

POL340Y – International Law 2016-2017

Department of Political Science, University of Toronto

Gerard J. Kennedy
gerard.kennedy@utoronto.ca

Brian Kolenda
brian.kolenda@utoronto.ca

Meeting Times

Lectures: Thursday, 6:00-8:00 p.m., AH100
Office Hours: Thursday, 8:00-9:00 p.m., AH100

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 two major parts to the course:

- I. Introduction to the pillars of the international legal structure (first term)
- II. Discussion of particular sub-fields within international law. Within each topic – International Human Rights Law, International Humanitarian Law, International Criminal Law, International Economic Law, and Extradition – we will look at topical political situations that demonstrate how these fields affect international politics and give witness to the principles discussed in Part I of the course. (second term)

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.

We will use Blackboard on the U of T Portal to provide information, updates and other content. As such, you need to monitor Blackboard and your email for updates on readings, assignments, *etc.*

The main text for the course will be John H. Currie, Craig Forcese, Joanna Harrington & Valerie Oosterveld, International Law: Doctrine, Practice and Theory, 2d ed. (Toronto: Irwin Law, 2014). You must purchase this book. It should be available at the Bookstore. Other readings will be posted to Blackboard.

Office Hours and Email Communications

Office Hours will take place every Thursday, after class in Alumni Hall. If you would like a more private setting, please advise. Whichever instructor is giving the lecture will hold office hours that same evening. We are available to meet during other times but request that you email us sufficiently in advance.

If you have a question about a particular assignment or the readings/materials for a particular lecture, please direct it to the instructor responsible for that particular assignment and/or lecture. The one exception to this rule is if you have a question in advance of a test/exam on a topic that the instructor responsible for the test/exam did not teach – in that case, send your question to both instructors.

Marking Scheme

The following is a breakdown of the marking scheme for the course. Detailed descriptions follow.

25% - Mid-Term Test (In-Class November 24, 2016)

30% - Research Paper (Due February 16, 2017)

45% - Final Exam (Exam Period April 2017)

Participation: Up to 3% bonus

Mid-Term Test (25% - Responsible Instructor: KENNEDY)

This will test knowledge on the topics from Part I of the course, to ensure students have grasped the basic principles of international law and can apply them to new factual scenarios. This will take place in class on November 24, 2016.

If you miss this test, you must notify Professor Kennedy as soon as possible. Proof of medical or other emergency is required to write the makeup, which will likely be written in mid-to-late-January.

Research Paper (30% - Responsible Instructor: KENNEDY)

A research paper of a quality expected of a third year political science student. Encouraged to be on a topic from Part II of the Syllabus. Suggested topics will be distributed before the end of 2016. But any topic may be chosen with Professor Kennedy'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 p.m.) on February 16, 2017. It may be submitted prior to this time, but before 4:59 p.m., at Political Science reception (*i.e.*, if you cannot submit by 4:59 p.m. at Political Science reception, you must submit in class).

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 16, 2017, and submit an additional electronic copy to gerard.kennedy@utoronto.ca and the responsible TA(s).

No extension will be granted without proof of medical or other emergency. Otherwise, there will be a penalty of 3% for all late research papers, plus an additional 1% per day, including weekend days, if the research paper is submitted after 6:10 p.m. on February 16, 2017. For greater clarity, the penalty for submitting a research paper one day late is 4%. 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 16, 2017 (if it is not submitted by that date, you will receive a zero).

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 research paper 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. If you exceed the Word limit, you will receive a 3% penalty, with an additional 1% penalty for every 35 words beyond 3500. (For greater clarity, research papers between 3501-3434 words will receive a 3% penalty, those between 3535 and 3569 words will receive a 4% penalty, *etc.*)

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

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>.

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 CIIA 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.*)

Final Exam (45% - Responsible Instructor: KOLENDA)

A comprehensive examination in the April Examination period on all course materials. As with the mid-term, students will be tested on their ability to apply the international legal principles to new fact scenarios.

Participation Bonus (up to 3%)

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 **up to 3% may be rewarded in “bonus” marks** for those who enrich the class with reasonable consistency through quality participation.

Other Class Policies

Turnitin.com

Normally, students will be required to submit their course essays [in this course, the Research Paper] 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 web site. The use of Turnitin.com is voluntary. However, if you do not wish to use Turnitin.com, you must send an email to both instructors by February 1, 2017 so that we can arrange an alternative method of assessing academic integrity.

