

Public International Law in context: a view from Latin America

Course Syllabus (40h)

International Summer School Law School 2022, Universidad de Los Andes

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I. Course Description

This course introduces and explores the main topics of public international law with particular attention to the Latin American context. It examines the nature and structure of international legal arguments in historical perspective and contemporary practice, considering the regional experience of Latin America. The course's central assumption is that international law looks different in different locations of the world, despite the universalist pull of the international legal argument. In this setting, the course will analyze the fundamental elements of international law concerning the particularities of the Latin American context. Specialized international law regimes will also be assessed in connection to specific issues of the regional experience. The course aims to enable students to engage deeply with the foundations of the field, but also to promote a critical understanding of the ways in which international law takes shape in the regional context.

The course focuses on international law as an argumentative practice that takes place in a regional context structured by disagreements amongst states and asymmetries of power. Political, economic, social and ideological issues all inform the contemporary practice of international law in Latin America. Accordingly, the key concepts, institutions, practices and debates of the field will be assessed contextually. Traditional topics of public international law will be explored under a regional sensibility: the sources of international law, the subjects of international law, international dispute settlement, immunities and jurisdiction, and state responsibility. The course will also address the protection of human rights in the region; the issues of development in relation to the protection of the environment in Latin America; the use of force and the ongoing regional discussions about the lawfulness of intervention; and contemporary regional issues related to the Law of the Sea.

Students will be encouraged to consider their own perspectives of historical and contemporary Latin American issues to acquire an expert understanding of the impacts of public international law in the region, as this course will be conducted based on a student-centred process of effective learning. Without thinking of international law as a neutral or objective field, but as a vocabulary that has connections with the various ways in which material and spiritual goods are distributed, this course aims to present a nuanced approach to the field. The main objective is to shed light on how international law as a vocabulary has been used to enable political blueprints for the region. This approach combines a focus on the history and theory of international law with a doctrinal assessment of the fundamental elements of the international legal argument. In this setting, effective learning comes not just as an issue of pedagogy, but as an essential strategy to explore the contemporary pressing stakes of the discipline in the context of Latin America.

II. Objectives

The objectives of this course are:

- To provide a substantive understanding of the key concepts, institutions, practices, and debates in the field of public international law;
- To provide an expert understanding of the development and structure of the international legal system and the historical and theoretical bases for public international law;
- To critically assess historical and contemporary events and developments in public international law;
- To analyze the practice of international law in the context of Latin America;
- To develop lawyerly skills in building international legal arguments about contemporary issues in public international law.

III. Course Content

Topic 1

Nature of international law. International law and historical legal method.

Reading materials:

- 1) H. Charlesworth, 'International Law: a discipline of Crisis'. 65 *Modern Law Review* 377 (2002);
- 2) M. Koskenniemi, 'International Lawyers'. In: P. Cane; J. Conaghan (eds.). *The New Oxford Companion to Law*, 2008;
- 3) A. Kemmerer, 'We do not need to always look to Westphalia . . . A Conversation with Martti Koskenniemi and Anne Orford'. 17 *Journal of the History of International Law* 1 (2015);
- 4) A. Orford, '¿El pasado como derecho o como historia? La relevância del imperialismo para el derecho internacional moderno'. In: A. Anghie; M. Koskenniemi; A. Orford. *Imperialismo y derecho internacional*. Bogotá: Siglo de Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, 2016, 191-227;
- 5) L. Eslava, L. Obregón, R. Urueña. 'Imperialismo(s) y derecho(s) internacional(es): ayer y hoy'. In: A. Anghie; M. Koskenniemi; A. Orford. *Imperialismo y derecho internacional*. Bogotá: Siglo de Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, 2016, 11-94.

Topic 2

Sources of international law. Customary law, the law of treaties, and the Latin American practice.

Reading materials:

- 1) H. Charlesworth, 'Law-making and Sources'. In: J. Crawford; and M. Koskenniemi (eds) *The Cambridge Companion to International Law* (CUP, 2012), 187-200;
- 2) B. S. Chimni, 'Customary International Law: A Third World Perspective'. 112 *American Journal of International Law* 1 (2018);

- 3) J. B. Scott, 'La Codificación del Derecho Internacional'. Conferencia pronunciada em la Facultad de Derecho de la Universidad de la Habana (República de Cuba), 1924.

Topic 3

Subjects of international law. Statehood and the individual in the regional context.

Reading materials:

- 1) K. Knop, 'Statehood: territory, people, government'. In: J. Crawford; and M Koskenniemi (eds) *The Cambridge Companion to International Law* (CUP, 2012), 95-116;
- 2) A. B. Lorca, 'Codifying American international law: statehood and non-intervention'. In: A. B. Lorca, *Mestizo International Law* (CUP, 2014), 720-739, 772-778;
- 3) A. A. Cançado Trindade, 'The Legal Personality of the Individual as Subject of International Law'. In: A. A. Cançado Trindade, *International Law for Humankind*, The Hague Academy of International Law Monographs, 2.ed., Leiden: Martinus Nijhoff, (2013), 213-232.

Topic 4

International dispute resolution and Latin American disputes.

