

LS 157

Professor: Smadar Ben-Natan

Instructor: Daimeon Shanks

International Law and International Relations Summer 2020

Public international law today is a dynamic and contested topic. This course offers an introduction to the wide array of topics and debates occupying international lawyers, states and organizations. It will introduce modern theories and doctrines of international law, as well as international law as a field of practice comprised of various institutions and actors. We will examine a host of fundamental questions, including, for example, is international law actually law, why states comply with international law (when they do), and how international practice is embedded and contested in global power relations. Discussion will address the main areas of interest such as human rights, the law of armed conflict, international criminal law and international environmental law, as well as the major current critical accounts on international law, such as its colonial history and human rights enforcement record. We will look into the connections between the global and local such as the roles of non-state actors and civil society, and what drives change in international law.

This course will be taught online, synchronously via Zoom. Presence and participation is required and amounts to 10% of the final grade. If you are unable to attend a session please email me in advance and explain why you are unable to attend in order to be excused. One unexcused absence is permitted. Students who miss a substantial amount of class time may be dropped from the class. It is understandable that COVID-19 and remote learning place unusual burdens on students, we will take that into account to accommodate justifiable needs. **Students who experience COVID-19 related difficulties with synchronous learning should address us to make special accommodations.**

Class hours: Monday-Thursday 10:00-12:00 PST. 10 minutes break between 11:00 - 11:10. **Discussion hours:** Group 1 Monday 8:00-10:00; Group 3 Wednesday 12:00-2:00 PST.

Office Hours: Class: Thursdays 4:00- 4:5:00 - 15 mins individual meeting (schedule through sign up) 5:10 - 6:00 (open collective meeting, no sign up required).

Discussion: Fridays 11:00 - 12:00; 1:00 - 2:00.

Assignments and Evaluation:

10% - Presence and participation in online sessions. 10% - Class presentation: each student will present one syllabus item (article or case) in class, according to a sign up to be filled by the end of the first day of class. 20% - Paper assignment: one essay question 60% - Final exam: essay questions

Textbook: Carter, Weiner, Hollis, International Law (7th ed. 2018). No need to buy the book, reading materials will be uploaded to bcourses.

Instructions on Course Readings

- Students are expected to **read all readings in preparation for class**. Classes will not repeat the reading material but base discussions on that material, where students are expected to participate in an informed manner. Students might be called on to participate. Please take into account about four hours of reading and preparation for each class, beyond class and discussions sessions.
- It is advised to take short notes of the main points of reading materials and possible questions you might have, while reading or immediately after. This will help you remember the material and participate in class discussions.
- Readings assigned from the textbook **do not include sections of “Notes and Questions.”** You can skip these parts, which are quite significant in length. It would be useful to review these sections in preparing for the final exam as the questions in the exam will be similar in style to the questions in the textbook.
- Pay attention to whether excerpts are defined by **pages** or **paragraphs**.
- Optional readings are, obviously, optional. Some of the shorter optional readings will be **given as reading in group work during class**. This is indicated in the syllabus, If you are slow in reading, or for any other reason, you should consider reading them beforehand.
- It is advised to read the textbook readings before any other reading for the same class since it will give you a general understanding on the topic before continuing into more advanced topics.

Presentations in class

- In each class, starting from class no.3, one or more students will present one reading item or a part of it, as indicated in the sign up sheet. Each reading item is about 10-15 pages long, but this is still subject to change if the number of students changes significantly. Students presenting in the first week will get 2 points (out of 10) bonus. Presentations will be preferably **no longer than 10 minutes**; 15 minutes is the absolute maximum. Presentation could be either in the first or the second part of class. It is suggested that you start reading and preparing for your presentation in the week prior to your presentation date, so you can still take advantage of office hours to ask clarification questions on the material. Students presenting one section

of a multi-section reading item are advised to read carefully all sections assigned to class in order to understand the context and argument of the piece.

Please do not prepare visual presentations (PPT etc.) for your class presentation

Zoom Participation Guidelines

1. **Private space** - Please do your best to have a private and quiet space during classes. We will be understanding if that is not possible or if there are inevitable interferences, but it is better to avoid them for your own learning and focus.
2. **Name** - Please make sure that your zoom name reflects how you would like us to address you; if you would like, add to your zoom name your choice of pronouns.
3. **Mute** - Please mute your mic (lower-left corner of your screen) whenever you are not speaking. This helps avoid background noise and distractions for others. If we find that self-muting is not effective, we will take control of the mute function.
4. **Video presence** - We strongly encourage you to have your video on as much as possible. Please keep off-camera episodes as short as possible only when necessary. Seeing each-other's faces is extremely helpful to the learning process and engaging with others and the learning material. Seeing your faces also helps us be engaged, assess your experience, and make the situation more humane and pleasant. If you generally feel uncomfortable with video presence for any reason, please write me an email explaining yourself, so we can make sure you are feeling well through class.
5. **Bandwidth** - Closing any other applications on your computer to keep the video optimally functioning and your focus on the class. For these two hours, we ask that you avoid engaging simultaneously with social media, emails, and so on. Remember that you might be called on to participate in class.
6. **Permission to speak** - If you want to speak, please indicate in the chat. Due to the number of students we might not see if you raise your hand and you might not know if we see you.
7. **Chat** - You can ask questions and make comments using the "Chat" feature (also on the bottom and center of your screen), they will be answered in occasional q&a breaks.
8. **Leaving at the end** - Please remember to "leave the meeting" when the session is finished.
9. **Mistakes are inevitable** - Please recognize that we are all still figuring out the manners of the virtual world. **Kindness matters more than ever now.**

