

NUCLEAR WEAPONS DOCTRINE, ARMS CONTROL AND INTERNATIONAL LAW
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Michigan State University College of Law, East Lansing, MI

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Course Description

The development of scientific thought and science over the past few centuries has profoundly changed the way we think and live. Virtually every aspect of the human experience has been affected by the rise of science and as a result, we have become extremely dependent upon the technology that is derived from the advances in theoretical science. In fact, many of the major challenges we face as a species today contain a scientific/technological component. Nuclear weapons technology, in particular, continues present one of our most difficult challenges. Even though the Cold War between the United States and the former Soviet Union that gave rise to the nuclear arms race has ended, many experts have argued that the use of nuclear weapons is more likely than at any time during the Cold War. Since 1945 the world has come to recognize that nuclear weapons pose the ultimate threat to humanity.

Since 1945 the world has come to recognize that nuclear weapons pose the ultimate threat to humanity. Given that today's nuclear weapons arsenals have the potential for annihilating a large segment of the world's population, for devastating and contaminating vast areas of the earth's surface, and for producing unpredictable arid uncontrollable biological and environmental consequences, reducing and eliminating the threat of nuclear war is a fundamental priority of our era.

This course will consider whether the basic concepts underlying strategic nuclear doctrine are consistent with the international law of armed conflict analyze and evaluate the implications of the international law of armed conflict for the arms control process. More than any other technological development in military weaponry, the advent of nuclear weapons has challenged the relevance of the law of armed conflict to modern warfare. Consequently, nuclear weapons pose two fundamental questions: Are nuclear weapons by their very nature unlawful and if not, can they be used lawfully in various military situations? Posing these questions for investigation is particularly appropriate now in the post Cold War era as the United States formulates new national strategies for the use of nuclear weapons and new negotiating proposals for arms control. An understanding of the complexities of the nuclear weapons issue will provide a basis for better legal understanding of the issue and help develop a basis for determining the role of nuclear weapons in the foreign policy formulation process. Furthermore, such a legal perspective provides an important means for stimulating and framing the debate.

Initially, the course will provide the law student with a framework for understanding the trends and patterns of international conflict with particular attention given to nuclear weapons

dimension of international conflict. The course will also examine the character of international law with emphasis placed on its limits as well as its achievements.

Furthermore, the course will examine the rules and doctrines of international law applicable to a legal evaluation of nuclear weapons. The course will also deal with a range of issues relating to the past, present and future legal efforts to control, reduce and eliminate nuclear weapons. Finally, an effort will be made to interpret the relationship between international law and the changing role of force in international relations. Consequently, attention will be placed on the links between law and politics and law and justice by making an evaluation of past and present efforts to establish a viable and stable structure of peace in international affairs.

Course Objectives

Social responsibility is an essential ingredient in a democratic society. The goal of this course is to provide students with the critical skills, information and understanding necessary to participate in and contribute to a democratic society. Thus, the primary objective of this course is to develop the critical tools by which to analyze, understand, accept or rebut the various arguments or positions advocated by candidates, journalists, commentators, professors, lawyers or political interest groups on the issue of nuclear weapons.

While history will forever be a subject open to reinterpretation, not all interpretations are equally valid. Any analysis of the issue of nuclear weapons must be based upon a foundation of evidence and held together by rationality and reasonableness. Throughout the course I will offer my own interpretations of the various issues raised in this course concerning the development and legality of nuclear weapons. You may find them interesting and insightful and possibly, even convincing. On the other hand, you may reject them in favor of viewpoints of your own. Whether you agree with me or not is not the purpose or objective of the course.

Nevertheless, the course has two primary objectives: to help you gain a deeper understanding and appreciation of the problem of nuclear weapons and to develop a new vocabulary of ideas by which to analyze and evaluate the problem. In pursuit of those two objectives, it is also my hope that the course contributes to improving your ability to read carefully and thoughtfully, sharpens your ability to think critically and with reasoned judgment and heightens your sense of the importance of ethical and normative standards.

Grading

No examination is to be given in this course. However, a high quality research paper of about 30 pages in length (double-spaced including text and footnotes) is required. This research paper will represent 80% of your final grade. Class participation will constitute the remaining 20% of each student's final grade. The topic of the paper will be assigned by the instructor. The completed paper will be due on May 12th. Students who wish to fulfill the law schools upper legal writing requirement with this research paper must initially submit an outline and draft of the paper to the instructor for editing and a final draft of the paper thereafter.

