Public International Law – LW531

Irish Centre for Human Rights

School of Law

**Academic Year 2019-2020**

**Course Outline**

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| **Objective** | The course is intended for students with little or no knowledge of public international law. The main objective of the course is to provide students with an overview of the fundamental notions and methodology of public international law. The course will equip students with the skills required in order to envisage legal dimensions of human rights issues. |
| **Lecturer(s)** | **Name** | **Office** | **Ext** | **E-mail** |
| Dr. Ekaterina Yahyaouii Krivenko | 205 ICHR | 2065 | Ekaterina.yahyaoui@nuigalway.ie |
| **Times** | Term One | **Day** | **Time** | **Venue** |
| Lectures: | Thursday  | 10 am to 1 pm | Irish Centre for Human Rights |
| **Overall Learning Outcomes** | * Become familiar with fundamental concepts of public international law;
* Establish links between fundamental concepts of public international law;
* Determine legal issues raised by current international events;
* Be able to identify and find relevant international law documents;
* Apply basic public international law methodology in order to envisage solutions to current international events;
* Critically assess envisaged solutions.
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| **Format** | Eleven three-hour seminars. Each seminar consists of a theoretical introduction and class discussion of relevant public international law notions, instruments and decisions. Students are expected to undertake required readings in preparation for each seminar. |
| **Programme(s)** | All LL.M. programmes of the ICHR |
| **Course Material** | The majority of readings required for this course are judgements and advisory opinions of the International Court of Justice. These judgements and opinions are available on the web-site of the ICJ: <http://www.icj-cij.org/en/list-of-all-cases> Articles from the Max-Planck Encyclopaedia of Public International Law are also required for the majority of courses. They constitute the background reading. These articles are available at: <http://www.mpepil.com/> (to get full access, please connect from a NUI G computer or using your NUI G credentials)Links to other readings are provided in the course outline below. While students are **not required** to purchase any textbook, they might find it useful to supplement required course readings by any up-to-date textbook. The following are particularly recommended (always check for the latest edition, but earlier editions can also be used provided notice is taken of relevant later developments):* Malcolm D. Evans (ed.), *Public International Law*, Oxford: Oxford University Press, (individual chapters are referred to in ‘additional readings’)
* Anthony Aust, *Handbook of International Law*, Cambridge: Cambridge University Press,
* Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press,
* James Crawford, Brownlie’s *Principles of Public International Law*, Oxford, Oxford University Press,
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| **Essential Texts** | Judgements of the International Court of Justice, relevant international treaties and entries from the Max-Planck Encyclopaedia of Public International Law indicated for each course (see below) |
| **Supplementary Texts** | Scholarly articles, weekly readings (see below) |
| **Assessment** | A take-home exam consisting of several questions (usually three) covering diverse subjects studied will be distributed at the end of the last class. Students will have to answer questions using cases and literature studied in class in an essay style. More clarifications will be provided during the first class; detailed instructions will be given when the exam questions are distributed (last class) (80%).Students are also required to make a presentation on one of the cases studied in class (10 min max). This presentation shall be accompanied by a written summary (1-2 pages) to be shared with other students on the day of the presentation. (20%) |

**WEEK 1 (19 September 2019)**

Introduction

**1. Definition of public international law**

**2. Overview of the historical development of public international law**

*Jus inter gentes* – end of the medieval society – foundational myth: treaty of Westphalia – Congress of Vienna 1815 – League of Nations 1919 – creation of the United Nations

**3. Modern theories and discussions**

Readings:

* *Shaw's International Law* (Cambridge University Press), Chapter 1, excerpt [The nature and development of international law](http://www.cambridge.org/ie/academic/subjects/law/public-international-law/international-law-7th-edition?format=HB&isbn=9781107040861#PhezwPl0UuKwVb5y.97) (under ‘Contents’, marketing excerpt)
* M. Koskenniemi, “What is International Law For?”, in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition)

Additional readings:

* M.W. Janis '[International Law?](http://www.heinonline.org/HOL/Page?handle=hein.journals/hilj32&id=1&size=2&collection=journals&index=journals/hilj)' 32 *Harvard Journal of International Law* (1991) 363-372.

