

Political Science 4550/5550

INTERNATIONAL LAW

Fall 2016

Instructor: Dr. Andrew Ross <rossa@ohio.edu>

Office: Bentley Annex 255

Office Hours: Tu 1:30-3:30; W 8:30-9:30

Location: Bentley 220

Meeting times: Tu/Th 12:00-1:20

Course Description

This course introduces students of politics to international law. We will explore historical roots and current problems, recognizing along the way contestation over the sources, purposes, and interests associated with international law. The course situates formal aspects of law—centered on international treaties, international organizations, and the World Court—within a broader landscape of global governance populated by states and non-state actors, centralized and decentralized forms of legal authority. We will place special emphasis on the significance of international law to colonialism, decolonization, and contemporary forms of imperialism, keeping in mind that the law has generally been received differently in the Third World.

Learning Outcomes

Students should complete the course with an ability to:

1. discuss historical and current problems in international law;
2. evaluate competing theoretical perspectives on what international law is, how effective it is, and which political interests are reflected in it;
3. design and deliver short essays that are organized coherently and logically, and that employ relevant evidence and examples;
4. design, plan, and present a written project that is organized coherently and logically, and that employs relevant evidence and examples (5550 and research option only);
5. cite and document appropriate sources to support an argument using a consistent and formal method of citation and format; and
6. summarize and evaluate complex ideas in an accurate and compelling way.

Assignments for POLS 4550

Assignments are described in greater detail in the “assignments” section of Blackboard (hereafter “Bb”). All assignments except the mid-term and presentations will be submitted via Bb under “submissions.”

Participation: Regular attendance and in-class participation are essential requirements for this course. Students are expected to come to class having completed and thought about the readings. You should also bring the readings to class. The participation grade will be based half on your attendance (see below) and half

on the quality and quantity of your contributions in class. Visits to office hours count as part of your participation: please don't be a stranger!

First paper: A five-page paper on an assigned topic, **due via Bb by noon Tuesday, Sep. 13.**

Mid-term exam: There will be one mid-term exam on material covered between Sep. 8 and Oct. 6. It will be held **in-class on Oct. 13.** The exam will consist of short, paragraph-length questions asking you to explain key concepts in international law using examples from the readings and class discussions.

Second paper: A five-page paper on an assigned topic, **due via Bb by noon Tuesday, Nov. 8.**

Final exam: There will be a take-home exam covering readings and topics from the entire course. The exam will require you to have completed all the assigned readings and thought about how they connect to the main themes we discuss in class. The exam will consist of two essays of approximately five pages each. I will post it on Bb the day of our last class, and it will be **due one week later on Thursday, Dec. 8 at noon.**

Research Option for POLS 4550

Undergraduates who receive 88/100 or higher* on the first short paper may request to write and present a research paper in lieu of the mid-term exam, the second short paper, and the final exam. The paper will be 12-14 pages long (excluding bibliography) but will otherwise follow all the same requirements, components, and due dates as the research paper for 5565. * Because we have limited class time for presentations in November, this option will be first-come, first-served after I return the first paper. In any case, you should request permission to pursue this option via email asap and no later than Oct. 5.

Assignments for POLS 5550

Attendance and participation and the first short paper, as described above, are also required for the graduate section.

Research paper: Your major assignment for this course will consist of a research paper of 18-20 pages. You should plan to start working on this project early (i.e. immediately after your first paper is due). The first step will be meeting with me at least once in September to discuss possible topics, and you must have my approval of your topic by **Oct. 10**. There are then four graded components to this assignment:

- (1) **Abstract and bibliography:** one document consisting of (a) a 1.5-page (double-spaced) abstract of the paper and (b) a bibliography of the materials you have gathered to date. The bibliography will have a special sub-section listing scholarly secondary sources, with one-paragraph annotations for five of those sources. This assignment is worth 15% of your overall grade and is due **noon Friday, Oct. 28;**
- (2) **Presentation:** a 15-minute in-class presentation on your research, followed by 5-10 mins of answering and discussing questions from the class. The presentation should provide both background information and analysis on your topic and research question. You must meet with me once during office hours at least one week prior to your presentation. Presentations are scheduled for Nov. 17, 22, and 29.

- (3) **Paper draft:** circulate a full draft of your paper **by end of the day Tuesday, Nov. 29**. You will submit a copy to me (Bb or email is fine) and will be expected to read one or two papers from your workshop working group in advance of our last class, Dec. 1. Submitting the draft on time is worth 2% of your final grade, and actively participating in the workshop is worth another 2%.
- (4) **The paper:** Revise your draft and submit by **noon on Thursday, Dec. 8**.

