

LAWS 2601 – SECTION A - ASHTAKALA

CARLETON UNIVERSITY

DEPT OF LAW AND LEGAL STUDIES

COURSE OUTLINE

COURSE NUMBER - TITLE LAWS 2601 - Public International Law**SECTION:** A**TERM:** Fall 2021**PREREQUISITES:** Precludes additional credit for LAWS 3603 (no longer offered).
Prerequisite(s): 1.0 credit from [LAWS 1001](#), [LAWS 1002](#), [PSCI 1100](#), [PSCI 1200](#), or PAPM 1000 [1.0]..**DAY & TIME:** Tuesdays 8:30-11:30 AM**DELIVERY METHOD:** In-person, building: SA THB.**INSTRUCTOR (CONTRACT):** Tara Ashtakala**CONTACT INFORMATION:** **OFFICE:** Loeb B-442
OFFICE HOURS: By appointment
EMAIL: Tara.Ashtakala@carleton.ca

CALENDAR COURSE DESCRIPTION

Examination of the role of law in contemporary international relations. Nature, history and sources of international law; international personality of states; status of international organizations and individuals; creation and effect of international obligations; importance and functions of law in the settlement of international disputes. Lectures three hours a week.

INSTRUCTOR COURSE DESCRIPTION

Dutch jurist Hugo Grotius wrote of ``a common law of nations`` in the 17th century, but it was not until over two hundred years later that the first rules describing how the nation states of the world should interact with one another were codified. Since then, the scope of public international law has vastly expanded, both in terms of the areas of activity covered by its norms and with regard to who can be a subject of this legal domain. This course will introduce the student to the nature, sources, subjects, types and judicial operation of public international law, with an emphasis on how law and jurisprudence within Canada is increasingly applying and harmonizing with that evolving at the international level. The ultimate goal of the evaluation activities in this course is to help the student 1) recognize the resonance between local and global legal issues and 2) use that dynamic to strategically resolve problems in practice.

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REQUIRED TEXTS

Required readings will be accessible online. Case study exercises will be posted on Brightspace during lecture. The readings and exercises reinforce or supplement lecture content. There is no textbook for the course. **PLEASE NOTE THAT YOU ARE ASKED TO READ ONLY SELECTED PARAGRAPHS OF EACH READING, AS INDICATED IN THE PRE-LECTURE NOTES, NOT THE ENTIRE DOCUMENT.**

COURSE DELIVERY:

- Pre-lecture notes will be posted on Brightspace prior to each class, indicating readings to be done ahead of lecture and containing questions that help the student focus on the most important concepts from each reading.
- Lectures will be delivered in-person, at the time and on the day indicated above for the particular course section. It is during lecture that the answers to the questions in the pre-lecture notes will be discussed.
- Case study exercises, involving groups discussions, will also be conducted during lecture.
- The presentation and research paper components of evaluation in the course will be submitted by students as per the deadlines indicated in the “Evaluation” section below.

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until have been approved by the Department and Dean.

All three (3) components must be completed in order to obtain a passing grade in course**1. Audio-visual Presentation - 25% of final grade**

The task for the Presentation is to create a five (5)-minute video (**NOT** a lecture-style presentation) that illustrates the issue selected. The **ORIGINAL** video (**NOT** made up of existing clips or stock photos) must 1) show why the issue is a problem (ie demonstrate its human impact); 2) summarize how it is reflected; and 3) propose how it may be remedied using international law.

VIDEO SUBMISSION DATES: EMAIL ME THE YOUTUBE LINK FOR YOUR VIDEO BY THE FOLLOWING DATES:

- | | |
|--|--------------------|
| • IF YOUR SURNAME STARTS WITH A-B (incl): | OCTOBER 12 |
| • IF YOUR SURNAME STARTS WITH C-D (incl): | OCTOBER 19 |
| • IF YOUR SURNAME STARTS WITH E-G (incl): | NOVEMBER 2 |
| • IF YOUR SURNAME STARTS WITH H-L (incl): | NOVEMBER 9 |
| • IF YOUR SURNAME STARTS WITH M (incl): | NOVEMBER 16 |
| • IF YOUR SURNAME STARTS WITH N-R (incl): | NOVEMBER 23 |
| • IF YOUR SURNAME STARTS WITH S-T (incl): | NOVEMBER 30 |
| • IF YOUR SURNAME STARTS WITH U-Z (incl): | DECEMBER 7 |

