



Jindal Global Law School
India's First Global Law School



O.P. Jindal Global University
A Private University Promoting Public Service

COURSE MANUAL
Public International Law

B.A.LL.B

Course instructors

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Spring Semester 2016

O. P. JINDAL GLOBAL UNIVERSITY

The information provided herein is by the Course Coordinator. The following information contains the official record of the details of the course.

Part I

Course Title **Public International Law**

Course Number **LW 1701**

Course Duration **One Semester (15 weeks)**

Number of credits **4**

Level **Five Year Law Degree Programme**

Medium of Instruction **English**

Pre-requisites _____

Nil _____

Pre-cursors

_____ **Nil** _____

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Equivalent

courses _____ **Nil** _____

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Exclusive Courses: _____ **Nil**

COURSE INTENDED LEARNING OUTCOMES Course Intending Learning Outcomes	Teaching and Learning Activities	Assessment Tasks/Activities
<p>By the end of the course students should be able to:</p> <p>Understand and apply the sources of Public International Law</p> <p>Understand the nature of the international legal system, actors in the international legal system and the concept of “international legal personality”</p> <p>Understand and apply critical theoretical perspectives of traditional western interpretations of PIL, including Third World Approaches to International Law (TWAIL) and feminist critiques</p> <p>Recognise how the doctrine of State sovereignty is increasingly being eroded (e.g. in the fields of environmental law, international criminal law and international human rights law) and understand how important this is for bolstering the international rule of law and ensuring justice for weaker nations and peoples</p> <p>Understand how PIL operates in practice. That is, how it is applied in litigation and in legal opinions provided to States, international organisations and non-governmental organisations (NGOs)</p> <p>Have a working knowledge of the relationship between PIL and the domestic legal systems, in particular, the Indian legal system</p> <p>Understand the manner in which disputes between States can be resolved peacefully within the framework of PIL</p> <p>Have an in-depth knowledge of the jurisdiction and selected jurisprudence of the International Court of Justice and other relevant international courts and tribunals</p> <p>Apply PIL to contemporary global challenges we face today.</p>		

<p>Analytically and critically describe and explain important legal concepts, doctrines associated with different streams of Public International Law especially the topics to be covered in the syllabus.</p>	<p>50% weight</p>	<p><i>Reading of relevant course materials and cases in addition to involving themselves in research</i></p> <p>Students will acquire knowledge on Public International Law in general and in particular the doctrines concepts associated with different streams of Public International Law covered in the syllabus.</p> <p><i>Lectures</i></p> <p>Students will be given guidance on their reading and research for their lectures and tutorials.</p> <p>Students will, by responding to questions and performing exercises, develop their analytical and critical capabilities to discuss important issues on</p>	<p><i>End-of-course closed book, timed examination (50% of marks)</i></p> <p>Internal 50% will be decided for each section by the faculty concerned</p> <p>Students' ability to describe explain and apply the General principles of International Law to the given factual situation will be tested by all three assessment tasks/activities.</p>
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		Public International Law	
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<p>Analyse and critically evaluate: fundamental issues and concerns in the field of Public International Law</p> <p><input type="checkbox"/> <input type="checkbox"/> The competing entitlements available in International Law</p> <p>o the emergence of new concepts and their implications in relation to change in the content of law</p> <p>o the new jurisprudential thinking on the</p>	<p>Variable weight (at faculty discretion, for each section taught)</p>	<p><i>Lectures</i></p> <p>Students will be introduced to issues and concerns and aspects of Public International Law</p> <p><i>Preparation for tutorials</i></p> <p>Students will research issues of International Law</p> <p><i>Tutorials</i></p> <p>Students will give presentations on selected topics in which they will scrutinise, analyse and evaluate issues and concerns in the</p>	<p><i>End-of-course examination</i></p> <p><i>Tutorials</i></p> <p><i>Assignments</i></p> <p><input type="checkbox"/> <input type="checkbox"/> Students' ability to analyse and critically evaluate different aspects of Public International Law will be tested by all three assessment tasks/activities.</p>
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<p>social roots of International Law</p>		<p>field of Public International Law.</p>	
<p><input type="checkbox"/> <input type="checkbox"/> Apply different aspects of international law to given problem by:</p> <p><input type="checkbox"/> <input type="checkbox"/> researching issues in international law</p> <p><input type="checkbox"/> <input type="checkbox"/> analysing and innovating to resolve problems concerning issues in International Law.</p> <p><input type="checkbox"/> <input type="checkbox"/> communicating their solutions orally and in writing clearly, coherently and accurately in their own words</p>		<p><i>Lectures</i></p> <p>Students will be shown how legal problems can be approached from various rules of international law by citing appropriate case laws and conduct of States.</p> <p><i>Preparation for tutorials</i></p> <p>Students will research on selected issues in International Law</p>	<p><i>End-of-course examination</i></p> <p>Students' ability to apply different rules/interpretations of international law to a given situations will be tested.</p> <p><i>Tutorials</i></p> <p>Students will be required to make presentations on international problems and suggest solutions.</p>

<p>and in plain language.</p>	<p><i>Tutorials</i> Students will give presentations on selected topics in which they will scrutinise, analyse and evaluate issues and concerns and current developments in the field of international law.</p>	<p>All students will be required to participate and contribute to tutorial discussions whether they are making a presentation or not. Students' ability to research, analyse and resolve problems, and communicate solutions orally will be tested.</p> <p><i>Assignment/s</i> Students' ability to research, analyse and resolve problems, and communicate solutions in writing will be tested</p>

Part II

GRADING OF STUDENT ACHIEVEMENT

To pass this course, students must obtain a minimum of 50% in the final assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination. These could include reaction papers, class

participation, tutorial presentations, group work and a final research paper. End of semester exam will be in the form of a sit-down written assessment and will carry 50 marks.

