

TOPICS IN INTERNATIONAL POLITICS I: INTERNATIONAL LAW
POL486H1S/POL2205H1S

University of Toronto
Winter 2020
Instructor: Elizabeth Acorn

I. COURSE OVERVIEW

The purpose of this course is to examine the role of international law in international relations and governance by focusing on selected issues and debates in contemporary international law. It reviews and analyzes foundational principles of international law, interrogating the core concepts of sovereignty and territoriality that underlie international law and considering calls for the expansion of the sources and actors in international law. The bulk of the course is devoted to the analysis of several pressing issues in international law, including critiques of international human rights law, recent withdrawals from the International Criminal Court, and calls for greater accountability of transnational corporations under international law.

II. LEARNING GOALS & OBJECTIVES

Students in this course will learn to:

- Analyze the foundational principles of international law
- Understand and evaluate critiques of the traditional histories and approaches to international law
- Analyze current issues in international law and their connection to international relations and governance
- Develop a research proposal concerning international law
- Verbally present their research

III. COURSE REQUIREMENTS & ASSESSMENT

The requirements for the class are set out below. Further information about the requirements and for the final paper will be provided throughout the semester.

- ***Class Participation:*** This course is intended to create an active intellectual atmosphere that promotes participatory learning. Students are expected to have engaged with the readings in advance and participate by making comments, asking questions and sharing ideas. Students are always required to interact respectfully with each other.
- ***Reading Responses:*** students are required to submit **4** reading responses over the semester that reflect on the readings assigned for class that week. The reading responses should each be a maximum of 2 pages double-spaced. In the reading responses, students should do three things: (1) summarize the main argument or contribution of each piece; (2) engage

critically with the readings (this should form the bulk of the reading response and could include, for instance, putting the readings in conversation with each other or other readings or class discussion; evaluating the arguments presented; or identifying and discussing areas that invite further consideration); (3) present at least one question or issue for class discussion. Reading responses must be posted on Blackboard by at least 10 p.m. on the day before class. Graduate students should be sure to address at least one of the additional readings in their responses.

- **Discussion Leader:** each student will be tasked with leading class discussion once during the course. The assigned student(s) will start class with a short summary of the readings and present questions/issues to lead the class discussion. Discussion leaders are required to submit to the instructor a short outline of their opening remarks and plans for class discussion. Outlines need not be more than a page (can be bullet points) and must be emailed to the instructor 48 hours prior to the class. Discussion leaders should be sure to read and incorporate reading responses from other students into the class discussion. Graduate students should also be sure to draw on the additional readings.
- **Final Paper:** throughout the semester, students are required to develop a research proposal on any topic of their choosing that is broadly related to the themes of the course. For undergraduate students, the final paper should be approximately 3,000 words. For graduate students, the final paper should be at least 4,000 words. As part of the final paper, all students are required to:
 - Complete an outline
 - Meet with the instructor at least once to discuss the paper
 - Present their final paper to the class

Assessment and Due Dates:

- Class participation: 20% (ongoing)
- Reading responses: 20% (due by 10 p.m. the day prior to class; see sign-up sheet)
- Discussion leader: 15% (see sign-up sheet)
- Final paper outline: 10% (due Week 5)
- Presentation of final paper: 5% (in-class Week 11 or Week 12)
- Final paper: 30% (due: April 3 at 11:59pm)

IV. COURSE POLICIES

Attendance: I expect you to attend every class on time, prepared and ready to participate. Absences or lateness will negatively affect your participation grade. Absences can be excused for illness, religious holidays, family emergencies and other extenuating circumstances, but must be approved in advance of class by the instructor via email.

Late Assignments: I expect all assignments to be submitted on time. Any assignment submitted after it is due is subject to a late penalty of one-third letter grade per day.

Electronics: You may use laptops in this class only to consult readings or take notes (but handwriting of notes is strongly encouraged; research has shown that handwriting notes is a more effective learning strategy than typing notes. For more, see this article: <https://www.washingtonpost.com/news/national/wp/2014/08/26/ditch-the-laptop-and-pick-up-a-pen-class-researchers-say-its-better-for-note-taking/>). Cell phones are completely prohibited during class. Improper use of laptops or use of cell phones interferes with the learning environment and will negatively affect your participation grade. If the use of laptops during class becomes a problem, I will revise this policy and exclude all electronics from class.

