Course Syllabus
Spring 2019
LAW201G

INTERNATIONAL HUMANITARIAN LAW

Number of ECTS credits: 6
Time and Place: Wednesday (16.30 to 18 hrs) and Friday (15 to 16.30 hrs)
Contact Details for Professor
Name of Professor: Marc Cogen
E-mail: marcgcogen@gmail.com
Office hours: one hour after each class

CONTENT OVERVIEW

<table>
<thead>
<tr>
<th>Syllabus Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Course Prerequisites and Course Description</td>
<td>2</td>
</tr>
<tr>
<td>Course Learning Objectives</td>
<td>3</td>
</tr>
<tr>
<td>Overview Table: Link between MLO, CLO, Teaching Methods,</td>
<td>4-5</td>
</tr>
<tr>
<td>Assignments and Feedback</td>
<td></td>
</tr>
<tr>
<td>Main Course Material</td>
<td>6</td>
</tr>
<tr>
<td>Workload Calculation for this Course</td>
<td>7</td>
</tr>
<tr>
<td>Course Assessment: Assignments Overview and Grading Scale</td>
<td>7-8</td>
</tr>
<tr>
<td>Description of Assignments, Activities and Deadlines</td>
<td>9-11</td>
</tr>
<tr>
<td>Rubrics: Transparent Criteria for Assessment</td>
<td>12</td>
</tr>
<tr>
<td>Policies for Attendance, Later Work, Academic Honesty,</td>
<td>13-14</td>
</tr>
<tr>
<td>Turnitin</td>
<td></td>
</tr>
<tr>
<td>Course Schedule - Overview Table</td>
<td>15</td>
</tr>
<tr>
<td>Detailed Session-by-Session Description of Course</td>
<td>16-23</td>
</tr>
</tbody>
</table>
Course Prerequisites (if any)

LAW101G or with prior written permission from the instructor.

Course Description

The course addresses international humanitarian law as part of general international law. It introduces the student to the history and codification of IHL, from the 16th century until today.

The methodology is explained by highlighting the difference between *ius ad bellum* (the legitimacy of armed operations) and the *ius in bello* (law applicable during armed conflict). The four Geneva conventions of 1949 and the two additional protocols of 1977 are looked upon into detail. Attention is paid to the question of law enforcement, in particular the numerous resolutions of the UN Security Council.

The course illustrates IHL in some recent armed conflicts such as the NATO air campaign in Kosovo, the Libyan civil war, the Syrian civil war and looks at some new challenges of IHL regarding armed drones, cyber warfare and ‘foreign terrorist fighters’.

Further Detail on Course Content (if needed)

None
Course Learning Objectives (CLO)

- Understanding the distinction between the rules on the methods and means of combat and the Law of Geneva on the protection of persons and civilian objects
  \[ \text{In terms of knowledge:} \]
  - Understanding the basic principles of humanitarian law that express ethical values
- Finding and understanding the sources of international humanitarian law by means of an overview of all existing treaties and protocols, rules of customary international law, and landmark cases
  \[ \text{In terms of knowledge:} \]
  - Comprehend the complex relationship between the many IHL treaties and the rules of relevant rules of customary international law
- Applying international humanitarian law as an important component in present-day conflict management and resolution. It is addressed to a variety of educational disciplines, such as political science, international affairs, conflict management and law.
  \[ \text{In terms of knowledge:} \]
  - Understand the importance of respect for IHL and the need to enforce respect in case of grave breaches, including the role of the ICRC and the UN Security Council
  \[ \text{In terms of skills:} \]
  - Enhancing the legal writing ability with appropriate legal terms
- To provide the students with the skills of using the websites of international humanitarian law
  \[ \text{In terms of skills:} \]
  - Use the relevant internet sources
  - And
  - Use appropriate referencing and bibliographic methods
- Stimulate critical attitudes, which are necessary for life-long learning and sensitivity to the importance of legal and ethical considerations and the ability to confront dominant, popular opinions with constructive criticism
  \[ \text{In terms of attitude:} \]
  - Critical attitudes, which are necessary for life-long learning
- To reflect on the ethical values as the foundation of humanitarian law, with attention to contemporary challenges
  \[ \text{In terms of attitude:} \]
  - Sensibility towards the ethical dimensions of many aspects of the content of this course
**LINK BETWEEN MAJOR OBJECTIVES, COURSE OBJECTIVES, TEACHING METHODS, ASSIGNMENTS AND FEEDBACK**

(BA International and European Law)

Summary: The course contains the entire field of international humanitarian law and pays attention to new challenges.

Number of assignments used in this course: 4 (two written assignments and two exams)
Number of Feedback occasions in this course (either written or oral): 1 oral feedback after midterm exam and 2 written form feedbacks on the written assignments.

