Georgia Institute of Technology

Sam Nunn School of International Affairs

Spring 2018

INTA 4500: The Politics of International Law

Class Time: M 3:00-5:45 PM

Classroom: Habersham G-17

Instructor:

Prof. Mikulas Fabry

Office location: Habersham 152

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Office hours: by appointment Mondays 1:00-3:00 PM

Course Description:

The purpose of this senior seminar is to explore the place of international law in global affairs, with a particular emphasis on the relationship between international law and international 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 and how do we know what they precisely mean? 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 in world affairs. The second part focuses on a number of contemporary issues with important international legal dimensions. They are clustered around three broad subject areas: international security, human rights and international organizations.

The seminar has four intended learning outcomes:

1. Students will show familiarity with select theoretical accounts of the place of international law within international relations
2. Students will demonstrate an understanding of different approaches to legal reasoning and argumentation and an ability to apply them when analyzing actual cases
3. Students will be able to analyze some of the most important issues in contemporary international relations with major legal aspects
4. Students will be able to express their arguments clearly and effectively orally and in writing

**Course Texts**:

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

Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge University Press, 2017) is highly recommended for background reading on international law.

Both books are available for purchase in the GT Barnes & Noble. 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 2016 version. It is the responsibility of students to ensure access to resources posted on T-Square. Should you experience technical difficulties, contact the GT 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 class then be ready and willing to discuss the readings **actively**. In order to provide stimulus for class discussions, each student should prepare for each class, starting January 22, 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 (15%)

Each student will deliver one formal presentation on the assigned 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 15-20 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 preceding the presentation. Should there be more than one presenter assigned for a class, the verbal presentations should be divided between the presenters, but each presenter’s written version should cover all the required readings assigned for that class. Should you choose to do your verbal presentation with the assistance of Power Point, you should e-mail your slides to the instructor, at the latest right after class.

* One analytical response paper on the assigned readings (15%)

Students are required to write one response paper on the assigned readings. There are eight possible topics: from The Use of Force I (February 12) to State Legitimacy/Recognition of New States and International Law (April 16) inclusive. **No student can write a response paper the week he/she presents**. You can turn in two response papers – in that case I will count the higher grade you receive. The response paper, which is due at the beginning of the first class for a given topic, 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 paper 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 that 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 prescribed questions for the research paper assignment. Students should formulate their own question based on their interests and **mandatory** consultation with the instructor. In general, the research papers should examine an issue involving international law in world affairs 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 **March 12** 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, **April 30** 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:**

Analytical 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](http://www.honor.gatech.edu)).

**Outline of Classes and Readings:**

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

Course Introduction: International Law and World Politics - Approaches, Practice, and History (January 8)

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, Ch. 1.

M.L. King Day (January 15 - NO CLASS)

Is International Law Really “Law”? (January 22)

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.

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.

International Law and World Order (January 29)

Hedley Bull, “International Law and International Order,” in *The Anarchical Society: A Study of Order in World Politics*, 4th ed. (Columbia University Press, 2012), pp. 122-155.

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.

Ian Hurd, *How To Do Things with International Law* (Princeton University Press, 2017), pp. 1-18.

Types of Legal Rules: Positive Law and Natural Law (February 5)

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: Shaw, Chs. 2 and 3.

The Use of Force I: Collective Security and the Right of Self-Defense (February 12)

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

Terry D. Gill, “The Temporal Dimension of Self-Defense: Anticipation, Preemption, prevention and Immediacy,” in M.N. Schmitt and J. Pejic (eds.), *International Law and Armed Conflict: Exploring the Fault Lines* (Brill, 2007), pp. 113-155.

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

Recommended: Shaw, Ch. 19 and pp. 946-980.

The Use of Force II: Humanitarian Intervention (February 19)

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 (February 26)

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: Shaw, Ch. 20.

Laws of War II: The Policy of Targeted Killings (March 5)

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.](http://journals.cambridge.org/abstract_S002122371200009X)

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.](http://journals.cambridge.org/abstract_S0021223712000118)

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 (March 12) – 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.

Ryan Kocse, “Final Detonation: How Customary International Law Can Trigger the End of Landmines,” *Georgetown Law Journal*, Vol. 103 (2015), pp. 749-796.

Spring Break (March 19 - NO CLASS)

Human Rights and International Law (March 26)

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: Shaw, Ch. 6.

International Criminal Law (April 2)

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.

Alana Tiemessen, “The International Criminal Court and the Politics of Prosecutions,” *The International Journal of Human Rights*, Vol. 18 (2014), pp. 444-461.

Recommended: Shaw, Ch. 7.

Governmental Legitimacy/Recognition of New Governments and International Law (April 9)

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.

Recommended: Shaw, Ch. 8.

State Legitimacy/Recognition of New States and International Law (April 16)

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: Shaw, Ch. 5.

International Organizations and Institutional Governance (April 23)

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: Shaw, Ch. 22.

**A Few Suggestions for Research Paper Topics:**

1. Assess realist theory’s view of international law.

2. Can preventive self-defense/war be ever legally justified?

3. Should democracy become an international legal entitlement? Is it an achievable goal?

4. Are the continued skeptical attitudes of the US/ Kenya-led African coalition 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*](http://disarm.igc.org/oldwebpages/worldct.html) (1996)/*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?

9. 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?

10. Assess the contemporary relevance of natural law for international law.

11. Can the policy of targeted killings be justified under contemporary international law?

12. Has recognition of Kosovo’s unilateral independence by some 110 countries been in conformity with international law?

13. Is US hegemony a threat to the international rule of law?

14. Is international law really law?

15. Can human rights be effectively protected by international law?

16. Is impartial international criminal justice possible?

17. Assess Russia’s justification of its annexation of Crimea.

18. Did the US recognition of Jerusalem as Israel’s capital contravene international law?

19. Assess the *South China Sea* (2016) arbitration of the Permanent Court of Arbitration. What are its political and legal implications?

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