Tuesday and Thursday, 3:15 - 6:15
Classroom: Harvard 202
Office Hours: By appointment. E-mail ryan5@fas.harvard.edu (Allan Ryan) or fjs143@gmail.com (Franklin Schwarzer, TA)
Course home page: http://isites.harvard.edu/k79590

About the Course

Can there be such a thing as law in lethal combat? Can the President hold unlawful enemy combatants indefinitely, and subject them to “enhanced” interrogation? Should terrorists be tried by judges or by military officers? Was the killing of Osama bin Laden “legal?” Can genocide be prevented, or punished? Should the United States participate in an International Criminal Court that prosecutes crimes against humanity? This course examines how U.S. and international law has been used to regulate armed conflict and to outlaw genocide, and to fight a “war” on terrorism since September 11, 2001.

The course begins with the first case study -- accusations that US Marines committed war crimes in the town of Haditha, Iraq in 2005 -- to illustrate the complexities of determining truth. We then turn back to the roots: codes of chivalry in medieval warfare, and the evolution of formal international treaties, including the Hague and Geneva Conventions, that accept war as legal but seek to protect noncombatants, including the wounded, prisoners of war, and civilians. We trace the development of international law and human rights at the International Military Tribunal at Nuremberg in 1945, and then examine how these principles apply to detainees at Guantanamo, in light of recent decisions of the Supreme Court, recent laws enacted by Congress, and executive orders signed by President Obama.

We will examine issues of torture under international law, and consider the important question of command accountability: when is a commanding officer
responsible for crimes committed by his troops? When can a soldier raise the defense of superior orders? We will use as case studies the My Lai massacre in Vietnam (1968) and the Haditha cases.

We then examine genocide in the 20th century and today: its definition, its dynamics, and the attempts of international law to outlaw and prosecute it, using the Rwandan genocide (1994) as a case study. The course concludes with a critical examination of domestic and international tribunals for war crimes and genocide, including the International Criminal Court, and a consideration of questions of the future, including robotized warfare and “cyberwar.”

The objective of the course is to enable students to critically analyze contemporary mechanisms for the legal regulation of warfare and genocide, including the war (if that is what it is) on terrorism. The emphasis of the course is not primarily on moral concepts, or on questions of when resort to warfare is legal, but rather on the actions of those who make war and genocide, and their accountability under the law. There are no prerequisites, and no prior knowledge of military or legal systems is necessary.

The syllabus is subject to last-minute change to incorporate breaking news. Students should stay abreast of developments and be prepared to consider them in class. Please check the course home page [http://isites.harvard.edu/k79590](http://isites.harvard.edu/k79590) at least once between every class.

There is a lot of assigned reading for this course. Students should note the lectures and discussion analyze and expand upon issues raised by the readings.

**Class and sections:** The class meets twice a week for three hours; attendance is required. Class participation is encouraged. There will also be a weekly section that is mandatory for students taking the course for undergraduate credit (including all secondary school students), and optional for those taking it for graduate credit. The teaching assistant may assign short exercises for section meetings.

**Exams and grading:** Students taking the course for graduate or undergraduate credit will have a mid-term and a final exam. For undergraduates, the course grade is based on the final exam (60%), the midterm (30%), and participation in section (10%). For graduate students, the course grade is based on the final exam (67%), and the midterm exam (33%). Noncredit students do not take exams or receive a grade.
The instructor: Allan A. Ryan is a graduate of Dartmouth College and the University of Minnesota Law School, magna cum laude. He was a law clerk for Justice Byron R. White of the United States Supreme Court, and a captain in the U.S. Marine Corps. From 1980 to 1983 he was the Director of the Office of Special Investigations, U.S. Department of Justice, the chief Nazi war crimes prosecutor for the United States.

In 1995-96, he was an adviser on genocide prosecutions to the Government of Rwanda, and a consultant to the Lawyers Committee for Human Rights (now Human Rights First) on issues related to the International Criminal Court treaty. Since 1990 has taught human rights and the law of war at Boston College Law School. He is a member of the U.S. Naval Institute and the Society for Military History. From 1985 to 2001 he was University Attorney, Office of the General Counsel, Harvard University; he is now Director of Intellectual Property, Harvard Business School Publishing.


He can be reached by e-mail at ryan5@fas.harvard.edu.

The teaching assistant is Franklin Schwarzer, Johns Hopkins University ’98, Boston College Law School ’06, a former captain and intelligence officer in the U.S. Marine Corps and now a practicing lawyer in Boston. He can be reached at fjs143@gmail.com
Shakespeare, *King Henry the Fifth* (any edition)


Other required readings will be found on the course’s homepage, as indicated in the weekly assignments below.

**Optional**


**Notes**

1. All books required for the course can be purchased at the Harvard Coop. They will also be on reserve for the summer at Lamont Library.

2. After the first week of class, students are expected to have the week’s assigned readings completed before the first class of the week.

