
INTERNATIONAL HUMANITARIAN LAW

Jean-Baptiste JEANGENE VILMER

Overview

This course is an introduction to International Humanitarian Law (IHL), also called the law of armed conflict or the laws of war. IHL is a set of rules that seek to limit the effects of armed conflict, with the dual purpose of saving those who do not, or no longer, participate directly in hostilities and to restrict the use of violence to the strict military necessity.

IHL is a branch of public international law that has close relations with other branches, such as international human rights law and international criminal law, but also with international politics and transitional justice. While analyzing its principles, sources, rules and jurisprudence, and using the most recent case studies (the Israeli-occupied territories, Afghanistan, Iraq, Democratic Republic of Congo, Libya, Syria, Mali, etc.), this course encourages a critical and interdisciplinary approach of IHL.

Pedagogical format

Interactive lectures (questions and discussions by students are encouraged).

Prerequisite

There is no strict prerequisite for this course but students should preferably have a previous knowledge of public international law and notions of international criminal justice.

Assessment

A 2000-word book review, due in week 9 (40%) and a 5000-word research paper, including footnotes, due at the end of the term (60%), on a topic of the student's choosing with teacher approval.

RESSOURCES

Internet

www.icrc.org
www1.umn.edu/humanrts/index.html
ihl.ihlresearch.org
www.cnchl-cncdh.ca
www.peacepalacelibrary.nl
www.crimesofwar.org
www.iihl.org
www.geneva-academy.ch
law.case.edu/war-crimes-research-portal
www.amnesty.org
www.hrw.org

General readings

DAVID Eric, *Principes de droit des conflits armés*, 5th ed. (Bruxelles: Bruylant, 2012).
FLECK Dieter (ed.), *The Handbook of International Humanitarian Law*, 3rd ed. (Oxford: Oxford University Press, 2013).
GREEN Leslie C., *The Contemporary Law of Armed Conflict*, 3rd ed. (Manchester: Manchester University Press, 2008).
GREENWOOD Christopher, *Essays on War in International Law* (London: Cameron May, 2006).
KOLB Robert and Richard HYDE, *An Introduction to the International Law of Armed Conflict* (Oxford: Hart Publishing, 2008).
ROBERTS Adam and Richard GUELFF (ed.), *Documents on the Laws of War*, 3rd edition (Oxford: Oxford University Press, 2000).
SCHMITT Michael N. and Jelena PEJIC (eds.), *International law and armed conflict: exploring the faultlines* (Leiden: Nijhoff, 2007).
SOLIS Gary D., *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge: Cambridge University Press, 2010).

Movies

Documentaries: *Four Hours in My Lai* (1989), *Nuremberg: Tyranny on Trial* (1995), *Srebrenica: A Cry from the Grave* (1999), *The War Tapes* (2006), *The Road to Guantanamo* (2006), *Taxi to the Dark Side* (2007), *No End in Sight* (2007), *The Greatest Silence: Rape in the Congo* (2007), *The Italian Doctor* (2007), *J'aiserré la main du diable* (2007), *The Devil Came on Horseback* (2007), *Standard Operating Procedure* (2008), *Triage: Dr James Orbinski's Humanitarian Dilemma* (2008), *The Reckoning: The Battle for the International Criminal Court* (2009), *Weapon of War: Confessions of Rape in Congo* (2009), *Restrepo* (2010), *Armadillo* (2010), *Remote Control War* (2011), *My Lai Four* (2011), *The Act of Killing* (2012), etc.

Fiction: *La Bataille d'Alger* (1966), *Hotel Rwanda* (2004), *Henry Dunant, du rouge sur la croix* (2005), *La révélation* (2010), *Rebelle* (2012), *Zero Dark Thirty* (2012), etc.

TV series: *Generation Kill* (HBO, 2008).

COURSE SCHEDULE AND SPECIFIC READINGS

Week 1 – Introduction

Just War doctrine – Sources and principles of the law of armed conflict

Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity, 2006).

Robert Kolb, “The History of International Humanitarian Law (Law of War)”, in “The Protection of the Individual in Times of War and Peace”, in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), p. 321-329 (Google Books).

Week 2 – Scope of application

When does IHL apply? (internal and international armed conflicts) – Who is protected? (principle of distinction)

ICTY, *Prosecutor v. R. Haradinaj, I. Balajand L. Brahimaj* (IT-04-84-T), Trial chamber I judgement, 3 April 2008, §63-100.

Mary Ellen O’Connell, “Defining Armed Conflict”, *Journal of Conflict & Security Law*, 13:3, 2008, p. 393-400.

Marco Sassòli, “The Status of Persons Held in Guantanamo under International Humanitarian Law”, *Journal of International Criminal Justice*, 2004, 2, p. 96-106.

Week3 –Means and methods of warfare

Weapons (WMD, nuclear, anti-personnel landmines, cluster bombs, conventional weapons, etc.) – Methods of conducting hostilities

ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

UN Security Council resolution 620 (1988) (on the use of chemical weapons).

William H. Boothby, *Weapons and the Law of Armed Conflict* (New York : Oxford University Press, 2009).

Iain J. MacLeod and Anthony P.V. Rogers, “The Use of White Phosphorus and the Law of War”, *Yearbook of International Humanitarian Law*, 10, 2007, p. 75-97.

Week4 – The protection of combatants and prisoners of war

Definitions – “direct participation in hostilities” – Mercenaries and spies – Treatment of POWs – The sick, wounded and shipwrecked

ICRC (Nils Melzer), *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, 2009.

JINKS Derek, “The Declining Significance of POW Status”, *Harvard International Law Journal*, 45:2, 2004, p. 367-442.