Class Topics and Reading

INTRODUCTION

1. Introductory class - Monday July 6

- Textbook, 1-5; 25-31 (The Nature of International Law, Henkin).
- Please be ready to introduce yourself and your interest in the course topic in a few sentences. The major part of this class will be dedicated to individual introductions.
- **Optional:** Textbook 32-35.

2. What is Law? What is International Law? – Tuesday July 7

- John Austin, The Province of Jurisprudence Determined (1832) (excerpts).
- Hans Kelsen, *Lecture III: International Law and the State, in Law and Peace in International Relations* (1942) (excerpts).
- **Case:** The Case of the S.S. “Lotus” (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) (Textbook 34-35).
- **Optional:** Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 Sydney Law Review 375 (2008), 375-376, 386-390 (to be read and discussed in class).

3. Histories of International Law- Wednesday July 8

- Textbook, 9-24.
- Antony Anghie, *Towards a Postcolonial International Law* (2014).
- **Optional:** Yasuaki Onuma, *When was the Law of International Society Born? – An Inquiry of the History of International law from an Intercivilizational Perspective*, 2 J. Hist. Int’l L. 1 (2000).

PART I: SOURCES OF INTERNATIONAL LAW

4. Treaties - Thursday July 9

- Textbook, 75-78 (defining treaties); 80-87 (defining treaties continued; examples); 88-89 (excerpt from Tim Mayer and Charles Lipson); 93-97 (invalidity of treaties); 98-100 (reservations).
- Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 Yale L. J. 1936 (2002), 1937-1942.
- **Optional:** Vienna Convention on the Law of Treaties.

5. Customary International Law - Monday July 13

- Textbook, 123-131.
- **Case:** The Paquete Habana, 175 U.S. 677 (1900).
- International Law Commission, [First Report on formation and evidence of customary International Law](#) (2013), 123-125.
- **Optional:** J. Patrick Kelly, *The Twilight of Customary International Law*, 40 Va. J. Int'l L. 449 (2000).

6. General Principles, Judicial Decisions and Scholars - Tuesday July 14

- Textbook, 464-465 (The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States).
- Oscar Schachter, *International Law in Theory and Practice* (1991), 50-55.
- Benedict Kingsbury et al., *The Emergence of Global Administrative Law*, 68 Law & Contemp. Probs. 15 (2005), 15-18, 27-31.
- **Case:** Kadi v. Council of the European Union and Commission of the European Communities, European Court of Justice (Sept. 3, 2008), paragraphs 278-330.
- **Optional:** Statute of the International Court of Justice, articles 38 & 59.

PART II: INTERNATIONAL ACTORS

7. States - Wednesday July 15

- Textbook, 450-466 (note that this segment includes the Declaration on Friendly Relations read for the previous class).
- **Case:** Jurisdiction of the ICC over Palestine: [Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine](#), paragraphs 7-17, 88-117.
- **Optional:** Charter of the United Nations.

8. States and "Territories" - Thursday July 16

- Textbook, 489-493
- Helman & Ratner, *Saving Failed States*, 3-12, 18-20 (skip the section "United Nations Conservatorship" on 12-18)
- Ralph Wilde, *The Skewed Responsibility Narrative of the "Failed States" Concept*, 9 ILSA J. Int'l & Comp. L. 425 (2003).

- **Case:** Western Sahara, Advisory Opinion 1975 I.C.J Rep. 12 (Oct. 16) (excerpts).

9. International Organizations I - The United Nations - Monday July 20

- Textbook, 494-499, 510-518.
- Jean Cohen, *Constitutionalism beyond the State: Myth or Necessity? (A Pluralist Approach)*, 2 *Humanity* 127 (2011), 132-137.
- **Case:** Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion 1945 I.C.J. Rep. 174 (Apr. 11), 4-18.

10. International Organizations II: The WTO and the WHO - Tuesday July 21

- Textbook, 522-527 (start at WTO and GATT).
- Clinton et al., [Why the WHO?](#), Think Global Health (May 29, 2020).
- **Case:** Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226 (July 11), 4-6 (paragraph 1), 9-19 (paragraphs 10-26).
- **Optional:**
 - International Health Regulations.
 - WHO Resolution on COVID-19.
 - Rana Essawy, *The WHO: The Guardian of Human Rights during Pandemics?*, EJIL:Talk! (June 15, 2020) (to be read and discussed in class).

