

LS 157

**Instructor:** Daimeon Shanks

**GSI:** Anja Bossow

### **International Law and International Relations Summer 2021**

Public international law today is a dynamic and contested field. 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), how international practice is embedded and contested in global power relations, and how international law is related to, but distinguishable from international 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 the remote learning environment places 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:** LEC 001 Monday–Thursday: 2:10–4:00 PST. 10 minutes break from 11:00–11:10.

- Zoom: Meeting ID: 965 1781 6877. Passcode: 348868.
- <https://berkeley.zoom.us/j/96517816877?pwd=OGluN1FOZDQxeXRtWDYvKytZdXNxdz09>

**Discussion hours:** DIS 101 Wednesday: 4:10–6:00 PST; DIS 102 Thursday: 12:10–2:00 PST.

- Zoom: 971 0988 0505. Passcode: 336743.
- <https://berkeley.zoom.us/j/97109880505?pwd=Qk9vY3g0cUxhT3NNSTdaRTFtdnVyZz09>

**Office hours:**

**Instructor Shanks:** Thursdays 4:10–5:00 PST (open collective meeting, no sign up required); 5:10–6:00 PST (individual 15 min meetings, schedule through sign up on bCourses).

- Zoom: Meeting ID: 910 2261 1929. Passcode: 655578.
- <https://berkeley.zoom.us/j/91022611929?pwd=RmV1MFdhdUZhZWV1K2hVVGd1OWh0Zz09>

**GSI Bossow:** Mondays 4:10–5:00pm (open collective meeting, no sign up required); Mondays 5:10–6:00 pm (individual 15 min meetings, by appointment only).

- Zoom: Meeting ID: 950 8708 5440. Passcode: 599235.
- <https://berkeley.zoom.us/j/95087085440?pwd=c3FQeWxhNW9UTS9KR0xEZXgzYzhIZz09>

### **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.

40% – Two paper assignments: one essay question each.

40% – Final exam: two 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 the “Notes and Questions” sections**. 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 on to 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 (Classes 3-7) 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.** Oral presentations are sufficient: we would prefer you focus on mastering the material rather than creating a visual presentation.

- **Sign-up will be available starting July 1.** To sign up, please visit the Google spreadsheet and put your name in the appropriate box. All reading materials are available on bCourses. <https://docs.google.com/spreadsheets/d/1YvV7oeoWodbHUYPmEiU7z3OmJiFGhOd7WeRt6ovp0SU/edit?usp=sharing>.

### **Paper assignments and final exams.**

The specific instructions for the paper assignments and final exam will be provided via bCourses announcements closer to their due dates. The papers will consist of one (1) essay question, the final exam will consist of two (2) essay questions; each paper will be worth 20% of your final grade, with the final exam worth 40%. The two papers are due 18 July and 1 August. The final exam will be 12 August.

### **Zoom participation guidelines.**

– **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.

– **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.

– **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.

– **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.

– **Recordings:** Each lecture will be recorded; however, the recordings will not be made available to students without expressly receiving permission from the instructor prior to an excused absence. Recordings may be made available in the final week of class for purposes of review.

– **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.

- **Permission to speak:** If you wish to speak or ask a question, please indicate in the chat or use the “raise hand” function.
- **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 during the occasional Q&A breaks.
- **Leaving at the end:** Please remember to “leave the meeting” when the session is finished.
- **Mistakes are inevitable:** Please recognize that we are all still figuring out the norms and practices of the virtual world. **Kindness matters more than ever now.**

## Class Topics and Readings

### INTRODUCTION

#### 1. Introductory class—Tuesday, 6 July

- 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 majority of this class will be dedicated to individual introductions.
- **Optional:** HEDLEY BULL, *THE ANARCHICAL SOCIETY* (1977) (excerpts).
- **Optional:** Textbook 32-35.

