

INTERNATIONAL LAW



Introduction



International Law

International Law Agenda

- Objective: Course introduction.
- Organization of the course.
- Class structure/content.
- Methodology and resources.
- Evaluation.
- Discussion questions.
- Next classes:
 - Jan. 19: International actors/territory. International Law in the news
 - Jan. 26: Sources of international law.
 - Feb. 2: Private International Law.



INTERNATIONAL LAW

- Course website: www.julianhermida.com
- Email: julian.hermida@algomau.ca
- Live sessions: Zoom (link available in AU Moodle for this course).



Class structure

- Short lectures (Zoom live sessions).

NO RECORDING



- Class activities.

Content

- Actors/territory.
- Sources.
- Private International Law.
- Jus ad bellum/Jus in bello.
- Space Law.
- International Criminal Court.
- Extradition.

Methodology and resources

- Participatory.
- Covid-19 constraints and challenges.
 - Possible changes to the course if Covid-19 measures change.
- Back to in-person classes?
- Course website: www.julianhermida.com.
- Zoom live sessions.



Evaluation

- Class participation: 40%
- Test: 30%
 - March 2-9 (one week-take home)
- Final take-home: 30%
 - Distribution: March 30.
 - Submission: April 5.



Discussion questions

- What is International Law?
- What is the purpose of International Law? Is it effective?
- Who are the main international actors?
- What are some of the topics of International Law?
- Do you think International Law affects your every day life? If so, how?
- Do you follow international news? If so, what news have you been following lately? Choose an international conflict or issue and follow it in the news. You will report about it throughout the course.

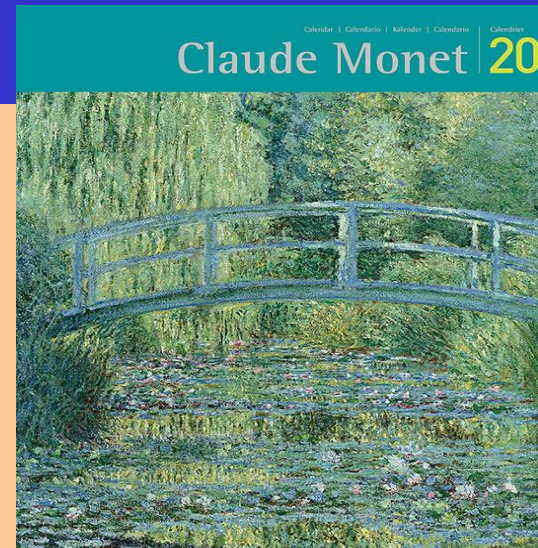
Discussion questions

Analyze the following cartoons



Next classes

- Jan. 19: International actors/territory.
- Jan. 26: Sources of international law.
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- Feb. 9: Globalization.
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International Law: Agenda

- Objective: International actors.
- International actors
 - State.
 - Other actors
- Law in the news.
- Next classes:
 - Jan. 26: Sources of international law.
 - Feb. 2: Private International Law.



International Law actors

- States.
- International intergovernmental organizations.
- International non-governmental organizations.
- Individuals.
- Corporations.
- Peoples seeking self-determination.

States

- Personification of state
 - Assumption that if a state exists it is valid. It is not allowed to question the legitimacy of a state.
 - Concept of Nation-State: The State was assumed to be its people. The assumption is that states and people are the same.
 - Monopoly of creation of laws: treaties and customs
 - Hegemonic powers of a few: small club Europe and North America

Recognition of States

- **Constitutive theory of recognition:** If a claimant to international legal personality was accepted by other existing states, then it could be considered as a state
- **Objective criteria for the existence of states:**
Montevideo Convention:
 - a) Permanent population
 - b) Defined territory:
 - c) Government: exercising control over, at least most of the territory
 - d) Capacity to enter into relations with other states

Recognition of States

- **Declaratory theory of recognition:** In 1989 the doctrine of recognition of states changed radically.
- Charter of Paris for a New Europe (1992) European states will not recognize a new state unless it complies with the following: **democracy, protection of Human Rights and protection of minorities.**
- In 1999 this shift ended because Germany immediately recognized the state of Croatia, even if it did not observe the Paris criteria.
- Now recognition is **essentially a political decision** based on the objective criteria. Because these criteria are loose, States may recognize other states as they see fit. However, they recognize a state when it exists, when a government is in control over its population.

Territory

- Land
- Internal waters: full sovereignty
- Territorial sea: 12 nautical miles out to sea from baseline. Full sovereignty over sea, airspace, and subsoil.
- Contiguous zone: 24 nautical miles from baseline. Jurisdiction related to pollution, customs, immigration, and taxation.
- Exclusive Economic Zone: 200 miles from baseline. Rights over exploration and exploitation of resources in the water and seabed. Jurisdiction over marine research.
- Continental shelf: seabed and seafloor (200 miles from baseline). Rights over the resources of the continental shelf.
- Air space:
 - Air space vs. Outer Space,

International intergovernmental organizations

- Set up by agreement between states; because of need for international dialogue.
- Necessary to look at institution's constitution to determine its standing, i.e. art 104 United Nations Charter: “the organization shall enjoy in the territory of members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.”
- International personality in context of international organizations is relative.

