

Course ID Number: ADC 6442

Course Title: International Humanitarian Law

No. of Credits: 2

Graduate School of International Relations
International University of Japan

Term: Spring 2012
Timetable: 6th and 7th period on Tue. and Fri.

Instructor: Nobuo Hayashi

Course Introduction

Standards of belligerent behaviour and individual accountability for war-time atrocities concern not only lawyers but also practitioners and scholars of international relations. Is it permissible to make a radio station the object of an attack? Why is it that some of the detainees at Guantanamo were labelled "unlawful enemy combatants" and what is so problematic about such a label? What difference does it make whether the situation in Darfur does or does not constitute genocide? How should war-torn communities deal with their turbulent past? Articulating informed responses to these questions requires familiarising oneself with the way in which war is to be normatively regulated.

This course aims to provide participants with an overview of the way in which international law seeks to regulate warfare. Such an overview will be of particular interest to those specialising or considering careers in politics, security, peacekeeping, conflict resolution, human rights and humanitarian affairs. While intended primarily for non-lawyers, this course would also be suitable for persons with prior legal training.

SYLLABUS

INTERNATIONAL HUMANITARIAN LAW

Offered: Spring 2012
No. credits: 2
Instructor: Nobuo Hayashi

International Peace Studies Programme
Graduate School of International Relations
International University of Japan

INTRODUCTION

Standards of belligerent behaviour and individual accountability for war-time atrocities concern not only lawyers but also practitioners and scholars of international relations. Is it permissible to make a radio station the object of an attack? Why is it that some of the detainees at Guantanamo were labelled "unlawful enemy combatants" and what is so problematic about such a label? What difference does it make whether the situation in Darfur does or does not constitute genocide? How should war-torn communities deal with their turbulent past? Articulating informed responses to these questions requires familiarising oneself with the way in which war is to be normatively regulated.

This course aims to provide participants with an overview of the way in which international law seeks to regulate warfare. Such an overview will be of particular interest to those specialising or considering careers in politics, security, peacekeeping, conflict resolution, human rights and humanitarian affairs. While intended primarily for non-lawyers, this course would also be suitable for persons with prior legal training.

OUTLINE OF THE COURSE

This is an introductory course on international humanitarian law.¹ It opens with preliminary reflections on the relationship between war and law. Throughout the course, participants will be guided by the overarching question: "Is war amenable to regulation by law and, if it is, to what extent and in what way is it so amenable?" Participants will also acquaint themselves with the historical and conceptual backgrounds to man's efforts to control belligerent conduct.

The course then analyses the law concerning armed hostilities, including its fundamental principles and specific prohibitions. Emphasis is placed on the process through which general normative propositions translate themselves into concrete rules and standards. Participants discuss victim protection and assistance, as well as the application of international humanitarian law in civil wars. A review of various means of implementation concludes the course's substantive component.

The remainder of the course is dedicated to a brief overview of the penal sanctions to which certain violations of international humanitarian law give rise. Participants are introduced to punishable violations, such as war crimes, crimes against humanity and genocide. They also consider some of the legal techniques used to bring responsible persons, including those in positions of authority and influence, to account for such crimes. The course ends with a short appraisal of the institutional framework of international criminal justice.

This course is instructed through lectures, discussions, assigned readings, case studies and, where appropriate, audio-visual materials.

LEARNING EXPECTATIONS

This course endeavours to help each participant accomplish, *inter alia*, the following learning objectives:

1. Develop skills in critical, logical and structured reasoning generally and within the context of international humanitarian law in particular;
2. Understand warfare as a social phenomenon and its regulation from a legal perspective;

¹ This body of rules (also known as *jus in bello*) is to be distinguished from the international law on recourse to force (also known as *jus ad bellum*).

3. Appreciate the interplay between legal rules and social values underlying the conduct of warfare;
4. Become aware of the law's substantive rules, on the one hand, and their implementation including criminal sanctions, on the other hand; and
5. Acquire the ability to follow, on one's own, contemporary events and discourses involving international humanitarian law.

ASSESSMENT

Each participant will be assessed on the basis of his or her regular attendance and active participation (40%), the quality of answers to quizzes on assigned readings (10%) and the quality of one mid-term examination (20%) as well as one final examination or one research paper (30%).

a) Regular attendance and active participation (40%)

Each participant will be expected to demonstrate his or her preparation and understanding of the course material by contributing effectively to in-class discussions. For every session, each participant will earn a maximum of 4 points (effective contribution to discussions) and a minimum of 0 point (absent without leave).

b) Quizzes (10%)

There will be six short unannounced quizzes on required readings (but *not* on documents). For a given quiz that each participant takes, he or she will earn a maximum of 2 points. Of the quizzes that each participant takes, only his or her best five will be taken into account.

c) Mid-term examination (20%)

The mid-term examination will consist of one take-home paper in which each participant shall choose and answer three from a total of five questions prepared by the instructor. Each question will correspond to one topic covered up to the fifth session in the course. The instructor will distribute the questions at the end of the fifth session. All answers will be due in one week thereafter. Each participant will earn a maximum of 10 points per answer. Only the two best answers for each participant will be taken into consideration.

d) Final examination or research paper (30%)

Each student shall take one take-home final examination or, if he or she so prefers, write one 5,000- to 6,000-word research paper.