Communication, Email, and Office Hours: Email is the best way to contact me and I will generally respond within 24 hours. I can often respond within a few hours if you send your message during the business day. While you are welcome to drop by during office hours, I encourage you to reserve a timeslot in advance. If you cannot make office hours and would like to meet, please send me an email and include several proposed meeting times.

V. ACADEMIC INTEGRITY

The work that you submit in this course must be your own. All source material that you use must be appropriately acknowledged and documented. Plagiarism is taken very seriously in this course and at the University of Toronto (see the University of Toronto's Code of Behaviour on Academic Matters: <http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>). If you have questions on how or what to cite, don't hesitate to ask.

Normally, students will be required to submit their course essays 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.

VI. STUDENT WELL-BEING & ACCOMMODATIONS

An inclusive learning environment is critical to the goals and objectives of this course and it is of great importance to me that students from all backgrounds and experiences feel welcome, participate actively, and have the opportunity to excel in this course. Your reflections or suggestions on how to ensure an inclusive learning environment for you individually or for other students are always welcome.

There are many resources available on campus to support you during the semester. The University's **Writing Center** (<http://www.writing.utoronto.ca/>) and **Academic Support** services (<http://www.future.utoronto.ca/current-students/student-services-campus-life>) can help with writing and more general academic strategies. The skills (and habits) you form now will follow

you through graduate and professional school and your careers—take advantage of these resources to develop learning styles and strategies that work for you!

If you have an established accommodation, please let me know as soon as possible so that we can work together in planning for a successful semester. For further information, please contact Accessibility Services (<http://www.studentlife.utoronto.ca/as>).

Being a college student can be a stressful and challenging time. Take care of yourself and reach out if you could use more support. The University's **Health & Wellness** site (<https://www.studentlife.utoronto.ca/hwc>) provides information on various well-being workshops and counseling services and can direct you to further resources.

VII. READINGS AND SCHEDULE

All students are expected to have completed the required readings for the course in advance of class. The readings will all be made available on Blackboard.

Additional readings: the first additional reading for each week provides important background on the topic and is marked with an asterisk. Students without a prior course in international law or who are unfamiliar with the particular area should complete this additional reading. All students are encouraged to complete the additional readings. Graduate students must, at a minimum, complete the additional readings on the weeks in which they serve as discussion leader and complete reading responses.

PART I: RE-EXAMINING INTERNATIONAL LAW'S FOUNDATIONS

Week 1: Introduction to the Course

Week 2: Revisiting Basic Principles: Sovereignty and Territoriality

- Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999), pp. 3-42.
- Odette Lienau, "Who Is the 'Sovereign' in Sovereign Debt?: Reinterpreting a Rule-of-Law Framework from the Early Twentieth Century," *Yale Journal of International Law* 33 (2008): 63-111.
- John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization* 47(1) (1993): 139-74.
- Kal Raustiala, "Territoriality in American Law," in *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (Oxford University Press, 2009), pp. 3-30.

Additional:

- *Vaughan Lowe, "The Ambit of International Law" in *International Law* (Oxford: Oxford University Press, 2007), pp. 1-33.

- Martti Koskenniemi, "The Many Faces of 'Sovereignty': Introduction to Critical Legal Thinking," *Kutafin University Law Review* 4(2) (2017): 282-291.

Week 3: Who and What Counts in International Law: Expanding Sources and Actors

- Anthea Roberts and Sandesh Sivakumaran, "The Theory and Reality of the Sources of International Law," in *International Law*, ed. Malcolm Evans (Oxford University Press, 2018), pp. 89-118.
- José E. Alvarez, "Legal Positivism and its Discontents," in *The Impact of International Organizations on International Law* (Brill, 2016), pp. 1-52.
- Abraham L. Newman and Elliot Posner, "International Soft Law and Mechanisms of Political Disruption," in *Voluntary Disruptions: International Soft Law, Finance, and Power* (Oxford University Press, 2018), pp. 13-30.
- James E. Hickey Jr., "The Source of International Legal Personality in the 21st Century," *Hofstra Law & Policy Symposium* 2 (1997): 1-18.

Additional:

- *Malcolm Shaw, "Sources," in *International Law*, 8th edition (Cambridge University Press, 2018), pp. 65-119.
- Abraham Newman and David Zhang, "Regulatory Networks," in *International Law and International Relations: The State of the Art*, ed. Jeffrey Dunoff and Mark Pollack (Cambridge University Press, 2013), pp. 244-265.
- José E. Alvarez, "Are Corporations 'Subjects' of International Law?" *Santa Clara Journal of International Law* 9 (2011): 1-35.

