

Law & International Security

Prof. Dr. Ebrahim Afsah
v. 1.0

The course meets from 6 May until 3 June 2020.
Wednesdays, 10:00–12:00, **online on Zoom**, session IDs can be found on Moodle

Description

Conflict is a normal part of human life, so its presence at the international level should not surprise us. Still, human beings are social animals and require security to sustain communal life, usually provided by states. The current international security architecture is built on particular axiomatic conceptions of how states operate, many of which have become increasingly tenuous. This course presents the genesis of this architecture in the two world wars and ensuing Cold War, and its drastic transformation since 1989.

Since then, the landscape of conflict has dramatically changed, arms control has become eclipsed by proliferation concerns, and inter-state warfare by asymmetric, often criminal violence. As states have become weaker or collapsed outright, fighting has become more asymmetric, while drastically better communication channels have given remote local struggles global bearing. Consequently, international efforts to address violent conflict have multiplied, for instance through peace-keeping, peace-making, territorial administration, sanctions, mediation, etc. But the intransigence of many such conflicts has likewise exposed the limitations of the existing institutional, legal and conceptual tool-box.

This course presents the changing character of violence and international efforts to deal with it. The focus lies on the practical challenges of normative ambiguity, strategic competition, resource constraints and operational decision-making. The normative clarity of international law is contrasted with the existence of competing interests between states and non-state actors, in other words: politics, and the inherent limitations of collective redress.

Course materials will be made electronically available.

Prerequisites

Knowledge of international law and a sufficient command of English.

Exam

The grade for this course consists of class participation (20%) plus one written, two day, open-book book exam of maximum 2000 words excluding footnotes (80%). You can write your answer in either German, English or French.

Students will have to answer two questions out of six, thus accommodating to some degree personal preferences. The exam is aimed to motivate a renewed engagement with the course material and to cement the retention of the above stated Learning Outcomes, which will guide grading. Special emphasis will be given to the mastery of comparative approaches.

Curriculum and Readings

1st Session, 4th May: Medical Analogies, Triage and Realism

- What is the difference between first aid, preventative, palliative and rehabilitative care?
- What is triage and how does it affect emergency medicine?
- How can we analogize between patient histories and international conflict?
- What does this say about the intervener, his abilities and responsibilities?
- What are contingencies?

Mandatory Material:

Thomas B. Repine, Major, Philip Lisagor, Colonel, and David J. Cohen, Colonel, "The Dynamics and Ethics of Triage: Rationing Care in Hard Times," *Military Medicine*, Vol. 170(6), No. 6 (2005) pp. 505-9.

Lakhdar Brahimi *et al.*, *Report of the Panel on United Nations Peace Operations*, A/55/305 - S/2000/809, 21 August 2000, United Nations, New York (2000), available at: www.un.org/peace/reports/peace_operations/, accessed on: 10 Februar 2009.

Additional Material:

Nico J. Schrijver, "The Future of the Charter of the United Nations," *Max Planck Yearbook of United Nations Law*, Vol. 10 (2006) pp. 1-34.

2nd Session, 6th May: Historical Analogies and Institutional Continuities

- To what extent can external actors influence, or even impose, constitutional orders?
- Are there differences in state functions more or less amenable to external influence?
- What is mainstream reading of the American occupation of Germany and Japan?
- What is the relative weight of material versus ideational factors?
- Can useful lessons be drawn for contemporary post-conflict?

Mandatory Material:

Stanley N. Katz, "Gun Barrel Democracy? Democratic Constitutionalism Following Military Occupation: Reflections on the U.S. Experience in Japan, Germany, Afghanistan and Iraq, Princeton Law and Public Affairs Working Paper No. 04-010," *Princeton Law and Public Affairs Working Paper Series* (2004).

Steven Van de Walle and Zoë Scott, *The Role of Public Services in State-and Nation Building: Exploring Lessons from European History for Fragile States*, GSDRC Research Paper (Governance and Social Development Resource Centre, University of Birmingham, 2009), available at: hdl.handle.net/1765/17084, accessed on: 20 September 2015.

Additional Material:

Ted Galen Carpenter and Malou Innocent, *Escaping the 'Graveyard of Empires': A Strategy to Exit Afghanistan* (Washington, D.C.: The Cato Institute, 28 January 2010).

Peter Viggo Jakobsen and Jens Ringsmose, "In Denmark, Afghanistan is Worth Dying For: How Public Support for the War was Maintained in the Face of Mounting Casualties and Elusive Success," *Cooperation and Conflict*, Vol. 50(2), No. 2 (2015) pp. 211-27.

James Dobbins *et al.*, *America's Role in Nation-Building from Germany to Iraq* (Santa Monica: RAND, 2003).

3rd Session, 11th May: Evolution of Conflict Management since 1945

- What effect did the Cold War have on the structure of the United Nations?
- What changed after the Cold War?
- Why is there no UN standing army? Would it be a good idea?
- Which phases of UN conflict management can you identify?
- Which normative, ideological and practical challenges can you identify?

