

Temple University, Spring 2012

M 3:00–5:30 p.m., 748 Gladfelter Hall

**Political Science 3996/4996: Honors Capstone Seminar:
The United States and the Rule of International Law**

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Office Hours: M 12:30 – 3:00 p.m.

Course Description

This interdisciplinary course examines, from the perspectives of both law and political science, the ambivalent relationship of the United States to the rule of international law. As we shall see, there is a long tradition of US foreign policy being guided and constrained by both international law and by US “foreign relations law”; and yet there is an equally long tradition, particularly among “realist” scholars, of skepticism about whether international law does or should play any role in US foreign policy, particularly when it comes to the use of force. We will explore these questions and the debates about them across a wide range of issue-areas, examining not only textbooks but also scholarly articles and domestic and international court cases. In addition, students will identify a question or issue that particularly interest them, and engage in an original research project on that subject, including oral presentations in class and a final research paper.

The course is divided into three parts. During the first part of the course, we will briefly introduce the ongoing debate over the role of law in US foreign policy, and provide general introductions to both public international law and US foreign relations law (Weeks 1-3). The second part of the course examines the role of law in a variety of issue-areas, including international human rights law, environmental law, the law of the sea, the US positions toward various international courts, as well as various issues arising from the use of force including the Iraq war, humanitarian intervention, and the so-called war on terror (Weeks 4-8). Finally, in the third part of the course, students will have the opportunity to research and present to the class preliminary versions of their research papers (Weeks 9-14), the final, written versions of which will be due at the end of the semester.

Course Requirements. As a capstone seminar, this course is also listed as writing-intensive, meaning that we will place heavy emphasis on reading comprehension, writing, and classroom presentation and discussion. Specific course requirements include:

1. Weekly readings of approximately 100-200 pages per week;
2. Participation – meaning both attendance and informed contribution – in class discussions (20% of the grade);
3. Two short essays (1-2 pages, *double-spaced*) responding to the weekly readings during Weeks 2 through 8 of the semester, of which at least one should be written by Week 4; late papers will not be accepted (20% of the grade); and
4. A research paper on a topic of the student's choice, to be undertaken in four stages:
 - (a) a preliminary statement of the topic and argument of the paper; a draft outline of the paper; and a preliminary annotated bibliography of primary and secondary sources (10% of the grade), due February 27;
 - (b) oral presentation of the draft paper in class during weeks 9-14 (approx 10-12 minutes plus question-and-answer session with fellow students, 10% of the grade);
 - (c) a first draft of the research paper, which should be complete in terms of both research and writing, due April 16 (20% of the grade); and
 - (d) a final draft paper (approx 15-20 pages, 20% of the grade), due on May 7. Late papers will be penalized one letter grade per day of lateness.

Please note that all of the writing assignments will be assessed primarily on the basis of substantive arguments about the role of law in US foreign policy, but also on the basis of how clearly and carefully they are written.

Required Reading: The following required books are available for purchase in the Temple University Bookstore:

- John F. Murphy, *The United States and the Rule of Law in International Affairs* (New York: Cambridge University Press, 2004).
- Jack Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (New York: W.W. Norton, 2007).

In addition to these texts, we will also read selections from other books and from articles and court decisions. With the exception of the four aforementioned books (which will also be placed on reserve at Paley Library), all of the **required readings** will be made available on electronic reserve – please **print these readings and bring them to class**, and be prepared to discuss specific points from the readings in class discussion.

By contrast with the required readings, the **recommended readings** are there only for students who wish to learn a bit more about topics that are not well covered in the

required readings. Feel free to look up the recommended readings if you like, but it is not necessary to read any of the recommended readings to do well in the course!

Academic Conduct: Temple University has adopted standards on academic conduct, and all students in PS 4896 are expected to comply fully with those standards, including with reference to the important issue of plagiarism. All students should, in all assignments, fully and unambiguously cite sources from which they are drawing important ideas and/or sizable quotations (for example, more than eight consecutive words or more than 50% of a given sentence or paragraph). Failure to do so constitutes plagiarism, which is a serious act of academic misconduct and will result in a failing grade for the course and notification of the infraction to the Dean of Students. Similarly, cheating during exams, copying written assignments from other students, or providing answers to others during exams are considered acts of academic misconduct. If you are unfamiliar with policies about plagiarism or other types of academic misconduct, you may wish to consult the useful handouts available at the Temple Writing Center (<http://www.temple.edu/writingctr/handouts/researchandplagiarism/index.html>), or if you still have remaining doubts or specific questions, raise them directly with me.

