

SYLLABUS

CONTEMPORARY ISSUES AS TO NUCLEAR WEAPONS AND INTERNATIONAL LAW IN THE POST 9/11 WORLD

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Fordham University School of Law
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This international law seminar will explore issues as to the lawfulness of the use and threat of use of nuclear weapons in the Post 9/11 World in light of contemporary strategic realities, including Russia's increased adventurism and reliance on nuclear weapons; Iran's nuclear weapons program and the 2015 agreement; North Korea's nuclear weapons; the instability of Pakistan and possible availability of its nuclear weapons to terrorists; the risks and potential effects of an Indian/Pakistani nuclear war; the spread of terrorism and willingness of terrorists to use nuclear weapons; the risks of further nuclear proliferation and collapse of the NPT regime; the United States' continuing reliance on nuclear weapons notwithstanding its clear hegemony over the rest of the world in conventional weapons; the widespread practice of nuclear deterrence; and the relationship between nuclear power plants and nuclear weapons. The course will also focus on facts that are central to the legal analysis, including the characteristics and effects of nuclear weapons; psychological factors that affect policies as to nuclear weapons; litigation throughout the world concerning nuclear weapons; and the 1996 advisory decision of the International Court of Justice on the Legality of the Threat and Use of Nuclear Weapons. This will be a paper course and students will be required to present their papers in class. The assignments will consist of contemporary think tank, university, governmental, and military materials (generally available on line) and portions of the second edition (in process) of Charles J. Moxley, Jr., *NUCLEAR WEAPONS AND INTERNATIONAL LAW IN THE POST COLD WAR WORLD* (Austin & Winfield, scheduled for 2017) (to be provided electronically). This course can be used to satisfy the writing requirement.

Credits: 2

Prof.	Day/Time	Room
Moxley	Monday / 6:00 PM to 7:50 PM	4-06

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Following are the class assignments for this course. Our focus will be divided into essentially three main parts: (1) a review of the facts as to nuclear weapons and the nuclear weapons world, including as to the weapons themselves, the policies and practices of the nuclear weapons states and the overall strategic realities of the Cold War and of today's multipolar world; (2) an examination of the law applicable to the possession, use and threat of use of nuclear weapons; and (3) a more detailed examination of selective contemporary issues as to nuclear weapons, selected based upon the areas of interest of class members, particularly as represented by the paper topics students choose for the course.

Most of the readings for parts “1” and “3” of the course will consist of materials available on-line. The readings for part “2” will be taken from the work-in-process draft of the second edition of Professor Moxley’s book, *NUCLEAR WEAPONS AND INTERNATIONAL LAW IN THE POST COLD WAR WORLD*. Students will be provided with an electronic copy of the manuscript.

This will very much be a discussion course. Students will be encouraged to participate actively. Please bring the assigned readings to class or have them available on your laptop.

Students are expected to write a paper of approximately twenty-five pages. The paper may be used for writing credit. Students taking the course for writing credit will be expected to submit an outline and draft of their paper for comments, pursuant to a schedule that we will establish.

In writing their papers, students are expected to take the analysis to the next level. The objective is not to write up the information and analysis set forth in the text and assigned readings or the like, but rather to assimilate such materials, identify the pressing issues – and address them creatively, with a view hopefully towards advancing our understanding of the issues and development of possible solutions.

I will provide students with a list of proposed topics for papers – topics that seem to be of particular salience in today’s security environment. Students are also encouraged to come up with their own paper topics.

Students will have the opportunity to present their papers orally to the class in presentations of approximately twenty minutes and to answer questions from the professor and other students and participate in discussion of their topics for another approximately twenty minutes. We will start the student presentations about midway through the course, although the papers do not need to be turned in until the end of the examination period. Students are expected to circulate to the class at least a brief outline of their paper several days in advance of their oral presentation. Such outlines will not be graded and may be in rough form, particularly for students presenting early in the semester.

Except as noted below, grading will be determined as follows: class participation (30%); presentation and “defense” of one’s paper (20%); and the paper (50%). Students may contribute to their class participation grade by serving as a discussion leader with respect to assigned readings or by researching discrete issues that arise in class discussions, generally at the initiative of the student.

However, the second element in the grading, the presentation and defense of one’s paper, is optional. Students may, if they prefer, participate in a brainstorming discussion with respect to the subject matter of their paper with the class. Students taking this approach will not be graded for the brainstorming session. Instead, their paper will count as 70% of their grade.

