# PS 343: POLITICS OF International Law Winter 2022

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A Moral Compass

This course explores how the international legal system works from a legal and political perspective, shaping international relations today. At its core international law is an idea about how to use the tools of law and legal systems to facilitate peaceful and mutually beneficial relations in the world. The course introduces some aspects of the method and substance of international law, such as concepts like reservations, customary international law, general principles of international law, jus cogens, principles of jurisdiction, immunity, extradition etc. But this is not a law course. We cover legal subjects to understand how politics and law interact in shaping international relations today. We read treaties, and use case studies to see how international law is made, why national governments and national courts at times contest international law, and why international law can be difficult to enforce. Substantively, the course examines international laws related to the oceans, the environment, and war. We also explore the legal and political issues surrounding contemporary flashpoints in international relations such as China’s claims to the South China Seas, climate change and how civil conflict is fueling the poaching of elephants. The last two weeks of the course will be chosen by the class, and could include trade, human rights, refugees, race, international criminal law, gender and international, China’s new embrace of international law or an international legal responsibility help stop mass atrocities.

*Learning objectives:*

* Become proficient in understanding core features of international law such as sources of international law, jurisdiction, when states are and are not bound to international law, and international law enforcement mechanisms.
* Gain experience reading legal texts and legal rulings, learning that one must look beyond the words to understand what the law means in practice.
* Learn the idea of international “law as a process” that unfolds in law’s making, application, and interpretation. Learn how the content and meaning of international law evolves in conjunction with the larger international context.
* Become comfortable with ambiguity. Legal practice is as much art as it is science. Like all law, international law is contested, evolving, meaningful and constraining. The system does not fit together as a coherent whole, and it rarely resolves like an episode of *Law and Order*.

## Assigned Readings:

Each session includes many short readings that provide the raw material that we will analyze in class. In this sense, the readings are more like law school than a regular polisci course. You are expected to have done the readings before class. Please bring legal cases/briefs to the class session where they will be discussed. Students should consult the weekly Canvas page for reading questions, guidelines, updates and links to current events.

*To purchase:*

1. **Nicole Scicluna *The Politics of International Law* Oxford University Press, 2021**- This book may not be available in the US. The syllabus includes alternatives should this book not be available.

2. **Case Studies** (purchased on line at <http://casestudies.isd.georgetown.edu/#_ga=1.187333740.519308017.1458305449>.) Please buy all at once.

* Case 176 - The Negotiations Leading to The 1987 Montreal Protocol On Substances That Deplete The Ozone Layer (Goodman)
* Case 181 - The Ivory Trade (Mingst) – Part B has been missing in the past. I have posted Part B on Canvas.
* Case 153 - The United States And The Law Of The Sea Treaty (Steven/Digeser)
* Case 134- “Establishing an International Criminal Court: The Emergence of a New Global Authority” (Leonard)

**Online Readings-** Most of the readings, including all readings listed on the syllabus with a \*, are available on Canvas. These readings include materials from a no longer published text book (*Slomanson’s Fundamentals of International Law)* and the not-very user friendly [on-line companion](https://www.tjsl.edu/slomansonb/txtcsesite.html). The on-line readings are most easily accessed by consulting the weekly Canvas page. There is also a file of documents for each week, which includes material assigned in previous years.

## Course Assignments:

The three types of assignments have an intentional overlap.

1. **Attendance, Participation + briefing book** (30%). This grade includes attendance, class participation and your preparations for cases discussion and simulations. The **briefing book,**which includes country briefing notes and case briefs, is a concrete manifestation of your participation as the class proceeds. Students asked me to make briefing book assignments due in real time. We will only grade the bundled final submission, but we will check that weekly submissions are submitted on time. **The bundled briefing book is due March 6. Canvas includes a detailed overview of the briefing book.**
2. **Three Quizzes** (30%): In the past, the course had a cumulative final. I have substituted three quizzes interspersed in the term. Each week’s Canvas page lists the material that might appear on the quiz. The quiz study guide assembles the material located on the weekly course pages. The quiz draws from these questions, which include I.D.s and short answers. I am trying something new: administering the quiz on line. The quiz is closed book. You will have 25 minutes to complete the quiz, thus you should study in advance. **Quiz dates:** **Jan 28, February 11, March 6.**
3. **Take-Home Final Exam** (40%) I will ask you to write on 3 assigned essay questions. Questions require you to draw on material covered during the entire course, comparing across weeks. **Submitted on Canvas and due at the time of the WCAS scheduled class final**

