

Federal State Autonomous Educational Institution of Higher Education

National Research University
«Higher School of Economics»

Faculty of World Economy and Foreign Affairs

Course Syllabus and Description

International Law

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Advanced by the Chair of Global economic governance and European
Integration..... Head of the Chair

Recommended by the WEWP Faculty Methodology and studies Section
..... Head of the Section

Approved by the WEWP Faculty Scientific Council «___»_____2012
..... Council's Scientific Secretary

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COURSE DESCRIPTION:

International Law constitutes the basis for ruling international relations, mainly relations among States but also, in some measure, among States and individuals and peoples.

As other areas in legal order, *Ius Gentium* is sometimes ignored by some States, but even though they try to justify their illegal activities or positions under International Law rules.

This course will deal with sources of International Law, especially the law of the treaties, the subjects of this legal order and the main multilateral rules governing their relationships. International responsibility, as a consequence of the International Law violation will be the object of our study as well as means to solve international disputes and controversies. A special reference will be made to the use of force in international relations.

The course will cover material areas such as the Law of the Sea, Humanitarian Law or International Human Rights where we will analyze the main rules and principles.

The course will be useful to anyone considering international career, diplomacy, Foreign Service or just working in business with international relationships.

PREREQUISITES:

There are not specific requirements for this course but basic competences in law and international relations.

COURSE OBJECTIVES:

- To know the content and interpretation of the main international legal rules and principles, in UN Charter and other multilateral treaties;
- To develop an understanding of the procedures for implementing these rules, to claim before international bodies for their violation and for asking the fair reparation;
- To provide students with tools for reasoning in legal terms according to International Law, issues related to national interests, to global interests, bilateral or multilateral controversies.

As a result of the course, the student should have:

- Knowledge: of the most important norms of General International Law usually codified, differences with regional norms and the foundations of International Law. The role of individuals and peoples in international law. The State sovereignty as base and limitation of International Law.
- Ability: to apply international rules to disputes among States, to reason according to International Law current international conflicts, and to protect national and even individual rights before international bodies.
- Skills: to critically evaluate analytical and scientific materials on the given issues.

COURSE TOPICS:

№	Topics	Contact Hours			Homework	Hours total
		Lectures	Seminars	Total		
	Concept and sources of International Law	3				
1	International society and international system; approaches to a definition, historical evolution	1		3	5	8
2	The treaties and its validity, international customary law, GPL, unilateral acts as a source of law Unity or fragmentation?	1		5	8	13
3	Relationship International Law – National Law	1	1	4	4	8
	The State as the main subject in International Law	4				
4	Population, territory and political power; sovereignty and immunity	1		4	7	11
5	States and Governments recognition	1		2	4	6
6	State' competences on population and territory	1	1	6	10	16
7	State' bodies in charge of International Relations. Diplomatic and Consular relations	1	1	4	5	9
	Secondary subjects of International Law	2				
8	International Organisations, peoples and its autodetermination; the role of individuals; international human rights law and international criminal law	1	1	8	5	13
	Principles of International Law	5				

9	UN Charter principles: international peace and security. The limited use of force	2	2	8	6	14
10	International responsibility: from illicit acts, from licit acts, individual criminal responsibility	2	1	8	9	17
11	Peaceful solution of controversies: jurisdictional and not jurisdictional tools	1		4	2	6
	Common Goods	2				
12	Law of the Sea, Law of Space and outerspace	2	1	8	5	13
	Cases				28	28
	Total	16	7	64	98	162

The class will meet once a week for 4 hours. Typically, there will be lectures, cases and discussions of the material covered in the corresponding section. Attendance and participation in the classes are required. The course concludes with an essay followed by a written exam.

PERFORMANCE EVALUATION:

Methods of evaluation:

- a) Continuous: examination of students during the course of lectures and cases.
- b) Final: test (with account of previous observations and appearance in lectures as in seminars).

