

# PHIL 455: Advanced Philosophy of Law

## International Law and War

Spring 2024

Prof. Tony Reeves

Email: [areeves@binghamton.edu](mailto:areeves@binghamton.edu)

**Office Hours:** Tuesday, 2:00 – 4:00 PM (Library Tower 1217)

I will be in my office and available during office hours, but you can make appointments to see me at other times. My preference is that we make appointments by email, and have substantive discussions face-to-face.

### Course Description

The course will investigate the nature and status of international law, with a focus on international criminal law and the law of war. Almost no one doubts that law is a quite real and important social phenomenon in domestic contexts across the globe. Also, many practitioners, theorists, and laypersons believe that at least some bodies of domestic law are legitimately enforced, and further that these bodies bind subjects in conscience (i.e., that subjects normally have an obligation to obey). When it comes to international law, however, each of these contentions become considerably more problematic. The international order is frequently ill-positioned to enforce what is seen as its law, and some actors appear to flout it with impunity. In what sense, then, is law actually operative in the international sphere, and how should the differences between domestic and international institutions impact our expectations of them? Should international ‘law’ be regarded as a useful and important basis for collective action or problem solving? What goods or averted perils are within its capacity? Further, even if the international order is possessed of genuine law, what is the basis for its legitimate imposition on sovereign states and autonomous persons? As we will see, it’s not clear that international law can draw upon the same normative resources as some domestic law to legitimate force and a claim to authority, e.g., it seems implausible to suggest that international law has democratic warrant. Also, the way in which moral norms should inform the observance of international law is not wholly evident. To provide a kind of case study and focus for our investigation, we will take up these general issues in the context of the law of war, with particular attention paid to international humanitarian law (i.e., the laws of armed conflict) and relevant international criminal law.

### Learning Objectives

The student will:

- Be familiar with some of the recent philosophical work on the topics of international jurisprudence, legitimacy, authority, the law and morality of war, and international criminal law

- Develop and be capable of articulating cogent and defensible views on legitimate international governance and status of the law of war
- Demonstrate an ability to write effectively, coherently, and analytically, and with a high degree of argumentative sophistication (C)
- Demonstrate an ability to revise and improve writing in both form and content (C)
- Develop an ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently talk about complex issues
- Demonstrate an understanding of the human experience through the study of philosophy (H)

## **Readings**

Students are expected to show up to class prepared to discuss, and answer questions concerning, the assigned reading. This is a seminar, so there will be a focus on student to student and instructor to student dialogue. The class discussion will center on students addressing the issues raised by the texts. Successful participation in class, then, requires familiarity with the readings for the course.

The required text for purchase is:

Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977 or later edition)

Other books we will use include the following, but these are available electronically through the library:

Charles Beitz, *Political Theory and International Relations* (Princeton 1979/1999)

Jeff McMahan, *Killing in War* (Oxford, 2009)

Adil Haque, *Law and Morality at War* (Oxford, 2017)

In addition to these texts, much of the required reading will be available on Brightspace (marked “[ER]” on the schedule of readings).

## **Requirements and Expectations**

**Statement from the Binghamton Faculty Senate Executive Committee** on expectations for a four credit course: This course is a 4-credit course, which means that in addition to the scheduled meeting times, students are expected to do at least 9.5 hours of course-related work outside of class each week during the semester. This includes time spent completing assigned readings, participating in lab sessions, studying for tests and examinations, preparing written assignments, and other course-related tasks.

The expectations for this seminar are in conformity with this statement.

### Grade Breakdown:

Participation	25%
Short Paper	20%
Long Paper Draft*	5%
Long Paper	50%

**Use of ChatGPT, or any other “generative AI” technology or similar writing tool, to complete any aspect of the course requirements qualifies (in this course) as academic dishonesty. In other words, use of such tools in this course is prohibited.**

Short Paper: Students will write a 5 – 6 page paper on an assigned topic.

Long Paper: Students will be required to write, in stages, a 15-page paper. I will provide a topic or topics, but students may develop their own in consultation with me. Any paper topic must be approved by me in advance. The writing of the paper will occur in stages, and students should expect to invest considerable effort over the course of several weeks into writing the paper.

*Stage One (Topic Selection):* One week after possible topics have been distributed, hand in a piece of paper indicating which of the topics you are going to write on. If you are writing on your own topic, you should discuss it with me.

*Stage Two (Polished Draft):* Roughly three weeks after the assignment is distributed, you will hand in a polished ten-page draft of your paper. The better the draft, the more likely it is I will be able to provide you with comments that will assist you in producing a good final version. Submitting an adequate draft will earn you the full 5% of the draft grade, whatever your final grade. I will return this draft with comments. Failure to turn in a draft, or submitting an inadequate one (e.g., one of insufficient length, or one carelessly assembled and/or unfamiliar with relevant material), will result in failing to receive the 5% credit for submitting a draft.

*Stage Three (Revision):* After the draft is returned with comments, you will have about ten days to revise your paper.

In general, papers will be assessed on the basis of: (1) accuracy and completeness in portraying the material in question, and (2) the development of a well-reasoned, original assessment of that material.

Students are required to maintain a digital backup of all submitted work until the end of the semester. Students may be asked to submit their papers through Turnitin.

Participation: Students will be assessed on their contributions in class. The grade will be based on the frequency with which students provide valuable verbal contributions to the class. Such contributions include informed responses to instructor questions, participation in classroom discussions, raising relevant and cogent questions, and actively participating in group work.

