

**New York University**  
**School of Professional Studies**  
**M.S. in Global Affairs**  
**U.S. Use of Force & The “Global War on Terror”**  
**GLOB1-GC.2115**

Instructor: Professor Trahan, Associate Clinical Professor  
3 credits, Tuesdays, 12:30-3:10 pm  
Spring 2017, room **TBA**

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office hours: Tues. 3:00-5:00pm; Wed. 2:30-3:30 pm  
office #446

**Course Description:**

This course introduces some of the key challenges the U.S. has faced in responding to the terrorist attacks of 9/11, and analyzes the U.S.’s response from a legal framework. We will cover basic principles on the use of force, and then apply them to examining the legal foundation for the coalition interventions in Iraq (2003) and Afghanistan. We will discuss whether the situation should be understood as a “Global War on Terror” (“GWOT”), “war against Al Qaeda and associated entities,” or something else. We will discuss some of the difficult issues as to the conduct of the “war”—including the responsibilities of an occupying power, permissible targets, means of targeting, the scope of the “field of battle,” and legal issues related to conducting counterinsurgency operations. We will cover the various options for U.S. terrorism trials—military commissions, federal court trials, or whether “national security courts” should have been created. We will discuss the newly codified “crime of aggression,” as well as drone strikes. Another focus will be the use of “enhanced interrogation” techniques and “extraordinary renditions,” and the extent to which there should be accountability as to U.S. practices. Finally, we will examine the domestic ramification of the “GWOT,” as well as how other countries have addressed counter-terrorism post-9/11, from a human rights standpoint. Throughout the course, we will consider a broad range of academic, military and government perspectives on the above topics, and a broad diversity of viewpoints is encouraged.

**Course Prerequisites:**

There are no course prerequisites, although it is strongly recommended to take the basic core International Law course prior to taking this course.

**Course Structure/Method:**

The course will involve both lectures and discussion, delivered in person. Class assignments are all contained below. Added handouts or clarifications will arrive via e-mail or be distributed in class. Class sessions meet Tuesdays, 12:30-3:10 pm.

The course will require students to write five brief “reflection pieces” and culminate in a final paper to be presented orally on the last day of class. Class participation will also form a component of the grade. On Days 5 and 7, students will be assigned specific roles

to play/arguments to make, for the purposes of class discussion. Students should come to class having read the materials and prepared to discuss them.

**Course Learning Outcomes:**

By the end of this course, students will have a basic familiarity with key concepts related to the use of force, and various legal issues that have arisen post-9/11 (identified above). Students will also learn to read legal articles in detail, and critically, and should be able to discuss them persuasively. Precision of writing will be tested in the short reflection pieces (discussed below). A detailed familiarity with one selected topic will be required for the final paper, which will also test research skills, and require clear, precise and organized written content. Students may turn in a draft of their final paper in the class *before* it is due, and receive a free set of constructive comments, which will in no way prejudice the final paper's grade.

**Communication Policy:**

The professor will be available via e-mail and will also communicate through NYU Classes. Credits students must use your NYU e-mail addresses to communicate. NYU Classes course-mail supports student privacy and FERPA guidelines. All e-mails will be responded to promptly.

**Course Expectations:**

Please complete the first reading for the first class.

Students should come to class having read the materials and prepared to discuss them.

As to the five two-page reflection pieces (or a total of 10 pages), please select five (or fewer) readings over the duration of the course, and discuss what the key arguments are in the reading, and then provide your own reflections as to the arguments. Since there are many readings, you have considerable leeway as to which to discuss. Each reflection piece will be due in hard copy *at the start* of the class on the day the material will be discussed; late submissions will not be accepted. Further details as to the reflection pieces will be provided in class. Five two-page pieces is suggested, but you write any combination of pages that will reach ten pages in total (e.g., two 3-page papers and one 4-page paper).

As to the final 20-25 page research paper, each student will select a topic that is either covered during one of the class days, or is a part of a topic covered on one of the class days, or is related to such a topic. A list of suggested paper topics will be provided. The proposed paper topic is due **February 7**. An outline of the paper is due on **February 21**. The final paper, which is due on the last class, must be typed or word-processed and contain footnotes, but no bibliography is required. Each student is encouraged to meet with the professor during the semester to discuss his or her paper topic, the scope of the topic and/or research techniques.