### ***Managing the workload to maximize learning and to do well in the course***

I anticipate that for every hour we meet as a class, you will need approximately two or three hours to prepare outside of class, with additional time to study for quizzes and to prepare briefs. Therefore, you should expect to spend about 6-9 hours per week on assignments for this class, roughly broken down as follows: 4-5 hours for reading, ~2-3 hours preparing briefs and taking notes for the quizzes, plus the time spent on studying for quizzes. In order to complete your readings in the suggested time frame, you will need to read strategically and efficiently, searching for main ideas and arguments rather than focusing on details. If you master the quiz concepts as we go, you will develop the deeper platform you need to understand the interaction between law and politics as the course proceeds. If you stay on top of the material, the first half of the course will fit with the second half, allowing a much deeper understanding of the political questions we examine. This deeper understanding will help you do well on the final exam.

In other words, the formula for success is straight forward:

1) Look at weekly Canvas page as a guide to the reading and course material. Read the assigned reading and do the briefing and case book assignment in advance of the class session. Sometimes there is an assigned reading for section. Bring questions to class & section.

2) Download the ppt outline before class. Take handwritten notes on the printout. Handwritten notes enhance learning (see [this article](http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/)).

3) Write out answers to each of the ‘quiz study guide’ questions during the week in which the material is covered. If in doubt, ask questions.

4) If you are not understanding something, ask a question and come to office hours. Professor Alter is also a resource for you.

5) Make sure all of the written work is your own.

### ***See the policies page on Canvas. In sum:***

* *Ours is a no-electronics classroom*: Laptops, tablets and cell phones may be consulted for discussions about readings, but should otherwise be stowed.
* *Weekly Assignments:* This paper syllabus provides a course overview, and I do expect to adhere to the schedule as written. But please consult the weekly Canvas page before doing the readings.
* *All assignments must be completed* in order to pass the class.
* *Closed book quizzes.* The quizzes are closed-book and administered on line. You will have only 25 minutes, so you need to study in advance. You should not be cutting and pasting answers. A late penalty of one third of a grade per day will apply, beginning immediately after the due time has passed.
* *University rules on academic integrity will be strictly enforced*. Students are responsible for reading and understanding Northwestern’s Academic Integrity policies. You are welcome to study in groups, but I expect all quizzes, the briefing book, and the final to be 100% of your own efforts.
* *Free speech confidentiality rules-* Opinions, viewpoints and writings shared in this class–by students and faculty–must be protected. I will not put the blanket "[Vegas rules](https://www.lucidmeetings.com/glossary/vegas-rules)" cone of silence on the course, but any idea that is shared must not be personally attributed to anyone. Power point handouts may also not be shared.
* *No recording or sharing of recordings or class materials:*Official NU Policy applies to this course. You may share the syllabi, but not the power point summaries.

# PART I: ATTRIBUTES OF THE INTERNATIONAL LEGAL SYSTEM

## Week 1: The sources of international law (Jan 3-6)

At the national level, legislatures make law and the body of laws is usually recorded as legislative statutes. There is no international legislature, and for this reason the question of who is making international law is much more complicated.

### A: What is international law? Introduction to the topic and the course

*Assigned readings:*

1. Scicluna *The Politics of International Law* Chapter 1 ([on line available here](https://oxforduniversitypress.app.box.com/v/he-9780198791201))
2. \*W.H. Auden Poem “What is Law”
3. [International Law: The 100 ways it shapes our lives](https://www.asil.org/resources/100Ways) (\*PDF is also downloaded on Canvas)

Sign up for you panel groups. Complete the “Tell me about yourself” quiz

*Optional Extra*: Sage Video “International Law and International Politics”

### B: The sources of international law

*Assigned readings:*

1. Scicluna Chapter 3 on sources of IL (if available- p. 48-61,64-97). Otherwise \*Slomanson *Fundamental Perspectives* 1.2 sources of int’l law.
2. Slomanson Downloads Chapter 1 1) [Paquete Habana Decision;](http://www.tjsl.edu/slomansonb/PaqHab.html) 2) [Flores. V. Peru Southern Copper](http://www.tjsl.edu/slomansonb/Flores.html) (these are on line links). I have already briefed Paquete Habana. You can brief Flores to start your briefing book assignment.
3. \*Slomanson Fundamental Perspectives Chapter 7 on Treaties p. 351-377.

C. Section: Why these many sources of international law?  
In section we will discuss the history and future of IL. Please review the briefing book assignment before section, and read the article below.

Read: Alter “[The Future of International Law](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3015177)”  in *The New Global Agenda*,  Rowman & Littlefield, 25-42 (Diana Ayton-Shenker ed., 2018).