Grades and Late Papers

I use a standard grading scale for determining letter grades: A = 93-100; A- = 90-92; B+ = 87-89; B = 83-86; B- = 80-82; C+ = 77-79; C = 73-76; C- = 70-72; D+ = 67-69; D = 63-66; D- = 60-62; F = <60. Overall grades will be calculated as follows:

POLS 4550		POLS 5550 / 4550 research option	
Participation	20 %	Participation	20 %
First paper	15 %	First paper	15 %
Mid-term exam	15 %	Abstract & bibliography	15 %
Second paper	20 %	Presentation	15 %
Take-home exam	30 %	Draft and Workshop	4 %
		Research paper	31 %
Total	100 %	Total	100 %

There will be no make-up assignments, extra credit assignments, or opportunities to revise and resubmit assignments for a higher grade. If you have concerns about your grade or questions about my expectations, please schedule a meeting with me as early as possible in the semester. **Late papers** will be penalized 6 points per day (e.g. a paper awarded an 88/B+ submitted one day late will receive an 82/B-), including weekend days, to a maximum of three days (after which the assignment will not be graded). No exceptions in cases of computer malfunction or loss of data. Cases of serious illness should be brought to my attention, with official documentation, prior to or immediately following the missed assignment.

Attendance

I strongly encourage students to attend as close to every class as possible. To accommodate minor illness and other occasional events, I allow all students to miss up to four classes (excluding the mid-term and paper workshop, if applicable) without documentation or explanation. I recommend reserving these allowed absences in case you get sick later in the semester. If you miss class due to minor illness, traffic delays, student conferences, athletics events, family obligations, or the like, that missed class will count toward these four allowed absences. Your participation grade will be reduced starting with the fifth missed class. The penalty will increase for each class missed, up to eight absences. If you miss nine or more classes, you will get zero for the attendance portion of your participation grade. Do not expect full attendance credit if you arrive late or leave early; arriving late on a regular basis will count as part of your four allowed absences. Students are responsible for all course materials covered and announcements made during missed classes. If you are missing class due to major, on-going health problems (physical or mental), please discuss the situation with me as early as possible.

Communications and Technology

Email: I will expect you to check your OU email regularly for announcements or other communications. You may contact me by email at any time, just be aware that I may not reply instantly: I try to reply within 24 hours during the week, and by Monday noon for messages sent Friday. And, if you have something more than a quick point of clarification, let's discuss it during office hours rather than over email. **Devices in class:** Please turn off the ringer on your phone *and* put them away during class time. You may use a laptop or tablet in class only for taking notes and accessing electronic readings. I reserve the right to ask you to put electronic devices away when/if they become distracting to you, to others, or to me.

Blackboard: I expect you to use the Bb system to access readings, announcements, and handouts, and to submit assignments. If you encounter a broken link, a missing content item, or something else I need to fix, please let me know via email asap. If you are having general Bb problems, contact the Help Desk. All assignments due via Blackboard should have links posted under "submissions"; please email me if you do not see a link one week before your assignment is due. It is your responsibility to ensure that your documents are properly uploaded and open-able by me: "oops, I accidentally uploaded a draft of my paper instead of the final version" or "golly, it looks like I mistakenly uploaded my music history paper" will not work ☹. Uploading formats other than .pdf and MS Word-created .docx may cause problems; again, it is your responsibility to ensure that your document is intact and accessible to me.

Academic Misconduct

Students in this course are expected to follow the University's standards of academic integrity and honesty and are responsible for understanding what constitutes plagiarism. One reference is here:

<http://www.ohio.edu/communitystandards/academic/students.cfm>. If you are caught cheating or plagiarizing, you may receive a grade deduction on the assignment, a failing grade for the assignment, or a failing grade for the class. You may also be reported to the Office of Community Standards and Student Responsibility for additional sanctions. Students may appeal academic sanctions through the grade appeal process.

Disability Accommodations

Any student who suspects s/he may need an accommodation based on the impact of a disability should contact the class instructor privately to discuss the student's specific needs and provide written documentation from the Office of Student Accessibility Services. If the student is not yet registered as a student with a disability, s/he should contact the Office of Student Accessibility Services.

