

ROYAL MILITARY COLLEGE OF CANADA
DEPARTMENT OF POLITICAL AND ECONOMIC SCIENCE
POE 488A – LAW OF ARMED CONFLICT

WINTER 2013-14 SYLLABUS

Lecturers:

Lieutenant-Colonel Rory G. Fowler CD, B.Comm (Hons), LL.B., LL.M.
Director of Administrative Law, Office of the Judge Advocate General
613-992-6274
Rory.Fowler@forces.gc.ca

Lieutenant-Commander Mike Baker CD, BA, MA, LL.B.
IC POCT and ILOAC
Canadian Forces Military Law Centre,
Canadian Defence Academy Headquarters
(613) 541-6000 ext. 6638

Class:

Date/Time: Mondays, 0800 hrs to 1050 hrs (Periods 1, 2 & 3)
Location: Girouard 124

Textbooks for Required Reading:

1. Solis, Gary D., *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge: Cambridge University Press, February 2010)
2. Dinstein, Yoram, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2d ed (Cambridge: Cambridge University Press, May 2010)
3. Green, Leslie C. *The Contemporary Law of Armed Conflict*, 3d ed (Manchester: Manchester University Press, 2008)

Note on Required Reading: Three different textbooks have been assigned for this course. These textbooks all concern the Law of Armed Conflict and, consequently, there will inevitably be some duplication of the content between the texts. The goal in assigning three similar texts is to provide the students with different perspectives on the Law of Armed Conflict (the authors are, respectively, academics from the United States, Israel and Canada). You may find that, for some classes, the assigned required reading is not insignificant. If you encounter difficulties completing all the reading, consider employing the following methodology: Choose one of the three assigned textbooks as your principal text for the course, and make the reading assigned for that text your priority. Read the assigned reading for the other texts if you are able. You should also read all the assigned reading related to the subject of your class presentation and research paper (see below for further details on these assignments). Where your 'priority text' is not assigned for a particular week, rely on the other texts.

Other Reference Material:

1. Office of the Judge Advocate General. *The Law of Armed Conflict at the Operational and Tactical Level*. Ottawa: Department of National Defence, (B-GG-005-027/AF-021)
2. Office of the Judge Advocate General. *Collection of Documents on the Law of Armed Conflict*. Ottawa: Department of National Defence, (B-GG-005-027/AI-022)
3. International Committee of the Red Cross. *The Geneva Conventions of 1949*. I.C.R.C.
4. International Committee of the Red Cross. *Protocols Additional to the Geneva Conventions of 12 August 1949*. Revised Edition 1996. ICRC, 1996.
5. United Nations. *Charter of the United Nations and Statute of the International Court of Justice*. N.Y. U.N.

Select Recommended Reading on reserve in Massey Library

1. Aust, Anthony. *Handbook of International Law*. Cambridge: Cambridge Univ. Press, 2005 (assorted chapters).
2. Roberts, Adam and Guelff, Richard. *Documents on the Laws of War*, 2nd Ed. Oxford: Clarendon Press, 1989 (Introduction by the Editors).

Other recommended reading will be pushed to the students via Moodle.

Course Description:

The principle aim of this course is to introduce students to the regime of international law regarding armed conflict in order to empower students to apply the relevant principles and characteristics of this regime in the conduct of operations by the Canadian Forces. Upon completion of the course, students will be capable of identifying and distinguishing the two principal bodies of law concerning armed conflicts and applying the relevant principles to specific factual contexts.

This legal regime is comprised of two separate bodies of rules governing the actions of states in armed conflict. The first, referred to as *jus ad bellum* (the law for war), governs the legality of a state's resort to the use of force. The second body of rules, *jus in bello* (the law in war), regulates conduct of hostilities once armed conflict has commenced. The body of rules contained in *jus in bello* is also referred to as International Humanitarian Law (IHL), the Law of Armed Conflict (LOAC) and sometimes the Law of War (LoW). This course will focus principally upon *jus in bello*, including the means and methods of warfare, the humanitarian protections accorded under the law and criminal responsibility for breaches of the LOAC.

Specific objectives. The course begins with an introduction to the nature and sources of law and, more specifically, of international law, including a brief history of the development of both *jus ad bellum* and *jus in bello*. This will provide a foundation for the subsequent study of the numerous treaties, conventions and principles of customary international law that form the basis for the law of armed conflict. Particular emphasis will be placed on the four *Geneva Conventions* of 1949 and the two *Additional Protocols to the Geneva Conventions* of 1977.

