

Revised January 2014

# **POL340Y – International Law 2013/14**

**Department of Political Science, University of Toronto**

**Gerard J. Kennedy  
gerard.kennedy@utoronto.ca**

## **Course Description**

In this course you will learn the fundamentals of international law, gain an understanding of particular subfields within international law, learn how to think like a lawyer, and engage on topics of contemporary and timeless significance.

At its simplest, international law is the law that governs the relationship between states. It is law, to be sure (well...see the readings) but is extraordinarily tied to public policy and political realities. It is thus particularly appropriate that this class is taught in a political science department as no other field of law is as connected to politics – and all fields of law are connected to politics. We will analyze the issues raised in this course from both legal and political science points of view.

This course will provide an introduction to the essential features of international law, and highlights from particular subfields. There will be three major parts to the course:

- I. Introduction to the pillars of the international legal structure. (8 weeks)
- II. Discussion of particular sub-fields within international law. Within each topic – International Human Rights Law, Law of Armed Conflict, International Criminal Law, International Environmental Law and International Economic Law – we will look at topical political situations which demonstrate how these fields affect international politics and give witness to the principles discussed in Part I of the course. (10½ weeks)
- III. How international law relates to domestic law. We will consider topical examples of how international law affects domestic legal systems and political situations. Canadian examples will be emphasized but not to the exclusion of considering other states' approaches to these issues. (3 weeks)

At various points in the course, we will also continue critiques of the international legal order from important points of view (eg, aboriginal, feminist).

The grading scheme will not change, but the course content and readings may be edited slightly. As such, regular class attendance is essential not only for the sake of understanding course material, and the course's participation component, but also to keep abreast of any changes in the syllabus.

Revised January 2014

I will use Blackboard on the U of T Portal to provide information, updates and other content. As such, you need to check this out for updates on readings, assignments, etc.

The main text for the course will be John H. Currie, Craig Forcese & Valerie Oosterveld, International Law: Doctrine, Practice and Theory (Toronto: Irwin Law, 2007). You must purchase this book. It should be available at the Bookstore. Other readings will be posted to Blackboard.

### **Marking Scheme**

**40% Final Exam:** A comprehensive final examination on all materials in the course, testing skills in both law and political science.

**25% Research Paper:** A research paper of a quality expected of a third year political science student. Encouraged to be on a topic from Parts II or III of the Syllabus. But any topic may be chosen with the instructor's approval. You will be marked on organization/writing style, research and creativity.

The paper shall be submitted at the beginning of class (6:10 pm) on February 12, 2014. It may be submitted prior to this time at the Political Science reception. **You must submit a hard copy of the paper – you may not submit a paper only by electronic version.** Please submit the paper to Turnitin.com by midnight on February 12, 2014.

No extension will be granted without proof of medical or other emergency. Otherwise, there will be a penalty of 6% for all late essays, plus an additional 2% per day, including weekend days and reading week, if the essay is submitted after February 12, 2014. Please see the following on this subject:

<http://www.viceprovoststudents.utoronto.ca/Assets/Students+Digital+Assets/Vice-Provost%2c+Students/Publications/your+grades.pdf>.

Barring medical or other emergency, the paper may not be submitted after March 19, 2014 (though it will already have lost 62% of its value by this date).

Students are strongly advised to keep rough and draft work and hard copies of their paper before handing it in. These should be kept until the marked assignments have been returned and the grades posted on ROSI.

The essay must be no less than 3000 words and no more than 3500 words, **inclusive of citations**: 12 point font, Times New Roman, double-spaced, one-inch margin. Please include page numbers at the top of each page, excluding any cover page. Please put the word count on the last page.

You may use any major recognized citation style, so long as you are internally consistent. See, eg: <http://www.writing.utoronto.ca/advice/using-sources/documentation>. Also feel free to use the *Canadian Guide to Uniform Legal Citation* (aka the "McGill Guide"), which is the standard form of legal citation in Canada.

