

*International Law Seminar: Topics on  
Human Rights, Humanitarian Law, and the Challenge of International Terrorism  
Spring 2007<sup>1</sup>*

Professor McDonnell  
Preston, Rm. 215  
Telephone: (914) 422-4381  
Fax: (914) 422-4261  
E-mail: [tmcdonnell@law.pace.edu](mailto:tmcdonnell@law.pace.edu)

***REQUIRED BOOKS***

Jordan J. Paust, *et al.*, *International Criminal Law* (3d ed. Carolina Academic Press 2007). (Be sure to buy Paust's *Criminal Law* casebook, not his *International Law* case book published by West, which I use for my International Law class.)

*International Criminal Law 2000 Document Supplement* (Carolina Press 2000)

Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students* (3d ed. West 2005)

---

<sup>1</sup> Because legal developments concerning these topics have been changing so rapidly, I intend to make major changes to this syllabus this fall.

## ***SYLLABUS***

Generally, I plan to follow the syllabus below, but I often assign some additional readings and change some topics and dates of coverage to meet the needs of the students and the course as the semester progresses. Any changes in the syllabus will be announced in class or by e-mail. Page references to the Paust Casebook are preceded by a “P” or by “Paust.”

---

*Friday, January 19*

### **First Assignment**

#### **Questions:**

In reading the materials below, please consider the following questions:

- (1) What are the sources of human rights law? Of humanitarian law (the law of war)?
- (2) How are human rights law and humanitarian law enforced?
- (3) In Robinson’s view, what role does international law play in dealing with the challenge of private organizations, like al Qaeda, that are capable of mega-terrorist attacks such as 9/11? Do you agree with her?
- (4) Is Ambassador Bolton correct in saying that protecting human rights ultimately depends on the use of military force? Do you agree with him?
- (5) Alberto Costi surveys several scholars’ views. Which are soundest? Which less so?
- (6) Are there “core” international law crimes? Assuming there are, what makes them so?

#### **Readings for First Class:**

Paust, pages 3 to top of page 14, including the end of note 8.

Alberto Costi, *Review Essay: Human Rights in the ‘War on Terror’*  
(in TWEN Course Materials)

Mary Robinson, *Shaping Globalization: The Role of Human Rights* (in TWEN Course Materials)

Panel, *New Customary Law: Taking Human Rights Seriously?* (in TWEN Course Materials)

---

*Friday, January 26*

Terrorism, Human Rights Law, and Humanitarian Law  
Paust, 827-44

Simulation: Formulate a definition of “terrorism.”

Fajans, 1-12

---

*Friday, February 2*

The “Torture Debate”

International Law Proscriptions against Torture and Cruel and  
Degrading Treatment P815-22

TWEN “Course Materials”:

- (a) Bybee Memo;
- (b) Conclusions and Recommendations of Committee Against Torture 2006;
- (c) Excerpts from Detainee Treatment Act and the Military Commissions Act of 2006.

Fajans, 14-44

---

*Friday, February 9*

“Torture Lite”: Cruel and Degrading Treatment, International Law, and the Challenge of  
Terrorism

TWEN “Course Materials”:

- (a) *Ireland v. United Kingdom*;
- (b) McDonnell,\* Chapter on Cruel and Degrading Treatment; and
- (c) Excerpts from Memo from Pentagon Working Group on Detainees and Interrogation.

For U.S. Reservations to ICCPR and to CAT, see web links.

Fajans, 46-73

**Outlines due on Tuesday, February 13, by noon in Preston, 201.**

---

---

\* In the actual syllabus, I do not disclose that I wrote this and other excerpts. I want students not to feel self-conscious about criticizing my work.

---

*Friday, February 16*

Indefinite Detention, The Geneva Conventions, Human Rights Law and United States Policies Regarding Detainees in Afghanistan, Iraq, and Guantanamo Bay.

TWEN “Course Materials”:

- (a) Proulx, *Indefinite Detention*;
- (b) *Hamdan v. Rumsfeld*;
- (c) Alberto Gonzalez’s January 25, 2002 Memo to the President;
- (d) Colin Powell’s Memo Responding to Alberto Gonzalez’s January 25, 2002 Memo to the President

Fajans, 74-96

---

*Friday, February 23*

NO CLASS—WINTER BREAK

---

*Friday, March 2*

Jurisdiction

P155-75; P176-84 (skim)

(Note: this class may be rescheduled because of the Jessup Competition.)

