International Law

Academic year 2019-2020

The Law of Nations in the 21st Century

DI117 - Autumn - 6 ECTS
Tuesday 16h15 - 18h00

Course Description

The purpose of this class is to acquaint students with the basic principles of international law and its contemporary practice. It explores the structure of the international legal system and addresses questions about the purposes of international law and the changing priorities that may or may not be observed when different branches of this law collide. The course will cover the ground in Brierly's "The Law of Nations", relying on the revised 7th edn. It questions some of the assumptions we make about the subjects of international law and suggests that adjustments to our thinking have to be made if we want international law to remain relevant to tackling contemporary issues in the 21st century. The basic principles of international law concerning, among others, the sources of international law, statehood, territory, jurisdiction, the law of the sea, immunities, treaties, peaceful settlement of disputes and the recourse to force will be covered.

Syllabus

Evaluation

The final evaluation will consist of a written exam. It will be on 17 December from 16.00 to 18.00.

- Students will have two hours to answer the questions.
- There will be one essay question and one case study where students will be asked to write a legal opinion. Both questions should be answered.
- Bilingual dictionaries are allowed (not legal dictionaries).
- The answers may be written either in English or in French.
Readings and support materials:

Required readings for each session are listed below and are available on the moodle or in the library. Please consult moodle regularly as additional materials may be uploaded there.

The main course materials consist of:

- *Brierly's Law of Nations: An Introduction to the Role of International law in International Relations*, 7th edn. (Oxford: Oxford University Press, 2012) (available in hard copy and as an e-book through the library; some copies are available through Alfredo Crosato at 20 CHF). Translations into Chinese are also available.
- Handouts that will be distributed to students before each class.

Key books which can be used to supplement the required readings include:


You may also find it helpful to consult the online Max Planck Encyclopedia of Public International Law available through the Graduate Institute’s subscription at [www.mpepil.com](http://www.mpepil.com).

The following pieces may also be of interest:


Outline of lectures

**Part 1: General Introduction to the Course (Tuesday, 17 September)**

Required readings:
- Brierly (7th edn.), Preface and new preface to the 7th edition and Chapter 1.
Case: Shooting down of US drone by Iran. We will discuss some legal issues regarding this situation and the subsequent events by way of a ‘warm up’.

Additional readings:

Part 2: The Basis of Obligation (Tuesday, 24 September)

Required readings:
- Brierly (7th edn.), Chapter 2, sections 1-4.
- ILC’s work on customary international law.

Additional readings:
- ILC’s work on general principles of law.

Part 3: The Basis of Obligation (continued) including international law in national courts (Tuesday, 1 October)

Required readings:
- Brierly (7th edn.), Chapter 2, sections 5-8.

Case law:

Additional Readings:

Part 4: The Legal Organization of International Society (Tuesday, 8 October)

Required readings:
- Brierly (7th edn.), Chapter 3.
- C. Binder, ‘Uniting for Peace Resolution (1950)’, in Max Planck Encyclopedia of Public
International Law (2017).


Legal instruments and case law:
- The Rome Statute for the International Criminal Court as amended (in particular articles 5-8, 12-18, 27, 53, 38, 61, 66 and 98).
- Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, ICC Pre-Trial Chamber II, 12 April 2019.

Additional Readings:

Part 5: States and other Entities under International Law (15 October)

Required readings:
- Brierly (7th edn.), Chapter 4.
- EJIL: Talk! and Opinio Juris blogs on ICJ Advisory Opinion on Kosovo.
- Who has recognized Kosovo as an independent state?

Rebel Groups:

Corporations:
- D. De Vos ‘The emerging norm of corporate criminal accountability for international crimes’ (2017).
- For civil cases see Jesner v. Arab Bank (below under jurisdiction)

Additional readings:

**Part 6: The Territory of States and the Jurisdiction of States (Tuesday, 22 October)**

Required readings:
- Brierly (7th edn.), Chapter 5 and Chapter 6, sections 1-7.

Additional readings:
- Blog Posts on the South China Sea Arbitration and its Aftermath, and for the Chinese Critical Study see here.
- The Strait of Hormuz: see 2019 Guardian Article and 2012 EJIL: Talk! blog.

**Part 7: Limitations to Jurisdiction of States, including the Question of Human Rights and Extraterritorial Jurisdiction (Tuesday, 29 October)**

Required readings:
- Brierly (7th edn.), Chapter 6, section 8.

Additional readings:
- Jaloud v. The Netherlands, Judgment, Grand Chamber, ECtHR, 2014.
- EJIL: Talk! - Jaloud v. the Netherlands.

**Part 8: Limitations to Jurisdiction (continued) and Questions of Diplomatic Protection and Immunity (Tuesday, 5 November)**

Required readings:
- Brierly (7th edn.), Chapter 6, sections 9-11
Legal instruments and case law:

- **Jurisdictional Immunities of the State (Germany v. Italy)**, Judgment, ICJ, 3 February 2012.
- **Jones and Others v. The United Kingdom**, Judgment, ECtHR, 14 January 2014.
- Case of Jamal Khashoggi.
- ILC’s work on immunity of State officials from foreign criminal jurisdiction.

Additional Reading:


Optional viewing:

- BBC Programme on kidnapping of Umaru Dikko.

**Part 9: Treaties (Tuesday, 12 November)**

N.B. Please bring with you the 1969 Vienna Convention on the Law of Treaties (on paper or downloaded) to class.

Required readings:

- Brierly (7th edn.), Chapter 7.

Legal instruments and case law:

- Is this 1994 Joint Declaration by the UK and China a treaty?

Additional readings:


**Part 10: International Courts and Non-Judicial Dispute Settlement (Tuesday, 19 November)**

Required readings:

- Brierly (7th edn.), Chapter 8.
Additional readings:

**Part 11: International Responsibility (Tuesday, 26 November)**

Required readings:

Case law:
- *Question Concerning the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, ICJ, 20 July 2012.

Legal instruments:
- ILC Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries.

Additional readings:

**Part 12: International Law and the Resort to Force (Tuesday, 3 December)**

Required readings:
- Brierly (7th edn.), Chapter 9.

Case law:

Additional readings:
- UK Attorney-General’s 2003 opinion regarding the legality of the use of force against Iraq.
- Lawfare blog on cyber-warfare.
Part 13: Resort to Force and Self-Defence: Humanitarian Intervention, R2P, the laws of war, and Self-Defence (Tuesday 10 December)

Required readings:

- UK 2018 position on humanitarian intervention in the context of the use of force to counter chemical weapons.

Additional readings:

- The ICRC Customary Rules of IHL.

Final Exam (Tuesday 17 December) 16.00-18.00