

Syllabus: Seminar (Fall 2022): Use of Force and Antiterrorism (Professor Foteh)

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Meetings set by appointment

Required documents supplement: 2008 DOCUMENTS SUPPLEMENT TO PAUST, VAN DYKE, MALONE, INTERNATIONAL LAW AND LITIGATION IN THE U.S. (West, American Casebook Series, 3 ed. 2009). Handouts (e.g., Packets I-IV) will be used for readings noted below. Pick up the first Packet on Use of Force and War Powers from my secretary in TU 2, second floor. If you have the Paust, Van Dyke, Malone casebook (3 ed. 2009), you do not need the first packet (use chapter 7).

Meet: Monday & Wednesday at 7:30pm - 9:00 pm.

I. Packets on Use of Force and War Powers (or re: IL casebook Ch. 7, use the 3 ed. 2009 of the Paust, Van Dyke, Malone casebook *if* you have it)

First Week: Class expectations/primary packet (IL casebook ch 7) pages 1072-1090

Second Week: pages 1090-1099 (U.N. Charter and 1970 Dec. & 1974 Dec.

Aggression)

Third Week: pages 1099-1133 (Self-Defense) (and perhaps start next set of pages)

Fourth Week: pages 1133-1135 (Security Council Measures), 1135-1139, and resolutions on Iraq (1990) and (2003)

Fifth Week: additional packets I, II, & III: Sofaer on “preemption,” 35 Cornell I.L.J., U.K. claim re: Iraq (2003), de Hoogh email, O’Connell, Pellet, Somer and Kirgis ASIL Insights, Somer emails re: Lebanon (2006)

Sixth Week: back to the primary packet (IL) pages 1152-1174 (starting U.S. war powers)

Seventh Week: pages 1174-1198

Seventh Week: pages 1199-1208 and documents

Eight Week: pages 1209-1223

II. The Terrorism Packet

Eight Week (ICL packet, chpt. 12, Section 1) packet pages 825-842, proscriptions and definitional problems, elements and examples

Ninth Week: discussion of the same

Ninth Week: pages 842-856, and the four U.N. terrorism resolutions referred to plus merely the Tokyo Convention, Hague Hijacking Convention, and Hostage-Taking Convention

Tenth Week: continue with the packet

III. Human Rights Packet

Tenth Week: (ICL packet chpt. 11) packet pages 811-815, and from Docs. Supp.: International Covenant on Civil and Political Rights, arts. 1-2, 4-5, 7, 9-10, 14, 19-22, 26; American Dec. Rts. & Duties of Man, arts. I-II, XVIII, XXV; plus discussion of revelations regarding inner circle approval of water-boarding, the “cold cell” and other interrogation tactic

Eleventh Week: Convention Against Torture (in the Docs. Supp.) and packet pages 815-822, plus the Inter-American Convention on Forced Disappearance (in the Docs.

Supp.) and packet pages 824-26 (forced disappearance); and Genocide Conv., arts. I-IV (in the Docs. Supp.)

IV. Law of War Packet

Eleventh Week: start Law of War Packet (ICL packet, chpt. 8) and see the Documents Supplement for (1) 1919 List of War Crimes, (2) 1907 Hague Convention, (3) 1949 Geneva Prisoner of War Convention (esp. arts. 1-4) and 1949 Geneva Civilian Convention (esp. arts. 1-5 and other arts. on treatment of civilians, e.g., arts. 13, 27-34, 49, 147)

Twelfth Week: continue with Law of War

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Packet

Thirteenth Week: continue discussion re: The Law of War Packet

Fourteenth Week: continue discussion re: Law of War & possibly other material (later)

November 30: **PAPERS DUE!!!**

Paper: students will turn in a paper on an approved topic (to be refined with consultation with the professor and with approval of an outline). The paper will be comprised of at least 37 pages of text, exclusive of footnotes or endnotes, double-spaced, 12 point font, with one inch margins.

More details on the paper to be handed out in class and discussed.

Paper due Monday, Nov, 30 2022, by the beginning of the regular class time.

Class attendance: class attendance is required (those missing more than 20% will be dropped).

In this class, you will be graded on the following scale:

Attendance and class participation: 20%

Paper: 80%

Objectives: First, for the student to prepare a paper of publishable quality. Second, to familiarize students with the nature, sources and evidences of international law on the use of armed force and intervention; the content of such international law, including impermissible use of force, self-defense, Security Council measures, case study of Iraq 2003; relevant U.S. constitutional powers concerning war and peace, including congressional powers, the War Powers Resolution, the U.N. Participation Act, presidential powers as commander in chief, powers of protection, powers to use other force, execution of treaties, limitations under international law; judicial competencies; terrorism, including proscriptions, problems of definition, antiterrorism conventions, U.S. implementing legislation, the Antiterrorism Act, Aircraft Hijacking and Hostage-Taking legislation; relevant human rights, especially concerning detention and treatment of detainees; and relevant laws of war, especially concerning the status, rights, and treatment of detainees.