Individuals

- Especially in the area of protection of human rights, the individual has attained standing before some international bodies.
- The expression of rights in conventions is not matched by equally effective measures to implement them.
- Individuals can be prosecuted for criminal violations of international customary or conventional law: war crimes, crimes against peace and security, crimes against humanity.

Corporations

- Represent states.
- Participate in meetings.
- Fund international governmental organizations.

Peoples seeking self-determination

- Groups asserting collective rights.
- UN Charter, arts. 1(2) “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...), 55 and 73—**recognize right to self-determination** (without defining it); art 73 (Declaration Regarding Non-Self-Governing Territories) urges administering states to ensure advancement and develop self-government.
- The term “peoples” as used in United Nations practice refers to an identifiable group of individuals. They must constitute a collectivity of reasonably homogeneous people, such as a cohesive national group.

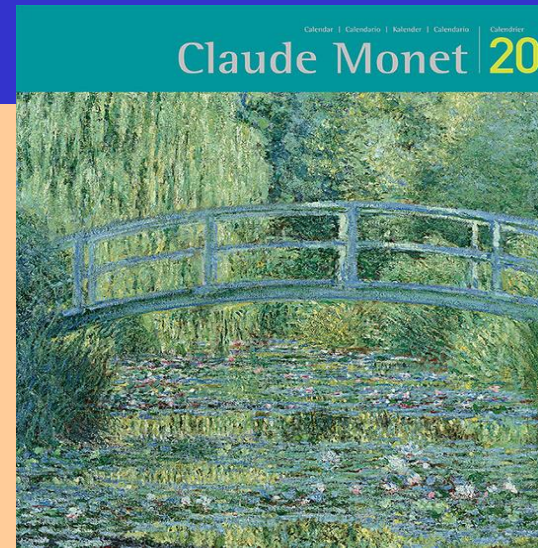
International Law in the News

Discuss current news dealing with International Law not discussed before in class.



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International Law: Agenda

- Objective: Sources of International Law.
- Primary sources
- Secondary sources
- Scenarios
- Next classes:
 - Feb. 2: Private International Law.
 - Feb. 9: Globalization/Private International Law
 - Feb. 16: Jus ad bellum and jus in bello.
 - March 2: Midterm test (take-home).



Sources of International Law

Primary sources

- Treaties
- Custom
- General principles

Secondary sources

- Precedents (in practice primary)
- Doctrine (writings of publicists)

Treaties

- **Essential elements:** (a) parties must be subjects of international law; (b) they must intend to create binding obligations under international law; (c) their agreement must be governed by international law.
- **Effects of a treaty:**
 - It exists within a framework which may be said to be *Pacta Sunt Servanda*, i.e., a shared expectation that the treaty obligations will be performed
 - Good faith obligation: Treaties must be performed and interpreted in good faith (internal law may not be invoked before a Treaty).

Treaties

Treaty Interpretation

No single golden rule of treaty interpretation

- 3 categories:
 - plain meaning
 - intention of the parties
 - object and purpose of the treaty

A preference for ordinary meaning if terms in light of the context and the object and purpose.

Treaties: Binding resolutions of international organizations.

- Some international agreements that are constitutions or charters of international organizations confer power on those organizations to impose binding obligations on their members by resolution, usually by qualified majorities.
- Such obligations derive their authority from the international agreement constituting the organization.
 - For example, the International Monetary Fund may prescribe rules concerning maintenance or change of exchange rates or depreciation of currencies. See § 821.
 - The International Civil Aviation Organization may set binding standards for navigation or qualifications for flight crews in aviation over the high seas.

Treaties: United Nations.

- The United Nations Charter. The Charter of the United Nations has been adhered to by virtually all states. Even the few remaining non-member states have acquiesced in the principles it established. The Charter provisions prohibiting the use of force have become rules of international law binding on all states.

Treaties: United Nations.

- Peremptory norms of international law (*jus cogens*). Some rules of international law are recognized by the international community of states as peremptory, permitting no derogation.
- These rules prevail over and invalidate international agreements and other rules of international law in conflict with them. Such a peremptory norm is subject to modification only by a subsequent norm of international law having the same character.
- It is generally accepted that the principles of the United Nations Charter prohibiting the use of force have the character of *jus cogens*.

Customs:

- Practice as customary law
- *Opinio juris*

Customs: Practice as customary law

- Diplomatic acts and instructions as well as public measures and other governmental acts and official statements of policy, whether they are unilateral or undertaken in cooperation with other states. Inaction may constitute state practice, as when a state acquiesces in acts of another state that affect its legal rights.
- The practice necessary to create customary law may be of comparatively short duration, but it must be "general and consistent. A practice can be general even if it is not universally followed; there is no precise formula to indicate how widespread a practice must be, but it should reflect wide acceptance among the states particularly involved in the relevant activity.

