

FALL 2013 | LAW AND WAR | PSC 700-2 (Section 16766)
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Never before...has the law that regulates warfare been more comprehensive or central to the perception of strategic legitimacy.¹

“From its inception as a nation, America has venerated the rule of law.”²

COURSE DESCRIPTION:

The famous adage—all is fair in love and war—is certainly not true of war, not since the advent of the UN Charter in 1945, which outlawed war as an instrument of national foreign policy, and the four revised Geneva Conventions of 1949, the cornerstone of the modern laws of war. Long before international legal solutions, however, restraint in warfare was both a respected norm, established across many divergent cultural traditions, and a professional necessity for warfighters as sovereign agents, including in the United States. However aspirational, international legal norms have shaped war in the modern period, with implications well into the asymmetric environment of the post-9/11 wars. In fact, one indisputable feature of the post-9/11 wars is that they have been fought as much through law and legal debate as on traditional and nontraditional battlefields. Today, however, these and other changing global conflict patterns and their challenges (variously described as asymmetric warfare, new wars, netcentric warfare) are testing the strength of these state-centric system of restraints.

This course blends law, policy, and social science methodologies to examine the relationship between legal instruments governing conflict and actual conflict dynamics, including recent changes in international conflict trends, actors, and norms. The course emphasizes both foundational theoretical paradigms and emergent interdisciplinary debates to frame often complex questions of conflict and use of force decisions in national and international security, as well as encouraging students to develop their own distinctive approaches to conflict and security. Course objectives include: (1.) familiarizing students with critical factors influencing conflict dynamics and their mitigation, including dilemmas faced by conflict actors, policymakers, and strategic leaders; (2.) gaining theoretical and historical perspective on the purpose and role of both law and war in foreign policy and international affairs, as well as relevant institutions, norms, and processes influencing the resort to war (international agreements, security policy, domestic and bureaucratic politics, allied concerns); (3.) attention to the role of law in paradigm shifts in U.S. national security, foreign policy, and strategic thinking from 1945 to the present; (4.) understanding the role of international organizations, global governance, and nontraditional actors (nonstate armed groups, NGOs, IOs) in conflict dynamics; and (5.) appraising new and emergent security concerns and challenges from the perspective of the U.S. national security infrastructure, international law, and international politics.

COURSE POLICIES, REQUIREMENTS & GRADING:

The course will involve group work, in-depth readings across academic disciplines and practice areas, case studies, and guest speakers. The course will also leave ample room for you to direct and shape its content for your own professional needs and goals.

¹ Geoff Corn and Laurie Blank, “The Laws of War: Regulating the Use of Force,” in Paul Rosenzweig, Timothy J. McNulty, Ellen Shearer eds., *National Security Law in the News: A Guide for Journalists, Scholars, and Policymakers* (ABA Standing Committee on Law and National Security and the Medill School of Journalism, Northwestern University, 2012): 97.

² United States War Department, *The 1863 Laws of War* (Mechanicsburg, PA: Stackpole, 2005): xi.

Class Participation: As a seminar, course attendance and quality participation are required. We will also regularly discuss incisive ways to present your ideas, make arguments, and contribute in both discussion and presentations. Be prepared for discussion—with specific points and questions in your notes to share with colleagues. Also, keep up-to-date on relevant security issues by reading broadly in the news and from suggested sources (see below).

Writing Assignments: Students will write one long research paper (20-30 pp.) and 3 unit “*précis*”—short (1-4 pp.) papers focused on a specific topic of your choice under a general unit theme (with additional extra-credit *précis* options available). **Alternatively**, students may complete a take-home final examination (comprised of 5 essay questions) in lieu of a final paper that covers material from the entire course (due Tuesday, **December 12 by 5:00 pm**). Specific instructions for each paper type will be discussed separately, but all papers are designed to be argumentative, substantiated essays. Papers will always be accepted before due dates. **Also, for *précis*, while I have mentioned suggested topics, you may write on topics of your choice.**

Group Projects: Students will participate in a group project during the term, which will culminate in a 20-30 minute oral presentation (with slides, due to me 24 hrs. prior to presentation so I can upload to Blackboard). Presentations will use a debate structure and focus on a unit-based problem in national or international security with both a law and war dimension. The group project may be either an analytical presentation focused on perspectivism (clashing or different theories, interest groups, cultures); or a policy presentation focused on recommendations and rationales (policy trade-offs, national security interests). **The class as a whole will play a role in presentations.** Students will choose groups and dates for group presentations during week 3, when further instructions will be provided for presentations.

A Note about Readings: All reading materials are available online (embedded in syllabus as links) or on Blackboard. Instructors always struggle with how much material to give students weekly—I’ve tried to limit readings to 40-120 (max) pp. p/week. We will discuss together how to make readings manageable for all—including prioritizing, ‘dividing the labor,’ and making some essays optional. Also note that I often list “Further Research/Of Interest” essays to provide you with sources for your research—these are strictly optional.

Final Grades will be based on the following elements:

Class Participation/Group Presentations	30%
Memo/ <i>Précis</i> Papers	30%
Final Paper or/Take-home Examination	40%

Late Assignments: With the exception of group presentations, contact me **prior** to assignment due dates if an extension is requested with (1.) a good explanation for tardiness; and (2.) a new, firm due date.

ACCOMMODATION POLICY AND ACADEMIC HONESTY:

Students in need of disability-related academic accommodations should register with the Office of Disability Services (ODS), 804 University Avenue, Room 309, 315-443-4498. Students with authorized disability-related accommodations should provide a current Accommodation Authorization Letter from ODS to me and review those accommodations. For further information, see the ODS website, <http://disabilityservices.syr.edu/>.

