POL340Y1Y – International Law

Course Syllabus
2018-2019

Department of Political Science
University of Toronto

Instructor: David Quayat
(david.quayat@utoronto.ca)

Meeting Times
Lectures: Monday, 6:00-8:00 p.m., Koffler House (KP) 108
Office Hours: Monday, 8:00-9:00 p.m., [Location TBA]

TAs
Joaquin Bardallo Bandera (joaquin.bardallobandera@mail.utoronto.ca) [Mid-Term]
Ben Cormier (ben.cormier@mail.utoronto.ca) [Final Exam]
Maika Sondarjee (maika.sondarjee@gmail.com) [Research Paper]

Course Description

This course will examine the historical context, theory and practice of international law. In addition, the course will examine the intersection of international law and politics, and tackle the question of whether international law is really law, or merely politics cloaked in the language of law.

Parts I – VI of the course (which will consume slightly more than half the academic year) will focus on the foundational aspects of international. Part I will explore the historical evolution of international law, as well as the sources of international law, including treaties and state practice. Part II will examine the subjects of international law. States are the predominant actors in international law, but the course will also look at international organizations and individuals as actors in the international legal order. Part III will cover the jurisdiction (that is the legal authority) of states to regulate activities of their own citizens and on their territories and how international law limits that jurisdiction. Part IV will examine what states can do when international legal obligations are breached.

Part V of the course will shift away from the foundational aspects of international law and examine specialized fields and regimes within international law, including international human rights, the law of armed conflict (international humanitarian law) and international
trade. Part V of the course will also consider whether populist political movements (i.e., the election of President Trump) pose a threat to international law.

Course Objectives

The primary objective of this course is to expose students to the core concepts of international law and to help students develop familiarity and fluency in the vocabulary of international law. Through the course, students will become familiar with the actors in the international legal order, how the international legal order functions, and the limits of international law. Question that students will be encouraged to ask is whether international law is really law, or just a series of political agreements and why it is that states seem to, as one author has put it “follow most of their international legal obligations most of the time.”

The course will also expose students to well-known subfields and regimes of international law, such as international human rights, the law of armed conflict and international trade. Employing the foundational knowledge developed during the course, students will apply those concepts to understand contemporary issues in international law.

Textbooks and Readings

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. In the reading list, it is referred to as the “Textbook”.

Students are also encouraged, but not required, to purchase Malcolm Evans, ed., *International Law*, 5th ed (Oxford University Press, 2018). This is an excellent edited volume that will be a useful reference for those students interested in pursuing an even deeper understanding of international law.

Other readings will be posted to Quercus or will be available through the U of T Library.

The reading list for this course is subject to revision. Students will be required to monitor Quercus and their emails for updates on reading lists and other matters related to this course.

Office Hours and Email Communications

Office Hours will take place every Monday after class. Students wishing a more private setting can set an appointment by email. Meetings outside of office hours will need to be set in advance.

Students are free to communicate with the instructor about the course via email. However, an email response may not always be appropriate. Where the instructor feels that an email response is not appropriate or sufficient, the instructor may propose a meeting with a student, or address the question in class (without direct reference to the student that asked the question).
Marking Scheme

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

25% - Mid-Term Test (In-Class December 3, 2018)
25% - Research Paper (Due February 11, 2019)
50% - Final Exam (Exam Period April 2019)

Mid-Term Test

This will test knowledge on the topics covered in all lectures up to and including November 26, 2018. The aim will be to ensure that students have mastered the foundational aspects of the international law covered up to that point in the course. This exam will be administered in in class on December 3, 2018 (closed book).

If you miss this test, you must notify the instructor 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

Students will be required to submit a research paper of a quality expected of a third year political science student. Suggested topics will be distributed before the end of 2018. 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 before the beginning of class (6:10 p.m.) on February 11, 2019. **You must submit your paper via Quercus.** Please submit the paper to Turnitin.com by midnight on February 11, 2019. If you are unable to submit your paper via Quercus, you must submit a hard copy of your paper in class by 6:10pm on February 11, 2019 and email it to david.quayat@utoronto.ca and the responsible TA(s).