Customs: Practice as customary law

- Failure of a significant number of important states to adopt a practice can prevent a principle from becoming general customary law though it might become "particular customary law" for the participating states.
- A principle of customary law is not binding on a state that declares its dissent from the principle during its development.

Customs: *Opinio juris*

- For a practice of states to become a rule of customary international law it must appear that the states follow the practice from a sense of legal obligation (*opinio juris sive necessitatis*); a practice that is generally followed but which states feel legally free to disregard does not contribute to customary law.
- A practice initially followed by states as a matter of courtesy or habit may become law when states generally come to believe that they are under a legal obligation to comply with it. It is often difficult to determine when that transformation into law has taken place.
- Explicit evidence of a sense of legal obligation (*e.g.*, by official statements) is not necessary; *opinio juris* may be inferred from acts or omissions.

Treaty and customs

- Treaty and custom operate in parallel (Nicaragua case). Treaty law does not fully displace custom.
- You must always look at whether there is a customary international rule apart from the Treaty.

General principles

- A principle must be recognized in substance by all the main systems of law.
- By applying it the judge would not be doing violence to the fundamental concepts of any of those systems.
- A principle of law is a general one. It must be applied by the most representative systems of municipal law.
- What is usually required is that the principle pervades the municipal law of nations in general.

Sources of International Law

Secondary sources

- Precedents (in practice primary)
- Doctrine (writings of publicists)

Scenarios

1. The General Assembly recently adopted the United Nations Declaration on Human Cloning, by which Member States were called on to adopt all measures necessary to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life. A leading South Korean university launched a human cloning program. The Philippines sent a letter to the SK government demanding the government to order the immediate termination of that program or else the Philippines would take this case to the International Court of Justice. Can the Philippines succeed? Why or why not?

Scenarios

2. Professor Cassale, a very respected Italian scholar, published a book on International Law where he holds that “In the case of secession non-military bases may continue to be used by the state that built them, provided that it offers to pay adequate compensation to the state where that base is located.” There is a conflict between Russia and Estonia as Estonia, now an independent state, wants to build a wind farm to generate clean electricity where there is a Soviet built nuclear plant. Russia offers compensation, which is considered adequate by Estonia, to keep operating the nuclear plant. Estonia refuses the compensation as it prefers to build the wind farm. There is no treaty and no international custom about this issue. Estonia brings the complaint to the International Court of Justice and Russia invokes the book. Can Russia be successful? Why or why not?

Scenarios

3. Netherlands ratified the Moon Agreement. Canada has not. Netherlands wants to invoke environmental obligations arising out of the Agreement against Canada. Is this possible?

Scenarios

4. France, Spain, Russia, and the United States have the following principles in their domestic laws. What is the general common principle? France: Foreign correspondents of internationally accredited news agencies must be given access to the theatre of operations in armed conflicts, provided they make a request in writing. Spain: Foreign correspondents of internationally accredited news agencies must be given access to the theatre of operations in armed conflicts, if requested with at least 72 hours in advance. United States: Foreign correspondents of internationally accredited news agencies must be given access to the theatre of operations in armed conflicts, provided they agree to comply with orders issued by the military officer in charge. Russia: Foreign correspondents of internationally accredited news agencies must be given access to the theatre of operations in armed conflicts, if previously registered with the Department of Foreign Affairs

Scenarios

- 5. Suppose, there is an international armed conflict between Belize and Honduras. BBC, the leading UK news organization wants to go to Belize to broadcast the conflict live. Can it invoke the general principle of law mentioned above?
- 6. The United States, Russia, France, and the United Kingdom, together with other European, and Latin American states are making declarations that they regard the clean up of nuclear plants as an imperative obligation. China objects and issues a declaration saying that there is no such obligation in international law. Brazil refuses to clean up its nuclear plants. The United States formally complains to Brazil and threatens to sue before the International Court of Justice. Can the US succeed? Why or why not?

Scenarios

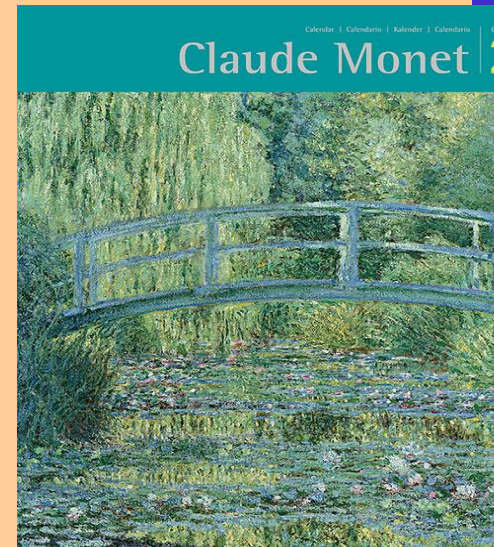
7. The United States, Russia, France, and the United Kingdom, together with other European, and Latin American states have long regarded the cooperation to clean up nuclear plants as an imperative obligation. So, for example, when France decided to clean up a nuclear plant in its Guyana territory, it sought the collaboration of the United States, which it gave it without seeking any monetary compensation. When Argentina sought help from China on account of this long established international customary norm, China refused saying that it now objects to that international custom. Argentina wants to bring a case against China before the International Court of Justice. Can Argentina succeed? Why or why not?