Disability Statement: This course is open to all students who met the academic requirements for participation. Any student who has a need for accommodation based on the impact of a disability should contact the instructor privately to discuss the specific situation as soon as possible. Contact Disability Resources and Services at 215-204-1280 to coordinate reasonable accommodations for students with documented disabilities. (Please use this text without modification.)

Statement on Academic Freedom: Freedom to teach and freedom to learn are inseparable facets of academic freedom. The University has adopted a policy on Student and Faculty Academic Rights and Responsibilities (Policy # 03.70.02) which can be accessed through the following link: http://policies.temple.edu/getdoc.asp?policy_no=03.70.02.

SCHEDULE OF TOPICS, READINGS, AND STUDY QUESTIONS

Week 1: Introduction: The US and the Rule of Law in International Affairs (Jan 23)

Required Readings

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Introduction, pp. 1-10.

Jost, Kenneth, "International Law," *The CQ Researcher*, Vol. 14, No. 44, pp. 1049-1072, accessed at <http://www.thecqresearcher.com>; read pages 1049-1058.

Charles Krauthammer, "The Curse of Legalism: International Law? It's Purely Advisory," *The New Republic*, Nov. 6, 1989, pp. 44-50.

Eric A. Posner, *The Perils of Global Legalism* (Chicago: University of Chicago Press, 2009), Preface, pp. ix-xvi.

Peter J. Spiro, "The New Sovereignists: American Exceptionalism and its False Prophets," *Foreign Affairs*, Nov/Dec 2000.

* Jack Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (New York: W.W. Norton, 2007), chapters 1 and 2, pp. 17-70.

Study Questions. There is *no paper assigned for this week*, but as you read the various readings for this week, consider the following questions:

1. What are the arguments – as presented in the various readings for this week – in favor of the United States taking a leading role in both constructing and complying with public international law? Given that international law constrains states, why should the United States treat international law as important and binding?
2. Contrarily, what are the arguments that the United States should not consider itself bound by international law, or that indeed international law is dangerous and represents a threat to the United States' security and/or its values?
3. Based on these very limited readings, what is your initial impression of the strength of the arguments on both sides?

Recommended Readings

Philippe Sands, *Lawless World: The Whistle-Blowing Account of How Bush and Blair Are Taking the Law into Their Own Hands* (New York: Penguin Books, 2006).

Clyde V. Prestowitz, *Rogue Nation: American Unilateralism And The Failure Of Good Intentions* (New York: Basic Books, 2004).

Stephen G. Brooks and William C. Wohlforth, *World Out of Balance: International Relations and the Challenge of American Primacy* (Princeton: Princeton University Press, 2008).

G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton: Princeton University Press, 2011).

Rosemary Foot, S. Neil MacFarlane and Michael Mastanduno, *US Hegemony and International Organizations* (New York: Oxford University Press, 2003).

Week 2: An Introduction to Public International Law (Jan 30)

Required Readings

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 1, pp. 11-73.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), pp 1-33.

Study Questions (Choose only one)

1. This is much to learn about the basics of public international law this week, including the distinction between the making of IL (a sort of international legislative function), the interpretation of international law (a judicial function), and the execution or enforcement of international law. We will come back to these points later in the term, but in the meantime, based on what you've read so far, answer the following, more basic question: (a) What do we generally mean by "law," according to your texts? (b) Is international law really "law"? (c) Should we in the United States feel bound by international law? Why or why not?
2. Dunoff, Ratner and Wippman take a different method from Murphy in their casebook: Instead of providing a general overview of IR, as Murphy does, DRW introduce the core concepts and issues of international law through an extended analysis of international legal cases. What are the two cases discussed by the authors in Chapter 1, and how, according to the authors, do these cases reveal the changes that have taken place in international law over the past few decades?

Recommended Readings

Sean D. Murphy, *Principles of International Law* (Thomson West, 2006).

Ian Brownlie, *Principles of Public International Law*, sixth edition (New York: Oxford University Press, 2003).

Antonio Cassese, *International Law*, 2nd edition (Oxford: Oxford University Press, 2005).

Mark W. Janis, *An Introduction to International Law*, 5th edition (New York: Aspen Publishers).