Please note the grades and their values below :

Letter Grade	Grade Value	Percentage of Marks	Grade Definitions and Explanation
O	7	70 and above	Outstanding Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyse existing materials and originality in thinking and presentation.
A+	6	65 to 69.75	Excellent Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability.

A	5	60 to 64.75	Good	Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.
B+	4	55 to 59.75	Adequate	Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
B	3	50 to 54.75	Marginal	Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills.
F	0.0	Below 50	Failure	Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.

A WORD OF CAUTION ON ONLINE READINGS

Online sources can be classified into reliable, unreliable and outright bogus. The Internet is an open domain in which all and sundry can create web pages and indulge in propaganda, falsification or misrepresentation of events. The few sources that can help you with basic information and which are fairly unbiased are: websites of established newspapers, magazines and journals. Student should always consult with the instructors about the veracity and authenticity of a particular web site and its suitability for researching topics covered in this syllabus.

PLAGIARISM

Any idea, sentence or paragraph you cull from a web source **must be credited** with the original source. If you paraphrase or directly quote from a web source in the exam, presentation or essays, the source must be explicitly mentioned. You *SHOULD NOT* feel free to plagiarise content, be it from scholarly sources (i.e. books and journal articles) or from the Internet. The university has strict rules with consequences for students involved in plagiarism. **This is an issue of academic integrity on which no compromise will be made**, especially as students have already been trained in the perils of lifting sentences or paragraphs from others and claiming authorship of them.

METHOD OF CONDUCTING CLASS

The class format will combine lecture and discussion. Where necessary discussion groups can be created with a view to enhance the quality and rigor of the discussion. Students are expected to prepare for and participate in class discussion on a regular basis. Students are expected to review in advance of each class and will lead the class through presentations. The instructor of the course may initiate discussion on the basis of a reported event or a reported case decision in the context of the subject matter taught in the class. Student's participation in the discussion will be assessed as part of continuous assessment.

International Law, Spring 2016, JGLS

Week wise reading list and course content including lecture outline

Welcome to our course on Public International Law, Spring Semester, 2016!

This course on International Law will explore how the process of international engagement and evaluation of claims, understood as dynamic, helps us to understand and even solve key dilemmas or problems about international law.

1. The course of international law needs to be traced if international law is to be understood. This semester aims to give you such an understanding. It is directed not at topics or subject headings – sources, treaties, states, human rights and so on – but at some of the key unresolved problems of our discipline – problems which, unresolved, call into question its status as a discipline. It argues that these key problems can be resolved, or at least reduced, by an imaginative reading of our shared practices and our increasingly shared history, with an emphasis on process. In this sense the practice of the institutions of international law (among them now courts) is to be understood as the law itself. Those institutions – prominent among them the states – are in a dialectical relationship with the law, shaping it and shaped by it, making it and made by it. This will be explained by reference to practice and process, to actual cases and examples, providing a course of international law in some standard sense as well.

2. Our teaching of international law is divided into **three parts**, each of four to five lectures. At the end of each part, we shall have a week of evaluation and a quiz.

Part One will examine five challenges to the possibility of international law as law: (1) the realist view that it is too weak to be any good; (2) the logical difficulty that international rules can only come into existence if we deceive ourselves as to their already existing; (3) the political objection that law properly so-called cannot emanate from sovereignty while sovereignty remains outside the law; (4) the technical problem of the relationship between treaty law and customary law, asking if more of one means less of the other, and (5) the critical insight that international law is radically indeterminate, and that making it determinate entails abandoning law's neutrality for an ideological choice.

3. **Part Two** will explore five difficulties with the assumption that international law is a system (as distinct from a miscellany or scrapbook of primary rules): (1) the issue of participation in the system, encapsulated in the problematic of personality; (2) the duality of international law and national law, expressed in the apparently spurious formula of the *dédoublement fonctionnel* (how, paid by one system, can we loyally serve another?); (3) the impossibility of multilateralism when multilateral bonds can always be reduced to bilateral relations (4); the taint of proliferation, fragmentation and purportedly self-contained regimes; and (5) to what extent international law is truly universal.

4. In **Part Three**, we will discuss five obstacles that will have to be overcome before we can coherently speak of the rule of (international) law as governing international affairs: (1) overcoming the fatuity of a 'system' of grossly unequal states customarily addressed as equal sovereigns; (2) that international law is by some means democratic; (3) that its principal embodied authority – the Security Council – is subject to legal constraint; (4) that there is something like a constitution of international society; and (5) that that society is not irremediably unjust. Yet there are grave doubts as to each of these requirements – not just whether they actually obtain, but whether they can obtain.

