

National Security Law and Policy
Spring 2023 Reading Group

National security intersects with a wide range of economic, political, and social issues. This reading group will explore current, emerging, and unorthodox perspectives at the intersection of national security and the law. Students will also scrutinize the logic and limits of a national security approach to regional, transnational, and global challenges. Guest speakers will include academic experts, national security lawyers, and former policymakers.

This reading group is co-sponsored by the National Security Group and the Center for Global Legal Challenges.

Meeting Time: TBD (Duration: one hour and twenty minutes)

Location: TBD

Attendance Policy: Students taking the reading group for credit can miss up to three sessions. Students must attend at least 750 minutes of meetings to receive credit.

Suggested Core Reading:

- OONA HATHAWAY & SCOTT SHAPIRO, *THE INTERNATIONALISTS* (2017) [640 pages]
- HAROLD HONGJU KOH, *THE NATIONAL SECURITY CONSTITUTION IN THE TWENTY-FIRST CENTURY* (forthcoming 2024) [pages TBD]

Week 1: The Structure and Strategy of National Security

Guest Facilitator: Brief intro by Professor Hathaway

- *Read 1-11, skip appendix:* *The National Security Council*, Congressional Research Service (Oct. 29, 2022), <https://sgp.fas.org/crs/natsec/R44828.pdf>. [11 pages]
- 50 U.S.C. §§ 3021-3024, <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter44&edition=prelim> (describing the NSC and Intelligence Community)
- *Focus on 1-14, skim rest:* *Trump Administration National Security Strategy*, December 2017, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>. [14 pages]
- *Focus on 1-13, skim rest:* *Biden Administration National Security Strategy*, October 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>. [13 pages]

Optional Reading

Salman Ahmed et al., *Making U.S. Foreign Policy Work Better for the Middle Class*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (2020), https://carnegieendowment.org/files/USFP_FinalReport_final1.pdf.

Office of the Director of National Intelligence, *Annual Threat Intelligence Assessment* (2023), <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>

Richard Danzig et al., *A Preface to Strategy: The Foundation of American National Security*, JOHN HOPKINS APPLIED PHYSICS LAB (2018), <https://www.jhuapl.edu/sites/default/files/2022-12/PrefaceToStrategy.pdf>.

Oona Hathaway, *COVID-19 Shows How the U.S. Got National Security Wrong*, JUST SECURITY (Apr. 7, 2020), <https://www.justsecurity.org/69563/covid-19-shows-how-the-u-s-got-national-security-wrong/>.

U.S. Department of State, Office of the Historian, *History of the National Security Council, 1947-1997*, <https://irp.fas.org/offdocs/NSChistory.htm>.

Week 2: The Ins and Outs (and Ethics) of National Security Lawyering

Potential Guest Speaker: TBD

- *Read 1-32*: Oona Hathaway, *National Security Lawyering in the Post-War Era: Can Law Constrain Power?* 68 UCLA L. REV. 2 (2021), <https://openyls.law.yale.edu/handle/20.500.13051/18004>. [32 pages]
- Caroline D. Krass, *Department of Defense Issues Update to DoD Law of War Manual on Presumption of Civilian Status and Feasible Precautions to Verify Military Objectives* JUST SECURITY (July 31, 2023), <https://www.justsecurity.org/87430/department-of-defense-issues-update-to-dod-law-of-war-manual-on-presumption-of-civilian-status-and-feasible-precautions-to-verify-military-objectives/>. [1 page]

Optional Reading

Robert Bauer, *The National Security Lawyer In Crisis: When the “Best View” of the Law May Not be the Best View*, 31 GEO. J. LEGAL ETHICS 175 (2018), <https://s3.documentcloud.org/documents/4636381/Bauer-Best-View.pdf>.

Jack Goldsmith, *Response to Bauer: Executive Branch Crisis Lawyering and the “Best View,”* GEO. J. LEGAL ETHICS (2018), <https://s3.documentcloud.org/documents/4636380/Goldsmith-Executive-Branch-Crisis-Lawyering-and.pdf>.