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2. Term Essay - 30% of final grade

The task for the Term Essay is to take the issue selected and to analyze how it is dealt with in international law: what are the international law rules or norms that apply; what defect in those rules is causing, or failing to rectify, the problem; and what is the most appropriate remedy in international law to fix it? (Introductory section describes the problem, main body analyzes it and concluding section explains why it is important to fix this problem in international law for the future).

- **Due on 10 December 2021:** upload to Brightspace
- **Length:** 10 pages, plus bibliography.
- **Use Canadian Guide to Uniform Legal Citation (McGill Guide) at https://library.carleton.ca/sites/default/files/help/writing-citing/Using_uniform_legal_citation_2018.pdf**
- **Use Canadian spelling only;** if you are going to use spell-checking applications to review your text, you should first ensure that the language settings on your computer are set to Canadian English or Multilingual Standard.

3. Open book final examination - 45% of final grade

The goal of the formally-scheduled final exam is to apply the course content to 1) solve a fictitious client's legal problem and to 2) thoroughly discuss a thematic issue.

- **To be scheduled during final exam period: 11-23 December, 2021**
- **The final exam will be proctored, for both in-person and online writing.**

LATE PENALTIES AND REQUESTS FOR EXTENSIONS:

- The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension.
 - For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.
 - **Extensions for longer than 7 days will normally not be granted.** In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).
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LECTURE TOPIC SCHEDULE**PART 1: BASIC PRINCIPLES****14 Sep INTRODUCTION AND OVERVIEW; NATURE OF INTERNATIONAL LAW****21 Sep INTERNATIONAL LEGAL PERSONALITY**Materials:

- Convention on the Rights and Duties of States , 26 December 1933
- International Commission of Jurists, Report on Aaland Islands dispute
- *Austro-German Customs Union* case:
- *Tinoco Arbitration (Great Britain v Costa Rica)*
- UN General Assembly Resolution 1514
- *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*
- *Reference re Secession of Quebec*
- Charter of the United Nations
- *Reparation for Injuries Suffered in the Service of the United Nations*
- Jurisdiction of the Courts of Danzig, Advisory Opinion

28 Sep SOURCES OF INTERNATIONAL LAWMaterials:

- Statute of the International Court of Justice (art. 38) (remember that it is annexed to the United Nations Charter)
- Vienna Convention on the Law of Treaties
- *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark and The Netherlands)*
- *Military Activities In and Against Nicaragua (Nicaragua v United States)*
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion
- *Nevsun Resources Ltd v Araya*, Supreme Court of Canada
- *International Status of South West Africa Case*, Advisory Opinion, Separate Opinion of J McNair

5 Oct RECEPTION OF INTERNATIONAL LAW IN NATIONAL LEGAL SYSTEMSMaterials:

- *Trendtex Trading Corp. v. Central Bank of Nigeria*
- Vienna Convention on the Law of Treaties
- *Attorney General (Canada) v Attorney General (Ontario) (Labour Conventions)*
- *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*.
- *Baker v. Canada (Minister of Citizenship and Immigration)*
- *Reference Re Public Service Employee Relations Act (Alta.)*
- *Canada (Justice) v. Khadr*
- *Operation Dismantle v The Queen*

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- *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*
- *Reference as to Powers to Levy Rates on Foreign Legations*
- *R. v. Hape*
- Vienna Convention on the Law of Treaties

PART II: THE LAW APPLICABLE TO NATIONS

12 Oct TERRITORY

Materials:

- *Island of Palmas case* (Netherlands v United States)
- Claiming the last global frontier: overlapping geographical claims of Antarctic territory`, S. Naidu, Jr
- *North Sea Continental Shelf cases (Germany v Denmark and Netherlands)`, I.C.J.*
- *Case concerning the Frontier Dispute* (Burkina Faso v Mali), ICJ Reports
- *Case Concerning the Territorial Dispute (Libya v Chad)*, ICJ,
- *In the Matter of the South China Sea Arbitration*, PCA
- Loukacheva, N. “Legal Challenges in the Arctic”
- Antarctic Treaty
- Chicago Convention on International Civil Aviation
- `Aerial Intrusions by Civil and Military Aircraft in Times of Peace`.