The student's independent work: assimilation of the theoretical material and information received in the course of the lectures, learning the works of domestic and foreign authors on the given problems, preparation for an essay on a chosen theme. **The course concludes with a test describing the results of students' study.**

Final grade is calculated from grades for:

- Essay – 30%;
- Lecture attendance and active involvement – 30%;
- Final test – 40%

TEACHING MATERIALS:

We will use:

- 1) International Law handbooks:
 - Armstrong, David, *Routledge Handbook of International Law*, London, 2008.
 - Aust, Anthony, *Handbook of International Law*, Cambridge University Press, 2006.
 - Brownlie, Ian, *Principles of Public International Law*, 7th edition, Oxford University Press, 2008.

Crawford, James, Koskenniemi, Martti, (ed.), *The Cambridge Companion to International Law*, Cambridge University Press, 2012.
Kaczorowska, Alina, *Public International Law*, 4th ed., Routledge, London, 2010
Remiro Brotons, Antonio, Riquelme, Rosa, Diez-Hochleitner, Javier, Orihuela, Esperanza, Pérez-Prat, Luis, *Derecho Internacional*, Tirant lo Blanc, Valencia, 2007.

- 2) Books and articles of foreign authors
- 3) UN documents
- 4) Cases and articles provided by the instructor.
- 5) Useful links:
 - International law and the UN, <http://www.un.org/law/>
 - The International Court of Justice, <http://www.icj-cij.org/>
 - The International Law Commission, <http://www.un.org/law/ilc/index.htm>
 - The American Society of International Law: ASIL Guide to Electronic Resources, <http://www.asil.org/resource/Home.htm>

Journals

- International and Comparative Law Quarterly (ICLQ), <http://journals.cambridge.org/action/displayJournal?jid=ILQ>
- European Journal of International Law (EJIL), <http://www.ejil.org/>

COURSE SCHEDULE:

1. International society and international system; approaches to a definition, historical evolution

- International social structure; contradictions within international system
- Foundations of International Law (Philosophical),
- Origin by the Spanish School of International Law
- Unity v. fragmentation

Recommended readings:

1. Allot, P., "The Concept of IL", *EJIL*, 1999, 31.
2. Amerasinghe, F., "IL and the Concept of Law: Why IL is Law?", in J. Makarczyk (ed.), *Theory of IL at the Threshold of the 21st Century*, The Hague, 1996, 79
3. Buzan, B. "From International System to International Society: Structural Realism and Regime Theory meet the English School", *International Organisation*, 47, 3, summer 1993, pp.327-352.
4. Casanovas, O., *Unity and Pluralism in Public IL*, The Hague, 2001.
5. McWhinney, E. "Shifting Paradigms of IL and World Order in an Era of Historical Transition", *Essays L. Haopei*, London, 2001, p.3.
6. Simson, F., *The Nature of IL*, Dordrecht, 2001.
7. Weil, P., "Vers une normativité relative en Droit International?", *RGDIP*, 1982, 5.
8. Weiss, E. B., "The Rise or the Fall of IL?", *Fordham Law Review*, 2000, 345.
9. Zimmermann, A., Hoffmann, R. (ed.), *Unity and Diversity of IL*, Proceedings of an International Symposium of the Kiel Walther Schu'cking Institute of International Law, November 4-7, 2004, Berlin, 2006.
10. Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', in chapter 12 of the ILC Report on its fifty-eighth session (2006), UN Gen. Ass., Official Records, Sixty-first Session, Supplement No. 10 (A/61/10), pp. 400-423
<http://untreaty.un.org/ilc/reports/2006/2006report.htm>

11. ILC 58th Session, 'Report of the Study Group on Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', finalized by M Koskenniemi, 13 April 2006, A/CN.4/L.682, pp.206–244, further Report of 18 July 2006, A/CN.4/L.702, <http://untreaty.un.org/ilc/sessions/58/58docs.htm>

2. The treaties and its validity, international customary law, GPL, unilateral acts as a source of law.

- The Role of the Consent in IL
- Normative Hierarchy? Imperative (Ius Cogens) and dispositive rules.
- Law of the treaties: treaty-making power, celebration, interpretation, application, validity, amendment, effects for third parties
- International customary law, General Principles of Law. The role of jurisprudence. Equity. Unilateral acts of States.