Week 3: Russia-Ukraine, Accountability, and the Law of War

Potential Guest Speaker: TBD

- Alexander Komarov and Oona Hathaway, *The Best Path for Accountability for the Crime of Aggression Under Ukrainian and International Law*, JUST SECURITY (Apr. 11, 2022), <https://www.justsecurity.org/81063/the-best-path-for-accountability-for-the-crime-of-aggression-under-ukrainian-and-international-law/>. [2 pages]
- Oona Hathaway, *International Law Goes to War In Ukraine*, FOREIGN AFFAIRS (Mar. 15, 2022), <https://www.foreignaffairs.com/articles/ukraine/2022-03-15/international-law-goes-war-ukraine>. [~5 pages]
- Brian Finucane & Stephen Pomper, *Can Ukraine Get Justice Without Thwarting Peace? Now Is Not the Time to Create a Special Tribunal for Russia*, FOREIGN AFFAIRS (May 8, 2023), <https://www.foreignaffairs.com/ukraine/russia-ukraine-justice-thwarting-peace>. [~5 pages]
- Rebecca Hamilton, Brian Finucane & Stephen Pomper, *Would Prosecuting Russia Prolong the War in Ukraine? Debating a Special Tribunal for the Crime of Aggression*, FOREIGN AFFAIRS (July 12, 2023), <https://www.foreignaffairs.com/responses/would-prosecuting-russia-prolong-war-ukraine>. [~5 pages]

Optional Reading

Oona Hathaway, Maggie Mills, Thomas Poston, *War Reparations: The Case for Countermeasures*, 76 STAN. L. REV. (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4548945.

Oona Hathaway and Scott Shapiro, *Supplying Arms to Ukraine is Not an Act of War*, JUST SECURITY (Mar. 12, 2022), <https://www.justsecurity.org/80661/supplying-arms-to-ukraine-is-not-an-act-of-war/>.

Week 4: China and Great Power Competition

Potential Guest Speaker: TBD

- Kurt M. Campbell and Jake Sullivan, *Competition Without Catastrophe: How America Can Both Challenge and Coexist with China*, FOREIGN AFFAIRS (Aug. 1, 2019), <https://www.foreignaffairs.com/china/competition-with-china-catastrophe-sullivan-campbell>. [~10 pages]
- Jessica Chen Weiss, *The China Trap: U.S. Foreign Policy and the Perilous Logic of Zero-Sum Competition*, FOREIGN AFFAIRS (Aug. 18, 2022), <https://www.foreignaffairs.com/china/china-trap-us-foreign-policy-zero-sum-competition>. [~5 pages]

- Ryan Hass and Jude Blanchette, *The Right Way to Deter China From Attacking Taiwan*, FOREIGN AFFAIRS (Nov. 8, 2023), <https://www.foreignaffairs.com/china/right-way-deter-china-attacking-taiwan>. [~3 pages]
- Jacob Schlesinger, *What's Biden's New China Policy? It Looks a Lot Like Trump's*, WSJ (Sept. 10, 2020), <https://www.wsj.com/articles/whats-bidens-china-policy-it-looks-a-lot-like-trumps-11599759286>. [~2 pages]
- Gavin Bade, *'A sea change': Biden reverses decades of Chinese trade policy*, POLITICO (Dec. 26, 2022), <https://www.politico.com/news/2022/12/26/china-trade-tech-00072232>. [~2 pages]

Optional Reading

Ryan Hass, Ryan McElveen, & Robert D. Williams, *The Future of US Policy Toward China, Recommendations for the Biden Administration*, BROOKINGS INSTITUTION & PAUL TSAI CHINA CENTER (Nov. 2020), <https://law.yale.edu/china-center/resources/us-china-relations>.

