

POL340Y1Y – International Law

Course Syllabus 2019 - 2020

**Department of Political Science
University of Toronto**

**Instructor: David Quayat
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Meeting Times

Lectures: Monday, 6:00-8:00 p.m., Lash Miller 162
Office Hours: Monday, 8:00-9:00 p.m. or by appointment

TAs

TBA

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 – IV of the course will focus on the foundational concepts of international law. 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, and the settlement of international disputes.

Part V of the course will shift away from the foundational aspects of international law and examine specialized fields and of international law, including international human rights, the law of armed conflict (international humanitarian law) and international criminal 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 with the vocabulary

of international law. Through the course, students will become familiar with the actors in the international legal system, how the international legal order functions, and the limits of international law.

Students will also develop their analytical and writing skills through the assignments and written exams in this course. At the core of legal analysis is the ability to spot issues, identify applicable rules and apply those rules. The assignments and exams in this case will assist student in developing these skills.

Textbooks and Readings

The main text for the course will be Alexander Orakhelashvili, *Akehurst's Modern Introduction to International Law* 8th ed (New York: Routledge, 2019). You must purchase this book. It will 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 a deeper understanding of international law. This book can be purchased through Amazon.ca.

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.

Podcasts

In addition to the Textbook and assigned readings, this course will be experimenting with podcasts to help set the stage for lectures. Podcasts will be used to provide a basic framework for understanding some of the course materials in the Textbook and readings so that class time can be spent productively on core concepts of international law and exploring the practical application of those core concepts.

Listening to assigned podcasts before class is essential. Podcasts will serve as an introduction to lectures so that students can come to class and get more out of lectures. Employing podcast materials will provide an interactive platform to respond to student questions and to highlight current events of interest to the course.

Podcast #1 (Introduction) will provide an overview of how the podcast will be used during the course.

Office Hours and Email Communication

Office Hours will take place every Monday after class. 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 an email response is not appropriate the instructor may propose a meeting with a student, or address the question in class or in a podcast (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.

15% - Case Comment Assignment (Due November 15, 2019 at 6:00pm EST)

20% - Mid-Term Test (Exam Period December 2019)

25% - Research Paper (Due February 28, 2020 at 6:00pm EST)

40% - Final Exam (Exam Period April 2020)

Case Comment Assignment

Developing a fluency in the language of international law and a facility with the decisions of international courts and tribunals is essential to studying international law. In this assignment, you will be required to read and summarize a case decided by the International Court of Justice.

Instructions for this assignment will be posted on Quercus. In summary, the Case Comment must be no less than 1,000 words and no more than 1,500 words (inclusive of all requirements).

Mid-Term Test (2 Hours)

This exam will test knowledge on the topics covered in all lectures up to and including December 2, 2019. The aim will be to ensure that students have mastered the foundational aspects of international law covered during the Fall semester. Students will be expected to apply the law they have learned to fact patterns set out in the exam. This exam will be administered during the December exam period. This will be an open book exam. Students will be allowed to bring any non-electronic resources (i.e., notes, textbook, etc) to the exam that they wish.

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 2020.

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 2019. However, any topic may be chosen with the instructor's approval. You will be marked on organization/writing style, research and creativity.

A guide setting the technical requirements of the paper will be posted on Quercus.

The paper must be submitted by 6:00 p.m. on February 28, 2020.

Final Exam (3 Hours)

This will be comprehensive exam. As with the mid-term, students will be tested on their ability to apply the international legal principles to fact scenarios. This exam will be scheduled during the April 2020 exam period. This will be an open book exam. Students will be allowed to bring any non-electronic resources (i.e., notes, textbook, etc) to the exam that they wish.

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>.

Submission of Written Assignments / Turnitin.com

Students are expected to submit their written assignments (i.e., Case Comment and Research Paper) through Quercus. By doing this, a student's written work will be processed by Turnitin.com for a review of textual similarity and detection of possible plagiarism. By submitting assignments through Quercus, students 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 is described on the Turnitin.com web site. The use of Turnitin.com is voluntary. If you do not wish to use Turnitin.com, you must send an email to the instructor by November 1, 2019 so that alternative arrangements to assess academic integrity can be implemented.

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

Penalty for Late Submission of Written Assignments

No extensions for the submission of written assignments (i.e., Case Comment and Research Paper) will be granted without proof of medical or other emergency.

Late written assignments will be assessed a penalty of 3% plus an additional 1% per day, including weekend days. For example, the penalty for submitting a written assignment one day late is 4%.

Barring medical or other emergency, the Case Comment will not be accepted after January 15, 2020. The Research Paper will not be accepted after April 15, 2020. Assignments not submitted by these dates will receive a zero.

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 and/or the grade posted to allow for a “cooling off” period.
2. You must write a well-written paragraph to the instructor 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 along with the grader’s comments so the instructor can evaluate any comments against your appeal.
4. The instructor will assess whether a re-grading is warranted and, if so, the result of the re-grading.

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 Sources of International Law

1. September 9th – Introduction to Course

We will discuss the objectives for the course, review the syllabus in detail, discuss grading, the instructor's approach to teaching, and an overview of key concepts that will be studied during the academic year.