**Briefing book assignment 1: Country Background** **(January 9):** Submit your briefing page about your country that discusses its population, politics, and economic interests. The [CIA World Factbook](https://www.cia.gov/the-world-factbook/) is a good place to start. Note that the next briefing assignment is due in 3 days, so you might do these two together.

## Week 2: The Making of International Law (Jan 11-13)

International law often represents an internationalization of domestic law and practice. International law is also often replicated across multiple international and domestic legal documents. These multiple sources create multiple anchors for international law, and these multiple anchors can make the question of abrogating international law (discussed next week) very complicated.

### A: States making international law (Environment)- Case note for this class

*Most straightforward pathway to making international law:* The Montreal Protocol is the ideal of multilateral politics. Countries around the world came together to craft an environmental law to address the global concern about a hole in the ozone layer. The Montreal Protocol is the most successful international environmental treaty in existence. In addition to understanding this lawmaking, we also want to figure out why this case is so exceptional.

**Prepare for Simulation.  Complete your briefing book assignment before class Jan 11.**

**Briefing book assignment 2 (Need for class Jan 11; Submit by Jan 12):** Write a 1-2 page brief that answers the following:  What are your country's interests with respect to CFCs and the Ozone hole? Did your sign and support the Montreal Protocol treaty? Why do you think it has adopted the position it did?  Should your country now change its mind and sign or unsign the Montreal Protocol?  Does your country comply with the Montreal Protocol? Should your country sign but violate the Montreal Protocol?

*Assigned Reading:*

1. \***On Canvas-Read the guides before you read the case-study:**Montreal Protocol case preparation note + some suggestions on how to prepare an excellent plenary presentation-- keeping in mind that the media covers plenary speeches.

2. Pew Case Study: Goodman, Allan “The Negotiations Leading to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer” Pew Case Studies in International Affairs, #176 (Purchase on line [here (Links to an external site.)](http://casestudies.isd.georgetown.edu/products/the-negotiations-leading-to-the-1987-montreal-protocol-on-substances-that-deplete-the-ozonelayer)).

3. Scicluna *The Politics of International Law* Chapter 5 on why comply p. 91-104 (there is no substitute for this reading)

Extras: There are readings that explain why the Montreal protocol has been so successful.

B: Non-Treaty International Law (Human Rights)

*More typical pathway to making international law:* We will use the *Filartiga ruling* to think again about customary international law. We will also see how customary international law regarding torture became hard law, and also US domestic law (e.g. the Torture Victims Protection Act). This means that IL regarding torture started as soft IL, followed by customary IL, followed by treaty-based IL, followed by domestic law.

*Assigned Reading:*

1. \*[Filártiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980)](https://canvas.northwestern.edu/courses/107595/files/7715395/download?wrap=1" \o "2-Filartiga.pdf)  Filartiga is based on customary IL, as was Paquete Habana.  What does this tell us about how IL is made?

2. The New Terrain of International Law - Rape as a War Crime case (p 319-323). What does this case tell us about how international law is made?

3. \*Slomanson on Alien Tort Statute, Torture Victims Protection Act & Genocide Accountability Act 637-642.  These are statutes passed by the US Congress.  What does this tell us about how IL is made?

4. Scicluna Chapter 4, on IOs, states and global governance (you may end on p. 86, skipping the discussion of the constitutionalization of international law.) (there is no substitute for this reading)

C: Determining whether and how a particular state is bound by international law

*You will need an electronic device for this section, as we will do this assignment together*

Compare the different types of country obligations under international law. What do the torture and genocide conventions actually require of those countries that ratify them?  Later, when we study the ICC, I will ask you how the legal prohibition against genocide, and the legal responsibility to do something about genocide, has changed over time.

[1. Look at CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading  
Treatment or Punishment](http://www.hrweb.org/legal/cat.html). Figure out if your panel country signed this convention, what its obligations are under the convention, and if there are any reservations to the convention.

2. Slomanson on the Genocide Convention: p. 568-572;  [Genocide Convention (Links to an external site.)](http://www.preventgenocide.org/law/convention/text.htm) (esp. Articles I, V, VI). [Reservations to Genocide Convention (Links to an external site.)](http://www.preventgenocide.org/law/convention/reservations/)

**Briefing book 3: Torture & Genocide Conventions** (Jan 16): Lets practice figuring out your country’s obligations under IL. Prepare a brief for a politician on your country’s position regarding the Genocide and Torture conventions. Identify when your country signed each convention, what your country’s obligations are under the treaties, and if there are any reservations, and any recent statements and positions in your country concerning the conventions.  Use citations to indicate the statements. Canvas has a link that might help.