**WEEK 2, 3 and 4**[[1]](#footnote-1) **(26 September, 3 and 10 October 2019)**

Sources and Norms of Public International Law

**1. Theory of sources of public international law**

a) Distinction between the source and the norm

b) Distinction between formal sources and material sources

c) Article 38 of the Statute of the International Court of Justice

d) Relationship between sources of public international law

e) Relationship between norms of public international law

**2. International treaties**

a) Definition and categories

b) Conclusion of treaties

c) Reservations to international treaties

d) Validity of treaties

e) Application of treaties

f) Modifications and termination of treaties

Readings:

* Article 38 of the Statute of the International Court of Justice
* Vienna Convention on the Law of Treaties, 1969 available at online.
* General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, Doc. CCPR/C/21/Rev. 1/Add. 6147 available online (eg <http://www.refworld.org/docid/453883fc11.html>)
* Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, advisory opinion, 28 May 1951, ICJ Reports 1951, p. 15. Read p. 16 (questions) and p. 20 and seq. (reference is made to page numbers at the top of the page)
* Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), 3 February 2006, summary of the judgement and Joint Separate Opinion by Judges Higgins, Kooijmans, Elaraby, Owada and Simma
* Entries from the Max Planck Encyclopaedia: Sources of International Law (Ruediger Wolfrum), Treaties (Malgosia Fitzmaurice), Treaties, Object and Purpose (Jan Klabbers), Treaties, Multilateral, Reservations to (Thomas Giegerich)

Additional readings:

* Hugh Thirlway, “The sources of international law” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition)
* Malgosia Fitzmaurice, “The practical working of the law of treaties” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition)

**WEEK 5 (17 October 2019)**

**3. Custom and other sources of public international law**

a) Custom

i) Formation of customary rules

ii) Application of customary rules

b) General principles of law

c) Judicial decisions and teachings of publicists

d) Unilateral declarations

Readings:

* The case of the S.S. « Lotus », 7 September 1927, PCIJ Reports, Series A, nº 10, p. 4. Read p. 5 and p. 10 and seq.
* North Sea Continental Shelf Cases, judgement, 20 February 1969, ICJ Reports 1969, p. 3. Read paragraphs 1 (starts at p. 12), 2, 14, 15, 37 and 60-85
* Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v.* United States of America), Merits, judgement, 26 June 1986, ICJ Reports 1986, p. 14. Read paragraphs 172-269.
* Nuclear Tests (New Zealand *v.* France) (Australia v. France), judgement, 20 December 1974, ICJ Reports 1974, p. 457. Read paragraphs 16 and seq.
* Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 25 February 2019, read paras 144-162
* Entries from Max-Planck Encyclopaedia: Customary International Law (Tullio Treves), General Principles of Law (Giorgio Gaja), Unilateral Acts of States in International Law (Victor Rodrigues Cedenio and Maria Isabel Torres Cazorlu)

**4. Other relevant notions**

*Jus cogens* – *erga omnes* –soft law

Readings:

* Entries from Max-Planck Encyclopaedia: Obligations erga omnes (Jochen Frowein), Jus cogens (Jochen Frowein)

**5. Critical evaluation of the theory of sources**

**WEEK 6 and 7 (24 and 31 October 2019)**

Subjects of Public International Law

**1. Overview**

**2. States**

a) Acquisition of legal personality

b) Competencies

c) Immunities

Readings:

* Island of Palmas case (Netherlands v USA), 4 April 1928, 2 UN Rep. Int’l Arbitration Awards 829, available at legal.un.org/riaa/cases/vol\_II/829-871.pdf
* Corfu Channel (United Kingdom of Great Britain and Northern Ireland *v.* Albania), judgement, 9 April 1949, ICJ Reports 1949, p. 4 (read just the judgement itself, not the declarations attached to it)
* Jurisdictional Immunities of the State (Germany *v.* Italy: Greece intervening), judgement, 3 February 2012, ICJ Reports
* Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo *v.* Belgium), judgement, 14 February 2002, ICJ Reports 2002, p. 3 (paragraphs 1, 13-15, 45, 46, 51-78) and Joint separate opinion of Judges Higgins, Kooijmans and Buergenthal (paras. 1-5, 17, 18, 19, 45-52, 70-89)
* Entries from the Max-Planck Encyclopaedia: Subjects of International Law (Christian Walter), Sovereignty (Samantha Besson), State (James Crawford), Governments (Siegfried Magiera)

Additional readings:

* Matthew Craven, “States and recognition in international law”, in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition)
* Chanaka Wickremasinghe, “Immunities enjoyed by officials of states and international organizations”, in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition)