Week 4: International Law? Contested Histories and Alternative Perspectives

- Martti Koskenniemi, "Expanding Histories of International Law," *American Journal of Legal History*, 56(1), 104-112.
- Anthony Anghie, "Introduction," in *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005), pp. 1-12.
- Anthea Roberts, "The Divisible College of International Lawyers," in *Is International Law International?* (Oxford University Press, 2017), pp. 1-18.
- Gregory Shaffer and Carlos Coye, "From International Law to Jessup's Transnational Law, From Transnational Law to Transnational Legal Orders," Legal Studies Research Paper Series, No. 2017-02, University of California Irvine (2019), pp. 1-21.
- Anthea Roberts et al., "Comparative International Law: Framing the Field," *The American Journal of International Law* 109(3) (2015): 467-474.

Additional:

- *Stephen C. Neff, "A Short History of International Law," in *International Law*, ed. Malcolm Evans (Oxford University Press, 2018), pp. 3-30.
- José E. Alvarez, "Hegemonic International Law Revisited," *The American Journal of International Law* 97 (2003): 873-888.

PART II: CURRENT ISSUES IN INTERNATIONAL LAW

Week 5: An Old Question Reconsidered: Does International Law Circumscribe War?

- Oona Hathaway and Scott Shapiro, "Introduction," "The End of Conquest," and "War No Longer Makes States" in *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster, 2017), ix-xxii, 309-335, and 336-351.
- Stephen Walt, "There's Still No Reason to Think the Kellogg-Briand Pact Accomplished Anything," *Foreign Policy* (September 29, 2017).
- Nina Tannenwald, "Assessing the Effects and Effectiveness of the Geneva Conventions," in *Do the Geneva Conventions Matter?* eds. Matthew Evangelista and Nina Tannenwald (Oxford University Press, 2017), pp. 1-34.
- Elizabeth Grimm Arsenault, "Geneva Convention Compliance in Iraq and Afghanistan," in *Do the Geneva Conventions Matter?* eds. Matthew Evangelista and Nina Tannenwald (Oxford University Press, 2017), pp. 137-160.

Additional:

- *Giovanni Distefano, "Use of Force," in *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press, 2014), pp. 545-573.
- Oona Hathaway and Scott Shapiro, "What Realists Don't Understand About Law," *Foreign Policy* (October 9, 2017).

Week 6: The Problem with Rights in International Human Rights Law

- David Kennedy, "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* 15 (2002): 101-125.
- Samuel Moyn, "International Law and Human Rights," in *The Last Utopia: Human Rights in History* (Harvard University Press, 2010), pp. 176-211.
- John Tasioulas, "Philosophizing the Real World of Human Rights: A Reply to Samuel Moyn," in *Human Rights: Moral or Political?* (Oxford University Press, 2018), pp. 88-102.
- Ruti Teitel, "Introduction" in *Humanity's Law* (Oxford University Press, 2011), pp. 3-18.
- Martti Koskeniemi, "Humanity's Law," *Ethics & International Affairs* 26 (2012): 395-398.

Additional:

- *Frans Viljoen, "An Introduction to International Human Rights Law," in *International Human Rights Law in Africa* (Oxford University Press, 2012).
- Samuel Moyn, "Human Rights in the Neoliberal Maelstrom," in *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018), pp. 173-211.
- John Tasioulas, "Saving Human Rights from Human Rights Law," *Vanderbilt Journal of Transnational Law* (forthcoming).

Week 7: Crisis at the International Criminal Court

- David Bosco, "Introduction," and "A Constrained Court," in *Rough Justice: The International Criminal Court in a World of Power Politics* (Oxford University Press, 2014), pp. 1-10, 177-190.
- Phil Clarke, "Introduction: The Warlord in the Forecourt," in *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge University Press, 2019), pp. 1-21.
- Cronin-Furman, Kate, and Stephanie Schwartz, "Is This the End of the International Criminal Court?" *Washington Post, Monkey Cage* (October 21, 2016).
- Bolton, John, "Speech Two: Reject and Oppose the International Criminal Court," in *Toward an International Criminal Court? Three Options Presented as Presidential Speeches*, ed. Alton Frye (Council on Foreign Relations, 1999).
- Gabor Rona, "More on What's Wrong with the ICC's Decision on Afghanistan," *Opinio Juris* (April 15, 2019).