Recommended readings:

1. Aust, A., "Limping Treaties: Lessons from Multilateral Treaty-Making", NILR, 2003-3, 243.
2. Cann, W. A., "Creating Standards and Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance between Sovereignty and Multilateralism", Yale JIL, 2000, 431.
3. Fitzmaurice, M., Elias, T. O., *Contemporary Issues in the Law of Treaties*, Utrech, 2005.
4. Goodman, R., "Human Rights Treaties, Invalid Reservations and State Consent", AJIL, 2002, 521.
5. Gowlland-Debas, V. (ed.), *Multilateral Treaty-Making*, London, 2000, 13.
6. Greig, D. W., *Invalidity and the Law of Treaties*, London, 2006.
7. Lukasuk, I., "Customary Norms in Contemporary IL", *Essays K. Skubiszewski*, The Hague-London, 1996, 487.
8. Meron, T., "Revival of Customary Humanitarian Law", AJIL, 2005, 817.
9. Riesenfeld, F. M. S. A., Abbott, F. M. (ed.), *Parliamentary Participation in the Making and Operation of Treaties. A Comparative Study*, Dordrecht, 1993.
10. Röber, V., *Developments of IL in Treaty-Making and Enforcement*, Berlin, 2005.
11. Ruiz Ruiz, F., "The Succession of States in Universal Treaties on the Protection of Human Rights and Humanitarian Law", *International Journal of Human Rights*, 2003-2, 42
12. Shelton, D. (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, Oxford, 2000.
13. Talmon, S., "The Security Council as World Legislature", AJIL, 2005, 175.
14. Alvarez, J. E., *International Organisations as Law-Makers*, Oxford, 2005

3. Relationship International Law – National Law

- Monism and Dualism
- Introduction, application and hierarchy of IL norms in domestic law
- Application of national law by international courts

Recommended readings:

1. Kadelbach, S., "IL and the Incorporation of Treaties into Domestic Law", *GYIL*, 1999, 66.

2. Martinico, G., "Is the European Convention Going to Be 'Supreme'? A Comparative-Constitutional Overview of ECHR and EU Law before National Courts?", *EJIL*, vol.23, 2012-2. <http://www.ejil.org/pdfs/23/2/2288.pdf>
3. <http://www.russian-civil-code.com/>, art.7

4. Population, territory and political power; sovereignty and immunity

- Constitutive elements of the State
- The limits to sovereignty
- State immunity: rationale and consequences

Recommended readings:

1. Chesterman, S., Ignatieff, M., Thakur, R. (ed.), *Making States Work: State Failure and the Crisis of Governance*, Tokyo, 2005.
2. Cooper-Hill, J., *The Law of Sovereign Immunity and Terrorism*, New York, 2006.
3. Dickinson, A., Lindsay, R., Loonan, J. P., *State Immunity*, Oxford, 2004.
4. Eisemann, P. M., Koskenniemi, M. (ed.), *State Succession: Codification Tested Against the Facts/ La succession d'Etats: la codification à l'épreuve des faits*, The Hague, 2000.
5. Higgins, R., "The Concept of 'the State': Variable Geometry and Dualist Perceptions", *Liber Amicorum G. Abi-Saab*, The Hague, 2001, 547.
6. Krisch, N., "IL in times of Hegemony: Unequal Power and the Shaping of the International Legal Order", *EJIL*, 2005, 408.
7. Schrijver, N., "The Changing Nature of State Sovereignty", *BYIL*, 1999, 65.
8. Yusuf, A. A., "Government Collapse and State Continuity: The Case of Somalia", *IYIL*, 2003, 11.
9. Convention on the Rights and Duties of States, Montevideo, 26 December 1933, Article 1, <http://www.yale.edu/lawweb/avalon/intdip/interam/intam03.htm>
10. Compare:
Peoples Republic of China, --The Taiwan Question , <http://www.chinese-embassy.no/eng/ztxw/twwt/default.htm> and Government Information Office, Republic of China (Taiwan), <http://www.mofa.gov.tw/EnOfficial/SiteSearch/Result/?SearchModel=0&searchStr=Taiwan-China>

5. States and Governments' recognition

- States Recognition. Theories and practice
- Governments Recognition. Theories and consequences

Recommended readings:

1. Murphy, S. D., "Democratic Legitimacy and the Recognition of States and Governments", *ICLQ*, 1999, 545.
2. Terret, S., *The Dissolution of Yugoslavia and the Badinter Arbitration Commission*, London, 2000.
3. Warbrick, C., "Recognition of States", *ICLQ*, 1993, 433.