Malcolm Shaw, *International Law*, 5th edition (Cambridge: Cambridge University Press, 2003).

Week 3: US Foreign Relations Law (Feb 6)

Required Reading

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 2, pp. 74-115.

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), pp. 569-609 [on customary international law in US courts, and the Alien Tort Statute], and pp. 657-69 [on the use of foreign and international sources in constitutional interpretation].

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), pp. 293-306 [on Breard and consular cases].

Study Questions (Choose only one)

1. One major element of US foreign relations law has to do with the constitutional separation of powers when it comes to the making of US foreign policy. What are the core powers of the legislative, executive and judicial branches in the making of US foreign policy, and especially in wartime? Is this division of powers clear and unambiguous? Why or why not?
2. What is the general status of international law in United States courts? Summarize the general situation in a few paragraphs, and then explore the difficulties posed by one of the three following situations: (1) the use of the Alien Tort Statute to punish foreign individuals for violations of law in US courts; (2) the rights of foreign citizens to consular assistance in US criminal cases; or (3) the use of foreign or international law sources by US governments in interpreting the US constitution or US law.

Recommended Reading

Sean D. Murphy, *Principles of International Law*, Chapters 7 and 8, pp. 199-258.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), Chapters 5 and 6.

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), chapters 1-3, pp. 1-204, and chapters 6-7, pp. 385-568.

Curtis A. Bradley, "A New American Foreign Affairs Law?" *University of Colorado Law Review*, Vol. 70, No. 4 (1999), pp. 1089-1107.

Harold Hongju Koh, "Bringing International Law Home," *Houston Law Review*, Vol. 35, No. 3 (Fall 1998), pp. 623-681.

Robert O. Keohane, "When Does International Law Come Home?" *Houston Law Review*, Vol. 35, No. 3 (Fall 1998) pp. 699-713.

David L. Sloss, Michael D. Ramsey and William S. Dodge, *International Law in the U.S. Supreme Court: Continuity and Change* (Cambridge: Cambridge University Press, 2011).

Harold Hongju Koh, "Paying Decent Respect to International Tribunal Rulings," *Proceedings of the American Society of International Law* (2002), pp. 45-53.

David Zaring, "The Use of Foreign Decisions by Federal Courts: An Empirical Analysis," *Journal of Empirical Legal Studies*, Vol. 3, No. 2 (July 2006), pp. 297-331.

Week 4: Human Rights Law and International Courts (Feb 13)

Required Readings

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), pp. 472-496 [on the US and UN human rights treaties].

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 9, pp. 325-338.

Andrew Moravcsik, "Why Is U.S. Human Rights Policy So Unilateralist?" in Shepard Forman and Patrick Stewart, eds., *The Cost of Acting Alone: Multilateralism and US Foreign Policy* (Boulder: Lynne Rienner Publishers, 2001), pp. 345-376.

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 7, pp. 250-283 (on the ICJ).

Study Questions (Choose only one)

1. International human rights law is an area of intense debate in international law and international relations, particularly with respect to whether the raft of universal and regional human rights treaties really makes a difference to the behavior of states and their respect for the human rights of their citizens (see recommended readings). But our focus is on a different question: Why, according to this week's readings, has the United States, despite its strong record of human rights protection and its championing of human rights abroad, been reluctant to champion, or even to sign and ratify, international treaties devoted to the protection of human rights? Are these reasons compelling, in your view, or should the United States overcome its reluctance and embrace all existing human rights treaties?
2. There are a growing number of international courts and tribunals, ranging from the WTO Dispute Settlement Body to the International Criminal Tribunal for the former Yugoslavia, but there is only one international court with general jurisdiction, and that is the International Court of Justice (ICJ). As you will see in this week's readings, the United States played a key role in the establishment of the ICJ, but has had a difficult relationship with the Court since then. What is the US position toward the ICJ, according to this week's readings? What criticisms of the ICJ do you find in the literature and in the position of the US government, and how convincing do you find them?

Recommended Readings

International Human Rights Law

Sean Murphy, *Principles of International Law*, Chapter 7, pp. 293-337.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), Chapter 7.

Moravcsik, Andrew. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54(2), pp. 217-252.

Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, Vol. 111 (2001-2002), pp. 1935-2042.

Jack L. Goldsmith and Eric Posner, *The Limits of International Law* (New York: Oxford University Press, 2005), Chapter 4.