Re-Grading

If you wish to have a marked assignment re-graded, the following procedure must be followed:

1. You must wait for one week until after the marked assignment has been returned to allow for a “cooling off” period.
2. You must write a well-written paragraph to the TA or instructor who marked the assignment as to why you believe the grade was wrong. It is not enough to argue that one could have weighed factors differently and arrived at a different grade – an error in principle must be identified or the grade must otherwise be plainly wrong.
3. You must return a copy of the assignment to the TA or instructor so he or she can evaluate his or her original comments against your appeal.
4. The TA or instructor has the right to decrease your mark if you choose to request re-grading.
5. If the TA marked the assignment and declines to change your mark, you can further appeal to the responsible instructor, but only after having followed steps 1-4 with respect to the TA. If you choose to take this further appeal, steps 1-4 must be repeated with respect to the instructor and the instructor will only change your mark if he is satisfied the TA made an error in principle that affected your mark or the grade is otherwise plainly wrong.

Accessibility Services and Religious Accommodations

If you are registered with Accessibility Services and require reasonable accommodation, please have Accessibility Services contact us and we will gladly make necessary reasonable accommodations.

If you otherwise require reasonable accommodation due to religious reasons, please speak to the responsible instructor and we will gladly make necessary reasonable accommodations.

In either case, you must speak to the responsible instructor as far in advance of the relevant coursework date as possible.

COURSE OUTLINE

1. September 15 – Introduction to Course (KENNEDY/KOLENDA)

Introductions and synopsis of course and introduction to some main themes, vocabulary, and topical issues that relate to the course.

Readings:

- Tom Phillips, Oliver Holmes and Owen Bowcott, “Beijing rejects tribunal’s ruling in South China Sea case”
(<https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china>)
- Carol E. Lee and Jay Solomon, “U.S. Acknowledges Cash Payment to Iran Was ‘Leverage’ in Prisoner Release” (<http://www.wsj.com/articles/u-s-acknowledges-cash-payment-to-iran-was-leverage-in-prisoner-release-1471558389>)
- Brett Cole, “Australia Will Close Detention Center on Manus Island, but Still Won’t Accept Asylum Seekers”
(<http://www.nytimes.com/2016/08/18/world/australia/manus-detention-center-papua-new-guinea.html>)

Part I: Introduction to International Law

2. September 22 – What is International Law?/Introduction to the Sources of International Law (KOLENDA 1)

An introduction to the history of international law, its sources and some of the themes that will run throughout the course, including the nature of “law” (and in particular, “international law”) as distinct from “politics” (and in particular, “world politics”).

Readings:

- Textbook, Chapter 1 (pp. 11-46)
- “The Concept of Legalization”, *International Organization* 54:3, 401-419 (2000)
[<http://simplelink.library.utoronto.ca/url.cfm/434589>]

3. September 29 – The International Legal Structure (KENNEDY 1)

Consider the UN system. Compare the powers of the General Assembly, the Security Council and the International Court of Justice

Readings:

- Textbook, pp. 249-254; 259-265; 267-283; 289-300
- *Palestinian Wall Case*

4. October 6 – States Part I: Characteristics, Rights and Responsibilities of States (KENNEDY 2)

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. 181-211; 237-246

5. October 13 – States Part II: The Beginning and End of States (KOLENDA 2)

An exploration of issues in the creation, dissolution and succession of states. What role do history, force, self-determination and politics play in the creation and dissolution of states? What does it take for a state to come into being? Consider two contemporary cases: Quebec and Crimea.

Readings:

- Textbook, pp. 211-236
- *Reference re: Secession of Quebec*: paras. 1-2, 19-23, 109-156 (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>)
- Brad Simpson, “Self-Determination in the Age of Putin” http://www.foreignpolicy.com/articles/2014/03/21/self_determination_in_the_age_of_putin_crimea_referendum
- Robert McCorquodale, “Self-Determination, Intervention and International Law” <http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-crimea-ukraine-russia-self-determination-intervention-international-law/>

6. October 20 – Treaties (KOLENDA 3)

An analysis of what treaties are, how they bind states, the effects of reservations to treaties, excuses for non-compliance, and their interaction with domestic law.

