Public International Law in a turbulent world. Its competence and impotence

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4 credits

This syllabus is practically final. Dates and topic are immutable. One or two pieces of readings may be changed once I have access to recently ordered books.

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The world is becoming more turbulent day by day. Does International Law have a role in limiting the disruptive elements? Can it offer a scheme to share resources, protect the vulnerable, or control climate disaster?

The course covers selected chapters of public international law. Specific emphasis is given to the use of force and the 21st century developments (drones, targeted killings, counter-terrorism), the rights of the individual, (human rights, refugee law), the rules of international transactions (law of treaties, diplomacy), conflicts and disputes (responsibility, the International Court of Justice) and the law of (sharing) natural resources (freshwaters, sea, outer space).

Although the approach dominantly is mainstream and aims at presenting law as it is applied by the international actors and tribunals, critical thoughts will repeatedly penetrate discussions. The reader reflects the diversity of international legal writing: it contains chapters from major textbooks, articles from leading journals and primary sources.

No legal background (general, or in public international law) is required. Many years of experience show that students with the most diverse academic background get accustomed to the language of the scholarly texts and primary sources, so they become fully competent in absolving the course with excellent grades.

Familiarity with public international law is essential in order to understand global and regional governance. It constitutes the framework within which the actors “pursue their interests”, “integrate”, “develop” “function”. Regimes are based on international law rules, written and customary. Whatever actors in the international theatre do, is relevant from the point of international law and can be assessed through its optic.

The course is based on mixed teaching techniques, the dominant element being discussions reflecting upon the readings and exchange of the participants’ views including knowledge derived from other disciplines. Presentations (at least one to be held by each student) are 8-15 minutes long (depending on class size) on a real life conflict (e.g. “North Korea’s nuclear threat”, “US withdrawal from the Paris Agreement”, “The legality of fences and other tools blocking access of migrants to EU territory”, “Seizure of a British tanker in the strait of Hormuz” or a subset of the class (e.g. “The ICJ’s view on the separation of the Chagos archipelago from Mauritius in 1965”, “How to defeat human smuggling in the Mediterranean?”, “Burkini ban: deprivation of human rights?”), based on the students’ own research and reading. Presentation topics are identified and distributed in the first two weeks. Occasionally internationally renowned experts or practitioners come to teach classes.

The course is designed to develop the students’ readiness to elaborate logical arguments supporting a predetermined position, in other words, to represent a legal claim and the underlying interests with the help of a toolbox of available legal arguments. At the same time, they are encouraged to take stance and argument for their personal value preferences and critically assess the political in the normative. Seminar discussion helps refine the argumentative and rhetoric skills. The presentation by each student during the course serves to strengthen their research design capabilities, the skill of academic co-operation, and, at the same time, the readiness for individual work. The midterm exam consolidates basic knowledge and gives feed-back to the student.

The final exam mobilizes the analytical and critical skills and the ability to be productive in short time frames. Constant formal and informal comment from the professor during the course creates an iterative process leading to deeper insight. Finally, the whole spirit of the course supports the idea of open society and the value of individual freedom and human rights. Almost thirty years of teaching versions of this course to non-lawyers guarantees that public international law is most enjoyable outside of law schools as well.

This syllabus refers to five textbooks in an abbreviated form:

Akehurst’s Modern Introduction to International Law 8th ed. by Alexander Orekashvili, Routledge, 2019, (Akehurst)

G Hernández: International Law Oxford University press 2019 (Hernández)


J. Klabbers: International Law second ed. Cambridge University Press 2017 (Klabbers)

M.N. Shaw: International Law, Eights ed. 2017  (Shaw)
The international treaties and documents to be read are not reproduced in the reader, they are accessible through the American Society of International Law resource bases (http://eisil.org/ or at http://treaties.un.org/Pages/Home.aspx?lang=en) and further sources identified in the resource tool reading at the end of the reader. Some textbooks have helpful online extensions, with treaties, cases etc., http://www.tjsl.edu/slomansonb/txtcsesite.html – run by Professor Slomanson, http://global.oup.com/uk/orc/law/intl/abass2c/student/weblinks/ - by Professor Abbas and www.oup.com/uk/hernandez - by Professor Hernandez.