Revised January 2014

Plagiarism is a serious academic offence and will be dealt with accordingly. For further clarification and information on plagiarism please see Writing at the University of Toronto: <http://www.writing.utoronto.ca/advice/using-sources>.

Turnitin.com: Normally, students will be required to submit their course papers to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com website. The use of Turnitin.com is voluntary. However, if you do not wish to use Turnitin.com, must you speak to me so that we can arrange an alternative method of checking for academic honesty.

In researching your paper, please see:

<http://www.lawlib.utoronto.ca/resguide/rschguid.htm>.

You also may want to consult the following (located in the Bora Laskin Law Library, the CIAA and Trinity College Library, and Robarts): The Canadian Yearbook of International Law; The British Yearbook of International Law; The American Journal of International Law; Journal of International Criminal Law; or any international law journal published by one of the major law schools (Harvard, Yale, Columbia, Stanford, U of T, NYU, etc.)

**20% Mid-Term Exam:** This will primarily test knowledge on the topics from Part I of the course, to ensure students have grasped the basic principles. December Exam Period.

**10% Annotation on News Article:** Find a news article or opinion piece from 2013 published in any major respected newspaper or magazine. Write an annotation on how the article highlights issues of international law that are at play in the world today. You will be marked for creativity, writing style, organization and ability to connect the readings and lectures to the article you have chosen.

**You are not expected to, and are in fact discouraged from, doing any research outside of the article you select and the course readings/lectures.** Of course, you are still expected to use citations appropriately. All rules surrounding citations, Turnitin.com and plagiarism apply equally to the paper and the annotation.

The annotation must be no less than 1000 words and no more than 1200 words, **inclusive of citations**: 12 point font, Times New Roman, double-spaced, one-inch margin. Please include page numbers at the top of each page, excluding any cover page. Please put the word count on the last page.

The annotation is due at the beginning of class on November 6, 2013. It may be submitted prior to this time at the Political Science reception. **You must submit a hard copy of the annotation – you may not submit an annotation only by electronic version.** Please submit the paper to Turnitin.com by midnight on November 6, 2013.

No extension will be granted without proof of medical or other emergency. Otherwise, there will be a penalty of 6% for all late annotations, plus an additional 2% per day, including

Revised January 2014

weekend days, if the essay is submitted after November 6, 2014. Please see the following on this subject:

<http://www.viceprovoststudents.utoronto.ca/Assets/Students+Digital+Assets/Vice-Provost%2c+Students/Publications/your+grades.pdf>.

Barring medical or other emergency, the paper may not be submitted after November 27, 2013 (though it will already have lost 48% of its value by this date).

**5% Participation:** The class will become more interesting when people are engaged on timely topics. This is a lecture class, but an element of discussion will be integrated. Consistent quality participation will be rewarded, and eight people will be “on call” per class to answer questions on the readings and topics.

Revised January 2014

## **COURSE OUTLINE**

### **Week One – Introduction to Course**

Introductions, synopsis of course and introduction to some main themes and vocabulary.

### **Part I: Introduction to International Law**

#### **Week Two – Introduction to Key Concepts/What is International Law?**

What is “law” and how does it differ from “politics”? Is International Law “real law”? How is it enforced? Why do states honour it? Why do they breach it? Who are its subjects? What is the difference between “private” and “public” international law? What is the relationship between domestic law and international law? How is it related to International Relations theory?

Readings:

- Textbook, pp. 1-39

#### **Week Three –The Sources of International Law and the International Legal Structure**

After a history of the ICJ and UN is presented, the sources of international law will be introduced and analyzed. Why is the international legal order structured the way that it is? Are the ICJ and UN effective instruments?

Readings:

- Textbook, pp. 39-40; 235-259; 265-280

#### **Week Four –State Sovereignty Part I: Characteristics, Rights and Responsibilities of States**

What is a state? How does the international law definition of a “state” compare to definitions in other contexts? What amounts to a violation of state sovereignty? Is state sovereignty even worth protecting?

