
COURSE:	LAWS 2601-B Public International Law
TERM:	Fall 2020
PREREQUISITES:	LAWS 1001, LAWS 1002, PSCI 1100, PSCI 1200, or PAPM 1000 [1.0].
CLASS:	Day & Time: Tuesday 14:35-17:25 All courses during the Fall 2020 semester will be delivered online. The lectures in this course will be delivered “live”, online every week during our regularly scheduled class time using the Zoom conferencing platform.
INSTRUCTOR: (CONTRACT)	Tara Ashtakala
CONTACT:	Office: Loeb B-442 Office Hrs: By appointment Telephone: 613-520-3690 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 in certain situations, 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.

REQUIRED TEXTS

Required readings will be accessible online. Case study exercises will be posted 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 CULearn 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 synchronously via Zoom, 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 the synchronous lecture session.**
- The synchronous portion of the lectures will therefore be of no more than 2 hours duration.
- 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.

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 colonialized, 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. 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 also 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.

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 they have been approved by the Department and the Dean.

All three (3) components must be completed in order to obtain a passing grade

1. Term Essay - 25% of final grade

- The task for the Term Essay is to take the life issue 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 11 December 2020: upload to CULearn

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Length: 10 pages, plus bibliography.

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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

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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.

2. 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 life 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 OR GOOGLE DRIVE LINK FOR YOUR VIDEO BY THE FOLLOWING DATES:

- IF YOUR SURNAME STARTS WITH A-B (inclusive): OCTOBER 13
- IF YOUR SURNAME STARTS WITH C-D (incl): OCTOBER 20
- IF YOUR SURNAME STARTS WITH E-G (incl): OCTOBER 27
- IF YOUR SURNAME STARTS WITH H-L(incl): NOVEMBER 3
- IF YOUR SURNAME STARTS WITH M-N (incl): NOVEMBER 10
- IF YOUR SURNAME STARTS WITH O-R (incl): NOVEMBER 17
- IF YOUR SURNAME STARTS WITH S-T (incl): NOVEMBER 24
- IF YOUR SURNAME STARTS WITH V-Z (incl): DECEMBER 8

3. Open book final examination - 50% of final grade

- the goal of the 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 formal exam period: 12-23 December, 2020

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).

LECTURE TOPIC SCHEDULE**PART 1: BASIC PRINCIPLES****15 Sep INTRODUCTION AND OVERVIEW; THE NATURE OF INTERNATIONAL LAW****22 Sep INTERNATIONAL LEGAL PERSONALITY****Materials:**

- Convention on the Rights and Duties of States , 26 December 1933, Organization of American States (Montevideo Convention)
- International Commission of Jurists, Report on Aaland Islands dispute
- *Austro-German Customs Union* case: Customs Régime between Germany and Austria (Protocol of March 19th, 1931), Advisory Opinion, Permanent Court of International Justice, 5 September 1931
- *Tinoco Arbitration (Great Britain v Costa Rica)* (1923) 1 R.I.A.A. 375
- UN General Assembly Resolution 1514
- *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Mauritius v UK*, ICJ, 25 Feb 2019
- *Reference re Secession of Quebec* [1998] 2 S.C.R. 217.
- Charter of the United Nations, art. 104 and at art. 71
- *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Advisory Opinion of 11 April 1949
- *Jurisdiction of the Courts of Danzig*, Advisory Opinion, 1928 P.C.I.J. (ser. B) No. 15 (Mar. 3)

29 Sep SOURCES OF INTERNATIONAL LAW**Materials:**

- 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, 1155 UNTS 331
- *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark and The Netherlands)*, [1969] I.C.J Rep. 3
- *Military Activities In and Against Nicaragua (Nicaragua v United States)*, [1986] I.C.J. Rep. 14
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996
- *Nevsun Resources Ltd v Araya*, Supreme Court of Canada, 28 Feb 2020, 2020 SCC 5
- *International Status of South West Africa Case*, Advisory Opinion [1950] ICJ Rep. 128 Separate Opinion of J McNair