For the third part of this course, when we will be focusing primarily on topics chosen by students, there will continue to be reading assignments. Students will be expected to draw from those assignments, as applicable, in their papers and class discussions.

Please note that legal analysis should make up at least half of every paper and related presentation. A paper may concentrate on one or more legal issues of interest, but should provide at least an overview of the universe of legal issues that may potentially be applicable to the particular topic or topics being addressed. As always in legal analysis, issue recognition is at the heart of the matter.

In light of the nature of modern communication in the courtroom and elsewhere, students who elect to make a formal presentation of their paper to the class are encouraged, when making their presentation, to use computer visuals and the like.

Professor Moxley is available at (212) 329-8553 and at cmoxley@moxleyadr.com

Class Assignments

Class 1 (8/22/16):

- Focus: Overview of the nuclear weapons world, including review of facts as to the weapons themselves and as to the policies and practices of the nuclear weapons states; review of the strategic environment during the Cold War and in today's multipolar world.
- Readings:¹
- Swedish International Physicians, materials on nuclear weapons, available at <http://laromkarnvapen.se/en/> (This is a large website with a lot of information organized in an intuitive way. While it is not particularly sophisticated and tends to oversimplify things, it is a good way to get an overall sense of facts and background as to the nuclear weapons world for any of you who have not had prior exposure to the area.)
- Henry Kissinger and Sam Nunn, "Next Steps in Reducing Nuclear Risks: The Pace of Nonproliferation Work Today Doesn't Match the Urgency of the Threat," Wall Street Journal op ed piece, March 5, 2013, available at <http://online.wsj.com/news/articles/SB10001424127887324338604578325912939001772>
- James E. Cartwright and Bruce G. Blair, "End the First-Use Policy for Nuclear Weapons." New York Times, op ed piece, Aug. 14, 2016, available at: http://www.nytimes.com/2016/08/15/opinion/end-the-first-use-policy-for-nuclear-weapons.html?_r=1
- The Heritage Foundation, "Nuclear Weapons and the Future of National Security," available at http://thf_media.s3.amazonaws.com/2014/pdf/NuclearWeaponsBookletFINAL.pdf (This brochure prepared by the conservative think tank, The Heritage Foundation, provides an introduction to the pro-nuclear weapons position.)
- International Committee of the Red Cross, Nuclear Weapons: Ending a Threat to Humanity," available at <https://www.icrc.org/en/document/nuclear-weapons-ending->

¹ As to some of the links, it may be necessary to cut and paste them onto a browser.

[threat-humanity](#)

- Congressional Research Service, “U.S. Strategic Nuclear Forces: Background Developments, and Issues,” available at <https://fas.org/sgp/crs/nuke/RL33640.pdf> (This is a good statement by a U.S. source as to many of the background facts as to nuclear weapons. This reports gets into much more detail than you need to pay attention to at this point, but you may find parts of it of general interest.)
- The Vatican, “Nuclear Disarmament: Time for Abolition,” available at <http://www.fciv.org/downloads/Holy%20See%20Contribution-Vienna-8-DEC-2014.pdf> (This is a particularly good presentation of concerns held by many as to nuclear weapons.)
- Testimony of Mr. Takashi Hiraoka, Mayor of Hiroshima, and Mr. Iccho Itoh, Mayor of Nagasaki, before the International Court of Justice, 7 November 1995 (22-39), available at http://www.nuclearweaponslaw.com/Hiroshima_Nagasaki.doc
- Optional: Images and Videos relating to Nuclear Weapons Prepared by Fordham Law School Student Zachary Novetsky: http://www.nuclearweaponslaw.com/NuclearWeapons Slideshow_Moxley.pdf

Class 2 (8/29/16):