Number and Types of Teaching Methods: weekly class, PPT slides, in-class exercise, class debate

<table>
<thead>
<tr>
<th>Major Learning Objectives</th>
<th>Course Learning objectives addressing the Major Objectives (testable learning objectives)</th>
<th>Methods used to Teach Course Objectives</th>
<th>Methods (and numbers/types of assignments) used to test these learning objectives</th>
<th>Type, Timing and Instances of Feedback given to Student</th>
</tr>
</thead>
<tbody>
<tr>
<td>acquire knowledge of terminology and concepts of international and European Law.</td>
<td>Understanding the distinction between the Law of the Hague on the means and methods of combat and the Law of Geneva on the protection of persons and civilian objects</td>
<td>Weekly class with PPT slides and questions</td>
<td>Two written assignments and the midterm and final exams</td>
<td>Two written reports on the two written assignments; and feedback of the midterm exam</td>
</tr>
<tr>
<td>gain an understanding of the international system and the European integration process</td>
<td>Finding and understanding the sources of international humanitarian law by means of an overview of all existing treaties and protocols, rules of customary international law, and landmark cases</td>
<td>Weekly class with PPT slides and questions</td>
<td>Midterm and final exam</td>
<td>One oral feedback of midterm exam</td>
</tr>
<tr>
<td>develop a working knowledge of international law-making by means of treaties, state practice and decisions of international organizations and conferences</td>
<td>Applying international humanitarian law as an important component in present-day conflict management and resolution. It is addressed to a variety of educational disciplines, such as political science, international affairs, conflict management and law.</td>
<td>Weekly class and preparation in class of the two written assignments</td>
<td>The two written assignments</td>
<td>Two written reports on the two written assignments</td>
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<tr>
<td>Major Learning Objectives</td>
<td>Course Learning objectives addressing the Major Objectives (testable learning objectives)</td>
<td>Methods used to Teach Course Objectives</td>
<td>Methods (and numbers/types of assignments) used to test these learning objectives</td>
<td>Type, Timing and Instances of Feedback given to Student</td>
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<td>enhance the student’s ability to use the appropriate research methods and tools in the framework of independent research projects</td>
<td>To provide the students with the skills of using the websites of international humanitarian law</td>
<td>Weekly classes and in-class exercises</td>
<td>Two written assignments</td>
<td>Two written reports on the two written assignments</td>
</tr>
<tr>
<td>provide students with the knowledge of and practice with electronic information sources on international and European law</td>
<td>develop the ability to communicate in an effective way the acquired knowledge and the outcome of research projects, both in written and oral form</td>
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<td>develop the ability for group work is incorporated into the structure of in-class presentations and case studies</td>
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<td>further develop skills in intercultural communication</td>
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<td></td>
<td>develop English language skills, both written and oral</td>
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<tr>
<td>stimulate critical attitudes, which are necessary for “life-long learning” and sensitivity to the importance of legal and ethical considerations and the ability to confront dominant, popular opinions with constructive criticism</td>
<td>stimulate critical attitudes, which are necessary for life-long learning and sensitivity to the importance of legal and ethical considerations and the ability to confront dominant, popular opinions with constructive criticism</td>
<td>Weekly classes and class debate after each chapter or major topic</td>
<td>Weekly questions and answers; class debate</td>
<td>Weekly class</td>
</tr>
<tr>
<td>stimulate an awareness of the normative dimension of international and European legal policies and of related ethical, social and operational problems and dilemmas.</td>
<td>To reflect on the ethical values as the foundation of humanitarian law, with attention to contemporary challenges</td>
<td>Weekly classes; two written assignments</td>
<td>Midterm and final exam; two written assignments</td>
<td>Oral feedback of midterm exam; two written reports on the written assignments</td>
</tr>
</tbody>
</table>
Main Course Materials

Please note that you can find the readings for each week and session in the Course Schedule section below.

The course material consists of PowerPoint presentations, lecture notes and readings from the textbook. PowerPoint presentations will be made available after the respective classes have taken place. A week-by-week overview of the course readings can be found in the section below.

The syllabus is handed out in the first class while the PowerPoint presentations and important messages will be emailed to the students. The professor is expected to email relevant material in a timely manner.

Course material marked as ‘suggested readings’ and ‘additional sources’ is helpful for research and to gain an increased understanding, but is not mandatory. This material can be found online or will be made available upon individual request.

Textbook

Reader of the professor, edition 2019 (278 pages)

Recommended Reference Books


Active Learning and Intensive ‘Reading around the Subject’: Additional Sources, Recommended Journals and Websites:

Learning should be an active and self-motivated experience. Students who passively listen to lectures, copy someone else’s notes, and limit their readings to required chapters are unlikely to develop their critical thinking and expand their personal knowledge system. At the exam, these students often fail to demonstrate a critical approach. Students are strongly recommended to have an updated understanding of developments related to this course and related to their wider Major. Active and engaged learning will turn out to be enriching to the overall course and class discussions. Students are invited to deepen their understanding of both theoretical and current issues from a variety of sources. Please find a list of suggestions compassing the entire course below. You are encouraged to read and browse in the leading journals of your discipline.

Leading Journals in International and Law


Further journals relevant for this course

**Websites of Interest**

Treaty database of the ICRC by topic: https://ihl-databases.icrc.org/ihl

Treaty database of the ICRC by date: https://ihl-databases.icrc.org/applic/ihl/ihlnsf/vwTreatiesByDate.xsp


CRC Casebook: https://casebook.icrc.org/

Peace Palace Library for the search of scholarly publications: www.peacepalacelibrary.nl


**Work load calculation for this course**

This course counts for 6 ECTS, which translates into 150 – 180 hours for the entire semester for this course. This means that you are expected to spend roughly 10 hours per week on this course. This includes 3 hours of lectures or seminars per week and 7 hours ‘out of class’ time spent on preparatory readings, studying time for exams as well as time spent on preparing your assignments. Please see below the estimated breakdown of your work-load for this course.