Hafner-Burton, Emilie M. (2005). "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," *International Organization*, Vol. 59, No. 3, pp. 593-629.

On International Courts and Tribunals

Cesare P.R. Romano, ed., *The Sword and the Scales: The United States and International Courts and Tribunals* (New York: Cambridge University Press, 2009).

Romano, Cesare. 1999. "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle." *New York University Journal of International Law and Politics*, Vol. 31, pp. 709-51.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), 652-667 [on the ICC].

Posner, Eric, and Michael de Figueiredo (2005). "Is the International Court of Justice Biased?" *Journal of Legal Studies*, Vol. 34, pp. 599-630.

Paulson, Colter (2004). "Compliance with Final Judgments of the International Court of Justice since 1987," *The American Journal of International Law*, Vol. 98 (3), pp. 434-461.

Week 5: The Law of the Sea, Environmental Law, and Economic Law (Feb 20)

Required Readings

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 6, pp. 226-49 (on the Law of the Sea) and 338-44 (on environmental law).

Tora Skodvin and Steinar Andresen, "An Agenda for Change in U.S. Climate Policies? Presidential Ambitions and Congressional Powers," *International Environmental Agreements*, Vol. 9 (2009), pp. 263–280.

Short articles on domestic politics of climate change in the U.S.:

- Wikipedia contributors, American Clean Energy and Security Act, http://en.wikipedia.org/wiki/American_Clean_Energy_and_Security_Act.
- John M. Broder, "House Passes Bill to Address the Threat of Climate Change," *The New York Times*, 26 June 2009, http://www.nytimes.com/2009/06/27/us/politics/27climate.html?_r=3&hp.
- Inside Congress, "House Vote 477 - H.R.2454: On Passage," *The New York Times*, <http://politics.nytimes.com/congress/votes/111/house/1/477>.
- Ryan Lizza, "As the World Burns: How the Senate and the White House Missed Their Chance to Deal with Climate Change," *The New Yorker*, October 11th, 2010, accessible on-line at: http://www.newyorker.com/reporting/2010/10/11/101011fa_fact_lizza.

Daniel Bodanksy, "The Copenhagen Climate Change Conference: A Post-Mortem," University of Georgia School of Law, February 12, 2010.

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, reread Chapter 1, pp. 49-58.

Jeffrey L. Dunoff, "Does the United States Support International Tribunals? The Case of the Multilateral Trade System," in Cesare P.R. Romano, ed., *The Sword and the Scales: The United States and International Courts and Tribunals* (New York: Cambridge University Press, 2009), pp. 322-355.

Study Questions (Choose only one)

This week, we encounter three bodies of law: the law of the sea, international environmental law (with a focus on climate change), and international trade law. You may answer questions on any of the three topics, but be sure to read about all three of them, including the multiple readings on climate change.

1. What are the core provisions of the Law of the Sea Convention, and what has been the United States position toward the treaty? What are the arguments for and against US participation? Which do you find more convincing, and why?
2. The United States is one of the largest emitters, and by far the largest per-capita emitter, of carbon dioxide and other greenhouse gases that are almost universally believed to be causing global climate change. Yet the United States has not proven willing to ratify the 1997 Kyoto Protocol that would mandate binding emissions reductions, and the Obama Administration in recent meetings (including the landmark 2009 meeting in Copenhagen, Denmark) has advocated a “soft law” approach to the problem, infuriating European Union countries that advocate a much more aggressive approach to the problem. Why has the United States, arguably the birthplace of environmentalism, been so consistently unwilling to be bound by international obligations on climate change and other environmental problems?
3. By contrast with some of the other areas we’ve read about, the United States has been seen as a consistent champion of international law in the area of free trade, playing a leading role in the establishment of the GATT and its successor, the WTO. Yet the US has sometimes been ambivalent about the dispute settlement mechanism set up to adjudicate disputes under the WTO, and indeed in some cases about free trade itself. On the basis of the readings, how would you characterize the US position toward the WTO and its dispute settlement body? How, in terms of our framework for the class, would you explain the US position?

Recommended Readings

Sean Murphy, *Principles of International Law*, Chapters 11 (Law of the Sea) and 12 (international environmental law).