**Required Reading Material:**

Reading will be available on the internet or circulated

### Assessment Strategy:

Your grade will be based on the following:

- class participation and presentation of final paper (10%)
- five two-page reflection pieces (or a total of 10 pages) (40%) **[at least two to be turned in by February 14]**
- final 20-25-page paper (50%)

### Policies for missed or late assignments:

Late short reflection pieces will not be accepted, as they are due in hard copy at the start of the class where the materials covered will be discussed.

### Grading Scale:

Grade	Meaning	GPA Conversion
A	Exceptional; superior effort	4.0
A-	Excellent	3.7
B+	Very good	3.3
B	Good; meets program standards	3.0
B-	Meets program standards in most respects	2.7
C+	Requires moderate improvement	2.3
C	Requires significant improvement	2.0
C-	Requires extensive improvement	1.7
F	Fail – Did not meet minimal course requirements	0

### NYUSPS Grading Policies can be found here:

<http://sps.nyu.edu/academics/academic-policies-and-procedures/graduate-academic-policies-and-procedures.html#Grades>

### NYUSPS Policies:

NYUSPS policies regarding the Family Educational Rights and Privacy Act (FERPA), Academic Integrity and Plagiarism, Students with Disabilities Statement, and Standards of Classroom Behavior among others can be found on the NYU Classes Academic Policies tab for all course sites as well as on the University and NYUSPS websites. Every student is responsible for reading, understanding, and complying with all of these policies.

The full list of policies can be found at the web links below:

- University: <http://www.nyu.edu/about/policies-guidelines-compliance.html>
- NYUSPS: <http://sps.nyu.edu/academics/academic-policies-and-procedures.html>

### Additional Policies

- **Attendance and Lateness policy:** All students must attend class regularly. Your contribution to classroom learning is essential to the success of the course. Any more than two (2) absences (other than for verifiable medical or similar reasons) during the

Fall and Spring and one (1) absence during the summer may lead to a need to withdraw from the course or negatively impact your final grade.

- **Incomplete policy:** Incompletes are only granted in extreme cases such as illness or other family emergency and only where almost all work for the semester has been successfully completed and the basis for the Incomplete can be verified. A student's procrastination in completing his/her paper is not a basis for an Incomplete.
- **Submission of work:** All written work must be submitted via the Assignment Tool on NYU Classes; student work will be scanned by Turnitin plagiarism-detection software.
- **Statement on Academic Integrity and Plagiarism:** *Plagiarism is presenting someone else's work as though it were one's own. More specifically, plagiarism is to present as one's own a sequence of words quoted without quotation marks from another writer; a paraphrased passage from another writer's work; creative images, artwork, or design; or facts or ideas gathered, organized, and reported by someone else, orally and/or in writing and not providing proper attribution. Since **plagiarism is a matter of fact, not of the student's intention**, it is crucial that acknowledgement of the sources be accurate and complete. Even where there is no conscious intention to deceive, the failure to make appropriate acknowledgment constitutes plagiarism. **Penalties for plagiarism range from automatic failure for a paper or course to dismissal from the University.***
- **Accommodations for Disabilities:** Any student who needs a reasonable accommodation based on a qualified disability is required to register with the Moses Center for Student Disabilities for assistance ([www.nyu.edu/csd](http://www.nyu.edu/csd)).

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## **A. MILITARY ACTION IN IRAQ AND AFGHANISTAN – Use of Force**

### **Day 1: Introduction: International Law on the Use of Force (January 24)**

UN Charter, handout of key articles

Stromseth, Jane, Brooks, Rosa, and Wippman, David, "Interventions and International Law: Legality and Legitimacy." In *Can Might Make Rights?: Building the Rule of Law after Military Interventions* (Cambridge: Cambridge University Press 2006), read pp. 18-55 (but you may skip or skim pp. 40-43, and pp. 46-50)

[https://books.google.com/books?id=dPKoNG7Oa90C&pg=PA19&lpg=PA19&dq="Interventions+and+International+Law:++Legality+and+Legitimacy."&source=bl&ots=H-nRNF9Vo4&sig=g0v0jnDhxwJpCb1K0gAqNqRZAxA&hl=en&sa=X&ved=0ahUKEwjW0sCisqbRAhVDzIMKHUejDSAQ6AEIJDAC#v=onepage&q="Interventions%20and%20International%20Law%3A%20%20Legality%20and%20Legitimacy."&f=false](https://books.google.com/books?id=dPKoNG7Oa90C&pg=PA19&lpg=PA19&dq=)

