

Governing War: The evolution of humanitarian law in theoretical and empirical perspective

Hauptseminar

(HP, W LA1-5, L-POWI-VP2, PW-BA-SP, PW-MA-5, PW-MA-7, PT-MA-4, IS-MA-2, IS-MA-3)

19 October 2010 - 15 February 2011

Tuesday, 10-12 am

AfE Turm 903

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The course is held in English language (readings, classes, assignments), with the exception of individual readings on German political debates and potential presentations by guest speakers.

Humanitarian law - the body of formal rules and informal customs governing the conduct of armed conflict - is a policy area that has been paid only scant attention by International Relations scholars, although it poses a range of intriguing theoretical puzzles and delicate ethical dilemmas: Why has the international community succeeded in outlawing the use of some technologies of warfare, such as landmines, but not others that were initially regarded as equally immoral, such as aerial bombardments? When and why do warring parties comply with or violate humanitarian law? How can the distinction between prohibited killing outside and "acceptable" killing inside armed conflict be justified? When - if at all - can the killing of innocent civilians be regarded as "proportional" to the achievement of a military objective? How should Western states, in contemporary foreign interventions, balance the protection of civilians against the protection of their own soldiers?

These and other questions are addressed by the course, which has two principal aims: First, it provides an in-depth empirical introduction to the evolution and current practice of humanitarian law - including the debates surrounding the US-led "war on terror", the privatization of warfare, and new technological developments. Second, it uses the "governance of war" as an exemplary policy area to introduce students to different (analytical and normative) schools of International Relations theory and to practice the application of theoretical ideas in research.

Preparatory readings

Fleck, Dieter (ed.) *The Handbook of Humanitarian Law*; Oxford: Oxford University Press 2008;

Heintschel von Heinegg, Wolff and Volker Epping (eds) *International Humanitarian Law Facing New Challenges*. Symposium in Honour of Knut Ipsen, Berlin and Heidelberg: Springer 2005;

Rodin, David and Henry Shue (eds) [Just and Unjust Warriors: The Moral and Legal Status of Soldiers](#), Oxford: Oxford University Press 2008.

Seminar schedule

Topics and readings

* in „Semesterapparat“

** in course pack

I Foundations

19.10. Introduction to the topic

26.10. History & basic concepts of humanitarian law

Classroom presentations:

- Methods and Means of Combat and the protection of the civilian population
- Combatants and non-combatants and the treatment of prisoners of war

Mandatory readings:

- Greenwood, Christopher (2008) Historical development and legal basis, in: Dieter Fleck (ed.) The handbook of international humanitarian law, Oxford: OUP (2nd ed.), 45-78.**
- Gasser, Hans-Peter (2008) Humanitäres Völkerrecht. Eine Einführung, Baden-Baden: Nomos, ch. 4 (basic concepts).**

Additional readings:

- Fischer, Horst (2009) Protection of Prisoners of War, in Dieter Fleck (ed.) The Handbook of International Humanitarian Law, Oxford: OUP, pp.367-418.*
- Gasser, Hans-Peter (2008) Protection of the Civilian Population, in Dieter Fleck (ed.) The handbook of international humanitarian law, Oxford: OUP (2nd ed.), 237-324 (only I-III).*
- Gasser, Hans-Peter (2008) Humanitäres Völkerrecht. Eine Einführung, Baden-Baden: Nomos, ch. 5-8.*
- Oeter, Stefan (2008) Methods and Means of Combat, in Dieter Fleck (ed.) The handbook of international humanitarian law, Oxford: OUP (2nd ed.), 119-236.*

26.10. Humanitarian law and human rights law: a useful merger?

Classroom presentation:

- Convergence of humanitarian and human rights law: trends, explanations and evaluations

Mandatory readings:

- Gasser, Hans-Peter (2008) Humanitäres Völkerrecht. Eine Einführung, Baden-Baden: Nomos, 28-32.**
- Smith, Thomas (2010) Can Human Rights Build a Better War?, Journal of Human Rights, 9, 24-44.**

Additional readings:

- Meron, Theodor (2000) The Humanization of Humanitarian Law, *American Journal of International Law*, 94, 2, 239-78.
- Teitel, Rudi G. (2002) Humanity's Law. Rule of Law for the New Global Politics, *Cornell International Law Journal*, 35, 355-87.