Topics may spill over to the next class, boundaries (especially in topics covering two classes) are fluid. Readings are not distributed proportionately. The burden is heavier in the first weeks, until the foundations are laid.

“Additional” readings are for those with deeper interest in the field, they are not included in the online reader and familiarity with them is not expected (but is welcome) in class.

Grading:
Participation and presentation(s): 25 %
Midterm test: 25 %
Final exam: 50 %
Office hours: Tuesday afternoon 17:20-19:00 and by appointment.

The classes

1. The subject matter of international law and the actors in the theatre of international law

   16 September

   What is international law about, comparison with domestic law in general terms. Does international law deserve the designation: “law”? Traditional subjects as states and intergovernmental organisations. The issue of the limited competence of the individual. People and mankind as subjects of international law.

   Akehurst’s Modern Introduction to International Law 8th ed. by Alexander Orekashvili, Routledge, 2019, 4 - 10


   G Boas, Public International Law, Contemporary principles and perspectives, Edward Elgar, Cheltenham, 2012, pp 229 - 237

   Additional:


   M. Koskenniemi: What is International Law for? In: Evans, pp 29 - 52

2. The system of sources – customary law and general principles of law.

   The problem of soft law

   17 September

   The miraculous nature of customary law. How can new custom emerge without breaching existing law? What are general principles recognized by civilized nations? What is soft law? The political and legal weight of UN General Assembly resolutions. Is there hierarchy among the sources?

   Hernández, pp 31 - 57

   Additional:

The law of treaties  Treaty conclusion, life, termination and invalidity.  24 September


1969 Vienna Convention on the law of treaties
Klabbers, 2nd ed. (2017) pp 44-71

A. Aust: Modern Treaty Law and Practice Cambridge University press, Cambridge, 2000, chapters 16 (Duration and termination), 17 (Invalidity) and 18 (The depositary) pp. 224-274


Theories on the source of binding nature of the law (compliance theories). How does international law become applicable by domestic courts and authorities? The place of treaties (and other sources of international law) in the domestic legal system


Akehurst’s Modern Introduction to International Law, pp. 63 – 74 (International law and municipal law)


5 – 6 The system of the fundamental principles of international law. Classical and critical issues of the use of force. Humanitarian intervention, responsibility to protect, drones and targeted killing, counter-terrorist fight  1 October and 2 October

The “constitutional” principles of international law, determining the international theatre: sovereignty, non-interference, prohibition of the threat or use of force, self-determination of peoples, peaceful settlement of disputes, pacta sunt servanda, the obligation to co-operate, respect for human rights. The prohibition of the use of force and the exception of self-defence and collective sanctions. The debates on preventive and pre-emptive self-defence.

Can the UN Charter system be left behind in favour of intervening without Security Council approval? Has R2P really taken off the ground or is it a lame duck? What are the legitimate methods of the “war on terror”. Do they include drones and smart weapons which kill with precision inside the battlefield or outside the combat?


S. Zifcak Responsibility to protect in: Evans, 2018, 485 - 517

C Grey: The International Law and the use of force Fourth ed. OUP, 2018, Chapter 5 The Use of Force against Terrorism: a New War for a New Century

Additional:

D Betlehem: Self-defense against an imminent or actual armed attack by nonstate actor AJIL vol. 106 (2012) 770 -777 and the debate on it in the April and July 2013 AJIL Issue

**7. Self-determination and state formation. Recognition of states and governments. State succession**  

8 October

Who is the bearer of the right to self-determination in the post-colonial world? Does International law endorse the independence of Kosovo, Chechnya, Kurdistan, Scotland, Catalonia and so forth? Is the recognition of new states a legal obligation or a political favour? Recognition and non-recognition of governments. Effects of recognition, then and now. Post-Cold War practice concerning state succession (Germany, Soviet Union, Yugoslavia, Czechoslovakia, Serbia-Montenegro, Kosovo, South-Sudan, Scotland /almost/, Catalonia)


Additional:


**8. The territory of states. Jurisdiction. The law of navigational and other uses of rivers.**  

9 October

Sovereignty and jurisdiction over land and internal waters. Earlier and more recent forms of acquisition. The tension between unlawful seizure and long term status quo.
Jurisdiction as the power to enforce national law. Types of jurisdiction (personal, territorial, universal, etc.)