Understanding international law can be the key to a more nuanced understanding of domestic law and domestic policy making. An interest in this subject is your ticket to enter the glamorous world of international civil servants and diplomats. It is your passport to a future working for an international organisation. Or, at the very least, it is your key to understanding, in an increasingly global world, what law and politics mean, or do not mean.

During the fourteen to sixteen weeks available to you this semester, you will cover a broad overview of the basic concepts in public international law.

Course Texts

There is no compulsory core text for this course but if students want a more in depth resource for international law or critical theory, please see some recommendations in the further readings section of each week.

Shaw, M. N: International Law. 7th edition Cambridge University Press, Cambridge (2014).

Note: All the Basic Readings are available on Dropbox.

Useful Internet Links

- <http://untreaty.un.org/cod/avl/intro.html>
- <http://untreaty.un.org/ilc/summaries/summaries.htm>
- <http://ials.sas.ac.uk/flare/flare.htm>
- <http://www.un.org/law/riaa/>
- <http://digitalcommons.law.yale.edu/>
- <http://www.mpepil.com/>
- <http://www.asil.org/>

Week 1 (1 – 5 February 2016)

INTRODUCTION TO INTERNATIONAL LAW

Illustrative keyword contents of lecture

The international community (or society) and the main characteristics of its normative structure. The role of States. International organizations and foremost the United Nations. Other public and private: “subjects, actors, participants and users” of international law. The cardinal principles of cooperation and non-use of force.

The difficult co-existence between organization and decentralization. The basis of rights and obligations under international law. Law and Politics. Law and Ethics. International law and international relations.

Lessons from the history of international law. The place of theory: Schools of thought, movements and tendencies: positivism, jus naturalism, socially oriented approaches, realism, pragmatism, constitutionalism and other “isms”. West and East. Introduction to alternative / critical schools of thinking - voices of the South.

Basic readings:

1. H.L.A. Hart, “*The Concept of Law*”, Chapter X, pp. 208 – 31
2. Thucydides, “*The History of the Peloponnesian War*” pp. 293 - 99

Further readings:

1. Robert Y. Jennings, “What is International Law and How Do We Tell It When We See It?”, *Schweizerisches Jahrbuch für Internationales Recht*, 1981, pp. 59-88
2. Mahnoush H. Arsanjani and W. Michael Reisman, “The Quest for an International Liability Regime for the Protection of the Global Commons”, *International Law: Theory and Practice. Essays in Honour of Eric Suy*, K. Wellens (ed.), The Hague, Martinus Nijhoff Publishers, 1988, pp. 469-492
3. Georges Abi-Saab, “Whither the International Community?”, *European Journal of International Law*, Vol. 9, 1998, pp. 248-265
4. Antonio Cassese, *International Law*, 2nd ed., Oxford, Oxford University Press, 2005, pp. 3-80
5. James Crawford, “Sovereignty as a legal value”, in James Crawford and Martti Koskeniemi (eds.), *The Cambridge Companion to International Law* (Cambridge, CUP, 2012), pp. 117-133.

Week 2 (8 – 12 February 2016)

WORKING OF THE INTERNATIONAL LEGAL SYSTEM

Lecture outline

Workshops producing international law: international conferences and international organizations, the importance of the United Nations System, bilateral meetings. Negotiation, expertise, and agreement. The emerging international civil society. The final product: preponderance of treaty law, the relevance of custom, a place for general principles of law, the jurisprudence of international and domestic courts, teachings, unilateral acts of states, soft law and contemplations regarding relativism.

The relationship between international and domestic law. Constitutional provisions and application of international law by domestic organs. International law is everywhere: the debate over its unity, universality, vacuums and contradictions. The price of rapid expansion of international normativity and the claims of fragmentation. State sovereignty in the twenty-first century. The quest for democratization, governance, and management of public common goods.

Basic Readings

1. Obiora Chinedu Okafor, "After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa" 41 *Harvard Int'l Law J.* 503 (2000)
2. Harlan Grant Cohen, *Finding International Law: Rethinking the Doctrine of Sources*, 93 *Iowa L. Rev.* 65 (1997)
3. Malcolm Shaw, 6th edn. pp. 69 – 128 (*Sources of International Law*)
4. Blaine Sloan, "The United Nations Charter as a Constitution" *Pace Law Review* (1989)

Further Readings

1. Report of the International Commission on Intervention and State Sovereignty (2001)
2. *North Sea Continental Shelf Cases (Netherlands/Germany) (Denmark/Germany) [1969]* *ICJ Reports* 3, pp. 41-47 (paras. 70-80, 81, 85).
3. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, [1986]* *ICJ Reports* 14, pp. 97-102, 108-109 (paras. 183, 184, 186, 187, 188, 189, 190, 193, 207).
4. M. Akehurst, 'Custom as a Source of International Law', 47 *BYIL*, 1974-5, p. 1
5. A. Boyle and C. Chinkin, *The Making of International Law*, Oxford, 2007
6. B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, London, 1953
7. C. Parry, *The Sources and Evidences of International Law*, Cambridge, 1965