#### Extras: [This excerpt of Anthea' Robert's book Is International Law International](https://canvas.northwestern.edu/courses/161621/files/12695888/download?wrap=1) identifies the different way that international law is taught in China, based on an analysis of textbooks.

***Week 3: How jurisdiction shapes the influence of international law (Jan 18-20)***

This week and next we examine how international legal obligations are enforced. We begin with the question of when adjudicators might claim jurisdiction of a case, and thus when states need to worry about being held legally accountable for violating international law. The international legal cases, along with the rape case study from last week, help us understand how the world is changing because of the creation of international courts. The video on Canvas links the international and domestic jurisdiction conversations.

A: Overview of the question of jurisdiction + International Court perspective

First watch the video on Canvas which connects the international and domestic jurisdiction conversations. From the international court perspective, the following questions about jurisdiction matter: Does the international court have jurisdiction to hear the complaint? Does the plaintiff have standing to raise the case?  
Is international law binding for the country and the case? Only if all of the answers are “yes” will the court proceed to the merits phase of the case.

*Assigned Reading:*

1. Scicluna *The Politics of International Law* p. 113-116 (judicialization of IR) (there is no substitute)

2. \*Slomanson Chapter 5 on Jurisdiction p 402-9, including *Norwegian Loans*, France v Norway, Judgment, Jurisdiction, [1957]

3. \*Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia) 2008

4. \*From: *The New Terrain:* Bahrain-Qatar case study (p. 172-178) [No brief for this case]

5. Sicluna *The Politics of International Law* p. 305-313 (on the ICC)

*Optional:*  \*Karen J. Alter, *The ICJ In Comparison: Understanding the ICJ’s Limited Influence*, 19 MELBOURNE JOURNAL OF INTERNATIONAL LAW 676, 678(2021).

B: The issue of jurisdiction from the domestic perspective + extradition

The domestic jurisdictional question is overviewed in the Slomanson reading.  These principles were made through legal practice. The Lotus ruling is frequently cited as a source. Extradition is how states gain access to people over whom they have jurisdiction.

*Assigned Reading:*

1. \*Slomanson Chapter 5 on Jurisdiction p 239-52.   
\*Blackmer v. United States, Supreme Court of the United States 284 U.S. 421 (1932)  
The Case of the S.S. Lotus (France v. Turkey) P.C.I.J. (ser. A) No. 10 (1927) (in the Slomanson reading)

2,\*Alter, K. J., Helfer, L. R., & Hafner Burton, E. (2019). Theorizing the Judicialization of International Relations. International Studies Quarterly, 63(3), 449-463. Excerpted version.

3. \*Slomanson on extradition 260-276 + \* United States v. Alvarez-Machain, 504 U.S. 655 (1992)

4. \*Hong Kong extradition law reading

C: Review of the first 3 weeks

This section will review the on-line study guide for the quiz, to make sure that all of the concepts are clear. Time permitting, there will be a comparison of the Chinese Hong Kong law regarding extradition, US practice (Alvarez-Machaine) & Belarus’ recent forced landing and arrest of a dissident (read [here](https://www.nytimes.com/2021/05/23/world/europe/ryanair-belarus.html)).

**The first on-line quiz must be completed by noon January 23.**

This is an early quiz so that we can trouble-shoot if you need to adjust your study skills.

## Week 4: How international law does and does not bind states (Jan 25-27)

States are, in theory, legally bound by all treaties they sign and ratify, by customary law, and by law that operates under the universal jurisdiction (jus cogens, or treaties that have ripened into customary international law.)  But if there is no remedy for a legal breach, then one might wonder if the "binding" international law has any teeth. This week examines formal legal rules on state responsibility under international law, and how states escape responsibility through exiting agreements. This issue of state accountability must be understood in conjunction with last week’s discussion of jurisdiction, since jurisdiction goes a long way to addressing when states will actually be held accountable for their international legal violations.