A common theme addressed within this course concerns the challenges facing the application and enforcement of this body of law under modern notions and conditions of armed conflict. In particular, the course will address the types of conflicts and the applicable thresholds that trigger the application of the law of armed conflict; the effect of the law on civilians; ramifications for the conduct of hostilities on land, at sea and in the air; and the implementation and responsibility for the law of armed conflict including the recent developments supporting its enforcement.

Pedagogical Method:

The course will consist predominantly of lecture presentations and class discussions. Other media, including videos, PowerPoint presentations and excerpts from newspapers and other media, will supplement the lectures. The classroom activities and individual research and work will permit the students to learn and apply the key principles and specific legal rules and customs of the law of armed conflict. The course is also intended to stimulate critical thinking about the many issues and current applications of this legal regime in modern military operations. Although the lecturer will provide handouts for certain classes, students will be responsible for their own note-taking.

As with all RMC courses, student attendance is obligatory, unless the student is excused in accordance with Cadet Wing policy. Students will be expected to arrive prepared to discuss the principal elements of each class. In particular, they will be expected to have read the required reading for each class. Although the recommended readings are not mandatory, they serve to augment the students' understanding of the principal readings. Additionally, the lecturer will provide supplemental guidance for each week in the respective Moodle entry. Since the course will rely heavily on the actual provisions in the many conventions and treaties, students should bring the *Collection of Documents on the Law of Armed Conflict* and *The Law of Armed Conflict at the Operational and Tactical Level* to each class.

Evaluation:

Class Participation:	10%
Class Presentation:	20%
Research Paper:	30%
Final Examination:	40%
Total:	100%

Research Paper & Presentation:

Significant effort will be required for the research paper and accompanying presentation. Each student will be expected to delve more fully into a specific facet of the LOAC. Students may choose from a proposed list of topics or a topic of their choice. In all cases, students must seek approval of any topic from the lecturer no later than 28 January 2015. Based upon their research, students will prepare and deliver a 10-minute presentation on their topic, and will subsequently submit a research paper. Prior to submitting the research paper, students will also be obliged to submit an outline (or draft) the paper for feedback from the lecturer (an outline is the minimum required; however, students may, and are encouraged to, prepare a draft of their paper). The due date for the outline or draft is 23 Feb 2015, at the beginning of class. Although the outline (or draft) will not be marked, it will provide each student with valuable feedback which, combined with feedback from the class presentation, will assist students in the completion of their research paper.

Class Presentation: Students will prepare a 10-minute presentation, to be delivered to their peers during one of two classes identified in the Lecture Schedule below. The presentation will reflect the same subject that the student selects for the research paper, and preparation of the presentation, and the subsequent feedback, are intended to assist the student with the completion of his or her research paper. Marks for the presentation will be assigned based upon: (i) the student's ability to present the subject in a clear and concise manner; (ii) the quality of research and preparation; and (iii) the student's ability to respond to questions following the presentation. Each student will be tasked to provide a critique of one of their peers; however, all students will be expected to attend and participate through interaction with each presenter. The quality of participation by students during their peers' presentations will be factored into their 10% 'Participation' mark.

Research Paper: This written submission must be set in 12-point Arial typeface, double-spaced, with 1 inch margins (top, bottom and sides). Submissions should be no more than 3000 words (approximately 8 to 10 pages), including footnotes, but excluding the bibliography and any relevant annexes. Footnotes and the bibliography shall be completed in accordance with the *Canadian Guide to Uniform Legal Citation*, 7th Ed. (Scarborough: Carswell, 2010) (NB: the lecturer will provide copies of the key provisions from this reference guide). Marks will not be deducted automatically if a student exceeds the set word limit; however, students should take note that the ability to present an issue or argument in a clear and concise manner reflects upon both presentation and structure, as described in the evaluation criteria below.

The research paper is due not later than 1600 hrs, Tuesday 7 April 2015. Students will submit a hard-copy and an identical electronic copy of their paper to the lecturer. The hard-copy can be submitted to the lecturer in class or by dropping it off in a marked envelope at the Canadian Forces Military Law Centre. The electronic copy will be submitted to the lecturer at the e-mail address identified on page one of this syllabus. A late penalty of 10% per day will be applied unless exigent circumstances warrant the

granting of an extension. Students who believe that they have a valid operational or personal reason for seeking an extension may petition the lecturer. Any such petition *must* be received in writing prior to the assignment's due date.