Materials:

- Podcast – Introduction to the Course
- Textbook, Chapter 1 (Introduction) - pp. 1 – 16

2. September 16th – International Law and International Relations

This class will examine why one should bother studying international law and how the study of international law relates to the study of international relations. The class will tie the historical developing of international law to current interdisciplinary issues between international law and 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.

Materials:

- Textbook, Chapter 2 (History) – pp. 17 - 29
- Beth Simmons, “International Law and International Relations” in Gregory A. Caldeira et. al., eds, *The Oxford Handbook of Law and Politics* (Oxford University Press, 2018)
- Sir Arthur Watts QC, “The Importance of International Law” in Michael Byers, ed., *The Role of Law in International Politics* (Oxford University Press, 2000), 5 - 16.

3. September 23rd – The Sources of International Law – Treaties (Part I)

In this class we begin studying the sources of international law. We will begin with international treaties. In this lecture, we will examine the basic framework for the creation of treaties, how they come into force, and how states may try to limit their obligations through what are known as “reservations”. We will also consider how, to whom, where, and when treaties apply.

Materials:

- *The Vienna Convention on the Law of Treaties*, available at <https://www.refworld.org/pdfid/3ae6b3a10.pdf>.
- Textbook – Chapter 3 (Sources), pp. 31 – 33; Chapter 12 (Treaties), pp. 251 – 265.

4. September 30th – The Sources of International Law – Treaties (Part II)

Treaties, like other forms of written communication, are not always clear. Indeed, sometimes the politics of treaty making require ambiguity. In this lecture we explore how treaties are interpreted. Additionally, we will look at how treaties may be terminated.

Materials:

- The Vienna Convention on the Law of Treaties, available at <https://www.refworld.org/pdfid/3ae6b3a10.pdf>.
- Textbook, Chapter 12 (Treaties), pp. 265 – 276.

5. October 7th – The Sources of International Law – 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? In this lecture, we explore how states can become subject to international obligations through their conduct.

Materials:

- Textbook – Chapter 3.3 (Sources), pp. 33 – 45.

6. October 21st – The Sources of International Law – The Grab Bag (*Jus Cogens* / General Principals) and the Interaction Between International Law and “Municipal” Law

In this lecture we will explore the remaining sources of international law, including general principles and the opinion of learned scholars as well as the hierarchy of sources in international law. We will also explore how international law interacts with the domestic or municipal law of states and how international law becomes part of domestic law.

Readings:

- Textbook – Chapter 3.3 and following (Sources), pp. 45 – 55; Chapter 4 (International law and municipal law), pp. 57 - 71.

Part II: Subjects and Objects of International Law

7. October 28th – States: Cradle to Grave – Part I

What is a state? How does the international law definition of a “state” compare to definitions in other contexts? In this lecture we explore the creation and recognition of states. The concept self-determination and how it interacts with sovereignty will be discussed.

Readings:

- Textbook – Chapter 5 (Creation and recognition of States) pp. 72 – 110.
- *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, paras. 1-2, 19-23, 109-156, available at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

8. **November 11th – States: Cradle to Grave – Part II**

States can change over time. They can lose territory or be replaced by entirely new states. But what happens when one states ceases or exist? This lecture will explore state succession and the dismembering and death of states.

Readings:

- Textbook – Chapter 14 (State succession) pp. 299 – 326.

9. **November 18th – The United Nations and Other International Organizations**

States are not the only actor in the international legal system. This lecture will explore the legal personality of international organizations, and the particular legal structure of the United Nations.

- Textbook – Chapter 6 (Legal personality of non-state actors) pp. 111 – 115; Chapter 22 (The United Nations and Peace and Security) pp. 504 – 515.
- ICJ Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, available at <https://www.icj-cij.org/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>.

10. **November 25th – Territory**

Territory is an almost indispensable component of being a sovereign state. While our digital world may be eroding borders, humans still need space to live, grow food, breathe clean air and live life. This lecture will explore international law governing the acquisition and loss of territory.

- Textbook – Chapter 7 (Territory) pp. 122 – 156.

11. **December 2nd – The Law of the Sea**

Approximately 71% of the earth is covered by water, including the oceans. What laws govern one of our planets more important resources (i.e., water)? In this lecture we examine the law of the sea, including its evolution and modern challenges.

- Textbook – Chapter 8 (The law of sea) pp. 157 – 195.

12. **December 5th – Mid-Term Review Session**

This class (a make-up for the class lost at Thanksgiving) will give students an opportunity to ask questions about topics covered during the Fall semester in preparation for the mid-term exam.

Part III: State Jurisdiction and its Limits

13. January 6th – 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 other states? This lecture will examine the concept of jurisdiction, and the bases upon which states can regulate and enforce laws.

Readings:

- Textbook – Chapter 10 (State jurisdiction) pp. 213 – 227.
- *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*, 569 U.S. 108 (2013), available at https://www.supremecourt.gov/opinions/12pdf/10-1491_l6gn.pdf

14. January 13th – Diplomatic and State Immunity

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? In this lecture we will explore when and how state and their agents can be brought before the courts of other states.