All students are expected to abide by the academic rules established by Syracuse University and to “exhibit honesty in all academic endeavors.” As per the Syracuse University Bulletin 2003-2004, “Cheating in any form is not tolerated, nor is assisting another person to cheat. The submission of any work by a student is taken as a guarantee that the thoughts and expressions in it are the student’s own except when properly credited to another. Violations of this principle include giving or receiving aid in an exam or where otherwise prohibited, fraud, plagiarism, or any other deceptive act in connection with academic work. Plagiarism is the representation of another’s words, ideas, programs, formulae, opinions, or other products of work as one’s own, either overtly or by failing to attribute them to their true source.” It is your responsibility to understand what plagiarism is and how to correctly reference and attribute other peoples’ work. If you have questions about what constitutes plagiarism, see the definition and examples at Syracuse University’s website: <http://academicintegrity.syr.edu>. If you have questions about how to make references in papers, consult any standard reference or ‘style guide’ on writing, such as *The Elements of Style*.

COURSE CALENDAR & READINGS:

Note: I've tried to keep readings at 40-120pp (max) p/week and I am serious about ensuring that readings are manageable for all (including deciding together prioritized and optional texts).

Monday, August 26: First Day of Classes

CLASS 1 | Thursday, August 29: Introductions: What is War? How is it Made Lawful?

Readings & Case: CIA-JSOC bin Laden Raid

Robert Chesney, "Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate," *Journal of National Security Law & Policy* 5 (2012) 539-629: <http://jnslp.com/wp-content/uploads/2012/01/Military-Intelligence-Convergence-and-the-Law-of-the-Title-10Title-50-Debate.pdf>

Nicholas Schmidle, "Getting Bin Laden," *The New Yorker*, (Aug. 8, 2011): pp. 1-9, http://www.newyorker.com/reporting/2011/08/08/110808fa_fact_schmidle

Yoram Dinstein, *War, Aggression, and Self-Defense* (4th ed., Cambridge UP, 2009): pp. 3-15: BB.

James Madison (or Hamilton), *The Federalist* #51, "The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments," Feb. 8, 1788: 1p. http://avalon.law.yale.edu/18th_century/fed51.asp

The Brookings Institution, "The Evolution of Joint Special Operations Command and the Pursuit of Al Qaeda in Iraq: A Conversation with General Stanley A. McChrystal" (Michael O'Hanlon/Bruce Reidel, Washington, D.C., January 28, 2013): p. 2-44, <http://www.brookings.edu/~media/events/2013/1/28%20mcchrystal%20zarqawi/mcchrystal%20transcript.pdf>

Reading Questions to frame Lecture #1:

- (1.) Why do we bother with rule of law questions in war? What does rule of law mean? Is this distinctive to the United States? Does the international community follow suit? Through what mechanisms?
 - (2.) Why is a legal definition of war different from other definitions of war (i.e. Clausewitz)?
 - (3.) How is war made lawful? Should it be made lawful? Was the bin Laden raid 'war'?
 - (4.) Is there an American tradition of war? Why do we separate out military and intelligence functions and authorities? What is an "authority"—is it a policy, legal, or a social science term (or some combination)?
 - (5.) What are the two respective legal regimes that govern warfare in the U.S. context? How do these regimes bear on intelligence (CIA), special operations (JSOC)? Do international norms cover these institutions/actors?
- Key terms: War, Rule of Law, Norms, Institutions (preliminary definitions; we'll come back to these again and again...)

Further Research/Of Interest:

Joseph Berger, "Covert Action: Title 10, Title 50, and the Chain of Command," *Joint Forces Quarterly* (National Defense University-Fort McNair), 67 (4th quarter), 2012: 32-39: <http://www.ndu.edu/press/jfq-67.html>

McChrystal Group website documents: http://www.mcchrystalgroup.com/crosslead_way

Monday, September 2: Labor Day—No Classes

CLASS 2 | Thursday, September 5: International Law Regulating Armed Conflict: IHL/LOAC

Readings & Case: 9/11 Terrorism & Evolving Legal Norms

Geoff Corn and Laurie Blank, "The Laws of War: Regulating the Use of Force," *Emory University School of Law, Legal Studies Research Paper Series*: Research Paper No. 12232: pp. 97-119: BB.

Gabor Rona, "Interesting Times for International Humanitarian Law: Challenges from the 'War on Terror,'" *Fletcher Forum of World Affairs* 27(2), Summer/Fall 2003: 55-74, available online: http://www.icrc.org/eng/assets/files/other/rona_terror.pdf

Michael Schmitt, "21st Century Warfare: Can the Law Survive?" *Melbourne Journal of International Law*, 8 (2007): pp. 443-476, <http://insct.syr.edu/wp-content/uploads/2013/03/Schmitt-M.21st-Century-Conflict.Can-the-Law-Survive.pdf>

U.S. Army, Judge Advocate General's Legal Center and School, International and Operational Law Department, *Law of Armed Conflict Deskbook* (Charlottesville, Virginia, 2012): pp. 1-17:
http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2012.pdf
DoD Directive, 2311.01E (May 9, 2006): 1 p. <http://www.dtic.mil/whs/directives/corres/pdf/231101e.pdf>

Reading Questions to frame Lecture #2:

- (1.) Why the discrepancy in terminology: Laws of War, IHL, LOAC?
- (2.) Does IHL cover terrorism? Why does terrorism change anything about the rules? Or does it?
- (3.) What is military necessity? Why must it be balanced with other humanitarian and arguably universal principles?
- (4.) Which is stronger: law, policy, or doctrine? Where are the respective rules for each to be found?
- (5.) Are the laws of war a global norm? Do all states respect and abide by them? Does the U.S.? Are they western legal instruments?

