

MCGILL UNIVERSITY
POLITICAL SCIENCE 355
FALL 2023

THE POLITICS OF INTERNATIONAL LAW

Prof. Fernando G. Nuñez-Mietz

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Lectures: Wednesdays and Fridays 4:05 - 5:25
McConnell Engineering Building 11
** Lectures will end at 4:55 between September 11 and November 13*
Office Hours: Wednesdays and Fridays 2:30 - 3:30, or by appointment (Zoom)
** No office hours on October 6, 11 and 13 and November 17*
Teaching Assistant: TBD
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Course Description

The interplay between politics and law is an essential feature of contemporary international relations. On the one hand, the political actions of states and other actors create, inform, and shape international law. On the other hand, international law structures, enables and disciplines politics in a variety of ways.

This course is an invitation to explore the relationship between international politics and law in the current international system. This politico-legal system gives meaning to – and regulates – such phenomena as war, humanitarian intervention, and transnational terrorism. Learning how international politics and law are intertwined is critical to apprehend the nature of international conflict, cooperation and governance in the contemporary world.

Prerequisites

A 200-level Political Science course in the field of International Relations is required.

Readings

All readings in the syllabus are required. The reading load averages 70 pages per week. The following textbook is required:

[Henderson, Conway W. \(2010\). *Understanding International Law*. Wiley-Blackwell.](#)

The digital version is accessible online through the McGill Libraries, but access is limited to 3 students at a time and printing/saving is limited to 60 pages per user. All other material is accessible online through the McGill Libraries and hyperlinked in this syllabus.

Assignments and grading

Participation in discussions (15%)

The participation grade is based on attendance to the conference sessions (5%) as well as the quantity and quality of the contributions made by the student to the group discussions therein (10%). Students are expected to come prepared for the activities scheduled, having done the required readings and group work.

Case enactment (5%)

In lectures, students will be randomly called to enact a case assigned as required reading for that lecture. Students will represent the Applicant, the Defendant, and the judicial authority. Students are expected to come to class prepared to act out any of these roles. The enactment will be guided by the instructor, covering both the political and the legal aspects of the case. Each student is expected to participate at least once.

Quizzes (15%)

There will be two online quizzes. They will consist of multiple-choice and multi-select questions to be completed individually and submitted on *MyCourses/Quizzes*. The quizzes will work also as preparation for the midterm and final exams.

Group Presentation (5%)

Conferences 7-10 will be dedicated to group presentations. Students will be divided into four teams and will give a group presentation on a pre-assigned case.

Midterm Examination (20%)

The in-class midterm exam will take place on October 27. It will consist of multiple-choice and short-answer questions. Students will have 80 minutes to complete the exam.

Final Examination (40%)

The three-hour, in-person final exam will cover all the material studied in the course.

The student must obtain a grade of 40% or higher in the final exam in order to pass the course.

In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme in this course may be subject to change.

COURSE SCHEDULE (LECTURES)

Course Introduction	
Wednesday, Aug 30	Johns, Leslie (2022). <i>Politics and International Law: Making, Breaking, and Upholding Global Rules</i> . Cambridge University Press, Chapter 1. Henderson - Chapter 1.
Section 1: Legal actors of the contemporary international system	
Friday, Sept 1	Biersteker, Thomas (2013). Chapter 10: State, Sovereignty, and Territory. In W. Carlsnaes, T. Risse and B. Simmons (eds.), <i>Handbook of International Relations</i> , SAGE, pp. 245-272. Henderson - Chapter 2. <u>Case: Kosovo's unilateral declaration of independence</u> (Request of the UNGA 2010). <u>Case: Rainbow Warrior</u> (New Zealand v. France 1990) [MyCourses]. <u>Case: Jurisdictional Immunities of the State</u> (Germany v. Italy: Greece intervening 2012).
Section 2: The sources of international law (customary law)	
Wednesday, Sept 6 Friday, Sept 8	Henderson – Chapters 2 and 3 (pp. 57-65). <u>Case: North Sea Continental Shelf</u> (FRG v. Denmark; FRG v. Netherlands 1969). Constanze Schulte (2004). <i>Compliance with Decisions of the International Court of Justice</i> . Oxford, pp. 137-140. <u>Case: The Paquete Habana and the Lola</u> (1900).
Section 3: The sources of international law (treaty law)	
Wednesday, Sept 13 Friday, Sept 15 Wednesday, Sept 20	Henderson – Chapter 3 (pp. 65-82). <i>Vienna Convention on the Law of Treaties</i> – Parts I, II & III (Sections 1 and 2). <u>Case: Fisheries Jurisdiction</u> (U.K. v. Iceland 1974). Constanze Schulte (2004). <i>Compliance with Decisions of the International Court of Justice</i> . Oxford, pp. 144-158.