Time spent in class: 3 hours per week / 45 hours per semester
Time allocated for course readings: 7 hours per week / 91 hours per semester: 13 weeks
Time allocated for preparing Assignment 1: 10 hours
Time allocated for preparing Assignment 2: 10 hours
Time allocated for preparing/revising for written Mid-term Exam: 12 hours
Time allocated preparing/revising for written Final Exam: 12 hours

Total hours for this Course: 180 hours

**Course Assessment: Assignments Overview**

The students will be evaluated on the basis of their performance in the following assignments:

- Written Assignment 1 20%
- Written Assignment 2 20%
- Midterm exam 30%
- Final exam 30%

TOTAL 100%
Grading Scale of Vesalius College

Vesalius College grading policy follows the American system of letter grades, which correspond to a point scale from 0 - 100. All assignments (including exams) must be graded on the scale of 0-100. To comply with the Flemish Educational norms, professors should on request also provide the conversion of the grade on the Flemish scale of 0-20. The conversion table below outlines the grade equivalents.

<table>
<thead>
<tr>
<th>Letter grade</th>
<th>Scale of 100 (VeCo Grading Scale)</th>
<th>Scale of 20 (Flemish System)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>85-100</td>
<td>17.0-20.0</td>
</tr>
<tr>
<td>A-</td>
<td>81-84</td>
<td>16.1-16.9</td>
</tr>
<tr>
<td>B+</td>
<td>77-80</td>
<td>15.3-16.0</td>
</tr>
<tr>
<td>B</td>
<td>73-76</td>
<td>14.5-15.2</td>
</tr>
<tr>
<td>B-</td>
<td>69-72</td>
<td>13.7-14.4</td>
</tr>
<tr>
<td>C+</td>
<td>66-68</td>
<td>13.1-13.6</td>
</tr>
<tr>
<td>C</td>
<td>62-65</td>
<td>12.3-13.0</td>
</tr>
<tr>
<td>C-</td>
<td>58-61</td>
<td>11.5-12.2</td>
</tr>
<tr>
<td>D+</td>
<td>54-57</td>
<td>10.7-11.4</td>
</tr>
<tr>
<td>D</td>
<td>50-53</td>
<td>10.0-10.6</td>
</tr>
<tr>
<td>F</td>
<td>0-49</td>
<td>0-9.9</td>
</tr>
</tbody>
</table>
**Description of activities, grading criteria and deadlines**

**The two written assignments: the lay-out guidelines**

Letter type: Courier

Letter font: 12

Spacing between lines: 1,15

Never underline a title or subtitle in a paper, nor in any academic publication

All sentences must be aligned on the left and right.

Overall use of paragraphs – a paragraph deals with one issue or question

The analysis part: divide it in two or three subtitles, depending on the topic, or the questions addressed

Use the template of the example of a written assignment in Annex to this syllabus.

**Written Assignment 1**

Description

A law paper on the history of IHL, basic IHL concepts, methods and means of combat, the Law of The Hague.

Before midterm, a written assignment of 2,000 words on the history of humanitarian law, basic concepts of humanitarian law, the Law of The Hague on the methods and means of combat, legality of nuclear weapons. 200 words is the margin of tolerance on both sides and the highest word count accepted. Assignment topics are chosen on consultation with the professor; the title of the assignment must cover its contents as precise as possible.

Structure of the written assignment: introduction - analysis - conclusion, with numbered pages.

At least 5 scholarly publications are consulted and used in footnote.

Presentation of the assignment in class if the number of students allows it. The time allocated to each student depends on the number of students in the class. In a typical class of 20 students, each presentation gets around 8 minutes per student.

The written assignment applies the following course objectives

- Understanding the distinction between the Law of the Hague on the means and methods of combat and the Law of Geneva on the protection of persons and civilian objects
- Finding and understanding the sources of international humanitarian law by means of an overview of all existing treaties and protocols, rules of customary international law, and landmark cases
Applying international humanitarian law as an important component in present-day conflict management and resolution. It is addressed to a variety of educational disciplines, such as political science, international affairs, conflict management and law.

To provide the students with the skills of using the websites of international humanitarian law
stimulate critical attitudes, which are necessary for life-long learning and sensitivity to the importance of legal and ethical considerations and the ability to confront dominant, popular opinions with constructive criticism
To reflect on the ethical values as the foundation of humanitarian law, with attention to contemporary challenges

Submission of Written Assignment 1 on date due (see course schedule) before midterm exam and by e-mail in Word format to marcgcogen@gmail.com and to Turnitin.

Course assessment: 20% of total assessment or 20 points

Written Assignment 2

Description

After the midterm, a written assignment of 2,500 words on the law of Geneva, belligerent occupation, enforcement of humanitarian law by the UN Security Council. 200 words is the margin of tolerance on both sides and the highest word count accepted. Assignment topics are chosen on consultation with the professor. The title of the written assignment must cover its contents as precise as possible. The subject may not be chosen if already chosen for Written Assignment 1.

Structure: introduction - analysis - conclusion, with numbered pages.

At least 5 scholarly publications are consulted and used in footnote.

Written assignment presentation in class. The time allocated to each student depends on the number of students in the class. In a typical class of 20 students, each presentation gets around 8 minutes per student.

The evaluation of the written assignment applies the following course objectives:

- Understanding the distinction between the Law of the Hague on the means and methods of combat and the Law of Geneva on the protection of persons and civilian objects
- Finding and understanding the sources of international humanitarian law by means of an overview of all existing treaties and protocols, rules of customary international law, and landmark cases
- Applying international humanitarian law as an important component in present-day conflict management and resolution. It is addressed to a variety of educational disciplines, such as political science, international affairs, conflict management and law.
- To provide the students with the skills of using the websites of international humanitarian law
- Stimulate critical attitudes, which are necessary for life-long learning and sensitivity to the importance of legal and ethical considerations and the ability to confront dominant, popular opinions with constructive criticism
To reflect on the ethical values as the foundation of humanitarian law, with attention to contemporary challenges

Submission of Written Assignment 2 in hard copy in class on date due (see course schedule) and by e-mail in Word format to marcgccogen@gmail.com and to Turnitin.