Key terms: IHL and Cardinal Principles (Military Necessity, Proportionality, Distinction, etc..) Law, Policy, Doctrine, Rules of Engagement

Précis #1: Choose one 'field manual' available at Library of Congress, TRADOC, or elsewhere and analyze some portion of it using your preferred area of interest i.e., operations, air, land, sea warfare rules, NATO, security force training, peacebuilding, intelligence, rule of law, etc. What implied rules and/or policy prescriptions inform the document? What legal regimes does it rest upon? What are its assumptions about war (and peace)? **Due by Sept. 19.**

See other U.S. Army Field Manuals, Training Circulars, Technical Manuals, War Department/Department of the Army Pamphlets: http://www.loc.gov/rr/frd/Military_Law/pamphlets_manuals.html; Joint Doctrine Publications, available at: http://www.dtic.mil/doctrine/new_pubs/jointpub.htm; and all doctrine from TRADOC: http://usacac.army.mil/CAC2/doctrine/CDG/CDG_START.html; JAG School: <https://www.jagcnet.army.mil/DocLibs/TJAGLCSDocLib.nsf/allDocuments.xsp>

Further Research/Of Interest:

Michael Schmitt, "Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance," *Virginia Journal of International Law* 50(4) 2010: 796-837: BB.
James Cockayne, "Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations," *International Review of the Red Cross*, 84(847) September 2002, 597-626: BB.

CLASS 3 | September 12: Security, Law and Power in IR Theory I: Use of Force

"Legal Basis for the Use of Force," *Operational Law Handbook* (2013), International and Operational Law Department, The Judge Advocate General's Legal Center and School, Charlottesville, Virginia: p. 1-9: http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2013.pdf
Alexander Hamilton, The Federalist No. 11, "The Utility of the Union in Respect to Commercial Relations and a Navy," (*Independent Journal*): 1p, http://avalon.law.yale.edu/18th_century/fed11.asp
John Mearsheimer, "E.H. Carr vs. Idealism: The Battle Rages On," *International Relations* 19(2): 139-152 (2005): BB
Eric Talbot Jensen, "Applying a Sovereign Agency Theory of the Law of Armed Conflict," *Chicago Journal of International Law* 12(2): Winter 2012: 685-727: BB.
Hew Strachan, "Strategy or Alibi? Obama, McChrystal and the Operational Level of War," *Survival* 52(5): 157-182 (2010): BB.
Beth Simmons, "Treaty Violation and Compliance," *Annual Review of Political Science* (2010), 13:273-96: BB.

Sign up for Group Projects: choose day, theme, and team

Reading Questions to frame Lecture #3:

- (1.) Are rule of law proponents mere idealists? Is IHL an alternative to state power or an instrument of state power? Are there other choices?

- (2.) Is Carr/Mearsheimer right that power is inseparable from international politics and that the “*ultima ratio* of power in international relations is war,” which makes military power the “supreme” instrument of statecraft? Is that true? If so, what status does this premise give to the laws regulating war? To peace?
- (3.) Do LOAC scholars believe this? What strategic role do they believe the law plays? Where does “strategy” lie in the IR theoretical universe? Operational law and war?
- (4.) Why do states make treaties? Comply with them?

Further Research /Of Interest:

Michael Hastings, “Runaway General,” *Rolling Stone*, June 22, 2010:
<http://www.rollingstone.com/politics/news/the-runaway-general-20100622>

CLASS 4 | September 19: Security, Law and Power in IR Theory II: Law as Strategic Necessity?

Michael Bahar, “As Necessity Creates the Rule: Eisentrager, Boumediene, and the Enemy—How Strategic Realities Can Constitutionally Require Greater Rights for Detainees in the Wars of the Twenty-First Century,” *University of Pennsylvania Journal of Constitutional Law*, 11:2 (2009): 277-329, BB.

Kenneth Waltz, “Structural Realism after the Cold War,” *International Security* 25(1) (Summer 2000): 5-41: BB

Stephen Walt, “The Renaissance of Security Studies,” *International Studies Quarterly*, 35(2) (Jun., 1991): pp. 211-239: BB

Michael Schmitt, “*Bellum Americanum* Revisited: U.S. Security Strategy and the *Jus Ad Bellum*,” *Military Law Review* (2003) 176: 364-421: BB

JAG Manual: “The Law of War across the Conflict Spectrum,” *Operational Law Handbook* (2011), International and Operational Law Department, The Judge Advocate General’s Legal Center and School, Charlottesville, Virginia 22903: p. 53-70: http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2013.pdf

Reading Questions to frame Lecture #4:

- (1.) What is the difference between *in bello* and *ad bellum* law? What is the relationship between *ad bellum* law and national security strategy? What role do military scholars play in this domain?
- (2.) What is the relationship between IHL and power politics in international relations? Historically? Today? What role does the law serve?
- (3.) What changed about U.S. security policy post-Cold War? How did that impinge upon IHL or did it? Did the law adapt?
- (4.) What does it mean to say that law is a strategic necessity? Is that different than saying law informs good national security policy?
- (5.) Is ‘strategic studies’ different from ‘security studies’?

