

International Law

Department: Fudan International Summer Session 2023

Course Code	LAWS170002		
Course Title	International Law		
Credit	2	Credit Hours	36+3 tutorial hours (one credit hour is 45 minutes)
Course Nature	<input type="checkbox"/> Specific General Education Courses <input type="checkbox"/> Core Courses <input checked="" type="checkbox"/> General Education Elective Courses <input type="checkbox"/> Basic Courses in General Discipline <input type="checkbox"/> Professional Compulsory Courses <input type="checkbox"/> Professional Elective Courses <input type="checkbox"/> Others		
Course Objectives	<p>This course is designed to provide students with an introduction to (public) international law focused on basic theory of contemporary international legal system including the major selected topics. It intends to use English as teaching language in the hope that students are able to learn international law on the basis of original legal materials, particularly the cases of International Court of Justice (ICJ) or WTO while practicing in English by course discussion and moot court, which will be of significance for students to practice international laws after graduation. Additional course-specific objectives include the following: 1) to develop students' ability to identify and apply international legal principles relevant to current issues and events in global politics; 2) to develop skills in analytical reasoning and 3) to improve students' ability to write with precision, clarity, and logical coherence.</p>		
Course Description	<p>International law (IL) is traditionally defined as the rules, principles, and norms which govern the interactions among states, but today it consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical. Some scholars of international relations view international law as a meaningful tool for providing order to world politics and for minimizing global conflict. Others of international relations dismiss international law as insignificant or regard it as international comity. According to these scholars, state interests-- not internationally agreed-upon rules, principles, and norms--guide interaction among states. However, many international jurists believe that international law is really a law and play very important role in international community. In this course, we will explore the concept of international law, the purposes, functions and resources of international law, the fundamental principles of international law, sovereignty and non-intervention, and whether these principles</p>		

have been eroded in recent decades as a result of growing support for new international legal norms, including human rights. We will also discuss the participants and the objects of international law, jurisdiction and state immunity, state responsibility, Law of International Contacts, (International Treaties and Laws of diplomatic relation), the settlement international disputes by peaceful means and Use of Force.

The course is organized into 10 topics, focusing on jurisprudence of international law. These topics can be categorized into 6 parts. The first part of the course offers a general introduction to international law, asking whether and to what extent international law is “really law,” examining international-relations approaches to IL in political science, general principles of international law, including the key actors, the creation and sources of international law, the interpretation of international law by courts and tribunals, the problem of enforcement, and the relationship between international and national (or “municipal” law). The second part focuses on laws on actors or subjects of international legal relations, including those of states, international governmental organizations, quasi-state, NGO and transnational corporations. In the third part, we examine legal system on individuals. The fourth part will concern laws on objects of international legal relations, containing laws on territory, law of the seas. In the fifth part laws on contact among states or international contact laws, including law of treaties and law of diplomatic relations. the 6th part includes the legal system on international dispute settlement, containing international judicial system (international courts) and arbitration system, and the laws of war. As for other issues, such as international environmental law, international economic law will be surveyed briefly, which will be mainly learned by students themselves.

For each topic, we will discuss one typical case.

Course Requirements:

Pre-requisite: International Relations

1. Each student shall register online to access into Fudan *eLearning* for references of teaching materials (PPT) and discussion out of classroom.
2. Registered student shall read textbook and cases before class in accordance with course schedule.
The summary of cases are assigned for reading, but it is strongly recommend to check website of ICJ or WTO for getting more information on each case
ICJ: <http://www.icj-cij.org/docket/index.php?p1=3>
WTO: http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm
3. Registered student must take final examination (open-book one, 60%), which will be assessed with

attendance (10%), completion of assignments (10%) and class performances including practices of moot court (20%).

Teaching Methods:

The methods of teaching include interpretation, discussion, questions and answers by campus network. The students are encouraged to make their presentations and to exchange views in the classroom. It is arranged for several presentations on typical cases by the students in groups.

Instructor's Academic Background:

Prof. Ma Zhongfa is a professor of international law at Law School, Fudan University. He was a visiting scholar at Max-plank Innovation and Competition Law Institute (June to August, 2018), Columbia University Law School (August 2013-August 2014) and Korea University Law School (August 2011-August 2012). His main academic interests are public international law, international environmental law and intellectual property law in international trade (focusing on technology transfer legal regime). His representative works include Theoretical Studies and Practical Research on the Legal System of International Technology Transfer, Beijing: Law Press China, 2007; Case Studies on US Anti-dumping Investigation against Enterprises from China, Shanghai: Shanghai People's Publishing House, 2009; Studies on Legal System of Technology Transfer and Constructing Shanghai to be an Innovative City, Beijing: Intellectual Property Press, 2012; Studies on the International Legal Regime of Technology Transfer for Combating Climate Change, Beijing: Law Press China, 2014; Studies on the Legal Regime of Clean Energy Technology Transfer, Beijing: Law Press China, 2018 and Studies on the Legal Regime of Civil Utilization of Nuclear Energy in China, Beijing: Law Press China, 2018, Studies on Legal Regime of Technology Transfer for Combating Climate Change: in aspect of private sectors, Shanghai: Shanghai People's Publishing House, 2019; and Law on Technology Transfer, Beijing: China Renmin University Press, 2021; Translating three great monographs of Hugo Grotius'----The Freedom of Seas, Commentary on the Law of Prize and Booty, and the Law of War and Peace---from English into Chinese respectively in 2005, 2006 and 2022, Shanghai: Shanghai People's Publishing House. He has published more than 100 academic papers in Journal of Technology Transfer (USA, English version), Singapore Economic Review, Journal of East Asia and International Law (South Korea, English version), Journal of Intellectual Property Rights (India, English version), Journal of Comparative law, Studies on Law and Business, Fudan Humanities and Social Sciences (English Version), Intellectual Property, International Reviews and other journals.

