



PUBLIC INTERNATIONAL LAW
Course Outline
FEU Institute of Law, A.Y. 2015-2016
Atty. J.R. Robert REÁL, Jr.

I. COURSE MATERIALS

A. *Primary References:*

1. 1987 CONSTITUTION
2. JOAQUIN G. BERNAS, S.J., INTRODUCTION TO PUBLIC INTERNATIONAL LAW (2009)
3. JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (8th ed. 2013)

B. *Supplementary Materials:*

1. MALCOLM N. SHAW, INTERNATIONAL LAW (7th ed., 2014).
2. MALCOM D. EVANS, INTERNATIONAL LAW (4TH ed., 2014).
3. ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT (1996).
4. H.L.A. HART, THE CONCEPT OF LAW (2nd ed., 1994).

C. *Dropbox.* Materials will be uploaded/shared via cloud storage folder.

II. FINAL GRADE

A.	Class Discussion	20%
B.	Short Exam	30%
C.	Moot Court	50%

I. MODULE 1: INTRODUCTION – NATURE OF INTERNATIONAL LAW

Read the following:

1. *Introduction*, in BERNAS, pp. 1-7.
2. *Introduction*, in CRAWFORD, pp. 3-19.
3. *Law as the union of primary and secondary rules*, in HART, pp. 79-99.
4. *A short history of International Law* by Stephen C Neff, in EVANS, pp. 3-24
5. *What is international law for?* by Marti Koskenniemi, in EVANS, pp. 29-52.

II. MODULE 2: SOURCES OF INTERNATIONAL LAW

A. General References

1. BERNAS, pp. 8-21.
2. Statute of the International Court of Justice, Arts. 38 and 59.
3. CRAWFORD, pp. 20-47. (For Supplementary Reading)
4. Michael Scharf, *Accelerated Formation of Customary International Law* (For Supplementary Reading)

B. On Customary International Law

6. *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. US), ICJ Reports, 27 June 1986.
7. *North Sea Continental Shelf Cases* (Germany/Denmark and Germany/Netherlands), ICJ Reports, 20 February 1969.
8. *Asylum Case* (Colombia v. Peru), ICJ Reports, 20 November 1950
9. *Nuclear Test Cases*, ICJ Reports:
 - a. New Zealand v. France, 1974
 - b. Australia v. France, 1974 (Sep. Op, Judge Petrón)
 - c. Request for an examination of the situation in accordance with par. 63 of the court's judgment of the 20 December 1974 in the Nuclear Tests (New Zealand V. France) Case, 1995
10. *Fisheries Jurisdiction Case* (United Kingdom v. Iceland), ICJ Reports 1974.
11. *Case Concerning the Right of Passage Over Indian Territory* (Portugal v. India), ICJ Reports, 12 April 1960

12. *Legality of the Treat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Reports 226, 8 July 1996

C. On Treaties

13. Vienna Convention on the Law of Treaties, Arts. 2, 26-36, 46-64.
14. *Reservations to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion), ICJ Reports 1951.
15. *Interpretation of Peace Treaties Case* (Second Phase, Advisory Opinion), ICJ Reports 1950, 221.
16. *Gabčíkovo–Nagymaros Project Case* (Hungary/Slovakia), ICJ Reports 1997.

D. On General Principles

17. *Temple of Preah Vihear Case* (Cambodia v. Thailand), ICJ Reports, 15 June 1962.
18. *Corfu Channel Case*, ICJ Reports, 9 April 1949
19. *Factory at Chorzów Case*, 1928 PCIJ Ser. A, No. 17
20. *Barcelona Traction, Light and Power Company Case*, ICJ Reports, 1970

E. On Judicial Decisions

21. *South-West Africa Cases* (Ethiopia v. South Africa; Liberia v. South Africa); Second Phase, 18 July 1966;

Guide Questions:

- a. *Is international law – law?*
- b. *What are the bases of international law?*
- c. *What is meant by “jus cogens”?*
- d. *What is meant by “erga omnes”?*
- e. *What is meant by “opinio juris”?*
- f. *What are the “sources” of international law?*
- g. *Is there a hierarchy of these sources?*
- h. *Distinguish “soft law” from “hard law”*
- i. *How do we distinguish private international law from public international law?*
- j. *Is there collective responsibility for a breach of international law?*
- k. *What is the extent of a state’s freedom of action?*

III. MODULE 3: RELATIONSHIP OF NATIONAL & INTERNATIONAL LAW

A. General References

1. CONST., Art. II §2; Art. VII §21; Art. VIII §5; Art. XVIII §25.
2. BERNAS, pp. 58-70.
3. CRAWFORD, pp. 48-111. (For Supplementary Reading)
4. Executive Order No. 459 – Providing for the Guidelines in the Negotiation of International Agreements and its Ratification, (Nov. 25, 1997).

B. On doctrine of incorporation

1. *Tomoyuki Yamashita v. Styer*, 75 Phil. 563 (1945) [G.R. No. L-129, 19 December 1945]
2. *Kookooritchkin v. Solicitor General*, 81 Phil. 435 (1948) [G.R. No. L-1812, 27 August 1948]
3. *Shigenori Kuroda v. Jalandoni*, 83 Phil. 171 [G.R. No. L-2662, 26 March 1949]
4. *Gonzales v. Hechanova*, 118 Phil. 1065 (1963) [G.R. No. L-21897, October 22, 1963]
5. *Tañada v. Angara*, G.R. No. 118295, May 02, 1997.
6. *BAYAN (Bagong Alyansang Makabayan) v. Zamora*, G.R. No. 138570, 10 October 2000, 396 Phil 623 (2000).
7. *Republic v. Sandiganbayan*, G.R. No. 104768, July 21, 2003.
8. *Pharmaceutical and Health Care Ass'n v. Duque*, G.R. No. 173034, Oct. 9, 2007.
9. *Vinuya v. Romulo*, G.R. No. 162230, 28 April 2010, 619 SCRA 533 (2010).
10. *Bayan Muna v. Romulo*, G.R. No. 159618, 1 February 2011, 641 SCRA 244 (2011).
11. *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700, 8 March 2016

C. On doctrine of transformation

12. **Tañada v. Angara*, (supra).
13. **BAYAN (Bagong Alyansang Makabayan) v. Zamora*, (supra).
14. **Pharmaceutical and Health Care Ass'n v. Duque*, (supra).
15. *Nicolas v. Romulo*, G.R. No. 175888, 11 February 2009, 598 Phil. 262 (2009).
16. **Bayan Muna v. Romulo*, (supra).

D. On interpretation in case of possible conflict

17. *Co Kim Cham v. Valdez*, G.R. No. L-5, 17 September 1945.
18. **Tañada v. Angara*, (supra).
19. **BAYAN (Bagong Alyansang Makabayan) v. Zamora*, (supra).
20. *Lim v. Executive Secretary*, G.R. No. 151445, 11 April 2002, 430 Phil. 555 (2002).
21. *Abaya v. Ebdane*, G.R. No. 167919, Feb. 14, 2007.
22. *Province of North Cotabato v. GRP Peace Panel*, G.R. No. 183591, Oct. 14, 2008.
23. **Bayan Muna v. Romulo*, (supra).
24. *China National Machinery v. Santamaria*, G.R. No. 185572, 7 February 2012, 665 SCRA 189 (2012).
25. **Saguisag v. Ochoa*, (supra)

E. On foreign jurisdiction approach

26. *The Paquete Habana*, 175 US 677, 8 January 1900.
27. *Sosa v. Álvarez-Machain*, 542 U.S. 692 (2004).
28. *Medellin v. Texas*, 552 US 491, 25 March 2008.

F. On treaties and executive agreements

1. BERNAS, pp. 22-57.
2. Vienna Convention on the Law of Treaties
3. * Guidelines in the Negotiation of International Agreements and its Ratification, Executive Order No. 459 (Nov. 25, 1997).
4. Enhanced Defense Cooperation Agreement (Philippines-U.S.)
5. **Saguisag v. Ochoa*, (supra)
6. **Republic v. Sandiganbayan*, (supra).