Key terms: Security, Strategy, Power in Law/Power in International Relations

Start thinking about your research paper: I’ll be accepting Outline for Research Projects: Sept 26-Oct 3.

Précis # 2: Design and/or critique (with an articulated alternative) an example of US National Security Policy for a particularly issue, region, or problem (i.e. post-Morsi Egypt, terrorism, China South Seas issues) with a legal dimension. Make sure your policy description and solution is based on identified U.S. national interests and can be implemented with a national strategy. Define and substantiate your terms...Alternatively, write on a topic of your choice on the policy-strategy nexus, so long as it is not only a critique. **Due by September 26.**

CLASS 5 | September 26: Strategy, Policy & the International System

Readings & Case: U.S. Grand Strategy Deficit & the Post-9/11 Wars

John Lewis Gaddis, “What Is Grand Strategy?” (Feb. 26, 2009), Keynote Address, “American Grand Strategy after War,” Triangle Institute for Security Studies/Duke University Program in American Grand Strategy: BB: pp. 1-15.

Sarah Sewell, “A Strategy of Conservation: American Power & the International System,” CNAS, *Finding Our Way: Debating American Grand Strategy* (2008): pp. 105-123: <http://www.cnas.org/node/123>

Carl von Clausewitz, *On War* (trans. J.J. Graham, 1874; 1909 reprinting): Book I, Chapter 1, “What Is War?”; Book III. Chapter I. “Strategy” (available at Gutenberg)

Colin Gray, "After Iraq: The Search for a Sustainable National Security Strategy" (Jan. 2009), Strategic Studies Institute, U.S. Army War College, Carlisle, PA: v-xiii; 1-62 (skim)
Hew Strachan, "Lost Meaning of Strategy," *Survival*, 47:3 (2005): pp. 33-54
Recall: Bahar and Corn & Blank's essays (and theses) for this Lecture

Reading Questions to frame Lecture #5:

- (1.) What is grand strategy? How is it different from national security policy? Grand strategy? What role does the law play in grand strategy?
- (2.) How and why have the post-9/11 wars prompted much public criticism about US 'grand strategy'? What has been missing and what does it have to do with the law?
- (3.) Must strategy interface with the norms and values of the international system?
- (4.) Key terms: Strategy, Policy, International System

Further Research/Of Interest:

Barry R. Posen and Andrew L. Ross, "Competing Visions for U.S. Grand Strategy," *International Security* 21:3 (Winter 1996/97).
Richard Betts, (Fall 2000), "Is Strategy an Illusion?" *International Security* 25 (2): 5-50: BB.
Stephen Biddle, *American Grand Strategy after 9/11: An Assessment* (April 2005), Strategic Studies Institute, U.S. Army War College, Carlisle, PA

Draft & Submit Outline for Research Project: Due Sept 26-Oct 3.

CLASS 6 | October 3: Changing Notions of War: New Wars, Asymmetric Warfare, Postmodern War

Michael Schmitt, "Asymmetrical Warfare and International Humanitarian Law," *The Air Force Law Review* 62 (2008): 1-42: BB.
Mary Kaldor, "In Defense of New Wars," *Stability: International Journal of Security and Development* 2(1):4 (Mar 2013): 1-16, DOI: <http://dx.doi.org/10.5334/sta.at>
Montgomery Meigs, "Unorthodox Thoughts about Asymmetric Warfare," *Parameters* (Summer 2003): 4-18: BB.
W. Michael Reisman, "The United States Constitution in its Third Century: Foreign Affairs," *The American Journal of International Law* 83: 4 (Oct. 1989): 777-785: BB.
Hew Strachan, "Changing Character of War," European Lecture, Graduate Institute of International Relations, Geneva, (9 Nov. 2006), Europaem: Oxford, 2007: pp. 1-31.
<http://www.europaeum.org/files/publications/pamphlets/HewStrachan.pdf>
Samuel Huntington, "The Clash of Civilizations," *Foreign Affairs*; Summer 1993; 72: 3: pp. 22-49: BB.
John Kiszely, "Post-Modern Challenges for Modern Warriors," Defence Academy of the United Kingdom (Shrivenham, England: 2007): pp. 5-12: BB.
DoD Dictionary entry: "strategic mission": http://www.dtic.mil/doctrine/dod_dictionary/data/s/7291.html
Recall: "The Law of War across the Conflict Spectrum," *Operational Law Handbook* (2011).

Reading Questions to frame Lecture #6:

- (1.) Does the nature or character of war change? Does war change or is conflict a continuum, a spectrum? Does the law account for both possibilities?
- (2.) What are the most compelling theories/accounts of conflict after the Cold War?
- (3.) What distinguishes new from old wars? What is the most compelling account of this distinction? Does the empirical picture support this view?
- (4.) Has global conflict increased or decreased in the modern period? What are its features?
- (5.) What are "war powers" in the US national security context? How do they interface with international law?

Draft & Submit Outline for Research Project: Due Sept 26-Oct 3.

Précis # 3: Discuss some aspect of this or the next unit on the post-Cold War security environment or changing practices of war of interest to you that draws on the readings. Has war or its practices really changed—in what ways? Are these perception or fact issues? Do the changes have to do with the US or international community's changing role in war? **Due by October 10 or 17.**

Further Research/Of Interest:

Edward Said, "The Myth of 'The Clash of Civilizations,'" Media Education Foundation (MEF) 1998: BB
Balakrishnan Rajagopal, "Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination,"
William & Mary Law Review 49 (2007): 1347: BB.

