

**Georgia Institute of Technology
Sam Nunn School of International Affairs
Fall 2010**

**INTA 4500A: The Politics of International Law
Class Time: T 3:05-5:55 PM
Classroom: Habersham G17**

Instructor:

Dr. Mikulas Fabry
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Office hours: Thursdays 3:15-4:15 PM, or by appointment

Course Description:

The purpose of this advanced seminar is to explore the place of international law within the larger context of world politics. It asks questions such as: What kind of law is international law and what needs does it fulfill? Where do particular legal rules come from? What role does international law play, and how does the interplay between law and politics operate, in actual decisionmaking of foreign policymakers and international organizations? Can international law be justifiably circumvented or defied? Can the world be changed and improved through it? The seminar is divided into two parts. The first part looks at different conceptualizations of the place of international law within international relations. The second part focuses on a number of contemporary issues in world politics with important legal dimensions.

The seminar has four core learning objectives:

1. To familiarize students with select theoretical accounts of the links between international law and international politics
2. To introduce students to legal reasoning and argumentation
3. To survey some of the most important issues in contemporary international relations with major legal aspects
4. To enable students to apply theories and legal reasoning when analyzing concrete cases

Course Texts:

Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004) is required.

Antonio Cassese, *International Law*, 2nd edition (Oxford University Press, 2005) is highly recommended for background reading on international law.

Both books are available for purchase in the GT Barnes & Noble and the Engineering Bookstore. They are also on reserve in the Main Library. Other readings will be available directly, or linked to particular online resources, on T-Square's course website (<https://t-square.gatech.edu/portal>) under "Resources". Resources that use Microsoft Office software will use the 2007 version. It is the responsibility of students to ensure access to resources posted on T-Square. Should you experience technical difficulties, contact the Office of Information Technology (<http://www.oit.gatech.edu>) for help.

Course Assignments, Due Dates and Grading:

Students will be evaluated on the following basis:

- Class participation (20%)

The format of the course is a seminar. Attendance is mandatory each class. Students are required each week to read the assigned material prior to each seminar and then be ready and willing to discuss it actively in class. In order to provide stimulus for class discussions, each student should prepare for each class two questions that they were left with after reading the assigned material. The questions should be handed to the instructor on an index card containing the student's name at the beginning of each class.

- Presentation (10%)

Each student will deliver one formal presentation on the readings to the class. The exercise is meant to serve as a takeoff point for further analysis by the rest of the class. The presentation, which will normally follow the instructor's introductory remarks and precede general class discussion, should be about 20-minutes long. The presentation should lay out the authors' arguments and explain their strengths and weaknesses, whether empirical, logical, normative or practical. It should end by raising two questions left in the presenter's mind. A written version of the presentation, roughly two single-spaced pages, should be e-mailed to the instructor by 4 PM of the Monday preceding the presentation.

- Two analytical response papers on the assigned readings (20%; 10% each)

Students are required to write two response papers on the assigned readings. There are eight possible topics: from Week 5 (September 21) to Week 14 (November 23) inclusive. No student should write a response paper the week he/she presents. You can turn in three response papers – in that case I will count the two highest grades you receive. The response papers, which are due at the beginning of the class when the topic they deal with is discussed, should be no less than one-page and no more than two pages single-spaced (with 1" margin from each side and 12-size font). In the papers you should:

- (1) Identify and concisely summarize the main arguments in the readings as they relate to the assigned topic.
- (2) Compare and contrast the readings. Are there any points of convergence between them? In what ways do they differ?

(3) Critically engage with the readings. Do you find one more convincing than the others? If you do, why? If you do not find any of the readings convincing, why not? What questions are left in your mind?

