

PUBLIC INTERNATIONAL LAW

LECTURE ONE

Module Title:	Public International Law
Module Team:	C.H.Spurin & Bryan Garrahty
Credits:	20M
Code:	LI4S12
Pre-requisite(s):	None
Co-requisite(s):	None
Award(s) for which module is a core requirement: None	
Aims of the module: To analyse the nature and function of Public International Law and the international institutional and convention rules and regulations of dispute resolution.	
Synopsis of module content: <ul style="list-style-type: none">▪ The nature and functions of Public International Law.▪ Public International Legal Personality and principal institutions.▪ General review of substantive Public International Law – Customary Law and Treaty Obligations.▪ The Laws of War and Peace.▪ International Human Rights Law and the peace and reconciliation movement.▪ International Boundary Dispute Settlement on land and in the maritime zones.▪ International environmental control and dispute resolution on land and at sea,	
Teaching Methods: 2 hours per week involving directed reading, lectures, case studies and workshops. Lectures will reinforce substantive institutional and legal knowledge. Workshops will facilitate critical analysis and application of substantive and procedural law.	
Learning Outcomes: Students will be able to: <ol style="list-style-type: none">1. A1, A2, B1 - display critical understanding of the respective merits of institutional and convention rules and regulations for public international dispute settlement2. A3, C1 - advise on procedural and substantive aspects of public international disputes.	
Key Common Transferable Skills delivered by this module: <ul style="list-style-type: none">▪ D1 Interactive and Group Skills . Workshop Problem Solving Exercises.▪ D2 Communication and Presentation Skills : Communicate the above in a confident professional manner.▪ D3 Psycho-Motor Skills : Discuss, devise and implement strategies and tactics for the conduct of public international dispute settlement processes. Isolate, clarify, assess and manage public international law claims / indictments / defences based on hypothetical problem situations.	

LECTURE ONE

Assessment requirements:

Coursework : 25% - 2,500 – 3,000 words – involving critical analysis of or application to hypothetical situations of appropriate forums and methodologies for the settlement of public international disputes.

Examination : 75% - Two hours, requiring candidates to engage in critical analysis of various aspects of public international law and the respective merits of global dispute settlement laws, institutional dispute settlement rules and regulations and the provisions of International Conventions governing dispute settlement and the solving of hypothetical problems.

Concise Indicative Reading List:

Reading Lists will be updated annually.

Textbooks

Current editions of

- **Brown E & Churchill C.** *UN Convention on Law of the Sea*. Law of Sea Institute.
- **Brownlie I.** *Principles of Public International Law*. Oxford University Press
- **David R.** *Major Legal Systems in the World Today*. Stevens.
- **Harris D.** *Cases & Materials on International Law*. Sweet & Maxwell.
- **Lay, Churchill & Nordquist.** *The Law of the Sea*. Oceana.
- **Merkin.R.** *Arbitration Law*. LLP. Ltd
- **Merriles.J.** *International Dispute Settlement*. Grotius.
- **O'Brien J.** *International Law*, Cavendish

Journals

- *Arbitration*. Chartered Institute of Arbitrators.
- *Arbitration and Dispute Resolution Law*. LLP Ltd
- *International and Comparative Law Quarterly*. OUP
- *International Journal of Constitutional Law*. OUP
- *International Journal of Refugee Law*. OUP
- *Journal of Conflict and Security Law*. OUP
- *Journal of International Criminal Justice*. OUP
- *Oxford Journal of Legal Studies*. OUP

Websites

- **Current Legal Issues** -www.ucl.ac.uk
- **Nationwide Academy of Dispute Resolution** - www.nadr.co.uk

Electronic Databases

- **All case law data-bases**

PUBLIC INTERNATIONAL LAW

LECTURE AND WORKSHOP SCHEDULE 2006-2007

Week Starting	LECTURES	WORKSHOP TOPIC
PUBLIC INTERNATIONAL LAW – GENERAL PRINCIPLES		
02.10.06	1	Definitions and Perspectives
09.10.06	2	Doctrines and Sources
16.10.06	3	Rules, principles and standards
23.10.06	4	International conflict
30.10.06	5	PCA & PCIJ
06.11.06	6	The Use of Force
13.11.06	6	CHSpurin - Blackburn
		READING WEEK
20.11.06	7	International personality & sovereignty
27.11.06	8	State Jurisdiction
04.12.06	9	Objects of International Law
11.12.06	10	Contract and treaties : State Immunity
18.12.06		CHSpurin Blackburn
		CHSpurin Blackburn
25.12.06		Vacation
		Vacation
01.01.07		Vacation
		Vacation
08.01.07	11	International Responsibility
PUBLIC INTERNATIONAL LAW OF THE SEA		
15.01.07	12	Sources, history & internal waters
22.01.07	13	Territorial waters
29.01.07	14	The territorial Sea
05.02.07	15	Innocent Passage & Straits
12.02.07	16	Innocent Passage & Archipelagic Waters
19.02.07		READING WEEK
		READING WEEK
26.02.07	17	The Contiguous Zone
05.03.07	18	The Continental Shelf
12.03.07	19	The Exclusive Economic Zone
19.03.07	20	High Seas & Piracy
26.03.07	21	Maritime Pollution
02.04.07		Vacation
		Vacation
09.04.07		Vacation
		Vacation
16.04.07		Vacation
		Vacation
23.04.07	22	Dispute Settlement
30.04.07		Revision week
		Revision week
07.05.07		Examinations begin
		Examinations begin
14.05.07		Examinations
		Examinations
21.05.07		Examinations end Friday
		Examination end Friday