Scenarios

8. An NGO that elaborated a draft international treaty on the protection of the Environment together with the Canadian government wants to vote in the international assembly discussing this treaty. You are the president of the assembly. May you allow the NGO to vote? Can you allow it to participate in the deliberations without voting?

Next classes

- Feb. 2: Private International Law.
- Feb. 9: Feb. 9: Globalization/Private International Law.
- Feb. 16: Jus ad bellum and jus in bello.
- March 2: Midterm test (take-home).
- March 9: Space Law
- March 16: International Criminal Court.
- March 23: Extradition.
- March 30: Distribution of final take-home.
- April 5: Submission of final take-home.



International Law: Agenda

- Objective: Private International Law.
- Private International Law
 - Jurisdiction
 - Rules
 - Recognition and enforcement
- Scenarios
- Next classes:



International Law: Next classes

- Feb. 9: Globalization/Private International Law (**in person**)
- Feb. 16: Jus ad bellum and jus in bello (**in person**).
- March 2: Midterm test (take-home).
- March 9: Space Law (online)
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Private International Law

Three main issues

- Jurisdiction, i.e., what court can hear the claim?
- Rules, i.e., what rules will the court apply?
- Recognition and enforcement, i.e., will a judgment of a foreign court be recognized and enforced in another country, where, for example, the defendant's assets are.

General jurisdiction

- Each state determines when it will hear a lawsuit.
- If both parties agree to take a case to a jurisdiction, that jurisdiction is competent. But there are many exceptions. Some countries choose to close their courts' doors when the case has no more substantial connection than the parties' consent. For example, New York courts tend to admit contracts cases when both parties consent to New York jurisdiction but not torts. France allows lawsuits filed by French nationals against a foreigner in France.

General jurisdiction

Individuals

- **Common Law:** Traditionally, the lawsuit may be brought where the defendant is served with process. But in modern states, an individual may be sued in his state of residence.
- **Civil Law:** the general jurisdiction to sue a person is that of his or her domicile or residence.

Corporations

- **Common Law:** A corporation may be sued in its state of incorporation. In the US, a corporation may also be sued in any state where it conducts business.
- **Civil Law:** The place of administration or management (siege or sede), which may be different from the place of incorporation.

Rules of Private International Law

TORTS

- **Common Law:** generally, *lex loci*, i.e., where the tort was committed.
- **Civil Law:** where the tort was committed.

Rules of Private International Law

CONTRACTS

- **Common Law:** Express choice: The chosen law will govern the contract, provided the choice is bona fide (there are some connecting points), legal, and it does not contradict public policy.
No express choice: the law with which the transaction has its closest and most real connection. Connecting factors include: place of contracting, place of performance (very important), place of residence, place of business, etc. In online consumer contracts, the applicable law is the law of the consumer's residence.
 - In Canada: (i) express choice; (ii) implied choice; (iii) no express or implied law: the proper law is objectively determined by looking for connections to foreign legal jurisdictions. There may be different foreign laws to govern different aspects of the contract, e.g., contract formation and contract performance.

Private International Law

CONTRACTS

- **Civil Law:** Express choice: The chosen law will govern the contract, except for consumer contracts and individual employment. No express choice: the law of the country with which it has the closest connection (a severable part of a contract with which another country has a closer connection may govern by way of exception). Connecting factors: habitual residence –individuals- or central place of administration –legal entities- of the performing party, and location of immovable property.

Rules of Private International Law

MARRIAGE

- **Common Law:** *Lex loci celebrationis* (place of celebration of marriage) for the formal validity of marriage and the law of each party's antepenultimate domicile for capacity (age, subsisting marriage, etc.) but in some cases courts take into consideration the intended matrimonial home.
- **Civil Law:** Capacity for marriage: law of nationality or habitual residence. Formalities: *Lex loci celebrationis*. Divorces may be brought in the state of the plaintiff's domicile.

Rules of Private International Law

JUDGEMENTS IN REM

- **Common Law:** Lawsuits involving land may be brought where the land is located.
- **Civil Law:** Lawsuits involving land may be brought where the land is located.