Readings:

- Textbook – Chapter 11 (Immunity from jurisdiction) pp. 230 – 249.
- ICJ Decision - Jurisdictional Immunities of the State (Germany v. Italy), available at: <http://www.icj-cij.org/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>.
- *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do>.

Part IV: Violations of International Law and Remedies

15. January 20th – 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? In this lecture we will examine how breaches of international law are established and ascribed to state actors.

Readings:

- Textbook – Chapter 13 (State responsibility) pp. 276 – 293
- *Responsibility of States for Internationally Wrongful Acts*, available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

16. January 27th – Individual and Collective Remedies Under International Law – Measures Short of Force

In this class we will look at what remedies, short of force, states may be able to obtain for breaches of international law. Sanctions as a tool of international law will be examined.

- Textbook – Chapter 13 (State responsibility) pp. 293 - 299
- Zachary Laub, “International Sanctions on Iran”, available at: <http://www.cfr.org/iran/international-sanctions-iran/p20258>.
- UN Security Council Resolution 2231 (2015), available at: <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>

17. January 27th – Settlement of International Disputes

How do states resolve allegations of breaches of international law (short of brute force)? In this lecture, we will examine where states can go to seek redress of alleged violations of international law. Crucially, we will examine how international dispute settlement is predicated on the notion of consent.

Readings:

- Textbook – Chapter 23 (Settlement of disputes) pp. 537 – 566.
- ICJ Decision in *Fisheries Jurisdiction* (Spain v. Canada), available at <https://www.icj-cij.org/files/case-related/96/096-19981204-JUD-01-00-EN.pdf>
- ICJ Decision in *Legality of Use of Force* (Serbia and Montenegro v. Canada), available at: <https://www.icj-cij.org/files/case-related/106/106-20041215-JUD-01-00-EN.pdf>.

18. February 3rd – Individual and Collective Remedies Under International Law – Measures Short of Force

In this class we will look at what remedies, short of force, states may be able to obtain for breaches of international law. Sanctions as a tool of international law will also be examined.

- Textbook – Chapter 13 (State responsibility) pp. 293 - 299
- Gary Haufbauer et. al., *Economic Sanctions Reconsidered*, 3rd ed (Peterson Institute for International Economic, 2008), Introduction, available at: https://www.piie.com/publications/chapters_preview/4075/01iie4075.pdf.
- Zachary Laub, “International Sanctions on Iran” available at: <http://www.cfr.org/iran/international-sanctions-iran/p20258>
- UN Security Council Resolution 2231 (2015), available at: <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf> [Note: No need to read the appendix – just read the resolution itself]
- ICJ Decision in *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (Islamic Republic of Iran v. United States of America) available at: <https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf>

Part V: Subfields and Contemporary Issues in International Law

19. February 10th – The Use of Armed Force

When is it legally permissible for states to use armed force against other states or entities? What constitutes “armed force”? In this lecture we will explore the general prohibitions on the use of force and the law of self-defence. We will explore these issues both as a matter of customary law and treaty law (i.e., the UN Charter)

- Textbook – Chapter 20 (Use of force) pp. 450 – 471.
- ICJ Advisory Opinion in *Legality of the Threat or Use of Nuclear Weapons Threat of Nuclear Weapons* available at: <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

20. February 24th – 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:

- Textbook – Chapter 21 (Laws applicable to armed conflict) pp. 471 - 504
- *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>.

21. March 2nd – 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>
- Human Rights Watch, “Between a Drone and Al-Qaeda” (2012), available at: https://www.hrw.org/sites/default/files/report_pdf/yemen1013web.pdf.
- Noah Feldman, “Liberals Like Me Caused the Illegal Drone War” (2013), available at <https://www.ohio.com/akron/editorial/noah-feldman-liberals-like-me-caused-the-illegal-drone-war>.
- Jack Goldsmith, “Obama's drone memo is exactly what he said it'd be” (2013), available at <https://newrepublic.com/article/112337/112337>.

22. March 9th – International Human Rights Law (Part I)

While states are the dominant actor in international law, a number of international treaties have been adopted that articulate specific individual rights. This class will examine the historical evolution of international human rights law and review some of the major international law treaties in the area.

Readings:

- Textbook – Chapter 16 (Protected persons and entities: human rights, group rights and self determination) pp. 351 – 373.
- *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), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

23. March 16th – International Human Rights Law (Part II)

Building on our understanding of international human rights, this class will examine the international legal framework for enforcing 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.
- *S.A.S. v. France [GC]*, no. 43835/11, ECHR 2014 (paras. 3, 10-14, 35-39, 75-85, 106-159), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145466/>.
- *Araya v. Nevsun Resources Ltd.*, 2017 BCCA 401, available at <https://www.bccourts.ca/jdb-txt/ca/17/04/2017BCCA0401.htm>.

24. March 23rd – International Criminal Law

Although individuals are not the principal actors under international law, there have been increased efforts to hold individuals 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 – Chapter 19 (International criminal justice) pp. 433 – 449.

25. March 30th – 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.