8. Alain Pellet, 'Article 38' in *The Statute of the International Court of Justice: A Commentary* (eds. A. Zimmermann, C. Tomuschat and K. Oellers-Frahm), Oxford, 2006, p. 677.
9. B. S. Chimni, "International Institutions Today: An Imperial Global State in the Making", *European Journal of International Law*, Vol. 15, 2004, pp. 1-37
10. Pierre-Marie Dupuy, "A Doctrinal Debate in the Globalization Era: On the 'Fragmentation' of International Law", *European Journal of Legal Studies*, Vol. 1, 2007, pp. 1-19
11. David Kennedy, "One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream", *NYU Review of Law & Social Change*, Vol. 31, 2007, pp. 641-659
12. P. Weil, "Towards Relative Normativity in International Law?", 77 *AJIL*, 1983, p. 413

Week 3 (15 – 19 February 2016)

SOURCES OF INTERNATIONAL LAW

Lecture outline

Where does international law come from and how is it made? These are more difficult questions than one might expect and require considerable care. In particular, it is dangerous to try to transfer ideas from national legal systems to the very different context of international law. There is no “Code of International Law”. International law has no Parliament and nothing that can really be described as legislation. While there is an International Court of Justice and a range of specialised international courts and tribunals, their jurisdiction is critically dependent upon the consent of States and they lack what can properly be described as a compulsory jurisdiction of the kind possessed by national courts. The result is that international law is made largely on a decentralised basis by the actions of the 192 States which make up the international community. The Statute of the ICJ, Art. 38 identifies five sources:- (a) Treaties between States; (b) Customary international law derived from the practice of States; (c) General principles of law recognized by civilised nations; and, as subsidiary means for the determination of rules of international law: (d) Judicial decisions and the writings of “the most highly qualified publicists”. This list is no longer thought to be complete but it provides a useful starting point.

Readings

A. Legal Instruments

Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945.

Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961, United Nations, *Treaty Series*, vol. 500, p. 95.

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, United Nations, *Treaty Series*, vol. 1155, p. 331.

Statute of the International Criminal Tribunal for the Former Yugoslavia, Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704), 3 May 1993.

International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, 2001.

B. Jurisprudence

Permanent Court of International Justice, *The Case of the S.S. “Lotus”*, Judgment of 7 September 1927, *P.C.I.J.*, Series A, No.10.

International Court of Justice, *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, *I.C.J. Reports* 1969, p. 3.

International Court of Justice, *Barcelona Traction, Light and Power Company, Limited; Judgment of 5 February 1970*, *I.C.J. Reports* 1970, p. 3.

International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, *I.C.J. Reports* 1986, p. 14.

International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, *I.C.J. Reports* 1996, p. 226.

International Court of Justice, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States)*, Preliminary Objections, Judgment of 27 February 1998, *I.C.J. Reports* 1998, p. 115.

International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Duško Tadić*, Judgment of 15 July 1999, Appeals Chamber, IT-94-1-A.

International Court of Justice, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002, *I.C.J. Reports* 2002, p. 3.

United Kingdom, House of Lords, *Jones v. Ministry of the Interior of the Kingdom of Saudi Arabia and another (Secretary of State for Constitutional Affairs and another intervening)*, 14 June 2006, [2006] UKHL 26.

Week 4 (22 – 26 February 2016)

THE LAW OF TREATIES

Lecture outline

In this week, we commence our detailed examination of treaties as sources of PIL. The sources of PIL are set out in Article 38 of the Statute of the International Court of Justice (ICJ), which is appended to the UN Charter. During this session we focus on Article 38 (a) of the ICJ Statute which states that the ICJ will settle its disputes with reference to “international conventions, whether general or particular, establishing rules expressly recognized by the contesting states”. The definition, interpretation and other rules related to international treaty law are governed by the 1969 Vienna Convention on the Law of Treaties (VCLT) which we will examine this week in detail. We will discuss the scope of treaties, their definition, purpose and evolution. This will be followed by the process of treaty making from drafting to reservations and voting.

What is the function of a treaty in PIL? Who makes international treaties? How are they made? What is meant by the term *pacta sunt servanda*? What is the difference between signature and ratification of a treaty? How are treaty provisions interpreted? What is a “reservation”? When may a state lawfully enter a reservation? What effect does a reservation have upon state obligations to a treaty? What is the procedure under the VCLT for challenging a reservation? How may a state legally justify non-adherence to an international treaty obligation? Is it possible for States to make reservations in respect of international human rights law treaties? What do the *Genocide* and the *Rawle Kennedy* cases tell us about reservations to human rights treaties? What is the test to determine whether a particular reservation is lawful or not? Is there any international body that has the jurisdiction to “sever” an unlawful reservation?