Review R2P reading from *International Law Norms, Actors, Process: A Problem-Oriented Approach*, Dunoff, Ratner and Wippman, Aspen Publishers (4th ed. 2015), pp. 784-86 (**most of you will have this book, but I will make a few xeroxes for those who don't**)

### **Day 2: U.S. use of Force in Afghanistan post 9/11 (January 31)**

Ratner, S. (2002), "Jus ad Bellum and Jus in Bello After September 11," *The American Journal of International Law*, Vol. 96, No. 4 (Oct., 2002), pp. 905-921

<http://users.polisci.wisc.edu/kinsella/ratner.pdf>

Spectar, J. M., “Beyond the Rubicon: Presidential Leadership, International Law & The Use of Force in the Long Hard Slog,” 22 Connecticut Journal of International Law 47 (2006), pp. 1-14 (Nexis printout), or 47-76 (journal pages) [read through 3<sup>rd</sup> full para. after heading C]

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/conjil22&page=47&collection=journals>

**Must be logged into NYU Library to view**

Cassese, Antonio, “Terrorism is Also Disrupting Some Crucial Legal Categories of International Law,” European Journal of International Law (Dec. 1, 2001) <http://www.ejil.org/pdfs/12/5/1558.pdf>

### **Day 3: U.S. use of Force in Iraq (Gulf War II); the Obligations of an Occupying Power (February 7)**

#### **Paper topic due**

U.N. Security Council resolutions 660, 678, 686, 687, 1441

- o 660, 678 <http://www.un.org/Docs/scres/1990/scres90.htm>
- o 686, 687 <http://www.un.org/Docs/scres/1991/scres91.htm>
- o 1441 <http://www.un.org/Depts/unmovic/documents/1441.pdf>

Spectar, J. M., “Beyond the Rubicon: Presidential Leadership, International Law & The Use of Force in the Long Hard Slog,” 22 Connecticut Journal of International Law 47 (2006), pp. 17-32 (Nexis printout), or 83-114 (journal pages) [start reading at heading II]

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/conjil22&page=47&collection=journals>

**Must be logged into NYU Library to view**

Zahawi, H. (2007) “Redefining the Laws of Occupation in the Wake of Operation Iraqi ‘Freedom’” California Law Review Vol. 95 (Dec. 2007), pp 1-13 (or to heading “Privatization of Iraq”); remainder is strongly recommended.

[http://ezproxy.library.nyu.edu:2105/stable/20439145?seq=1#page\\_scan\\_tab\\_contents](http://ezproxy.library.nyu.edu:2105/stable/20439145?seq=1#page_scan_tab_contents)

**Must be logged into NYU Library to view**

Recommended, Farer, T. (2003) “Agora: Future Implication of the Iraq Conflict: The Prospect for International Law and Order in the Wake of Iraq,” 97 American Journal of International Law 621 (2003)

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/aji197&page=621&collection=journals>

**Must be logged into NYU Library to view**

**Day 4: Is the US fighting a Global War on Terror (“GWOT”)? Do the laws of war adequately address counterinsurgency strategy? (February 14)**

**Two “reflection pieces” due**

Yoo, John C. and Ho, James C., “The Status of Terrorists,” 44 Va. J. Int'l L. 207 (2004)

<http://www.escholarship.org/uc/item/7kt6n5zf;jsessionid=74230D79EA51FF068765EB9D6BF11136#page-1>

O’Connell, Mary Ellen, “Enhancing the Status of Non-State Actors Through a Global War on Terror?,” 43 Columbia Journal of Transnational Law (2005) [you may skip section A. “Aid NGOs”]

[http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1087&context=law\\_faculty\\_scholarship](http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1087&context=law_faculty_scholarship)

Rona, Gabor (2003), “Interesting Times for International Humanitarian Law: Challenges from the War on Terror,” 27 Fletcher F. World Aff. 55 (2003).