19 Oct JURISDICTION AND IMMUNITY

Materials:

- *The Steamship Lotus (France v Turkey)*
- *Nuclear Weapons Advisory Opinion*, Dissenting Opinion of Justice Shahabudeen
- *Libman v. The Queen*,
- *Ex Parte Pinochet*
- *United States v Meng*
- Vienna Convention on Diplomatic Relations
- Vienna Convention on Consular Relations
- *Luther v Sagor*
- *Trendtex Trading Corp. v. Central Bank of Nigeria*
- *United States v. Burns*
- *Italy v Germany*, ICJ,
- *Kuwait Airways v Iraqi Airways*
- *Jensen v Arab Bank*, Supreme Court of the United States
- *Nevsun Resources Ltd. v Araya*.

26 Oct Fall Reading Week, no class

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2 Nov THE LAW OF TREATIESMaterials:

- *Nuclear Test Cases (Australia v France)*
- Vienna Convention on the Law of Treaties
- *Interpretation of Peace Treaties (second phase)*, Advisory Opinion:
- *Libya v Chad*, ICJ
- *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion
- *Military Activities In and Against Nicaragua (Nicaragua v United States)*
- *Yukos Universal Ltd. v. Russian Federation*.
- *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ

PART III: DIFFERENT AREAS AND SUBJECTS OF INTERNATIONAL LAW**9 Nov INTERNATIONAL HUMAN RIGHTS LAW; INTERNATIONAL LAW OF INDIGENOUS PEOPLES**Materials:

- *Toonen v. Australia*
- Office of the High Commissioner for Human Rights, General Comment no. 06 The Right to Life, (art. 6)
- *Husband of Maria Fanny Suarez de Guerrero v. Colombia*
- Committee on Economic, Social and Cultural Rights, General Comment No.03
- *Gosselin v. Québec (Attorney General)*
- *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*
- *Roger Judge v. Canada*
- United Nations Declaration on the Rights of Indigenous Peoples
- *Simon v. The Queen*
- *Awas Tingni v Nicaragua*
- *Apirana Mahuika et al. v. New Zealand*
- *Stephen Hagan v. Australia*
- *Sandra Lovelace v Canada*

16 Nov INTERNATIONAL TRADE AND INVESTMENT LAWMaterials:

- GATT 1947
- GATT, Belgian Family Allowances case (1952)
- GATT 1994 and Agreement establishing WTO:
- *Japan Semiconductors case*.
- *US-Tuna Dolphin cases*
- *United States: Reformulated Gasoline*
- *United States-Import prohibition Shrimp*

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- *WTO Seal products:*
- *Canada v Maxzone Auto Parts (Canada) Corp.,*
- North American Free Trade Agreement
- *Methanex v United States*
- *Pac Rim Cayman v El Salvador*
- *Philip Morris v Uruguay*

23 Nov INTERNATIONAL ENVIRONMENTAL LAW; THE LAW OF THE SEA; THE LAW OF OUTER SPACE

Materials:

- Statute of the ICJ, art.38
- Trail Smelter Arbitration (USA, Canada)
- Charter of the United Nations
- Stockholm Declaration
- Rio Declaration
- *Nuclear Weapons Advisory Opinion, ICJ*
- *Gabcikovo (Hungary v Slovakia),*
- *EC Beef Hormones* case, read C. Arguments by Canada-Appellee, 2. The Precautionary Principle
- *Indian Council for Enviro-Legal Action and Ors. V.Union of India* (UOI) and Ors. , Supreme Court of India
- *Case concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)*
- *Urgenda v The Netherlands*
- UNCLOS
- *Nicaragua* case
- *In the Matter of the South China Sea Arbitration (Phillipines v China)*
- *Anglo-Norwegian Fisheries case (Iceland v UK),* opinion of Justice Fitzmaurice, ICJ
- *Corfu Channel, case*
- *Panama and José C. Monteverde (Panama) v. U.S (The David)*
- Outer Space Treaty
- Moon Agreement
- *Smith v United States*
- Settlement of Claim between Canada and the Union of Soviet Socialist Republics for Damage Caused by "Cosmos 954"
- *Langevin*

PART IV: JUDICIAL SETTLEMENT OF DISPUTES

30 Nov THE WORLD'S COURTS

Materials:

- Military Activities In and Against Nicaragua (*Nicaragua v United States*), (merits)
- Statute of the International Court of Justice
- *Nottebohm (Leichtenstein v Guatemala),* Preliminary Objections, Decision of the Court
- *Nicaragua*

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- *Nicaragua*
- *WTO Argentina: Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items—Report of the Panel*
- Statute of the ICJ
- *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J.
- Rules of the Court, ICJ,
- *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Dissenting Opinion of Justices Al-Khasawneh and Simma,
- Rules of the Court
- *Nicaragua*
- *Corfu Channel Case (Merits)*
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide [“Crime of Genocide”]*
- *Island of Palmas*

PART V: THE LAST RESORT OF STATES**7 Dec THE LAW OF WAR AND THE USE OF FORCE and REVIEW OF COURSE**Materials:

- Charter of the United Nations
 - *The Caroline case*
 - *Nicaragua case*
 - *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion ICJ
 - *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion
 - Geneva Conventions of 1949 and the Additional Protocols 1977
 - GCI: art.1,3,49,50,129,146
 - GCII: art. 1,3,49,50,129,146
 - GCIII: art. 1,3,4,5,49,50,129,146
 - GCIV: art. 1,3,28,49,50,129,146
 - AP I: arts. 1, 4,5,35,43,44,48,50,52,85
 - AP II: art. 1,4,5
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COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://students.carleton.ca/course-outline/>.

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details [click here](#).

Academic Accommodations for Students with Disabilities

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal

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evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable):

<https://carleton.ca/pmc>.

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/student-support/svpolicy/>.

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>.

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/student-experience-resources/>.

DIVERSITY AND INCLUSION IN COURSE CONTENT AND EXECUTION:

Lawyers need to be able to read statutes, in order to apply them in the courtroom. It is equally important to the success of a lawyer's case to know what the statute does not say.

In international law cases, the litigants are primarily States; because of that fact, all individuals, no matter what their background, are disadvantaged to a large extent in this body of law. When one of the States involved in the dispute is itself historically disenfranchised in the international legal system, the people who inhabit it bear (disproportionately, compared to other populations in the world) the consequences of the violations of law committed and the cost of the remedies awarded. It is impossible to deny that the rules of modern international law were created by and for European empires; even if international legal disputes are now decided by some judges and lawyers who come from historically colonized, enslaved and otherwise suppressed communities, their fellow citizens - who are not trained in law - do not get to voice their concerns by arguing in international courts, nor do they get to publish scholarly articles about them. Thus, the voices of those who are most impacted by international decisions are not heard in international law.

You will notice from this Outline that the vast majority of readings in this course are cases, from both international and domestic courts, rather than academic articles. Court cases are essentially stories: the same set of facts happen to two or more parties who interpret the sequence or nature of events differently. Whether a party wins or loses, they get the chance to tell their story. I ask students to read case law so that we can together glean from it the basic concepts of public international law. It is whilst reading a case that students also have the opportunity to think critically about whose concerns are not addressed and about what impact that omission of voices has on the development of the basic concepts of international law that the whole international community operates by today; indeed, the questions in the pre-lecture notes for this course will require you to do so. It is expected that students will include those insights in their presentation and research paper assignments, as well as express them in the honest, yet respectful, debates that comprise the live case study discussions following each lecture.

End of Course Outline.