

# BOSTON UNIVERSITY GENEVA PROGRAM

Spring 2009 • Course IR 445 E

## Introduction to Public International Law

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### 1. Course Overview

The course aims to present a panorama of public international law, which covers principles and rules that govern the relations between States and the latter's interactions with other international actors. The course is designed to give students a global understanding of the rules governing international relations and, ultimately, provide them with practical skills in legal reasoning and arguing, research and writing on international issues.

The course will start with an introduction to the international legal order, including a presentation of the specificities of international law as compared to domestic law. It will then focus on core areas of public international law which involve the following questions. Who are the actors in the international legal system and to whom international law does apply? How is international law created and where to find it? What are the fundamental principles of public international law, besides the multitude of international rules? Finally, in case of breaches of international rules, how does international law react to such breaches? In addition to these questions, a special focus will be attached to one of the fundamental principles of international relations, namely the prohibition of the use of force, given its frequent invocation in recent State practice.

### 2. Methodology and textbooks

The course is taught through lectures and in-class discussions, with an extensive reliance on primary materials (treaties, resolutions, and official declarations) and decisions of international courts and tribunals. The relevant materials are indicated for each topic. Students are required to read them carefully before coming to class. Additional readings are also suggested for students who wish to go further on topics of particular interest.

The main textbook used for the course is Malcolm EVANS (ed.), *International Law*, Oxford University Press, 2<sup>nd</sup> ed., 2006 (hereafter EVANS). Other reference books are Peter MALANCZUK, *Akehurst's Modern Introduction to International Law*, London/New York: Routledge, 7<sup>th</sup> revised ed., 1997 (AKEHURST'S), and Antonio CASSESE, *International Law*, Oxford University Press, 2<sup>nd</sup> ed. 2005 (CASSESE).

Students may also consult [www.icj-cij.org](http://www.icj-cij.org) to access full texts of the judgments and advisory opinions of the International Court of Justice, as well as [www.un.org/documents](http://www.un.org/documents) for official documents of the United Nations.

### 3. Assignments and grading criteria

Assignments for the course, and the objectives of each of them, will be explained in greater detail on the first day of class. Assignments are composed of three written works and on attendance, as follows:

- Case analysis: 15% of grade (due by Wednesday February 11 at 6 pm, to be sent to [djacoba@bu.edu](mailto:djacoba@bu.edu))
- Essay of 5 pages maximum, including all references such as footnotes and bibliography: 25% of grade (due by Friday February 20, at 8.30 am, before the class)
- Two hour exam in which students are required to answer two questions: 50%, on February 26, 3-5pm
- Full attendance and active participation: 10% of grade.

For the two research papers, a 10% penalty point will be applied to any work submitted after the deadline, except for circumstances outside the students' control, i.e. 1.5 points penalty for the case analysis, and 2.5 for the essay.

The final grade, from A to F, is the total percentage of the assignments, with the following equivalence:

A : 93-100 %	B : 81-84	C- : 65-68
A- : 89-92	B- : 77-80	D : 60-64
B+ : 85-88	C+ : 73-76	F : below 60

#### 4. Course schedule (Thursday January 22<sup>nd</sup> to Wednesday February 26<sup>th</sup>, 2009)

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**Class #1:** Thursday Jan. 22, 2-5pm

Room: Vollandes

##### INTRODUCTION TO THE INTERNATIONAL LEGAL ORDER

- The Structure of the International Community
- Historical Development and Specificities of Public International Law

*Required Reading (Numbers refer to the document number in the reading brick):*

- The Charter of the United Nations, Preamble and article 2
- M. Wood, "The Perspective of a Foreign Ministry Legal Advisor", in: EVANS, 23-25

*Suggested Reading:*

- CASSESE, Chapter 1: "The Main Legal Features of the International Community", 3-21
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**Class #2:** Monday Jan. 26, 2.20-5.20pm

Room: Webster

##### THE SUBJECTS OF INTERNATIONAL LAW (I)

- The Concept of Subject of Law and of Legal Personality
- States: Definition and Conditions for Statehood, Territory and Underlying Principles, Sovereignty

*Required Reading:*

1. Montevideo Convention on the Rights and Duties of States, 1933
  2. Federal Republic of Germany, Administrative Court of Cologne, In re *Duchy of Sealand*, 1978
  3. Badinter Commission, *Opinions Nos. 1, 2 and 3*, in 92 *Int'l Law Report* (1992), 162-172.
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**Class #3:** Wednesday 28, 2.20-5.20pm

Room: Webster

##### THE SUBJECTS OF INTERNATIONAL LAW (II)

- International Organizations: Legal Definition, Rights and Duties under International Law
- The Status of Individuals in International Legal Order
- Other International Actors: Non-State Actors and International Regulations of their Activities

*Required Reading:*

4. ICJ, *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*, 1949 [extracts]
- R. McCorquodale, "The Individual and the International Legal System", in EVANS, 307-329.

