

University of Florida
International Law and the Use of Force
EUS 4930
Fall 2020

COURSE INFORMATION:

Instructor: Prof. Alexander Panayotov, Ph.D.

E-mail: apanayotov@ufl.edu

Course Location: MAT 0105 (Remote)

Course Time: Tuesday, 3:00-4:45 PM; Thursday 4:05-4:45 PM

Office Location: Turlington Hall 3343

Office Hours: Tuesday 1:00-2:30PM, Friday 3:00-4:30 PM

Web link: <https://ufl.zoom.us/j/9134775814>

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force.”

David Kennedy

COURSE DESCRIPTION:

This is an introductory course in public international law and the regulation of the use of force. It has three main objectives: 1) to explore the origins of international law (IL) and its relation to international politics; 2) to outline the general principles governing the creation, interpretation, and enforcement of international legal rules regulating the use of force; and, 3) to provide a broad overview of the emerging issues in the regulation of the use of force: cyberwarfare, use of autonomous weapon systems, and lawfare.

In this class, we will study public international law. While we will study the evolution of IL at the intersection of legal and political theories, the crux of the class will be a systematic examination of international rules and cases decided by international, European, and US courts. We will start with a general introduction to international public law. Then we will examine the conditions under which states can resort to the use of force (*jus ad bellum*). Consequently, we will learn the legal framework governing state behavior during war (*jus in bello*). You will learn different styles of legal analysis and argumentation. Understanding these styles might prove challenging. Because of this, be prepared to discuss them during the class. The class discussion is a deliberative exercise: you are expected to contribute to it because everyone will benefit from a vigorous exchange of ideas. In order to facilitate this exchange, I will call people in class. Please note that class attendance is mandatory.

In addition, please respect your colleagues' views: IL is a subject open to multiple interpretations and an arena of contentious debates. Don't forget that collegiality and tolerance are virtues not vices.

LEARNING OBJECTIVES:

Students in this course will:

- Explore the foundations of public international law and its regulation of the use of force in international politics.
- Learn the methodological skills to read, analyze, and understand international legal cases.
- Refine their writing, editing, and presentation skills.

COURSE TEXTS:

1. Sean D. Murphy, *Principles of International Law*, 3rd edn. (West Academic Publishing, 2018) [hereinafter PIL]. Check carefully and don't buy previous editions of the book.
2. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, 2nd edn. (Cambridge University Press, 2016) [hereinafter LAC]. Check carefully and don't buy previous edition of the book.
3. Materials on the Canvas web site.

EXAMINATIONS AND ACADEMIC HONESTY:

- I will not be able to change exams' parameters and presentation dates except in the following cases: a medical emergency, which must be properly documented, and a death in the immediate family.
- Absences from class must be properly documented. An absence without proper documentation will be counted as an unexcused one. Two or more unexcused absences will result in lowering of your attendance and participation grade.
- Depending on our progress, there might be changes in the schedule. You will be notified of all changes in advance.
- No extra credit assignments will be offered.
- Please note that UF students are bound by The Honor Pledge which states, "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: "On my honor, I have neither given nor received unauthorized aid in doing this assignment." The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor in this class. Please note that this is a research-intensive course. Because of this, plagiarism and other forms of academic dishonesty will not be tolerated. Students are required to read, understand, and abide by the University of

Florida Academic Honesty policy. The policy can be found here: <https://sccr.dso.ufl.edu/process/student-conduct-code/> . All violations of the said policy will be reported in accordance with the process outlined in it.

- The requirements in the syllabus are consistent with the UF grading policy. The policy can be found here: <https://catalog.ufl.edu/UGRD/academic-regulations/grades-grading-policies/>

GRADE CONCERNS:

If a student disagrees with her grade, she must outline her concerns in writing within 48 hours of receiving the grade. I will not accept grade concern statements after the expiration of the 48-hour period. The statement must contain a reasoned claim backed by textual evidence. After evaluating the merit of the claim, I will do one of the following: 1) increase the grade; 2) lower the grade; or, 3) leave the grade unchanged. The student will be notified about my decision within a reasonable time frame and the grade will be adjusted accordingly. Please note that this policy will not be applicable to the final paper and the overall final grade.

