

PUBLIC INTERNATIONAL LAW

Law 330 - FALL 2009

Tuesday, Thursday 1:30-3:00, RM 158

Ted L. McDorman, RM 221

COURSE DESCRIPTION

This course is designed as a basic course to introduce students to Public International Law. Public International Law is the legal system that States have created to provide order in state-to-state relationships. Public International Law involves disputes between Canada and the United States as opposed to disputes involving individuals from Canada in the United States.

This course will deal with the fundamental aspects of Public International Law including its sources, the interaction of Public International Law and Canadian domestic law, and international legal dispute resolution. The goal of the course is to provide students with some understanding of the Public International Law that they may meet while practising law in Canada.

COURSE STRUCTURE/EVALUATION/MATERIALS

The course will be lecture driven.

The evaluation involves a final exam (open book) scheduled for the December exam period. All students will be required to write the full exam.

Students have an option to complete a modest research paper (20 pages) for 35% of the final grade with the final exam worth 65%. The research paper must be:

- (a) agreed upon between the Faculty member and student on/by 2 October; and
- (b) the paper handed in on/by 27 November.

These dates, subject to direction from the Associate Dean, are not negotiable.

The primary course materials are McDorman, ed. *Public International Law*, Volumes I and II available from the Course Distribution Center. **These are new and revised materials for 2009.** Volume II will be available later in the term

RELATIONSHIP OF MATERIALS/LECTURES

It is important to recognize the relationship between the materials and the lectures in this course. Most of the time, the lectures are extensions from the materials rather than directly tied to the materials. The goal is to provide an understanding of the concepts and this is best accomplished by the combination of materials and lectures.

Section One - Introduction to International Law

- Wallace, *International Law* (4th ed., 2002) 1-6 [CB I 1]
- Schachter, *International Law in Theory and Practice* (1991) 5-15 [CB I 5]
- Brierly, *The Law of Nations* (1963), 54-56, 68-78 [CB I 14]
- Lori Fisler Damrosch, “Enforcing International Law Through Non-Forcible Measures”, (1997) 19-24 [CB I 19]
- Johnston, *Consent and Commitment in the World Community* (1997) 82-95 [CB I 23]

Section Two - Subjects of International Law

A. Introduction

Brownlie, *General Course on Public International Law* (1995) 51-52 [CB I 33]

B. States and Statehood

1. Montevideo Criteria

Wallace, *International Law* (1997) 60-64 [CB I 34]

2. Recognition

- Wallace, *International Law* (4th ed., 2002) 75-81 [CB I 37]
- Canadian Statement on Recognition (1988) [CB I 40]

3. Sovereign Equality of States

Cassese, *International Law* (2001), pp. 88-91 [CB I 43]

C. Federal States

- Williams and De Mestral, *An Introduction to International Law* (1987) 53-54 [CB I 46]
- Van Ert, *Using International Law in Canadian Courts* (2nd ed.) (2008) 99-102, 116-117 [CB I 47]

D. Peoples Right of Self-Determination

- *Reference Re Succession of Quebec*, 1998 SCC [CB I 50]
- *Construction of the Wall in the Occupied Palestinian Territory* (ICJ, 2004) [CB I 60]

E. Indigenous Peoples

Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 105-108 [CB I 65]

F. International Organizations

1. Legal Personality

Currie, *Public International Law* (2001) 56-61 [CB I 67]

2. Authority/Importance

Sands, *Principles of International Environmental Law* (2003) 76-78, 108-109 [CB I 71]

G. Non-Governmental Organizations

Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 96-100 [CB I 73]

H. Corporations and Individuals

1. As International Legal Persons

- Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 100-104 [CB I 75]
- McCorquodale in Evans, ed. *International Law* (2006), 317-319 [CB I 78]
- Office of UN HC for Human Rights, "Human Rights Bodies – Complaint Procedures" [CB I 80]
- *Ahani v. Canada* (Ont CA, 2002, SCC appeal dismissed without reasons) [CB I 83]
- McCorquodale in Evans, ed. *International Law* (2006), 314-315 [CB I 91]
- John Currie, *Public International Law* (2008) 560-563 [CB I 92]

2. Nationality

Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 263-267 [CB I 94]

Section Three - Law Creation and Ascertainment

A. Introduction

- Currie, *Public International Law* (2001) 66-69 [CB I 97]
- Statute of the International Court of Justice (Article 38) [CB I 98]

B. Customary International Law

- Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 39-46 [CB I 100]
- *North Sea Continental Shelf Cases*, ICJ (1969) [CB I 106]
- Triggs, *International Law: Contemporary Principles and Practices* (2006) 59-62, 74 [CB I 114]
- McDorman, "Canada's Aggressive Fisheries Actions" (1995) 7-11 [CB I 117]

C. International Treaties

1. Introduction (Types and Numbers)

Schachter, *International Law in Theory and Practice* (1991) 74-77, 80-81 [CB I 119]

2. Source of Law

- Vienna Convention on the Law of Treaties, (Arts 2,26) [CB I Annex]
- Shaw, *International Law* (6th ed., 2008) 903-907 [CB I 123]

3. Relationship with Customary International Law

Thirlway, “The Sources of International Law,” in Evans, ed. *International Law* (2006) 131-134 [CB I 126]