Recognition and enforcement of foreign judgments

- Recognition: the recognition of the validity of a foreign judgment.
- Enforcement: an order for an action arising from a foreign judgment, e.g., sale of property, foreclosure, freezing an account, etc.
- Some countries require the transformation of a foreign judgment into a domestic one. Some states demand that a new procedure be initiated again, and others simply inquire about the regularity of the foreign proceedings.
- Requirements for enforcement and recognition in both common law and civil law states. All foreign judgments are enforced and recognized, except when:
 - Foreign state lacked jurisdiction, according to the laws of the state where recognition is sought.
 - Fraudulent proceedings.
 - Public Policy.
 - Reciprocity (some civil law countries only).

Group activity

- Josh, a Canadian citizen who resides in Sault Ste. Marie, Ontario. He went to Bologna, Italy for the summer holidays. There he bought a meat sandwich from La Rosticceria, an Italian deli with no assets or branches outside Italy. He ate the sandwich. He was immediately hospitalized for a week as the meat was contaminated. He came back to Canada and wants to sue La Rosticceria in Canada. If he does, can the judicial decision be enforced in Canada? If so, what is the applicable law? Can the judicial decision be recognized in Italy? If Josh wanted to sue La Rosticceria in New York, will the New York courts accept the case?
- Essar, a Canadian company in Sault Ste. Marie, requested the purchase of steel from a Pipeland, a UK company. The companies exchange emails and agree on the price of steel. They do not mention anything about the governing law of this contract. Pipeland does not deliver the steel as agreed. Essar wants to sue Pipeland. Where can Essar sue? What is the applicable law?

Group activity

- Julian wants to sell his stamp collection. He places an ad on his own website. Alex, a resident of Moscow, Russia, emails Julian saying he wants to buy it. Alex receives the stamp collection but never pays. Where can Julian sue Alex? What is the applicable law?
- The Coca-Cola Company, a company with head offices in Atlanta, Georgia, US, hires Heliene, a solar power company from Sault Ste. Marie, to install solar panels on its new plant in Barcelona, Spain. Heliene sends three Canadian technicians to Barcelona and ships the panels from the Sault. The technicians install the panels. The Coca-Cola Co. refuses to pay Heliene because it argues that the panels were not correctly installed. Where can Heliene sue The Coca-Cola Company? The contract between Heliene and Coca-Cola is silent as to the governing law. Suppose that one of the Heliene technicians is injured while installing the panels. Where can the technician sue? What is the applicable law?

Group activity

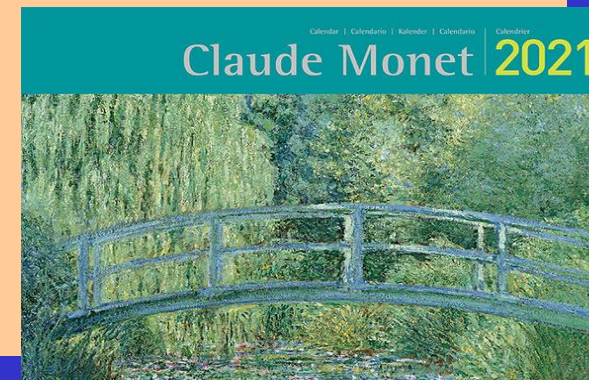
- Pierre, a French citizen, went to Disneyworld in Florida, US. There he injured his head in Splash Mountain because the ride malfunctioned. Where can Pierre sue Disneyworld? What is the applicable law?
- 25 de mayo, a theater company located in Buenos Aires, Argentina makes a request for the purchase of a rotating stage from a Theatre Props, a company in Madrid, Spain. The request is accepted but there is no mention of the governing law. 25 de Mayo receives the rotating stage. When its technicians try to install it, they realize that it does not work. One of the technicians is injured while trying to install the stage. Where can 25 de Mayo sue Theatre Props for the contracts and the torts case? What is the applicable law in each lawsuit?
- Because there is no same sex marriage law in Texas, Paul and John came to Sault Ste. Marie, Ontario to get married. After the marriage, they return to Texas. Is the marriage valid in Canada? Is the marriage valid in Texas? Suppose that Paul and John intend to live in the Sault after they get married. Is the marriage valid in Canada?

Group activity

- Marie and Jean are French citizens. They have been married for 10 years. They have always lived in France. Marie had an affair with George, an American businessperson while he worked in France. When George returns to the States, he asks Marie to join him, which she does. Jean wants to file for divorce. Where can he file for divorce? What is the applicable law?
- Sony Pictures, a corporation incorporated in the State of Delaware, US, decided not to distribute dividends. A Canadian minority shareholder, who lives in Toronto, Ontario, disagrees with this decision and wants to sue Sony Pictures. Where can the minority shareholder sue? What is the applicable law?
- CineVideo, a corporation incorporated in the state of Luxembourg, with principal offices in Paris, France decided not to distribute dividends. A Canadian minority shareholder, who lives in Montreal, Quebec, disagrees with this decision and wants to sue CineVideo. Where can the minority shareholder sue? What is the applicable law?

Next classes

- Feb. 9: Globalization/Private International Law (**in person**)
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International Law: Agenda

- Objective: Jus ad bellum & jus in bello.
- Jus ad bellum
- Jus in bello
- Next classes:



International Law and War

- Jus ad bellum

- Jus ad bellum refers to the conditions under which States may resort to war or to the use of armed force in general.

