

INTERNATIONAL CONSTITUTIONAL LAW

International law governs the relations between states and other internationally privileged actors. International law represents a very clear-cut way of understanding how states actually interact. Ultimately, in most instances, states must recast their mutual relations into legal form. This requires a precise statement of their positions to safeguard their interests or to advance the common interest.

In addition to its transactional aspects, international law offers insights into the development of the international system as a whole. Are we still operating within the 'anarchical system' of power politics, or have we actually moved on, towards an international society governed according to (admittedly) decentralized constitutional principles and mechanisms?

The international law course is aimed at those who have not studied law before. It offers a more practical perspective on other issues you might study when taking courses on particular regions, on particular themes (nationalism, religion, violence) or on IR theory. In addition, you will absorb, as if by accident, aspects of legal thinking and method over time.

In this course, we will address some substantive aspects of international law (treaties, territory, law of the sea, environment, maintaining peace and collective security, etc), along with broader issues concerning the attempt to construct and maintain an international order. We will consider how international legal obligations are made, how compliance can be assured, and how disputes are settled.

The emphasis in the first term will be on law-making, on the creation of global community values and on the state and its relations with its own constituents, in particular the question of independent statehood, self-determination disputes and democracy in international law. The second term is mainly devoted to issues of law-implementation, peaceful dispute settlement, and attempts to restrain the use of force in international relations.

It is recommended that you take the course over both terms. Those who wish to take international law as an examined option must take the course over both terms.

There is no examination at the end of the first term, although you will be invited to prepare a practice examination essay over the Christmas break (unless you are merely auditing). This means that if you are taking international law over two terms, it will count as one non-examined course in one term and as one of your examined courses in the other. If you just opt to attend either the first or the second term, but not both, that one term will be counted as one of your non-examined options.

We will meet individually over the second term to discuss your practice essay and work on improvements. The second term concludes with a short, invigilated essay examination for those who are taking the full course over two terms as an examined option. If COVID rules force a change, we may instead move to a 24 hour take-home examination.

Please remember that you are not participating in this course in order to pass the examination. You are not required to 'learn' the materials, and will only need to master a limited number of authorities from case law. You will be allowed to use a collection of treaties in the assessment, and the emphasis is on your ability to offer critical analysis and ideas. In the thirty years that this course has run, no candidate has ever failed the assessment, and I am sure this year will be no different.

We will mainly work with real live materials from contemporary international relations, addressing actual cases. (Indeed, our first substantial seminar addresses the 1988 and 2020 Afghanistan 'Peace' Accords). There will be a mixture between lectures and seminar discussions. You will be invited to participate actively, to present cases and positions of governments and others over the term. To make it easy for you to prepare, you will receive a prepared bundle of materials for each week.

As we can only address some aspects of the overall field of international law, and to reinforce the lectures and seminars, you will also be invited to read one assigned chapter in a text- or casebook for each week. You will not need to read the case-book chapters entirely, but can skim in and out, recognizing the elements we are covering. The textbook is Shaw, *International Law* (9th ed.), the case-book is Harris et al, *Cases and Materials on International Law* (9th ed). All colleges have numerous copies of these if you are reluctant to buy them.

Some of you may also find it useful to buy a copy of Evans, *International Law Documents* (14th ed), which is a reasonably priced collection of many of the key international constitutional treaties we will occasionally look at.

SYLLABUS

This syllabus proceeds from the assumption that the course can be delivered as normal. Covid rules may require us to condense the form of presentation and the areas of substantive coverage. Please also be aware that we will be complying with strict standards of mask wearing, hand sanitizing and ventilation.

WEKK 0 (Introductory Week)

Lecture 0: International Constitutional Law: History, Theory and Concept

Seminar 0: Structure of Legal Argument

This introductory seminar is devoted to an initial understanding of how international law operates. We will study the Great Belt Case (materials are handed out to those who have booked the course). You will defend either Denmark or Finland. You will find that your contributions will be 90 per cent the same as those actually made by the highly experienced (and highly paid) advocates in that case. You will be off to a flying start!

Shaw Chapters 1 and 2. Harris Chapter 1.

Lecture 1: Law Making—Treaties

Seminar 1: The Afghanistan 'Peace' Agreements of 1988 and 2020

We will study the concept of treaties and their interpretation, using mainly the nicely complex example of the 1988 Afghanistan 'Peace' Agreements. For fun, we will contrast that set of agreements, which heralded to the USSR's withdrawal from Afghanistan, with that of the Trump administration's achievement in 2020, committing the USA to its withdrawal some three decades later.

Shaw, Chapter 15. Harris Chapter 10.

Lecture 2: Customary International Law

Seminar2: The Nuclear Weapons Advisory Opinion

As a brief exercise, we may consider the Economic Rights and Duties Case—a previous examination case. In the main, we shall consider the Nuclear Weapons Advisory Opinion Case that was before the International Court of Justice. The question is: ‘Is the Threat or Use of Nuclear Weapons Permitted in International Law.’ You will take the position of either a nuclear weapons opponent or of a proponent. The aim is to see how international customary law operates.