II The evolution of humanitarian norms in theoretical perspective

9.11. Factual knowledge test and recap of International Relations Theories

16.11. Constructivism and humanitarian norms: the case of weapons bans

Classroom presentations:

- Constructivist theories of norm evolution
- The nuclear weapons taboo

Mandatory reading:

- Price, Richard (1998): Reversing the Gun Sights: Transnational Civil Society Targets Land Mines, *International Organization*, 52, 3, 613-44.

Additional readings:

- Finnemore, Martha and Kathryn Sikkink (1998) International Norm Dynamics and Political Change, *International Organization*, 52, 4, 887-917.
- Tannenwald, Nina (2005) Stigmatizing the Bomb: On the Origins of the Nuclear Taboo, *International Security*, 29, 4, 5-49.

23.11. Rational choice and humanitarian norms: the case of POWs

Classroom presentations:

- The rational design of international institutions

Mandatory reading:

- Morrow, James (2001) The Institutional Features of the Prisoners of War Treaties, *International Organization*, 55, 4, 971-91.

Additional reading:

- Koremenos, Barbara, Charles Lipson and Duncan Snidal (2001) The Rational Design of International Institutions, *International Organization*, 55, 4, 761-99.

30.11. (When) does international humanitarian law constrain states?

Classroom presentations:

- Organizational culture and norm compliance
- Unintended effects of humanitarian treaties

Mandatory reading:

- Jochnick, Chris af and Roger Normand (1994) The Legitimation of Violence: A Critical History of the Laws of War, *Harvard International Law Journal*, 35, 1, 49-95.

Additional readings:

- Franceschini, Giorgio and Elvira Rosert (2010) The Dialectics of Arms Control Norms and Technological Progress: Theoretical Reflections and Empirical Illustrations, paper prepared for the panel “Arms control as a condition for or as a result of security?”, SGIR 7th Pan-European International Relations Conference: September 9-11, Stockholm.
- Legro, Jeffrey W. (1997) Which Norms Matter? Revisiting the “Failure” of Internationalism, *International Organization*, 51, 1, 31-63.

7.12. Just and unjust warriors: the laws of war in ethical perspective

Classroom presentation(s):

- Combatant equality: the pros and cons

Mandatory readings:

- Rodin, David and Henry Shue (2008) Introduction, in David Rodin and Henry Shue (eds) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Oxford: Oxford University Press, 1-18.**
- McMahan, Jeff (2008) The Morality of War and the Law of War, in David Rodin and Henry Shue (eds) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Oxford: Oxford University Press, 19-43.**

Additional readings:

- Rodin, David (2008) The Moral Inequality of Soldiers: Why jus in bello Asymmetry is Half Right, in David Rodin and Henry Shue (eds) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Oxford: Oxford University Press, 44-68.*
- Roberts, Adam (2008) The Principle of Equal Application of the Laws of War, in David Rodin and Henry Shue (eds) *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Oxford: Oxford University Press, 226-54.*

III Domestic and international (f)actors in the implementation of humanitarian law

14.12. Democracies at war

Classroom presentation:

- Democracies and compliance with humanitarian norms

Mandatory reading:

- Downes, Alexander B. (2006) Desperate Times, Desperate Measures: The Causes of Civilian Victimization in War, *International Security*, 30, 4, 152–95.

Additional reading:

- Morrow, James (2007) When Do States Follow the Laws of War?, *American Political Science Review*, 101, 3, 559-72.