No extension will be granted without proof of medial 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 11, 2019. 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$!2c+Students/Publications/your+grades.pdf](http://www.viceprovoststudents.utoronto.ca/Assets/Students+Digital+Assets/Vice-Provost$!2c+Students/Publications/your+grades.pdf).

Barring medical or other emergency, the paper may not be submitted after April 1, 2019 (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.

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

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. This exam will be closed book.

Other Class Policies

Plagiarism

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 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 the instructor by February 1, 2019 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 the instructor so that necessary reasonable accommodations can be made.

If you require reasonable accommodation for religious reasons, please speak to the instructor and so that reasonable accommodations can be made.

In either case, you must speak to the instructor as far in advance of the relevant coursework date as possible. Accommodation after-the-fact may not be possible if accommodation could have been sought before-the-fact.
COURSE OUTLINE

Part I: Origins and Foundations of International Law

1. September 10 – Introduction to Course / History of International Law

Introduction and overview of the course. A review of the history of international law. Introduction to some of the main themes, vocabulary, and topical issues that relate to the course.

Readings:

- Textbook, pp. 28-37 (Critical History of International Law)
- “U.S.-Iran Tensions Rise Over Oil Route as EU Tries to Save Nuclear Deal” (July 5, 2018) (https://www.nytimes.com/reuters/2018/07/05/world/middleeast/05reuters-iran-oil-usa-navy.html)
- 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)

2. September 17 – The Nature and Purpose of International Law

This class will examine why one might bother to study international law and how the study of international law relates to the study of international relations. This class will launch what will be common theme throughout the course, namely whether international law is really “law” or whether it is politics cloaked in the language of law.

Readings:


3. September 24 – The Sources of International Law I – Treaties

This class will explore treaties as a source of international law. What are treaties and how do they bind states? What are the effects of reservations to treaties, excuses for non-compliance, and their interaction with domestic law?
Readings:


4. **October 1 – The Sources of International Law II – Customary International Law**

What is customary international law? What is the difference between custom and habit? How widespread does the custom have to be in order to be legally binding on states? Is customary international law compatible with state sovereignty?

Readings:


**Part II: The Subjects of International Law**

5. **October 15 (Full Class) and 22 (First Half of Class) – States and Sovereignty**

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

Readings:

- Textbook, pp. 181-246; 345-368.
6. **October 22 (Second Half of Class) and October 29 – International Organizations and Other Non-State Actors**

What is an international organization? What status do they enjoy under international law? The structure of the UN system, including its organs and powers will be discussed. Finally, what status (if any) do other non-state actors enjoy under international law?

**Readings:**
- ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf]

**Part III: State Jurisdiction and its Limits**

7. **November 12 – State Jurisdiction**

Accepting that states are the primary actors in the international legal order, what are the limits of a state’s power? What authority do states have to regulate activities on their own territories or on the territories of others? When is conduct so harmful or egregious that a state can exercise universal jurisdiction?

**Readings:**
- Textbook, pp. 476-485; 488-494; 499-521
- *Amnesty International Canada v. Canada (Chief of the Defence Staff)*, 2008 FCA 401 (http://canlii.ca/t/21xc6)
- Amnesty International Canada v. Canada (Chief of the Defence Staff), 2008 FC 336 (http://canlii.ca/t/1w2fh)
- *Kiobel v. Royal Dutch Petroleum* (to be circulated via Quercus)

8. **November 19 – Exceptions to Jurisdiction - Diplomatic and State Immunities**

What are diplomatic and state immunity? What is the scope of diplomatic and state immunity? 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:**
- ICJ Decision - Jurisdictional Immunities of the State (Germany v. Italy) (http://www.icj-cij.org/files/case-related/143/143-20120203-JUD-01-00-EN.pdf)
9. **November 26 – Criminal Immunity / Midterm Prep Session**

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?

Readings:
- Textbook, pp. 555-572

10. **December 3 – In-Class Test**

Closed book test will cover all materials covered during Parts I, II and III.

