

**Georgia Institute of Technology
Sam Nunn School of International Affairs
Fall 2023**

**INTA 4060/8803 MF: International Law
Class Time: TR 12:30-1:45 PM
Classroom: D.M. Smith 15**

Instructor:

Prof. Mikulas Fabry
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Office hours: by appointment –Tuesdays, Thursdays 2:00-3:00 PM

Course Description:

The purpose of this advanced discussion and research seminar is to explore the place of international law in global affairs. It asks questions such as: What kind of law is international law and what needs does it fulfill? Where do 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 decision-making of foreign policymakers and international organizations? Can international law ever 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 global affairs. The second part focuses on selected 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 selected theoretical accounts of the place of international law within international affairs.
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 affairs with major legal aspects.
4. Students will be able to apply research skills to address legal problems in the field of international affairs.

INTA 1110: Introduction to International Relations is **highly recommended** as a pre-requisite for undergraduate students.

Course Texts:

Shirley V. Scott, *International Law in World Politics*, 3rd ed. (Lynne Rienner, 2017)

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

Both required books are available for purchase in GT Barnes & Noble. They are also on reserve in the GT Library (see Canvas/Reading Lists). Other readings will be available directly, or linked to particular online resources, on Canvas/Files. It is the responsibility of students to ensure access to resources posted on Canvas. Should you experience difficulties in opening files posted by the instructor, try accessing them from a different device or a computer in the GT Library. If this does not work or you encounter other technical difficulties, please 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 and participation (20%)

This course is a seminar. Attendance is **mandatory for** each class. Given the seminar format, student class participation is **absolutely indispensable**. Students are **required** to read the assigned material **prior** to class and then be ready and willing to discuss the readings **actively**. In order to provide stimulus for class discussions, each student should prepare for the first class of each topic, starting August 29, two questions that they were left with after reading the assigned material. The questions should be submitted on Canvas/Discussions prior to that first class. (If a topic has a single class, two questions should be submitted prior to that single class).

- Presentation on the readings (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-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 (with 1" margin from each side and 12-size font), should be e-mailed to the instructor by 4:00 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 prior to the class during which you present.

- 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 (September 21) through International Organizations

(November 21). **No student can write a response paper the week s/he presents.** You can turn in two response papers – in that case I will count the higher grade you receive. The printed response paper, which is due at the beginning of the second class for a given topic (if there is only one class on a topic, then at the beginning of that class), 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 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%), Research paper presentation (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, research papers should examine an issue, problem, or puzzle involving international law in global affairs and include empirical evidence in their analysis. A few topics are suggested at the end of this syllabus. By the end of October, you should have enough research to draw up a five-page (graduate students: eight-page) outline that sketches the paper’s topic, preliminary argument and annotated bibliography (summarizing each source in one or two sentences) of at least 10 academically reputable sources (graduate students: 15 sources) beyond the course material, including books and academic journal articles. The outlines should be double-spaced (with 1” margin from each side and 12-size font), except the annotated bibliography which should be single-spaced). The printed outlines are due in class on **October 24th** and are worth 10% of your final course grade.

Students are required to present their research paper findings, via Power Point, to the class during one of the last three sessions of the semester (worth 10% of your grade final grade). Copies of your presentation should be uploaded to Canvas/Discussions by 4:00 PM the day before your presentation.

The final research paper should be 15-17 (graduate students: 18-20) 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 to be uploaded in Canvas/Assignments on Monday, **December 11th** at 4:00 PM. Papers will be graded based on their originality and logic of argument, quantity and quality of supporting research, and readability and elegance of writing style.

Penalty Policy and Class Absence:

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. Class absence is only justified for **documented** medical and family emergency reasons and in other cases approved by the GT Office of the Dean of Students.

Academic Integrity:

Georgia Tech aims to cultivate a community based on trust, academic integrity, and honor. Students are expected to act according to the highest ethical standards. For information on Georgia Tech's Academic Honor Code, please visit: catalog.gatech.edu/policies/honor-code/ or catalog.gatech.edu/rules/18/.

All assignments submitted on Canvas will be screened for plagiarism via Turnitin. Any student suspected of cheating or plagiarizing on an exam or assignment will be reported to the Office of Student Integrity, which will investigate the incident and identify the appropriate penalty for violations.

Accommodations for Students with Disabilities:

If you are a student with learning needs that require special accommodation, contact the Office of Disability Services at (404) 894-2563 or disabilityservices.gatech.edu as soon as possible, to make an appointment to discuss your special needs and to obtain an accommodation letter. Please also let me know as soon as possible so that I know of your learning needs.

Additional Student Resources:

The Center for Academic Success (success.gatech.edu) offers a variety of academic support services to help students succeed academically at Georgia Tech (e.g. tutoring, peer-led study groups, writing and study skills, etc.). The Division of Student Life (studentlife.gatech.edu) in the Office of the Vice President for Student Life and the Dean of Students offers resources and support for all students in the Tech community. The Counseling Center (counseling.gatech.edu/) offers free mental health services, as well as stress management and wellness workshops to all currently enrolled students. They are located in Smithgall, Suite 210 and are offering virtual and in-person resources.

Communications Policy:

As your official GT email is the only means for the instructor to reach you outside the classroom, you are responsible for checking it **daily**. You are also asked to **turn on** to receive **all** the course-related notifications on Canvas.

Tips for Success:

1. Come to class.
2. Come to class having read and reflected on the assigned readings and prepared to engage in discussion.