Course assessment percentage: 20% of total assessment or 20 points

System of bibliographic referencing in the two written assignments: the footnotes

Books and articles


Treaties, agreements, conventions and protocols

Mention the full title of the treaty, agreement, convention or protocol with the year of conclusion in the text itself without reference to it in footnote.

For example,

Treaty on the Non-proliferation of Nuclear Weapons of 1968
Convention on the Rights of the Child of 1989

Case law

‘North Sea Continental Shelf’ case, judgment of February 20, 1969, International Court of Justice, paragraph 74

‘Applicability of the Obligation to Arbitrate’ advisory opinion of April 26, 1988, International Court of Justice, paragraph 25

Webpages

Customary international law and IHL:
Rubrics: Transparent grading criteria for each written assignment

The following criteria will be applied in assessing your two written assignments:

A. The grading rubrics hereunder give students the possibility to understand the rationale of the grading and to prepare at best for all assignments

B. Pay attention to the reference system in footnotes as explained in this syllabus - see above

C. Include all major legal elements and use paragraphs to separate the issues covered

Grading form for written assignments (more than 10% of the final grade).

<table>
<thead>
<tr>
<th>Structure, including word count</th>
<th>An introduction and conclusion; word count</th>
<th>The assignment is well structured and coherent</th>
<th>A short ad rem intro (preferably a history), a good structure, use of separate paragraphs per topic, and conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:</td>
<td>/6</td>
<td>/2</td>
<td>/2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Critical analysis of the major elements</th>
<th>Major elements are covered</th>
<th>Good legal reasoning in a logical way</th>
<th>Systematic analysis of all major elements and use of personal comments or critical questions. The assignment is persuasive in its reasoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:</td>
<td>/8</td>
<td>/2</td>
<td>/2</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal sources and legal terminology, including footnotes</th>
<th>Good use of scholarly articles</th>
<th>Appropriate use of legal terminology; an analytical-legal style; correct use of footnotes</th>
<th>All major sources are consulted with good legal terminology overall. The topic is placed in the broader context of humanitarian law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:</td>
<td>/6</td>
<td>/2</td>
<td>/2</td>
</tr>
</tbody>
</table>

TOTAL /20

On a scale of 100:

Comments:

Midterm Exam (written)

Six questions regarding knowledge and comprehension; each question counts for two points. A typical answer requires between 5 and 8 lines; and

Two questions regarding the application of the IHL rules in connection with a specific situation; each question counts for four points. A typical answer is between 15 and 20 lines.

Note that the elements of the answer are NOT enough, they must be worked out in sentences and have a logical structure.
Final Exam (written)

Six questions regarding knowledge and comprehension; each question counts for two points. A typical answer requires between 5 and 8 lines; and

Two questions regarding the application of the IHL rules in connection with a specific situation; each question counts for four points. A typical answer is between 15 and 20 lines.

Note that the elements of the answer are NOT enough, they must be worked out in sentences and have a logical structure.

Vesalius College Attendance Policy

As the College is committed to providing students with high-quality classes and ample opportunity for teacher-student interaction, it is imperative that students regularly attend class. As such, Vesalius College has a strict attendance policy.

Participation in class meetings is mandatory, except in case of a medical emergency (e.g. sickness). Students will need to provide evidence for missing class (doctor’s note). If evidence is provided, the missed class is considered as an excused class. If no evidence is provided immediately before or after the class, the missed class is counted as an absence.

Participation implies that students are on time: as a general rule, the College advises that students should be punctual in this regard, but it is up to the professor to decide whether to count late arrivals as absences, or not.

Additional course policies

Late papers will not be accepted unless there are serious legitimate reasons. Provision of a signed medical note is required, and notice must be given prior to the deadline.

Use of laptop or smartphone is only allowed to take notes. It is prohibited to use them for other reasons.

Academic Honesty Statement

Academic dishonesty is NOT tolerated in this course.

Academic honesty is not only an ethical issue but also the foundation of scholarship. Cheating and plagiarism are therefore serious breaches of academic integrity.

Following the College policy, cheating and plagiarism cases will be communicated in writing to the Associate Dean and submitted to the Student Conduct Committee for disciplinary action.

If you refer to someone else’s work, appropriate references and citations must be provided. Grammar, spelling and punctuation count, so use the tools necessary to correct before handing in assignments.

Cheating and plagiarism, including self-plagiarism, are therefore serious breaches of academic integrity.

Please consult the Section "Avoiding Plagiarism" in the College Catalogue for further guidance.
Turnitin

All written assignments that graded and count for more than 10% towards the final course grade need to be submitted via the anti-plagiarism software Turnitin. You will receive from your professor a unique password and access code for your Class.
### Course Schedule Overview