Guide Questions:

- a. *Distinguish between Monist and Dualist theories of international law.*
- b. *Distinguish between the doctrine of incorporation and the doctrine of transformation.*
- c. *In case of conflict between municipal law and international law, which should prevail?*

IV. MODULE 4: PERSONALITY AND RECOGNITION

A. General references

1. BERNAS, Chap. 5, pp. 71-102.
2. CRAWFORD, pp. 115-202. (For Supplementary Reading).

B. On subjects of international law

3. *Free City of Danzig and the International Labour Organisation*, Advisory Opinion of 26 August 1930 (PCIJ Ser. B, No. 18).
4. *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, I.C.J. Reports 1949, p. 174.
5. **Shigenori Kuroda v. Jalandoni*, (supra).

C. On creation and incidence of statehood

6. 1933 Montevideo Convention on Rights & Duties of States, Art. 1.
7. 1945 Charter of the United Nations, Arts. 1, 2, 3, & 4.
8. *Case Concerning Rights of Nationals of the United States of America in Morocco*, Judgment of 27 August 1952, I.C.J. Reports 1952, p. 176.
9. *Western Sahara Case*, Advisory Opinion of 16 October 1975, I.C.J. Reports 1975, p. 12.
10. **The Province of North Cotabato v. GRP Peace Panel* (supra).
11. **Republic v. Sandiganbayan*, (supra).

State Succession:

12. *International Status of South-West Africa*, Advisory Opinion of 11 July 1950, I.C.J. Reports 1950, p. 128.
13. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, I.C.J. Reports, 1971, p. 16.

Self-determination:

14. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403.
15. *Aaland Islands Question*, (On the Merits), Report by the Commission of Rapporteurs, League of Nations Council, LN Council Doc. 87 21/68/106 (1921).

16. *Reference re Secession of Quebec*, 115 ILR 536, 594-5 (1998).

D. On recognition of states and governments

17. *Legal Status of Eastern Greenland Case*, Judgment, 5 April 1933 (PCIJ Ser. A/B, No. 53).
18. *Aguilar-Amory and Royal Bank of Canada claims “Tinoco Claims Arbitration”* (Great Britain v. Costa Rica), 1 RIAA 369 (1923).

E. On international organizations and others

19. 1945 Charter of the United Nations, Arts. 7, 104
20. *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, I.C.J. Reports 1949, p. 174 (supra).
21. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, p. 66.
22. *International Catholic Migration Commission v. Calleja*, G.R. No. 85750, 89331, 28 September 1990, 268 Phil. 134 (1990).
23. *Southeast Asian Fisheries Development Center-Aquaculture Department v. National Labor Relations Commission*, G.R. No. 86773, 14 February 1992, 206 SCRA 283.

Guide Questions:

- a. *What are the elements of statehood?*
- b. *Is recognition an element of statehood?*
- c. *What are the theories on recognition of a state?*
- d. *Distinguish the following doctrines: Tobar/Wilson, Stinson, and Estrada?*
- e. *Distinguish de iure from de facto recognition.*
- f. *Can the Holy See be considered a state?*
- g. *What are “sui generis” entities?*
- h. *What is the principle of succession of states/governments?*
- i. *What is the principle of state continuity?*
- j. *What is belligerency?*
- k. *What is the “uti possidetis iuris” doctrine?*
- l. *What is the doctrine of sovereign immunity?*
- m. *What is the “act of state” doctrine?*
- n. *What are the Calvo and Drago doctrines?*
- o. *What is the doctrine of sovereign equality of states?*
- p. *What is the doctrine of non-intervention?*
- q. *What is the principle of self-determination?*
- r. *Distinguish between recognition of states and recognition of governments.*