■ Research paper assignment (50%)

There is no set list of questions for the research paper assignment. Students should formulate their own question based on their interests and consultation with the instructor. In general, the research papers should examine an issue involving the relationship between international law and international politics and include empirical evidence in their analysis. A few topics are suggested at the end of this syllabus. By the second third of the semester, you should have enough research to draw up a five-page outline (double-spaced, with 1" margin from each side and 12-size font) that sketches the paper's topic, preliminary argument and annotated bibliography of at least 10 academically reputable sources beyond the course material, including books and academic journal articles. The outline is due on October 26 and is worth 10% of your final course grade.

The final research paper should be 15-20 double-spaced pages long (with 1" margin from each side and 12-size font). It is worth 40% of the final course grade. It is due on Monday, December 13 at 2 PM in my mailbox in Habersham 129. Papers will be graded on the basis of their originality and logic of argument, quantity and quality of supporting research, and readability and elegance of writing style.

Additional Requirement for International Plan (IP) Students:

For all IP students, there is an additional assignment, a short paper, 10-15 pages, which is required for the IP capstone course. Please see me during my office hours in the second week of classes to discuss this work. You will be attending a workshop run by OIE that will provide you with readings and an exercise to facilitate your writing of the paper which will ask you to reflect on the impact of your time studying and working abroad on your studies as an INTA or IAML major. That question is: What intercultural understanding did you gain as a result of your experiences studying and/or working abroad and how have those experiences led you to reflect upon themes of study in your courses as an INTA or IAML major and the career you want to pursue?

Penalty Policy and Academic Honesty:

Response papers will not be accepted after the beginning of the class for which they are due. Research papers outlines and research papers will be penalized by half a grade per day late, unless valid justification for missing the due date is provided before the due date. In all your coursework, you must adhere to Georgia Tech's Honor Code (www.honor.gatech.edu).

Outline of Classes and Readings:

[N.B. The schedule is subject to revision; I will provide ample notice.]

1. Course Introduction: International Law and World Politics - Approaches, Practice, and

History (August 24)

Christian Reus-Smit, “Preface,” “Introduction” and “The Politics of International Law,” in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. xii-44.

David Armstrong, Theo Farrell and Hélène Lambert, “The Evolution of International Law,” in *International Law and International Relations* (Cambridge University Press, 2007), pp. 34-65.

Recommended: Cassese, Preface and Ch. 2.

2. Is International Law Really “Law”? (August 31)

Christopher C. Joyner, “The Reality and Relevance of International Law in the 21st Century,” in Charles W. Kegley and Eugene R. Wittkopf (eds.), *The Global Agenda: Issues and Perspectives* (McGraw Hill, 1998), pp. 252-265.

John R. Bolton, “Is There Really ‘Law’ in International Affairs?” *Transnational Law and Contemporary Problems*, Vol. 10 (2000), pp. 1-47.

Recommended: Cassese, Ch. 1.

3. International Law and World Order (September 7)

Hedley Bull, “International Law and International Order,” in *The Anarchical Society: A Study of Order in World Politics*, 3rd ed. (Columbia University Press, 2002), pp. 122-155.

Sir Arthur Watts, “The Importance of International Law,” in Michael Byers (ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford University Press, 2000), pp. 5-16.

Shirley V. Scott, “Is There Room for International Law in *Realpolitik*? Accounting for the US ‘Attitude’ towards International Law,” *Review of International Studies*, Vol. 30 (January 2004), pp. 71-88.

Recommended: Cassese, Ch. 3.

4. Types of Legal Rules: Positive Law and Natural Law (September 14)

Anthony Clark Arend, “The Variety of International Rules,” in *Legal Rules and International Society* (Oxford University Press, 1999), pp.13-39.

Terry Nardin, “Legal Positivism as a Theory of International Society,” in Terry Nardin (ed.), *International Society: Diverse Ethical Perspectives* (Princeton University Press, 1998), pp. 17-35.

Joseph Boyle, "Natural Law and International Ethics," in Terry Nardin and David Mapel (eds.), *Traditions of International Ethics* (Cambridge University Press, 1992), pp. 112-135.