6. State' competences on population and territory

- Nationality. Diplomatic protection. New trends
- Foreigners Status. Asylum regime
- Neighboring Relationships
- Succession of States

Recommended readings:

1. Bassiouni, M. C., *'Aut Dedere aut Iudicare': The Duty to Extradite or Prosecute in IL*, Dordrecht, 1995.
2. Fitzpatrick, J. (ed.), *Human Rights Protection for Refugees, Asylum-Seekers and Internally Displaced Persons. A Guide to International Mechanisms and Procedures*, New York, 2001.
3. Milano, E., "Diplomatic Protection and Human Rights before the ICJ: Re-fashioning tradition", *NYIL*, 2004, 85.
4. Schreuer, C. H., *The ICSID Convention: A Commentary*, Cambridge, 2001.
5. Shaw, M. N., *Title to Territory*, Dartmouth, 2006.

7. State' bodies in charge of International Relations. Diplomatic and Consular relations

- The President, the Prime Minister and the Minister of Foreign Affairs
- Diplomatic Missions
- Consular Missions
- Multilateral Diplomacy before International Organisations and Conferences

Recommended readings:

1. Jönson, Ch., Langhorne, R., *Diplomacy*, vol. 2, London, 2004.
2. Kauffmann, J., *Conference Diplomacy: An Introductory Analysis*, 2nd ed., Dordrecht, 1988.

8. International Organisations, Peoples and its Self-determination; the role of individuals; international human rights law and international criminal law

- Legal personality of International Organizations
- What a People is? Which rights they have under IL?
- Limited international subjectivity of individual: international protection of Human Rights and the Responsibility of Individuals for International Crimes

Recommended readings:

1. Butler, F., (ed.), *Human Rights Protection: Methods and Effectiveness*, The Hague, 2002.
2. Harrington, J., Milde, M., Vernon, R. (ed.), *Bringing Power to Justice? The Prospects of the ICC*, Montreal, 2006.
3. Klabbers, J., *An Introduction to International Institutional Law*, Cambridge, 2002.
4. Nollkamper, A., "Concurrence between Individual Responsibility and State Responsibility", *ICLQ*, 2003, 615.
5. Rai, D., *Statehood & The Law of Self-Determination*, Leiden-Boston, 2002.
6. Schermers, H., Blokker, N. M., *Unity within Diversity*, 3rd ed. of *International Institutional Law*, Dordrecht, 1995.
7. Waart, P. J. I. M. de, *Dynamics of Self-Determination in Palestine: Protection of Peoples as a Human Right*, Leyden, 1994.
8. On the construction of a wall in occupied Palestinian territories: *AJIL*, Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory, 2005,1.

9. UN Charter principles: international peace and security. The limited use of force

- International peace and security. Peace keeping operations
- The Use of Force according to UN Charter

- The scope of the Responsibility to Protect
- Humanitarian Law as protection when the force is used
- Non intervention in domestic issues

Recommended readings:

1. Bellamy, A. J., *Global Politics and the Responsibility to Protect. From Words to Deeds*, London, Routledge:2011
2. Bothe, M. (ed.), *Redefining Sovereignty: the Use of Force after the Cold War*, Ardsley, New York, 2005.
3. Fleck, D. (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford-New York, 1995.
4. Franck, T. M., *Recourse to Force: State Action Against Threats and Armed Attacks*, Cambridge, 2003.
5. Goodman, R., "Humanitarian Intervention and Pretexts for War", *AJIL*, 2006, 107.
6. Knight, W. A., Frazer Egerton (eds.). *The Routledge Handbook of the Responsibility to Protect*, London, Routledge, 2012
7. Kondo, B., *International Peacekeeping*, Aldershot, 2005.
8. McWhinney, E., *The September 11 Terrorist Attacks and the Invasion of Iraq in Contemporary International Law*, Leiden, 2004.
9. Sivakumaran, S. "Re-envisioning the International Law of Internal Armed Conflict", *EJIL*, vol.22, 2011-1, <http://ejil.oxfordjournals.org/content/22/1/219.full.pdf>
10. Thakur, R., *The Responsibility to protect. Norms, Laws and the Use of Force in International Politics*, London, Routledge, 2011.
11. White, N. D., *Collective Security Law*, Hampshire, 2003.