SCHEIPERS Sibylle, *Prisoners or War* (Oxford: Oxford University Press), 2010

Week 5 – The protection of civilians

Women and children – Child soldiers – Human shields– Occupation – displaced persons (refugees and internally displaced persons)

Claire Breen, “When is a Child not a Child?: Child Soldiers in International Law”, *Human Rights Review*, 8:2, 2007, p. 71-103.

Cynthia Chamberlain, Hilly Moodrick-Even Khen&William A. Schabas, “Children and Armed Conflict”, in NoëlleQuenivet and Shilan Shah-Davis (eds.), *International Law and Armed Conflict:Challenges in the 21st Century* (La Haye: T.M.C. Asser Press, 2010), p. 243-286.

Erika Feller, “International Refugee Protection 50 Years On: The Protection Challenges of the Past, Present and Future”, *International Review of the Red Cross*, 843, 2001, p. 581-593.

KarenHulme, “Armed Conflict and the Displaced”, *International Journal of Refugee Law*, 17:1, 2005, p. 91-116.

Week 6 –Theprotection of civilian objects, cultural property and the environment

Civilian objects – Cultural property – Environment

ICTY, Prosecutor v. Strugar (IT-01-42-T), Trial Chamber II judgement, 31 January 2005, §229-233 and 298-329.

Victoria A.Birov, “Prize or Plunder? The Pillage of Works of Art and the International Law of War”, *New York University Journal of International Law and Politics*, 30:1-2, 1998, p. 201-249.

Roger O’Keefe, *The Protection of Cultural Property in Armed Conflict* (Cambridge: Cambridge University Press, 2006).

Tara Weinstein, “Prosecuting Attacks that Destroy the Environment: Environmental Crimes or Humanitarian Atrocities”, *Georgetown International Environmental Law Review*, 17:4, 2005, p. 697-722.

Week7 – IHL and Terrorism

Definitions of terrorism – The “War on Terror” – Torture

Christopher Greenwood, “International law and the ‘war against terrorism’”, *International Affairs*, 78:2, 2002, p. 301-317.

John Yoo, “Terrorists Have No Geneva Rights”, *Wall Street Journal*, 26 May 2004.

JanKlabbers, “Rebels with a Cause? Terrorists and Humanitarian Law”, *European Journal of International Law*, 14:2, 2003, p. 299-312.

Alex J. Bellamy, “No pain, no gain? Torture and ethics in the war on terror”, *International Affairs*, 82:1, 2006, p. 121-148.

Week8 – The Challenge of robotization

Drones and targeted killings – Lethal autonomous robots

Philip Alston, *Report of the Special Rapporteur on extrajudicial, summaryor arbitrary executions, Addendum, Study on targeted killings*, Un Doc A/HRC/14/24/Add.6, 28 May 2010.

Daniel Brunstetter and Megan Braun, "The Implications of Drones on the Just War Tradition", *Ethics and International Affairs*, 25:3, 2011, p. 337-358.

G. E. Marchant *et al.* (CETMONS), "International Governance of Autonomous Military Robots", *The Columbia Science and Technology Law Review*, 12, 2011, p. 271-315.

Week 9 – The implementation of IHL

States – ICRC – UN (Peacekeeping forces and IHL) – NGOs

David P. Forsythe, "The ICRC: a Unique Humanitarian Protagonist", *International Review of the Red Cross*, 865, 2007, p. 63-96.

Christopher Greenwood, "Protection of Peacekeepers: The Legal Regime", *Duke Journal of Comparative and International Law*, 7, 1996, p. 185-207.

Siobhán Wills, *Protecting Civilians: The Obligation of Peacekeepers* (Oxford: Oxford University Press, 2009).

Week 10 – Crimes and Responsibility

Crimes (of War, genocide, ethnic cleansing, crimes against humanity) – State Responsibility – Command responsibility

ICC Rome Statute (1998).

Marco Sassòli, "State Responsibility for Violations of International Humanitarian Law", *International Review of the Red Cross*, 846, 2002, p. 401-434.

Guénaél Mettraux, *The Law of Command Responsibility* (Oxford: Oxford University Press, 2009).

Week 11 – International criminal justice

Nuremberg and Tokyo – ICTY and ICTR – ICC – Hybrid jurisdictions – The peace *versus* justice dilemma

Payam Akhavan, "Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism with Political Realism", *Human Rights Quarterly*, 31:3, 2009, p. 624-654.

Edoardo Greppi, "The Evolution of Individual Criminal Responsibility under International Law", *International Review of the Red Cross*, 835, 1999, p. 531-553.

Gillian Triggs, "National Prosecution of War Crimes and the Rule of Law" in H. Durham et T. McCormack (eds.), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (The Hague: Kluwer law International, 1999), p. 175-191.

Week 12 – Critical approaches and conclusion

Postcolonialism – Feminism

Judith Gardam, "The Neglected Aspect of Women and Armed Conflict – Progressive Development of the Law", *Netherlands International Law Review*, 52, 2005, p. 197-220.

Frédéric Mégret, “From ‘savages’ to ‘unlawful combatants’: a postcolonial look at international humanitarian law’s ‘other’”, in A. Orford (ed.), *International Law and its 'Others'* (Cambridge: Cambridge University Press, 2006), p. 318-356.

Raimon Panikar, “Is the Notion of Human Rights a Western Concept?”, in H. Steiner et P. Alston (eds.), *International Human Rights in Context: Law, Politics, Morals*, 2nd ed. (New York: Oxford University Press, 2000), p. 383-389.

René Provost, “The International Committee of the Red Widget? The Diversity Debate and International Humanitarian law”, *Israel Law Review*, 40, 2007, p. 614-647.