Developed by Professor Yuval Shany, Hebrew University of Jerusalem (Israel)

Course description:

The course explores the normative, theoretical institutional development of international humanitarian law (IHL). After discussing the policy and philosophical justifications underlying the development of IHL, the course describes its historical growth from the traditional laws of war and surveys the principal instruments and institutions which comprise IHL. Particular attention will be given in this regard to issues such as eligibility for POW status, the norms governing the war on terror, limitations of the means and methods of warfare and the increasing merger of IHL and human rights law. The final part of the course critically examines international attempts to enforce IHL, particularly through the development of international criminal law instruments and institutions, such as the International Criminal Court.

Treaties used throughout the course:

- Hague Convention IV – Laws and Customs of War on Land 1907, 205 Consol. T.S. 277
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to
the Protection of Victims of International Armed Conflicts (Protocol I), 1977, 1125 U.N.T.S. 3

- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, 1125 U.N.T.S. 609

**Program of Studies:**

**Class 1:**

**The Case for the Legal Regulation of Inter-State Violence**

The class discusses the justifications for restricting the conduct of warring parties in order to promote humanitarian goals, and introduces the distinction between *jus ad bellum* (the law governing resort to force) and *jus in bello* (the law governing the conduct of hostilities).

*Reading materials:*

- M. Sassòli, A.A. Bouvier and A. Quintin, *How Does Law Protect in War?* (3rd edition, 2011), Ch. 1 & Ch. 2. II.

**Class 2:**

**Historical Development of IHL**

The class discusses the process of development of IHL from the battle of Solferino (1859) to the conclusion of the Rome Statute (1998). The main focus of discussion would be the classic distinction between Hague law (inter-state oriented IHL) and Geneva law (human-rights oriented IHL).

*Reading materials:*
• Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles, 29
  November/11 December 1868
• Convention [No. IV] on the Laws and Customs of War on Land, 18 Oct. 1907
• Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to
  the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,
  art. 51

Class 3-4:

The General Principles of IHL governing Military Operations

The class will discuss the principles of military necessity, proportionality, distinction and
the prevention of unnecessary suffering (principle of humanity), as they had been
developed in treaty law, customary law and in the case law. It will use as primary case
studies Israel’s targeting killing policy, on the one hand, and NATO’s bombing campaign
over Yugoslavia, on the other hand.

Reading Materials:

• Final Report to the Prosecutor by the Committee Established to Review the NATO
  28-91 [See Case No. 226, Federal Republic of Yugoslavia, NATO Intervention [Part
  B.]]
• H.C.J. 769/02, Public Committee against Torture v. Government of Israel, Judgment
  of 13 Dec. 2006 [See Case No. 136, Israel, The Targeted Killings Case]
• H.C.J. 3799/02, Adalah v. IDF Chief of Central Command, judgment of 6 Oct. 2005

Class 5:

Regulations of Means of Warfare

The class will discuss the application of the general principles governing methods of
warfare discussed in classes 3-4 to the choice of means of warfare – that is, to the international regime governing the lawfulness of specific weapons and munitions.

Reading materials:


Class 6:

**Prisoners of War and Belligerent Status**

The class will discuss the centrality of the institution of POW and belligerency status in regulating the conduct of warfare and elaborate on the various conditions for conferring or denying this status in the light of recent case law in the U.S. and Israel on the matter. The class discussion will also address the right to detain and target individuals taking part in hostilities.

Reading Materials:

- Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949
- Cr A 8780/06, *Srur v. Israel*, ILDC 590

Class 7:

**The Law Governing Non-International Armed Conflicts**
The class will address the changing nature of the distinction between international and non-international armed conflict and discuss the norms developed to regulate the latter type of conflicts.

Reading materials:

- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

Class 8-9:

The War on Terror

The class discusses the applicability of IHL to the war on terror, in particular, to questions of targeted killings and detention of “unprivileged” or “unlawful combatants”

Reading materials:

- CrimA 6659/06, A v. Israel, Judgment of 11 June 2008 [See Case No. 138, Israel, Detention of Unlawful Combatants [Part A.]]
Class 10-11:

The Law of Occupation

The class will discuss the basic principles of law governing situations of belligerent occupation, focusing, in particular, on the Israeli/Palestinian and the Iraq case studies. Among the specific issues to be discussed are the conditions for applying the law of occupation, the prohibition against changing the status quo in occupied territories and the nature of the obligations of the occupier vis-à-vis the local population.

Reading materials:

- *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. 136, at para. 70-162 [See Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A.]]

Class 12:

Application of Human Rights Norms in Times of Armed Conflict

The class will discuss the theory and practice concerning the co-application of human rights law and IHL in times of armed conflict, emphasizing the centrality of ‘effective control’ as
a concept governing such potential co-application and assessing the implications of co-application

Reading materials:

- *Al-Skeini v. Secretary of State for Defence*, [2007] UKHL 26

Class 13-14:

Enforcement of IHL

The class will discuss the problem of enforcing IHL and survey different institutions designed to improve upon the dismal record of compliance of many parties to many conflict. The class will focus, in particular, on development in the field of international criminal law – e.g., the establishment of the ICC – which may serve as effective avenue for enforcing IHL norms.

Reading materials:


Class 15:
Critical Perspectives

The class will offer some concluding observations on the IHL discourse and on the degree in which it limits or legitimizes power.

Reading materials:


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