CLASS 7 | October 10: Changing Practices of War: Peacekeeping & Stability Operations

Authorization for the Use of Military Force (AUMF), Sept. 18, 2011: 1 pp.

<http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/pdf/PLAW-107publ40.pdf>

Ann Scott Tyson, "America's Bewildering Battle in Iraq Follows New Rules: Repressed People Won't Defend their Country as Expected," *Christian Science Monitor*, (June 8, 2004): 2pp.

<http://www.csmonitor.com/2004/0608/p15s01-bogn.html>

W. Michael Reisman, "Why Regime Change Is (Almost Always) A Bad Idea," *The American Journal of International Law*, 98: 3 (Jul., 2004): 516-525: BB.

Colin H. Kahl, "In the Crossfire or the Crosshairs? Norms, Civilian Casualties, and U.S. Conduct in Iraq," *International Security* 32: 1 (Summer 2007): 7-46: BB.

Seth G. Jones, "The Future of Irregular Warfare," Before the Committee on Armed Services, Subcommittee on Emerging Threats and Capabilities, United States House of Representatives (March 27, 2012): 1-9,

<http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg73795/pdf/CHRG-112hhrg73795.pdf>

US Army Field Manual (FM) 3-07, Stability Operations (2008): 1-18

<http://usacac.army.mil/cac2/repository/FM307/FM3-07.pdf>

Joint Doctrine: Capstone and Keystone Primer, p. 9, Conclusion (10 Sept. 2001): 1 para.

<http://www.dtic.mil/doctrine/doctrine/primer.pdf#search=%22MOOTW%22>

Reading Questions to frame Lecture #7:

- (1.) What are the role and status of civilians in new wars?
- (2.) What is the relationship between US domestic authorization for the use of force and the laws of war (*ad bellum* and *in bello*)?
- (3.) Was Iraq a lawful war? By which regime? Does the answer to that question matter in how Iraqi or US/coalition forces act in theatre?
- (4.) What are 'stability operations'? Are they 'war'?

Further Research/Of Interest:

Colin Gray, "War—Continuity in Change, and Change in Continuity," *Parameters*, 40 (Summer 2010): 5-13: BB.

Zoli & Armstrong, "Post 9/11 Stability Operations: How US Army Doctrine is Shaping National Security Strategy," *Prism*, 2:1 (2010): 101-120.

CLASS 8 | October 17: Nontraditional Actors and Strategic Motivation

Alina Angela Manolescu, "Non-State Actors and Transnational Relations in the New Global System," *AGORA Int'l J. Jurid. Sci.*, lxiii-lxv: BB.

Martin van Creveld, "Through a Glass Darkly: Some Reflections on the Future of War" (2000), *Defense and the National Interest*, Project on Government Oversight: 3 pp.

<http://dnipogo.org/creveld/throughaglassdarkly.html>

Ted Koppel, "Op-Ed: America's Chronic Overreaction to Terrorism: The country's capacity for self-inflicted damage must have astounded even Osama bin Laden," *Wall Street Journal* (Aug. 7, 2013): 1 pp.

<http://online.wsj.com/article/SB10001424127887324653004578650462392053732.html>

Edward Newman, "Critical Human Security Studies," *Review of International Studies*, 36: 77-94: BB.

Brian Fishman and Joseph Felter, *Al-Qa'ida's Foreign Fighters in Iraq: A First Look at the Sinjar Records*, Combating Terrorism Center, Dept. of Social Sciences, US Military Academy, West Point, NY: 3-29,

<http://www.ctc.usma.edu/wp-content/uploads/2010/06/aqs-foreign-fighters-in-iraq.pdf>

Analysis of Al Qa'ida Foreign Fighters in Iraq (Feb. 27, 2009): 1 pp. <https://www.palantir.com/2009/02/sinjar/>

Joint Pub 3-07: *Joint Doctrine for Military Operations Other Than War* (16 June 1995): I-7; III-15

<http://ids.nic.in/It%20Doctrine/Joint%20Pub%203-0MOOTW.pdf>

Reading Questions to frame Lecture #8:

- (1.) Do our security paradigms need to change (i.e., human security) to accommodate nonstate actors in conflict dynamics? Are nonstate actors in conflict dynamics new?
- (2.) How do we identify strategic motivation of nonconventional forces and actors?
- (3.) What is the relationship between IHL and Rules of Engagement (ROE)? What is the difference between conduct and status-based ROE?
- (4.) Are states at a disadvantage in dealing with nonstate adversaries? What are reasonable—and unreasonable—responses? Where do they develop and codify such guidelines? What happens when we overreact?