11. International Organizations III - Courts and Tribunals - Wednesday July 22

- Textbook, 331-341 (International Court of Justice); 800-820 (regional human rights systems).
- Adrian Fulford, *Who Arrests Those Accused by the ICC?*, 112 *AJIL Unbound* 168 (2018).
- [The Guardian View on Trump and the International Criminal Court: An Attack on Human Rights](#) (June 21, 2020).

12. Individuals, Corporations, Peoples and Civil Society - Thursday July 23

- Textbook, 780-782.
- **Case:** [Kiobel v. Royal Dutch Petroleum Co.](#), 569 U.S. 108 (2013), in textbook 299.
- **Case:** SERAC v. Nigeria (2001) AHRLR 60 (African Commission on Human Rights), paragraphs 43-72.
- Mauro Barelli, *The Role of Soft Law in the International Legal System: the case of*

the United Nations Declaration on the Rights of Indigenous Peoples, 58 Int'l & Comp. Law Quarterly 957 (2009), 957-983.

PART IV: FOCUS AREAS IN INTERNATIONAL LAW

13. International Dispute Resolution - Monday July 27

- Textbook, 319-329; 400-411.
- **Case:** [Award in the Arbitration regarding the delimitation of the Abyei Area](#) between the Government of Sudan and the Sudan People's Liberation Movement/Army (July 22, 2009), Paragraphs 497-503.

14. International Environmental Law - Tuesday July 28

- Textbook, 823-841; 898-908.
- Cymie R. Payne, [Australia v. Japan: ICJ Halts Antarctic Whaling](#), ASIL Insights (Apr. 8, 2014).
- **Case:** Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening), Judgment, 2014 I.C.J. GL No. 148 (Mar. 31).

15. The Law of Armed Conflict: Jus Ad Bellum - Wednesday July 29

- Textbook, 964-967; 981-991 (preemptive self-defense and international intervention); 1032-1033 (Responsibility to Protect); 1044-1048 (intervention in Lybia).
- Dapo Akande, Classification of Armed Conflicts, sections 1-7, 9.
- **Case:** Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14 (June 27) (excerpts).

16. The Law of Armed Conflict: Jus in Bello - Thursday July 30

- Textbook, 1053-1071; 261-273 (presidential power and the global struggle against terrorism, Hamdi and Hamdan).
- Harold Hongju Koh, *On American Exceptionalism*, 55 Stan. L. Rev. 1479 (2003).
- **Case:** Hamdan v. Rumsfeld, 548 U.S. 557 (2006).

17. Emergencies and International Law - Monday August 3

- Marko Svcevic, [COVID-19 as a Threat to International Peace and Security: What](#)

Place for the UN Security Council?, EJIL: Talk! (Mar. 27, 2020).

- Oren Gross & Fionnuala Ní Aoláin, *Emergency, War and International Law: Another Perspective*, 70 Nord. J. Int. Law 29, 29-63 (2001) (excerpts).

18. Citizenship and Asylum - Tuesday August 4

- Textbook, 748-751.
- James Hathaway, *The Law of Refugee Status* (1991), 1-13.
- Karen Musalo, *A Short History of Gender Asylum in the United States*, 29 Refugee Surv. Q. 46 (2010).
- **Case:** Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. Rep. 4 (Apr. 6).

19. Human Rights - Wednesday August 5

- Textbook, 752-757 (background and UNDHR); 759-760 (international covenants); 770- 771 (UN human rights system); 783-789 (US and human rights law).
- Hilary Charlesworth, *What are “Women’s International Human Rights”?* in *Human Rights of Women: National and International Perspectives* (1994).

20. Human Rights II: Torture - Thursday August 6

- Textbook, 275-277 (postscript for Hamdan and the future of Guantanamo and its military commissions); 1146-1147.
- David Luban, *Liberalism, Torture and the Ticking Bomb*, 91 Va. L. Rev. 1425 (2005), 1140-1461.
- **Movie:** *The Report* (2019).

21. International Criminal Law – Monday August 10

- Textbook, 1127-1147; 1170-1176.
- Howard S. Levie, *Report of the Commission on the Responsibility of the Authors of the War*, 14 AJIL 95 (1919).
- **Optional:** Timothy Brook, *The Tokyo Judgment and the Rape of Nanking*, 60 J. Asian Studies 673 (2001).

PART V: INTERNATIONAL LAW IN DOMESTIC COURTS

22. International Law in Domestic Courts – Tuesday August 11

- Textbook, 153-178; 186-190; 440-448.
- Sarah Cleveland, *Our International Constitution*, 31 Yale J. Int'l L. 1 (2006) (excerpts).
- Smadar Ben-Natan, *Constitutional Mindset: The Interrelations between Constitutional Law and International Law in the Extraterritorial Application of Human Rights*, 50 Isr. L. Rev. 139 (2017).
- **Case:** *Medellín v. Texas*, 552 U.S. 491 (2008) (in textbook, 194-200); entire decision (optional) can be found [here](#).

CONCLUSION

23. Empire, International Community and International Law - Wednesday August 12

- Jean L. Cohen, *Whose Sovereignty? Empire Versus International Law*, 18 Ethics and Int'l Aff. 1 (2004), 1-24.

FINAL EXAM - Thursday August 13