A: The formal legal answer of how IL binds states: State responsibility in international law

*Assigned Reading:*

1. Scicluna *The Politics of International Law* Chapter 5 105-113 including case on The Gambia v. Myranmar. If not available, then \*Slomanson Fundamental Perspectives 2.5

2. Slomanson 2.6. 2.7E Sovereign Immunity + other types of immunity   
\*Pinochet Case: Judgment off The House Of Lords Regina V. Bartle and The Commissioner Of Police For The Metropolis And Others Ex Parte Pinochet  
\*Brief of ICJ Case Concerning The Arrest Warrant Of 11 April 2000 (Democratic Republic Of The Congo V. Belgium). Ruling from 14 February 2002 [No brief allowed, since this a brief]

3. Read the Charles Taylor case (Alter *New Terrain*: p. 267-273). Also read about the Chuckie Taylor case prosecuted in the United States (US Upholds conviction of Chuckie Taylor (Charles Taylor Jr). Read the story [here](http://www.charlestaylortrial.org/2010/07/21/united-states-court-of-appeals-judges-uphold-charles-taylor-jr-s-chuckie-taylor-convictions-and-97-years-jail-sentence/). [No brief allowed]

4. Charlie Savage “European Court Rules Against 9/11 Victims Seeking $1.6 Billion From Iran” *New York Times* March 28, 2019.Read story [here](https://www.nytimes.com/2019/03/28/us/politics/iran-september-11th-victims.html)

B: Exit and other ways to escape international legal obligations

*Assigned Reading:*

1. How to avoid legal enforcement (handout on line)
2. Helfer, Laurence. (2019). Taking Stock of Three Generations of Research on Treaty Exit: Masterclass European Society of International Law (ESIL) *Israel Law Review*, 52(1), 103-117.
3. Exit is not so easy: Read p 30-39 of the report WTO at a Cross Roads which describes what a withdrawal from the WTO would require
4. Clémençon, Raymond. “The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?” *The Journal of Environment & Development* 25, no. 1 (March 2016): 3–24. <https://doi.org/10.1177/1070496516631362>.

*Optional:* For those who want to understand the more detailed legal aspects of exit, I recommend the AJIL unbound symposium: [Treaty Exit at the Interface of Domestic and International Law](https://www.cambridge.org/core/journals/american-journal-of-international-law/ajil-unbound-by-symposium/treaty-exit-at-the-interface-of-domestic-and-international-law)

### Section: Does international law only bind weak states (a brief to prepare for this class)

In section we will draw on our cross country expertise to explore the question of whether international law primarily binds weak countries.

**Briefing book 4: Your Country and International Courts** (Jan 27): Figure out if your country has agreed to the optional or compulsory jurisdiction of any international courts (you can leave the ICC for week 7). I suggest that you begin with Alter *The New Terrain of International Law* (chapter 3) which has figures and tables that identify countries subject to the authority of international courts. You should then figure out if the court has compulsory jurisdiction, and google your country plus the court to see if you learn anything about your country’s engagement with the court. For the ICJ, learn about which countries can appear [here](https://www.icj-cij.org/en/contentious-jurisdiction). Learn about whether your country has ever appeared in front of the ICJ [here](https://www.icj-cij.org/en/cases-by-country).

## Week 5: Beyond enforcement: Compliance and international law in motion (Feb 1-3)

In most cases, the question of eliciting respect for international law is less about enforcement, and more about state capacity and will to comply. This week we focus on some hard cases involving building respect for international law. We also start to examine the ‘holes’ in the international legal system- how states escape legal accountability.

### A: Thinking about the Challenges of Eliciting Compliance (Environment Case)- Brief for this class

*Assigned Reading:*

1. \*Ivory Trade Case preparation note + Simulation notes (which are also lecture notes)
2. *Pew Case Study:* Mingst, Karen “The Ivory Trade” Pew Case Studies in International Affairs, #181. See also part B in the coursepack.
3. \*When CITES Works and Doesn’t Work
4. \*Setting the Record Straight: The N v. S view of CITES is a Myth
5. \*Do International Conventions Work? The CITES Debate Rages On

**Briefing book 5: Your Country & CITES** (February 3): Write a brief that explains your country’s position regarding the Ivory Trade today. This brief should explain why your country adopted its position, and whether or not your country generally complies with the CITES convention.

### B. The system in motion: Extraterritoriality & other unilateral forms of enforcement

*Assigned Reading:*

1. \*Putnam on extraterritoriality from Courts without Borders: Law, Politics and US Extraterritoriality (CUP, 2016) p 1-15.
2. \*Pistor *Code of Capital* p.137-143- be prepared to discuss the Eli Lilly case.
3. \*Arnold, A. (2016). The True Costs of Financial Sanctions. *Survival*, 58(3), 77-100.
4. Tom Ginsburg Democracies and International Law Excerpt on China’s Rise and an Eastphalian Order p. 245-287 (under library reserves)

### C. The costs and benefits of collective versus unilateral enforcement

Thinking of the readings this week, what are the benefits of working collectively versus unilaterally to encourage respect for international? Are some enforcement approaches more or less costly?