- Jus in bello

- Jus in bello regulates the conduct of parties engaged in an armed conflict. It seeks to minimize suffering in armed conflicts, notably by protecting and assisting all victims of armed conflict to the greatest extent possible.

Jus ad bellum

- Until the end of the First World War, resorting to the use of armed force was regarded not as an illegal act but as an acceptable way of settling disputes.
- In 1919, the Covenant of the League of Nations and, in 1928, the Treaty of Paris (the Briand-Kellogg Pact) sought to outlaw war.
- The adoption of the United Nations Charter in 1945 confirmed the trend: “The members of the Organization shall abstain, in their international relations, from resorting to the threat or use of force ...”

Jus ad bellum

- General rule: Prohibition against the use of force amongst States
- Exceptions:
 - Self-defence: The UN Charter upholds States' right to individual or collective self-defence in response to aggression by another State (or group of States).
 - Anticipatory self-defence
 - UN authorization for the use of force. The UN Security Council, acting on the basis of Chapter VII of the Charter, may also decide to resort to the collective use of force in response to a threat to the peace, a breach of the peace, or an act of aggression.

Jus in bello

- It applies to the belligerent parties irrespective of the reasons for the conflict or the justness of the causes for which they are fighting. If it were otherwise, implementing the law would be impossible, since every party would claim to be a victim of aggression.
- IHL is intended to protect victims of armed conflicts regardless of party affiliation. That is why *jus in bello* must remain independent of *jus ad bellum*.

Space Law: The Outer Space Treaty of 1967

- COPUOS (development of international cooperation in space exploration for peaceful purposes).
- Consensus: minimum common denominator.
- 1963 Declaration of Legal Principles.
- Cold War.

Outer Space Treaty

- **Purpose (preamble)**

- To contribute to broad international cooperation in the exploration and use of outer space for peaceful purposes.
- International cooperation will contribute to the development of mutual understanding and to strengthen friendly relations between states and peoples.

Outer Space Treaty

- **Common Interest of Mankind**

- Exploration and use of outer space: for the benefit and in the interests of all countries (irrespective of their degree of economic and scientific development) and shall be the Province of Mankind (common interest of mankind).
- International cooperation and freedom of investigation.
- Not subject to national appropriation by claim of sovereignty, use, occupation or any other means.

Outer Space Treaty

- **Freedom of exploration and use**
 - Free exploration and use by all states without discrimination.
 - Free access to all areas of celestial bodies.
 - Freedom of scientific investigation in outer space.
- **Application of International Law**
 - International Law.

Outer Space Treaty

- **Peaceful purposes (limitation of military activities in outer space)**
 - No objects carrying nuclear weapons or weapons of mass destruction may be placed in orbit around the Earth, installed on celestial bodies, or stationed in outer space.
 - The Moon and other celestial bodies shall be used exclusively for peaceful purposes. No testing weapons and no establishing military bases on celestial bodies. The use of military personnel for scientific purposes is not prohibited.
- **Astronauts**
 - Astronauts are envoys of mankind in outer space. Assistance. Rescued and returned.

Outer Space Treaty

- **Authorization and continuing supervision**
 - Authorization and continuous supervision of activities of non-governmental entities by the appropriate state.
- **Responsibility**
 - International responsibility for national activities in outer space, whether carried out by governmental or non-governmental entities and for assuring that national activities are carried out in conformity with the Space Treaty.
 - Activities carried out by an international organization, responsibility for compliance is on the international organization and the states participating in the organization.

Outer Space Treaty

- **Liability for damages**

- The launching and procuring states, and states from whose territory or facility an object is sent to outer space are internationally liable for damage to another state, or its natural or juridical persons on Earth, airspace, or outer space.

Outer Space Treaty

- **Registry**

- State of registry of the space object retains jurisdiction and control over the object and any personnel, while in outer space.
- Ownership of a space object is not affected by its presence in outer space.

- **International cooperation**

- International cooperation (not mandatory, but subject to consultations and agreements).
- No harmful contamination. No introduction of extraterrestrial matter into Earth.
- Information on space activities to the UN.

Liability Convention

- **Liable entities**
 - The launching and procuring states, and states from whose territory of facility an object is sent to outer space are internationally liable for damage to another state, or their natural or juridical persons on Earth, airspace, or outer space.
- **Grounds for liability**
 - Damage caused on the surface of the Earth or to an aircraft in flight: **ABSOLUTE LIABILITY**.
 - Even force majeure
- **Damage caused in outer space: FAULT LIABILITY**

Liability Convention

- **Compensation for damage**
 - Determined in accordance with international law and the principles of equity and justice in order to provide reparation that will restore the person, natural or juridical, State or international organisation on whose behalf the claim is presented **to the condition which would have existed if the damage had not occurred.**
- **Exception to total compensation**
 - nationals of that launching State;
 - foreign nationals during such time as they are participating in the operation of that space object.
- **Claims**
- A state will present a claim for compensation for

Liability Convention

- **Claims**

- A state will present a claim for compensation for damage to a launching state through diplomatic channels.
- The claim has to be presented not later than one year following the date of the damage
- If there is no settlement, the claim must be submitted to the Claims Commission (consisting of 3 members).
- The decision of the Commission is final and binding if the parties have so agreed; otherwise the Commission will render a final and recommendatory award, which the parties have to consider in good faith.