V. MODULE 5: TERRITORIAL SOVEREIGNTY

A. General References

1. Bernas, 103-116.
2. CRAWFORD, pp. 203-254. (For Supplementary Reading).

B. On forms of governmental authority over territory

3. CRAWFORD, pp. 203-254. (For Supplementary Reading).
4. *Fisheries Case* (United Kingdom v. Norway, I.C.J. Reports, 1951).
5. *Land, Island, and Maritime Frontier Dispute* (El Salvador/Honduras), I.C.J. Reports 1992, p. 351.
6. **Western Sahara Case* (Advisory Opinion, I.C.J. Reports, 1975)
7. *Eritrea-Yemen Arbitration*, PCA, 1998.
8. *Island of Palmas Case* (Netherlands v. U.S.A., 2 R.I.A.A. 829, Permanent Court of Arbitration
9. **International Status of South-West Africa*, Advisory Opinion of 11 July 1950, I.C.J. Reports 1950, p. 128.
10. **Case Concerning Rights of Nationals of the United States of America in Morocco*, Judgment of 27 August 1952, I.C.J. Reports 1952, p. 176.
11. *L v N (Bulgarian Occupation of Greece)*, 14 ILR 242 (1947).

C. On Acquisition and Transfer of Territorial Sovereignty

12. *Clipperton Island Arbitration (France v. Mexico)*, 8 January 1931.
13. *The Minquiers and Ecrehos Case* (France/U.K.), I.C.J. Reports 1953, p. 47.
14. **Legal Status of Eastern Greenland* (P.C.I.J. Reports, series A/B, No. 53, 1933).
15. *Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*.
16. *Frontier Dispute (Burkina Faso/Mali)*.
17. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle rocks and South Ledge (Malaysia/Singapore)*, ICJ Reports 2008

Guide Questions:

- a. *What are the “modes” of acquiring territory?*
- b. *What is the meaning of “effectivité”?*
- c. *What does discovery and occupation mean as a mode of acquiring territory?*

VI. MODULE 6: THE SEA AND THE AIR

A. General References

1. Bernas, 120-132.
2. 1935 Constitution, Art. I, Sec. 1.
3. Republic Act No. 9522 – *An Act to Define the Baselines of the Territorial Sea of the Philippines*
4. 1982 Convention on the Law of the Sea, Arts. 1-13, 33, 46-73, 76-81, 86-98, 110-112, 116-121, 136-142, 293
5. Convention on International Civil Aviation, signed at Chicago on 7 December 1944
6. Statute of the International Tribunal for the Law of the Sea, Annex XI of UNCLOS, Arts. 21-23

B. On Jurisdiction over Sea and Air

7. **The Corfu Channel Case* (I.C.J. Reports, 1949)
8. **Fisheries Case* (United Kingdom v. Norway, I.C.J. Reports, 1951).
9. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, ICJ Reports 2001, p. 40.
10. **North Sea Continental Shelf Cases* (Germany/Denmark and Germany/Netherlands), ICJ Reports, 20 February 1969.
11. SS Lotus case.

Guide Questions:

- a. *What is the archipelagic doctrine?*
- b. *What is the Thalweg doctrine?*
- c. *Distinguish the territorial sea from the high seas.*
- d. *What is the continental shelf?*
- e. *Distinguish the rights of the coastal state in the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf.*
- f. *What is the doctrine of innocent passage?*
- g. *What are the five freedoms in a state's aerial domain?*

VII. MODULE 7: THE PHILIPPINE TERRITORY

A. General References

1. 1987 Constitution, Art. I.
2. 1973 Constitution, Art. I, Sec. 1.
3. 1935 Constitution, Art. I, Sec. 1.
4. Republic Act No. 9522 – *An Act to Define the Baselines of the Territorial Sea of the Philippines*
5. Treaty of Peace Between the United States of America and the Kingdom of Spain (Treaty of Paris), 10 December 1898.
6. Treaty Between the Kingdom of Spain and the United States of America for Cession of Outlying Islands of the Philippines, 1990.
7. Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of Borneo (1930).
8. Treaty of General Relations Between the Republic of the Philippines and the United States of America, Art. I (1946).
9. Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases (1947).
10. *Magallona v. Ermita*, GR 187167, 16 August 2011.
11. **The Province of North Cotabato v. GRP Peace Panel* (supra).
12. **Saguisag v. Ochoa*, (supra)