# PART II. Substantive ISSUES in International Law

## Week 6: The Law of the Sea (Feb 8-10)

The Law of the Sea is the first truly global convention. It is also the first major effort of developing countries to have international law address their concerns and interests. The convention is so successful that we tend to for granted its many achievements. This week we understand why the US has not joined this convention, and the contributions and limits of the UNLOS III convention. We then examine what the LOS does and does not entail.

### A: The challenges in creating the Law of the Sea convention. Brief for this class

Today we will think about how the New International Economic Order (NIEO) attempted to create an agreement that better served their interests, and how their demands contributed to the US response. The US has still not joined the LOS, so one can ask whether the NIEO issue is what is really holding back US support.

*Assigned Reading:*

1. \*Law of Seas Case preparation note + Appendix on instruments of LOS
2. \*Slomanson *Fundamental Perspectives* 12.4 (on New International Economic Order)
3. *Pew Case study*: “The United States and the Law of the Sea Treaty” Steven David and Peter Digeser.
4. \*“ Boleslaw Adam Boczek, Ideology and the Law of the Sea: The Challenge of the New International Economic Order, 7 B.C. Int'l & Comp. L. Rev. 1 (1984)

**Briefing book 6: Your Country and the LOS** (Feb 10): Figure out your country’s position regarding the Law of the Seas. What is at stake for your country?  What matters most for you regarding this convention? If your country has a particular leverage for negotiations, identify it. What does your country get from the convention? Does your country want the US to join the convention? Is your country willing to make any concessions to encourage US membership?

### B: The success and limits of the Law of the Sea treaty

The LOS both created and resolved many disputes involving the oceans. The creation of disputes concerns maritime territorial delimination. The Bahrain-Qatar case and the Australian-E. Timor cases were both prexisting and they were resolved. The S. China Seas case is a major international flashpoint.

*Assigned Reading:*

1. \*Slomanson *Fundamental Perspectives* 6.3 (Law of Seas)
2. \*Slomanson on-line ruling: Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in The Area, ITLOS advisory opinion Feb 1. 2011
3. Beeson, Mark, and Andrew Chubb. “Australia, China and the Maritime ‘rules-Based International Order’: Comparing the South China Sea and Timor Sea Disputes.” *International Relations of the Asia-Pacific*, 2019.

### C: Creating and resolving maritime delimitation cases

What makes some international disputes more easily resolved than others. Read the overview article of the role of the ICJ in resolving territorial disputes. Why do you think that the Bahrain-Qatar and Australian-E. Timor Maritime delimitation cases have been resolved, while the S. China Seas case has not been resolved?

*Assigned Reading:* Rothwell, Donald R. “The Law of the Sea, International Courts, and Judicialization.” *AJIL Unbound* 115 (2021): 373–77. doi:10.1017/aju.2021.57.

**Second on-line quiz to be completed by February 11 at noon**

## Week 7: International law regulating when and how force can be used (Feb 15-17)

International law scholars noted that the prohibition on the use of force is one of the most significant changes in international law in the twentieth century, and it ushered in a major decline in inter-state war and battle deaths. Notwithstanding the violence that exists in Syria, Afghanistan, Iraq, the Congo (and other civil wars), the issue of the use of force is one where social scientists have demonstrated international law’s impact. When it comes to individual accountability, there have been major innovations that are struggling.

### A: The substantive international law on the use of force

*Assigned Reading:*

1. Scicluna *The Politics of International Law* chapter 10   
   If Scicluna not available, then read \*Hathaway and Shapiro *The Internationalists* excerpt (intro + p. 93-98) + Slomanson *Fundamental Perspectives* 9.1, 9.2 (A-E)
2. ICJ decision in Military and Paramilitary Activities in and Against Nicaragua (in Slomanson reading p. 487-8)
3. \* [Slomanson on line](http://www.tjsl.edu/slomansonb/txtcsesite.html): [British Iraq War legality](https://www.tjsl.edu/slomansonb/9.2_BritWarIraq.pdf)
4. \* Slomanson on line: [Armed Act Congo](https://www.tjsl.edu/slomansonb/9.2_BritWarIraq.pdf)

### B: International Criminal Law: Holding individuals accountable. Brief for this class

*Assigned Reading:*

1. Scicluna *Politics of International Law* Chapter 13 International Criminal Justice: From Nuremberg to the ICC p. 287-305   
   *or* Theodor Meron, "Reflections on the Prosecution of War Crimes by International Tribunals," *American Journal of International Law* 100, no. 3 (July 2006): 551-579 + Slomanson 8.5D
2. Case 134- “Establishing an International Criminal Court: The Emergence of a New Global Authority” (Leonard)
3. Excerpts on the Rome Statute (on line)
4. The Crime of Aggression: This [NGO page](http://www.iccnow.org/?mod=aggression) explains the state of the "crime of aggression" which may eventually fall under the ICC's jurisdiction:. This [weblink](http://www.iccnow.org/?mod=aggression) is an NGO explanation of the crime of aggression.