Required Texts

The following books are required for this course and are available for purchase at the Little Professor Bookstore on Court St., as well as through library reserves:

Kennedy, David. *Of War and Law*. Princeton: Princeton University Press, 2005.

O'Connell, Mary Ellen. *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement*. New York: Oxford University Press, 2008.

All other course readings are available on Bb under "Readings." Minor modifications to weekly readings may become necessary; I will notify you of any changes in class and confirm via email.

READINGS AND TOPICS

1. WHAT IS "INTERNATIONAL LAW"?

Aug. 23 Introduction and What is "International Law"?

Please read the syllabus carefully.

Aug. 25 What is "International Law"? Cont'd

O'Connell, Introduction

Damrosch, Lori et al. "Introduction to the Study of International Law." In *International Law: Cases and Materials*, edited by Damrosch, Henkin, Murphy, and Smit, xv-xvii. St. Paul: West Publishing, 2009.

Damrosch, Lori et al, "Historical Introduction." In *International Law* [above], xix-xxx.

Aug. 30 Power and International Law

Morgenthau, Hans J. "The Main Problems of International Law." In *Politics Among Nations: The Struggle for Power and Peace*. Brief edition. New York: McGraw-Hill, 1993. [pp. 253-68]

Goldsmith, Jack L. and Eric A. Posner. Introduction. *The Limits of International Law*. New York: Oxford University Press, 2005. [pp. 3-17]

Sep. 1 Legitimacy and Reputation

Henkin, Louis. "The Politics of Law Observance." In *How Nations Behave: Law and Foreign Policy*. Second edition. New York: Columbia University Press, 1979. [pp. 39-68]

Goldsmith, Jack L. and Eric A. Posner. Ch. 6 "A Theory of International Rhetoric." *The Limits of International Law*. New York: Oxford University Press, 2005. [pp. 167-84]

O'Connell, Ch. 3 [pp. 99-131 only]

Sep. 6 Law as Transnational Process

Koh, Harold H. "Transnational Legal Process." *Nebraska Law Review* 75 (1996): 181-207.

2. KEY CONCEPTS

Sep. 8 Legal Personality

Klabbers, Jan. "Legal Personality: The Concept of Legal Personality." *Ius Gentium* 11 (2005): 35-66.

Blank, Yishai. "The City and the World." *Columbia Journal of Transnational Law* 44 (2005-6): 875-939. [read only pp. 875-99; 922-39]

Sep. 13 Sources of International Law: Treaties (note: first paper due by noon 9/13)

Brownlie, Ian. "Sources of the Law." In *Principles of Public International Law*, seventh edition. New York: Cambridge UP, 2008. [pp. 3-5]

Gamble, John King Jr. "The Treaty/Custom Dichotomy: An Overview." *Texas International Law Journal*, 16 (1981): 305-19.

O'Connell, Ch. 3 [pp. 132-49 only]

Sep. 15 Sources of International Law: Customary International Law

Byers, Michael. Ch. 9, *Custom, Power, and the Power of Rules: International Relations and Customary International Law*. New York: Cambridge UP, 1999. [pp. 147-65]

Goldsmith, Jack L. and Eric A. Posner. Ch. 2 "Case Studies." *The Limits of International Law*. New York: Oxford University Press, 2005. [pp. 45-54 only]

Toope, Stephen. "Powerful But Unpersuasive: The Role of the United States in the Evolution of Customary International Law." In *United States Hegemony and the Foundations of International Law*, edited by Michael Byers and Georg Nolte, 287-316. New York: Cambridge UP, 2003.

Sep. 20 Bases of Jurisdiction

Damrosch, Lori et al, "Bases of Jurisdiction." In *International Law: Cases and Materials*, edited by Damrosch, Henkin, Murphy, and Smit, 755-61. St. Paul: West Publishing.

Malley, Robert, Jean Manas, and Crystal Nix. "Constructing the State Extraterritorially: Jurisdictional Discourse, The National Interest, and Transnational Norms." *Harvard Law Review* 103 (1989-90): 1273-1305.

Sep. 22 Decentralized Enforcement

O'Connell, Ch. 6

Sep. 27 Centralized Enforcement and the Status of International Organizations

O'Connell, Ch. 7

Pillinger, Mara, Ian Hurd, and Michael N. Barnett, "How to Get Away with Cholera: The UN, Haiti, and International Law." *Perspectives on Politics* 14, no. 1 (2016): 70-86.