<table>
<thead>
<tr>
<th>Week 1</th>
<th>23 January</th>
<th>Outline of the course and Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25 January</td>
<td>Introduction</td>
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<tr>
<td>Week 2</td>
<td>30 January</td>
<td>legality of an armed activity</td>
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<tr>
<td></td>
<td>1 February</td>
<td>Concepts of humanitarian law and <em>ius in bello</em></td>
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<tr>
<td>Week 3</td>
<td>6 February</td>
<td>Concepts of humanitarian law and <em>ius in bello</em></td>
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<tr>
<td></td>
<td>8 February</td>
<td>methods and means of combat: four humanitarian principles</td>
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<tr>
<td>Week 4</td>
<td>13 February</td>
<td>sources on the methods and means of combat</td>
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<td></td>
<td>15 February</td>
<td>sources on the methods and means of combat</td>
</tr>
<tr>
<td>Week 5</td>
<td>20 February</td>
<td>sources on the methods and means of combat</td>
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<td></td>
<td>22 February</td>
<td>Legality of nuclear weapons; submission of Written Assignment 1 in hard copy in class</td>
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<tr>
<td>Week 6</td>
<td>27 February</td>
<td>Articles on drones and cyberwar (Maurer and Gisel)</td>
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<td></td>
<td>1 March</td>
<td>Revision</td>
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<tr>
<td>Week 7</td>
<td></td>
<td>REVISION SESSION</td>
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<td></td>
<td></td>
<td>Mid-Term Exams</td>
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<tr>
<td>Week 8</td>
<td>13 March</td>
<td>Geneva law</td>
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<td></td>
<td>15 March</td>
<td>Geneva law</td>
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<tr>
<td>Week 9</td>
<td>20 March</td>
<td>Geneva law</td>
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<td></td>
<td>22 March</td>
<td>Geneva law</td>
</tr>
<tr>
<td>Week 10</td>
<td>27 March</td>
<td>Law of belligerent occupation</td>
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<td></td>
<td>29 March</td>
<td>Enforcement by UN Security Council</td>
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<tr>
<td>Week 11</td>
<td>3 April</td>
<td>Enforcement by UN Security Council</td>
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<td></td>
<td>5 April</td>
<td>Final Report to the Prosecutor of the ICTY</td>
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<td></td>
<td></td>
<td>SPRING RECESS: 8 – 21 April</td>
</tr>
<tr>
<td>Week 12</td>
<td>24 April</td>
<td>Final Report to the Prosecutor of the ICTY</td>
</tr>
<tr>
<td></td>
<td>26 April</td>
<td>Protecting civilians in urban areas (Durhin)</td>
</tr>
<tr>
<td>Week 13</td>
<td>1 May</td>
<td>Legal holiday</td>
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<tr>
<td></td>
<td>3 May</td>
<td>Foreign fighters (Krähenmann); Amnesty International - Annual Report on Syria 2016-2017; submission of Written Assignment 2 in hard copy in class</td>
</tr>
<tr>
<td>Week 14</td>
<td>8 May</td>
<td>Revision</td>
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<tr>
<td></td>
<td>10 May</td>
<td>Revision</td>
</tr>
<tr>
<td>Week 15</td>
<td>14 to 18 May</td>
<td>FINAL EXAMS</td>
</tr>
</tbody>
</table>
Detailed Session-by-Session Course Outline

Week 1

- Wednesday 23 Jan 13.30-15 hrs Reader 1: Outline of the course and Introduction
- Friday 25 Jan 13.30-15 hrs Reader 1: Introduction

Main topics:

- How did the school of natural law contribute to the re-thinking of international law in general, and humanitarian law in particular?
- What were the contributions of legal positivism to the further development of humanitarian law? What shortcoming was apparent at the conference of Versailles?
- What is the legal relationship between the peace treaties of Westphalia and the concept of unlawful combatant?
- Explain why the Lieber Code is a great step forward in the development of humanitarian law.
- The UN Charter did not mention any role of the UN Security Council in upholding IHL. How was this remedied?

Readings

Reader 1: Introduction

Recommended further readings

  www.icrc.org/eng/resources/documents/article/other/57jqhg.htm

Week 2

- Wednesday 30 Jan 13.30-15 hrs Reader 2.1: legality of an armed activity
- Friday 1 Feb 13.30-15 hrs Reader 2.2: concepts of humanitarian law and *ius in bello*

Main topics:

- Why is the right to self-defense a strong legal argument for the use of force?
- How can states justify a humanitarian intervention??
- Is a pre-emptive strike legally acceptable according to international law?
• How was the military operation against Afghanistan justified after the 9/11 attacks?
• What is the advantage of an armed operation on the basis of a UN Security Council resolution?

Readings

Reader 2.1: legality of an armed activity
Reader 2.2: concepts of humanitarian law and *ius in bello*

Recommended further readings


Week 3

- Wednesday 6 Feb 13.30-15 hrs  
  Reader 2.2: concepts of humanitarian law and *ius in bello*
- Friday 8 Feb 13.30-15 hrs  
  Reader 3.1: methods and means of combat: four humanitarian principles

Main topics:

• What are the challenges for IHL after the Cold War?
• What is the difference between the law of The Hague and the law of Geneva?
• How do human rights relate to humanitarian law?
• Why is Common Article 3 of the Geneva Conventions so important?
• What does the principle of military necessity mean?
• Explain why the principle of distinction between combatants and civilians is difficult to maintain in many wars today.
• Although the principle of proportionality is a key principle, its drafting was neglected. Give evidence for this point.

Readings

Reader 2.2: concepts of humanitarian law and *ius in bello*
Reader 3.1: four key humanitarian principles

Recommended further readings


Week 4
- Wednesday 13 Feb 13.30-15 hrs  Reader 3.2: sources on the methods and means of combat
- Friday 15 Feb 13.30-15 hrs  Reader 3.2: sources on methods and means of combat

Main topics:
• Which principle of the St Petersburg Declaration of 1868 is still important today?
• Why were the Hague Regulations of 1907 applicable during the First World War and the Second World War?
• Are the Air Warfare Regulations of 1923 still relevant today?
• The First World War was the first war in which chemical weapons were used on a large scale. Were chemical weapons allowed during that war according to IHL of that time?
• Is IHL applicable in outer space?