Statutes and Cases

1. The Vienna Convention on the Law of Treaties 1969, available at <http://legal.un.org/avl/ha/vclt/vclt.html>
2. Treaty Handbook, United Nations (Reprinted 2006) [WILL BE DISTRIBUTED IN HARD COPY IN CLASS]

Basic Readings

3. R. R. Baxter, “Treaties and Custom” (1970) 129 *Recueil des Cours* 25, 64.
4. *Reservations to Genocide Convention* (1951), ICJ

Further Readings

1. R.R. Baxter, “International law in her infinite variety”, (1980) 29 *ICLQ* 549, pp. 549-551, 564-566.
2. *Rawle Kennedy v. Trinidad and Tobago*, The United Nations Human Rights Committee (HRC), Communication No.845/199, (Decision of 2 November 1999)

3. Final Act of the Conference on Security and Cooperation in Europe, 1 August 1975, 14 ILM 1292, para. 1(a)(X).
4. ILC Articles on Responsibility of States for Internationally Wrongful Acts, 12 December 2001, ILC Ybk 2001(II)/2, Arts. 4, 7, 10 (codification); Arts. 41, 48 (progressive development).
5. A. Boyle, "Soft Law in International Law Making" in M. D. Evans (ed.), *International Law* (OUP, 3rd ed., 2010), Chap. 5.

Week 5 (29 February – 4 March 2016)

STATE PRACTICE AND THE ICJ

Lecture outline

This week we pay particular attention to Article 38 (b) of the Statute of the International Court of Justice, which sets out that the Court will apply; “international custom, as evidenced of general practice accepted as law”. Customary international law is an increasingly important source of international law and a product of state practice. It is, however, much harder to determine what constitutes state practice than to determine a treaty rule. This is because customary international law may not necessarily be written law and there is no one international body that has the task of declaring what constitutes State Practice even though the ICJ has had to do this in a number of cases. During this session we will further examine the complex relationship between international treaties and customary international law and the role of ICJ in etching out the legal implications of State Practice.

We ask, what is CIL; what are the constituent elements of CIL. What kind of acts can be considered to constitute state practice; does state practice require absolute conformity with a rule; what does *opinio iuris* actually mean; what is meant by the term “regional custom”? What approach does the ICJ follow when attempting to identify the creation, change and modification of CIL?

Statutes and Cases

Article 64, 1969 VCLT

Anglo-Norwegian Fisheries Case (UK v. Norway), 1951 ICJ

Military and Paramilitary Activities in Nicaragua (Merits), 1986 ICJ

North Sea Continental Shelf Case, 1969 ICJ

Nuclear Weapons Advisory Opinion, 1996 ICJ

Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)

Basic Readings

Article 64, 1969 VCLT

Weisburd, A. Mark. "International Court of Justice and the Concept of State Practice, The." U. Pa. J. Int'l L. 31 (2009): 295.

Beckett, J., "Customary International Law", in Cali, B. *International Law for International Relations* (2010), pp.122-141

Segura-Serrano, A. "Internet Regulation: A Hard-Law Proposal", Jean Monnet Working Paper 10/06

Further Readings

Cassese, Antonio. "The Nicaragua and Tadić tests revisited in light of the ICJ judgment on genocide in Bosnia." *European Journal of International Law* 18.4 (2007): 649-668.

Barcelona Traction, Light and Power Company Case, 1970 ICJ (case summary and para.3 & 33-35)

Namibia Advisory Opinion (Legal Consequences for States of the Continued Presence of South Africa in Namibia), 1969 ICJ (case summary)

Week 6 (7 – 11 March 2016)

STATEHOOD, SELF DETERMINATION AND THE ICJ

Lecture outline

States are the primary actors in public international law and the concepts of state “sovereignty” and “statehood” are at the heart of the derivative of the Westphalian international legal system. Traditionally a State centric discipline, PIL is beginning to accommodate non-state actors and devise a permissive framework for their critical interplay. This week will focus on the theories of statehood, the politics of territorial sovereignty and how it determines and gives rises to jurisdictional claims. It will also discuss the role of non-state actors as seen from the perspective of States. This week we will also explore the concept of external and internal self-determination and how it affects the concept of sovereignty.

Questions to consider include, what is a state; what is the legal significance of recognition of a new State by other States; how important is recognition in the formation of a new state; are Palestine and Kosovo states; what is self-determination; who has the right to self-determination and how can it be exercised.

Statutes and Cases

Article 1, 1933 Montevideo Convention on the Rights and Duties of States

UN General Assembly Resolution 67/19 on the Question of Palestine (29 November 2012)

Assembly, General. "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." Basic Documents in International Law (1970): 36.

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, ICJ Advisory Opinion of 22 July 2010 (case summary)

Basic Readings

Shaw, M. International Law (2008, 6th Edition), Chapter 9 (pp. 444-482) and Chapter 10 (pp. 487-499)

Harris, D. Cases and Material on International Law (2004, 6th edition), Chapter 4 (pp.99 & 144-170)

Clapham, A. 'Non-State Actors' in Chetail, V. (ed.) Peace-building Lexicon (2009)

Further Readings

Nanda, Ved P. "Self-Determination in International Law: The Tragic Tale of Two Cities--Islamabad (West Pakistan) and Dacca (East Pakistan)." *American Journal of International Law* (1972): 321-336.

Shaw, Malcolm. "The Western Sahara Case." *British Yearbook of International Law* 49.1 (1979): 119-154.