ATTENDANCE:

- Please be advised that class attendance is mandatory. I reserve the right to revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (two or more absences).
- Arrive on time. I reserve the right to lower your attention and participation grade in cases of systematic tardiness. I define systematic tardiness as “three or more late arrivals to class.”
- Do not leave early. If you leave early three or more times, I reserve the right to lower your attention and participation grade.
- Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

INCOMPLETES:

Incompletes will be granted under exceptional circumstances. A student who wants to receive an incomplete must: (1) inform the professor 10 (ten) days prior to the last day of class and (2) provide a written explanation about the reasons necessitating the incomplete. These reasons must be properly documented. In addition, the student must provide a written plan for finishing the missing work. The student must complete the work during the following semester. Failure to complete the work will result in an E.

COURSE EVALUATIONS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.ua.ufl.edu/students/> . Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their

Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/> . Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

ACCOMMODATIONS:

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the disability Resource Center by visiting disability.ufl.edu/students/get-started. It is important for students to share their accommodation letter with their instructor and discuss their access needs, as early as possible in the semester

Faculty can expect to receive a student's accommodation letter within the first 3 weeks of classes; however, if a student registers with the DRC later in the semester faculty are still obligated to facilitate accommodations. Neither faculty nor administrators may independently deny a request for accommodation that is approved by the Disability Resource Center.

Students are also advised to explore the opportunities offered by the UF Disability Resource Center. The Center is located at 001 Reid Hall, web page: <https://disability.ufl.edu/#> .

PRIVACY POLICY:

Our class sessions may be audio visually recorded for students in the class to refer back and for enrolled students who are unable to attend live. Students who participate with their camera engaged or utilize a profile image are agreeing to have their video or image recorded. If you are unwilling to consent to have your profile or video image recorded, be sure to keep your camera off and do not use a profile image. Likewise, students who un-mute during class and participate orally are agreeing to have their voices recorded. If you are not willing to consent to have your voice recorded during class, you will need to keep your mute button activated and communicate exclusively using the "chat" feature, which allows students to type questions and comments live. The chat will not be recorded or shared. As in all courses, unauthorized recording and unauthorized sharing of recorded materials is prohibited.

RESPONSIBILITIES:

- Ensure that you have a reliable access to Canvas because it will be used extensively throughout the semester. Note that you will be responsible for printing or viewing the assigned material.
- Read the materials in advance and in the order indicated in the syllabus.
- Turn off your cell phones **before** coming to class.
- Restrict the use of electronic devices to class-related activities, e.g., note-taking or article reading.
- Please do not eat in class. Drinks in closed containers are permitted.
- Please note that I will call people in class. This means that it's your responsibility to be prepared at all times. I reserve the right to lower your participation grade if you are unprepared.

RECORDINGS:

No recording of the class discussion is permitted. I will post recordings of the class sessions whenever necessary.

GRADE SCALE:

A	94-100
A-	90-93
B+	87-89
B	84-86
B-	80-83
C+	77-79
C	74-76
C-	70-73
D+	67-69
D	64-66
D-	60-63
E	0-59

ASSIGNMENTS AND DEADLINES:

DUE DATE	ASSIGNMENT	DESCRIPTION	WEIGHT
	Attendance and participation	Please note that attendance is mandatory. Participation is an essential ingredient for your success in the course. I reserve the right to revise your grade one grade step up (e.g. A- to A) to reward your class participation. I also reserve the right to revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (two or more absences). I will consider revising the grade one grade step down (e.g. B+ to B) for systemic tardiness (three or more late arrivals). I will not revise grades upwards to reward regular attendance. Do not leave early. If you leave early three or more times, I reserve the right to lower your attention and participation grade.	10%
17-Sep-2020	Précis I	The précis is a one-page summary of an important IL concept. I will post three concepts on Canvas and you will have to select one of them. The précis will have to be 1” margin all around, Times New Roman font, size 12, single line spacing. You may cite course materials or external sources — books, articles, judicial decisions or primary documents — related to the concept. All sources must be properly cited in a bibliography, which will not be counted toward the page requirement. Please submit the assignment by using the Canvas web site. I will deduct 15 points for assignments submitted after the deadline and before 11:59 PM on September 19 th . I will not accept submissions after that and no points will be awarded for this assignment.	10%
01-Oct-2020 – 08-Oct-2020 11:59 pm	Midterm (take-home exam)	The midterm will consist of two questions and two short answers. The answer to each essay question should not exceed 5 double-spaced pages. The short answers should not exceed five sentences. The additional requirements for the essay questions and the short answers are: 1” margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. I will deduct 15 points if an exam is submitted after the deadline and prior to 11:59 PM on October 9 th . I will not accept	30%