Readings:

- Textbook, pp. 47-56, 70-85, 97-115

7. October 27 – Customary International Law and Peremptory Norms (KOLENDA 4)

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. 116-139, 153-157

- Harold H. Koh, “Why do Nations Obey International Law?” 106(8) Yale L.J. 2599 (1997), pp. 2599-2603; 2645-2659
- Richard Steinberg, “Wanted – Dead or Alive: Realism in International Law”, pp. 146-148; 160-167 (excerpt from introductory material, plus concluding section on custom)

8. November 3 – State Jurisdiction (KOLENDA 5)

We will continue our discussion of states by discussing jurisdiction, with a particular eye to when states can exercise universal jurisdiction.

Readings:

- Textbook, pp. 476-485; 488-494; 499-521
- Thought experiment on *Kiobel v. Royal Dutch Petroleum* (to be circulated via Portal)

9. November 10 – Mid-Term Preview/Diplomatic Immunities/State Immunities Part I (KENNEDY 3)

What is diplomatic immunity? What does it cover? What does it not? To what extent are states immune from the jurisdiction of other states? Can you sue one state in the courts of another state? What about situations where states are themselves involved in commercial activity? Should the rules be relaxed where states are engaging in breaches of international law (including international human rights and international humanitarian law)?

Readings:

- Textbook, pp. 525-555; 572-85

10. November 17 – State Immunities Part II (GUEST LECTURER/KOLENDA 6)

When should heads of states be immune from criminal prosecution for prosecution in a foreign state or an international tribunal for serious human violations of international human rights law and/or international humanitarian law? A guest lecturer will engage with Prof. Kolenda.

Readings:

- Textbook, pp. 555-572
- *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62 (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do>)
- **Additional Readings TBD**

11. November 24 – In-Class Test (KENNEDY 4)

A test on “Part I” of the Course.

12. December 1 – States Part III: State Responsibility (KENNEDY 5)

When is a state responsible (*i.e.*, liable) in international law? Who “counts” as a state official? When can a state be liable for the acts of private persons (including “private”

military or paramilitary personnel)? What defences can a state invoke to resist liability? What recourse do states have when another state breaches an international obligation?

- Textbook, pp. 763-810

Part II: The Regimes of International Law

13. January 5 – International Human Rights Law Part I (KOLENDA 7)

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, pp. 585-626
- *Universal Declaration on Human Rights*, 10 December 1948, G.A. Res. 217 A (III) (<http://www.refworld.org/docid/3ae6b3712c.html>)
- *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976)

14. January 12 – Topical Issues in International Human Rights Law (KOLENDA 8)

We will look at the various forums for the enforcement of IHRL and consider the “universality” of IHRL.

Readings:

- Textbook, pp. 654-676
- Rosalie Abella, “International Law and Human Rights: The Power and the Pity”, 55 McGill L.J. 871 (pp. 871-72; 883-887)
- Jack Donnelly, “The Relative Universality of Human Rights”, (2007) 29 Hum. Rights Q. 281 (pp. 281-293; 300-306)
- McGinnis, John O. and Somin, Ilya, “Democracy and International Human Rights Law” (July 1, 2009). Notre Dame Law Review, Vol. 84, No. 4, p 1739 (excerpts: 1740-1747; 1763-1782; 1796-1798)
- *S.A.S. v. France [GC]*, no. 43835/11, ECHR 2014 (paras. 3, 10-14, 35-39, 75-85, 106-159), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145466>

15. January 19 – Introduction to International Humanitarian Law (KENNEDY 6)

We will look at topical issues surrounding the law of armed conflict by looking at whether traditional aspects of the law of armed conflict make sense in the modern era. In particular, we will look at:

- Self-Defence
- Responsibility to Protect

Readings:

- Textbook, pp. 854-895

16. January 26 – International Humanitarian Law Part II (KENNEDY 7)

We will look at the basic structure surrounding the Law of Armed Conflict (also known as International Humanitarian Law) codified in the *Geneva Conventions*. We will analyze targeted killing as a case in point.

Readings:

- Textbook, pp. 843-847
- *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"

17. February 2 – From International Humanitarian Law to International Criminal Law (KENNEDY 8)

We will segue from the law of armed conflict to an introduction to the International Criminal Law regime from Nuremberg to the *ad hoc* tribunals for Rwanda and the Former Yugoslavia to the International Criminal Court. What does the emergence of international criminal law tell us about changes in the international legal order, particularly re: the status of the individual? What about the difficulties it has had in gaining acceptance in certain circles?