3. Participate in class by both asking and answering questions and sharing your perspectives. There is no such thing as a bad or stupid question.
4. Make sure you understand the material for each topic before classes on the next topic.
5. Form study groups with your classmates both to compare notes and to get feedback on your grasp of the course material.
6. Before getting to work on an assignment, re-read the instructions for that assignment in the syllabus.
7. You know you are on your way to selecting an appropriate research paper topic if there is a debate or disagreement about it in the world of policy or scholarship, or (even better) both.
8. Follow the news related to international law and relate it to the material of the course.
9. Make use of all available resources including, but not limited to, the library and the instructor's office hours. Reach out if you need additional assistance or support.

Outline of Classes and Readings:

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

Course Introduction (August 22)

International Law and World Politics - Approaches, Practice, and History (August 24)

Scott, pp. 291-295.

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.

Is International Law Really "Law"? (August 29, 31)

Scott, ch. 1 + pp. 295-300.

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.

Key questions: What kind of "law" is international law? Can there exist genuine law without government?

International Law and World Order (September 5, 7)

Scott, ch. 7.

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.

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.

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

Key questions: What role does international law play in foreign policy of states and in relation to world order more generally? Does it always need to prevail over non-legal considerations in governmental decision-making? Do individual legal rules have a single correct meaning and is there only one valid way to comply with them?

Types of Legal Rules: Positive Law and Natural Law (September 12, 14)

Scott, ch. 6.

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.

Key questions: What different international legal rules are there? Do legal rules necessarily carry/should carry more weight internationally than non-legal ones?

The Use of Force I: Collective Security and the Right of Self-Defense (September 19, 21)

Scott, pp. 173-180 and 187-195.

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.

Key questions: What happens to the substance of a legal rule when the circumstances underpinning its creation are claimed to change? Does the state right to self-defense today include preventive self-defense?

INTA Librarian Presentation (September 26)

The Use of Force II: Humanitarian Intervention (September 28, October 3)

Scott, 180-187.

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.

Key questions: How should the tension between a legal rule and a moral imperative be resolved? Under what circumstances can states resort to humanitarian intervention?

Laws of War I: Their Operation and the Case Study of the Status and Treatment of Detainees in the War on Terror (October 5, 12)

Scott, ch. 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.

Jan Klabbers, "Rebel with a Cause? Terrorists and Humanitarian Law," *European Journal of International Law*, Vol. 14, No. 2, (2003), pp. 299-312.

Key questions: How should a claimed gap within (i.e. an issue not covered by) legal rules be resolved? Can the only answer to the indeterminacy of how a legal rule ought to be applied in a particular situation lie in political preferences?

Laws of War II: The Policy of Targeted Killings (October 17)

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).

Key questions: How should governments act in situations involving multiple knotty legal rules? Can the policy of targeting killings ever be justified, and if yes, under what circumstances?

Laws of War III: Banning Anti-Personnel Landmines (October 19)

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.

Key questions: At what precise moment does a rule of customary law come into being? Can a widely but not universally embraced treaty rule give rise to a customary rule?

Human Rights and International Law (October 24, 26) – RESEARCH PAPER OUTLINE DUE IN CLASS OCTOBER 24

Scott, ch. 13.

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.

Key questions: Should international law regulate the domestic jurisdiction of states? If yes, can it do so effectively?

International Criminal Law (October 31, November 2)

Scott, pp. 83-89.

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.

Key questions: Can you have an international court that resembles a domestic court? Is impartiality possible in the operation of international law?

Governmental Legitimacy/Recognition of New Governments and International Law (November 7, 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, "Democratization's Discontents: Rediscovering the Virtues of the Non-Intervention Norm," *Chicago Journal of International Law*, Vol. 23, No. 1 (2022), pp. 161-177.

Rebecca Barber, "The Role of General Assembly in Determining the Legitimacy of Governments," *International & Comparative Law Quarterly*, Vol. 71, No. 3 (2022), pp. 627-656.

Key questions: Should the international legitimacy of a government be guided by foreign assessments of domestic legality or processes? If yes, under what circumstances can such assessments be workable?

State Legitimacy/Recognition of New States and International Law (November 14, 16)

Scott, ch. 2.

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.

Key questions: What is the role of advisory opinions of the International Court of Justice? Did the court clarify anything in the *Kosovo* case?

International Organizations and Institutional Governance (November 21)

Scott, ch. 4.

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.

Key questions: What is the relationship between international law and international organizations? Can the latter decisively impact the former?

Thanksgiving Break (November 23) – NO CLASS

Research Paper Presentations (November 28, 30, December 5)

A Few Suggestions for Research Paper Topics:

1. Assess realist/liberal theory’s view of international law.
2. Can preventive self-defense/war ever be 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/R2P 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 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (2010)/*Chagos Islands* (2019) 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/Juan Guaidó as the president of Venezuela by numerous countries been in conformity with international law?
13. Has US hegemony been a threat to the international rule of law? What does the rise of China portend for it?
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 absorption of the four Ukrainian territories.
18. Did the US recognition of Jerusalem/the Golan Heights as Israel's capital/territory (or Western Sahara as Moroccan territory) contravene international law?
19. Assess the *South China Sea* (2016) arbitration of the Permanent Court of Arbitration. What are its political and legal implications?
20. Do the Catalans/Iraqi Kurds have the right of self-determination under international law?
21. Assess the legal basis of US attacks in Syria/US military presence in Syria/Saudi-led intervention in Yemen.
22. Is the US finding that the Israeli settlements in the West Bank as such do not contravene international law, correct?
23. Is "soft law" a sound international legal concept?

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.**