- Focus: U.S. nuclear weapons policy and practice during the Cold War and in today’s multipolar world.
- Readings:
 - Department of Defense, “Nuclear Posture Review Report,” April 2010, pages i-xiv, available at <http://archive.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf>
 - Department of Defense, “Report on Nuclear Employment Strategy of the United States” (2013), available at <http://www.globalsecurity.org/wmd/library/policy/dod/us-nuclear-employment-strategy.pdf>
 - Federation of American Scientists, “U.S. Nuclear War Plan Updated Amidst Nuclear Policy Review,” available at <https://fas.org/blogs/security/2013/04/oplan8010-12/>
 - Union of Concerned Scientists, Memorandum to U.S. Arms Control Official about alert levels of U.S. Nuclear Forces, available at <http://www.ucsusa.org/sites/default/files/attach/2015/01/leaders-against-hair-trigger-alert.pdf>
 - June 10, 2015 letter of Lawyers Committee on Nuclear Policy and Physicians for Social Responsibility to President Obama concerning alert levels of U.S. nuclear weapons, available at <http://lcnp.org/pubs/Obama-letter-PSR-LCNP-June-2015.pdf>
 - Bulletin of the Atomic Scientists, “US nuclear forces, 2016,” available at <http://thebulletin.org/2016/march/united-states-nuclear-forces-20169232>

- Vancouver Declaration, February 11, 2011, “Law’s Imperative for the Urgent Achievement of a Nuclear-Weapon-Free World,” available at http://www.thesimonsfoundation.ca/sites/all/files/Vancouver%20Declaration_3.pdf

Class 3 (9/12/16):

- Focus: Review of nuclear weapons issues concerning Iran, India and Pakistan, North Korea, Russia, China, and other areas of concern.
- Readings:
 - **General**
 - Text of the NPT, available at <http://www.un.org/en/conf/npt/2005/npttreaty.html>
 - **Iran**
 - NTI, “Iran,” available at <http://www.nti.org/learn/countries/iran/>
 - Huffington Post article, “The Iran Deal: One Year Later, The Facts Point To Success,” available at http://www.huffingtonpost.com/john-tierney/the-iran-deal-one-year-late_b_10948878.html
 - C. Eugene Emery, Jr., “Donald Trump says Iran military will have nuclear weapons as soon as enrichment limits expire,” available at <http://www.politifact.com/truth-o-meter/statements/2016/mar/24/donald-trump/donald-trump-says-iran-military-will-have-nuclear/>
 - Iran Nuclear Agreement, available at <http://apps.washingtonpost.com/g/documents/world/full-text-of-the-iran-nuclear-deal/1651/>
 - Carnegie Endowment for International Peace, “Bridging the Gulf in the Gulf: Regional Peace After the Iran Deal,” available at <http://carnegieendowment.org/2015/07/14/bridging-gulf-i-gulf/idcv>
 - Article, CFR Events, July 24, 2015, “Assessing the Iran Nuclear Accord,” available at <http://www.cfr.org/iran/assessing-iran-nuclear-accord/p36825>
 - **India and Pakistan**
 - NTI, “Pakistan,” available at <http://www.nti.org/learn/countries/pakistan/nuclear/>
 - Huffington Post article, “The Other Bomb: Pakistan’s Dangerous Nuclear Strategy,” available at http://www.huffingtonpost.com/joseph-vmicallef/the-other-bomb-pakistans_b_9180504.html
 - Al Jazeera article, “Are India and Pakistan heading for a nuclear showdown?,” available at <http://www.aljazeera.com/indepth/opinion/2016/03/india-pakistan-heading-nuclear-showdown-160303053541342.html>
 - C. Christine Fair, “Pakistan’s army is building an arsenal of ‘tiny’ nuclear weapons—and it’s going to backfire,” available at <http://qz.com/579334/pakistans-army-is-building-an-arsenal-of-tiny-nuclear-weapons-and-its-going-to-backfire/>