Readings:

- Textbook, pp. 895-904
- Antonio Cassese, Reflections on International Criminal Justice, 9 JICJ 271 (2011)
- Textbook, 905-919

18. February 9 – International Criminal Law Continued (KENNEDY 9)

We will continue addressing the topics from the previous class, with a particular look at genocide. We will consider the previous classes of this term comprehensively through thought experiments.

Readings:

- Textbook, pp. 942-963
- Thought Experiments on International Humanitarian Law and International Criminal Law (to be circulated)

19. February 16 – Topical Issues in International Criminal Law (GUEST LECTURER/KENNEDY 10)

A guest lecturer will engage with Prof. Kennedy on topical issues in international criminal law.

20. March 2 – Topical Issues in International Criminal Law II (KOLENDA 9)

Non-state actors have always played a significant role in armed conflict, arguably now more than ever. This class will focus on the question of who, if anyone, bears responsibility for the actions of non-state actors in times of armed conflict in international law. We will focus on the attribution of responsibility for international crimes. In particular, we will examine the grounds for attribution of conduct of individuals and groups to superiors (in international criminal law) and states (in the law of state responsibility in general international law), and how they may differ.

Readings:

- Textbook, pp. 929-942
- Antonio Cassese, *The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia* (2007) 18 Eur. J. Int'l. L. 649 (<http://www.ejil.org/article.php?article=233&issue=9>)
- Berglind Halldorsdottir Birkland, *Reining in Non-State Actors: State Responsibility and Attribution in Cases of Genocide* (2009) 84 N.Y.U.L. Rev. 1623 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1552181)
- Darryl Robinson, "How Command Responsibility Got So Complicated: A Culpability Contradiction, Its Obfuscation, and a Simple Solution" 13 *Melbourne Journal of International Law* (2012) 13 *Melbourne J. Int'l L.* 1 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950770)

21. March 9 – Extradition (KENNEDY 11)

We will discuss extradition, with an emphasis on how extradition works in Canada. We will consider, in depth, the issues of extradition of nationals and extradition to the death penalty.

Readings:

- *Extradition Act*, ss. 3-29, 40-47.1
- *United States of America v. Cotroni; United States of America v. El Zein*, [1989] 1 S.C.R. 1469 (excerpts to be posted)
- *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 (excerpts to be posted)
- *United States of America v. Burns*, 2001 SCC 7, [2001] 1 S.C.R. 283, paras. 32-38 and 124-132

22. March 16 –Sanctions and Other Remedies (KOLENDA 10)

We will discuss the history and practice of economic and other sanctions in international law. We will consider UN and national/regional sanctions and discuss the lawfulness of various sanctions regimes, from both an international and Canadian perspective. We will focus on recent developments with sanctions against Iran.

Readings:

- Textbook, pp. 827-842

- Zachary Laub, “International Sanctions on Iran” (<http://www.cfr.org/iran/international-sanctions-iran/p20258>)
- UN Security Council Resolution 2231 (2015) (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)
- Jean Galbraith, “The Security Council Resolution on the Iran Deal–A Way around the ‘Reverse Veto’” (<http://opiniojuris.org/2015/07/23/guest-post-the-security-council-resolution-on-the-iran-deal-a-way-around-the-reverse-veto/>)
- Canadian Economic Sanctions: A Portal for Small Business (<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>)

23. March 23 – Case Study: South China Sea Dispute (GUEST LECTURER/KOLENDA 11)

We will discuss the legal and political issues surrounding the South China Sea maritime boundary disputes, with particular reference to the recent decisions of the Permanent Court of Arbitration’s rulings in the case of *Philippines v. China* pursuant to the *Convention on the Law of the Sea*. A guest lecturer will engage on these issues with Prof. Kolenda.

Readings:

- Permanent Court of Arbitration Ruling on Jurisdiction and Admissibility (29 October 2015) (excerpts)
- Permanent Court of Arbitration Ruling on Merits (12 July 2016) (excerpts)
- Additional Readings TBD

24. March 30 – Conclusion (KOLENDA/KENNEDY)

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