		submissions after that and no points will be awarded for this assignment.	
29-Oct-2020	Précis II	The précis is a one-page summary of an important ILUF concept. I will post three concepts on Canvas and you will have to select one of them. The précis will have to be 1" margin all around, Times New Roman font, size 12, single line spacing. You may cite course materials or external sources — books, articles, judicial decisions or primary documents — related to the concept. All sources must be properly cited in a bibliography, which will not be counted toward the page requirement. Please submit the assignment by using the Canvas web site. I will deduct 15 points for assignments submitted after the deadline and before 11:59 PM on October 31 st . I will not accept submissions after that and no points will be awarded for this assignment.	10%
08-Dec-2020 – 15-Dec-2020 11:59 pm	Final Exam (take-home exam)	The final exam will consist of two questions and two short answers. The answer to each essay question should not exceed 5 double-spaced pages. The short answers should not exceed five sentences. The additional requirements for the essay questions and the short answers are: 1" margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. The final exam will cover all materials studied throughout the semester. I will deduct 20 points for assignments submitted after the deadline and before 11:59 PM on December 16 th . I will not accept submissions after that and no points will be awarded for this assignment.	40%

SUBMISSIONS:

All assignments should be submitted by using the class Canvas web site unless otherwise directed by the instructor.

IMPORTANT DATES:

- **September 17th:** Précis I due
- **October 8th:** Midterm due
- **October 29th:** Précis II due
- **December 15th:** Final Exam due

TOPICS AND READINGS:

PRELIMINARY READINGS

"History is a guide to navigation in perilous times. History is who we are and why we are the way we are."

David McCullough

	Subject	Preliminary Readings
	History of IL & Methodology	1. PIL 3-35 2. PIL 35-52 3. Power Point Presentation on Legal Analysis [Canvas]

INTERNATIONAL LAW: GENERAL PART

"The purpose of law is to prevent the strong always having their way"

Ovid

Date	Subject	Readings
01-Sep-2020	Sources of IL	1. PIL 81-101
03-Sep-2020	Sources of IL	1. PIL 101-120 2. PIL 125-138 (skim)
08-Sep-2020	Jurisdiction in IL	1. PIL 313-331 2. PIL 338-343 (skim)
10-Sep-2020	Rules on State Responsibility	1. PIL 229-251

INTERNATIONAL LAW: *JUS AD BELLUM AND JUS IN BELLO*

"Right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must."

Thucydides "History of the Peloponnesian War", 4th ct. BC

"Ius est ars boni et aequi"

(Law is the art of the good and the equitable)

Celsus, "Digests", 2nd ct. AD

JUS AD BELLUM AND JUS IN BELLO

Date	Subject	Readings
15-Sep-2020	<i>Jus ad bellum</i> : Introduction	<ol style="list-style-type: none"> 1. <i>PIL</i> 573-579 2. Monroe Leigh, “<i>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i>” (AJIL, 1984, Jurisdiction) [Canvas] 3. Monroe Leigh, “<i>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i>” (AJIL, 1986, Merits) [Canvas]
17-Sep-2020	<i>Jus ad bellum</i> :Self-Defense	<ol style="list-style-type: none"> 1. <i>PIL</i> 580-590 2. Case Study: The American Journal of International Law, Contemporary Practice of the United States, “ <i>U.S. Drone Strike in Iraq Kills Iranian Military Leader Quasem Soleimani</i>” [Canvas]
22-Sep-2020	<i>Jus ad bellum</i> : Peace Enforcement by the Security Council and Regional Organizations	<ol style="list-style-type: none"> 1. <i>PIL</i> 592-602 2. Case Study: Sean D. Murphy, “<i>Assessing the Legality of Invading Iraq</i>” (173-179, 180-203, 228-229, 256-257) [Canvas]. This is a long article and you are not required to read it in its totality. However, it is a good example of how to conduct a comprehensive legal analysis of complex international legal problems.
24-Sep-2020	<i>Jus in bello</i> : Introduction	<ol style="list-style-type: none"> 1. <i>PIL</i> 602-616
29-Sep-2020	Conflict Status	<ol style="list-style-type: none"> 1. <i>LAC</i> 159-182 2. <i>LAC</i> 182-186 3. <i>LAC</i> 194-198 [<i>The OSIRAK attack</i>]
01-Oct-2020	REVIEW SESSION	There are no readings for this class
06-Oct-2020	Individual Battlefield Status I	<ol style="list-style-type: none"> 1. <i>LAC</i> 200-231
08-Oct-2020	Individual Battlefield Status II	<ol style="list-style-type: none"> 1. <i>LAC</i> 232-254
13-Oct-2020	Principles I	<ol style="list-style-type: none"> 1. <i>LAC</i> 268-292 2. <i>LAC</i> 314-317 [<i>The ICJ Opinion on the Threat or Use of Nuclear Weapons</i>]