The format used for the mid-term examination will apply *mutatis mutandis* to the final examination. The choice for each participant will be four out of the five questions drawn from the sixth, seventh, eighth, ninth and tenth sessions, respectively, and evaluation will be based on his or her three best answers. The instructor will distribute the questions at the end of the final session; the answers will be due in one week thereafter.

In the event that a student wishes to write a research paper in lieu of a take-home final examination, he or she shall have the topic discussed with the instructor as early as possible and a draft table of contents approved by him no later than the end of the fifth session. All research papers will be due on the same day as the take-home final examination answers.

Upon successful completion of the course, each participant will earn two credits.

TOPICS COVERED

Introduction

- I. War and law
- II. Historical and conceptual background

Part One: Substantive Provisions

- III. Conduct of hostilities I
- IV. Conduct of hostilities II
- V. Treatment of victims
- VI. Internal armed conflicts
- VII. Implementation²

Part Two: Penal Sanctions

- VIII. Punishable violations
- IX. Individual accountability³
- X. Institutions of international criminal justice

² *Crossing the Lines: War Rules*, a 60-minute BBC documentary on activities of the International Committee of the Red Cross, may be viewed.

³ *Riddles of the Dead: Savage Evidence*, a 50-minute National Geographic documentary on war crimes investigations, may be viewed.

COURSE SCHEDULE

Sess.	Day	Topic	Note
I	Friday, 06 April	War and law	
II	Tuesday, 10 April	Historical and conceptual background	
III	Friday, 13 April	Conduct of hostilities I	
IV	Tuesday, 17 April	Conduct of hostilities II	
V	Friday, 20 April	Treatment of victims	Take-home mid-term exam questions distributed/draft tables of contents for re-search papers approved
No class	Friday, 27 April		Take-home mid-term exam answers due
VI	Friday, 25 May	Internal armed conflicts	
VII	Tuesday, 29 May	Implementation	
VIII	Friday, 01 June	Punishable violations	
IX	Tuesday, 05 June	Individual accountability	
X	Friday, 08 June	Institutions of international criminal justice	Take-home final exam questions distributed
No class	Friday, 15 June		Take-home final exam answers/research papers due

READING LIST

Books Required for Each Participant

- Antonio Cassese, *International Criminal Law*, 2nd ed., Oxford University Press, 2008.
- Leslie C. Green, *The contemporary law of armed conflict*, 3rd ed., Manchester University Press, 2000.
- Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War*, 3rd ed., Oxford University Press, 2000.

Books and Other Works Placed on Reserve at the Library

- International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports* 1996.
- Supreme Court of the United States, 548 U.S. *Salim Ahmed Hamdan, Petitioner v. Donald H. Rumsfeld, Secretary of Defense, et al.* (2006).
- Georges Abi-Saab, "Non-International Armed Conflicts," in Henry Dunant Institute and UNESCO (eds.), *International Dimensions of Humanitarian Law*, Martinus Nijhoff Publishers, 1988, p. 217 *et seq.*
- Hans Blix, "Means and Methods of Combat," in Henry Dunant Institute and UNESCO (eds.), *International Dimensions of Humanitarian Law*, Martinus Nijhoff Publishers, 1988, p. 135 *et seq.*
- Carl von Clausewitz, *On War*, Michael Howard and Peter Petit (eds. trans.), Princeton University Press, 1976.
- Knut Dörmann, "The legal situation of 'unlawful/unprivileged combatants'," in *International Review of the Red Cross*, no. 849, 2003, p. 45 *et seq.*
- Jakob Kellenberger, "Speaking Out or Remaining Silent in Humanitarian Work," in *International Review of the Red Cross*, no. 855, 2004, p. 593 *et seq.*
- Larry May, *Crimes Against Humanity: A Normative Account*, Cambridge University Press, 2005.
- A.P.V. Rogers, *Law on the battlefield*, 2nd ed., Manchester University Press, 2004.

ASSIGNED READINGS AND DOCUMENTS

War and law

- *Required readings:* Clausewitz, chap. 1; Green, chap. 1.

Historical and conceptual background

- *Required readings:* Green, chaps. 2-3.
- *Documents to consult and bring to class:* Roberts and Guelff, document no. 2.

Conduct of hostilities I

- *Required readings:* Blix; Rogers, chap. 3.
- *Documents to consult and bring to class:* Roberts and Guelff, documents no. 5, 24-25.

Conduct of hostilities II

- *Required readings:* International Court of Justice; Rogers, chaps. 4-5.
- *Documents to consult and bring to class:* Roberts and Guelff, document no. 2, 27.

Treatment of victims

- *Required readings:* Green, chaps. 10-12; Dörmann.
- *Documents to consult and bring to class:* Roberts and Guelff, documents no. 17-20, 24.

Internal armed conflicts

- *Required readings:* Abi-Saab; Green, chap. 19; Supreme Court of the United States.
- *Documents to consult and bring to class:* Roberts and Guelff, documents no. 17-20, 25.

Implementation

- *Required readings:* Green, chaps. 13, 15, 17; Kellenberger.
- *Documents to consult and bring to class:* TBA.

Punishable violations

- *Required readings:* Cassese, chaps. 4-6.
- *Documents to consult and bring to class:* Roberts and Guelff, documents no. 15-16, 17-20, 24, 29, 32, 36.

Individual accountability

- *Required readings:* May, chaps. 8, 10.
- *Documents to consult and bring to class:* Roberts and Guelff, documents no. 15-16, 24, 29, 32, 36.

Institutions of international criminal justice

- *Required readings:* Cassese, chaps. 16, 21; May, chap. 13.