Recommended: Cassese, Chs. 8, 9, 10 and 11.

5. The Use of Force I: Collective Security and The Right of Self-Defense (September 21)

Dino Kritsiotis, "When States Use Armed Force," in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 45-79.

Michael Byers, "Preemptive Self-defense: Hegemony, Equality and Strategies of Legal Change," *Journal of Political Philosophy*, Vol. 11 (2003), pp. 171-190.

Abraham Sofaer, "On the Necessity of Pre-emption," *European Journal of International Law*, Vol. 14 (2003), pp. 209-226.

Recommended: Cassese, Chs. 17, 18 and pp. 469-481.

6. The Use of Force II: Humanitarian Intervention (September 28)

Michael Byers and Simon Chesterman, "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law," in J.L. Holzgrefe and Robert Keohane (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003), pp. 177-203.

Thomas M. Franck, "Interpretation and Change in the Law of Humanitarian Intervention," in J.L. Holzgrefe and Robert Keohane (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003), pp. 204-231.

Brad R. Roth, "Bending the Law, Breaking It, or Developing It? The United States and the 'Humanitarian' Use of Force in the Post-Cold War Era," in Michael Byers and Georg Nolte (eds.), *United States Hegemony and the Foundations of the International Law* (Cambridge University Press, 2003), pp. 232-63.

7. Laws of War I: Their Operation and the Case Study of the Status and Treatment of Detainees in the War on Terror (October 5)

Nicholas Wheeler, "The Kosovo Bombing Campaign," in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 189-216.

George H. Aldrich, "The Taliban, Al Qaeda, and the Determination of Illegal Combatants," *The American Journal of International Law*, Vol. 96 (October 2002), pp. 891-898.

Jeremy Rabkin, "After Guantanamo: The War over the Geneva Convention," *The National Interest* (Summer 2002), pp. 15-26.

Recommended: Cassese, Ch. 20.

8. **Laws of War II: The Policy of Targeted Killings (October 12)**

Steven R. David, "Israel's Policy of Targeted Killing," *Ethics and International Affairs*, Vol. 17 (Spring 2003), pp. 111-126.

Yael Stein, "By Any Name Illegal and Immoral," *Ethics and International Affairs*, Vol. 17 (Spring 2003), pp. 127-137.

Steven R. David, "If Not Combatants, Certainly Not Civilians," *Ethics and International Affairs*, Vol. 17 (Spring 2003), pp. 138-140.

The Supreme Court of Israel, *The Public Committee against Torture in Israel v. The Government of Israel* (Summary of Judgment, December 13, 2006).

9. **Fall Recess (October 19) – NO CLASS**

10. **Laws of War III: Banning Anti-Personnel Landmines (October 26) – RESEARCH PAPER OUTLINE DUE**

Richard Price, "Emerging Customary Norms and Anti-Personnel Landmines," in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 106-130.

Jodi Preusser Mustoe, "1997 Treaty to Ban the Use of Landmines: Was President Clinton's Refusal to Become a Signatory Warranted?" *Georgia Journal of International and Comparative Law*, Vol. 27, (1999), pp. 541-569.

11. **Human Rights and International Law (November 2)**

Jack Donnelly, "The Virtues of Legalization," in Saladin Meckled-García and Başak Çali (eds.), *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law* (Routledge, 2006), pp. 67-80.

Michael Freeman, "Putting Law in Its Place," in Saladin Meckled-García and Başak Çali (eds.), *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law* (Routledge, 2006), pp. 49-64.

Makau Wa Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal*, Vol. 42 (2001), pp. 201-245.

Recommended: Cassese, Ch. 19.

12. **International Criminal Law (November 9)**

David Wippman, "The International Criminal Court," in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 151-188.

Jack Goldsmith and Stephen D. Krasner, "The Limits of Idealism," *Daedalus*, Vol. 132 (Winter 2003), pp.47-63.

Recommended: Cassese, Ch. 21.

