University of Waterloo

Balsillie School of International Affairs &

School of Environment, Enterprise and Development

**GGOV 660**

**Public International Law**

**Winter 2020**

Course Syllabus

Course Instructor Neil Craik

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Office Hours Mondays 2.30 – 400 pm or by appointment

Class times 11.30 am – 2.30 pm

Location Rm 233 BSIA

Course Description:

International law is a familiar but complicated element of global affairs. Much of our discussion and assessment of state actions and other activities beyond the state is made with reference to international legal norms:

* Does China’s treatment of its minorities meet international legal standards? Can those standards be enforced? By whom?
* What obligations does Canada owe foreign detainees in its operations in Afghanistan or Syria?
* What remedies do small island states or low-lying states, whose very existence is threatened by climate change, have against large polluters?

Despite its ubiquity in international affairs, international law is subject to nagging doubts about the extent to, or the conditions under, which states feel bound by international rules or the consequences for states and other actors that fail adhere to international legal requirements. Can a viable legal system be created and maintained by the same set of actors that it seeks to govern? Can we realistically talk about the international rule of law? Do we expect too much of international law or too little?

This survey course will provide students with a systematic introduction to the international legal system. Much of the focus of the course will be on the role of international law as an element of international governance, including the relationship between international law and state behavior, and the role of international law in enabling and constraining power. To this end, the course will look beyond doctrine to examine international law in action, with particular attention being paid to how international legal processes constitute and organize states and international organizations, how they structure interactions among them, the allocation of competences in international affairs and the relationship between the form of international legal arrangements and the subject matter and actors these arrangements seek to govern.

Topics to be covered include: the origins and nature of the international legal system; the sources, formation and application of international law; the law of treaties; international legal personality; state jurisdiction; jurisdictional immunities of states; and a selection of substantive international legal topics including, as time permits, and in accordance with student interests, human rights and international criminal law, the use of force, humanitarian law, trade law and international economic law, and international environmental law and the law of the sea.

The learning objectives for the course are as follows:

* Provide students with a foundational knowledge of public international law, particularly,
  + Sources of international law, their legal effect, how they are interpreted, and how they are implemented by states;
  + Which actors are recognized as having capacity to engage in international legal relations, as creators of international law and as the subject of international law;
  + How international law structures territory and the rights to exercise authority in relation to resources, property and persons.
* Introduce students to several substantive areas of international law.
* Critically consider the nature and role of international law in inter-state relations, and the relationship between international law and international relations, as distinct but closely linked academic disciplines.
* Familiarize students with the basics of international legal research

Course Structure

The course will consist of a mixture of instructor-led and student led seminars. The first six weeks will involve primarily instructor led discussions on the fundamental concepts in public international law. This will be followed by four weeks of student led (and instructor facilitated) discussions of substantive areas of international law. The areas chosen will be driven by student interests and integrated into the course assignments (see Course Evaluation below). The final two weeks of the course will focus on broader themes respecting the role of international law in international affairs, such as dispute settlement, compliance and effectiveness. The course discussions and materials draw on current events, legal disputes and controversies to illustrate and raise questions about the content of the course.

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| Dates | Topic |
| Week 1  January 6 | The Concept and Nature of International Law |
| Week 2  January 13 | Sources of International Law |
| Week 3  January 20 | Sources of International Law |
| Week 4  January 27 | International Legal Personality |
| Week 5  February 3 | State Jurisdiction |
| Week 6  February 10 | State Immunities |
| Feb 17-21 | **Reading Week** |
| Week 7  February 24 | State Responsibility, Sanctions and Dispute Settlement |
| Week 8  March 2 | Topics in IL: Human Rights and International Criminal Law |
| Week 9  March 9 | Topics in IL: Use of Force |
| Week 11  March 16 | Topics in IL: International Economic Law Held Online |
| Week 12  March 23 | Topics in IL: International Environmental Law and Law of the Sea – Held Online |
| Week 12  March 30 | Compliance: International Law and State Behaviour – Cancelled – but extensive reading note provided |

Course Materials

* John Currie, Craig Forcese, Joanna Harrington and Valerie Oosterveld, *International Law: Doctrine, Practice and Theory, 2d*
* Materials on LEARN (all listed readings not in Currie *et al.* will be provided on LEARN during the course of the term)

Course Evaluation

**Participation: 10 %**

The following requirements are part of the participation assessment:

1. regular class attendance;
2. prior preparation;
3. in-class contributions to peer learning;
4. students will be required to lead discussions throughout the term.

Because participation is integral to the success of the seminar, attendance at each class is mandatory. Please advise the instructor in advance if you are going to miss a class.

The idea that animates the assessment of the participation requirement in this course is that each member of the course should be contributing to the learning of others.