	<p><u>Case: Concerning the Gabčíkovo-Nagymaros project</u> (Hungary v. Slovakia 1997).</p> <p>Constanze Schulte (2004). <i>Compliance with Decisions of the International Court of Justice</i>. Oxford, pp. 240-249.</p> <p><u>Case: Whaling in the Antarctic</u> (Australia v. Japan: New Zealand intervening 2014).</p>
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Section 4: The creation, application and incorporation of international law

<p>Friday, Sept 22 Wednesday, Sept 27 Friday, Sept 29</p>	<p>Henderson - Chapter 4.</p> <p>John Grant (2010). <i>International Law</i>. Dundee University Press, Chapter 12 (pp. 129-138).</p> <p>Malcolm Shaw (2003, 5th ed.). <i>International Law</i>. Cambridge University Press, pp. 120-162 (Chapter 4).</p> <p><u>Case: Fisheries Jurisdiction</u> (Spain v. Canada 1998).</p> <p><u>Case: NATO's military intervention in Kosovo</u> (Yugoslavia v. United States 1999; Serbia and Montenegro v. Canada 2004).</p> <p><u>Case: Application of the CERD</u> (Georgia v. Russia 2011).</p> <p><u>Case: Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament</u> (Marshall Islands v. United Kingdom 2016).</p> <p><u>Case: Concerning East Timor</u> (Portugal v. Australia 1995).</p>
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Section 5: State responsibility

<p>Wednesday, Oct 4</p>	<p>Anthony Aust (2005). <i>Handbook of International Law</i>. Cambridge, 2nd ed., pp. 407-429.</p> <p><u>Case: Tehran Hostages</u> (United States v. Iran 1980).</p> <p>Constanze Schulte (2004). <i>Compliance with Decisions of the International Court of Justice</i>. Oxford, pp. 163-172.</p>
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<p>Friday, Oct 13</p>	<p><i>No class</i></p>
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<p>Monday, Oct 23</p>	<p><i>Assignment due: Quiz 1</i></p>
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Section 6: Jurisdiction

Wednesday, Oct 18 Friday, Oct 20 Wednesday, Oct 25	Henderson - Chapter 5. <u>Case: S.S. Lotus (France v. Turkey 1927)</u> [MyCourses]. <u>Case: Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia 2022)</u> . <u>Case: Abduction and trial of Adolf Eichmann</u> Kai Ambos (2016). "Adolf Eichmann." In W. Schabas (ed.), <i>The Cambridge Companion to International Criminal Law</i> , Cambridge University Press, pp. 275-294. <u>Case: Augusto Pinochet's extradition</u> Michael Byers (2000). "The Law and Politics of the Pinochet case." <i>Duke Journal of International and Comparative Law</i> 10:2, pp. 415-441. <u>Case: Jadhav case (India v. Pakistan 2019)</u> . <u>Case: Avena and Other Mexican Nationals (Mexico v. United States of America 2004)</u> .
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**Friday, Oct 27
4:05 – 5:25** *MIDTERM EXAM*