13. Governmental Legitimacy/Recognition of New Governments and International Law (November 16)

Gregory H. Fox, "The Right to Political Participation in International Law," in Gregory H. Fox and Brad R. Roth (eds.), *Democratic Governance and International Law* (Cambridge University Press, 2000), pp. 48-90.

James Crawford and Susan Marks, "The Global Democracy Deficit: An Essay in International Law and Its Limits," in Daniele Archibugi, David Held and Martin Köhler (eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Stanford University Press, 1998), pp. 72-90.

Brad R. Roth, "Conclusion: Sovereignty and Popular Will," in *Governmental Illegitimacy in International Law* (Oxford University Press, 2000), pp. 413-430.

14. State Legitimacy/Recognition of New States and International Law (November 23)

Peter Hilpold, "The Kosovo Case and International Law: Looking for Applicable Theories," *Chinese Journal of International Law*, Vol. 8 (2009), pp. 46-61.

Alexander Orakhelashvili, "The Kosovo UDI between Agreed Law and Subjective Perception," *Chinese Journal of International Law*, Vol. 8 (2009), pp. 285-290.

Peter Hilpold, "What Role for Academic Writers in International Law? A Rejoinder to Orakhelashvili," *Chinese Journal of International Law*, Vol. 8 (2009), pp. 291-298.

Alexander Orakhelashvili, "Kosovo and the Pitfalls of Over-theorizing International Law: Observations on Hilpold's Rejoinder," *Chinese Journal of International Law*, Vol. 8 (2009), pp. 589-592.

The International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Summary of the Advisory Opinion, pp. 5-14), July 22, 2010.

Recommended: Cassese, Ch.4.

15. International Organizations and Institutional Governance (November 30)

Anthony Anghie, “International Financial Institutions,” in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 217-237.

Wayne Sandholtz and Alec Stone Sweet, “Law, Politics and Institutional Governance,” in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp. 238-271.

Recommended: Cassese, pp. 510-518.

16. Research Paper Work Day – Extra Office Hours During Class Time (December 7)

A Few Suggestions for Research Paper Questions:

1. Assess realist theory’s view of international law.
2. Can preventive war be ever justified as a response to the perceived threat of terrorism or weapons of mass destruction?
3. Should democracy become an international legal entitlement? Is it an achievable goal?
4. Are the skeptical US attitudes towards the International Criminal Court justified?
5. Evaluate the prospects for the emergence of the right of humanitarian intervention in positive international law. Would such a development be desirable, if it is achievable?
6. Assess the legality of the various phases or controversial practices of the US war on terror.
7. Write a paper on the evolving international tensions over Iran’s nuclear program. Under what circumstances, if any, would the use of coercive measures against Iran be legally justified, and by whom?
8. Assess the *Legality of the Threat or Use of Nuclear Weapons* (1996) advisory opinion of the International Court of Justice. What are its political and legal implications?
9. Assess the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) advisory opinion of the International Court of Justice. What are its political and legal implications?
10. What status should the detainees in the war on terror be accorded and how should they be treated? Does existing international law provide satisfactory answers?
11. Assess the contemporary relevance of natural law for international law.
12. Can the policy of targeted killings, such as the one carried out by Israel in the Gaza Strip, be justified under contemporary international law?
13. Assess the legal aspects of the Goldstone Report of the UN Human Rights Council as they pertain to the alleged international crimes committed in the Gaza Strip during Israel’s military offensive in December 2008-January 2009.
14. Has recognition of Kosovo’s unilateral declaration of independence by 69 countries been in conformity with international law?
15. Is US hegemony a threat to the international rule of law?
16. Is international law really law?
17. Assess the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (2010) advisory opinion of the International Court of Justice. What are its political and legal implications?

18. Was Israel's forcible action against the "Gaza flotilla" in May 2010 legal?

Students may narrow these questions or suggest their own topic. **All students should talk to the instructor about their intended topic prior to proceeding with research.**