Expectations

9+

* + - * able to initiate and facilitate the development of ideas
      * comments are consistently insightful and raise questions or ideas that stimulate the learning of others
      * demonstrates critical reflection on readings
      * brings relevant and interesting resources (media, cases, articles) to the attention of others

8

* + - * comments and questions demonstrate some critical analysis
      * consistently shares ideas
      * effort made to build on ideas of others

6-7

* + - * raises occasional clarifying questions and comments
      * comments often not of a critical nature and do not demonstrate integration of material

Below 6

* + - * no consistent contribution
      * little evidence of integrated learning
      * absent from class

**Treaty Assignment (30%)**

Students are required to identify a particular international treaty of interest to them and complete a written assignment based on the treaty. The assignment requires students to answer a series of technical, as well as more evaluative, questions about the treaty. Students must choose a treaty no later than week 3 and must have their choice approved. Assignments are due in Week 7.

The assignment is intended as a descriptive, analytical and research exercise, in that it requires students to identify the underlying problem and normative goals of the treaty, as well as identify a wide range of treaty features, and then reflect upon the manner in which the features of the treaty may contribute to the effectiveness of the treaty.

It is expected that the treaty assignment will provide students with much of the background to lead a seminar segment on a substantive area of international law in weeks 8-11. For examples, students interested in presenting on Arctic shipping may choose to do their assignment on the Convention on the Law of the Sea, or the London Convention on Dumping at Sea. Students interested in human rights may choose one of the human rights covenants.

**Seminar Presentation (20%)**

In weeks 8-11 students will be asked to lead a segment of a seminar on a topic of their choice that is relevant to the range of substantive topics identified below. Students may wish to establish a group approach where the subject areas of the treaties being presented are closely linked. (But each student contribution will be marked individually.)

1. Human rights and International Criminal Law
2. The Use of Force
3. International Economic Law (including trade and investment law)
4. International Environmental Law and Law of the Sea

The seminar itself should present a unique aspect of the broader area, such as a particular sub-issue, or a specific dispute. The seminar preparation will involve identifying readings, key questions for discussion, as well as the presentation itself. In preparation for the student-led seminars, students will be required to meet with the instructor two weeks in advance to coordinate the material and presentations.

**Take Home Final Exam (40%)**

Students will be required to write a 36 hour take home exam. The date for the take home exam will be determined early in the term.

Late Papers

It is expected that all course assessments be handed in on the date and time that they are due. Failure to do so will result in a mark reduction of 5% (of the assignment mark) for the first day and 2% for every day thereafter to a maximum of 20%. Any assessment item that is more than 7 days late requires the instructor’s permission to hand in.

The take-home exam must be handed in in accordance with the strict time requirements. Any accommodations must be arranged in advance through the accessibility office.

Course Communication

Communication by the instructor to students will be sent to students ‘uwaterloo’ email through LEARN or through postings to the course LEARN site. Students are responsible for ensuring prompt retrieval of course messages. **Any communication from students to the instructor should be via their ‘uwaterloo’ account and include “GGOV 660” in the subject line.**

University and Faculty Requirements and Notices

* + Academic Integrity: In order to maintain a culture of academic integrity, members of the University of Waterloo community are expected to promote honesty, trust, fairness, respect and responsibility. [www.uwaterloo.ca/academicintegrity/](http://www.uwaterloo.ca/academicintegrity/). Students who are unsure what constitutes an academic offence are requested to visit the on-line tutorial at http://www.lib.uwaterloo.ca/ait/
  + Research Ethics: Please also note that the ‘University of Waterloo requires all research conducted by its students, staff, and faculty which involves humans as participants to undergo prior ethics review and clearance through the Director, Office of Human Research and Animal Care (Office). The ethics review and clearance processes are intended to ensure that projects comply with the Office’s Guidelines for Research with Human Participants (Guidelines) as well as those of provincial and federal agencies, and that the safety, rights and welfare of participants are adequately protected. The Guidelines inform researchers about ethical issues and procedures which are of concern when conducting research with humans (e.g. confidentiality, risks and benefits, informed consent process, etc.). If the development of your research proposal consists of research that involves humans as participants, the please contact the course instructor for guidance and see [www.research.uwaterloo.ca/ethics/human/](http://www.research.uwaterloo.ca/ethics/human/)
  + Note for students with disabilities: [AccessAbility Services](https://uwaterloo.ca/disability-services/), located in Needles Hall, Room 1401, collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with [AccessAbility Services](https://uwaterloo.ca/disability-services/) at the beginning of each academic term.
  + Religious Observances: Please inform the instructor at the beginning of term if special accommodation needs to be made for religious observances that are not otherwise accounted for in the scheduling of classes and assignments.
  + **Grievance:** A student who believes that a decision affecting some aspect of his/her university life has been unfair or unreasonable may have grounds for initiating a grievance. Read Policy 70 - Student Petitions and Grievances, Section 4, [www.adm.uwaterloo.ca/infosec/Policies/policy70.htm](http://www.adm.uwaterloo.ca/infosec/Policies/policy70.htm). When in doubt please contact your Undergraduate Advisor for details.
  + **Discipline:** A student is expected to know what constitutes academic integrity to avoid committing an academic offence, and to take responsibility for his/her actions. [Check [the Office of Academic Integrity](https://uwaterloo.ca/academic-integrity/) for more information.] A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course instructor, academic advisor, or the undergraduate associate dean. For information on categories of offences and types of penalties, students should refer to [Policy 71, Student Discipline](https://uwaterloo.ca/secretariat-general-counsel/policies-procedures-guidelines/policy-71). For typical penalties, check [Guidelines for the Assessment of Penalties](https://uwaterloo.ca/secretariat-general-counsel/policies-procedures-guidelines/guidelines/guidelines-assessment-penalties).
  + **Appeals:** A decision made or penalty imposed under Policy 70 - Student Petitions and Grievances (other than a petition) or Policy 71 –(Student Discipline) may be appealed if there is a ground. A student who believes he/she has a ground for an appeal should refer to Policy 72 (Student Appeals) [www.adm.uwaterloo.ca/infosec/Policies/policy72.htm](http://www.adm.uwaterloo.ca/infosec/Policies/policy72.htm)
  + **Turnitin.com:**Text matching software (Turnitin®) may be used to screen assignments in this course. Turnitin® is used to verify that all materials and sources in assignments are documented. Students' submissions are stored on a U.S. server, therefore students must be given an alternative (e.g., scaffolded assignment or annotated bibliography), if they are concerned about their privacy and/or security. Students will be given due notice, in the first week of the term and/or at the time assignment details are provided, about arrangements and alternatives for the use of Turnitin in this course. It is the responsibility of the student to notify the instructor if they, in the first week of term or at the time assignment details are provided, wish to submit the alternate assignment.