Week 7 (14 – 18 March 2016)

SOVEREIGNTY AND JURISDICTION

Lecture outline

In this week, we discuss the conceptualization of the state in international law. Statehood implies certain powers vested in the authority claiming it, and in this lecture, we look at the manner of exercise of this power and its regulation in International Law today. An associated concept would be that of jurisdiction – the authority to sanction legal action over certain situations and circumstances.

Questions to consider: What is state sovereignty? What are the powers, privileges and immunities associated with the concept of state sovereignty? Who are the subjects of a sovereign state? How is jurisdiction over a particular case justified? What is universal jurisdiction?

Basic Readings

1. Lowe, International Law (OUP, 2007), 170-184
2. *Nottebohm Case (Liechtenstein v. Guatemala)* [1955] ICJ 1
3. *SS Lotus (France v. Turkey)* 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7)
4. Roger O Keefe, 'Universal Jurisdiction: Clarifying the Basic Concept', 2 J. Int. Crim. Justice 735–760 (2004)

Further Readings

1. Valeria Eboli & Jean Paul Pierini, 'The "Enrica Lexie Case" and the Limits of the Extraterritorial Jurisdiction of India', (2012) *Online Working Paper* 2012/n.39 available at <http://www.cde.unict.it/sites/default/files/39_2012.pdf>
2. Brian Taylor Sumner, 'Territorial Disputes At the International Court of Justice', 1544 *Duke Law J.* 1779–1812 (2004)
3. *Case Concerning the Arrest Warrant of 11 April 2000 (Congo v. Belgium)* [2002] I.C.J. 3
4. *South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa); Preliminary Objections*, International Court of Justice (ICJ), 21 December 1962
5. *Case Concerning Certain Phosphate Lands in Nauru (Nauru v Australia)* Preliminary Objections, Judgment, [1992] ICJ Rep 240

Week 8 (21 – 25 March 2016)

‘HARD CASES MAKE BAD LAW...’

Lecture outline

In this lecture we discuss the manner in which the International Court of Justice has dealt with hard cases in the past and the effect that these rulings have had on the development of international law in general. It is a well-known adage that hard cases make bad law. Does the same reasoning apply to International Law as well?

Should the laws that have been established be applied to all cases regardless of the consequences of such application to each individual case? Do extreme factual scenarios merit alternative treatment in order to better secure the ends of justice? How does the application of such alternatives to extreme cases affect the interpretation and application of these laws in general? Do political considerations affect the administration of decision in international tribunals?

Basic Readings

1. Posner, Eric A and Miguel F P De Figueiredo, ‘Is the International Court of Justice Biased?’ (2005) 34 *Journal of Legal Studies* 599
2. *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*; Merits, International Court of Justice (ICJ), 27 June 1986 [effective control test]
3. *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, International Court of Justice (ICJ), 11 July 1996

Further Readings

1. *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004
2. *Prosecutor v. Dusko Tadić (Appeal Judgement)*, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999
3. Cassese Antonio, ‘The Nicaragua and Tadic Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia’ (2007) 18 *European Journal of International Law* 649 <<http://ejil.oxfordjournals.org/cgi/doi/10.1093/ejil/chm034>>
4. Simon Chesterman, *The United Nations and the Law of War : Power and Sensibility in International Law*, 28 *Fordham Int. Law J.* 531–541 (2004).
5. *Beit Sourik Village Council v. The Government of Israel*, HCJ 2056/04, Israel: Supreme Court, 30 May 2004
6. Kelsen, ‘Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?’ (1947) 1 *ILQ* 153
7. James A. Green, *The International Court of Justice and Self-Defence in International Law* (Hart Publishing, 2009) 165-206

Week 9 (28 March – 1 April 2016)

HUMAN RIGHTS LAW AND PRACTICE

Lecture outline

In this week, we examine the identification and enforcement of human rights and its evolution into a separate stream of law in international law today. We will be discussing the nature of obligations imposed upon states as well as the sources of international human rights law.

Questions to consider: What are human rights? Is the idea that human rights are inherent and inalienable something that you agree with? Do you agree with the concept of universality of human rights? How is international human rights law enforced and where does it become applicable, given the sources of int'l human rights law today?

Basic Readings

1. Moeckli, D. et al. (eds.) *International Human Rights Law* (OUP, 2010) 75-85, 123-156
2. Milanovic M, 'From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties' (2008) 8 *Hum. Rts L. R.* 411
3. *Banković and others v. Belgium and others*, Admissibility, 12th December 2001, ECHR 2001-XII

Further Readings

1. *Velásquez Rodríguez Case*, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrtHR), 29 July 1988
2. Martti Koskeniemi, *Human Rights Mainstreaming as a Strategy for Institutional Power*, 1 *Humanit. An Int. J. Hum. Rights, Humanit. Dev.* 47–58 (2010).
3. Ronald Dworkin, 'Hard Cases' in *Taking rights seriously* (1990)
4. Ratna Kapur, *Human rights in the 21st century: Take a walk on the dark side*, 28 *Sydney L. Rev.* 665 (2006)

Week 10 (4 – 8 April 2016)

DISPUTE SETTLEMENT IN INTERNATIONAL LAW

Lecture outline

In this week, we focus on the other kinds of dispute settlement mechanisms available in international law besides the International Court of Justice. Several tribunals have been established either under treaties or by international organizations in order to settle disputes between nations on different subject matters.