[http://www.icrc.org/eng/assets/files/other/rona\\_terror.pdf](http://www.icrc.org/eng/assets/files/other/rona_terror.pdf)

Stephen W. Preston, General Counsel, US Department of Defense, keynote speech (**summary to be circulated**)

Sitaraman, G., “Counterinsurgency, The War on Terror, and The Laws of War,” 95 Virginia Law Review (Nov. 2009), pp. 1-14, end before heading “Rethinking Doctrine”; the remainder is recommended

<http://insct.syr.edu/wp-content/uploads/2013/03/Sitaraman-Ganesh.CT-GWOT-and-the-LOAC.2009.2.pdf>

**Day 5: U.S. use of drones (February 21)**

**Outline of paper due**

Etzioni, Amitai, “The Great Drone Debate,” Military Review (March-April 2013), at

[http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\\_20130430\\_art004.pdf](http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf)

O’Connell, Mary Ellen, “The Questions Brennan Can’t Dodge,” Op-ed for The New

York Times, February 6, 2013, <http://www.nytimes.com/2013/02/07/opinion/the-questions-brennan-cant-dodge.html>

Department of Justice White Paper, “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida or An Associated Force,

<https://fas.org/irp/eprint/doj-lethal.pdf>

**Day 6: Targeting Issues Iraq & Afghanistan (the conduct of the wars) (February 28)**

Article 8, Rome Statute of the International Criminal Court, at

<http://www.un.org/law/icc/index.html>

“Off Target: The Conduct of the War and Civilian Casualties in Iraq,” (Human Rights Watch 2003), at <http://www.hrw.org/en/reports/2003/12/11/target>, pp. 1-18 required; pp. 19-83 **to be assigned among class.**\*

“The Human Cost: The Consequences of Insurgent Attacks in Afghanistan,” (Human Rights Watch 2007), at <http://www.hrw.org/en/reports/2007/04/15/human-cost>, pp. 2-11 required; pp. 12-24 recommended; pp. 25-98 **to be assigned among class.**\*

“Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan,” (Human Rights Watch 2008), at <http://www.hrw.org/en/reports/2008/09/08/troops-contact>, pp. 4-9 required; pp. 10-25 **to be assigned among class.**\* [Additional instructions to be supplied.]

### **Day 7: The Crime of Aggression: ramifications for the U.S. and global order as the crime becomes part of the International Criminal Court’s Statute (March 7)**

Trial of the Major War Criminals Before the International Military Tribunal (Nuremberg), excerpt, pp. 146-155 in Mary Ellen O’Connell, International Law and the Use of Force (**copy to be provided**)

U.N. General Assembly Resolution 3314 (1974),

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/3314\(XXIX\)&Lang=E&Area=RESOLUTION](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/3314(XXIX)&Lang=E&Area=RESOLUTION)

Trahan, Jennifer, “Negotiating the Amendment on the Crime of Aggression: Proceedings at the Kampala Review Conference,” International Criminal Law Review (Jan. 2011)

<http://nyuglobalcitizen.files.wordpress.com/2011/04/aggression-kampala-article-final.pdf> [skim section on competing proposals not accepted]

## **SPRING BREAK MARCH 14 - NO CLASS**

### **B. PROSECUTING THOSE DETAINED**

#### **Day 8: The Crime of Terrorism & Prosecuting it in U.S. Federal Courts (March 21)**

Richard Zabel & James Benjamin Jr., “In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts,” (Human Rights First 2008), <http://www.humanrightsfirst.org/resource/pursuit-justice> pp. 1-20, pp. 31-60 (read p. 31 and then skim readings or read headings); pp. 65-75 (read Chapter VII)

**or** A. McCarthy & A. Velshi, “We Need A National Security Court,” <http://www.aei.org/papers/politics-and-public-opinion/judicial/constitutional/we-need-a-national-security-court/>

[**Interactive portion:** Half of the class will read the Human Rights First report and argue that federal courts should be used to try terrorism cases. The other half of the class will read the McCarthy/Velshi report and argue that a new national security court should handle such prosecutions. You will be assigned to one of the groups. It is recommended that you read both reports if time allows.]

**Day 9: Military Commission Trials: Guantanamo & future military commissions (March 28) (possible guest speaker, Jennifer Cowen, GTMO defense lawyer)**

Trahan, Jennifer, "Procedures for Military Commission Trials at Guantanamo Bay, Cuba: Do They Satisfy International and Constitutional Law?," 30 Fordham Int'l L. J. 780 (2007)

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/frdint30&page=780&collection=journals>

**Must be logged into NYU Library to view**

Elsea, Jennifer K., "The Military Commissions Act of 2009: Overview and Legal Issues," CRS Report for Congress,