Additional:


9. The law of the sea I

The world oceans as resources. The development of the law of the sea: the 1958 Geneva Conventions, UNCLOS, 1982, the 1994 Agreement on the Implementation of the UN Law of the Sea Convention. The zoning of the oceans: internal waters, territorial waters, the exclusive economic zone. Rights to navigate and to utilise the living and non-living resources.

Evans Fifth ed. 2018 635-674,

Additional:

doi:10.1017/S00029300000763202

10. The law of the sea II

The continental shelf, high seas, specific areas like archipelagic waters, straits, etc. Debates on sharing their resources. Piracy, including dilemmas caused by Somali pirates. The economic utilization of the sea resources and their protection against pollution. Debate over the Arctic continental shelf. The importance of the deep seabed for the common heritage of mankind doctrine.


Additional:

R. Rayfuse: Differentiating the Common? The Responsibilities and Obligations of States Sponsoring Deep Seabed Mining Activities in the Area *German Yearbook of International Law*, vol. 54, 2011, pp. 459 – 488

doi:10.1017/S0020589315000214

11. Outer Space. The common heritage of mankind and the status of future generations

The status of outer space and the celestial bodies. Outer space as a theatre of military competition. Commercial uses and the protection of the space environment. To whom does the Moon belong?

The doctrine of common heritage of mankind and the idea of the common concern of mankind as novel ideas affecting the most fundamental elements of international relations: the title to territory and natural resources. Access rights, use rights and utilization rights. The specific position of future generations and the arguments in their favour.

12. Principles and methods of protecting the environment I. Principles. 23 October

After a bird’s eye view at the state of the global environment, the class will concentrate on the general principles of environmental law (do they mean anything, do they really regulate?) and on the 2030 agenda for sustainable development adopted at the global summit in September 2015. The (failed?) negotiations concerning The Global Pact for the Environment.


Additional:
Transforming Our World: the 2030 Agenda for Sustainable Development. Finalised text. Read in particular the detailed description of the 17 Sustainable development goals


13. Midterm exam, covering classes 1 -12 29 October

14. Principles and methods of protecting the environment II. Climate 30 October

Post Paris, post Trump. Hope or despair? Change or crisis? Is there still room for mitigating it or only adaptation is left as a (limited) option, How do states, cities, business and other stakeholders cooperate in developing a legal regime based on national commitments? The Kigali Protocol to the Montreal Protocol combining the ozone and the climate regime.


Additional:
WMO Statement on the State of the Global Climate in 2018, WMO, Geneva, WMO-No 1233, 2019
https://library.wmo.int/doc_num.php?explnum_id=5789

E. A, Heath: Introductory note to amendment to the Montreal protocol on substances that deplete the ozone layer (Kigali amendment) International Legal Materials 56 (2017), pp 193-194

15. Diplomatic law and consular law 5 November

Is diplomatic intercourse still relevant? The law governing the status and activities of the diplomatic missions. Main features of the 1961 Vienna Convention regulating to the field. Use and misuse of privileges and immunities. The review of the immunities of states in the International Law Commission of the UN. The diplomatic toolkit applied in the political relations. Functions of the regular and honorary consuls. The 1963 Vienna Convention regulating the status of the consular mission. Consular protection vs. diplomatic protection.

Shaw 2017, pp 567 - 583
Additional:
DOI:10.1093/oso/9780198795940.001.0001

ICJ case: Jadhav Case (India v. Pakistan) Judgment of 17 July 2019

Wickmerashinghe Chanaka: Immunities Enjoyed by Officials of States and International Organizations in: Evans, 392-401


16. Substantive human rights.  6 November
The situation of human rights amidst an increasing number of illiberal states. The right to life. The right to freedom from torture. Expression, assembly, religion, private life, non-discrimination. Key concepts as understood by universal and regional human rights treaties. The universalist – relativist debate concerning the burka, female genital mutilation, family planning. Are there indeed universal values, or should our entitlements against the state be social context (and culture) dependent, i.e. relative?