John Norton Moore and William L. Schachte Jr., “The Senate Should Give Immediate Advice and Consent to the UN Convention on the Law of the Sea: Why the Critics are Wrong,” *Journal of International Affairs*, Vol. 59, No. 1 (Fall/Winter 2005), pp. 1-23.

Doug Bandow, “Don’t Resurrect the Law of the Sea Treaty,” *Journal of International Affairs*, Vol. 59, No. 1 (Fall/Winter 2005), pp. 25-41.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition, Chapters 10 and 11.

Daniel Bodansky, Jutta Brunnée, and Ellen Hey, eds., *The Oxford Handbook of International Environmental Law* (New York: Oxford University Press, 2007).

R. Daniel Kelemen and David Vogel, “Trading Places: The Role of the United States and the European Union in International Environmental Politics,” *Comparative Political Studies*, Vol. 43, No. 4 (2009), pp. 427-56.

Week 6: Research Paper Proposals Due (Feb 27)

Week 7: The Use of Force I: Basic Provisions of US and International Law: *jus ad bellum* and *jus in bello*; the Iraq War; and the Responsibility to Protect (March 12)

Required Reading

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 4, pp. 142-181.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), Chapter 13, pp. 875-915 (on the wars in Iraq), pp. 932-957 (on UN peacekeeping, humanitarian intervention, and the case of Kosovo).

To be added: additional documents and newspaper articles on the NATO intervention in Libya.

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 5, pp. 207-221 (on arms control).

Study Questions (Choose only one)

1. International law has long made a distinction, drawn from medieval just war theory, between *jus ad bellum* and *jus in bello*. What do these two terms mean, and what are the basic provisions of international law relating to each?
2. This week, we first focus on the legal debate over the United States' 2003 invasion of Iraq. What were the *legal* (as opposed to the political or moral) arguments put forward by the Bush Administration to justify its war? Do you find these arguments legally persuasive? Why or why not?
3. Looking beyond Iraq, the past several years have seen a growing debate over the legitimacy of "anticipatory self-defense," "preemption," or "prevention" as legal justifications for war, with the United States acting as a key champion for these concepts. What are the primary arguments for accepting such a new stance on the meaning of "self-defense," and what are the arguments against it? Which arguments do you find more convincing, and why?
4. Much of the international legal system in general, and the UN Charter in particular, are based on the notion of state sovereignty, which would seem to rule out any possibility of "humanitarian" military intervention by one state in the internal affairs of another state. As a matter of law – as opposed to politics or morality – is it possible to posit a legal basis for a right to intervene or "a responsibility to protect?" If so, what would be the legal basis and the legal conditions for engaging in such an intervention?

5. Dunoff, Ratner and Wippmann focus special attention on the case of Kosovo in 1999. Why, after nearly a decade of interventions by the international community, did this particular institution raise an important legal dispute? Based on what you have read, was the US intervention in Kosovo legally justified, or not? Explain the reasoning that leads you to your answer.

Recommended Reading

Jus ad bellum and jus in bello

Sean D. Murphy, *Principles of International Law*, Chapter 14, pp. 439-72.

Christine Gray, *International Law and the Use of Force* (New York: Oxford University Press, 2004).

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), Chapter 4 (war powers).

Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977).

Anticipatory Self-Defense and Iraq

John Yoo, "International Law and the War in Iraq," *American Journal of International Law*, Vol. 97 (2003), pp. 563-22.

Thomas M. Franck, *What Happens Now? The United Nations After Iraq*, 97 AM. J. INT'L L. 607 (2003).

W. Michael Reisman, *Assessing Claims to Revise the Laws of War*, 97 AM. J. INT'L L. 82 (2003).

Michael Doyle et al., *Striking First: Pre-Emption and Prevention in International Conflict* (Princeton: Princeton University Press), first two chapters by Doyle, response by Koh, pp. 3-118.

Frontline film, "Bush's War," <http://www.pbs.org/wgbh/pages/frontline/bushswar/>.

Humanitarian Intervention

Nicholas J. Wheeler and Alex J. Bellamy, "Humanitarian Intervention," in *The Globalization of World Politics*, in John Baylis and Steve Smith, eds. (Oxford University Press, 2004), pp. 555-578.

Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Harper Perennial, 2003).

Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2003).

J.L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (New York: Cambridge University Press, 2003).

Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution Press, 2008).

Nicholas J. Wheeler, "A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit," *Journal of International Law and International Relations*, Vol. 2, No. 1 (Winter 2005), pp. 95-105.