Mandatory Material:

Alex Morrison, "Fiction of a U.N. Standing Army, The Non-Traditional Missions and the Use of Force: The Debate over Peacekeeping, Peace Enforcement, and Related Operations," *Fletcher Forum of World Affairs*, Vol. 83(1), No. 1 (1994) pp. 83-96.

Marrack Goulding, "The Evolution of United Nations Peacekeeping," *International Affairs*, Vol. 69(3), No. 3 (1993) pp. 451-64.

Additional Material:

Shibley Telhami, "Is a Standing United Nations Army Possible? Or Desirable?," *Cornell International Law Journal*, Vol. 28(3), No. 3 (1995) pp. 673-83.

Randall Lesaffer, "Too Much History: From War as Sanction to the Sanctioning of War," in: *The Oxford Handbook of the Use of Force in International Law*, ed. by Marc Weller (Oxford: Oxford University Press, 2015) pp. 35-55.

4th Session, 13th May: Conceptual and Legal Framework

- What are zero-sum games?
- What is the role of force in conflict management?
- What is the role of the global balance of power?
- Which changes in the legal framework can you detect?
- Which negative effects of external intervention can you identify?

Mandatory Material:

James Sloan, "The Evolution of the Use of Force in UN Peacekeeping," *Journal of Strategic Studies*, Vol. 37(5), No. 5 (2014/07/29 2014) pp. 674-702.

Edward N. Luttwak, "Give War a Chance," *Foreign Affairs*, Vol. 78(4), No. 4 (1999) pp. 36-44.

Additional Material:

Kenneth J. Campbell, "Once Burned, Twice Cautious: Explaining the Weinberger-Powell Doctrine," *Armed Forces & Society*, Vol. 24(3), No. 3 (1998) pp. 357-74.

Michael Moodie, "Tragedy in the Balkans: A conflict ended – or interrupted?," *Small Wars & Insurgencies*, Vol. 9(1), No. 1 (1998) pp. 12-31.

5th Session, 18th May: Conflict Prevention

- What is the difference between Chapter Six and Seven measures in the UN Charter?
- What is 'forceful persuasion' and what does it depend on?
- How is that different from neutral measures?
- What is the difference between primary and secondary sanctions?
- What is the causal mechanism of sanctions?

Mandatory Material:

Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004, United Nations, Geneva (25 January 2005), available at: http://www.un.org/news/dh/sudan/com_inq_darfur.pdf, accessed on: 24 July 2015, pp. 2–6. read the Executive Summary.

Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, A/47/277 S/24111, United Nations, New York (17 June 1992), available at: https://peaceoperationsreview.org/wp-content/uploads/2015/08/an_agenda_for_peace_1992.pdf.

Barry R. Posen, "Military Responses to Refugee Disasters," *International Security*, Vol. 21(1), No. 1 (1996) pp. 72-111.

Additional Material:

Alexander L. George, *Forceful Persuasion: Coercive Diplomacy as an Alternative to War* (Washington, D.C.: US Institute of Peace Press, 1991).

Barry R. Posen, "The Security Dilemma and Ethnic Conflict," *Survival*, Vol. 35(1), No. 1 (1993) pp. 27-47.

Stuart J. Kaufman, "Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence," *International Security*, Vol. 30(4), No. 4 (2006) pp. 45-86.

6th Session, 20th May: Peace-Keeping

- Operationally, what kind of troops are used in 'classical' peace-keeping?
- What is the strategic logic of peace-keeping?
- What are the chief political, tactical and social challenges?
- What is the track-record?
- What is the legal framework?

Mandatory Material:

Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace: The United Nations since the 1990's* (New Haven: Princeton University Press, 2000), excerpt from Chapter Six, Case Study on Cyprus

UN DPKO, "Where We Operate," New York, United Nations Department of Peacekeeping Operations, 2019, available at: <https://peacekeeping.un.org/en/where-we-operate>.

Additional Material:

Boutros Boutros-Ghali, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations.*, United Nations, New York (25 January 1995), available at: <https://digitallibrary.un.org/record/168325>.

Kofi Annan, *In Larger Freedom. Towards Development, Security and Human Rights for All. Report of the Secretary-General*, A/59/2005/Add3, United Nations, New York (26 May 2005), available at: <https://www.ohchr.org/Documents/Publications/A.59.2005.Add.3.pdf>.

Lenard J. Cohen and Alexander Moens, "Learning the lessons of UNPROFOR: Canadian peacekeeping in the former Yugoslavia," *Canadian Foreign Policy Journal*, Vol. 6(2), No. 2 (1999) pp. 85-100.

Ted A. Van Baarda, "A Legal Perspective of Cooperation Between Military and Humanitarian Organizations In Peace Support Operations," *International Peacekeeping*, Vol. 8(1), No. 1 (2001) pp. 99-116.