*Suggested Reading:*

- AKEHURST'S (on subjects of international law), 75-108.
  - J. Klabbers, '(I can't get no) Recognition: Subjects Doctrine and the Emergence of Non-State Actors', in: J. Petman & J. Klabbers (eds.), *Nordic Cosmopolitanism: Essays in International Law for Martti Koskenniemi*, Leiden / Boston: Martinus Nijhoff, 2003, 351-369.
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**Class #4:** Monday Feb. 2, 2.20-5.20pm

Room: Webster

##### THE SOURCES OF INTERNATIONAL LAW (I)

- Material and Formal Sources of Law
- Article 38 of the ICJ Statute and its List of Sources
- Treaties: Concept, Conclusion, Reservation, Conditions of Validity, Interpretation, Termination

*Required Reading:*

- Statute of the International Court of Justice (Article 38)
- 5. The Vienna Convention on the Law of Treaties (1969) [extracts]
- 6. ICJ, *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, 1997 [extracts]

*Suggested Reading:*

- M. Fitzmaurice, "The Practical Working of the Law of Treaties", in: EVANS, 187-213.
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**Class #5:** Tuesday Feb. 3, 2-4pm

Room: Vollandes

##### THE SOURCES OF INTERNATIONAL LAW (II)

- Custom, General Principles of Law and Codification
- Resolutions of International Organizations and Unilateral Declarations of States
- Hierarchy of Sources and Hierarchy of Norms in International Law

*Required Reading:*

7. ICJ, *Colombian-Peruvian Asylum Case (Judgment)*, 1950 [extracts]

8. ICJ, *North Sea Continental Shelf Case (F.R. of Germany/Denmark; Germany/The Netherlands)*, 1969 [extracts]
9. ILC, *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations*, 2006

*Suggested Reading:*

- H. Thirlway, 'The Sources of International Law', in: EVANS, 115-140.

**Class #6:** Thursday Feb. 5, 2.20-5.20pm

Room: Webster

**THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW (I)**

- The Principles proclaimed in the UN General Assembly Resolution 2625 (XXV), 1970
- 'The Responsibility to Protect' as a new principle of international law? 'A New Wine in Old Bottle'

*Required Readings:*

- The Charter of the United Nations: Preamble, Articles 1 and 2
- 10. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the U.N, annexed to GA Res. 2625 (XXV), 1970
- 11. ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. USA) (Merits)*, 1986 – hereafter *Nicaragua Case* [extracts], paras. 202-220 and 239-249
- 12. Extracts of UN documents on the 'Responsibility to Protect'

*Suggested Readings*

- CASSESE (2001), Chapter 5: 'The Fundamental Principles Governing International Relations', 86-113.

**Class #7:** Monday Feb. 9, 2.20-5.20pm

Room: Webster

THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW (II):

**THE PROHIBITION OF THE USE OF FORCE**

- History of the Prohibition of the Use of Force
- Scope of the Prohibition and its Legal Nature
- The Horizontal Exception to the Prohibition: Individual and Collective Self-Defense

*Required Reading:*

13. Briand-Kellogg Pact, 1928
14. Saavedra Lamas Treaty ('Anti-War Treaty'), 1933
15. The Stimson Doctrine of Non-Recognition, 1932
  - The Charter of the United Nations: Articles 2 (3), 2 (4), and 51
16. The Definition of Aggression, annexed to General Assembly Resolution 3314 (XXIX), 1970
17. ICJ, *Armed Activities on the Territory of Congo (D.R. Congo v. Uganda)*, 2005 [extracts]
  - ICJ, *Nicaragua Case*, 1986 [see Document 15], paras. 75-80, 92-94, and 226-238
18. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*, 2004

*Suggested Reading:*

- Ch. Gray, 'The Use of Force and the International Legal Order', in: EVANS, 589-619.
- S. Murphy, 'Terrorism and the Concept of 'Armed Attack' in article 51 of the UN Charter', 43:1 *Harvard International Law Journal* (2002), 41-51.
- Ch. Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq', 4 *San Diego International Law Journal* (2003), 7-38.