Readings

Reader 3.2: sources of the Law of The Hague

Recommended further readings
• Daniel Hammond, Autonomous Weapons and the Problem of State Accountability, in: Chicago Journal of International Law, 2015, pp. 652-687
• Tim McCormack, Chemical Weapons and Other Atrocities: Contrasting Responses to the Syrian Crisis, in: International Law Studies (U.S. Naval College), 2016, pp. 512-544

Week 5
- Wednesday 20 Feb 13.30-15 hrs  
  Reader 3.2: sources on methods and means of combat
- Friday 22 Feb 13.30-15 hrs  
  Reader 3.2: legality of nuclear weapons
- Submission of Written Assignment 1

Main topics:

- Did the advisory opinion of 1996 of the ICJ elaborate further on the legality of nuclear weapons?
- Which states are entitled to possess and develop nuclear weapons?
- Did IHL develop its rules with regard to drones?
- How can states react in a legal way to a cyberattack on its vital infrastructure?
- How can we apply the rules of IHL to autonomous weapons?

Readings

Reader 3.2: legality of nuclear weapons

Recommended further readings

- John Williams, Distant Intimacy: Space, Drones and Just War, in: Ethics and International Affairs, 2015, pp. 93-110

Week 6

- Wednesday 27 Feb 13.30-15 hrs  
  Articles on drones and cyberwar (Maurer, Gisel)
- Friday 1 March 13.30-15 hrs  
  repetition

Readings

Article: Interview on use of drones, and
Article: interview on cyber warfare

Recommended further readings


Week 7  
Midterm Exam
- Wednesday 6 March 13.30-15 hrs

Week 8
- Wednesday 13 March 13.30-15 hrs Reader 4.1: Geneva Law
- Friday 15 March 13.30-15 hrs Reader 4.2: Geneva Law

Main topics:
- What is relationship between the Land Convention and the Maritime Convention?
- What is the reason for providing an exception to the Vienna Convention on the Law of Treaties by means of Common Article 1 of the Geneva conventions?

Readings
Reader 4: Geneva Law

Recommended further readings

Week 9
- Wednesday 20 March 13.30-15 hrs Reader 4.3: Geneva Law
- Friday 22 March 13.30-15 hrs Reader 4.4 and 4.5: Geneva Law

Main topics:
- What are the rules of IHL with regard to medical treatment?
- What is the conceptual relationship between the members of the armed forces of a state and lawful combatants?
- Why is PoW status granted and protected?
- Is internment of civilians allowed according to IHL?

Readings
Reader 4: Geneva Law

Recommended further readings

Week 10

- Wednesday 27 March 13.30-15 hrs Reader 4.6: The law of belligerent occupation
- Friday 29 March 13.30-15 hrs Reader 5: Enforcement by UN Security Council

Main topics:

- Although the Hague Regulations paid few attention to the rules concerning occupation, they were a great step forwards. What was the next step in the further development of the rules of occupation?
- Explain why the facts on the ground are a decisive criterion in the laws of occupation.
- Can an occupying force change the laws of the state occupied?
- Give arguments that the Iraq I war (1990/1991) also necessitated a humanitarian intervention sanctioned by the UN Security Council. This is more than the liberation of Kuwait.
- The Iraq I War (1990/1991) created the new concept, 'safety zone'. Explain why.

Readings

Reader 4.6: The law of belligerent occupation
Reader 5: Enforcement by the UN Security Council

Recommended further readings

Week 11

- Wednesday 3 April 13.30-15 hrs  Reader 3.5: Enforcement by UN Security Council
- Friday 5 April 13.30-15 hrs  Articles and Reports 1: Final Report to the Prosecutor of the ICTY

Main topics:

- What are the IHL lessons learnt after the Srebrenica massacre of 1993?
- What IHL lessons can be learned from the civil wars in Libya and Syria?
- How are the rules concerning the protection of children in armed conflicts further developed?
- What were the review criteria of the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia?
- Why is target selection an important IHL element in an assessment of military operations?

Readings

Reader 3.5: Enforcement by UN Security Council
Articles and Reports 1: Final Report to the Prosecutor of the ICTY

Recommended further readings


Week 12

- Wednesday 24 April 13.30-15 hrs  Reader Reading 1: Final Report to the Prosecutor of the ICTY
- Friday 26 April 13.30-15 hrs  Reader Article: Protecting civilians in urban areas (Durhin)

Main topics:

- How were the military objectives evaluated by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia?
- What kind of problem did the Committee encounter when evaluating the application of the principle of proportionality in the NATO bombing campaign against the Federal Republic of Yugoslavia?
- The article on the Libyan civil war dealt with the difference between humanitarian objectives and political objectives. What are the arguments of the author?

Readings

Articles and Reports 1: Final Report to the Prosecutor of the ICTY
Articles and Reports 2: Protecting civilians in urban areas (Durhin)
Recommended further readings


Week 13

- Wednesday 1 May  
  Legal holiday
- Friday 4 May  

Readings

Article: Foreign Fighters under International Law and National Law (Krähenmann)
Article: Amnesty International: Annual Report on Syria 2016/2017

Recommended further readings


Week 14

- Wednesday 8 May  
  13.30-15 hrs Revision
- Friday 10 May  
  13.30-15 hrs Revision

Week 15  
Final Exam
Annex

Example of a Written Assignment

Student: X
Course: LAW 201G
Written Assignment 1
February 25, 2019

Title: The principle of distinction between combatants and civilians

1. Introduction

According to international humanitarian law, the parties to an armed conflict, either domestic or international, must at all times distinguish between combatants and civilians. It is always prohibited to direct an attack against civilians who do not participate directly in the fighting or who have stopped fighting. Only military objectives may be attacked. The principle of distinction is codified by Articles 48, 51(2) and 52(2) of Protocol I.