- **International organizations**

Liability Convention

- **International organizations**

- If an international intergovernmental organisation is liable for damage, that organisation and its members are jointly and severally liable; provided, however, that: any claim for compensation must be presented first to the organisation; and only when the organisation does not paid, within a period of six months, may the claimant State invoke the liability of the members.

Crimes in Outer Space

- Criminal jurisdiction on the ISS
 - The right to exercise criminal jurisdiction belongs, in principle, to the State of nationality of the perpetrator.
 - Criminal jurisdiction over personnel who are their own nationals, irrespective of where the perpetrator is located.
- Concurrent jurisdiction
 - In case of misconduct on orbit that: (a) affects the life or safety of a national of another partner State or (b) occurs in or on or causes damage to the flight element of another Partner State, the partner State whose national is the alleged perpetrator has the original –but not entirely exclusive- right to exercise criminal jurisdiction. If it decides to exercise it, then it preempts the right of the affected State. But the State of nationality of the perpetrator may also agree to exercise concurrent jurisdiction with the State of the nationality of the victim.

Crimes in Outer Space

- The IGA does not determine substantive criminal acts, i.e., it does not create criminal offences which if committed or omitted on the ISS would give rise to criminal prosecution.
- Each Partner State designates in its own domestic laws what criminal acts when committed on board the ISS will be subject to criminal prosecution.
- The United States determined that federal crimes are applicable on board the ISS.
- In Canada, only behaviour committed or omitted by a Canadian crewmember on a flight element of the International Space Station that constitutes an indictable offence in Canada is subject to criminal prosecution.

International Criminal Court

- Crimes within the jurisdiction of the ICC
 - Genocide
 - Crimes against humanity
 - War crimes

International Criminal Court

Genocide

- Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:
 - Killing members of the group;
 - Causing serious bodily or mental harm to members of the group;
 - Deliberately inflicting on the group conditions of life to bring about its physical destruction in whole or in part;
 - Imposing measures intended to prevent births within the group;
 - Forcibly transferring children of the group to another group.

International Criminal Court

Crimes against humanity

- Any of the following crimes when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.
 - Murder
 - Extermination
 - Enslavement
 - Deportation or forcible transfer of population;
 - Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
 - Torture;
 - Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds;
 - Enforced disappearance of persons;
 - The crime of apartheid;
 - Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

International Criminal Court

Crimes against humanity: Mental element

- Intent for the underlying offence (murder, extermination, deportation, etc.)
- Knowledge that the offences are part of a systematic policy or of widespread and large scale-back abuses.
- When these crimes take the form of persecution, the intent to subject a person or group to discrimination, ill-treatment, or harassment so as to produce great suffering or injury to that person or group on religious, political, or other such grounds (aggravated criminal intent or *dolus specialis*).

International Criminal Court

Crimes against humanity

- When one or more individuals are not accused of planning or carrying out a policy of inhumanity, but simply of perpetrating specific atrocities, in order to determine whether the necessary threshold is met, the following test applies: (i) verify whether the atrocities may be regarded as part of an overall policy or a consistent pattern of inhumanity, or whether they may be regarded as part of an overall policy or a consistent pattern of inhumanity, or whether instead they constitute isolated or sporadic acts of cruelty

International Criminal Court

War crimes

- In particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
- Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the acts against persons or property protected under the provisions of the relevant Geneva Convention.

International Criminal Court

- **Jurisdiction**

- The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
- The State of which the person accused of the crime is a national.

International Criminal Court

- **Principle of complementarity**

- The ICC is based on a principle of complementarity, i.e., the ICC can only act when a national court is unable or unwilling to carry out a prosecution. The ICC was not created to supplant the authority of the national courts.
- However, when a state's legal system collapses or when a government is a perpetrator of heinous crimes, the ICC can exercise jurisdiction.

- **Initiation**

- Prosecutor
- State Party refers to Prosecutor
- UN Security Council

International Criminal Court

- **Initiation**

- Prosecutor.
- State Party refers to Prosecutor.
- UN Security Council.

International Criminal Court

- **Applicable law**

- ICC Statute, Elements of Crimes and its Rules of Procedure and Evidence.
- Applicable treaties and the principles and rules of international law
- Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime.
- The Court may apply principles and rules of law as interpreted in its previous decisions.