Below are some broad guidelines on the participation grade standards:

**A:** Arrives prepared for discussion; participates multiple times in a responsive and informed way; does not dominate conversation; listens to comments from others and responds; actively engages in any classroom activities.

**B+:** Arrives prepared for discussion; participates at least once in a meaningful way; demonstrates knowledge of the reading material.

**C+:** Is attentive, but does not contribute meaningfully to the discussion.

**C-:** Present, but not always engaged.

**D:** Present, but often disengaged.

**F:** Normally disengaged.

### **Course Policies**

**Attendance:** Attendance in class is mandatory. Students should arrive promptly at the beginning of class with the assigned reading for the day in hand. Students are permitted (3) unexcused absences without penalty. Each additional unexcused absence will result in the student's final grade being reduced by one-third a letter grade (e.g. a B becomes a B-).

**Late Papers:** Papers turned in late will be penalized one-third a letter grade per day of lateness.

**Electronics:** Without special permission, the use of electronic devices, including computers, is not permitted during class time.

**Academic Honesty:** Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. The **Student Academic Honesty Code** can be found on the University Bulletin.

**AI Policy:** As noted above, the use of AI technology to complete any aspect of class requirements is prohibited, and will be treated as academic dishonesty. Whatever the proper role of generative AI in other domains, its use in this class is in tension with the learning objectives. This is an opportunity to develop reading, writing, creative problem-solving, and analytical abilities- to learn to think capably and independently. I strongly encourage you to approach the course expectations from that perspective.

### **Schedule of Readings**

The following plan is subject to revision - I will inform the class of any changes as we go. Listed on the left are the dates of the class meetings, on the right are the readings that will be discussed on those dates. Readings with [ER] next to them are available on Brightspace.

Date	Reading
Jan 16	Introductory class
Jan 18	Thucydides, Melian Dialogue [ER] Hans Morgenthau, <i>Politics Among Nations</i> , 4-15 [ER]
Jan 23	Walzer, <i>Just and Unjust Wars</i> , 3-20 Hobbes, <i>Leviathan</i> , chs. 6 (par. 1-12), 10, 11[ER]
Jan 25	Hobbes, Chs. 13-18
Jan 30	Hobbes, Chs. 19, 20 (par. 1-15), 21, 26 (par. 1-24), 28-30
Feb 1	Susanne Sreedhar, “Defending the Hobbesian Right of Self-Defense” <i>Political Theory</i> (2008), 781-802 [ER]
Feb 6	Charles Beitz, <i>Political Theory and International Relations</i> , Part One (13-66)
Feb 8	Beitz, <i>Political Theory and International Relations</i> , Part Two (69-123) <b>Short Paper Assigned</b>
Feb 13	Oona Hathaway & Scott Shapiro, “Outcasting: Enforcement in Domestic and International Law” <i>Yale Law Journal</i> (2011), 261-268, 282-290, 302-319 [ER]
Feb 15	David Lefkowitz, “H.L.A. Hart: Social Rules, Officials, and International Law”, in <i>Philosophy and International Law: A Critical Introduction</i> (2020), 20-39
Feb 20	Samantha Besson, “Theorizing the Sources of International Law” in <i>The Philosophy of International Law</i> (2011), 163-185 [ER]
Feb 22	Martha Nussbaum, “Capabilities and Human Rights”, <i>Fordham Law Review</i> (1997) 285-297 [ER] Charles Beitz, <i>The Idea of Human Rights</i> (2009), selections [ER] <b>Short Paper Due</b>
Feb 27	David Luban, “Just War and Human Rights” <i>Philosophy &amp; Public Affairs</i> (1980) [ER]
Feb 29	Walzer, <i>Just and Unjust Wars</i> , 21-48, 51-73
Mar 12	Walzer, <i>Just and Unjust Wars</i> , 74-108
Mar 14	Jeff McMahan, <i>Killing in War</i> , 1-51
Mar 19	McMahan, <i>Killing in War</i> , 51-92
Mar 21	McMahan, <i>Killing in War</i> , 203-235
Mar 26	Henry Shue, “Do We Need a ‘Morality of War’?”, in <i>Just and Unjust Warriors</i> (Oxford 2008), 87-111 [ER]
Mar 28	Adil Haque, <i>Law and Morality at War</i> , 1-55
Apr 2	Haque, <i>Law and Morality at War</i> , 56-83 <b>Long Paper Topics Distributed</b>
Apr 4	Haque, <i>Law and Morality at War</i> , 84-136
Apr 9	Haque, <i>Law and Morality at War</i> , 137-174 <b>Select Topic</b>

<b>Apr 11</b>	Haque, <i>Law and Morality at War</i> , 175-235
<b>Apr 16</b>	Haque, <i>Law and Morality at War</i> , 236-255
<b>Apr 18</b>	David Luban, “A Theory of Crimes Against Humanity”, <i>Yale Journal of International Law</i> (2004), 86-93, 116-123 [ER] Tony Reeves, “Impunity and Hope”, <i>Ratio Juris</i> (2019), 415-425 [ER]
<b>Apr 23</b>	Reeves, “Impunity and Hope”, 425-436 <b>Long Paper Draft Due</b>
<b>Apr 30</b>	R.A. Duff, “Authority and Responsibility in International Criminal Law” (2011) [ER] <b>Draft Returned</b>
<b>May 2</b>	Tony Reeves, “Liability to International Prosecution: The Nature of Universal Jurisdiction” <i>European Journal of International Law</i> (2017) [ER]

**TERM PAPER DUE BY 5 PM, May 10. You are certainly welcome to submit it earlier.**