Section 7: Compliance and enforcement of international law

Wednesday, Nov 1 Friday, Nov 3	Baldwin, David (2013). Chapter 11: Power and International Relations. In W. Carlsnaes, T. Risse and B. Simmons (eds.), <i>Handbook of International Relations</i> , SAGE, pp. 273-297. Beth Simmons (2010). "Treaty Compliance and Violation." <i>Annual Review of Political Science</i> 13:1, pp. 273-296. Burgstaller, Markus (2005). <i>Theories of Compliance with International Law</i> . M. Nijhoff. Chapters 4 & 5.
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Section 8: The United Nations Organization

Wednesday, Nov 8	Malcolm Shaw (2003, 5 th ed.). <i>International Law</i> . Cambridge University Press, pp. 1082-1160 (Chapter 22). <i>Charter of the United Nations</i> – Preamble, Chapters I-VII, Chapter XIV.
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Section 9: The use of force in the UN System – Jus in bello

Friday, Nov 10	Malcolm Shaw (2003, 5 th ed.). <i>International Law</i> . Cambridge University Press, pp. 1054-1081 (Chapter 21).
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Case: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request of the UNGA 2004).

Section 10: The use of force in the UN System – *Jus ad bellum*

Wednesday, Nov 15
4:05 - 5:25

Friday, Nov 17

No class

Wednesday, Nov 22
4:05 - 5:25

Levy, Jack (2013). Chapter 23: Interstate War and Peace. In W. Carlsnaes, T. Risse and B. Simmons (eds.), *Handbook of International Relations*, SAGE, pp. 581-606.

Müller, Harald (2013). Chapter 24: Security Cooperation. In W. Carlsnaes, T. Risse and B. Simmons (eds.), *Handbook of International Relations*, SAGE, pp. 607-634.

Henderson – pp. 211-233 & 187-196.

Case: Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States 1986).

Constanze Schulte (2004). *Compliance with Decisions of the International Court of Justice*. Oxford, pp. 184-211.

Case: Iranian Oil Platforms (Iran v. United States 2003).

Case: UNSC Resolution 487 – Concerning the Israeli attack on the Osirak nuclear reactor (1981).

Case: Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda 2022).

Section 11: Human rights and humanitarian intervention

Friday, Nov 24
4:05 - 5:25

Schmitz, Hans Peter and Kathryn Sikkink (2013). Chapter 33: International Human Rights. In W. Carlsnaes, T. Risse and B. Simmons (eds.), *Handbook of International Relations*, SAGE, pp. 827-852.

Henderson - Chapter 10.

Hehir, Aidan (2013). *Humanitarian Intervention: An Introduction*. Palgrave Macmillan. Chapters 1, 5-7.

Case: S.A.S. v. France (ECtHR 2014).

Case: Yaker v. France (HRC 2018).

Monday, Nov 27

Assignment due: Quiz 2

Section 12: International criminal law

Wednesday, Nov 29
4:05 - 5:25

Henderson - Chapter 9.

Friday, Dec 1 4:05 - 5:25	Anthony Aust (2005). <i>Handbook of International Law</i> . Cambridge, 2 nd ed., pp. 273-282. <i>Rome Statute of the International Criminal Court – Preamble & Parts I-III & XIII.</i> Paola Gaeta (2009). “Does President Al Bashir Enjoy Immunity from Arrest?” <i>Journal of International Criminal Justice</i> 7, pp. 315-332.
TBD	FINAL EXAM