- Carnegie Endowment for International Peace, “Festering Tensions Between India, Pakistan Threat to Global Security,” available at <http://carnegieendowment.org/2015/05/14/festering-tensions-between-india-pak-threat-to-global-security-william-burns/i8kk>
- Article. “Is Pakistan’s nuclear stock safe?,” available at <http://www.dw.com/en/is-pakistans-nuclear-stock-safe/a-17143032>
- Global Security Newswire article, “The Pentagon’s Secret Plans to Secure Pakistan’s Nuclear Arsenal,” available at <http://www.nti.org/gsn/article/the-pentagons-secret-plans-to-secure-pakistans-nuclear-arsenal/>
- **North Korea**
 - NTI, “North Korea,” available at <http://www.nti.org/learn/countries/north-korea/>
 - Bulletin of the Atomic Scientists article, “North Korea’s nuclear weapons: What now,” available at <http://thebulletin.org/north-koreas-nuclear-weapons-what-now>
- **Russia**
 - NTI, “Russia,” available at <http://www.nti.org/learn/countries/russia/>
 - Time article, “Why Russia Is Rebuilding Its Nuclear Arsenal,” available at <http://time.com/4280169/russia-nuclear-security-summit/>
 - Carnegie Endowment for International Peace article, Elbridge Colby, “The Role of Nuclear Weapons in the U.S.-Russian Relationship,” available at <http://carnegieendowment.org/2016/02/26/role-of-nuclear-weapons-in-u.s.-russian-relationship-pub-62901>
 - Daily Beast article, “Putin Threatens Nuclear War Over Ukraine,” available at <http://www.thedailybeast.com/articles/2014/08/31/putin-threatens-nuclear-war-over-ukraine.html>
 - Bulletin of the Atomic Scientists article, “Why Russia calls a limited nuclear strike “de-escalation,” available at <http://thebulletin.org/why-russia-calls-limited-nuclear-strike-de-escalation>
- **China**
 - NTI, “China,” available at <http://www.nti.org/learn/countries/china/nuclear/>
 - Union of Concerned Scientists article, Gregory Kulacki, “China’s Military calls for Putting Its Nuclear Forces on Alert,” available at <http://www.ucsusa.org/sites/default/files/attach/2016/02/China-Hair-Trigger-full-report.pdf>
 - Tong Zhao, “Strategic Warning and China’s Nuclear Posture,” available at <http://thediplomat.com/2015/05/strategic-warning-and-chinas-nuclear-posture/>
 - Union of Concerned Scientists, “The Chinese Military Updates China’s Nuclear Strategy,” available at <http://www.ucsusa.org/sites/default/files/attach/2015/03/chinese-nuclear-strategy-full-report.pdf>

- *Arms Control Today*, Gregory Kulacki, “Chickens Talking With Ducks: The U.S.-Chinese Nuclear Dialogue,” available at http://www.armscontrol.org/act/2011_10/U.S._Chinese_Nuclear_Dialogue

Class 4 (9/19/16)

- Focus: Review of current strategic realities in light of the matters discussed in Classes 1 through 3; discussion of possible topics for students papers and oral presentations.
- Readings:
 - Laura Grego, George N. Lewis and David Wright, “Shielded in Oversight – The Disastrous US Approach to Strategic Missile Defense, available at <http://www.ucsusa.org/sites/default/files/attach/2016/07/Shielded-from-Oversight-full-report.pdf>
 - Carnegie-Tsinghua Center for Global Policy, “Banning Hypersonics: Too Much to Hope For,” available at <http://thebulletin.org/test-ban-hypersonic-missiles/banning-hypersonics-too-much-hope>
 - Chatham House Report, “Too Close for Comfort: Cases of Near Nuclear Use and Options for Policy” (2014), available at <http://www.chathamhouse.org/publications/papers/view/199200>
 - Baker Spring, “Disarm Now, Ask Questions Later: Obama’s Nuclear Weapons Policy” (The Heritage Foundation, Backgrounder, July 11, 2013), available at <http://www.heritage.org/research/reports/2013/07/disarm-now-ask-questions-later-obamas-nuclear-weapons-policy>
 - Alan Robock and Owen Brian Toon, “Self-Assured Destruction: The Climate Impacts of Nuclear War,” Bulletin of the Atomic Scientists (2012), available at <http://climate.envsci.rutgers.edu/pdf/RobockToonSAD.pdf>
 - Carnegie Moscow Center, “An Unnoticed Crisis: The End of History of Nuclear Arms Control?,” available at http://carnegieendowment.org/files/CP_Arbatov2015_n_web_Eng.pdf (skim)
 - Carnegie Moscow Center, “How to Avert a Nuclear War,” available at <http://carnegie.ru/2015/04/19/how-to-avert-nuclear-war/i7g2>
 - Carnegie Endowment for International Peace, “How to Stop States From ‘Weaponizing’ Nuclear Programs,” available at <http://carnegieendowment.org/2015/06/30/how-to-stop-states-from-weaponizing-nuclear-programs/ib8k>
 - Second Report of the Deep Cuts Commission, “Strengthening Stability in Turbulent Times,” available at <http://www.armscontrol.org/files/DeepCuts-SecondReport-April2015-Final-web.pdf>
 - Optional: information about pending nuclear-weapons related litigation: <http://lcnp.org/RMI/index.html>