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Course Schedule

Topic 1: Introduction and Nature of International Law (1)

Historical development of International law

What does International law contain?

Nature of International law

Definition of international law: is International law really law?

Structure of International

Reading materials:

1. "INTERNATIONAL LAW: 100 WAYS IT SHAPES OUR LIVES"
2. "INTERNATIONAL LAW: 50 ways it harms our lives"
3. Introduction of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
4. Lotus Case (1927)

Topic 1: Introduction and Nature of International Law (2)

General principles of international law and *ius cogens*

General principles of United Nations Charter

What's *ius cogens*?

What's *erga omnes*?

Case analysis (2): *Genocide case*

Bosnia-Herzegovina v. Serbia/Montenegro (2007, ICJ)

International law and domestic law

What's the principle under the WTO Agreement in respect of International law and domestic law?

What's the constitutional status of international law in US?

What's the constitutional status of international law in China?

Case analysis (3) *China-Measures Affecting Imports of Automobile Parts*

US v. China (2008, WTO)

Reading materials:

1. Introductory Notes, Preamble and Chapters 1 & 2 of UN Charter,
2. "Other Major International Courts" in Chapter IX in Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
3. Cases on Bosnia-Herzegovina v. Serbia/Montenegro (2007, ICJ), and *China-Measures Affecting Imports of Automobile Parts* US v. China (2008, WTO)

Topic 2 Sources of international law

Natural law vs. positive law

Introduction: Applicable law for dispute settlement by ICJ

Modern sources of international law:

Article 38 of the Statute of International Court of Justice, including treaties, custom, general principle of law, judicial decisions and the teachings of publicists, other sources

Concerning the following questions:

How is international law made?

Whose consent is needed, and how is consent given?

How are international agreements made, interpreted, applied, terminated?

What new forms of law-making are emerging in the 21st century?

Examples of the sources of law relevant in field of human rights, climate change addressing, arms control and non-proliferation, and environmental protection.

Case analysis: *North Sea Continental Shelf Case*

Germany v. Denmark and Netherlands (1969, ICJ)

Reading materials:

1. Chapter I Sources of international law of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.

2. The Slides discussed in the class

3. Case Reading : *North Sea Continental Shelf Case*

Germany v. Denmark and Netherlands (1969, ICJ)

Topic 3 The Participants in the international legal system

The concept of subject of international law: development of the subjects

The international system constituted

The conditions of being a state

The right of a people to self-determination

States, Organizations, and Individuals

legal doctrines govern recognition of states and governments and legal consequences from recognition

--analyzing post-Soviet and post-Yugoslav developments (including the issue on Kosovo), the Palestinian situation, South Sudan, and Taiwan.

The status, rights, and obligations which actors possess under international law

Case analysis *Western Sahara* (Advisory Opinion of 16 October 1975)

Reading materials:

1. Chapter VII International Legal Personality of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.

2. The Slides discussed in the class

3. Case Reading: *Western Sahara* (Advisory Opinion of 16 October 1975)

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Topic 4: Jurisdiction and state immunity

Criminal jurisdiction of national court

Territorial principle

Nationality principle

Protective principle

Universality principle

State Immunity and exceptions

extraterritorial application of legislation, restrictions on transactions

Immunity questions include

--suits against foreign states in relation to their commercial activities and against state sponsors of terrorism,

--issues of diplomatic and head-of-state immunity

--the immunities of foreign officials.

Case analysis: Case Concerning the Arrest Warrant of 11 April 2000,

Democratic Republic of the Congo v. Belgium (2002, ICJ)

the U.S. Supreme Court in *Samantar v. Yousuf* (2010)

Reading materials:

1. Chapter IV Jurisdiction of the textbook: Valerie Epps, *International Law* (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class
3. Case Concerning the Arrest Warrant of 11 April 2000, Democratic Republic of the Congo v. Belgium (2002, ICJ)

Topic 5 State responsibility

Definition of Responsibility of States

The preliminary rules and secondary rules in respect of state responsibility

International wrongful act

The consequences of an international wrongful act

Draft of Responsibility of States for Internationally Wrongful Acts 2001

http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf

Case analysis : *the Corfu Channel Case* United Kingdom v. Albania (1949 ICJ)

Reading materials:

1. Chapter 8 Rules on State Responsibility of Damrosch & Murphy, *International Law: Cases and Materials* (6th ed. 2013)

2. The Slides discussed in the class
3. Draft of Responsibility of States for Internationally Wrongful Acts 2001
4. Case reading: *the Corfu Channel Case* United Kingdom v. Albania (1949 ICJ)

Topic 6 Individual in international law and Human Rights

The status of individual in international law

The law of nationality

The legal status of alien

Asylum and extradition

International Law of Human Rights

- International Legal Systems and the Development of Human Rights law
- The United National Systems and the modern human rights regime
- The International Bill of Rights: The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESC)
- Regional Protection of Human Rights: European Court of Human Rights, American Court of Human Rights

* Case analysis (7) *Nottebohm Case* Liechtenstein v. Guatemala (1955, ICJ) ;

Case discussion: *Soering Case* (Soering v. UK, ECt HR, 1989)

Reading materials:

1. Chapter VIII of the textbook: Valerie Epps, *International Law* (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class
3. Case reading : *Nottebohm Case* Liechtenstein v. Guatemala (1955, ICJ) ;
Soering Case (Soering v. UK, ECt HR, 1989)

Case Analysis and Presentations

Topic 7 Objects of International Law: Territory in international law, the law of sea, the law of air space and the law of outer space

Part I: Territorial Sovereignty

- Concept of a state's territory
- International legal principles pertaining to the modes of acquisition
- Critical date and intertemporal law
- *Island of Palmas Case*, *Legal Status of Eastern Greenland case*, *Temple of Prea Vihear*
- Principle of *Uti Possidetis*

Reading materials:

1. Chapter 2 Title to Territory of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class
3. Case Reading: Island of Palmas Case, Legal Status of Eastern Greenland case

Part II: Law of the Sea

- UN Convention on the Law of the Sea
- Maritime zones: Territorial Sea, Contiguous Zone, Continental Shelf, Exclusive Economic Zone
- Maritime delimitation issues
- The regime of the High Seas: freedom of the High Seas, Jurisdiction over ships, regulation of fisheries

Part III: International Environmental Law

* Case discussion: Pedra Blanca (Malaysia/Singapore, 2008, ICJ)

Reading materials:

1. Chapter V The Law of the Sea and Chapter VI International Environmental Law of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class
3. Case Reading: Pedra Blanca (Malaysia/Singapore, 2008, ICJ)

Topic 8 Law of International Contacts: International Treaties and Laws of diplomatic relation

- The nature and role of treaties in the Vienna Convention on the Law of Treaties (1969)
- Formalities for the conclusion of treaties
- Reservations to treaties: definition, legal effect, reservation to human rights treaties (The Genocide Convention case, ICJ 1951)
- General principles of Interpretation
- Invalidity, Termination, and Suspension of Treaties
- The Scope of legal obligation: Pacta Sunt Servanda, Rights and Duties of Third States
- * Case discussion: Temple of Preah Vihear (Cambodia v Thailand, 1962, ICJ) concerning the interpretative approach of the ICJ;
- The Vienna Convention on Diplomatic Relations (1961)
- General legal aspects of diplomatic relations
- Classification of personnel, inviolability of mission, privileges and immunities
- The Vienna Convention on Consular Relations (1963)

* Case discussion: La Grand Case (Germany v. US, 2001, ICJ; Case Concerning United States Diplomatic and Consular Staff in Tehran (US v. Iran, 1980, ICJ)

Reading materials:

1. Chapter III The Law of Treaties of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class
3. La Grand Case (Germany v. US, 2001, ICJ; Case Concerning United States Diplomatic and Consular Staff in Tehran (US v. Iran, 1980, ICJ)

Topic 9 : The Settlement International Disputes by Peaceful Means

Definition and classification of international disputes

Diplomatic Methods of International Dispute Settlement

Inter-state Courts and Tribunals

International Institutions and Dispute Settlement

Introduction of **International Criminal Law**

The origin (the Nuremberg and Tokyo trials after World War II) **and the development** (International Criminal Tribunals for Yugoslavia and Rwanda---Ad Hoc ones---- and the International Criminal Court) **of** international criminal tribunals.

Reading materials:

1. Chapter IX The Peaceful Settlement of Disputes the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class

Topic 10: Use of Force

The conditions for states to lawfully use force?

--self-defense

---collective uses of force authorized by the United Nations and regional organizations

--intervention for humanitarian and other purposes under an evolving concept of "responsibility to protect."

--the law of war (including the international humanitarian law that protects noncombatants and regulates methods of warfare.

--specific cases.

Reading materials:

1. Chapter X The use of Force including War of the textbook: Valerie Epps, International Law (fifth edition), Carolina Academic Press, 2009/2013.
2. The Slides discussed in the class

Discussion and Presentations

Q&A and examination

The design of class discussion or exercise, practice, experience and so on:

Lectures, discussion, presentations and exam

Grading & Evaluation:

Registered students must take the final examination (open-book one, 70%), which will be assessed with class performances including short essays and exercises (30%).

Teaching Materials & References (Including Author, Title, Publisher and Publishing time):

See above