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.fas.org%2Fsgp%2Fcrs%2Fnatsec%2FR41163.pdf&ei=-81EXT-i1I4Ps0gH3\\_MmKAw&usg=AFQjCNFsDhCS2PD-sCQzJfwz2NtIEybKTQ&sig2=5BNS3r0a1TgG6HEAm7-vaA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.fas.org%2Fsgp%2Fcrs%2Fnatsec%2FR41163.pdf&ei=-81EXT-i1I4Ps0gH3_MmKAw&usg=AFQjCNFsDhCS2PD-sCQzJfwz2NtIEybKTQ&sig2=5BNS3r0a1TgG6HEAm7-vaA) , pp. 1-4, 18-33

Grigg, D., "Guantanamo: It Is Not About Them—It Is About Us," 50 The Advocate 5 (Spring 2010), at pp. 161-68 of [http://www.texasbarcle.com/Materials/Events/8974/116880\\_01.pdf](http://www.texasbarcle.com/Materials/Events/8974/116880_01.pdf)

"The Writ Stops Here: No Habeas for Prisoners Held by U.S. forces in Afghanistan," American Society of International Law Insight, June 3, 2010, at <http://www.asil.org/insights/volume/14/issue/13/writ-stops-here-no-habeas-prisoners-held-us-forces-afghanistan>

Recommended: Captain A. Jackson, A., "Habeas Corpus in the Global War on Terror: An American Drama," 65 The Air Force Law Review 263 (2010)

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/airfor65&page=263&collection=journals>

**Must be logged into NYU Library to view**

**C. DETENTION ABUSES**

**Day 10: Detention Abuses by U.S.: Abu Ghraib, Bagram, "secret prisons," Guantanamo (April 4)**

"Criminal Justice for Criminal Policy: Prosecuting Abuses of Detainees in U.S. Counterterrorism Operations," International Center for Transitional Justice (2009), <http://ictj.org/publication/criminal-justice-criminal-policy-prosecuting-abuses-detainees-us-counterterrorism-0>

**Day 11: "Extraordinary Renditions;" Reparations for Detention Abuses (April 11)  
Film: Outlawed: Extraordinary Renditions, Torture and Disappearances in the War on Terror**

"After Torture: U.S. Accountability and the Right to Redress," International Center for Transitional Justice (2010), <http://ictj.org/publication/after-torture-us-accountability-and-right-redress> pp. 3-24

## **D. DOMESTIC AND GLOBAL RAMIFICATIONS OF GWOT**

**Day 12: Post 9/11 Domestic Ramifications of the “Global War on Terror” (GWOT): erosion of civil liberties or necessary law enforcement? (possible guest lecturer) (April 18)**

Charu A. Chandrasekhar, “Flying while Brown: Federal Civil Rights Remedies to Post-9/11 Airline Racial Profiling of South Asians,” 10 Asian L.J. 215 (2003), read pp. 215-227 only

<http://ezproxy.library.nyu.edu:2264/HOL/Page?public=false&handle=hein.journals/aslj10&page=215&collection=journals>

**Must be logged into NYU Library to view**

Richard A. Posner, “Security Versus Civil Liberties,” The Atlantic Monthly; December 2001; Volume 288, No. 5; 46-48.

<http://www.theatlantic.com/past/docs/issues/2001/12/posner.htm>

ACLU Report 2009 “Reclaiming Patriotism: A Call to Reconsider the Patriot Act,” pp. 5-17, 22-33, at [http://www.aclu.org/pdfs/safefree/patriot\\_report\\_20090310.pdf](http://www.aclu.org/pdfs/safefree/patriot_report_20090310.pdf)

**Day 13: International Ramifications of GWOT: carte blanche for a state to crack down against the opposition under the rubric of “terrorism”? (April 25)**

“Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights,” International Commission of Jurists (2009), Chapter 2 <http://www.un.org/en/sc/ctc/specialmeetings/2011/docs/icj/icj-2009-ejp-report.pdf>

Amnesty International 2008 Brief to the United Nations, “Security and Human Rights: Counter-Terrorism and the United Nations,” executive summary, recommendations, and Chapter 4 (human rights violations in the context of counter-terrorism strategies)

<https://www.amnesty.org/en/documents/IOR40/019/2008/en/>

Irene Khan, “Security for Whom?,” Secretary General, Amnesty International Speech to London School of Economics on December 10, 2003

[http://www.lse.ac.uk/humanRights/aboutUs/articlesAndTranscripts/101203\\_Irene\\_Khan.pdf](http://www.lse.ac.uk/humanRights/aboutUs/articlesAndTranscripts/101203_Irene_Khan.pdf)

**Film: State of Fear**

**Day 14: Final Papers Due. Students present papers (10-15 minutes each) (May 2)**