LECTURE ONE

Introduction to Public International Law

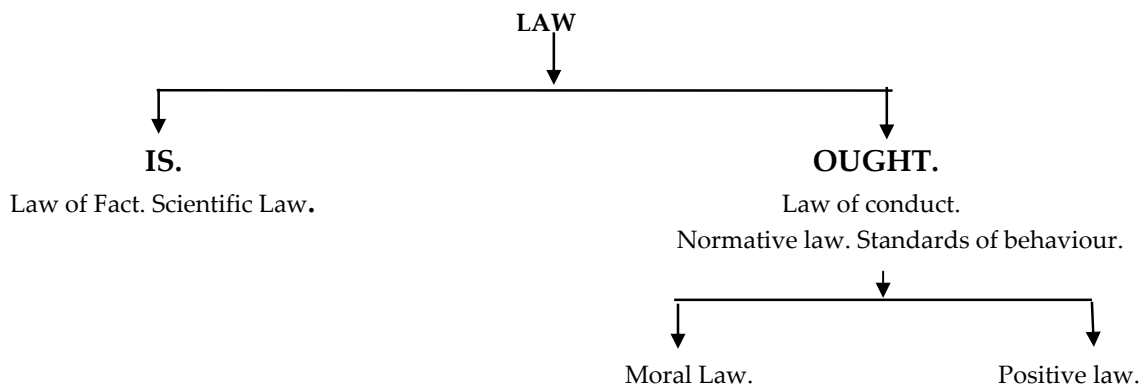
Definitional problems of Public International Law.

The notion of Law is in itself a difficult concept. There is no right or definitive definition of law. In particular Municipal law definitions do not cover Public International Law. If one's definition of municipal law is regarded as the only valid definition of Law then one might doubt that the so called rules of Public International Law are in fact law at all.

Can International Law be described as law ? Austin regarded the province of jurisprudence as determined by 'Commands enforced by the supreme political authority' and as such asserted that it excluded Public International Law which he therefore categorised as 'A system of positive morality'.

Glanville Williams regarding International Law & the controversy concerning the word law considered however that definitions have no importance. It is the content of and the reasons for observance of law by way of sanction that are important in reaching a legal classification.

The Nature of International Law.



Validity & Effectiveness.

A rule is valid if it is lawfully created. Validity does not equal effectiveness.

Definition of Public International Law

"A body of legal rules which apply between sovereign states and such other entities as have been granted international personality."

- a) Legal rules : thus distinguishing it from a moral system.
- b) A system of rules implies norms applied to actual problems.
- c) Personality requires the capacity of parties to a dispute to be the bearer of rights & duties under International Law : eg U.N.

Whilst the individual may benefit from International Law the individual is not an international personality.

Public International Law contrasted with Private International Law and Conflict of Law.

The latter is a branch of Municipal Law concerning foreign extracts. A Treaty from International Law may reconcile the conflict.

Quasi International Law. Concession contracts. These resemble treaties and whilst they may well be in accordance with International Law they are not actually law.

Comparative Law : This is a tool for comparing legal systems but is not itself a system of law.

PUBLIC INTERNATIONAL LAW

PERSPECTIVES OF INTERNATIONAL LAW

The Relevance of the History of International Law

- 1). A variety of legal systems have been tried in International Law such as The League of Nations and the U.N.
- 2). The present system is developed from Christian Europe which explains why it is a problem regarding nations with other cultural backgrounds

Treaties are not regarded as International Law unless between recognised International Persons. Thus Treaties with American Indians have been ignored since they were not legally recognised as Public International Persons.

R v S.S. of State ex pte Indian Affairs Alberta. 1982 Times Law Rpts. Carr L.J. Indian treaties not treaties of International Law : not recognised persons (historical accident) : The agreements predated 1763 and consisted of the so called indian 'treaties' and articles of submission to the crown.

The U.N. General Assembly has since passed a resolution on Natural Resources in respect of New Independent States trying to claim resources back from managers left over after colonialism ended. Indigenous peoples as in Australia, New Zealand and the US have had differing degrees of success in reclaiming ancestral rights.