Research paper evaluation criteria: The research paper will be marked according to the following categories and percentages of the mark:

Presentation, grammar, spelling, diction, citation style and consistency, etc.	20%
Paper structure: Introduction, Development & Analysis, Conclusion/Thesis	20%
Research quality, analysis, logic, originality and sophistication	60%
Total:	100%

To some students of politics, the nature and scope of legal concepts may appear to be extremely technical; consequently, the research paper may appear to be a daunting task. The outline (or draft) of the research paper and the class presentation are designed to provide assistance to students when developing their understanding of the relevant issues and resulting argument. The concepts that we will discuss during the course do not always have universally accepted solutions or conclusions. The problems that develop within the context of the LOAC do not always have simple solutions; states-men and -women, legal scholars and other stakeholders struggle with these problems. The research papers and presentations will be evaluated on how effectively the students have: (i) identified the issues and relevant criteria for evaluation of these issues; (ii) considered the limitations and courses of action open to decision-makers; and (iii) analysed the strengths and weaknesses of the available options. Students are encouraged to seek guidance and feedback from the lecturer. Active and considered participation in each class will assist students with the development of their presentations and papers.

Plagiarism: Plagiarism is both a service offence under the Code of Service Discipline and a contravention of the RMCC Academic Regulations, and can result in charges under the Code of Service Discipline, academic sanction, or both. The RMCC Academic Regulations define plagiarism as: (1) using the work of others and attempting to present it as original thought, prose or work. For example, this includes the failure to appropriately acknowledge a source, misrepresentation of cited work, and misuse of quotation marks or attribution; (2) failure to acknowledge adequately collaboration or outside assistance; and (3) copying. If a student is concerned that a portion of his/her paper or presentation may constitute plagiarism, the student should discuss the issue with the lecturer before conducting the presentation or submitting the paper.

Lecture Topics & Proposed Schedule:

1. 05 Jan 15 – Introduction to LOAC Study and a Brief History of the LOAC

Required Reading:

- a) *The Law of Armed Conflict at the Operational and Tactical Level*, c. 1 & 2
- b) Solis, c. 1 (in particular, pp. 3-10 and 20-26), c. 2, pp. 38-57. If you can, it would be valuable at least to skim c. 3.
- c) Green, c. 1, pp. 1-25; c. 2, pp. 26-65

Recommended reading:

- a) Adams & Guelff, *Documents on the Law of War*, 3d Edition, "Introduction by the Editors" (Posted on Moodle)
- b) Aust. *Handbook of International Law*, c. 12: "The law of armed conflict (international humanitarian law)," in particular, pp. 251-255
- c) Telford Taylor, "Just and Unjust Wars", from Malham M. Watkin (ed), *War, Morality, and the Military Profession* (Westview Press, 1986), pp. 226 to 238 (Posted on Moodle)
- d) James L. Childress, "Just War Theories: The Bases, Interrelations, Priorities, and Functions of their Criteria", from Malham M. Watkin (ed), *War, Morality, and the Military Profession* (Westview Press, 1986), pp. 256 to 276 (Posted on Moodle)

2. 12 Jan 15 – Sources and Principles of the Law of Armed Conflict

Required Reading:

- a) *The Law of Armed Conflict at the Operational and Tactical Level*, c. 2
- b) Solis, c. 1, (in particular, pp. 11-26), c. 7, c. 2, pp. 38-57, c. 3, pp. 73-107
- c) Dinstein, c. 1, pp. 1-32
- d) Green, review c. 2, read c. 21, pp. 387-398

Recommended reading:

- a) If not done already, review the recommended reading for Seminar 1.

3. 19 Jan 15 – Structure and Scope of the Law of Armed Conflict

Required Reading:

- a) Solis, review c. 2, read c. 3 and 4
- b) Dinstein, review c. 1
- c) Green, review c. 1 and 2

Recommended reading:

- a) Brownlie, *Public International Law*, c. 27, "The Law of Treaties" (Moodle)
- b) *Vienna Convention on the Law of Treaties*, 1969 (Posted on Moodle)
(http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

4. 26 Jan 15 – *Jus ad Bellum*

Required Reading:

- a) Solis, c. 5 (pp. 149-169)
- b) Green, c. 4, particularly pp. 91-99

Recommended Reading:

- a) Thomas M. Frank, *Recourse to Force: State Action Against Threats and Armed Attacks*, (Cambridge: Cambridge Univ. Press, 2002)
- b) Yoram Dinstein, *War, Aggression and Self-Defence*, 3d ed (Cambridge: Cambridge Univ. Press., 2001)
- c) Aust. *Handbook of International Law*, Chap. 10 "The United Nations, including the use of force"

*** Students must identify their research topic no later than noon, 28 Jan 14.**

5. 2 Feb 15 – Application of LOAC: When, to what, and to whom?