Additional:
European Court of Human Rights: Case of S.A.S. v. FRANCE (Application no. 43835/11), Grand Chamber judgment of 1 July 2014

17. Remedies of human rights violations  12 November
A number of courts and “treaty bodies” adjudicate and assess alleged violations of protected rights. How do they function, what biases – if any – influence them? How can an individual (or a state) access them?

Evans, International machinery of human rights, 799 - 808

Additional:
Case of Al-Skeini and Others v. The United Kingdom (Application no. 55721/07) Judgment Strasbourg 7 July 2011 (Excerpts, on jurisdiction)

18 The governance of regular migration and persons without the right to stay  13 November
Migration (regular, irregular and forced) has moved to the centre of international politics, at least on both sides of the Atlantic Ocean and of the Mediterranean Sea. The Global Compact on Safe and Orderly Migration has a dominantly positive view of it, many governments do not. Is there a right to migrate? What if people could move to other countries as of a right? Why do people choose to stay “illegally” in a country. Are walls effective of keeping irregular migrants out? The class offers clarity as to the meaning of the frequently confused terms and sicusses the moral and legal aspects of
international migration, also reflecting on the theories explaining why people move
Class exercise on the vision of globally free migration (Desirable? Nightmare?)

V, Chetail: International Migration Law, OUP, 2019, 92 - 109

Additional:

19. Forced migration, refugees, internally displaced persons 19 November
What are the rights of those who risk their life when crossing the Mediterranean in search of safety? The Geneva Convention relating to the status of refugees and its application in West and East. Who is the persecutor, what grounds for persecution do matter? Failure or success: the EU’s response to the events of 2015-2018. Responsibility or burden sharing or shifting?

Additional:
V, Chetail: International Migration Law, OUP, 2019, Chapter 3: Refugees, pp.166 -199

20. International responsibility and liability I. 20 November
The doctrine of international responsibility of states. Are states responsible for terrorists coming from the country or for companies, headquartered in them? Does a nuclear accident entail state responsibility? Intricacies of breach of obligation, attribution to the state. Circumstances precluding the wrongfulness of a state act. Consequences of the wrongful act: countermeasures, individual and collective sanctions. The draft articles on the responsibility of international organizations. The ILC’s work on preventing transboundary harm and the allocation of damages.
ILC Draft Articles on State Responsibility, 2001

Additional:

21. International responsibility and liability II. The peaceful settlement of disputes (diplomatic methods) 26 November
Consequences of the wrongful act: countermeasures, individual and collective sanctions. The draft articles on the responsibility of international organizations. The ILC’s work on preventing transboundary harm and the allocation of damages
Negotiations, good offices, mediation, inquiry, conciliation as methods of peaceful settlement of disputes. Psychological traps and virtues of the mediator. (Must (s)he be impartial, really?) The concept of arbitration
Hernández, 299 – 308

Additional:

22 The International Court of Justice 27 November
Is the ICJ relevant? Does it settle disputes of major importance? Composition of the Court, basis of its jurisdiction. Contentious procedure and procedure leading to advisory opinions. Insights on the Court’s functioning during the Gabčíkovo-Nagymaros Project Case.

A Kaczorovska-Ireland: *Public International Law* Fifth ed. Routledge, 2015, 629 - 678

Additional:

Hugh Thirlway: *The International Court of Justice* in: Evans, 589-617


23 War crimes, war criminals and tribunals to sentence them 3 December

The most brutal attack on the individual’s integrity is war. Can those responsible for wars, whether domestic or international be called to justice? Is the international community entitled to accuse and sentence heads of governments? Can the inferiors excuse themselves by relying on the defence: „it was the superior’s order”? Features of the International Criminal Court.


Additional:


24 Wrap up class, reflections on the utility (or not) of international law. Start of the exam 4 December

The class completes, whatever was left over due to lack of time, winds up the topics, responds to remaining questions. At the end of the class the 24 hour long take-home exam (allowing any source to be used) starts.