3. To minimize costs as much as possible, some readings have been posted in the “Weekly readings” folders on the course’s website [http://isites.harvard.edu/k79590](http://isites.harvard.edu/k79590). When this can be done consistent with copyright law, These readings are designated “site” on the syllabus. Other readings are available on the library’s HOLLIS on-line database [http://lib.harvard.edu](http://lib.harvard.edu). As to others, I refer you to the URL.
WEEK OF JUNE 27

Introduction and Course Overview
Ryan, Introduction to military rank and chain of command (site)
Taylor, Nuremberg and Vietnam, Chapter 1: War Crimes (site)

Case Study for the Course: Haditha, Iraq: November 19, 2005
www.time.com/time/archive
Enter “haditha” in the search field, and read the articles dated March 19, 2006 and June 4, 2006

War and the Law of War: The Medieval Roots
Meron, “Shakespeare’s Henry the Fifth and the Law of War,” 86 American Journal of International Law 1 (Jan. 1992) (site) (Read for broad principles of medieval law)
Shakespeare, King Henry the Fifth (any edition)
Video (class): King Henry V (1988)

WEEK OF JULY 4

The Law of War: American Innovation
The Lieber Code (1863) (excerpts) (site)

The International Foundations
Hague Convention IV (1907) and Regulations (site)
International Committee of the Red Cross, Summary of the Geneva Conventions (site)
Ryan, Introduction to the Geneva Conventions of 1949 (site)
Geneva Conventions I-II
Geneva Convention III
Geneva Convention IV (site)
US procedures for determination of enemy POW status: Army Reg. 190-8, secs. 1-1, 1-5, and 1-6 (site)
WEEK OF JULY 11

The Holocaust: Jones, chapter 6

International Military Tribunal at Nuremberg (1945-46)
  Background: Marrus, Nuremberg War Crimes Trial, 1-34, 39-51
  The Charter of the IMT: Marrus, 51-57
  The Court and Opening Addresses: Marrus, 71-85, 122-28, 149-64, 185-93
  The Judgment of the IMT (edited) (site)
  Assessment: Marrus, 241-254, 261

Courts-martial

Military Commissions
  President Bush’s Order of 13 November 2001 establishing military commissions
  Historical Background: CRS, Terrorism and the Law of War: Trying Terrorists as War Criminals before Military Commissions, 16-26

Due Process of Law and Captured Enemy Combatants
  Overview
    Ryan, Due Process of Law and Captured Enemy Combatants (2011)

The Obama Administration
  President Obama’s Executive Orders of January 2009
  President Obama on Gitmo and Trial (May 21, 2009)
  Obama Administration Policy for Detainee Trials, 2009-2011
WEEK OF JULY 18
Midterm Examination – first hour of class, Tuesday, July 19

After Gitmo, What? National Security Courts, federal criminal trials, continued detention and other alternatives
Council on Foreign Relations, Closing Guantanamo (February 12, 2009), at www.cfr.org/publication/18525/

The Limits on Torture
Convention Against Torture (excerpts)
CRS, UN Convention Against Torture: Overview and Application to Interrogation Techniques, 1-19
US Practices
Background:
   Bybee/Yoo Memo to Gonzales, August 1, 2002, pp. 1-13 (site)
   Bybee Memo to Rizzo at CIA, August 1, 2002 (site)
Update:
   US Senate Armed Services Committee Report November 2008 (released April 22, 2009), Executive Summary, pp. i –xxix (site)
   Weiner, Torture Memos and Accountability, www.asil.org/insights090515.cfm
Review President Obama’s Executive Orders (above)

Note: for those interested, I have posted on the course web page many of the original documents that are quoted in the Senate Report. Reading them is optional but may be interesting and useful in understanding the issues as they developed. The article by Jane Mayer in the New Yorker is especially good. Under “Weekly Readings,” see the file named “Optional Readings for Week of July 5.”

WEEK OF JULY 25

Accountability for War Crimes
Ryan, Accountability for War Crimes: Lawful Orders and Command Responsibility
Beidler, “Calley’s Ghost,” Virginia Quarterly Review (2003),
www.vqronline.org/printmedia.php/prmMediaID/8376
Video (class): Remember My Lai (PBS, 1988)

The Dynamics of Genocide
Convention on Genocide (Articles 1-8) (site)
Jones, Chapters 1, 2, 4, 7 (185-202)

WEEK OF AUGUST 1

Genocide: Rwanda
Jones, Chapter 9
Power, Bystanders to Genocide, The Atlantic, Sept. 2001,
www.theatlantic.com/issues/backissues.com [also course home page]
Ryan, Report to the Kigali Conference on Prosecution of Genocide in Rwanda (site)

Video (class): Ghosts of Rwanda (PBS, 2004)

Recommended: Council on Foreign Relations, Crisis Guide: Darfur (multimedia),
www.cfr.org/publication/13129 (chapters 1 - 5)

Judicial Responses
Jones, Chapter 14 and 15

The International Criminal Court
http://www.icc-cpi.int/Menus/ICC/About+the+Court/
http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/
http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/
http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm
Rome Statute of the International Criminal Court (excerpts) (chp-)

The United States and the ICC
Bush Administration Position on the ICC:
Questions for the Future: Is there still such a thing as the law of war?
The Economist, War in the Fifth Domain, July 3, 2010
The Economist, Cyberwar (an editorial), July 3, 2010

WEEK OF AUGUST 8

Tuesday: No class meeting
Thursday: Final Exam (3.15 to 6.15, in the classroom)