

Syllabus: Seminar (Fall 2012): Use of Force and Antiterrorism (Professor Paust)

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).

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

- Aug. 27 & 29: primary packet (IL casebook chapter 7) pages 1072-1090
- Sept. 3: holiday
- Sept. 5: pages 1090-1099 (U.N. Charter and 1970 Dec. & 1974 Dec. Aggression)
- Sept. 10: pages 1099-1133 (Self Defense)
- Sept. 12: pages 1133-1135 (Security Council Measures), 1135-1139, and resolutions on Iraq (1990) and (2003)
- Sept. 17 & 19: 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)
- Sept. 24: back to the primary packet (IL) pages 1152-1174 (starting U.S. war powers)
- Sept. 26: pages 1174-1198
- Oct. 1: pages 1199-1208 and documents
- Oct. 3: pages 1209-1223

II. The **Terrorism** Packet

- Oct. 8: (ICL packet, chpt. 12, Section 1) packet pages 825-842, proscriptions and definitional problems, elements and examples
- Oct. 10: discussion of the same
- Oct. 15: pages 842-856, and the four U.N. terrorism resolutions referred to plus merely the Tokyo Convention, Hague Hijacking Convention, and Hostage-Taking Convention
- Oct. 17: continue with the packet
- Oct. 22: (Sections 3 & 4, domestic laws and prosecution) pages 856-886

III. **Human Rights** Packet

Oct. 24 & 29: (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 new revelations regarding inner circle approval of water-boarding, the “cold cell” and other interrogation tactics

Oct. 31: 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

Nov. 5 & 7: 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)

Nov. 12: no class (work on your papers)

Nov. 14: continue with Law of War Packet

Nov. 19: continue discussion re: the Law of War Packet

Nov. 21: holiday (Thanksgiving on Nov. 22)

Nov. 26: continue discussion re: Law of War & possibly other material (later)

Nov. 22 & 28: continue discussion re: Law of War.

Dec. 3 on: no class sessions – finish your paper

deadline to turn in your paper: by 3 pm on Dec. 21 (Friday)

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 40 pages of text, exclusive of footnotes or endnotes, double-spaced, with one inch margins. Paper due Dec. 21, 2012 by 3 pm.

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

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, and prosecutions under the Seditious Conspiracy Statute, RICO, Aircraft Hijacking and Hostage-Taking legislation, and legislation concerning provision of material support to a foreign

terrorist organization; relevant human rights, especially concerning detention and treatment of detainees; and relevant laws of war, especially concerning the status, rights, and treatment of detainees, with attention to relevant provisions of the Military Commissions Act of 2006.