Customary Rules are frequently based on treaties and their use or omission affect the extent to which they become part of International Law.

- 3). **Principles of International Law.** These have tended to be flexible often to accommodate political reality and are thus imperfect for the purpose of predicting outcomes to disputes. The public law of Europe through Public International Law now covers the whole world. Changes in law affect and law in turn is affected by the influence of the predominant groups.

International Law & International Relations. A Sociological view.

This can help to explain why the system does or does not work through a contrast of the concepts of Society and Community.

Society is likened by Schwarzenberger to an assemblage of hedgehogs which may be gathered together in a defined territory but each member of which maintains its own space by means of its quills. Society as a means to an end is based on self interest and fear by the exclusion of external societies. A Community is an interest in itself. The members of a society remain isolated in spite of association whilst those of a community are united in spite of their separate existence.

Predominant societies include business companies, gang of thieves, cartels and organised international society. Predominant communities include Families, nations and religious groups. The distinction between society and community enables three classifications of law to be made.

1). Law of power.

Society.

Municipal law such as that of the law of contract often involves inequalities of bargaining power.

International Law treaties to end wars involve terms such as reparations etc reached from a position of strength by the victorious personality.

2). Law of reciprocity.

Hybrid.

Municipal law regarding education and development of the community. International law : International law organisations : human rights : children's funds etc.

3). Law of co-ordination.

Community.

Municipal Law & rules which are wise to observe : eg to drive on one side of the road.

LECTURE ONE

International law : rules on diplomatic relations : Red Cross conventions.

Municipal law is regarded as Law of Subordination in an Austinian style definition whilst International Law is seen as law of Co-ordination between legally equal persons.

These perspectives help to show why some aspects of International Law work and some do not and helps to understand the nature of public international dispute problems and how to improve the situation and resolve the problems inherent in the Nature of Public International Law.

The Role of Cases in International Law.

There is no system of binding precedent in International Law. However non legally binding precedent exists. The International court does however cite precedent and follow it.

Courts and tribunals in International Law.

- 1). Municipal courts., Usual law reports etc.
- 2). International Court of Justice. Judicial organ of the U.N.
- 3). Permanent courts of arbitration : appoint tribunals for individual cases : e.g. claims commission.

The identity of the parties in cases and their strength at that time in history is vital as are distinctions between the judiciary and executive roles undertaken : the date is therefore important : See also whether the body delivered an advisory opinion or binding judgement.

Questions arising

- 1 Is there any right definition of law ?
- 2 What is the derivation of the word law ?
- 3 Is international law a law of fact (scientific) or a law for conduct (normative)?
- 4 Is international law moral law or positive law ?
- 5 What does positive mean ?
- 6 Is international law effective ? When it is not can it be said to be valid law ?
- 7 How would you define international law ? How would you expand this definition to bring out its full meaning and significance ?
- 8 Distinguish between international law and municipal law, private international law and comparative law.
- 9 What do you learn from looking at international law in an historical perspective ?
- 10 Distinguish between society and community.
- 11 What are the three types of law ? What do you mean by a type of law and is this classification helpful?
- 12 Are the terms ratio decidendi, obiter dictum and distinguishing relevant in international law ?

PUBLIC INTERNATIONAL LAW

Reading Material

The International Law of the Sea Volumes 1 & 2 : E.D.Brown 1994

Dartmouth Publishing Company Limited : Gower House. Croft Road Aldershot Hants GU11 3HR : ISBN 1 85521 306 0

Freedom for the seas in the 21st Century : Ocean Governance and Environmental Harmony : J.M.Van Dyke : Durwood Zaelke & Grant Hewison : Island Press : 1993 Greenpeace Inc : ISBN 1 559673 242 9

International Law 3rd ED. Shaw : Grotius 1991 ISBN 0 9490009 95 4

Bowett. Law of the Sea Manchester U. P.

Churchill & Lowe. The Law of the Sea. Manchester U.P.

Schwarzenberger & Brown. Manual of International Law. Professional Books. Public International Law Text book & HLT. Revision Workbook.

Brownlie. Basic Documents on International Law. OUP. United Nations Convention on Law of the Sea.

Harris. Cases and Materials on International Law. S&M. International Law Documents. Evans. Blackstone. 2nd Ed Cases & Materials on International Law. Dixon & McCorquodale. Blackstone. International Law. Rebecca Wallace. S&M.

Seabed Energy and Mineral Resources. E.D.Brown. Graham & Trotman. Greening International Law. Philippe Sands. Earthscan. ISBN 1 85383 151 4 Introduction to International Law. Starke. Butterworths.

The Law of International Institutions. Bowett. Stevens. Brierly : The Law of Nations OUP 1963

Briggs : The Law of Nations. Appleton Century Crofts 1953

Green : International Law Through the Cases 4th ed Oceana New York 1978 O'Connell : International Law Stevens 1970 & International Law for Students 1971