Alex J. Bellamy, "The Responsibility to Protect and the Problem of Military Intervention," *International Affairs*, Vol. 84, No. 4 (2008), pp. 615-639.

Thomas G. Weiss, *Humanitarian Intervention* (Malden, MA: Polity Press, 2007).

Week 8: The Use of Force II: The War on Terror and International Criminal Law (March 19)

Required Readings

* Jack L. Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (New York: W.W. Norton, 2007), Chapters 3-6 and Afterward, pp. 71-233.

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), pp. 983-1031 [the war on terror – you can skim pp. 984-999], 625-637 [on wartime abuses and Abu Ghraib].

Jack L. Goldsmith, “The Cheney Fallacy,” *The New Republic*, 18 May 2009.

To be added: Additional documents and newspaper articles analyzing the Obama Administration’s policies in the war on terrorism.

* John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 8, (ICL) skim 284-312, read 312-319.

Study Questions (Choose only one)

The September 11th, 2001, attacks on the United States, and the Bush Administration’s subsequent “war on terror” raised an enormous variety of legal as well as political and moral questions, including the impact (if any) of international law (e.g., the Geneva Conventions) in US behavior; the power of the Presidency vis-à-vis the other branches of government in US foreign relations law; and specific questions about the designation of detainees, the use and institutional set-up of military commissions, the use of extraordinary rendition and/or torture, and the conduct of warrantless wiretapping. We will discuss all of these questions in class, but for now, consider writing an essay on one of the following questions:

1. What do the Geneva Conventions say about the rights of prisoners of war? To whom did the Bush Administration decide that the rights spelled out in the Geneva Conventions applied – put more simply, who’s covered, and who isn’t? Is this position legally defensible? Why or why not?
2. In terms of US foreign relations law, what new or novel claims did the Bush Administration make about executive powers to conduct an ongoing war on terrorism, particularly vis-à-vis the other branches of government? Did the Bush Administration’s reading of Article 2 of the Constitution undermine the Constitution, or simply adapt it to the realities of a war against a new type of enemy?

3. In 2008, candidate Barack Obama ran on a platform of opposition to the Bush Administration's war on terror. In what ways, if any, has Obama changed Bush's policies regarding the war on terror, domestic law, and international law? And in what ways, if any, has Obama continued Bush Administration policies?

Recommended Readings

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), Chapter 5 [War on Terrorism], pp. 289-383.

Philippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values* (New York: Palgrave Macmillan, 2009).

Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals* (New York: Doubleday, 2008).

John Yoo, *War by Other Means: An Insider's Account of the War on Terror* (New York: Atlantic Monthly Press, 2006).

Derek Jinks, *The Rules of War: The Geneva Conventions in the Age of Terror* (New York: Oxford University Press, 2005).

Michael Byers. 2002. "Terrorism, the Use of Force, and International Law after 11 September," *The International and Comparative Law Quarterly*, Vol. 51 (April), pp. 401-14.

Harold Koh, *The Spirit of the Laws*, 43 HARV. INT'L L. J. 32-39 (2002)

W. Michael Reisman, *In Defense of World Public Order*, 95 AM. J. INT'L. L. 833-35 (2001).

Jonathan I. Charney, *The Use of Force Against Terrorism and International Law*, 95 AM. J. INT'L L. 835-39 (2001).

Catherine A. McKinnon, "Women's September 11th: Rethinking the International Law of Conflict," *Harvard Journal of International Law*, Vol. 47, pp. 1-31.

Frontline film, "Cheney's Law," <http://www.pbs.org/wgbh/pages/frontline/cheney/view/>.

Jack Goldsmith, "Influence of Lawyers in the War on Terror," <http://video.google.com/videoplay?docid=-8871010591802593792&q=Jack+Goldsmith+terror&ei=neVfSJ-FA5WgqgKWpomhDQ>.

International Criminal Law

Jack L. Goldsmith. 2003. "The Self-Defeating International Criminal Court," *University of Chicago Law Review* 70, p. 89ff.

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Week 9: Student Presentations (March 26)

Week 10: Research and Writing (April 2)

Week 11: Student Presentations (April 9)

Week 12: Student Presentations, First Draft Papers Due (April 16)

Week 13: Student Presentations, First Drafts Returned (April 23)

Week 14: Student Presentations and Conclusions (April 30)