Readings:

- Textbook, pp. 163-185; 212-221

#### **Week Five – State Sovereignty Part II: The Beginning and End of States**

Consider Canada – how could Quebec become a state? What is the international legal status of aboriginal nations? Can Canada assert sovereignty over the arctic? Consider the cases of Kosovo, Taiwan, Chechnya and Palestine. Are they states? If not, what are they?

- *Reference re: Secession of Quebec*: paras. 1-2, 19-23, 109-156

Revised January 2014

- François Côté & Robert Dufresne, *The Arctic: Canada's Legal Claims* (<http://www.parl.gc.ca/content/lop/researchpublications/prb0805-e.htm>)
- Donald McRae, "Arctic Sovereignty: What's at Stake?" (2009): to be posted to Blackboard
- Ivan L. Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions" (1963) 9 McGill L.J. 200: to be posted to Blackboard

### Week Six – State Jurisdiction

When can states enforce a principle of international law? Over what matters can states regulate? What factors affect this assessment? What political considerations have created these rules?

Readings:

- Textbook, pp. 433-437; 442-475
- *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013)

### Weeks Seven and Eight – Treaties

An analysis of what treaties are, how they bind states and the effects of reservations to treaties. What does the law of treaties tell us about state sovereignty?

Readings:

- Textbook, pp. 40-43, 46-74, 92-120

### Week Nine – Customary International Law and Peremptory Norms

What is customary international law? What is the difference between custom and habit? How widespread does the custom have to be? Is customary international law compatible with state sovereignty? What about *jus cogens*? Compare the doctrine of "persistent objector" to the doctrine of *jus cogens*.

Readings:

- Textbook, pp. 120-144; 158-162

Revised January 2014

## **Part II: The Fields of International Law**

### **Week Ten – International Human Rights Law Part I**

An introduction to the basic history of International Human Rights Law, and how it emerged post-World War II. Is this really law or “just politics”? What does it mean to say it is law as opposed to “just politics”?

READINGS:

- Textbook, 538-548, 551-558, 568-578
- *Universal Declaration on Human Rights* and *International Covenant on Civil and Political Rights* (do not need to read in depth but should be skimmed)

### **Week Eleven – International Human Rights Law Part II**

We will take a more in-depth look at selected topical issues in international human rights law, of importance to Canada in particular:

- Social and Economic Rights
- Problems with enforcing International Human Rights Law

Readings:

- *Kindler v. Canada*, Communication No. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991 (1993)
- *International Covenant on Economic, Social and Cultural Rights*
- Textbook, pp. 558-568
- Rosalie Abella, “International Law and Human Rights: The Power and the Pity”
- Thomas Franck, “Are Human Rights Universal?”

### **Week Twelve – International Human Rights Law Part III**

A look at indigenous rights under international law.

Readings:

- General Assembly, *Declaration on the Rights of Indigenous Persons*
- James Anaya, Statement upon conclusion of the visit to Canada
- Michael J. Bryant, “Aboriginal Self-Determination: The Status of Canadian Aboriginal Peoples at International Law”

**CHRISTMAS BREAK**

Revised January 2014

### Week Thirteen – Introduction to the Law of Armed Conflict and Targeted Killing

We will look at the basic structure surrounding the Law of Armed Conflict (also known as International Humanitarian Law) codified in the *Geneva Conventions*. But does it even makes sense to consider the “law of war” given how war is the ultimate breakdown of law? We will in particular consider the practice of targeted killing.

Readings:

- Textbook, pp. 833-840
- *Geneva Conventions*, Common Articles 2 and 3
- Milena Sterio, "The United States? Use of Drones in the War on Terror: The (Il)Legality of Targeted Killings Under International Law"
- Noah Feldman, "Liberals Like Me Caused the Illegal Drone War"
- Jack Goldsmith, "Obama's drone memo is exactly what he said it'd be"

### Week Fourteen – Law of Armed Conflict Part II

We will look at important aspects of the law surrounding the use of force, including the nature of the Security Council’s power, the responsibility to protect and traditional conceptions of self-defence.