### C: Section: How is international criminal prosecution working in practice

1. The positive case for adjudication is that it establishes an historical record. Skim ICTY, Prosecutor v. Radovan Karadzic (No brief for this long case)
2. Another positive case is that it holds leaders accountable. Read: Alter *New Terrain* case study on Charles Taylor p. 267-273
3. The previous cases involved ad hoc criminal courts. The ICC is facing its own challenges. See: Courtney Hillebrect *The ICC’s Case against Duarte Drug War is on Hold. That could hurt the ICC’s authority* The Washington Post Dec 6 2021 ([here](https://www.washingtonpost.com/politics/2021/12/06/icc-case-against-dutertes-drug-war-is-hold-that-could-hurt-courts-authority/))

**Briefing book 7: Your Country and the ICC (Feb 17)**: State your country’s position regarding the ICC. Did your country support the creation of the ICC? Can you find any newspaper articles that explain why your country supported the creation of the ICC?  Did your country [ratify the Rome Statute?](https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx)Why did it ratify the Rome Statute?  Has your country signed an [Article 98 agreement with the US?](http://www.law.georgetown.edu/library/research/guides/article_98.cfm)  What is your country’s position regarding the ICC’s jurisdiction for the crime of aggression? Follow the links to find the answers.  Are there any “situations” being investigated with respect to your country, or situations that NGOs think should be investigated?

**Third on-line quiz to be completed by March 6 at noon**

# Student selected topics for weeks 8 -9

## Week 8: Pick 2 week: China & Refugees (Feb 22-24)

A: China’s Approach to International Law

*Assigned Reading:*

1. Ignacio de la Rasilla, HAO Yayezi, The Community of Shared Future for Mankind and China’s Legalist Turn in International Relations, *Chinese Journal of International Law* 20(2): 341–379
2. Shaffer, Gregory, and Henry Gao. 2020. A New Chinese Economic Order? Journal of international economic law 23(3): 607-35. I am only assigning p. 607-620
3. China seems to be shifting its argument right before our eyes.  This [new joint statement, issued with Russia,](http://en.kremlin.ru/supplement/5770) seems to qualify China's commitment to multilateralism. I don't fully trust the source- President Putin's home page. At some point, a Chinese version of this that is less bellicose and antagonistic might appear.

Optional:

This is a short propaganda speech from China’s Foreign Minister. Y. Wang, *China: a Staunch Defender and Builder of the International Rule of Law*, 13 Chinese journal of international law (Boulder, Colo.) 635-638 (2014)

*This is an in-progress chapter:* Ji Li & Karen J. Alter, Chinese and Western Perspectives on the Rule of Law and Their International Implications, Written for the *Cambridge Handbook on China and International*

B: International Refugee Law: A Human Rights Failure: Special Guest Professor Alexander Betts

I have invited Professor Alexander Betts to talk with us about this issue, via Zoom. He is an expert on the topic. He asks that you read three chapters from his new book:

*Assigned Reading:*

Betts. (2021). *Wealth of refugees: how displaced people can build economies*. Oxford University Press. Chapters 1 (Introduction 1-20), Skim 2 (The Search for Sustainability 21-66)) & 8 (The Politics of Refugee Rights 207-221)

Optional but recommended: Watch [Professor Bett’s TED Talk:](https://www.ted.com/talks/alexander_betts_our_refugee_system_is_failing_here_s_how_we_can_fix_it?language=en) Our Refugee System is Failing, here is how we can fix it

## Week 9: International Law and Human Rights (March 1-3)

There are many international human rights instruments, and many of the international legal provisions are embedded into national law. In addition, there are regional human rights courts in Europe (the European Court of Human Rights), Latin America (the Inter-American Court of Human Rights), and Africa (the African Court of people and Human Rights, plus regional African courts are also enforcers of human rights cases). First we will review the international human rights law on the books, including a few domestic and international legal rulings inspired by international treaties.  Next we will review the debate about how and whether these human rights agreements are successful. I think there is ample evidence that the systems succeed in their goals, but there is also an effort to recast the conversation, and to suggest that human rights should not be seen as binding elements of international law.