21.12. IHL enforcement in the military and in private military companies

Classroom presentation:

- The role of the Judge Advocate General in the US army

Mandatory readings:

- Perrin, Benjamin (2006) Promoting Compliance of Private Security and Military Companies with International Humanitarian Law, *International Review of the Red Cross*, 88, 863, 613-36.
- Smith, Thomas W. (2008) Protecting Civilians... or Soldiers? Humanitarian Law and the Economy of Risk in Iraq, *International Studies Perspectives*, 144-64.

Additional readings:

- Borch, Frederic L. (2004) Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti, Washington: Office of the Judge Advocate General.*
- Smith, Thomas W. (2002) The New Laws of War: Legitimizing High-Tech and Infrastructural Violence, *International Studies Quarterly*, 46, 355-74 (esp. pp. 367-70).

11.1. War crimes tribunals

Classroom presentations:

- The historical evolution of international criminal justice I: war crimes tribunals
- The historical evolution of international criminal justice II: The International Criminal Court

Mandatory readings:

- Dauphinee, Elizabeth (2008) War Crimes and the Ruin of Law, *Millennium*, 37, 1, 49-67.
- Snyder, Jack and Leslie Vinjamuri (2003/04) Trials and Errors. Principle and Pragmatism in Strategies of International Justice, 28, 3, 5-44.

Additional readings:

- Arieff, Alexis, Rhoda Margesson and Marjorie Ann Browne (2010): International Criminal Court Cases in Africa: Status and Policy Issues, CRS Report for Congress, Washington, DC: Congressional Research Service.
- Bass, Gary Jonathan (2000) Stay the hand of vengeance: The Politics of War Crimes Tribunals, Princeton: Princeton University Press.*
- Esser, Albin (2001) Towards an International Criminal Court: Genesis and Main Features of the Rome Statute, *University of Tasmania Law Review*, 20, 1, 1-28.*

IV International Humanitarian Law in Asymmetric Conflicts

18.1. Practical challenges of asymmetric and non-international armed conflict

Classroom presentation:

- New Norms for Asymmetric Conflict?

Mandatory readings:

- Schmitt, Michael N. (2007) Asymmetrical Warfare and International Humanitarian Law, in Heintschel von Heinegg, Wolff and Volker Epping (eds) *International Humanitarian Law Facing New Challenges. Symposium in Honour of Knut Ipsen*, 11-48.**
- Boothby, William (2007) 'The End Justifies the Means' – Should This Be the Philosophy?, in Heintschel von Heinegg, Wolff and Volker Epping (eds) *International Humanitarian Law Facing New Challenges. Symposium in Honour of Knut Ipsen*, 49-52.**
- Oeter, Stefan (2007) Comment: Is the Principle of Distinction Outdated?, in Heintschel von Heinegg, Wolff and Volker Epping (eds) *International Humanitarian Law Facing New Challenges. Symposium in Honour of Knut Ipsen*, 53-64.**

Additional readings:

- Gross, Michael (2010) *Moral Dilemmas of Modern War. Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*, Cambridge: Cambridge University Press, Ch. 5 (assassination), 7 (noncombatant immunity).*

25.1. Humanitarian law in the “war on terror”

Classroom presentation(s):

- Prisoners of war, torture, and rendition in the “war on terror”: legal concerns

Mandatory readings:

- Roberts, Adam (2002) Counter-terrorism, Armed Force and the Laws of War, *Survival*, 44, 1, 7-32.
- Gross, Michael (2010) *Moral Dilemmas of Modern War. Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*, Cambridge: Cambridge University Press, Ch. 6 (torture and rendition).**

Additional readings:

- Mofidi, Manooher and Amy E. Eckert (2003/04) “Unlawful Combatants” or “Prisoners of War”: The Law and Politics of Labels, *Cornell International Law Journal*, 36, 59-92.
- Sadat, Leila Nadya (2007) Extraordinary Rendition, Torture, and Other Nightmares from the War on Terror, *George Washington Law Review*, 75, 1200-48.

V Case study: The German debate about Afghanistan and Bundeswehr missions

1.2. Presentation of term papers & debate I

8.2. Presentation of term papers & debate II

15.2. Final discussion and seminar evaluation