CONFERENCES	
<p><u>Conference 1: Discussion - Is Palestine a State?</u></p> <p><u>Malcolm Shaw (2003, 5th ed.). <i>International Law</i>. Cambridge University Press, pp. 175-246.</u></p> <p><u>Adam Yoffie (2011). “The Palestine Problem: The Search for Statehood and the Benefits of International Law,” <i>The Yale Journal of International Law</i> 36, pp. 497-511.</u></p> <p><u>Jure Vidmar (2013). “Palestine and the Conceptual Problem of Implicit Statehood,” <i>Chinese Journal of International Law</i> 12: pp. 19-41.</u></p>	
<p><u>Conference 2: Debate - Who owns the Falklands?*</u></p> <p><u>James Gravelle (1985), “The Falkland (Malvinas) Islands: An International Law Analysis of the Dispute between Argentina and Great Britain” (excerpts), <i>Military Law Review</i> 107, pp. 5-52.</u></p>	
<p><u>Conference 3: Debate - Who owns Crimea?*</u></p> <p><u>Simon Chesterman (2014), “Crimean War 2.0: Ukraine and International Law,” <i>Straits Times</i> (15 March 2014).</u></p> <p><u>Robert McGee (2014), “The Crimean Secession: A Comment on Chesterman’s “Crimean War 2.0: Ukraine and International Law”.</u></p> <p><u>John Burke and Svetlana Panina-Burke (2015). “Eastern and Southern Ukraine’s Right to Secede and Join the Russian Federation.” <i>Russian Law Journal</i> 3:1, pp. 33-57.</u></p> <p><u>William Burke-White (2014). “Crimea and the International Legal Order.” <i>Survival</i> 56: 4, pp. 65–80.</u></p> <p><u>Rein Mullerson (2014), “Ukraine: Victim of Geopolitics,” <i>Chinese Journal of International Law</i> 13, pp. 133-145.</u></p>	

<p><u>Conference 4: Discussion - The UNSC, the ICJ and “judicial review.”</u></p> <p><u>Thomas Franck (1992). “The ‘Powers of Appreciation’: Who Is the Ultimate Guardian of UN Legality?” <i>The American Journal of International Law</i> 86, pp. 519-523.</u></p> <p><u>Vera Gowlland-Debbas (1994). “The Relationship between the International Court of Justice and the Security Council in the light of the Lockerbie Case,” <i>The American Journal of International Law</i> 88, pp. 643-677.</u></p> <p><u>Michael Matheson (2004). “ICJ Review of Security Council Decisions,” <i>The George Washington International Law Review</i> 36, pp. 615-622.</u></p>
<p><u>Conference 5: Midterm revision</u></p>
<p><u>Conference 6: Discussion - No place for nukes in international law?</u></p> <p><u><i>ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996).</i></u></p>
<p><u>Conference 7: Group presentation – Cambodia*</u></p> <p><u>Nicholas Wheeler (2002). <i>Saving Strangers: Humanitarian Intervention in International Society</i>. Oxford University Press. Chapter 3, pp. 78-110.</u></p>
<p><u>Conference 8: Group presentation – Kosovo*</u></p> <p><u>Aidan Hehir (2013). <i>Humanitarian Intervention: An Introduction</i>. Palgrave Macmillan. Chapter 11.</u></p>
<p><u>Conference 9: Group presentation – Darfur*</u></p> <p><u>Aidan Hehir (2013). <i>Humanitarian Intervention: An Introduction</i>. Palgrave Macmillan. Chapter 13.</u></p>
<p><u>Conference 10: Group presentation – Libya*</u></p> <p><u>Aidan Hehir (2013). <i>Humanitarian Intervention: An Introduction</i>. Palgrave Macmillan. Chapter 14.</u></p> <p><u><i>UN Security Council Resolution 1973 (2011).</i></u></p>

** Requires group preparation in advance.*

Academic integrity and students’ rights

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offenses under the Code of Student Conduct and Disciplinary Procedures (see [McGill’s guide to academic honesty](#) for more

information). Note that to support academic integrity, your assignments may be submitted to text-matching or other appropriate software (e.g., formula-, equation-, and graph-matching).

- In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded.
- If you have a disability please contact the instructor to arrange a time to discuss the situation. It would be helpful if you contact the Office for Students with Disabilities (398-6009) before you do this.
- If you are experiencing any problem, inside or outside the classroom, that is affecting your performance in this course, do not hesitate to approach the instructor.

For more information on students’ resources, see <https://www.mcgillpssa.ca>.