Before Protocol I of 1977, there was much legal uncertainty regarding the application of this principle on the battlefield. The massive and imprecise aerial bombardments during the Second World War had been standard practice of both opposing sides and the Allies had paid only lip service to this distinction while Nazi Germany had even rejected any rules restraining their forces1. An article by Lester Nurick in the American Journal of International Law (October 1945, p.696) came to the conclusion that according to state practice during the Second World War, ‘... the non-combatant was legally subject to almost unrestricted artillery and naval bombardment. If he lives in a country which does not grow enough food to support its population, a blockade can legally starve him to death.’2

Against the background of imprecise or even indiscriminate aerial bombardments during the Second World War, the subsequent Geneva Conventions of 1949 did not declare the principle of distinction as an overriding humanitarian principle for the conduct of armed operations. Only the Fourth Geneva Convention on the Protection of the Civilian Population prohibited attacks against the civilian population in occupied territories. Article 27 declared to this end that civilians ‘... shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.’

1 Judith Gardam, Non-Combatant Immunity as a Norm of International Humanitarian Law, Dordrecht, Martinus Nijhoff Publishers, 1993, p. 24 on the civilian death toll in the Second World War: ‘It was estimated that aerial bombardment alone was responsible for the death of twelve million civilians and the practice of saturation bombing of civilian targets was widespread.’

2 Lester Nurick, The Distinction Between Combatant and Noncombatant in the Law of War, in: American Journal of International Law, October 1945 p. 680 starts by saying that, although highly regarded in international law, ‘... the distinction between combatants and the civilian population, has been so whittled down by the demands of military necessity that it has become more apparent than real. On occasion belligerents still give lip-service to the doctrine but when confronted with a particular military situation in the course of actual combat activities in most cases they have either refused to recognize the distinction or, possibly in order to satisfy the requirements of their legal advisers, have extended the definition of combatant to include almost all important elements of the enemy’s civilian population.’
2. Change in legal opinion.

Legal opinion at the time of drafting Geneva Protocol I had already fundamentally changed towards a general protection of the civilian population and civilian objects by prohibiting an armed attack against the civilian population and civilian objects as such, wherever they may be. Thus, civilians not living in occupied territory are also under this protection which means that the principle of distinction applies in every battle zone and applies to any armed operation. The principle of distinction now sets a clear parameter on military necessity and limits the justification of an armed operation to armed attacks, whether in offensive or defensive, against military objectives only. Even the threat to use armed force against civilians is prohibited and punishable - see Article 75(2) of Protocol I.

3. Case law

The prohibition to attack civilians is part of customary international law and is confirmed by the international criminal tribunals established after the adoption of Protocol I, namely the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, both established by a UNSC resolution under Chapter VII of the UN Charter, as well as the Statute of the International Criminal Court.

The UN Secretary-General’s Report S/25704 of 3 May 1993 (Paragraph 29) on the International Criminal Tribunal for the Former Yugoslavia underlined that the tribunal would act on the basis of existing customary international law, without creating new norms of international law: ‘It should be pointed out that, in assigning to the International Tribunal the task of prosecuting persons responsible for serious violations of international humanitarian law, the Security Council would not be creating or purporting to “legislate” that law. Rather, the International Tribunal would have the task of applying existing international humanitarian law.’

4. Signs of distinction: the wearing of a uniform, or insignia recognizable at a distance, or carrying the arms openly in attack

In order to facilitate the distinction between combatants and civilians, Article 44(3) of Protocol I provides that ‘... in order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.’ However, the minimum yardstick for lawful methods in combat is that combatants ‘... carry their arms openly during each military engagement, and during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.’ The usual marks of distinction are a uniform or any other insignia recognizable at a distance. Such clearly visible marks of distinction prevent any possible dispute on the combat methods during a criminal investigation after battle. The criterion that the fixed distinctive sign, or the carrying of arms openly, must be recognizable at a distance, is implicitly drawn from the obligation of Article 4A(2)(b) and (c) of the Third Geneva

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Convention on the Prisoners of War and Article 44(3) of Protocol I. If a combatant fails to distinguish himself by a uniform, insignia or by not carrying his arms openly, he forfeits his right to be a prisoner of war – Article 44(4) of Protocol I. States are required to follow the generally accepted practice with respect to the wearing of the uniform by combatants – Article 44(7) of Protocol I.

Wearing the uniform of the enemy is a war crime and punishable as espionage and perfidy. Another prohibition related to the wearing of the uniform or insignia is the feigning of civilian, non-combatant status or the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other states not parties to the conflict. Such method is an act of perfidy and punishable as a war crime. One incident took place during the Bosnian war in May 1995 when Serb militia, dressed in French uniforms and flack jackets, took over a UN-controlled bridge in the heart of Sarajevo.

5. Combatants

Combatants are the members of the armed forces of a state party to an armed conflict with the exception of medical and religious personnel. According to Article 43(1) of Protocol I, the armed forces of a state party consist of ‘... all organized armed forces, groups and units which are under a command responsible to that state party for the conduct of its subordinates, even if that state party is represented by a government or an authority not recognized by an adverse state party’. A state party may incorporate a paramilitary or armed law enforcement agency into its armed forces but is obliged to notify this to the other state parties to the conflict. The question who are members of the armed forces of a state party is not regulated by international law and is left to the discretion of that state party. It is an example of the renvoi rule in international law.