4. Treaty-Making

i) General

Fitzmaurice, “The Practical Working of the Law of Treaties,” in Evans, ed. *International Law* (2006) 191-193 [CB I 127]

ii) In Canada

Van Ert, *Using International Law in Canadian Courts* (2008) 92-95, 97-98 [CB I 130]

iii) Federal State Clauses

Vienna Convention on the Law of Treaties, (Arts. 27 and 29) [CB I Annex]

5. Law Regarding Treaties: Selected Aspects

i) Reservations

Aust, *Modern Treaty Law and Practice* (2nd ed., 2007) 131-134 [CB I 132]

ii) Interpretation

- McDorman, et al. *The Marine Environment and the Caracas Convention* (1981) 85-88 [CB I 135]
- OPTIONAL READING: McDorman, “Access to Information Under OSPAR Convention” (2004) [CB I 138]

iii) Invalidity of Treaties/Termination of Treaties

- Triggs, *International Law: Contemporary Principles and Practices* (2006) 537-538 [CB 143]
- Fitzmaurice, “The Practical Working of the Law of Treaties,” in Evans, ed. *International Law* (2006) 209-212 [CB I 145]
- Aust, *Modern Treaty Law and Practice* (2nd ed., 2007) 319-320 [CB I 147]

iv) Treaties and Third Parties

v) Successive (Conflicting) Treaties

- Vienna Convention on the Law of Treaties, (Arts 30, 40-41, 59) [CB I Annex]
- Aust, *Modern Treaty Law and Practice* (2nd., 2007) 215-216, 218, 227-229 [CB I 149]

vi) State Succession to Treaties

Aust, *Handbook of International Law* (2005) 393-397 [CB I 151]

D. Other Sources

1. General Principles, Judicial Decisions, Publicists

- Lowe, *International Law* (2007) 87-88 [CB I 154]
- Birnie and Boyle, *International Law and the Environment* (2002) 20-21 [CB I 155]

2. UN General Assembly Resolutions

Thirlway, “The Sources of International Law,” in Evans, ed. *International Law* (2006) 136-137 [CB I 156]

3. UN Security Council Resolutions

- Malanczuk, *Akehurst’s Modern Introduction to International Law* (7th rev. ed., 1997), 373-374 [CB I 157]
- Shaw, *International Law* (6th ed., 2008) 1268-1271 [CB I 158]
- U.N. Security Council Resolution 1441 (2002) [CB I 160]

4. Acts of Other International Organizations

Sands, *Principles of International Environmental Law* (2nd ed., 2003) 140-143 [CB I 161]

5. “Soft Law”

Birnie and Boyle, *International Law and the Environment* (2nd ed. 2002) 24-27 [CB I 163]

Section Four - Application of International Law in Canada

A. Introduction

- Higgins, “International Law and Avoidance, Containment and Resolution of Disputes” (1991) 265-266, 269-272 and 275-280 [CB I 167]
- Van Ert, Using *International Law in Canadian Courts* (2nd ed., 2008) 3-11 [CB I 173]

B. Treaties in Canada

Labour Conventions Case (Privy Council, 1936) [CB I 178]

C. Customary International Law in Canada

R v. Hape (SCC 2007) [CB I 179]

D. Beyond the Basics

- Currie, *Public International Law* (2nd ed., 2008) 255-256 [CB I 187]
- *Baker v. Minister of Citizenship*, (SCC, 1998) [CB I 188]
- *Spraytech v. Town of Hudson* (SCC, 2001) [CB I 191]
- Van Ert, *Using International Law in Canadian Courts* (2nd ed., 2008) 79-80, 91 [CB I 194]
- *Abdelrazik v. Minister of Foreign Affairs*, Federal Court June 2009 [CB I 196]
- Van Ert, *Using International Law in Canadian Courts* (2nd ed., 2008) 325-326, 332-333 [CB I 199]

Section Five - Jurisdiction

A. The Nature of Jurisdiction

B. Over Land and Sea

1. Land and Islands

2. Ocean Areas

3. Canada

C. Ships, Aircraft and Space Objects

D. Over Individuals

1. Overview

2. Enforcement

3. Issues Respecting Prescription

4. Canadian Cases/Examples

Section Six - State Immunities

A. Sovereign Immunity

B. Immunity of Heads of State, Foreign Ministers

C. Diplomatic Immunity

Section Seven - International Dispute Resolution

A. Introduction

B. International Court of Justice

1. History, Composition, Organization

2. Jurisdiction

i) Article 36(1)

ii) Article 36(2) – Compulsory Jurisdiction

iii) Contested Jurisdiction

iv) Article 65 - Advisory Opinions

3. Technical Issues (Objections, Interim Measures, Intervention)

4. Remedies

5. Enforcement of Judgments

6. Cases and Effectiveness

7. The Consular Relations Cases

Section Eight - A Selected Issue: The Use of Force

A. Basics: Non-Intervention and Prohibition on Use of Force

B. Use of Force

1. The UN Structure

2. Self-Defence: Traditional View

3. Self-Defence: Contentious Views

C. Humanitarian Intervention/Responsibility to Protect