Précis # 4 (extra-credit): Choose any example of nonstate actors (i.e., NGOs, cyber adversaries, nonstate armed groups), their behavior, strategy or tactics, and/or states' responses to these actors (i.e. drone strikes, Israel-Lebanon war 2006) or their tactics (COIN) and discuss some aspect of interest for you that draws on the readings. This précis applies for this or the following unit. **Due by October 24 or 31.**

CLASS 9 | October 24: Counterinsurgency (COIN) and Human Rights Law

- William Banks, "Introduction: Shaping a Global Legal Framework for Counterinsurgency Operations: Placing Postmodern War in Context," in Banks, ed., *COIN Law* (Oxford UP, 2013): 7-22, BB.
- Geoff Corn, "Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict," *International Humanitarian Legal Studies* 1 (2010) 52–94: BB.
- Ganesh Sitaraman, "Why Counterinsurgents Should Follow the Laws of War," *ABA Insights on Law & Society* 13.3 (Spring 2013): 1-17. BB.
- George Packer, "The Accidental Guerrilla," *The New Yorker*, May 12, 2009: 3 pp.
<http://www.newyorker.com/online/blogs/georgepacker/2009/05/the-accidental-guerrilla.html>
- Gian P. Gentile, "A Strategy of Tactics: Population-centric COIN and the Army," *Parameters: Journal of the Army War College* (Autumn 2009): 1-11, BB.
- H.R. McMaster, Opinion: "The Pipe Dream of Easy War," *The New York Times* (July 20, 2013): 1 pp.
http://www.nytimes.com/2013/07/21/opinion/sunday/the-pipe-dream-of-easy-war.html?pagewanted=all&_r=0
- Eliot Cohen, Conrad Crane, Jan Horvath, and John Nagl, "Principles, Imperatives, and Paradoxes of Counterinsurgency," *Military Review* (March-April 2006): 3 pp. BB
- US Army Field Manual (FM 3-24): COIN (Dec. 2006): p. 1-24, <http://www.fas.org/irp/doddir/army/fm3-24.pdf>
- Recall: Chesney and McChrystal's comments at Brookings

Reading Questions to frame Lecture #9:

- (1.) Why did operational commanders in Afghanistan use stricter requirements for rules of engagements than required by the law?
- (2.) How did Gentile know COIN would be vulnerable to failure? Were these obvious flaws or subtleties? Elsewhere Gentile describes COIN as "nation-building at gunpoint"—is that accurate?
- (3.) What is McMaster's larger 'lesson learned' about contemporary warfare? Is COIN doomed to fail?
- (4.) Why did human rights advocates support COIN doctrine?

Further Research/Of Interest:

- Ganesh Sitaraman, "Counterinsurgency, the War on Terror, and the Laws of War," *95 Virginia Law Review* 1745 (2009): BB.
- Video: Center for a New American Security (CNAS), John A. Nagl, Sarah Sewall: Panel on new COIN Field Manual (11/13/2007): <http://www.cnas.org/node/524>

CLASS 10 | October 31: Conflict Dynamics & Datasets: The Empirical Picture

- Blogs on conflict datasets: <http://www.jordanragusa.com/datapage.html>; Erica Chenoweth, "[Some Stuff I Learned at ISA](#): Conflict Data is Converging," 8 Apr. 2013, <http://politicalviolenceataglance.org/?s=conflict+data+is+converging>
- Stathis Kalyvas & Laia Balcells, "International System and Technologies of Rebellion: How the End of the Cold War Shaped Internal Conflict," *American Political Science Review*, 104:3, 415-429:
http://stathis.research.yale.edu/documents/Kalyvas_Balcells_APSR.pdf

Daron Acemoglu, “Why Nations Fail,” Lecture & Slides, <http://economics.mit.edu/files/7850>
<http://video.mit.edu/watch/daron-acemoglu-on-why-nations-fail-10628/>

How Experts Talk to Each Other: Daron Acemoglu & James Robinson, “What Bill Gates Got Wrong about Why Nations Fail: Did the Microsoft founder even read our book before he criticized it?” March 12, 2013, Foreign Policy: 2 pp.

http://www.foreignpolicy.com/articles/2013/03/12/what_bill_gates_got_wrong_about_why_nations_fail

Paul Collier & Dominic Rohner, “Democracy, Development and Conflict,” *Journal of the European Economic Association* 6:2-3, 531–540, April-May 2008:

<http://users.ox.ac.uk/~econpco/research/pdfs/DemocracyDevelopmentConflict.pdf>

Recall: Huntington “Clash of Civilizations”

Further Research/Of Interest:

FP Failed State Index:

http://www.foreignpolicy.com/articles/2011/06/17/2011_failed_states_index_interactive_map_and_rankings

Ed Cairns, “Oxfam Responds to The Human Security Report 2012,” Oct. 11, 2012, <http://policy-practice.oxfam.org.uk/blog/2012/10/human-security-report-response>

Précis # 5: Choose any aspect of conflict data and analysis and discuss using readings/research. **Due by Nov. 14.**

Reading Questions to frame Lectures #10 & #11

- (1.) What are the most prevalent theories explaining conflict behavior: state strength/failure; economic development/poverty; political regime; culture, ethnicity and religion; natural resources? Which is most compelling?
- (2.) What definition of war do conflict scholars use? Do they incorporate legal definitions of conflict?
- (3.) What do Acemoglu and Robinson mean when they claim political institutions — not culture or natural resources — determine the wealth of nations?
- (4.) What are the limits of empirical data for understanding and mitigating conflict dynamics? How have governments used these assumptions in policy?

CLASS 11 | November 7: Conflict Dynamics II: Ancillary Debates (Wealth of Nations, Civil War, Ethnicity & Religion)

Cases: Arab Spring States, US Intervention, and Libya, Syria, Egypt

Paul Collier, “It’s Lonely Being No. 1: Is there any hope for Somalia?” June 18, 2012, 2 pp.

http://www.foreignpolicy.com/articles/2012/06/18/its_lonely_being_no_1

James Fearon & David Laitan, “Ethnicity, Insurgency, and Civil War,” *American Political Science Review* 97, 1 (Feb. 2003), 75-90: BB. For summary, see “Grievances and Civil War,” 27 June 2012:

<http://themonkeycage.org/2012/06/27/grievances-and-civil-war/>

Human Security Report Project. *Human Security Report 2009/2010: The Causes of Peace and the Shrinking Costs of War* (New York: Oxford University Press, 2011): <http://www.hsrgroup.org/human-security-reports/20092010/text.aspx>

Paul Collier, “The Political Economy of State Failure,” *Oxford Review of Economic Policy*, 25: 2, (2009): 219-240: BB.