Class Participation

Learning should be an engaging and interactive experience. Only when a student is given the opportunity to articulate his/her own thoughts can “learning,” not memorization occur. The material in this course is ripe with competing perspectives and contentious issues. Students are expected to critically assess both the perspectives and issues that we will discuss. Therefore students must be able to articulate their thoughts freely and without rebuke. In order to attain such an environment students must engage the material in this course with an open mind and a willingness to question. It has been my experience that this type of environment will result in a more lively and interesting semester. Thus, it is my hope that each student will actively participate in the classroom discussions.

Required Texts

Beckman, Crumlish, Dobkowski & Lee, *The Nuclear Predicament: Nuclear Weapons in the Twenty-First Century*, 3rd Ed. (“**Beckman**”); Richard Smoke, *Nuclear Security and the Nuclear Dilemma, 1945-1991* (“**Smoke**”) and a collection of articles, all of which are available in the Bookstore.

Reading Assignments

Students are expected to read all of the assigned materials prior to the date for which the readings have been assigned so that they might better understand and participate in the classroom discussions. Students will be responsible for assignments, information, and schedule changes announced in class, even if they are absent. If you miss class, it is your responsibility to find out what you missed.

Week 1

The Context of Total War

Smoke, National Security and the Nuclear Dilemma, Chapter 2
Beckman, The Nuclear Predicament, Chapter 3

Week 2

History of the Arms Race

Smoke, Chapters 3-6 & 11
Barash, The Arms Race and Nuclear War, Chapter 9

Week 3

Delivery Systems & Strategic Doctrine

Barash, Chapters 2 & 3
Beckman. Chapter 4

Week 4

The Effects of Nuclear Weapons

Barash, Chapters 4 & 5
Report of the Secretary General of the United Nations. Effects of the Use of Nuclear Weapons

Week 5

Arms Control & Disarmament

Barash, Chapter 10
Smoke, Chapters 8,9 & 12
Beckman, Chapter 6

Week 6

Rethinking Deterrence

Gray and Payne. "Victory is Possible"
Ikle, "Can Deterrence Last Out the Century"
Keeny and Panofsky, "MAD versus NUTS"
Beres, "Nuclear Strategy and World Order: The United States Imperative"
Catholic Bishops Ad Hoc Committee on War and Peace, "Proposed Pastoral Letter on War, Armaments and Peace"
Ikle, "The Second Coming of the Nuclear Age"

Week 7

Case Studies

International Court of Justice, Advisory Opinion on the "Legality of the Threat or Use of Nuclear Weapons"
Japanese Annual of International Law, "The Shimoda Case"

Week 8

The Nature of the International System: Conflict & Coercion

Bull, "The Concept of Order in World Politics"
Falk, "A New Paradigm for International Legal Studies"
Bull, "Order vs. Justice in International Society"
Bull, "The State's Positive Role in World Affairs"
Bull, "The Grotian Conception of International Society"
Kaplan and Katzenbach, "Law in the International Community"

Week 9

Relevance of International Law

Boyle, "The Relevance of International Law and Organizations"
Statement by Dean Acheson before the American Society of International Law
Hoffman, "International Law and the Control of Force"
Reisman, "International Incidents"
Kratochwil, "Thrasymachos Revisited"

Week 10

Nuclear Weapons and International Law

Meyrowitz, "The Opinion of Legal Scholars on the Legal Status of Nuclear Weapons"
Almond, "Deterrence Processes & Minimum Order"
Builder and Graubard, "The International Law of Armed Conflict: Implications for the Concept of Assured Destruction"

Falk, "Toward a Legal Regime for Nuclear Weapons"
Rostow, "The World Health Organization, The ICJ and Nuclear Weapons"

Week 11

Steps to Prevent Nuclear War

Bundy, Kennan, McNamara & Smith, "Nuclear Weapons and the Atlantic Alliance"
Beres, "Apocalypse: Nuclear Catastrophe in World Politics"
Report of the Independent Commission on Disarmament and Security Issues (Palme Commissions), "Elements of a Programme for Arms Control and Disarmament"
Report of the Canberra Commission on the Elimination of Nuclear Weapons
Johansen, "Toward a Dependable Peace: A Proposal for an Appropriate Security System"
Falk, "Nuclear Policy and World Order: Why Denuclearization"
Weston, "Law and Alternative Society: Toward a Just World Peace"
Meyrowitz, "The Baruch Plan"