15-Oct-2020	Principles II	1. LAC 292-310
20-Oct-2020	War Crimes I	1. LAC 328-343 2. LAC 363-368
22-Oct-2020	War Crimes II	1. LAC 343-363
27-Oct-2020	Obedience to Orders I	1. LAC 373-396
29-Oct-2020	Obedience to Orders II	1. LAC 397-399 2. LAC 399-407 3. 408-412
03-Nov-2020	Command Responsibility I	1. LAC 417-436 2. LAC 442-444 [<i>Yamashita v. Styer</i>] 3. LAC 444-447 [<i>Theater Judge Advocate's Review: The United States v. General Tomoyki Yamashita</i>]
05-Nov-2020	Command Responsibility II	1. LAC 436-442 2. LAC 448-450
10-Nov-2020	Targeting Objects Human Targeting	1. LAC 505-514 2. LAC 569-577 3. LAC 588-604
12-Nov-2020	Autonomous Weapons, Drones, and Targeted Killing	1. LAC 535-563
17-Nov-2020	Torture I	1. LAC 615-642 2. LAC 664-665 [<i>Prosecutor v. Brdanin</i>]
19-Nov-2020	Torture II	1. LAC 642-655
24-Nov-2020	Cyberwarfare	1. LAC 673-704 2. Case Study: John Richardson, " <i>Stuxnet as Cyberwarfare: Applying the Law of War to the Virtual Battlefield</i> ", pp. 1-27 [Canvas] (skim)
01-Dec-2020	Military Commissions Detention	1. LAC 783-803 2. LAC 817-825
03-Dec-2020	Lawfare: Law as a Weapon of War	1. Charles Dunlap, <i>Lawfare 101: A Primer</i> ", pp.8-17 [Canvas]
08-Dec-2020	REVIEW SESSION	There are no readings for this class.

USEFUL LINKS:

1. The United Nations: <http://www.un.org/en/> (English version)
2. The International Court of Justice (English version): <http://www.icj-cij.org/homepage/index.php?lang=en>
3. The American Society of International Law: www.asil.org
4. The EISIL (Electronic Information System for International Law): <http://www.eisil.org/>
5. The Avalon Project at Yale Law School: <http://avalon.law.yale.edu/>
6. Lawfare, the national security law blog: <https://www.lawfareblog.com/>
7. Just Security at the Reiss Center for Law and Security (NYU):
<https://www.justsecurity.org/>
8. Research Guides at NYU School of Law
<https://www.law.nyu.edu/library/research/researchguides>
9. UN IL audiovisual library:
<http://legal.un.org/avl/lectureseries.html>
10. The Vienna Convention on the Law of Treaties:
http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
11. UN Charter and the Statue of the International Court of Justice:
<https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

A (VERY) SHORT DICTIONARY OF FOREIGN PHRASES:

A contrario: “from a contrary position”

A fortiori: “for a still stronger reason”

Ad hoc: “for this; for the specific purpose”

Contra legem: “against the law” (often used in the context of legal interpretation)

De jure: “according to law”

De facto: “in reality; in fact”

Erga omnes: “toward all” (often used in relation to obligations)

De lege ferenda: “law as it should be”

De lege lata: “law as it is”

Opinio juris: “opinion of the law”

Rebus sic stantibus: “things standing thus” (dmarrine used to describe fundamental change of circumstances in international law, Art.62 of the VCLT)

Travaux préparatoires: “preparatory work” (often used for interpreting international treaties in accordance with Art. 32 of the VCLT)