Marco Sassoli, “State Responsibility for Violations of International Humanitarian Law,” *IRRC* (June 2002) 84:846, pp. 401-433: http://www.icrc.org/eng/assets/files/other/401_434_sassoli.pdf

CLASS 12 | November 14: Intelligence and Threat Structure: Targeting and the Use of Drones

Zoli away at conference—guest speaker or make-up class

Kenneth Anderson, “You Are an Operational Commander of AQAP Reading the White House Fact Sheet,”

Lawfare (May 24, 2013): 2 pp. <http://www.lawfareblog.com/2013/05/you-are-an-operational-commander-of-aqap-reading-the-white-house-fact-sheet/>

Matthew Waxman, “The Structure of Terrorism Threats and the Laws of War,” *Duke Journal of Comparative & International Law* 20(2010): 429-455

- Michael T. Flynn, "Sandals and Robes to Business Suits and Gulf Streams: Warfare in the 21st Century," *Small Wars Journal* (April 20, 2011): 5 pp. <http://smallwarsjournal.com/jrnl/art/sandals-and-robles-to-business-suits-and-gulf-streams-warfare-in-the-21st-century>
- Rosa Brooks, "The Constitutional and Counterterrorism Implications of Targeted Killing," Testimony before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights (Apr. 23, 2013): 1-20, <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>
- Mark Bowden, "Prologue, 2007–2008," *The Finish: The Killing of Osama Bin Laden*, 4 pp. <http://www.npr.org/books/titles/162959272/the-finish-the-killing-of-osama-bin-laden#excerpt>
- Jack Goldsmith, "DOD's Weak Rationale for Keeping Enemy Identities Secret," *Lawfare*/Cora Currier, "Who Are We at War With? That's Classified," *ProPublica*, July 26, 2013: 2 pp. <http://www.lawfareblog.com/2013/07/dods-weak-rationale-for-keeping-enemy-identities-secret/>

Reading Questions to frame Lecture #12

- (1.) Why do Cohen et al. (2006) claim that intelligence drives operations? What does that mean?
- (2.) Are drones permissible within IHL? US national security law? If lawful, are they strategic? Are there any constraints on drones?
- (3.) Why is "self-defense" used to justify use of drones?
- (4.) What happens to traditional law of war norms (i.e. surrender) in the face of this technology? How do drones impact the international system?

Further Research/Of Interest:

- Legality of Targeted Killing Program under International Law: <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/legality-of-targeted-killing-program-under-international-law/>
- William Banks & Peter Raven-Hansen, "Targeted Killing and Assassination: The US Legal Framework," *University of Richmond Law Review* 37 (2002-03): BB.
- Dana Priest and William Arkin, "A Hidden World, Growing beyond Control," *The Washington Post*, Sept. 17, 2010, <http://projects.washingtonpost.com/top-secret-america/>
<http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>
 blog: <http://voices.washingtonpost.com/top-secret-america/>
- Richard Posner, "What Our Intelligence Agencies Could Learn from Silicon Valley: We need less hierarchy and centralization," *The Wall Street Journal*, May 28, 2010, <http://online.wsj.com/article/SB10001424052748704717004575268783383613118.html>

CLASS 13 | November 21: Cyber, NSA & Espionage

- Mike Schmitt, "Reaction: Cyberspace and International Law: The Penumbra of Uncertainty," *Harvard Law Review* (2013): (126) 176-180, http://www.harvardlawreview.org/media/pdf/forvol126_schmitt.pdf
- Presidential Policy Directive (PPD-20): *US Cyber Operations Policy* (2012): 5 pp. <http://www.theguardian.com/world/interactive/2013/jun/07/obama-cyber-directive-full-text>
- Fact Sheet on PPD-20: 1 pp. <https://www.fas.org/irp/offdocs/ppd/ppd-20-fs.pdf>
- Bruce Schneier, "Restoring Trust in Government and the Internet," "NSA Surveillance and Mission Creep," and "The Public/Private Surveillance Partnership," 3 pp. <http://www.schneier.com/blog/archives/2013/08/>
- Laura Dickinson, "*Outsourcing War and Peace*: Six Questions," 2 pp. <http://harpers.org/blog/2011/06/outsourcing-war-and-peace-six-questions-for-laura-dickinson/>
- Bill Snyder, "Wrong, Mr. Snowden, Just Wrong," July 13, 2013, 1 pp. <http://blog.cybersecuritylaw.us/2013/07/13/wrong-mr-snowden-just-wrong/>
- Lawrence Lessig, "Code is Law," in *Code* (Perseus Books 2006): pp. 1-8, <http://codev2.cc/download+remix/Lessig-Codev2.pdf>; "Lawrence Lessig on Technology as a Protector of Liberty," <http://www.palantir.com/2013/06/lawrence-lessig-on-technology-as-a-protector-of-liberty/>
- Susan Landau, "Making Sense from Snowden: What's Significant in the NSA Surveillance Revelations," July/August 2013, *IEEE Computer and Reliability Societies* p. 54-61: <http://www.computer.org/cms/Computer.org/ComputingNow/pdfs/MakingSenseFromSnowden-IEEESecurityAndPrivacy.pdf>

