

**Georgia Institute of Technology
Sam Nunn School of International Affairs
Fall 2012**

**INTA 4500: International Law and World Politics
Class Time: R 3:05-5:55 PM
Classroom: Habersham G17**

Instructor:

Dr. Mikulas Fabry
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Office hours: by appointment Tuesdays 1:45-2:45 PM

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. They are clustered around three subject areas: international security, human rights and international institutions.

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 attendance (10%) and participation (20%)

This course is a discussion seminar. Attendance is **mandatory** each class and counts for 10% of the final grade. Given the seminar format, student class participation is **absolutely indispensable** and counts for 20% of the final grade. Students are **required** to read the assigned material **prior** to each class and then be ready and willing to discuss it actively. To better steer seminar discussions, each student should prepare for each class, starting September 6, two questions that they were left with after reading the assigned material. The questions should be handed in – on a typed page containing the student's name – to the instructor at the beginning of 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 day (Wednesday) 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 27) to Week 14 (November 29) inclusive. **No student can 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 outline (10%) and final research paper (30%)

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. Some 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 25 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 30% of the final course grade. It is due on Monday, December 10 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.

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.]

Course Introduction + International Law and World Politics - Approaches, Practice, and History (August 23)

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*, 2nd ed. (Cambridge University Press, 2012), pp. 38-73.

Recommended: Cassese, Preface and Ch. 2.

Instructor Away at a Conference (August 30) – NO CLASS

Is International Law Really “Law”? (September 6)

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.

International Law and World Order (September 13)

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.

Types of Legal Rules: Positive Law and Natural Law (September 20)

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.

The Use of Force I: Collective Security and the Right of Self-Defense (September 27)

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.

Robert J. Delahunty and John Yoo, "The 'Bush Doctrine': Can Preventive War Be Justified?" *Harvard Journal of Law and Public Policy*, Vol. 32 (2009), pp. 843-865.

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

The Use of Force II: Humanitarian Intervention (October 4)

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.

Laws of War I: Their Operation and the Case Study of the Status and Treatment of Detainees in the War on Terror (October 11)

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

Recommended: Cassese, Ch. 20.

Laws of War II: The Policy of Targeted Killings (October 18)

Kai Ambos and Josef Alkatout, “Has ‘Justice Been Done’? The Legality of Bin Laden's Killing Under International Law,” *Israel Law Review*, Vol. 45, No. 2 (2012), pp 341 – 366.

David A Wallace, “Operation Neptune's Spear: The Lawful Killing of Osama Bin Laden,” *Israel Law Review*, Vol. 45, No. 2 (2012), pp 367 – 377.

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

Laws of War III: Banning Anti-Personnel Landmines (October 25) – 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.

Human Rights and International Law (November 1)

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.

Jeremy A. Rabkin, “The Human Rights Crusade,” in his *Law without Nations?* (Princeton University Press, 2005), pp. 158-192.

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.

International Criminal Law (November 8)

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, "Self-Defeating International Criminal Court," *University of Chicago Law Review*, Vol. 70, No. 1 (Winter 2003), pp. 89-104.

Recommended: Cassese, Ch. 21.

Governmental Legitimacy/Recognition of New Governments and International Law (November 15)

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.

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

Thanksgiving (November 22) – NO CLASS

State Legitimacy/Recognition of New States and International Law (November 29)

Marcelo G. Kohen and Katherine Del Mar, "The Kosovo Advisory Opinion and UNSCR 1244 (1999): A Declaration of 'Independence from International Law'?" *Leiden Journal of International Law*, Vol. 24 (2011), pp. 109-126.

Marc Weller, "Modesty Can be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?" *Leiden Journal of International Law*, Vol. 24 (2011), pp. 127-147.

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. 5-15), July 22, 2010.

Recommended: Cassese, Ch.4.

International Organizations and Institutional Governance (December 6)

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.

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 continued skeptical attitudes of the US 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/North Korea's nuclear program. Under what circumstances, if any, would the use of military measures against Iran/North Korea 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 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 90 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?
19. Can human rights be effectively protected by international law?

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.**