Shaw Chapter 3. Harris Chapter 3.

Lecture 3: Moving towards an International Constitutional Order

Seminar 3: The Lockerbie and Genocide Cases

We will consider to what extent we are moving from a system of strict state consent, and reciprocal obligations between states, towards an international system of universal obligations that apply to all states, whether or not they have specifically consented. This would represent the *aquis*, or minimum international public order, of the international constitutional system.

Shaw Chapter 3. Harris Chapter 3.

Lecture 4: Constituents of the International System: Legal Personality

Seminar 4: Territory and Jurisdiction

We will consider the delimitation of the territorial jurisdiction of states, and the rules that limit the exercise of such jurisdiction, along with entitlement to exercise state powers outside of the area of state territory. We will illustrate the legal rules by considering the sad case of General Manuel A Noriega, former President of Panama, who found himself moved to a windowless cell in the basement of the Miami Federal Justice building.

Shaw Chapter 5. Harris Chapters 5 and 6.

Lecture 5: Self-determination—the Classical Rule

Seminar 5: Colonial Self-determination

We will consider the tension between claims to territorial integrity of states and the claim of some within the state to secede. In this seminar, we will study the way in which the international system addressed this issue in relation to colonial cases. We will consider the ‘Sowaliland’ practice case.

Shaw Chapter 5. Harris Chapter 4.

Lecture 6: Self-determination—Challenges to Statehood

Seminar 6: We will move on to the dissolution of Yugoslavia and other challenges to the classical, restrictive rules on self-determination. We will consider the case of Kosovo in particular, also addressing Catalonia and Crimea.

Shaw Chapter 8, Harris Chapter 4.

Lecture 7: Settling Self-determination Conflicts—New Approaches

Seminar 7: A Democratic Entitlement in International Law?

In this seminar, we will ask whether states are obliged to offer democratic governance to their constituents. We will focus on the case of Myanmar (1990 and 2021).

Handout only.

Week 8: Reserve—A voluntary revision session or Catch-up if we fall behind schedule (as is likely). In the alternative, if we find ourselves at leisure, we may take a brief look at the substantive legal rules on Human Rights. Or, if you are too engaged on the examinations in other courses, we may just have:

Mince Pies and Holiday Cheer.

LENT TERM

Lecture 1: Compliance Management in International Law

Seminar 1: State Responsibility and Claims

We will consider the international process of attributing violations of international law to states, and of seeking to bring them into compliance with legal obligations they may have breached. In addition to considering the classical rules of state responsibility, we will consider counter-measures (reprisals). We will consider the practice case of *Goldenboy* and *Goldenbaby*, if time allows.

Shaw Chapter 13, Harris Chapter 8.

Lecture 2: Dispute Settlement

Seminar 2: Access to Legal Remedies

We will consider how states, but also others (individuals and corporations) can have access to legal redress in case their rights are violated. This includes the International Court of Justice, specialized international courts, and the International Centre for the Settlement of Investment Disputes and other bodies. You will be invited to identify the best possible way of pursuing a case in the news at the time through international mechanisms.

Shaw Chapter 17. Harris Chapter 12.

Lecture 3: Human Rights Enforcement

Seminar 3: Human Rights and War Crimes

We will consider the range of international human rights bodies and mechanisms, along with the operation of the International Criminal Court and *ad hoc* internationalized courts and tribunals.

Shaw Chapters 6 and 7. Harris Chapter 9.

Lecture 4: Prohibition of the Use of Force

Seminar 4: The Development of the Prohibition of the Use of Force

We will consider the development of the prohibition of the use of force from the League of Nations to the Briand Kellogg Pact and the UN Charter, focusing in particular on the interplay between the prohibition and the right to self-defence. We will also approach the international administration of these rules by international institutions, in particular the UN Security Council. We will consider the case of Iraq-Kuwait.

Shaw Chapter 19. Harris Chapter 11.

Lecture 5: Collective Security

Seminar 5: The Operation of the UN System of Collective Security

We will consider the Iraq war of 2003 and the complex (and failing) legal arguments put forward to justify the military operation as an exercise of collective security.

Shaw Chapter 21. Harris Chapter 11.

Lecture 6: Forcible Humanitarian Action

Seminar 6: Humanitarian Intervention (so-called) and Responsibility to Protect

We will consider the differing theories in support and against the doctrine of forcible humanitarian action, culminating in the elegance of the Weller theory on the subject. We will use the case of the NATO armed action concerning Kosovo as our principal example.

Handout only.

Lecture 7: Conclusions: An International Constitutional System?

Seminar 7: Catch-up, as history tells us that we are likely to fall behind a little, or if time permits, we may devote some time to considering the Governance of International Spaces and Global Environmental and Economic Justice, perhaps by way of a guest presentation.

Week 8: Revision Seminar

We will work through a number of practice cases in preparation for your crowning achievements in the assessment.