Fajans, 98-116

---

*Friday, March 9*

International Criminal Court, The Ad Hoc Tribunals, Treaty Interpretation, and Crimes against Humanity

Paust, Chapter 6, pp. 458 *et seq.*  
Handout\*

**First Finished Draft of Paper due at beginning of class.**

**Conferences on the Drafts scheduled for next week.**

---

---

*Friday, March 16*

Some Extradition Issues

Luring/Abductions/Disguised Extradition  
P408 *et seq.*

TWEN “Course Materials”: Excerpt from McDonnell,\* *Defensively Invoking Treaties in American Courts—Jurisdictional Challenges Under the U.N. Drug Trafficking Convention by Foreign Defendants Kidnapped Abroad by U.S. Agents*, 37 Wm. & Mary L. Rev. 37 (1996).

Fajans, 117-34

**Conferences on the Drafts scheduled this week.**

---

*Friday, March 23*

International Law, the Death Penalty, and the Struggle Against Terrorism  
*Soering*, P356-66  
*Kindler* P367-71

TWEN “Course Materials”:

- (a) *Roper v. Simmons*;
- (b) *State v. Makwanyane*;
- (c) Excerpt from McDonnell,\* *The Death Penalty—An Obstacle to the “War against Terrorism”?*, 37 Vand. J. Trans. L. 353 (2004).

Fajans, 135-52

---

---

Friday, March 30

Targeted Killing/Assassination—A legal tool against suspected terrorists?; Disappearances/Extra-judicial killing

P823-827

TWEN “Course Materials”:

- (a) Amos Guiora, *Targeted Killing as Self-Defense*;
- (b) Marco Sassoli, *Use and Abuse of the Laws of War in the “War on Terrorism”*; and
- (c) Excerpt from McDonnell,\* *Assassination/Targeted Killing of Suspected Terrorists — A Violation of International Law?* Posted on *Jus in Bello* Blog, Dec. 1, 2005.

[For this fall’s class, I will be adding the following:]

- (d) *Lex Specialis: Alston et al, The Competence of the UN Human Rights Council and Its Special Procedures in Relation to Armed Conflicts: Extrajudicial Executions in the “War on Terror,”* 19 Eur. J. Int’l L. 183 (2008).

Fajans, 135-52

---

Friday, April 6

SPRING BREAK, NO CLASS

---

Friday, April 13

International Law Governing Use of Armed Force and Occupation

TWEN “Course Materials”:

- (a) An excerpt from McDonnell,\* *The Invasion and Occupation of Iraq: A Violation of International Law?* PACE ALUMNI MAGAZINE, Winter 2004, at 16;
  - (b) Excerpts from both the public and secret opinions of British Attorney General Goldsmith on the legality of invading Iraq. (Skim only.)
  - (c) Contrasting views on humanitarian intervention, Antonio Cassese, *Ex Iniuria Ius Oritur, Are we moving toward Legitimation of Forcible humanitarian Countermeasures in the World Community*; R.C. Thomas, *NATO and International Law*.
-

---

*Friday, April 20*

The Right of Self-Determination

TWEN “Course Materials”:

- (a) Michla Pomerance, *Self-Determination Today: The Metamorphosis of an Ideal*; and
- (b) S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*

**Final Papers due at the beginning of class**

---

*Friday, April 27*

Presentations

---

*Friday, May 4*

Presentations

---

## *COURSE POLICIES*

### *1. Grading*

Grades are based on the following:

Outline	pass/fail
First Finished Draft	pass/fail
Final Draft	260 points
Presentation and Class Participation <sup>2</sup>	15 points

A failing grade on a pass fail assignment may result in a loss of up to 20 points of the raw score.

### *2. Paper Requirements*

Papers are essentially short law review articles and must present original ideas and applications. The paper must comply with Bluebook citation form for law reviews.

For students fulfilling the ULWR, the paper must be 25 pages, including footnotes. For everyone else, the paper must be 18-20 pages, including footnotes. Each paper must be set in Times New Roman font, 12 point, with at least one inch margins on top, bottom and sides of each page.

### *3. Modes of Submission*

A hard copy of each written submissions is due on the corresponding date and time indicated in the syllabus.

An electronic copy of all written submissions must be sent by 5 p.m. on the corresponding due date.

### *4. Presentations*

The presentations on the papers will be approximately ten minutes in length. The presenter should be prepared to answer questions. The presenter will set forth his or her thesis and support the thesis with facts, argument, and authorities.

### *5. Attendance*

---

<sup>2</sup> “Class participation” includes any simulations that may be carried out in class.

Attendance is required. Much of the work in this course is done in class. More than one unexcused absence may affect your grade.

#### *6. Conferences*

A 60 to 90 minute conference will be scheduled with each student on the paper. The conference is mandatory.

#### *7. Office Hours*

Office hours are posted on my door. If you cannot meet me during any of these times, we can arrange to meet at a mutually convenient time. I also make a point of staying after each class to answer any student's questions or concerns.

#### *8. Communications*

Be sure to check your e-mail Monday through Friday. Please feel free to call or e-mail me if you have a question.