B. On claim to Spratlys

13. Coquia, “The South China Sea Dispute – The Spratlys”
14. Treaty Limits of the Philippines (illustration) South China Sea: Selected Claims (illustration)
15. Carpio, Historical Facts, Historical Lies, and Historical Rights in the West Philippine Sea
16. *South China Sea Arbitration*, Award on Jurisdiction and Admissibility, 29 October 2015

C. On claim to Sabah

17. Manila Accord Between the Philippines, the Federation of Malaya, and Indonesia, 31 July 1963
18. Manila Declaration by the Philippines, the Federation of Malaya, and Indonesia, 3 August 1963

19. Joint Statement by the Philippines, the Federation of Malaya, and Indonesia, 5 August 1963
20. DFA Policy Paper No. 15 (on Sabah Claim)
21. Philippine Claim to Sabah, Materials and Documents
 - a. Letters of Acting Consul-General Treacher to the Earl of Derby
 - b. Grant by the Sultan of Sulu of a Permanent Lease covering his Lands and Territories on the Island of Borneo
 - c. Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara and Rajah of Sandakan
 - d. Proclamation on the Termination of the Lease
 - e. Brief Memorandum on the Government of the Sultanate of Sulu and Powers of the Sultan during the 19th Century
 - f. Statement at the Opening Meeting of the British-Philippine Talks
 - g. Joint Final Communique
 - h. Cession and Transfer of the Territory of North Borneo to the Republic of the Philippines

Guide Questions:

- a. *What is the legal basis of the Philippine's claim over the Kalayaan Island Group?*
- b. *What are the legal arguments of the Philippines in the West Philippine Sea dispute with China? How about China's arguments?*
- c. *What is the legal basis of the Philippine's claim over Sabah? How about Malaysia's arguments?*

VIII. MODULE 8: THE ENVIRONMENT AND NATURAL RESOURCES

A. Common Spaces and Cooperation in the Use of Natural Resources

1. *Legality of Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 266
2. Treaty on the Non-Proliferation of Nuclear Weapons (NPT)
3. *Lake Lanoux Arbitration*, 12 R.I.A.A. 281. (1957).
4. **Gabčíkovo–Nagymaros Project Case* (Hungary/Slovakia), (supra)
5. Antarctic Treaty

6. 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (GAR 1962)
7. 1966 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies

B. Protection of the Environment

1. BERNAS, 320-334.
2. *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993
3. *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008
4. *Trail Smelter Arbitration* (3 R.I.A.A.1905, 1938/1941)
5. *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 1
6. 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change
7. The Stockholm Principles (1972)
8. Rio Declaration on Environment and Development, A/CONF.151/5/Rev.1, 31 I.L.M. 874 (1992)
9. 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, as adjusted and amended
10. 1989 Basel Convention on the Transboundary Movement of Hazardous Wastes

IX. MODULE 9: INTERNATIONAL TRANSACTIONS

A. Law of the Treaties

7. BERNAS, pp. 22-57.
8. Vienna Convention on the Law of Treaties
9. * Guidelines in the Negotiation of International Agreements and its Ratification, Executive Order No. 459 (Nov. 25, 1997).
10. Enhanced Defense Cooperation Agreement
11. **Reservations to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*, (supra)
12. **Gabčíkovo–Nagymaros Project Case* (Hungary/Slovakia), (full text)
13. *Navigational Rights*, ICJ Reports 2009, p. 213

B. Diplomatic and Consular Relations

14. *Legality of Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p.266
15. Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

C. Unilateral Acts; Estoppel

16. *Legality of Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p.266
17. Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

D. Succession to Rights and Duties

18. *Legality of Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p.266
19. Treaty on the Non-Proliferation of Nuclear Weapons (NPT)