Sep. 29 Enforcement through National Courts: The Case of Human Rights

O'Connell, Ch. 9

Bradley, Curtis A. "The Costs of International Human Rights Litigation." *Chicago Journal of International Law*, 2, no. 2 (2001): 457-73.

Stephens, Beth. "Taking Pride in International Human Rights Litigation." *Chicago Journal of International Law*, 2, no. 2 (2001): 485-93.

3. THE USE OF FORCE AND HUMANITARIAN LAW

Oct. 4 Use of Force I: Self-Defense

O'Connell, Ch. 4

Hurd, Ian. "The Permissive Power of The Ban on War." *European Journal of International Security*, FirstView article (August 2016): 1-18.

Oct. 6 Use of Force II: Multilateral Intervention

O'Connell, Ch. 5

Oct. 11 Use of Force III: the "Responsibility to Protect"

Glennon, Michael. Introduction and Ch. 6 In *Limits of Law, Prerogatives of Power: Interventionism After Kosovo*. New York: Palgrave, 2001. [pp. 1-7, 177-205]

Hurd, Ian. "Is Humanitarian Intervention Legal? The Rule of Law in An Incoherent World." *Ethics & International Affairs* 25, no. 3 (2011): 293-313.

Oct. 13 Mid-term Exam (4550) and Library Workshop (5550)

Oct. 18 Law and War

Kennedy, David. Introduction and Ch. 2, *Of War and Law*.

Oct. 20 War as Law

Kennedy, David. Ch. 3 and Epilogue, *Of War and Law*.

Oct. 25 Issues in The Regulation of Force: Terrorism

Byers, Michael. "Terrorism, the Use of Force, and International Law after 11 September." *International and Comparative Law Quarterly* 51 (2002): 401-14.

Simpson, Gerry. "Arguing about Afghanistan: Great Powers and Outlaw States Redux." Ch. 11 in *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*. New York: Cambridge University Press, 2004. Pp. 319-51.

Oct. 27 Issues in Humanitarian Law: The Legality of Drones

Buchanan, Allen and Robert O. Keohane. "Toward a Drone Accountability Regime." *Ethics & International Affairs* 29, no. 1 (2015): 15-37.

Crawford, Neta C. "Accountability for Targeted Drone Strikes against Terrorists." Same as above, pp. 39-49.

Williams, John. "Distant Intimacy: Space, Drones, and Just War." Same as above, pp. 93-110.

4. INTERNATIONAL CRIMINAL JUSTICE

Nov. 1 The Nuremberg "Justice" Trials I

In-class film: selections from *Judgment at Nuremberg* (1961; 186 mins)

Moeller, Robert G. "How to Judge Stanley Kramer's Judgment at Nuremberg." *German History* 31, no. 4 (2013): 497-522.

Nov. 3 The Nuremberg "Justice" Trials II

Simpson, Gerry. "Law's Politics..." Chapter 1 in *Law, War, and Crime: War Crimes Trials and The Reinvention of International Law*. Malden, MA: Polity Press, 2007. [pp. 11-29]

Nov. 8 International Criminal Court (note: second paper due by noon 11/8)

Bosco, David. "Introduction" and "Conclusion" in *Rough Justice: The International Criminal Court in A World of Power Politics*. New York: Oxford University Press, 2014. [pp. 1-10; 177-90]

Struett, Michael. "Why the International Criminal Court Must Pretend to Ignore Politics." *Ethics & International Affairs* 26, no. 1 (2012): 83-92.

Nov. 10 The ICC and Africa

Clarke, Kamari. "Rethinking Africa through Its Exclusions: The Politics of Naming Criminal Responsibility." *Anthropological Quarterly* 83, no. 3 (2010): 625-52.

Nov. 15 Rape during War; Rape as Genocide

MacKinnon, Catharine A. "Rape, Genocide and Women's Human Rights." *Harvard Women's Law Journal* 17 (1994): 5-16.

Buss, Doris E. "Rethinking 'Rape as A Weapon of War'." *Feminist Legal Studies* 17, no. 2 (2009): 145-63.

Jaleel, Rana. "Weapons of Sex, Weapons of War" *Cultural Studies* 27, no. 1 (2013): 115-35.

5. STUDENT PRESENTATIONS

Nov. 17, 22, 29 **Topics and required readings to be announced**

Dec. 1 Paper Workshop (5550) and Review (4550)

Students completing the research paper will arrive at noon to begin the workshop; all other students arrive at 12:20 for exam review.