**WEEK 8 (7 November 2019)**

**3. International Organisations and other subjects of public international law**

a) International organisations

i) Nature of their legal personality

ii) Example of the Organisation of the United Nations

b) Individuals

 i) Links to the State

 ii) International protection of human rights

 iii) International criminal law and duties of individuals

c) Other subjects

Readings:

* Charter of the United Nations adopted on 26 June 1945 (entered into force on 25 October 1945), available online. Read preamble and articles 1-32, 55, 61-72, 92-101.
* Reparation for Injuries Suffered in the Service of the United Nations, advisory opinion, 11 April 1949, ICJ Reports 1949, p. 174
* Nottebohm (Liechtenstein *v.* Guatemala), judgment, 6 April 1955, ICJ Reports 1955, p. 4
* Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (read paras 109-146 only)
* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004; ICJ Reports 2004, p.136 (pages 4-6 and paras. 66, 67, 114-137)
* Entries from the Max-Planck Encyclopaedia: Peoples (Gudmundur Alfredsson), Individuals in International Law (Simone Gorski)

Additional Readings:

* Cindy G. Buys, “Nottebohm’s Nightmare: Have We Exorcised the Ghosts of WWII Detention Programs or Do They Still Haunt Guantanamo?”, 2011 *Chicago Kent Journal of International and Comparative Law*, available at http://studentorgs.kentlaw.iit.edu/jicl/journal/volume-11/

**WEEK 9 (Tuesday, 12 November 2019 2-5pm) No class on 14 November!**

Implementation of Public International Law

**1. Relationship between national and international law**

a) General theories:

monism and dualism - subordination and coordination

b) Examples of application

i) International treaties

ii) Customary law and *jus cogens*

Readings:

* Brunno Simma, “Contribution of Alfred Verdross to the theory of international law” 6 *European Journal of International Law* (1995) p. 33-54, available at <http://ejil.org/pdfs/6/1/1300.pdf> . Read pp. 38-47 in particular.
* Andrew D. Mitchell, “Genocide, Human Rights Implementation and the Relationship between International and Domestic Law: Nulyarimma v. Thompson” 24 *Melb. U. L. Rev*. (2000), p. 15-49, available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083000>
* Entry from the Max-Planck Encyclopaedia: International Law and Domestic (Municipal) Law (Joerg Polakiewicz)

Additional readings:

* Eileen Denza, “The relationship between international and national law” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition).

**WEEK 10 (21 November 2019)**

**2. International responsibility**

Readings:

* Draft Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the UN General Assembly on 12 December 2001, available online (You need the text without commentaries. A text containing detailed commentaries also exists. You are not required to read the commentaries.)
* Gabčíkovo-Nagymaros Project (Hungary/Slovakia), judgement, 25 September 1997, ICJ Reports 1997, p. 7. Read paras. 49-58, 82-87, 148-154.
* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion, 9 July 2004; ICJ Reports 2004, p.136 (pages 4-6 and paras. 66, 67, 143 and seq.)
* Entry from the Max-Planck Encyclopaedia: State Responsibility (James Crawford)

Additional readings:

* James Crawford and Simon Olleson, “The nature and forms of international responsibility” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition).

**WEEK 11 (28 November 2019)**

Use of Force and Peaceful Settlement of Disputes AND Revision

**1. Prohibition of the use of force**

**2. Legal consequences of the use of force**

**3. Duty of the peaceful settlement of disputes**

Readings:

* Charter of the United Nations adopted on 26 June 1945 (entered into force on 25 October 1945), available at online;

Read articles 1, 2, 33-51, 92-96 of the Charter and articles 34-38, 41, 65, 66 of the Statute of the International Court of Justice.

* Declaration on principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations, adopted by the UN General Assembly on 24 October 1970, GA Official documents, 25th session, supp. nº 28, p. 131, UN Doc A/5217 (1970), available at http://www.un-documents.net/a25r2625.htm
* Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v.* United States of America), Merits, judgement of 26 June 1986, ICJ Reports 1986, p. 14. Read paragraphs 172-269.
* Entries from the Max-Planck Encyclopaedia: Responsibility to Protect (Ingo Winkelmann), United Nations, Security Council (Michael Wood)

Additional readings:

* Hugh Thirlway, “The international court of justice” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition).
* Christine Gray, “The use of force and the international legal order” in M. Evans (ed), *International Law*, Oxford: Oxford University Press (2010, 3rd edition).
1. Please note that week 4 will be exclusively devoted to the issue of reservations to international treaties. [↑](#footnote-ref-1)