6 Oct RECEPTION OF INTERNATIONAL LAW IN NATIONAL LEGAL SYSTEMS**Materials:**

- *Trendtex Trading Corp. v. Central Bank of Nigeria* 1975 T. No. 3663

- Vienna Convention on the Law of Treaties arts. 4, 84, 26, 27
- *Attorney General (Canada) v Attorney General (Ontario) (Labour Conventions)* [1937] UKPC 6 (28 January 1937)
- *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*, [2017] UKSC 5.
- *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817
- *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313
- *Canada (Justice) v. Khadr*, [2008] 2 S.C.R. 125, 2008 SCC 28
- *Operation Dismantle v The Queen*. 9 May 1985, [1985] 1 SCR 441
- *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982,
- *Reference as to Powers to Levy Rates on Foreign Legations*, [1943] S.C.R. 208
- *R. v. Hape*, [2007] 2 S.C.R. 292, 2007 SCC 26
- Vienna Convention on the Law of Treaties art 53

PART II: THE LAW APPLICABLE TO NATIONS

13 Oct TERRITORY

Materials:

1. Acquisition of territory:
 - *Island of Palmas case* (Netherlands v United States) (1928), 2 R.I.A.A. 829
 - Claiming the last global frontier: overlapping geographical claims of Antarctic territory`, S. Naidu, Jr., *Transnational Law & Contemporary Problems*. 17.2 (Spring 2008) p529
2. Principles in disputes over land boundaries:
 - *North Sea Continental Shelf cases (Germany v Denmark and Netherlands)*", I.C.J.1969
 - *Case concerning the Frontier Dispute* (Burkina Faso v Mali), ICJ Reports 1986 p. 554
 - *Case Concerning the Territorial Dispute (Libya v Chad)*, ICJ, 1994
 - *In the Matter of the South China Sea Arbitration*, PCA 2013-19, Award, 12 July 2016
3. Jurisdiction over shared or common areas – polar regions:
 - Loukacheva, N. "Legal Challenges in the Arctic"
 - Antarctic Treaty
4. Jurisdiction over Airspace:
 - Chicago Convention on International Civil Aviation
 - `Aerial Intrusions by Civil and Military Aircraft in Times of Peace` (1985) 107 Military L.R.

20 Oct JURISDICTION AND IMMUNITYMaterials:

- *The Steamship Lotus (France v Turkey)* (1927) PCIJ Ser. A., No. 10
- *Nuclear Weapons Advisory Opinion*, Dissenting Opinion of Justice Shahabudeen
- *Libman v. The Queen*, [1985] 2 S.C.R. 178
- *Ex Parte Pinochet*
- *United States v Meng*, 2020 BCSC 785
- Vienna Convention on Diplomatic Relations arts. 22, 24, 27, 29, 31, 34, 38, 39, 41(1)
- Vienna Convention on Consular Relations art, 41
- *Luther v Sagor* [1921] 3 K.B. 532
- *Trendtex Trading Corp. v. Central Bank of Nigeria* [1977] 2 W.L.R. 356
- *United States v. Burns*, [2001] 1 S.C.R. 283, 2001 SCC 7
- *Italy v Germany*, ICJ, 2012
- *Kuwait Airways v Iraqi Airways*
- *Jensen v Arab Bank*, Supreme Court of the United States, April 2018
- *Nevsun Resources Ltd. v Araya*.

27 Oct Fall Reading Week, no class**3 Nov THE LAW OF TREATIES**Materials:

- *Nuclear Test Cases (Australia v France)*, ICJ, Judgement of 20 December 1974
- Vienna Convention on the Law of Treaties
- *Interpretation of Peace Treaties (second phase)*, Advisory Opinion: I.C. J. Reports 1950, p. 221
- *Libya v Chad*, ICJ
- *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion of 28 May 1951
- *Military Activities In and Against Nicaragua (Nicaragua v United States)*, [1986] I.C.J. Rep. 14,
- *Yukos Universal Ltd. v. Russian Federation*.
- *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ, Judgement of 25 September 1997

PART III: DIFFERENT AREAS AND SUBJECTS OF INTERNATIONAL LAW**10 Nov INTERNATIONAL HUMAN RIGHTS LAW; INTERNATIONAL LAW OF INDIGENOUS PEOPLES**Materials:

- *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc

- CCPR/C/50/D/488/1992 (1994), paras 1, 3.1-4.2, 6.9, 8.1-8.6
- Office of the High Commissioner for Human Rights, General Comment no. 06 The Right to Life, (art. 6) : . 04/30/1982
- *Husband of Maria Fanny Suarez de Guerrero v. Colombia*, Communication No. R.11/45, U.N. Doc. Supp. No. 40 (A/37/40) at 137 (1982), 1.1-3.2 (incl) ,13.1 – 15
- Committee on Economic, Social and Cultural Rights, General Comment No.03, UN Doc. E/1991/23; (1994) 1-1 I.H.H.R. 6
- *Gosselin v. Québec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429
- *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657, 2004 SCC 78
- *Roger Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003), 10.2-11
- United Nations Declaration on the Rights of Indigenous Peoples
- *Simon v. The Queen*, [1985] 2 S.C.R. 387
- *Awas Tingni v Nicaragua*
- *Apirana Mahuika et al. v. New Zealand*, Communication No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000)
- *Stephen Hagan v. Australia*, Communication No. 26/2002, U.N. Doc. CERD/C/62/D/26/2002 (2003)
- *Sandra Lovelace v Canada*, UN Human Rights Committee Communication No. 24/1977

17 Nov INTERNATIONAL TRADE AND INVESTMENT LAW

Materials:

- 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* (1998/2000)
- *WTO Seal products:2013*
- *Canada v Maxzone Auto Parts (Canada) Corp.*, 2012 FC 1117
- North American Free Trade Agreement, arts 1102 and 1103
- *Methanex v United States*
- *Pac Rim Cayman v El Salvador*, ICSID 2016,
- *Philip Morris v Uruguay*

24 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) read p.1912 (last paragraph); p1922

- Charter of the United Nations
- Stockholm Declaration
- Rio Declaration
- *Nuclear Weapons Advisory Opinion*, ICJ
- *Gabcikovo (Hungary v Slovakia)*, read para 140 , 97
- *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 1996
- *Case concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)* (2010) read paras. 204-205
- *Urgenda v The Netherlands*, The Hague Court of Appeal – Civil Law Division, Case number : 200.178.245/01, Case/cause list number : C/09/456689/ HA ZA 13-1396 , Ruling of 9 October 2018.
- UNCLOS
- *Nicaragua case*
- *In the Matter of the South China Sea Arbitration (Phillipines v China)*, PCA 2016, read paras. 939-945
- *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)*, (1933) 6 RIAA 382
- 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* 2012 QCCS 613

PART IV: JUDICIAL SETTLEMENT OF DISPUTES

1 Dec THE WORLD'S COURTS

Materials:

- Military Activities In and Against Nicaragua (*Nicaragua v United States*), (merits) [1986] I.C.J. Rep. 14
- Statute of the International Court of Justice, art. 36; text found
- *Nottebohm (Leichtenstein v Guatemala)*, Preliminary Objections, Decision of the Court , Judgement of 18 November 1953
- *Nicaragua* para 29
- *Nicaragua* para 30
- *WTO Argentina: Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items—Report of the Panel* [25 November 1997] WT/DS56/R
- Statute of the ICJ articles 48-52
- *Armed Activities on the Territory of the Congo (Democratic Republic of the*

- *Congo v. Uganda*), Judgment, I.C.J. Reports 2005, p. 168 .
- Rules of the Court, ICJ, read Rule 95
- *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Dissenting Opinion of Justices Al-Khasawneh and Simma,
- Rules of the Court, Rule 62
- *Nicaragua* para 63
- *Corfu Channel Case (Merits)*, Judgment of April 9th, 1949, I.C. J. Reports 1949, p.4
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide [“Crime of Genocide”]* (Bosnia Genocide case), ICJ 2007.
- *Island of Palmas*

PART V: THE LAST RESORT OF STATES

8 Dec THE LAW OF WAR AND THE USE OF FORCE and REVIEW OF COURSE

Materials:

- Charter of the United Nations arts. 2(4) and 51
- *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

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://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy obligation

Please contact 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, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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 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/studentssupport/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. <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/current-students/>