**Detailed Course Outline and Readings**

**Week 1 – The Concept and Nature of International Law**

* International Law as a System of Law
* International Law and Globalization

Readings:

* Currie, chp 1, pp. 11-46 (skim)
* Robert O. Keohane, “International Relations and International Law: Two Optics” (1997) 38 Harv. Int'l. L. J. 487.
* D. Bethlehem, “The End of Geography: The Changing Nature of the International System and the Challenge to International Law” (2014) 25 EJIL 9-24.
* M. Mutua, “What is TWAIL?”, (2000) ASIL Proceedings 30.

**Week 2 – Sources of International Law – Treaty Law**

* Introduction to Sources of International Law
* Formation of Treaties
* Structure of Treaties
* Interpretation of Treaties

Readings

* Currie, Chp.2, pp.48-115

**Week 3 – Sources of International Law – Customary Law and Transformation**

* Customary International Law
* General Principles of International Law
* Subsidiary Sources
* Transformation into Domestic Law

Readings

* Currie, chp. 2, 116-157, 158-175

**Week 4 –International Legal Personality**

* **Statehood**
* **International Organizations**

Readings:

* Currie *et al.,* Chp.3, pp. 180-191; 1991-200 (skim); 200-207; 237-246; 246-249.

**Week 5 – State Jurisdiction**

* **Acquisition of Territory**
* **Jurisdiction over Oceans**
* **Jurisdiction over the Atmosphere and Outer Space**

Readings

* Currie *et al.,* pp.307-08 (skim), chp. 4, pp.309-345; pp.345-370 (skim); chps. 5-6, pp. 393-474 (skim).

**Week 6 – Jurisdiction over Persons and State Immunities**

* **Exercise of Jurisdiction**
* **Foreign Immunities (State and Diplomatic) to Jurisdiction**

Readings:

* Currie *et al.,* Chp 7, pp. 475-479; 488-494; 499-521; chp.8, pp. 525-545; 554-563.

**Week 7 – State Responsibility and Dispute Settlement**

* **State Responsibility**
* **Sanctions**
* **International Courts**

Readings

* Currie *et al.,* chp. 12, pp.761-766; pp.766-785; pp.289-305

**Week 8 - Human rights and International Criminal Law**

Readings: TBD

**Week 9 – The Use of Force**

Readings: TBD

**Week 11 - International Economic Law (including trade and investment law)**

Readings: TBD

**Week 12 - International Environmental Law and Law of the Sea**

Readings: TBD

**Week 12 – Compliance, International Law and State Behaviour – lecture cancelled – students still responsible for material; extensive reading note provided.**

* **IR/IL literature**
* **Compliance**

Readings

* Chayes and Chayes, “On Compliance”, (1993) 47 Int’l Org. 175
* Harold Koh, “Bringing International Law Home”, (1998-9) 35 Hous. L. Rev. 623.
* Jutta Brunneé & Stephen J Toope, “Interactional International Law: An Introduction” (2011) 3:2 International Theory 307-318.