Class 5 (9/26/16)

- Focus: Rules of the law of armed conflict applicable to the lawfulness of the use and threat of use of nuclear weapons, as articulated by the United States.
- Readings:
 - 1-74² (assignments, unless otherwise noted, are to Moxley, NUCLEAR WEAPONS AND INTERNATIONAL LAW IN THE POST COLD WAR WORLD)
 - Testimony of Ms.Lijon Eknilang, Council Member of Rongelap, before the International Court of Justice, 14 November 1995 (24-28), available at <http://www.nuclearweaponslaw.com/Rongelap.doc>

Class 6 (10/03/16):

- Focus: Rules of the law of armed conflict applicable to the lawfulness of the use and threat of use of nuclear weapons, as articulated and applied by the United States.
- Readings:
 - 74-174
 - Belfer Center, “Transcending Mutual Deterrence in the U.S.-Russian Relationship” (2013), available at <http://belfercenter.ksg.harvard.edu/files/MAD%20English.pdf>

Class 7 (10/17/16):

- Focus: Rules of the law of armed conflict applicable to the lawfulness of the use and threat of use of nuclear weapons, as applied by the United States; the ICJ decision in the Nuclear Weapons Advisory Case; student presentations.
- Readings:
 - 175-266
 - The ICJ’s decision in the Nuclear Weapons Advisory Case, available at 35 I.L.M. 809, 809-32 (also available in dual English/French version at <http://www.icj-cij.org/docket/files/95/7495.pdf>)³

Class 8 (10/24/16):

² Page numbers to Professor Moxley’s book are to the draft of the second edition (in process) that will be circulated to the class.

³ Class discussion will focus on the discussion of the ICJ Nuclear Weapons Advisory Decision in the text. However, students are expected to read and be prepared to discuss the actual opinions making up the decision.

- Focus: The ICJ decision in the Nuclear Weapons Advisory Case; student presentations.
- Readings:
 - 266-372
 - ICJ Decision: dissenting opinion of Judge Weeramantry, available at 35 I.L.M. 809, 879 (also available in dual English/French versions at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&case=95&code=unan&p3=4>)
 -

Class 9 (10/31/16):

- Focus: the ICJ decision in the Nuclear Weapons Advisory Case; student presentations.
- Readings:
 - ICJ decision: separate opinions of various Judges:
 - dissenting opinion of Vice-President Schwebel, available at 35 I.L.M. 809, 836.
 - dissenting opinion of Judge Higgins, available at 35 I.L.M. 809, 934.
 - dissenting opinion of Judge Koroma, available at 35 I.L.M. 809, 925.
 - (These opinions are also available in dual English/French versions at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&case=95&code=unan&p3=4>).

Class 10 (11/07/16):

- Focus: the ICJ decision in the Nuclear Weapons Advisory Case; student presentations.
- Readings:
 - ICJ decision: separate opinions of various Judges:
 - dissenting opinion of Judge Shahabudeen, available at 35 I.L.M. 809, 861.
 - declaration of Judge Vereshchetin, available at 35 I.L.M. 809, 833.
 - individual opinion of Judge Guillaume.
 - declaration of President Bedjaoui.
 - declaration Judge Herczegh.
 - declaration of Judge Shi.
 - separate opinion of Judge Fleischhauer.
 - declaration of Judge Bravo.
 - individual opinion of Judge Ranjeva.
 - For those opinions not available in I.L.M., they are available in dual English/French versions at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&case=95&code=unan&p3=4>

Class 11 (11/14/16):

- Focus: Generally accepted principles of law applicable to the issue of the lawfulness of the use and threat of use of nuclear weapons; student presentations.
- Readings: to be assigned, based on student papers being presented.

Class 12 (11/21/16):

- Focus: Generally accepted principles of law applicable to the issue of the lawfulness of the use and threat of use of nuclear weapons; risk factors inherent in U.S. operational policy as to nuclear weapons in the post World War II era; student presentations.
- Readings: to be assigned, based on student papers being presented.

Class 13 (11/28/16):

- Focus: Risk factors inherent in the policy of deterrence; risks of the limited use of nuclear weapons; risks of the United States' operational nuclear policy; risks of chemical and biological weapons; student presentations.
- Readings: to be assigned, based on student papers being presented.