A: Law on the Books + the Institutional Apparatus to Protect Human Rights

1. Sciculna *The Politics of International Law* Chapter 8: Human Rights in the Post WWII Era
2. Slomanson’s The UN’s promotional role (re: human rights). 10.2. Skip the death penalty discuss. The Ildiwe Mazibuku et all case mentioned on p. 590 is here. Plus skim, to get a sense of, 10.3 (the human rights potpourri).
3. Awas Tigni case brief ([here](https://www.escr-net.org/caselaw/2006/case-mayagna-sumo-awas-tingni-community-v-nicaragua-eng)) and human rights policy brief (here)

B: A retreat from protecting human rights? And Class Conclusion

1. US Supreme Court Koibel ruling; US Supreme Court Nestlé ruling (these were part of Week 5’s extras) + Amnesty International’s [summary of ECOWAS’ ruling](https://www.amnesty.org/en/latest/news/2012/12/ground-breaking-ecowas-court-judgment-orders-government-punish-oil-companie/).
2. Wuerth, Ingrid. 2018. International Law in the Post-Human Rights Era. *Texas Law Review* 96(2): 279-349. Parts I, III, IV.

Extra: there is a long and twisty story about efforts to sue Chevron for pollution in Ecuador. We will not read this story, but if you are interested, [here is a WSJ article on it](https://www.wsj.com/articles/litigation-without-end-chevron-battles-on-in-28-year-old-ecuador-lawsuit-11619975500).

C: Extraterritorial strategies to protect human rights

Look up the [US State Department’s report for your panel country](https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/). If you are the US, then please overview the entire 2016 report, which was issued under the Obama administration, and see if there is a difference in the 2019 report (issued under the Trump administration).

**Briefing book 8:** **Your Country & Human Rights.** *Every country but the US:* Review the US State Department’s report on your country. Write a policy brief on the report, including your recommendation on whether the government should release a statement condemning the US report. If you do recommend a statement, what would you include in it. *For the US case*, the assignment is the same but it should be based on the UN Human Rights Commission’s report (general page [here](https://www.ohchr.org/EN/HRBodies/UPR/Pages/USIndex.aspx), Working group report [here](https://undocs.org/en/A/HRC/46/15)).

**Third on-line quiz to be completed by March 6 at noon**

# topics We chose from

## The Global Trade Regime (a week)

The General Agreement on Tariffs and Trade became the World Trade Organization in 1994. These two institutions have built a relatively open global trading system. The current system is under great stress, and this week we would investigate what the WTO provided, and think about what a world without the WTO looks like. We would also focus on the controversial issue of property rights protection in international trade. Intellectual property protection us a major issue given the current pandemic.

## Human Rights Issues, and a focus on the prohibition against torture (a week) Conservatives like to claim that international human rights are dead. This is, in my view, quite an exaggeration. Human rights obligations are part of nearly every constitution, and most countries have National Institutes of Human Rights which regularly monitor the implementation of international human rights treaties. This week would consider the range of human rights obligations, and how these obligations are imbricated into international and domestic enforcement mechanisms. We would spend a day looking at the issue of torture, asking whether and how international human rights law is making a difference.

**Race and international law (1 session)**Colonial era international law was overtly racist. Just like overt discrimination has been outlawed in the US, overt discrimination is not part of international law. Yet in other ways, international law is quite racist, and despite the switch to multilateralism, much of the colonial order remains intact. We could consider how international law does and does not address issues related to race.

**China’s approach to international law (1 session)**

China is embracing international law with gusto, to assuage the concern of many about its rise. Chinese leaders are insisting that they are committed to international law and multilateralism, but as is typical, the version of international law that China embraces is particularistic. China focuses on the UN system of international law, and Chinese leaders are trying to shape how others understand what international law requires.

**Refugees and international law (1 session)**International law is completely failing with respect to the issue of refugees. We would study this topic, and then debate what should be done.

**Responsibility to protect (R2P) and humanitarian intervention (1 session)**

A very difficult issue is the right or obligation to intervene to stop mass atrocities. We would review the problem of humanitarian intervention, asses the state of R2P.

**Gender and international law (1 session)**I have been sneaking gender into this course. We discussed rape as a war crime, and the video discussed the Hadijatou Mani case. There is actually a treaty about the treatment of women: CEDAW. The treaty is both limited and controversial, because patriarchal societies dislike certain CEDAW rules, such as rules that prohibit child marriage and require women to consent to marry. We could look at how international law has tried and struggled to address concerns of interest to women.