

University of Florida
International Law and the Use of Force
EUS 4930
Fall 2022

COURSE INFORMATION:

Instructor: Prof. Alexander Panayotov, Ph.D.

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Course Location: Turlington 1101

Course Time: Tuesday 8:30-10:25 AM; Thursday 9:35-10:25 AM

Office Location: Turlington Hall 3343

Office Hours: Tuesday 12:00-2:00 PM (in person), Thursday 12:45-1:45 (Zoom), and by appointment

“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:

War and violence evoke images of chaos and destruction. These images are accurate but also obscure the fact that the use of force by state and non-state actors alike is a regulated legal activity. In this course, we will study the structure of this activity, its nature, and limitations. 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*, 3rd edn. (Cambridge University Press, 2022) [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 will revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (three or more absences).
- Arrive on time. I will 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 will 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.aa.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/#> .

CLASS EXPECTATIONS:

In response to COVID-19, the following recommendations are in place to maintain your learning environment, to enhance the safety of our in-classroom interactions, and to further the health and safety of ourselves, our neighbors, and our loved ones. If you are not vaccinated, get vaccinated. Vaccines are readily available and have been demonstrated to be safe and effective against the COVID-19 virus. Visit one.uf for screening / testing and vaccination opportunities. If you are sick, stay home. Please call your primary care provider if you are ill and need immediate care or the UF Student Health Care Center at 352-392-1161 to be evaluated. Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.

RECORDINGS:

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

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.

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%
27-Sep-2022	Précis	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 29 th . I will not accept submissions after that and no points will be awarded for this assignment.	20%
04-Oct-2022 – 11-Oct-2022 11:59 pm	Midterm (take-home exam)	The midterm will consist of two questions and one short answers. The answer to each essay question should not exceed 5 double-spaced pages. The short answer 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 13 th . I will not accept submissions after that and no points will be awarded for this assignment.	30%

06-Dec-2022 – 13-Dec-2022 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 15 th . I will not accept submissions after that and no points will be awarded for this assignment.	40%
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SUBMISSIONS:

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

IMPORTANT DATES:

- **September 27th:** Précis I due
- **October 11th:** Midterm due
- **December 13th:** Final Exam due

TOPICS AND READINGS:

INTRODUCTION

"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
25-Aug	History of IL & Methodology	1. PIL 3-35 (skim) 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
30-Aug-2022	Sources of IL	1. <i>PIL</i> 81-101
01-Sep-2022	Sources of IL	1. <i>PIL</i> 101-120 2. <i>PIL</i> 125-138 (skim)
06-Sep-2022	Jurisdiction in IL	1. <i>PIL</i> 313-331 2. <i>PIL</i> 338-343 (skim)
08-Sep-2022	Rules on State Responsibility	1. <i>PIL</i> 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
13-Sep-2022	<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] 4. Adil Haque, “<i>Symposiums on Ukraine and the International Order: An Unlawful War</i>” (AJIL, 2022)
15-Sep-2022	<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]
20-Sep-2022	<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.

22-Sep-2022	<i>Jus in bello</i> : Introduction	1. <i>PIL</i> 602-616
27-Sep-2022	Conflict Status	1. <i>LAC</i> 129-158 2. <i>LAC</i> 158-160 3. <i>LAC</i> 164-167 [<i>The OSIRAK attack</i>]
29-Sep-2022	REVIEW SESSION	There are no readings for this class
04-Oct-2022	Individual Battlefield Status I	1. <i>LAC</i> 168-186
06-Oct-2022	Individual Battlefield Status II	1. <i>LAC</i> 186-208
11-Oct-2022	Principles I	1. <i>LAC</i> 209-225
13-Oct-2022	Principles II	1. <i>LAC</i> 225-240 2. <i>LAC</i> 245-247
18-Oct-2022	War Crimes	1. <i>LAC</i> 248-276
20-Oct-2022	Obedience to Orders	1. <i>LAC</i> 282-316
25-Oct-2022	Command Responsibility	1. <i>LAC</i> 317-342 2. Sergey Vasiliev, “ <i>Aggression Against Ukraine: Avenues for Accountability for Core Crimes</i> ” (EJIL blog, 2022) [Canvas]
27-Oct-2022	Ruses and Perfidy	1. <i>LAC</i> 350-362
02-Nov-2022	Targeting Objects	1. <i>LAC</i> 397-411
04-Nov-2022	Human Targeting	1. <i>LAC</i> 425-453
08-Nov-2022	Autonomous Weapons and Drones	1. <i>LAC</i> 464-481
10-Nov-2022	Targeted Killing	1. <i>LAC</i> 481-494 2. Gabriella Blum & Philip Heymann, “ <i>Law and Policy of Targeted Killings</i> ” [Canvas] (skim)
15-Nov-2022	Torture	1. <i>LAC</i> 498-524
17-Nov-2022	Cyberwarfare	1. <i>LAC</i> 532-556 2. Case Study: John Richardson, “ <i>Stuxnet as Cyberwarfare: Applying the Law of War to the Virtual Battlefield</i> ” [Canvas] (skim)
22-Nov-2022	Gas, Biological, Chemical, and Nuclear Weapons	1. <i>LAC</i> 611-632 2. <i>LAC</i> 638-639
29-Nov-2022	Military Commissions Detention	1. <i>LAC</i> 640-661 2. <i>LAC</i> 672-689 (skim)
01-Dec-2022	Lawfare: Law as a Weapon of War	1. Charles Dunlap, <i>Lawfare 101: A Primer</i> ”, pp.8-17 [Canvas]
06-Dec-2022	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” (term 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)