Mark Wu, *The 'China, Inc.' Challenge to Global Trade Governance*, 57 HARVARD INT'L L.J., 1001 (2016), <https://www.law.berkeley.edu/wp-content/uploads/2020/05/WuMark.pdf>.

Week 5: Africa and the International System

Potential Guest Speaker: TBD

- Jack A. Goldstone & John F. May, *The Global Economy's Future Depends on Africa*, FOREIGN AFFAIRS (May 18, 2023), <https://www.foreignaffairs.com/africa/global-economys-future-depends-africa>. [~2 pages]
- Tim Murithi, *Order of Oppression: Africa's Quest for a New International System*, FOREIGN AFFAIRS (Apr. 18, 2023), <https://www.foreignaffairs.com/africa/global-south-un-order-oppression>. [~5 pages]
- Mark Suzman, *The Roots of the Global South's New Resentment*, FOREIGN AFFAIRS (Sept. 8, 2023), <https://www.foreignaffairs.com/africa/roots-global-souths-new-resentment>. [~5 pages]
- *Read first 20 pages, skim Section III:* Matiangai V. S. Sirleaf, *Regionalism, Regime Complexes and International Criminal Justice in Africa*, 54 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 699 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2293988. [~30 pages]
- *Skim articles by Adelle Blackett and Kamari Maxine Clarke, in Racing National Security: Introduction to the Just Security Symposium*, <https://www.justsecurity.org/71373/racing-national-security-introduction-to-the-just-security-symposium/>. [~4 pages]

Week 6: Israel-Hamas and International Law

Potential Guest Speaker: TBD

Tentative readings (more TBD):

- Ryan Goodman, Michael W. Meier and Tess Bridgeman, *Expert Guidance: Law of Armed Conflict in the Israel-Hamas War*, JUST SECURITY (Oct. 17, 2023), <https://www.justsecurity.org/89489/expert-guidance-law-of-armed-conflict-in-the-israel-hamas-war/>. [~5 pages]
- Adil Haque, *Enough: Self-Defense and Proportionality in the Israel-Hamas Conflict*, JUST SECURITY (Nov. 6, 2023), <https://www.justsecurity.org/89960/enough-self-defense-and-proportionality-in-the-israel-hamas-conflict/>. [~2 pages]
- Amichai Cohen and Yuval Shany, *Unpacking Key Assumptions Underlying Legal Analyses of the 2023 Hamas-Israel War*, JUST SECURITY (Oct. 30, 2023), <https://www.justsecurity.org/89825/unpacking-key-assumptions-underlying-legal-analyses-of-the-2023-hamas-israel-war/>. [~4 pages]
- Clive Baldwin, *How Does International Humanitarian Law Apply in Israel and Gaza?*, HUMAN RIGHTS WATCH (Oct. 27, 2023), <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza>. [~2 pages]
- James Jeffrey, *What 50 Years of Wars in the Middle East Tell Us About Gaza*, LAWFARE (Oct. 14, 2023), <https://www.lawfaremedia.org/article/what-50-years-of-wars-in-the-middle-east-tell-us-about-gaza>. [~3 pages]

Week 7: Digital Authoritarianism and Technology's Global Reach

Potential Guest Speaker: TBD

- Ronen Bergman and Mark Mazzetti, *The Battle for the World's Most Powerful Cyberweapon*, N.Y. TIMES MAGAZINE (Jan. 31, 2022), <https://www.nytimes.com/2022/01/28/magazine/nso-group-israel-spyware.html>. [~3 pages]
- Michael Clarke, *Turning Ghosts into Humans: Surveillance as an Instrument of Social Engineering in Xinjiang*, WAR ON THE ROCKS (Nov. 2, 2021), <https://warontherocks.com/2021/11/turning-ghosts-into-humans-surveillance-as-an-instrument-of-social-engineering-in-xinjiang/>. [~4 pages]
- Jon Bateman, *Denying Support for Chinese and China-Enabled Authoritarianism and Repression*, CARNEGIE ENDOWMENT (Apr. 25, 2022), <https://carnegieendowment.org/2022/04/25/denying-support-for-chinese-and-china-enabled-authoritarianism-and-repression-pub-86924>. [~8 pages]