Additional:

- *Jose E. Alvarez, "Alternatives to International Criminal Justice," in *The Oxford Companion to International Criminal Justice*, ed. Antonio Cassese (Oxford University Press, 2009), pp. 25-40.
- Robert J. Currie, "Neil Boister, An Introduction to Transnational Criminal Law," *Journal of International Criminal Justice* 13, no. 5 (2015): 1166–1169.
- Dapo Akanda and Antonios Tzanakopoulos, "The Crime of Aggression before the International Criminal Court: Introduction to the Symposium," *European Journal of International Law* 29(3) (2018): 829-833.

Week 8: International Trade Law: The WTO at a Standstill

- Antoine Martin and Bryan Mecurio, "Doha Dead and Buried in Nairobi: Lessons for the WTO," *Journal of International Trade Law and Policy* (2017).
- Gregory Shaffer and Henry S. Gao, "China's Rise: How It Took on the U.S. at the WTO," *University of Illinois Law Review* 2018: 115-184.
- Kathleen Claussen, "The Other Trade War," *Minnesota Law Review* 103(1) (2018): 1-19.
- Gregory Shaffer, "A Tragedy in the Making? The Decline of Law and the Return of Power in International Trade Relations," *Yale Journal of International Law* (2018): 1-17.

Additional:

- *John H. Jackson, "The Evolution of the World Trading System: The Legal and Institutional Context," in *Oxford Handbook of International Trade Law*, eds. Daniel Bethlehem et al. (Oxford University Press, 2009), pp. 3-53.
- Marc Busch and Krzysztof Pelc, "Dispute Settlement in the WTO," in *The Oxford Handbook of the Political Economy of International Trade*, ed. Lisa Martin (Oxford University Press, 2015), pp. 1-19.

Week 9: Backlash in International Investment Law: An Opportunity for Reform?

- Claire Provost and Matt Kennard, "The Obscure Legal System That Lets Corporations Sue Countries," *The Guardian* (June 10, 2015).
- Gus Van Harten, "Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law," in *International Investment Law and Comparative Public Law*, ed. Stephan Schill (Oxford University Press, 2010), pp. 627-657.
- Federico M. Lavopa, Lucas E. Barreiros, and M. Victoria Bruno, "How to Kill a BIT and not Die Trying: Legal and Political Challenges of Denouncing or Renegotiating Bilateral Investment Treaties," *Journal of International Economic Law* 16 (2013): 869-891.
- Stephan W. Schill, "Reforming Investor-State Dispute Settlement: A (Comparative and International) Constitutional Framework," *Journal of International Economic Law* 20 (2017): 649-672.

Additional:

- *Sornarajah, M., "Bilateral Investment Treaties," in *The International Law on Foreign Investment* (Cambridge University Press, 2017), pp. 1-36.
- Alec Stone Sweet and Florian Grisel, "The Evolution of the Arbitral Order," in *International Arbitration: Judicialization Governance, Legitimacy* (Oxford University Press, 2017), pp. 35-79.

Week 10: Can International Law fill the Governance Gap for Transnational Business?

- International Commission of Jurists, *Corporate Complicity & Legal Accountability: Facing the Facts and Charting a Legal Path* (2008), pp. 1-31.
- Suzanne Daley, "Guatemalan Women's Claims Put Focus on Canadian Firms' Conduct Abroad," *New York Times* (April 2, 2016).
- Wolfgang Kaleck and Miriam Saage-Maass, "Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and Its Challenges," *Journal of International Criminal Justice* 8(3) (2010): 699-724.
- Penelope Simons, "The Value-Add of a Treaty to Regulate Transnational Corporations and Other Business Enterprises: Moving Forward Strategically," in *Building a Treaty on Business and Human Rights: Context and Contours*, eds. Surya Deva and David Bilchitz (Cambridge University Press, 2017), pp. 48-78.

Additional:

- *Penelope Simons and Audrey Macklin, "Introduction," in *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage* (Routledge, 2014), pp. 1-21.
- James G. Stewart, "The Turn to Corporate Criminal Liability for International Crimes: Transcending the Alien Tort Statute," *New York University Journal of International Law and Politics* 47 (2014): 121-206.
- Leslie Johns, Krzysztof J. Pelc, and Rachel L. Wellhausen, "How a Retreat from Global Economic Governance May Empower Business Interests," *Journal of Politics* 81(2) (2019): 731-738.

Week 11: Class Presentations

Week 12: Class Presentations