#### 2. What is international law? What is international relations?—Wednesday, 7 July

- 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—Thursday, 8 July

- 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—Monday, 12 July

- 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—Tuesday, 13 July

- Textbook, 123-131.
- International Law Commission, *First Report on formation and evidence of customary International Law* (2013), 123-125.
- **Case:** The Paquete Habana, 175 U.S. 677 (1900).
- **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—Wednesday, 14 July

- 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—Thursday, 15 July

- 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.

## FIRST PAPER—Due Sunday, 18 July at 10pm

### 8. States and “territories”—Monday, 19 July

- 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—Tuesday, 20 July**

- 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—Wednesday, 21 July**

- 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—Thursday, 22 July**

- Textbook, 331-341 (International Court of Justice); 800-820 (regional human rights systems); 1166-1175 (International Criminal Court).
- 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).
- **Optional:** Rome Statute

### **12. Individuals, corporations, peoples, and civil society—Monday, 26 July**

- Textbook, 147-156 (skip Notes and Questions).
- **Case:** *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), Opinion p. 1-3 (Section I), p. 14 (Section IV).
- **Case:** *SERAC v. Nigeria* (2001) AHRLR 60 (African Commission on Human Rights), paragraphs 1-10, 30, 43-72.
- **Optional:** 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 III: FOCUS AREAS IN INTERNATIONAL LAW**

### **13. International dispute resolution—Tuesday, 27 July**

- Textbook, 319-329; 400-411.
- **Case:** Summary and Excerpt of: 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—Wednesday, 28 July**

- Textbook, Pages 823-827 (Law of the Sea), Pages 897-908 (International Environmental Law - general).
- Cymie R. Payne, ICJ Halts Atlantic Whaling – Japan Starts Again, pages 181- 184, 188 – 190 (section 5), 192-194.
- **Case:** Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening), Judgment, 2014 I.C.J. GL No. 148 (Mar. 31) (no reading, summary provided in Payne's article).
- **Optional:** Textbook pages 931-944 (Climate Change).

### **15. The laws of armed conflict: Jus ad bellum—Thursday, 29 July**

- 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 (Nicaragua. v. U.S.), Judgment, 1986 I.C.J. Rep. 14 (June 27) (in Christine Gray, International Law and Use of Force, 75-78).

## **SECOND PAPER—Due Sunday, 1 August at 10pm**

### **16. The laws of armed conflict: Jus in bello—Monday, 2 August**

- 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) (in Textbook 266-273).

### **17. Emergencies and international law—Tuesday, 3 August**

- Oren Gross & Fionnuala Ní Aoláin, *Emergency, War and International Law: Another Perspective*, 70 NORD. J. INT. LAW 29, 29-63 (2001) (29-32).
- Marko Svijevic, *COVID-19 as a Threat to International Peace and Security: What Place for the UN Security Council?*, EJIL: TALK! (Mar. 27, 2020).

## 18. Citizenship and asylum—Wednesday, 4 August

- Textbook, 748-751 (citizenship).
- **Case:** Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. Rep. 4 (Apr. 6) (excerpts provided) (citizenship).
- Hathaway and Foster, *The Law of Refugee Status* (2014), 1-12 (Asylum).
- Karen Musalo, *A Short History of Gender Asylum in the United States*, 29 REFUGEE SURV. Q. 46 (2010) (Asylum).

## 19. Human rights I: Introduction—Thursday, 5 August

- 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—Monday, 9 August

- STEINER, ALSTON, GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT, 224-228 (torture generally); 231-234 (Ireland v. UK).
- Textbook, 275-277 (postscript for Hamdan and the future of Guantanamo and its military commissions; The 2002 “torture memo”; Extraordinary rendition).
- **Film:** The Report (2019).

## 21. International criminal law—Tuesday, 10 August

- 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).

## CONCLUSION

## 22. Empire, international community, and international law—Wednesday, 11 August

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

## FINAL EXAM—Thursday, 12 August