Readings:

- Textbook, pp. 841-880

### Week Fifteen – From the Law of Armed Conflict to International Criminal Law

After finishing up self-defence in the “modern” era, we will consider the modern complement to international humanitarian law – international criminal law. We will discuss the history of the international criminal law regime from Nuremberg to the *ad hoc* tribunals for Rwanda and the Former Yugoslavia, and consider the definitions of genocide, war crimes and crimes against humanity.

- Textbook, pp. 880-892, 900-918

### Week Sixteen – Introduction to International Criminal Law Part II

We move to the modern incarnation of international criminal law – the International Criminal Court. How does it fit into this history? What should we make of the difficulties it has had in gaining acceptance in certain circles? We will also consider how international criminal law can be implemented domestically.

Readings:

- Textbook, 918-945
- Antonio Cassese, Reflections on International Criminal Justice, 9 JICJ 271 (2011)

Revised January 2014

### Weeks Seventeen and Eighteen – Topical Issues in International Criminal Law

Recognizing the limitations of international criminal law, we will look at several topical issues, primarily through the lens of prosecutorial discretion. These will include gender-based crimes and the political implications of international prosecutions.

**N.B.:** We will have guest lecturers one week, bringing in lawyers who have recently been working in The Hague. In light of their schedules and interests, I will circulate the readings for both weeks as soon as possible

### Week Nineteen – International Economic Law

We will examine leading ways states have sacrificed their sovereignty in the area of economic regulations. Why have states done this? Has this been more successful than many more human rights-focussed developments in international law from recent decades? If so, why?

Readings:

- Textbook, pp. 693-718
- Re-read aspects from Abella article on trade law

### Week Twenty – International Environmental Law

How has international law sought to protect the environment? How does this compare to other themes in the course, such as treaties, state sovereignty, etc.?

Readings:

- Textbook, pg. 719-758

## **Part III: International Law in Domestic Context**

### Week Twenty-One – Extradition and Child Abduction

What happens when people try to use borders to shield their unlawful activity? We will consider two different situations in which this occurs and two different responses: extradition and child abduction. Do domestic criminal law and domestic family travel? How do these concepts relate to international human rights law?

Readings:

- Excerpts from Elaine Krivel, Thomas Beveridge & John W. Hayward, *A Practical Guide to Canadian Extradition*: passages to be posted to Blackboard
- *The Hague Convention on International Child Abduction*: Just skim; do not have to read in depth
- Merle H. Weiner, “...the Road Between Uniformity and Progress” (2001): Passages to be posted to Blackboard

Revised January 2014

- *Thomson v. Thomson*, [1994] 3 S.C.R. 551: Passages to be posted to Blackboard

### Weeks Twenty-Two and Twenty-Three – State Immunity and Judicial Deference in Foreign Relations

*When* should domestic courts be barred from sitting in judgments of the acts of foreign sovereigns? *Who* domestically ought to have the duty to enforce international legal obligations? Should it be the judiciary, the legislature or the executive? *How* and *why* are the answers to these two questions related? How do treaties interact with domestic law? What does the difference in approach between Canada and the US tell us about the two countries' approaches to international law? We will look at different doctrines in the United States and Canada for approaching these issues, also considering the doctrine of federalism.

Readings:

- Textbook, pp. 479-504
- *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, paras. 27-47
- *United States v. Burns and Rafay*, 2001 SCC 7, [2001] 1 S.C.R. 283, paras. 9-19; 79-93
- *Zivotofsky v. Clinton*, 566 U.S. \_\_\_ (2012): passages to be posted to Blackboard
- *Medellín v. Texas*, 552 U.S. 491 (2008) : passages to be posted to Blackboard

### Week Twenty-Four – Conclusion

We will look back on major themes of the course and attempt to “tie everything together.”