- Martin Beraja, Andrew Kao, David Y. Yang, & Noam Yuchtman, *Exporting the surveillance state via trade in AI* (Jan 13, 2023), https://www.brookings.edu/wp-content/uploads/2023/01/Exporting-the-surveillance-state-via-trade-in-AI_FINAL-1.pdf. [18 pages]

Optional

Shoshana Zuboff, *The Coup We Are Not Talking About*, N.Y. TIMES (Jan. 29, 2021), <https://www.nytimes.com/2021/01/29/opinion/sunday/facebook-surveillance-society-technology.html>.

Paul Scharre, *The Dangers of the Global Spread of China's Digital Authoritarianism*, Testimony to United States–China Economic and Security Review Commission, (May 4, 2023), <https://www.cnas.org/publications/congressional-testimony/the-dangers-of-the-global-spread-of-chinas-digital-authoritarianism>.

Week 8: AI and Emerging Technologies

Guest Speaker: TBD

- Biden AI Executive Order, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>. [36 pages]
- *Focus on Intro and Section I:* Rebecca Crootof, *The Killer Robots Are Here: Legal and Policy Implications*, CARDOZO L. REV. 1837 (2015), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2599&context=law-faculty-publications>. [8 pages]
- Paul Scharre, *Debunking the AI Arms Race*, 4 TEX. NAT'L SEC. REV. (2021), <https://tnsr.org/2021/06/debunking-the-ai-arms-race-theory/>. [~5 pages]

Week 9: Investment, Regulation, and Economic Security

Session Leads: TBD

- *Focus on Section IV and Conclusion:* Ganesh Sitaraman, *The Regulation of Foreign Platforms*, 74 STANFORD L. REV. 1073 (May 2022), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2022/05/Sitaraman-74-Stan.-L.-Rev.-1073.pdf>. [16 pages]
- Ganesh Sitaraman, *The National Security Case for Breaking Up Big Tech*, FOREIGN AFFAIRS (Feb. 10, 2023), <https://www.foreignaffairs.com/world/too-big-prevail-break-up-big-tech>. [~5 pages]
- *Skim:* Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549 (2022),

<https://columbialawreview.org/content/national-security-creep-in-corporate-transactions/>.
[61 pages]

Optional

Ben Thompson, *Anti-Monopoly vs. Antitrust*, STRATECHERY (October 7, 2020).

<https://stratechery.com/2020/anti-monopoly-vs-antitrust/>.

Daniel A. Crane, *Fascism and Monopoly*, 118 MICH. L. REV. 1315, 1316 - 1321 (2020),

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=5958&context=mlr>.

Week 10: Climate Change

Guest Speaker: TBD

- Mark Nevitt, *Is Climate Change a National Emergency?*, JUST SECURITY (Feb. 21, 2021), <https://www.justsecurity.org/74914/is-climate-change-a-national-emergency/>. [~5 pages]
- Morgan Bazilian & Cullen Hendrix, *An Age of Actorless Threats: Rethinking National Security in Light of COVID and Climate*, JUST SECURITY (Oct. 23, 2020), <https://www.justsecurity.org/72939/an-age-of-actorless-threats-re-thinking-national-security-in-light-of-covid-and-climate/>. [~2 pages]
- *Skim:* Mark Levitt, *On Environmental Law, Climate Change, and National Security*, 44 HARV. ENV'T L. REV. 321 (2017), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3103&context=faculty_scholarship. [47 pages]