Questions to consider: What is the primary reason for the establishment of various courts / tribunals for the adjudication of international law / associated disputes? What is the extent of jurisdiction exercised by these tribunals? Are there courts with overlapping jurisdictions? How effective are these tribunals in achieving their stated objectives? What factors influence the effectiveness of these tribunals?

Basic Readings

1. Crawford, James, 'Brownlie's Principles of Public International Law' 8th edition (OUP 2012) 718-743
2. J. G. Merrills "The Mosaic of International Dispute Settlement Procedures: Complementary or Contradictory?" 54(2) *Netherlands International Law Review* 361 (2007)

Further Readings

1. *The Case of the ARA Libertad (Argentina v. Ghana)*, Case. No. 20, Request for the Prescription of Provisional Measures (ITLOS Dec. 15, 2012)
2. Amaya-Castro, J. "International Courts and Tribunals", in Cali, B., *International Law for International Relations* (OUP 2010) pp.165-186
3. Keisuke Iida, *Is WTO Dispute Settlement Effective?*, 10 *Global Governance* 207–225 (2004).
4. Cryer et al, *An Introduction to International Criminal Law and Procedure* (CUP 2010) 144-180
5. Nouwen, Sarah MH, "Hybrid Courts' The Hybrid Category of a New Type of International Crimes Courts", 2 *Utrecht Law Review* 190 (2006)

Week 11 (11 – 15 April 2016)

INTERNATIONAL LAW IN DOMESTIC COURTS

Lecture outline

This week will explore how international law is interpreted and applied in the domestic legal system of states. International law mandates that states respect their treaty obligations, but it does not dictate how exactly states are to domestically implement these international law obligations into their internal legal system. This matter is largely left for the states to decide upon, keeping in mind their views on the relationship between international and domestic law. The theories of monism and dualism will be examined.

Questions/ Points for Discussion

- What is a “monist” legal system?
- What is a “dualist” legal system?
- How does India incorporate international law into its domestic law?

Required Readings

1. Gutierrez, Carlos Jose, “Conflict between Domestic and International Law,” *The American University Law Review*, Vol. 30: 147.
2. Brindusa, Marian, “The Dualist and Monist Theories. International Law’s Comprehension of these Theories.”

Further additional readings

- Rigaux, Francois, “Hans Kelsen on International Law”, *European Journal of International Law* 9 (1998), 325-343.
- Falk, Richard A. (1964) “The Role of Domestic Courts in the International Legal Order,” *Indiana Law Journal*: Vol. 39: Iss. 3, Art. 2.
- Ximena Fuentes Torrijo, “International Law and Domestic Law: Definitely an Odd Couple.”

Week 12 (18 – 22 April 2016)

INTERNATIONAL HUMANITARIAN LAW

Lecture outline

In this part we will first examine the international legal framework governing the use of force by states (*jus ad bellum*). The UN Charter was drafted after WWII with a primary focus of outlawing “war” and providing a forum for states to peacefully resolve their disputes. So we will first look at Article 2(4) of the Charter that prohibits inter-state “war.” Then we will look at the limited exceptions to Article 2(4) that are set out in Articles 2(7) and 51. Lastly, we will examine the concept of “humanitarian intervention” and “Responsibility to Protect.”

Then we will turn to the legal principles that govern the conduct of hostilities (IHL or *jus in bello*). IHL is one of the oldest branches of PIL and is comprised of both treat and customary rules. We will explore the basic principles of IHL and the distinction between international and non-international armed conflicts.

Questions/ Points for Discussion

What are the main features of the collective security system envisaged by the UN Charter? Under what circumstances may states lawfully use force in self-defense? Is there a difference between treaty law and customary law regarding self-defense? Is anticipatory self-defense lawful? What is “humanitarian intervention?” Is it a lawful exception to Article 2(4)? Should it be? What is “responsibility to protect?” What are the basic principles of IHL? When is IHL applicable?

Required Readings

- Chapters 1-7 of the UN Charter (particularly Articles 1, 2(4), 2(7), 39, 42, and 51)
- Report of the Independent Commission on Intervention and State Sovereignty, The Responsibility to Protect, 2010, Chapters 1, 2, and 4
- Security Council Resolution 1973 (17 March 2011)
- General Assembly World Summit Outcome Document (2005), paras. 138-140
- Website of the International Committee of the Red Cross and Crescent, www.icrc.org
- Henckaerts, J. & Doswald-Beck, L., Customary International Humanitarian Law, Volume 1: Rules, International Committee of the Red Cross, (2005), pp. xxxi-iv
- Relevant Treaties: 1907 Hague Conventions; 1949 Geneva Conventions I, II, III, and IV; 1977 Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts; 1977 Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts [***Please note: Students are not expected to read and memorize every provision of all these treaties. All that is required is a basic familiarity with them***]

