occupation: Applying the Laws of War and Human Rights](#)", 100 *American Journal of International Law* (2016) pp. 580-622

Class 8 6 November 2019

Laws of War (Victims of War II) Human Rights Law, Genocide and Crimes Against Humanity

Compulsory:

- Marco Sassòli and Laura Olson, "[The relationship between international humanitarian law and human rights law where it matters: admissible killing and internment of fighters in non-international armed conflicts](#)", 90 *International Review of the Red Cross* (2008), pp. 599- 627.
- Chapter 29 of *The Oxford Handbook of International Law in Armed Conflict*, Paola Gaeta, "War Crimes and Other International 'Core' Crimes" (*focusing on genocide and crimes against humanity*)
- [Hassan v UK](#) (2014).
- Andrew Clapham, "The Complex Relationship Between the Geneva Conventions and International Human Rights Law," in Andrew Clapham, Paola Gaeta and Marco Sassòli

(eds.), *The 1949 Geneva Conventions: A Commentary* (Oxford, Oxford University Press 2015).

- Aeyal Gross, "The Righting of the Law of Occupation, in Nehal Bhuta (ed), "The Frontiers of Human Rights" (Oxford Scholarship, 2016)

Optional:

- ILC Report, Draft Articles on Crimes Against Humanity and commentaries thereto, A/72/10, 2017, chapter IV, [available here](#).

Class 9 13 November 2019

Laws of War (Victims of War III and the Environment) Refugees, IDPs, environmental Law and the Interaction of All the Branches of International Law Studied so Far

Compulsory:

- Vincent Chetail, "Armed Conflict and Forced Migration: A Systemic Approach to International Humanitarian Law, Refugee Law, and Human Rights Law", in A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- Jean-Marie Henckaerts and Dana Constantin, "Protection of the Natural Environment", in A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- Steven R. Ratner, "[Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War](#)", 22 *EJIL* (2011), pp. 459-506.

Optional:

- Viktorija Jakjimovska and Ezéchiél Amani, [Protecting the Environment in Non-International Armed Conflicts: Are We There Yet?](https://www.ejiltalk.org/protecting-the-environment-in-non-international-armed-conflicts-are-we-there-yet/), 16 July 2019: <https://www.ejiltalk.org/protecting-the-environment-in-non-international-armed-conflicts-are-we-there-yet/>

Class 10 20 November 2019

War Crimes (I) substance

Compulsory:

- Chapter 29 of *The Oxford Handbook of International Law in Armed Conflict*, Paola Gaeta, "War Crimes and Other International 'Core' Crimes" (focusing on war crimes)
- Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge, Cambridge University Press, 2007), Chapter II, pp. 23-45.
- Gerry Simpson, "Law's Politics: War Crimes Trials and Political Trials" (Chapter 1) and "Law's Subjects: Individual Responsibility and Collective Guilt" (Chapter 3), in *Law, War and Crime – War Crimes Trials and the Reinvention of International Law* (2007)

Class 11 27 November 2019

War Crimes (II) Enforcement and Compliance with the Laws of War

Compulsory:

- Noelle Quenivet , ["The obligation to investigate after a potential breach of article 2 ECHR in an extra-territorial context: Mission impossible for the armed forces?"](#), 37(2) Netherlands Quarterly of Human Rights (2019) pp. 119–138
- Tom Buitelaar, ["The ICC and the Prevention of Atrocities"](#), in (2015) *the Hague Institute for Global Justice* (paper 8).
- ICC, Pre-Trial Chamber II, ICC-02/17, [Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan](#), 12 April 2019

Those with no background in international criminal law may want to look at the following:

- R. Cryer, H. Friman, D. Robinson, and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, 3rd edn, (Cambridge, Cambridge University Press, 2014), chapters 8 and 23.
- A. Cassese, P. Gaeta, L. Baig, M. Fan, G. Gosnell, and A. Whiting, (revised by), *Cassese's International Criminal Law*, 3rd edn, (Oxford, Oxford University Press, 2013), chapters 15, 16, 17.

Optional (to get a flavour of what a war crimes judgment looks like):

- ICC, Trial Chamber VI, [Decision](#), *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2359, 08 July 2019

Class 12 4 December 2019

The Future of War

- **The Arms Trade**
- **Autonomous Weapons**
- **Cyberwar**

Neutrality

Conclusions on the significance of war in international law

(a) The Arms Trade

Compulsory:

- [Academy Briefing on the Arms Trade Treaty](#)
- [UK Court of Appeal, The Queen \(on the application of Campaign against Arms Trade\) and The Secretary Of State for International Trade](#), T3/2017/2079 , 20 June 2019

(b) Autonomous Weapons

Optional:

- Marco Sassòli, "Autonomous Weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to be Clarified", 90 *International Law Studies* (2014), pp. 308-40.
- Human Rights Watch, [Shaking the Foundations: The Human Rights Implications of Killer Robots](#), 12 May 2014.
- Jens Ohlin, "The Combatant's Stance: Autonomous Weapons on the Battlefield", 92 *International Law Studies* (2016), pp. 1-30.

(c) Cyberwar

Optional:

- Michael N. Schmitt, "The Law of Cyber Warfare: *Quo Vadis?*", 25 *Stanford Law & Policy Review* (2014), pp. 269-300.
- Dustin A. Lewis, [Legal reviews of weapons, means and methods of warfare involving artificial intelligence: 16 elements to consider](#), 21 March 2019
- Michael N. Schmitt, "[The Notion of 'Objects' During Cyber Operations: A Riposte In Defence of Interpretive and Applicative Precision](#)", in 48 *Israel Law Review* (2015) (on Data as a civilian object).

Neutrality

Compulsory:

- [Summary of Switzerland's neutrality policy during the Iraq conflict](#) (2005)
- Paul Seger, "The Law of Neutrality" in the A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: OUP, 2014).
- Institut de Droit International, [1906 Resolution on the regime of neutrality](#)

Optional:

- [Swiss Neutrality](#) (brochure for the general public).
- Christopher Greenwood, "The Applicability of International Humanitarian law and the Law of Neutrality to the Kosovo Campaign", 78 *International Law Studies* (2002), pp. 35-69.

Conclusions on the significance of war in international law

Compulsory:

- Jessup 'Intermediacy', 23 *Nordisk Tidsskrift for International Ret* (1953) 16-26, at 25.

Optional:

- Levenfeld, 'Israel's Counter-Fedayeen Tactics in Lebanon: Self-Defense and Reprisal under Modern International Law', 21 *Columbia Journal of Transnational Law* (1982), pp. 1-48.

Class 13 11 December 2019

Guest lecture – Just War

- Jeff McMahan, *Killing in War* (Oxford, Oxford University Press, 2009) (philosophical approach) (see also the Chapters by McMahan and Shue in Samantha Besson (ed.), *The Philosophy of International Law* (Oxford, Oxford University Press, 2010)).

Class 14 18 December 2019 (at 14.00-16.00)

Final Written Exam during the last class