Required Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 3 and skim c. 4 (ss. 5 to 8)
- b) Solis, review c. 5 and read c. 6 (particularly ss. 6.0 to 6.2 and 6.9 to 6.12)
- c) Green, review c. 3 and 4, read c. 5 and 6
- d) *Geneva Conventions, 1949*, common Arts. 2 and 3
- e) *Additional Protocol 1, 1977*, Preamble and Arts. 1 to 7

Recommended Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 13

6. 9 Feb 15 – Application of LOAC: Use of Force, ROE and Targeting

Required Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 4
- b) Solis, c. 14 (and skim c. 13)
- c) Dinstein, c. 2, c. 4 (if pressed for time, skim c. 2 and read c. 4)

Recommended Reading:

- a) Solis, c. 13, 15
- b) Dinstein, c. 6, 7
- c) Green, c. 7, 8 and 9
- d) *Law of Armed Conflict and the Operational and Tactical Level*, c. 6, 7 & 8

16 Feb 15 – No Class – Mid-Term Reading Week

7. 23 Feb 15 – Hague Law, Law Relative to the Conduct of Hostilities: Means and Methods of Warfare

Required Reading:

- a) Dinstein, c. 8
- b) Green., c. 7, 8 & 9 (focus on means and methods, rather than weapons)
- c) *Law of Armed Conflict and the Operational and Tactical Level*, c. 4, 6, 7 and 8

Recommended Reading:

- a) Solis, c. 11

*** Outline (or Draft) of research paper is due at the beginning of this class.**

8. 2 Mar 15 – Limitations or Restrictions on the Use of Certain Weapons

Required Reading:

- a) Green, c. 7, 8 & 9 (focus on weapons)
- b) Dinstein, c. 3
- c) *Law of Armed Conflict and the Operational and Tactical Level*, Chap. 5

Recommended Reading:

- b) Solis, c. 16, 17

9. 9 Mar 15 (Periods 1 & 2) – Combatant Status & Treatment of Prisoners of War

Required Reading:

- a) *The Law of Armed Conflict at the Operational and Tactical Level*, c. 3 & 10 plus c. 15 (section 4)
- b) Solis, c. 6 (particularly pp. 186-202, 224-238)
- c) Dinstein, c. 2
- d) Green, c. 6 & 10
- e) *Prisoner of War Status Determination Regulations* (SOR 91-134)

Recommended Reading:

- a) CF Doctrine Manual: *Prisoner of War Handlings, Detainees and Interrogation & Tactical Questioning in International Operations*, B-GJ-005-110/FP-020
- b) Judge Advocate General Strategic Paper Series, Issue 1: *The Law of Interrogations – The Issue of Torture and Ill-Treatment*, A-LG-007-SLA/AF-001, 4 June 2008
- c) Green, c. 13

9 Mar 15 (Period 3) – Geneva Law: Treatment of Wounded, Sick, Shipwrecked, Dead and Civilians

Required Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 4, 9 & 11
- b) Solis, c. 6 (ss. 6.9 to 6.11)
- c) Dinstein, c. 5 and 6
- d) Green, c. 11 & 12

10. **16 Mar 15 – Class Presentations:** Each student will present a synopsis of their research paper – not to exceed 10 minutes. One fellow student will provide a detailed critique of the presentation. Separate instructions will be issued to students concerning the conduct of the presentations.

11. 23 Mar 15 – Non-International Armed Conflicts/Internal Conflicts

Required Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 17
- b) Green, c. 19
- c) *Additional Protocol II, 1977* (Students should at least familiarise themselves with the nature of the 28 articles of this Protocol)

12. 30 Mar 15 – Implementation, Individual and Criminal Responsibility and Enforcement of LOAC

Required Reading:

- a) *Law of Armed Conflict and the Operational and Tactical Level*, c. 15 & 16
- b) Solis, c. 8, 9, 10 (Although these chapters represent 100 pages of reading, they provide a comprehensive discussion of this topic and students should endeavour at least to skim these chapters.)
- c) Dinstein, c. 9
- d) Green, c. 17 & 18
- e) *Crimes Against Humanity and War Crimes Act*, S. C. 2000, C. 24, ss. 4-8
- f) *Statute of the International Criminal Court, 1998*, Rome, 17 July 1998 (ss. 5-8, & Part 3 (ss. 22-33))

13. 6 Apr 14 – No Class – Easter Monday