**Part IV: Violations of International Law and Remedies**

11. **January 7 – State Responsibility for Breaches of International Law**

What constitutes a breach of international law? How is liability for a breach ascribed to state actors? When are states liable for the conduct of non-state actors? Who has the right to complain about breaches of international law? What defences are available to states for their breaches of international law?

Readings:
- Textbook, pp. 763-797, 811-824.


What are the options of a state when another state violates their international legal obligations? How does the international legal order cope with law breakers? What is the scope for an acceptable response (short of enforcing the law through brute force)?

- Textbook, pp. 797-811, 827-842.


When is it acceptable for states to resort to the use of force under international law? What constitutes “force”? When is individual versus collective action appropriate and allowed? How have advancements in technology shifted the conceptualization of force under international law?

Readings:

- Textbook, 843-860, 880-905.
- ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons  
  (https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf)

**Part V: Regimes and Contemporary Issues in International Law**


While states are the dominant actor in international law, much effort has been expended since WWII to protect individuals, including the adoption of a variety of instruments to protect human rights. This class will examine the historical evolution in international human rights law and review some of the major international law treaties in the area.

Readings:

- Textbook, pp. 585-626.
  (http://www.refworld.org/docid/3ae6b3712c.html)
  [http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx]

15. **February 4 – International Human Rights Law (Part II)**

Building on our understanding of international human rights, this class will examine the international legal framework to enforce human rights. Additionally, this class will look at strategies adopted in some countries to universalize human rights, including through litigation in national courts.

Readings:

- Textbook, pp. 654-676.

16. February 11 – The Responsibility to Protect

Can mass violations of human rights within the borders of one state justify the use of military force by other states to protect against further atrocities? This class will explore the intersection of human rights and the international legal prohibition on the use of armed force.

Readings:

• Textbook, pp. 860-880.

17. February 25 - International Humanitarian Law (Part I)

The regulation of armed conflict has been a major preoccupation of international law for over a century. This class will examine the evolution of the law of armed conflict (known as international humanitarian law) and the major legal instruments that regulate armed conflict.

Readings:

• Geneva Conventions, Common Articles 2 and 3 (including the commentaries to those Articles as provided by the International Committee for the Red Cross) available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument.

18. March 4 – International Humanitarian Law (Part II)

Increasingly, armed conflicts include non-state actors such as ISIS or other groups that wage “war” on undefined battlefields. This class will explore the challenges posed by modern armed conflict to international humanitarian law. The notion of “targeted killing” will be used to examine these challenges.

Readings:
• Milena Sterio, “The United States’ Use of Drones in the War on Terror” (available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1072&context=jil)
• Jack Goldsmith, “Obama’s drone memo is exactly what he said it’d be” (2013) (available at https://newrepublic.com/article/112337/112337)

19. March 11 – International Criminal Law

Although individuals are not the principal actors under international law, there have been increased efforts to hold individual liable for breaches of international law, notably for breaches of international humanitarian law. In this class we will examine the historical efforts to hold individuals to account and how those efforts have evolved, particularly since the end of the Cold War.

Readings:
• Textbook, pp. 905-942.

20. March 18 – The Regulation of International Trade

Commerce among states is centuries old. The international regulation of that commerce is extensive and involves a number of treaties and international organizations that regulate that commerce. In this class we will explore how states regulate trade and the tools states use to combat “unfair trade”.

Readings:
• To be assigned at least three weeks prior to class.

21. March 25 – International Law in the Age of Populism

The election of President Trump and the decision by the United Kingdom to exit the European Union represent potential popular backlash against, among other things, the liberal international order. In an era where the electorate of some states seem willing to “break” things, the question this class will address is whether international law and
international institutions are under threat. What is the future of international law in the face of increasing populism?

Readings:

- To be assigned at least three weeks prior to class.

22. April 1 – The Wrap Up Class

This final class will tie together common themes that have run throughout the course and tie up any loose ends from Part V of the course. Students will also be given the opportunity to ask questions in contemplation of the final exam.