International Criminal Court

- **Principles of Criminal Law**
 - Nullum crimen sine lege
 - Nulla poena sine lege
 - Non-retroactivity *ratione personae*
 - Individual criminal responsibility
- **Sanctions**
 - Prison of up to 30 years
 - Life in prison
 - Financial penalties

Extradition

- **Canadian Criminal Jurisdiction over international crimes**
 - TAG: When the offender is present in Canada.
 - When the perpetrator of the international crime is a Canadian citizen.
 - When the victim of an international crime is a Canadian citizen.
 - When the perpetrator is a citizen of a state that was engaged in an armed conflict against Canada.

Extradition

- Extradition is the surrender by one country, at the request of another country, of a fugitive who is either accused or convicted of a crime by the requesting country.
- It differs from deportation which is an immigration matter. Also, deportation does not necessarily require a court hearing; extradition does.
- Extradition involves the surrender of persons to or from Canada.

Extradition

Reasons for extradition

- for prosecution,
- to impose a sentence,
- or to enforce a sentence that has already been imposed (6 months or more).
- There must also be some kind of legal agreement between Canada and the other country. That can take the form of a binational extradition treaty or some other kind of multilateral agreement that specifically contains provisions dealing with extradition. Canada has signed bilateral extradition treaties with more than 50 countries.

Dual Criminality

- People can be extradited only if the offence they're accused or convicted of is a crime in both countries ("dual criminality" test).
- Extradition is meant to apply to relatively serious crimes. Under Canadian law, the threshold is specific. To qualify for extradition, Canada will not allow anyone to be extradited unless the offence involved could have resulted in a jail sentence of two years or more had it taken place in Canada.
- Name and elements of the offence may not be identical. Test: "essence of the offence".
- The specific crime must also be listed or included in the relevant treaty.
- The principle of specialty: a person extradited shall not be tried or punished in the requesting state for an offence other than that for which extradition was granted.

Extradition

- Canada will generally not allow the extradition of people charged with political offences in another country.
- As long as the person's political "offence" in the requesting country was non-violent, Canada will refuse to surrender the individual.
- Exceptions in death penalty cases.

Extradition

- The extradition request (authority to proceed).
- Judicial phase.
- Political phase (extradition appeal to the Minister of Justice).

The extradition request

- Request from an extradition partner to the Minister of Justice alleging that the person sought for extradition is wanted for the purpose of prosecution or sentencing.
- The requesting country must establish dual criminality and that the offence could have been punishable by two or more years of incarceration.
- “Authority to Proceed” (ATP).
- Once the ATP has been issued, the Minister makes arrangements to either have the individual arrested or summoned to court.

The judicial phase

- The judicial phase includes various functions, such as issuing process for the person to appear in court, the consideration of bail, determining the place of the hearing, and conducting the extradition hearing.
- The judge reviews a collection of documents assembled by the requesting state called the “Record of the Case” (ROC). The ROC summarizes the evidence available to the extradition partner for use in the hearing.
- After reviewing the ROC and any other admissible evidence, the Judge will consider whether the evidence establishes a *prima facie* case that the extradition crime has been committed.

Extradition

- Political phase
 - The Minister of Justice is responsible for the implementation of extradition agreements, the administration of the *Act* and responding to requests under the *Act*.
 - In addition, the Minister's agreement is required for the Minister of Foreign Affairs to conclude a specific agreement or modify the schedule of extradition partners.

Extradition to Canada

- The extradition process is also used when Canada requests the extradition of a person to Canada from another country for trial, imposition or service of sentence.
- The Minister of Justice may only seek extradition from another state at the request of the competent authority (i.e. the Attorney General of Canada or the Attorney General of the province) who is responsible for the prosecution in Canada.
- The foreign state will apply its own laws to executing the Canadian request. Canadian officials will be advised of the progress of the proceedings.

Russia-Ukraine crisis



Discussion questions

- What is the war in /demilitarization and de-nazification of/ Ukraine about?
- Who is Vladimir Putin? Who is Zelenski?
- Discuss major developments in Ukraine since the collapse of the Soviet Union: (i) foreign debt; (ii) the 1996 Constitution; (iii) Yanukovich.
- What is the connection between the first Trump impeachment and the war in Ukraine? What is Joe and Hunter Biden's involvement in Ukraine?
- What are Russia's arguments for invading Ukraine? What do you think of these arguments?
- How did the U.S. respond to the crisis? Why? Has it been effective? What about other Western countries? Are Western's sanctions legal under international law? What about domestic law?
- What are the everyday implications of the sanctions in Canada?

Discussion questions

- Are Russia's military operations legal under International Law?
- Was Russia's annexation of Crimea legal under international law? Why or why not?
- What similarities and differences do you see between the Ukraine crisis and the Cold War? Are Russia and the West headed toward a new Cold War?
- Should Ukraine become a member of NATO? Why or why not? What would this mean for Russia?
- Should Ukraine become a member of the EU? Why or why not?
- What are Russian's demands to end the crisis? Do you think the current negotiations can end the conflict?