7th Session, 25th May: Peace-Enforcement

- Operationally, what kind of troops are used in peace-enforcement?
- What is the strategic logic of peace-enforcement?
- What are the chief political, tactical and social challenges?
- What is the track-record?
- What is the legal framework?

Mandatory Material:

Scott Sheeran, "The Use of Force in United Nations Peacekeeping Operations," in: *The Oxford Handbook of the Use of Force in International Law*, ed. by Marc Weller (Oxford: Oxford University Press, 2015).

Niels Blokker, "Reconfiguring the UN System of Collective Security," in: *The Oxford Handbook of the Use of Force in International Law*, ed. by Marc Weller (Oxford: Oxford University Press, 2015).

Additional Material:

Michael Byers and Simon Chesterman, "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law," in: *Humanitarian Intervention*, ed. by J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003) pp. 177-203.

Niels Blokker, "Outsourcing the Use of Force: Towards More Security Council Control of Authorized Operations?," in: *The Oxford Handbook of the Use of Force in International Law*, ed. by Marc Weller (Oxford: Oxford University Press, 2015).

8th Session, 27th May: Humanitarian Assistance and Intervention

- What are the main ethical conundra?
- What is the test to decide the morality of a given intervention?
- What is the test to decide its legality?
- What, if any, is the role of neutrality?
- Is there a duty to accept humanitarian assistance? Or to provide it?

Mandatory Material:

Kofi Annan, "Two Concepts of Sovereignty," *The Economist*, (London, 18 September 1999), p. 49.

Aidan Hehir, "Humanitarian Intervention: Past, Present and Future," *Political Studies Review*, Vol. 6(3), No. 3 (2008) pp. 327-39.

Ryan Goodman, "Humanitarian Intervention and Pretexts for War," *American Journal of International Law* (2006) pp. 107-41.

Nigel S. Rodley, "Humanitarian Intervention," in: *The Oxford Handbook of the Use of Force in International Law*, ed. by Marc Weller (Oxford: Oxford University Press, 2015) pp. 775-96.

Additional Material:

Robert A. Pape, "When Duty Calls: A Pragmatic Standard of Humanitarian Intervention," *International Security*, Vol. 37(1), No. 1 (Summer 2012) pp. 41-80.

Gareth J. Evans, Ramesh Thakur, and Robert A. Pape, "Correspondence: Humanitarian Intervention and the Responsibility to Protect," *International Security*, Vol. 37(4), No. 4 (Spring 2013) pp. 199-214.

9th Session, 3rd June: Post-Conflict Reconstruction

- What is a 'light-footprint'?
- What is the role of institutional continuities?
- What is the role of politics, especially bureaucratic politics?
- Does psychology matter?
- Can one move from emergency aid to development?

Mandatory Material:

Ebrahim Afsah, "Dysfunctional Resilience in the Afghan Civil Service" (Paper presented at the "Workshop on Constitutional Resilience in South Asia", University of Melbourne Law School, Melbourne, 5–7 December 2019).

Philip White and Lionel Cliffe, "Matching Response to Context in Complex Political Emergencies: 'Relief', 'Development', 'Peace-building' or Something In-between?," *Disasters*, Vol. 24(4), No. 4 (2000) pp. 314-42.

Additional Material:

Geoffrey Swenson, "Why US Efforts to Promote the Rule of Law in Afghanistan Failed," *International Security*, Vol. 42(1), No. 1 (2017) pp. 114-51.

Lucy Morgan Edwards, "State-building in Afghanistan: A Case Showing the Limits?," *International Review of the Red Cross*, Vol. 92(880), No. 880 (2010) pp. 967-91.

Ebrahim Afsah and Alexandra Hilal Guhr, "Afghanistan: Building a State to Keep the Peace," *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005) pp. 373-456.

10th Session, 8th June: Justice, Democracy and Territorial Administration

- How important is a common vision for the future?
- What is a 'security community'?
- What is 'good governance' and can it be measured?
- What is its relationship to the rule of law?
- Can 'territorial administrations' be likened to (neo-)colonialism?

Mandatory Material:

Ebrahim Afsah, "Guides and Guardians: Judiciaries in Times of Transition," in: *Judges as Guardians of Constitutionalism and Human Rights*, ed. by Martin Scheinin, Helle Krunke, and Marina Aksenova (London: Edward Elgar, 2016) pp. 251-77.

Hansjörg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor," *American Journal of International Law*, Vol. 95(1), No. 1 (2001) pp. 46-63.

Additional Material:

Barnett R. Rubin, "(Re)Building Afghanistan: The Folly of Stateless Democracy," *Current History* (April 2004) pp. 165-70.

Juan E. Méndez, "Constitutionalism and Transitional Justice," in: *The Oxford Handbook of Comparative Constitutional Law*, ed. by Michel Rosenfeld and Andrés Sajó (Oxford: Oxford University Press, 2012) pp. 1270-86.

Nathan J. Brown, "Egypt's Failed Transition," *Journal of Democracy*, Vol. 24(4), No. 4 (2013) pp. 45-58.