Mark Hagerott and Daniel Sarewitz, “A Future in Denial: What Sci-Fi isn’t Telling us about Surveillance,” 5 pp.
http://www.slate.com/articles/technology/future_tense/2013/07/surveillance_and_the_future_what_sci_fi_isn_t_telling_us.2.html

Andrew Bacevich, “Are Manning and Snowden Patriots? That Depends on What We do Next,” 1 pp.
http://articles.washingtonpost.com/2013-08-16/opinions/41416348_1_edward-snowden-bradley-manning-good-war

Reading Questions to frame Lecture #13

- (1.) Can cyber warfare conform with “values, principles and norms for state behavior” supported by the United States domestically and internationally?
- (2.) Do new technological capabilities when mobilized by government for security aims imperil the individual, enforce conformity, erode innovation?

Further Research/Of Interest:

Map your own Metadata: <https://immersion.media.mit.edu/>

Jeffrey Rosen, “Conscience of a Conservative,” *The New York Times*, September 9, 2007,
<http://www.nytimes.com/2007/09/09/magazine/09rosen.html?pagewanted=1>

Sunday, November 24 - Sunday, December 1: Thanksgiving Break—No Classes

CLASS 14 | December 5: Culture, Security & Operational Law (Last Day of Class)

Laura Dickinson, “Outsourcing War and Peace: Outsourcing and Organizational Culture,” 2 pp.
<http://opiniojuris.org/2012/05/21/military-lawyers-and-organizational-culture/>

Eric Posner, Review: *Law without Nations? Why Constitutional Government Requires Sovereign States*, by Jeremy A. Rabkin, *Perspectives on Politics* 4(2) (June 2006): 432-433: BB.

W.M. Reisman, “Holding the Center of the Law of Armed Conflict,” *The American Journal of International Law*, 100: 4 (Oct., 2006), pp. 852-860:
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1997&context=fss_papers

Harold Koh, “On American Exceptionalism,” *Stanford Law Review*, 55: 5 (May, 2003), pp. 1479-1527
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2737&context=fss_papers

Bruce Bueno de Mesquita, “Recipe for Failure,” *Foreign Policy*, No. 175 (November/December 2009): 76-81, BB.

Barry Posen, “Command of the Commons: The Military Foundation of U.S. Hegemony,” *International Security*, 28, 1 (Summer 2003), pp. 5–46: <http://web.mit.edu/ssp/people/posen/commandofthecommons.pdf>

Jared Diamond, “That Daily Shower Can Be a Killer,” *The New York Times* (January 29, 2013), D1, 1 p.
<http://www.nytimes.com/2013/01/29/science/jared-diamonds-guide-to-reducing-lifes-risks.html>

Final exam questions distributed: Due, Tuesday, Dec 12

Last Day of Classes: Friday, December 6

Reading Days: Sat. Dec. 7, 8; Tues. Dec. 10; Thurs. Dec. 12

Final Examinations: Mon. Dec. 9-Fri. Dec. 13

Thursday, December 12: Final essay due; Final exam due

Final Grades due: Thursday, December 26

APPENDIX: ONLINE SOURCES & RESOURCES OF INTERESTS:

International Law and War: Primary Sources

- ❖ Yale Avalon Project: Documents in Law, History & Diplomacy: <http://avalon.law.yale.edu/>
- ❖ International Committee of the Red Cross (ICRC) databases on international humanitarian law (IHL): <http://www.icrc.org/eng/resources/ihl-databases/index.jsp>
- ❖ [Treaty database and States Party](#)
- ❖ [ICRC national implementation database](#)
- ❖ [Customary IHL database](#)
- ❖ [The National Security Archive, George Washington University: http://www.gwu.edu/~nsarchiv/](http://www.gwu.edu/~nsarchiv/)

- ❖ Stockton (author of first US Navy LOAC manual), US Naval War College [International Law Department's LOAC/IHL research e-portal](#): <http://usnwc.libguides.com/LOAC-IHL>
- ❖ Library of Congress: Military Legal Resources: http://www.loc.gov/rr/frd/Military_Law/
- ❖ Department of Defense (DoD) Dictionary of Military Terms: http://www.dtic.mil/doctrine/dod_dictionary/index.html

International Law and War Analysis, Commentary and Blogs:

- Journal of National Security Law and Policy (INSCT/Georgetown Law): <http://jnslp.com/>
- Harvard National Security Journal (NSJ): <http://harvardnsj.org/>
- Journal of Conflict and Security Law: <http://jcsl.oxfordjournals.org/>
- International Security (MIT/Belfer Center)
- [Lawfare](#) (Brookings/Harvard Law): <http://www.lawfareblog.com/>
- [EJIL](#) Talk (European Journal of International Law); <http://www.ejiltalk.org/>
- [Opinio Juris](#) (U.S. International Law faculty): <http://opiniojuris.org/>
- [Intercross](#) (ICRC): <http://intercrossblog.icrc.org/>
- Jurist Forum (Pittsburgh School of Law): <http://jurist.org/forum/>
- [ASIL Insights](#) (American Society of International Law): <http://www.asil.org/insights.cfm>
- Leiber Code: <http://www.liebercode.org>
- GW National Security Archive Blog: <http://nsarchive.wordpress.com/>
- Syracuse's Institute for National Security & Counterterrorism Blog (Bill Snyder's Cybersecurity course): <http://www.nationalsecuritylaw.info/>