

LL4050V/LL5050V/LL6050V/LC5050V – PUBLIC INTERNATIONAL LAW

Course Description:

This course provides a classic general introduction to international law, its structures, institutions, processes and principles. It is taught from a 'globalist' perspective, and is not confined to any particular country's approach towards international law; it seeks to make the student aware of points of convergence and divergence with respect to how the legal orders of different states may relate to international law in general.

The classic paradigm of international law as the law between nation-states no longer fully accurately captures global realities in the contemporary setting. Today, a variety of non-state actors (international organisations like the UN, WTO, ILO, multi-national corporations, terrorists, individuals, ethno-cultural groups) participate in international society and influence its norms and processes. Public international law continues to be a rapidly expanding field, covering diverse fields of human activity. This has given rise to specialist topics pertaining to trade, environmental law, human rights law, outer space etc...

This course will focus on foundational concepts and principle underlying the international legal system and the application of legal norms. It will resist the temptation to take a whistle-stop tour through the most exotic or most current international affairs and incidents. Both historical and contemporary material will be judiciously referenced, to illustrate core ideas and the types of situations international law is called upon to address. A key objective is to unveil the current state of the international legal order and the tension between law and politics, theory and practice, power and justice, utopia and the real world.

Course Objectives

Our primary text is DJ Harris, Glicker & Sivakumaran's ***Cases & Materials in International Law*** (Sweet & Maxwell, 2020, 9th edition). Copies can be obtained from the Co-Op. Access to the electronic version is available via LINC.

No specific textbook is prescribed though students may wish to refer to one of the following:

- Vaughan Lowe, **International Law** (Oxford University Press, 2007)
- Martin Dixon, **Textbook on International Law**, 7th ed (or later), (Oxford University Press, 2013)
- Malcolm Shaw, **International Law** 8th ed., (Cambridge University Press, 2017)

Excellent reference texts include:

- Malcolm Evans ed., **International Law** (Oxford University Press, 2018), 5th ed.
- James Crawford, **Brownlie's Principles of Public International Law** (Oxford University Press, 2019) , 9th ed.

A **PIL Instruments Supplement** exclusive to students who take this module will be provided, consisting of the major international instruments we will refer to, via Luminus.

The course will focus on the operation of general international law norms and principles, the creation and modification of international law, the engagement between international and domestic legal systems, issues relating to personality (sovereignty, self-determination, recognition) and competence to hold rights, duties, immunities and to be subject to liabilities and international responsibility, the content of fundamental norms (*ius cogens, erga omnes* obligations) and the procedures and mechanisms for invoking and enforcing these norms to remedy international legal violations.

Students on successful completion of the course will be able to

- a) appreciate the role and impact of law in contemporary world politics and national decision-making, against the historical context giving rise to the 'law of nations'; they should be able to engage in sound critical legal analysis and independent reasoning, as distinct from populist rhetoric
- b) be familiar with fundamental principles and legal norms, be able to analyse international law cases;
- c) be aware of the deeper critical and conceptual issues related to this discipline, its underlying normative basis and the search for a 'desirable' world public order;
- d) attain an advanced understanding of the nature of law and 'legal systems' and the role and limits of law as a regulatory method in international politics

Outline of the Course:

This course is taught by lectures and seminars. For each seminar, we will examine relevant international treaties and soft law instruments, cases discussing customary international law (both domestic and international), domestic statutes incorporating international law and academic analysis of international legal issues. Concrete examples will be referenced to facilitate an understanding of how international law applies in practice.

Weeks 1-4

1. **The nature of the international legal system:** how legislative, adjudicatory and enforcement is carried out within a horizontalised Westphalian state order, with particular attention to UN Organs like the Security Council, General Assembly and International Court of Justice, as well as primary UN Charter norms such as the rules regulating the use of force and the pacific settlement of disputes. We will consider the underlying theoretical basis of international law (natural law, positive law, legal realism etc) and consider whether it promotes the well-being of the international community or whether it was used as a tool to advance specific interests. This is situated against significant 'moments' in the history of international relations: Westphalia, the League of Nations, the United Nations and the post- Cold War/post 9-11 era that describes the 21st Century where problems concerning the managing of capitalism and the managing of tribalism continue to demand attention.
2. **The Sources of International Law:** Treaties, Customary International Law, General Principles and 'Soft Law.' We examine the hierarchy of international norms (*ius cogens / ius dispositivum, erga omnes obligations*) etc
3. **The inter-relationship between international law and municipal law;** dualist and monist approaches; the law on treaties. We examine through case law how international law is received in various jurisdictions and consider the impact on the domestic legal system where a state becomes party to an international treaty.

Weeks 5-7

4. **The question of international legal personality:** who or what entity is able to hold rights and enforce them at international law
5. The question of **statehood and self-determination**
6. The law and policy of **recognition.**

Weeks 8-9

7. **Types and heads of jurisdiction;** the sufficiency of territorially based jurisdiction in an age of cross-border crime, terrorism, torture; the need for and limits on extra-territorial assertions of jurisdiction against claims of sovereign equality and territorial integrity

8. **The immunities of states and state actors** from heads of states to lesser officials

Weeks 10-12

9. **General principles underlying state responsibility** – we closely examine the ILC Articles on State Responsibility for Internationally Wrongful Acts: we consider when a state is liable for committing an international wrong, defences to liability, how international law seeks to regulate the unilateral actions of states as a form of self-help, and reflect on the nature of the international society: is it primitive? Maturing?
10. **Specific Examples of State responsibility**: we focus on the treatment of aliens abroad, issues of foreign investment and expropriation, and the implications of the right to development with respect to the sovereign equality of states and how inter-state relations are impacted.