Further Additional Readings

- Guiora, A. “Anticipatory Self-Defence and International Law-A Re-Evaluation” (2008) 13 Journal of Conflict and Security Law pp.3-24
- Chesney, R. “Who May Be Killed; Anwar al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force” 13 Yearbook of International Humanitarian Law (2010), pp.3-60

Cases

- *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, 2005 ICJ Reports (case summary)
- *Caroline Case*, 1837
- *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1996 ICJ Reports (case summary)
- *Military and Paramilitary Activities in Nicaragua (Merits)*, 1986 ICJ Reports
- *Oil Platforms Case (Iran v. UK)*, 2003 ICJ Reports (case summary)
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. UK)*, Provisional Measures, Order of 14 April 1992, [1992] ICJ Reports, pp. 14-15 (paras.38-42)
- *Legality of the Use of Force (Serbia and Montenegro v. Belgium)*

Week 13 (25 April – 29 April 2016)

CRITICAL LEGAL STUDIES

PART 1: THIRD WORLD APPROACHES TO INTERNATIONAL LAW

Lecture outline

In this week, we introduce you to the *situatedness* of studying international law at an Indian law school, we bring you a tool of *resistance* to understand that the *counter majoritarian* ‘stream of consciousness’ offers an *alternate* narrative to the story of international law. Through the lenses of a) Indeterminacy; b) Contradiction; and c) Legitimation and False Consciousness, we introduce the core texts and architects of the CLS school. We do this in two parts. Part I, this week deals with TWAIL, and Part II, next week, deals with feminist critiques of international law.

Many argue that PIL is too often dominated by the West. Critics highlight the need to question the underlying bases of PIL and the inherent assumptions upon which it is built. This week, along with Week 14 (“Feminist Critiques”), will explore some of the most popular critiques of mainstream PIL.

Required Readings

- B.S. Chimni. *Third World Approaches to International Law: A Manifesto*. International Community Law Review 8: 3-27 (2006)
- B.S. Chimni. *The Past, Present and Future of International Law: A Critical Third World Approach*. Melbourne Journal of International Law, Volume 8 (2007).

Further Additional Readings

- Okafor, Obiora Chinedu. *Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective*. Osgoode Hall Law Journal. Vol. 43, No. 1 & 2 (2005).
- Luis Eslava & Sundhya Pahula, *Between Resistance and Reform: TWAIL and the Universality of International Law*. 3 (1) Journal of Trade, Law & Development 103 (2011).
- Martii Koskenniemi, *From Apology to Utopia*
- Balakrishnan Rajagopal, *Koskenniemi’s From Apology to Utopia*

Week 14 (2 –6 May 2016)

CRITICAL LEGAL STUDIES

PART II: FEMINIST CRITIQUES OF INTERNATIONAL LAW

Lecture outline

Critical legal theorists argue that mainstream PIL is dominated by white, western male perspectives. In this week, the focus shall be on the development of feminist jurisprudence and its contribution to international legal theory. A critical discourse on the many “silences” of international law, as outlined by Charlesworth and Chinkin, juxtaposed with the distinction between national and international law maps, the public/private divide and cultural relativism. It will also delve into critiques and responses to the feminist theories and their interpretations.

Basic Readings

Feminist Approaches to International Law Hilary Charlesworth, Christine Chinkin and Shelley Wright *The American Journal of International Law* Vol. 85, No. 4 (Oct., 1991), pp. 613-645

Alvarez, Jose E. “Book Review: The Boundaries of International Law: A Feminist Analysis.” *American Journal of International Law* 95 (2001): 459–464.

Further Readings

Charlesworth, Hilary. "Feminist critiques of international law and their critics." *Third World Legal Stud.* (1994)

Brooks, Rosa. "Feminism and International Law: An Opportunity for Transformation." *Yale Journal of Law & Feminism* 14 (2002): 345-361.

Week 15 (9 – 13 May 2016)

TAKING STOCK: FUTURE OF INTERNATIONAL LAW?

Lecture outline

What is the elusive “International Society’s” idea of justice? How does this calibrate into the dilemma that the idealist faces in studying and learning about the “laws” that make international law what it is. In this crucial concluding week of our course, we will stop, take a deep breath and through the narratives of resonance and reason, blunder our way through to forming a conclusion about the cohesive or otherwise, adherent or otherwise, arbitrable or otherwise nature of this discipline with which we have engaged for fifteen weeks.

Basic Readings

Aristotle, *Politics* (translated by B. Jowett), Elibron Classics Series, 2011.

I. Kant, *Critique of Judgment* (translated by J.C. Meredith), Oxford University Press, Oxford, 2007.

Further Readings

S. Heaney, *Seeing Things*, Farrar, Straus and Giroux, New York, 1991.

G. B. Shaw, *The Doctor's Dilemma*, 1906.

P. Terentius Afer, *Heauton Timorumenos: The Self-Tormenter*, Johannes de Roigny, 1552.

A. Tennyson, “Will Waterproof’s Lyrical Monologue”, in *The Complete Works of Alfred Tennyson*, R. Worthington, New York, 1880.

Voltaire, *Candide*, Dover Publications, New York, 1991.