**Class #8:** Thursday Feb. 12, 2.20-5.20pm

Room: Webster

**THE PROHIBITION OF THE USE OF FORCE (CONTINUED)**

- The Vertical Exception to the Prohibition: the UN Charter Framework and the Practice of 'Authorized' or 'Recognized' Military Actions

*Required Reading:*

- The Charter of the United Nations: Articles 24 and 25, Chapters VII and VIII
- 19. Selected Security Council Resolutions relating to Iraq
- 20. Selected Security Council Resolutions Authorizing Use of Force by Regional Organizations

*Suggested Reading:*

- Ch. Tomuschat, 'Iraq – Demise of International Law?', 78:2-3 *Die Friedens-Warte* (2003), 141-160.

**Class #9:** Monday Feb. 16, 2.20-5.20pm

Room: Webster

**STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS (I)**

- Nature of International Responsibility

- The Elements of State Responsibility

*Required Reading:*

21. ILC Articles on State Responsibility for Internationally Wrongful Acts, annexed to GA Res. 56/83, 2001
22. ICJ, *United States Diplomatic and Consular Staff in Teheran (USA v. Iran) (Judgment)*, 1980 [extracts]
  - ICJ, Nicaragua Case, 1986 [see Document 15], paras. 105-116
23. ICJ, *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgment)*, 2007 – hereafter *Genocide Case* [extracts]

*Suggested Reading:*

- J. Crawford & S. Olleson, 'The Nature and Forms of International Responsibility', in EVANS, 452-477.

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**Class #10:** Thursday Feb. 19, 2-5pm

Room: Vollandes

**STATE RESPONSIBILITY (II)**

- The Content of State Responsibility
- The Invocation of Responsibility and Diplomatic Protection

*Required Reading:*

- ICJ, Gabcikovo-Nagymaros Case, 1997 [See Document 9]
- ICJ, Wall Case, 2004 [See Document 23]
- ICJ, Genocide Case, Judgment, 2007 [See Document 30]

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**Class #11:** Friday Feb. 20, 9.20-12.20 am

Room: Webster

**THE SETTLEMENT OF INTERNATIONAL DISPUTES (I)**

- Diplomatic Means of Dispute Settlement: Negotiation, Good Offices, Mediation, Inquiry, Conciliation

*Required Reading:*

- The Charter of the United Nations; Articles 2(3), and 33
- J. Merrills, 'The Means of Dispute Settlement', in: EVANS, 533-559.

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**Class #12:** Monday Feb. 23, 2-5pm

Room: Vollandes

**THE SETTLEMENT OF INTERNATIONAL DISPUTES (II)**

- Legal Means of Dispute Settlement: Arbitration and Permanent Courts
- The Law and Procedure of the International Court of Justice

*Required Reading:*

- The Charter of the United Nations: Articles 92-96
  - The Statute of the ICJ: Articles 34, 35, 36, 41, 59, 65 and 66
24. Sample Declarations of Acceptance of the Compulsory Jurisdiction of the ICJ
    - ICJ, Wall Advisory Opinion, 2004 [see Document 23]
  25. ICJ, *LaGrand Case (Germany v. USA)*, Judgment, 2001 [extracts]

*Suggested Reading:*

- H. Thirlway, 'The International Court of Justice', in: EVANS, 561-588.

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**Class #13:** Tuesday Feb. 24, 2-5pm

Room: Vollandes

**REVISION SESSION:**

Overview of the whole course and question-time, case analysis exercise

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**Class #14:** Thursday Feb. 26, 3-5pm

Room: Vollandes

**FINAL EXAM**

**5. Plagiarism**

All students are responsible for having read the Boston University statement on plagiarism, which is available in the Academic Conduct Code. Students are advised that the penalty against students on a Boston University program for cheating on the examinations or for plagiarism may be 'expulsion from the program or the University or such other penalty as may be recommended by the Committee on Student Academic Conduct, subject to approval by the dean'.

**6. Grade appeal**

See the instruction distributed by the BU Geneva office at the introductory session of the program.