Based on the experience of resistance movements during the Second World War, Article 4A of the Third Geneva Convention on Prisoners of War broadens the category of combatants by declaring that members of other militias and members of other volunteer corps, including members of ‘organized resistance movements’, belonging to a state party to the conflict and operating in or outside their own territory, even if this territory is occupied, become prisoners of war provided that they are commanded by a person responsible for his subordinates, they have a fixed distinctive sign recognizable at a distance, and they conduct their operations in accordance with ‘the laws and customs of war’ or international humanitarian law. The expression ‘belonging to a Party’ refers to their allegiance to a state party to the conflict, even when that state party has not made any decision on their legal status. The act of allegiance is an autonomous decision by the members of that resistance movement. Here we notice the opposite of the renvoi rule. Even by absence of a decision by a national authority,

6 The term ‘non-combatant’ is reserved to medical personnel and chaplains of the armed forces. Upon capture, they do not become prisoners of war but they are to be given treatment not less favorable than that given to prisoners of war – see Article 33 of the Third Geneva Convention on Prisoners of War.
7 The term ‘resistance movement’ applies equally when the citizens of a territory that has not yet been invaded, on the approach of the enemy, spontaneously take up arms to fight the invading enemy troops. However, they must carry their arms openly and respect the rules of international humanitarian law during combat.
international humanitarian law grants prisoner-of-war status to members of resistance movements who are acting on the side of that state party to which they have pledged allegiance.

6. Civilians and civilian objects

Civilians are persons who are not members of the armed forces of a state and the civilian population comprises all persons who are civilians – see above ‘combatants’ for the definition of armed forces (Article 50 of Protocol I).

According to Article 51 of Protocol I, the civilian population and individual civilians enjoy general protection against dangers arising from military operations. They shall not be the object of an attack. Moreover, acts or threats of violence with the aim of spreading terror among the civilian population are prohibited. In the ‘Prosecutor v. Stanislav Galic’ case, the International Criminal Tribunal for the Former Yugoslavia (Trial Chamber I), in its judgment of 5 December 2003, paragraph 19, declared:

‘The jurisprudence of the Tribunal has already established that the principle of protection of civilians has evolved into a principle of customary international law applicable to all armed conflicts. Accordingly, the prohibition of attack on civilians mentioned in the above-mentioned provisions (i.e. Articles 51 and 15 of Additional Protocols I and II respectively) reflects customary international law.’

Customary international law prohibits the deliberate attack on civilians and this prohibition also applies in case of suicide bombings against civilians. Civilians cannot be lawfully attacked or targeted during any conflict and this prohibition remains constant, whether the attacker is a private person or a member of the armed forces of a state. In many countries, the victims of suicide bombings are entitled to civil actions under tort law, which may include violations of international law. For example, in the United States ‘... the Supreme Court, in the ‘Sosa v. Alvarez-Machain’ case, cautioned the federal courts to exercise restraint in permitting civil actions for violations of international law, under the jurisdictional limits of the Alien Tort Statute, 28 U.S.C. 1350. Nonetheless, the Sosa Court ruled that a cause of action could be implied whether clear and specific standards of international law prohibit a heinous wrong.’

Article 51(4) prohibits and defines indiscriminate attacks because they put the civilians in danger by not making the distinction between combatants and civilians. The article defines ‘indiscriminate attacks’ as ‘... (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat which cannot be limited as required by this Protocol; and consequently, in each case, are of a nature to strike military objectives and civilians or...

8 ‘Attack’ means acts of violence against the adversary, whether in offence or in defence - see Article 49(1) of Protocol I. Article 85(3)(a) of Protocol I declares that making the civilian population or individual civilians the object of an attack is a grave breach of that protocol.
9 The judgment referred to the case law of the Tribunal on this point, namely Strugar Interlocutory Appeal, paragraph 10; and Kordic Jurisdiction Decision, paragraph 31.
11 Idem, paragraph 6.
The concept of ‘indiscriminate attack’ applies to both the methods and the choice of the weapons in combat. If no weapons are available that can discriminate, the attack should not be carried out, even at the loss of a military advantage. Combatants have the duty to verify the presence of civilians and civilian objects in the preparation of the attack.

7. Conclusion

International humanitarian law developed a fundamental distinction between combatants and civilians. The conclusion of the Geneva conventions, especially the Fourth Geneva Convention on the Protection of Civilians, in 1949 reinforced this principle taking into account the very high civilian death count during the Second World War. The principle serves the protection of civilians as a fundamental principle in any armed activity. Case law has further developed the application of the principle of distinction by means of international tribunals. However, the question remains how the principle of distinction can be enforced if militia fighters refuse to respect it. We refer to Isis terrorist fighters in the Battle for Mosul who deliberately did not wear a uniform and mixed among the civilian population. This has become a common fact in the several city wars in Iraq and Syria in the period 2013-2017. The principle of distinction between combatants and civilians has again come under scrutiny in recent wars while recent publications try to establish new guiding criteria on how to improve its effectiveness. Finally, respect for the principle of distinction between combatants and civilians may become the ultimate test of international humanitarian law today.

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12 Article 51(5) of Protocol I gives the following examples of indiscriminate attacks: (a) an attack by bombardment by any methods or means which treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.


14 See for example, Nathalie Durhin, Protecting Civilians in Urban Areas: A Military Perspective on the Application of International Humanitarian Law, in: International Review of the Red Cross, 2016, pp. 177-199