

## Advanced Public International Law

The objective of this course is to cover four major and important areas of international law from the practical perspective, namely: sources of international law, law of treaties, law of state responsibility and dispute resolution. These areas are of general importance and application across different specialized areas of international law and therefore their thorough understanding is necessary. The course is structured in 8 lectures of 3 hours each. The class would be interactive.

Essential readings can be found underneath each sub-topic.

### Assessment:

- Take home exam. Students will have 8 hours to respond to one problem based question, which will touch upon the course covered. Students will be assessed based on their understanding and analysis of the taught course (80%)
- Class participation (20%)

### Lecture 1: Introduction:

- Developments of specialized regimes in international law. Their importance and interactions with general international law.  
ILC, Report on Fragmentation, paras. 5-20.  
([https://legal.un.org/ilc/documentation/english/a\\_cn4\\_l682.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf))
- History of the sources of international law (Article 38 of the ICJ Statute).  
Alain Pellet, paras. 4-53. (<http://pellet.actu.com/wp-content/uploads/2016/02/PELLET-2006-Article-38-of-the-Statute-of-the-ICJ.pdf>)
- Distinction between material and formal sources of international law.  
Alain Pellet, paras. 109-114.
- Subsidiary sources: general principles of law  
Alain Pellet, paras. 245-264
- Equity Article 38 (2) versus equity as a general principle of law.  
Vaughan Lowe, 'Role of Equity in International Law' (1989) Australian Yearbook of International Law 4.  
(<http://www.austlii.edu.au/au/journals/AUYrBkIntLaw/1989/4.pdf>)
- Judicial decisions and academic writings  
Alain Pellet, paras. 298-324.

### Lecture 2: Customary International Law:

- Introduction to customary international law: two elements test (*opinio juris* + State practice).  
Draft Conclusion 2, Commentary paras 1-2, ILC, Identification of customary international law.  
Alain Pellet, paras. 207-239
- Forms and contents of two elements  
Draft Conclusion 3, Part 3, Draft Conclusion 4 - 8, Part 4, 9ILC, Identification of customary international law.
- Forms of practice, weight to be given to practice, general nature  
Draft Conclusion 6, ILC, Identification of customary international law.
- Role of other actors:
  - International organizations.

- Draft Conclusion 6, ILC, Identification of customary international law.
  - Decisions of courts and tribunals.
    - Conclusion 13, commentary (all paragraphs), ILC, Identification of customary international law.
  - Teachings.
    - Conclusion 14, commentary paras 3-5, ILC, Identification of customary international law.
- Persistent objector:
  - Part 6, Conclusion 15, commentary paras. 1-4, ILC, Identification of customary international law.
- Regional custom
  - Part 7, Conclusion 16, commentary paras 1, 3-5, 7, ILC, Identification of customary international law.

Note: Interested students may read the entire commentary to the ILC, Identification of customary international law.

### **Lecture 3: Law of Treaties (Part 1):**

- Meaning and formation of a treaty.
  - Chapter 2 (pp. 16-31), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).
- Treaties and MOUs.
  - Chapter 3 (pp. 32-57), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).
- Conclusion and entry into force:
  - Articles 6-10, Vienna Convention on the Law of Treaties.
- Consent to be bound:
  - Articles 12-18, Vienna Convention on the Law of Treaties.
- Reservations:
  - Articles 19-23, Vienna Convention on the Law of Treaties; Chapter 8 (pp. 125-161), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).
- Compliance with treaties and relationship with national law:
  - Chapter 10, (pp. 178-199), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).
- Termination:
  - Articles 54-64, Vienna Convention on the Law of Treaties.
- Invalidity:
  - Chapter 17, (pp. 312-323), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).

### **Lecture 4: Law of Treaties (Part 2):**

- Treaty interpretation
  - Articles 31-33, Vienna Convention on the Law of Treaties.
  - Chapter 13, (pp. 230-254), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).
- Provisional Application of Treaties.
  - Article 25, Vienna Convention on the Law of Treaties
  - EJIL, 'A New Hope for the Yukos Shareholders – PCA Awards Revived by the Hague Court of Appeal' <https://www.ejiltalk.org/a-new-hope-for-the-yukos-shareholders-pca-awards-revived-by-the-hague-court-of-appeal/>

- Modifications and amendments:  
Articles 39-41, Vienna Convention on the Law of Treaties.
- Registration and publicity:  
Chapter 19 (339-351), Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).

Note: Interested students may read the ILC Articles on the Law of Treaties and Antony Aust, Modern Treaty Law and Practice (2<sup>nd</sup> edn, CUP).

### **Lecture 5: Relationship between sources, conflict of norms and hierarchy of norms:**

- Relationship between treaties and customs.  
Draft Conclusions 11 and commentary, ILC Identification of customary international law.
- Pre-emptory norms of general international law (*jus cogens*)
  - Elements
  - Formation
  - Consequences of breach  
Articles 54 and 63, Vienna Convention on the Law of Treaties; Conclusions 3, 4, 10-20, ILC, Peremptory norms of general international law (*jus cogens*).
- Hierarchy of norms  
Michael Akehurst, The Hierarchy of the Sources of International Law, (1974-5) 47 British Yearbook of International Law 273.
- Conflict of norms  
ILC, Fragmentation Report, paras. 21-26; 37-43
- *Lex specialis derogat les generali; lex posterior derogat priori; lex superior derogat legi inferiori*  
ILC, Fragmentation Report, paras. 46-122; 223-250; 324-409
- Systematic integration Article 31 (3) (c), VCLT.  
ILC, Fragmentation Report, paras. 410-460.

Note: Interested students may read the Fragmentation Report of the ILC.

### **Lecture 6: State Responsibility (Part 1):**

- Introduction  
James Crawford, *State Responsibility: General Part* (CUP), pp. 49-63
- Primary and secondary norms in international law.  
James Crawford, *State Responsibility: General Part* (CUP), pp. 64-66
- Civil vs criminal responsibility.  
James Crawford, *State Responsibility: General Part* (CUP), pp. 79-81
- Domestic law vs international obligation.  
Article 27, Vienna Convention on the Law of Treaties; Article 3, commentary paras 2-7, ILC Draft Articles on State Responsibility.
- Elements.  
Articles, 1,2 paras 3 to 8 of commentary under Article 2, ILC Draft Articles on State Responsibility.
- Attribution  
Articles 4-11, ILC Draft Articles on State Responsibility.

### **Lecture 7: State Responsibility (Part 2):**

- Breach of an international obligation.  
Articles 12-15, ILC Draft Articles on State Responsibility.

- Responsibility for actions of third States.  
Articles 16-19, ILC Draft Articles on State Responsibility.
- Circumstances precluding wrongfulness  
Articles 20-27, ILC Draft Articles on State Responsibility.
- Consequences of breach and remedies  
Articles 28-39, ILC Draft Articles on State Responsibility.
- Counter-measures:  
James Crawford, *State Responsibility: General Part* (CUP), pp. 675-705.
- Current status and future of Articles on State Responsibility.

Note: Interested students are encouraged to read all the commentaries under the articles in ILC Draft Articles on State Responsibility

### **Lecture 8: Dispute Resolution:**

- Proliferation of international courts and tribunals and forum shopping.
- Pacific methods without binding decision.  
Articles 2(3), 33, UN Charter.
- International litigation.
- Jurisdictional and Admissibility  
Chapter 9 - Jurisdiction and Admissibility: General Concepts, Rosenne's Law and Practice of the International Court: 1920-2015.  
JG Merrills, *International Dispute Settlement* (Cambridge University Press, 2005), pp. 308-335.