Reading materials:

- 1) M. T. Infante Caffi, 'El Pacto de Bogotá: casos y práctica'. *ACDI - Anuario Colombiano De Derecho Internacional*, 10 (2017) 85-116.
- 2) L. B. Restrepo, *La Tensión entre lo Jurídico y lo Político. Un debate sobre la juridicidad de la mediación internacional*. Bogotá: Ediciones Uniandes, 2018, 37-54.

Topic 5

Jurisdiction and immunities. Latin American practice on diplomatic asylum.

Reading materials:

- 1) F. F. Carvalho Veçoso, *International law, diplomatic asylum and Julian Assange*, Pursuit, University of Melbourne, <https://pursuit.unimelb.edu.au/articles/international-law-diplomatic-asylum-and-julian-assange>
- 2) G. Villa, 'El derecho de asilo en el derecho internacional general y en el derecho internacional público'. *Revista de Derecho Público* (datos bibliograficos completos a confirmar)

Topic 6

State responsibility.

Reading materials:

- 1) K. Greenman, 'Aliens in Latin America: intervention, arbitration and state responsibility for rebels'. 31 *Leiden Journal of International Law* (2018) 617-639.
- 2) A. B. Lorca, 'Codifying American international law: statehood and non-intervention'. In: A. B. Lorca, *Mestizo International Law* (CUP, 2014), 891-911;

Topic 7

International Environmental Law and development in Latin America.

Reading materials:

- 1) S. Pahuja, 'Conserving the world's resources?'. In: J. Crawford; and M Koskenniemi (eds) *The Cambridge Companion to International Law* (CUP, 2012), 398-420;
- 2) R. Merino, 'Reimagining the Nation-State: Indigenous Peoples and the Making of Plurinationalism in Latin America'. 31 *Leiden Journal of International Law*, (2018), 773-792.

Topic 8

International law and the use of force. International law and intervention in Latin America.

Reading materials:

- 1) F. F. Carvalho Veçoso, 'Intervención, deuda externa y la conformación del orden espacial: el bloqueo de Venezuela revisitado (1902-1903). *Revista Estudios Sociales*, Santa Fé, 2020, in press.
- 2) A. Orford, 'NATO, Regionalism, and the Responsibility to Protect'. In: I Shapiro and A Tooze (eds), *Charter of the North Atlantic Treaty Organisation together with Scholarly Commentaries and Essential Historical Documents* (Yale University Press, 2018), 302-327.

Topic 9

International Human Rights Law. The Inter-American view on amnesties.

Reading materials:

- 1) F. F. Carvalho Veçoso; C. A. V. Sandoval, 'A Human Rights' Tale of Competing Narratives'. 8 *Direito & Práxis*, 2017, 1603-1651.
- 2) F. F. Carvalho Veçoso; A. A. Junior, 'The Inter-American System as New Grossraum? Assessing the Case Law of the Inter-American Court of Human Rights.' *ESIL Conference Paper Series*, 2011, 1-21.

Topic 10

Law of the Sea. Latin Americans, the Third UN Conference on the Law of the Sea, and contemporary issues.

Reading materials:

- 1) F. V. Garcia Amador, *América Latina y el derecho del mar*, Editorial Universitaria: Instituto de Estudios Internacionales, Universidad de Chile, 1976, 13-47.
<https://libros.uchile.cl/files/presses/1/monographs/317/submission/proof/index.html#48>

Topic 11

Regional international law: past, present and future.

Reading materials:

- 1) F. F. Carvalho Veçoso, 'Assessing Regionalism in International Law'. 35 *L'Observateur des Nations Unies*, 2013, 7-23.
- 2) L. Obregón, 'Regionalism (Re-)constructed: A Short History of a "Latin American International Law"'. *Select Proceedings of the European Society of International Law: Regionalism and International Law Valencia*, 2012.

IV. Class schedule

Week 1	Topic 1	Nature of International Law
		International Law and historical method
	Topic 2	Sources of International law
		Customary law, the law of treaties, and the Latin American practice
	Topic 3	Subjects of International Law
		Statehood and the individual in the regional context
Topic 4	International Dispute resolution and Latin American disputes	
Topics 5 and 6	Jurisdiction and immunities – Latin American practice on diplomatic asylum	
		State responsibility

Week 2	Topic 7	International Environmental Law and development in Latin America
		Research Workshop
	Topic 8	International law and the use of force
		International law and intervention in Latin America
	Topic 9	International Human Rights Law
		The Inter-American view on amnesties
Topic 10	Law of the Sea	
	Latin Americans, the Third UN Conference on the Law of the Sea and contemporary issues	
Topic 11	Regional international law: past, present and future	

V. Assessment

Students will be assessed based on the following:

- a) Class participation (30%);
- b) Written memorandum (30%);
- c) Essay (40%).

a) This subject is based on a student-centred process of effective learning, and class participation will be encouraged as a fundamental aspect of the activities developed in the classroom.

b) Students will be asked to prepare a written memorandum providing legal advice to the Ministry of Foreign Affairs in Colombia in regards to a contemporary international legal issue. Word limit: 1,500 words.

c) The final assessment is a short essay (up to 2,000 words, excluding footnotes). Students will be asked to choose a topic amongst the eleven topics of the course, and explore one specific research question related to the selected topic. At the beginning of week 2 of the course, students will present their preliminary ideas for collective discussion in a research workshop.