10. International responsibility: from illicit acts, from licit acts, individual criminal responsibility

- The international illicit act
- Imputability
- The Duty of Reparation
- Sanctions and Countermeasures
- Damages Prevention from licit acts
- Individuals Criminal responsibility (see below)

Recommended readings:

1. Arcari, M. "Responsabilité de l'Etat pour violations graves du droit et système de sécurité collective des Nations Unies", *Académie de Droit International*, 2005, 41.
2. Czaplinski, W., "State Responsibility for Violations of Human Rights", *Essays L. Haopei*, London-New York, 2001, 171.
3. Fitzmaurice, M., *Issues of State Responsibility before International Judicial Institutions*, Oxford, 2004.
4. Sicilianos, L. A., "La codification des contre-mesures par la CDI", *RBDI*, 2005, 447.
5. Walleensteen, P., Staibano, C. (ed.), *International Sanctions. Between Words and Wars in the Global System*, London-New York, 2005.

11. Peaceful solution of controversies: jurisdictional and not jurisdictional tools

- Concept of "international controversy"
- Non-jurisdictional means: negotiations, good offices, mediation
- Judicial means: arbitration and international courts

Recommended readings:

1. Merrills, J. G., *International Dispute Settlement*, 4th ed., Cambridge, 2005.
2. McWhinney, E., "Judicial Settlement of Disputes. Jurisdiction and Justiciability", *R. des C.*, 1990, t. 221, 9.
3. Rosenne, S., *The Law and Practice of the International Court*, 4th ed., Dordrecht, 2006.

12. Law of the Sea, Law of Space and outerspace

- Territorial Sea, EEZ, Continental Shelf, High Seas, Seabed
- Convention safeguarding civilian aviation
- Use of outer-space according to global interests

Recommended readings:

1. Cheng, C. J., Hwan Kim, D., *The utilization of the world's air space and free outer space in the 21st century: proceedings of the International Conference on Air and Space Policy, Law and Industry for the 21st Century* held in Seoul 23-25 June 1997, The Hague, 2000.
2. Franckx, E., *Maritime Claims in the Arctic: Canadian and Russian Perspectives*, Dordrecht, 1993.
3. Oude Elferink, A. G., "The Islands in the South China Sea: How does their presence limit the extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts?", *Ocean Development & International Law*, 32, 2001, 169.
4. - United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982
<http://www.austlii.edu.au/au/other/dfat/treaties/1994/31.html>
- Convention on International Civil Aviation, Chicago, 7 December 1944
<http://www.austlii.edu.au/au/other/dfat/treaties/1957/5.html>
- International Civil Aviation Organisation
<http://www.icao.org/>
- United Nations Office for Outer Space Affairs
<http://www.oosa.unvienna.org/>

DISCUSSION AND EXAMINATION QUESTIONS:

1. What are the main issues that threaten IL unity?
2. What are the legal status and hierarchy of International Norms in Russian Law?
3. Lockerbie case and the recognition by Libya of the damages caused by the action of individuals.
4. The international regulation of Polar spaces
5. P. R. China and Republic of China (Taiwan): territorial sovereignty and international recognition
6. International rights and duties involved in the development and use of nuclear energy
7. Libya Civil War and the End of the Gadaffi's regime
8. Syria Civil War. Comparison with Libya case. US, Europe, China, Turkey, Iran and Russia positions
9. Middle East conflict: rights of the parties, duties according to IHL, external influences
10. What are the rights and guarantees of foreign investors in Russia? And what of Russian investors in third countries?
11. Military alliances within UN Charter.
12. The Responsibility to Protect: it is possible a normative evolution?
13. J. Assange "asylum" in Ecuadorian Embassy before UK.
14. Frozen conflicts and the international community

15. Analysis on the territorial disputes between China, Russia and Japan concerning Islands in the China Sea