



**DALHOUSIE
UNIVERSITY**

SCHULICH SCHOOL OF LAW

Laws 2205/International Humanitarian Law Syllabus/Fall 2018

Class hours: Mondays 930 am-1120 am, Weldon 309

Instructor: Karen Saweczko

Phone: 902-233-7678

Office Hours: By appointment. Please speak to me in class or email me to make an appointment to meet.

Email: lcdr.saweczko@ns.sympatico.ca

Course Description : This seminar explores the development and operation of International Humanitarian Law (IHL), which is the body of public international law that regulates conduct during armed conflict. Although IHL is the expression most widely used, the same body of law is often referred to as Law of Armed Conflict (LOAC), and occasionally referred to as Law of War or as *Jus in Bello*. IHL has long been a part of public international law. The major treaties underlying IHL today are the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, and the Additional Protocols of 1977. Traditionally, IHL has been divided into the Law of the Hague (concerned with methods and means of warfare) and the Law of Geneva (concerned with protection of victims of war). Relatively recently (since World War II), IHL has been applied to an increasing degree in non-international armed conflicts (NIAC), by far the most common type of contemporary conflict. As states are more willing to accept limits on how they conduct themselves in conflicts with other states than they are on how they treat their own citizens in a non-international armed conflict, the body of IHL which applies to NIACs is much less developed than the body of IHL which applies to international conflicts; this problem is one that we will explore frequently throughout our seminars. The primary focus of the course will be a review of selected topics in IHL to assess what the law is, how it got to be that way, and how it fits into the complex factual situations of contemporary conflicts. It will also endeavour to assess how new legal approaches might be used to strengthen the law and provide enhanced protection to victims of war.

Required Text(s) Gary Solis, *THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR*, 2nd Edition (New York: Cambridge University Press, 2016).

Supplementary Reading Material: Each student will also be encouraged to download two Canadian Forces texts: (1) *Law of Armed Conflict at the Operational and Tactical Level* and (2) *Collection of Documents on the Law of Armed Conflict*, both of which have been downloaded to the Brightspace site. Several other readings have been downloaded to Brightspace and are noted in the course schedule.

In addition, relevant websites include those of the ICRC (which includes a treaty database, and a very extensive Customary IHL database that is continually evolving), the ASIL (www.asil.org), the UN (www.documents.un.org), and the IHL Research Initiative (www.ihlresearch.org). The Law Library has a reasonable but not exhaustive IHL/LOAC collection. Students should be aware that the ICRC has published extensive commentaries on each of the 1949 Geneva Conventions and on the 1977 Additional Protocols. In addition, the ICRC has recently published a study of customary IHL (J-M. Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law (vol 1 – Rules (including commentary) and vol 2 (in 2 parts)- Practice) (Cambridge 2005); this publication is kept up to date online at the ICRC website's Customary IHL database.

Course Assessments: This is a major paper course, so the largest component of your mark will come from your major paper. However, the discussions, presentations, and readings that take place along the way to the endpoint that is your major paper are also extremely important. Accordingly, 60% of the marks are allocated to the paper, 20% is allocated to your presentation on your paper topic and the final 20% is allocated to class participation. Please note that the class participation mark includes both attendance and participation in group discussions.

1) Major Paper

The paper must be a minimum of 25 pages long, in accordance with the requirements for a major paper course. Given that you will be expected to do work in connection with other presentations, the papers should not be much longer than that: you should aim for a paper in the 25-35 page range. I will stop marking after 40 pages, so please ensure your paper is no longer than that. I am also quite happy to review outlines or drafts and to discuss them, up until one week before the due date for the papers. **The papers will be due on Monday December 3rd at 4:00 pm.** The paper will be worth 60% and will be evaluated according to the criteria for major papers set out in the Calendar.

Students may suggest any choice of research topics within the scope of IHL/LOAC to the instructor. Preparation of papers related to specific topical incidents which require analysis of fact and law as well as preparation of papers related to specific legal issues is encouraged. Reasoned legal analysis is essential in every paper. Unsubstantiated polemics are discouraged – remember, this is a law class, not a class in morality or politics, so your argument must be based in law. The following work schedule must be adhered to:

Monday September 24th (in class) – Submission of proposed topic (e.g. a working title).

Monday October 15th (in class) – Submission of an outline and a bibliography. The outline should be a working document (max. 2pp.) that indicates by divisions and subheadings the structure of the paper to be written. It should express a hypothesis, the legal issues involved and may include possible conclusions. The bibliography should list the primary and secondary sources which have been or will be reviewed in the course of the work.

Monday December 3rd by 4:00 pm – Final deadline for submission of typed paper. Please present your paper for date stamping and receipt at the Law School Reception.

Major papers must be submitted in hard copy. Students should hand papers in to the reception desk and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

2) Class Presentation

Every student will do a class presentation that will take up to one third of a class (depending on enrollment). You should plan to speak for 20-25 minutes and to have discussion fill the rest of the 40 minute total. You will need to prepare materials for distribution in class one week ahead of time that will give your fellow students sufficient background on your topic to be able to form some preliminary thoughts. This should consist of a 2-3 page introduction of your topic that highlights the key areas of discussion and sets out your preliminary thesis. The goal is to inform people and spark discussion about your topic. Materials must be distributed electronically on the Saturday prior to your presentation. The quality of these materials will count towards your mark for your presentation.

3) Class Participation

This component will be evaluated not merely on whether you have said anything, but on how useful that contribution was to furthering the discussion. It goes without saying that, in order to participate, you need to be present in class.

In sum, evaluation will be based on this formula:

- 1) Paper: 60%
- 2) Presentation: 20%
- 3) Participation: 20%

Course Schedule:

September 10th – Introduction; Syllabus; Discussion of potential paper topics; Basic Principles of International Humanitarian Law.

September 17th – Topic: Sources and History of International Humanitarian Law

Readings:

- Solis, pp. 3-30, 42-62
- Henckaerts: ICRC Study on Customary International Humanitarian Law;
- Bellinger-Haynes: US Government Response to ICRC Customary Law Study.

September 24th – Topic: Conflict Status and Combatant Status

Readings:

- Solis, pp. 159-182; 200-254; 268-309
- Submission of proposed topic due**

October 1st – Topic: Guest Lecturer – – Canadian Red Cross

Readings:

- Melzer: Direct Participation in Hostilities

October 8th – Topic: Targeting

Readings: Solis, pp. 505-527; 535-561; 569-603.

October 15th – Topic: War Crimes

Readings:

- Solis, pp. 328-362; 615-654.
-

Supplemental Readings:

- Appeal Decision – United States v. Maynulet
- Court Martial Decision – R. v. Semrau

Submission of outline and bibliography due

October 22nd – Topic: Conduct of Hostilities: Battlefield Issues & Command Responsibility

Readings: Solis, pp. 373-396; pp. 417-442; pp 474-498.

Student Presentations: October 29th, November 5th, 19th, 26th and December 3rd. Presentation schedule available by October 8th.

This course is governed by the academic rules and regulations set forth in the University Calendar and the Senate.

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Academic, Michael Deturbide, or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

2. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

3. Please also note the following links:

General Academic Support – Advising Halifax: https://www.dal.ca/campus_life/academic-support/advising.html

* Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>