Week 11: Human Rights and War

Guest Speaker: TBD

- Samuel Moyn, *America Is Giving the World a Disturbing New Kind of War*, N.Y. TIMES, Sept. 13, 2021, <https://www.nytimes.com/2021/09/03/opinion/us-war-afghanistan.html>. [~2 pages]
- Stephen Pomper, *Has War Become Too Humane*, FOREIGN AFFAIRS (Sept. 21, 2021), <https://www.foreignaffairs.com/reviews/review-essay/2021-09-21/has-war-become-too-humane>. [~3 pages]
- Azmat Khan, *Hidden Pentagon Records Reveal Patterns of Failure in Deadly Airstrikes*, NEW YORK TIMES (Dec. 18, 2021), <https://www.nytimes.com/interactive/2021/12/18/us/airstrikes-pentagon-records-civilian-deaths.html>. [~20 pages]

Week 12: Intelligence, Truth Seeking, and Democratic Discourse

Session Leads: TBD

- *Accountability*, Office of the Director of National Intelligence, <https://www.dni.gov/index.php/how-we-work/accountability>. [1 page]
- Sunny Jiten Singh, *The U.S. Intelligence Enterprise and the Role of Privatizing Intelligence*, HARVARD KENNEDY SCHOOL BELFER CENTER (2019), <https://www.belfercenter.org/sites/default/files/files/publication/PrivateIntel%20-%20final.pdf>. [37 pages]
- *Read 3-7, 43-49:* Oona Hathaway, *Secrecy's End*, MINN. L. REV. (2021). <https://minnesotalawreview.org/article/secrecys-end/>. [10 pages]
- *Not a Secret: Professor Hathaway Explains Classified Documents*, YALE LAW SCHOOL, <https://law.yale.edu/yls-today/news/not-secret-professor-hathaway-explains-classified-documents>. [1 page]
- Patrick Radden Keefe, *Review of the Cult of Secrecy*, FOREIGN AFFAIRS (Feb. 13, 2023), <https://www.foreignaffairs.com/reviews/patrick-radden-keefe-cult-of-secrecy-america-classification-crisis>. [~3 pages]

Optional Readings

David Robarge, *Interview With Former US Senator Gary Hart*, 65 *Studies in Intelligence* 4, 29 (Unclassified extract, Dec. 2021), https://www.cia.gov/static/9277141b84c37179b5f2fbcd9e4b9c8b/Interview_Gary_Hart_Oversight_of_Intelligence_Studies_65_4_December2021_Updated.pdf.

Optional, Brian Katz, *The Collection Edge: Harnessing Emerging Technologies for Intelligence Collection*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (July 2020), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/20713_Katz_CollectionEdge_v4_WEB%20FINAL.pdf.

Week 13: Civil Liberties and Diversity in National Security

Session Lead: TBD

- Zoe Kreitenberg, *Opinion: Affirmative action is banned — except at military academies? Why that won't help students*, LA TIMES (Jul 17, 2023), <https://www.latimes.com/opinion/story/2023-07-17/military-exception-supreme-court-affirmative-action>. [2 pages]

- Matiangai Sirleaf, *Racing National Security: Introduction to the Just Security Symposium*, JUST SECURITY (July 13, 2020), <https://www.justsecurity.org/71373/racing-national-security-introduction-to-the-just-security-symposium/>. [1 page]
- Zachariah Mampilly, *The Du Bois Doctrine: Race and the American Century*, FOREIGN AFFAIRS (Sept. 6, 2023), <https://www.foreignaffairs.com/united-states/web-du-bois-doctrine-race-america-century>. [5 pages]

Optional Readings

Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, BLOOMBERG (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

Skim: Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEORGETOWN L. J. 379, 379, 381- 84, 414 -25, <https://law.stanford.edu/wp-content/uploads/2017/02/sinnar-lost-story-of-iqbal.pdf>.

Skim: FACT SHEET: *President Biden Signs Executive Order Advancing Diversity, Equity, Inclusion, and Accessibility in the Federal Government*, White House (June 25, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/25/fact-sheet-president-biden-signs-executive-order-advancing-diversity-equity-inclusion-and-accessibility-in-the-federal-government/>.