

# Comparative International Legal Regimes

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CLJ 395

- **Instructor: Dr. Jean-Marc Coicaud**
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- **Meeting time : Tuesdays 3:55-7:00 p.m.**

## Course Description:

Most law courses focus on one given legal regime, be it at the national level or at the international level. This course will depart from this conventional approach. Rather than focusing on one legal regime, it will compare a variety of legal regimes, and this at the international level. It will mainly focus on human rights law, humanitarian law, environmental law, and business and economic law. On the basis of these international legal regimes, taken as examples, expressions and tools of international law contributing, or not, to global governance, the objectives of the course will be the following: 1) to acquire basic knowledge on each of these international legal regimes, chosen for their relevance and importance in the overall landscape of international law and global governance; 2) to compare the extent to which there is overlap and convergence in the fundamental principles, values and objectives of each of these regimes; 3) to assess the extent to which tensions and contradictions exist amongst them; 4) analyzing whether or not, and to what extent, these regimes are part of and, amount to a sound and coherent system of global governance; 5) to examine the conditions under which these international legal regimes could contribute to a better global governance of the world, including in their relations to relevant national legal regimes; and 6) to explore the nexus of international law—that is to say law as centered on the agency and relations of states—and global law—understood as dealing with state and non-state actors, including individuals, NGOs, and transborder networks. And furthermore, how this nexus is and its emerging legal regime is transforming the project of global policy as a whole.

The course will be more than a simple introduction to a variety of legal regimes. It will be about exploring the overall logic of regimes of international law in connection with the demands of global governance and global policy. While the course is divided into sections based on distinct areas of international law, throughout the course we will evaluate and compare each session's

legal regime to the next, building to the overall convergences, compatibilities, and competition/tensions of each regime.

### **Course Requirements:**

This course is designed as a seminar and requires student attendance and participation as mandatory. Attendance is the responsibility of the student. If a student has an absence they are expected to contact the instructor prior to the missed class. If a student is absent more than three classes s/he will be unable to earn credits for the course. Students must read all assigned literature prior to each class and be prepared to discuss the materials both voluntarily and when called upon. Students will be graded based on the following:

- I. Class Participation: Active participation by students is required in class. This includes contributions to in-class discussions and presentations. It will account for 30% of students final grade
- II. A final research paper of 4,000 words is required to be submitted at the end of the semester on:. It may address any topic covered in the course. Students must submit a draft of the paper prior to the final on:.

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***Session I— The session will introduce the relevance of the course for law students and graduate students, highlighting its main aspects and indicating how they will be tackled.***

#### **Overall presentation of the course**

- **Introduction of the students enrolled in the course**
- **Describing the overall logic of the course**
- **Practical Issues**
  - **Course participation**
  - **Paper**
  - **Grades**

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#### ***Session II— Intellectual Overview***

- Chapter 1 pp. 14-48 in *Gridlock*, Hale et al (2013)
- Chapter 1 pp. 3-29 and Chapter 2 pp. 31-62 in *Principles of International Law*, Murphy (2006)
- Chapter 2 pp. 14-27 in *Modern Treaty Law and Practice*, Aust (2013)
- *Charter of the United Nations* (1945)
- *Vienna Convention on the Law of Treaties* (1969)

- Chapter 1 pp. 5-12 in *Modern Treaty Law and Practice*, Aust (2013)

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### ***Session III—IV Legal Regime: Human Rights Law***

#### *Readings Session III*

- Chapter 10 pp. 293-334 in *Principles of International Law*, Murphy (2006)
- *The Universal Declaration of Human Rights* (1948)
- Chapter 1 pp. 17-31, MacKinnon in *Non-State Actors, Soft Law and Protective Regimes*, Bailliet (ed.) (2012)
- *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979)
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (2000)

#### *Readings Session IV*

- *Convention on the Prevention and Punishment of the Crime of Genocide* (1948)
- *Rome Statute of the International Criminal Court* (1998)
- Chapters 1-2 pp. 11-51; Chapter 5-Conclusion pp. 108-189 in *Rough Justice: The International Criminal Court in a World of Power Politics*, Bosco (2014)

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### ***Session V—VI Legal Regime: International Humanitarian Law/The Law of Armed Conflict***

#### *Readings Session V: Use of Force*

- Chapter 14, section A pp. 439-453 in *Principles of International Law*, Murphy (2006)
- *Charter of the United Nations* Chapter 2(4) and Chapter VII (1945)
- Chapters 4-5, pp. 85-62 in *War Aggression and Self-Defense*, Dinstein (2011)

*Readings Session VI: jus in bello*

- Chapter 1, pp. 1-38, Christopher Greenwood in *The Handbook of Humanitarian Law in Armed Conflicts*, Fleck (ed.) (1995)
- *Geneva Convention III (be familiar with the basic content of Geneva's I, II, and IV) and Additional Protocol I (part 1 and 3) and Additional Protocol II*
- Chapter 14, section B pp. 455-464 in *Principles of International Law*, Murphy (2006)
- Chapter 4, pp. 117-137 in *Cyber Warfare and the Laws of War*, Dinniss (2012)
- Tallinn Manual on the International Law Applicable to Cyber Warfare (2009); Read/be familiar with all rules, read commentaries on Rules 5, 30 and 31.

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***Session VII Legal Regime: Trade, Business, and Economic Law***

*Readings Session VI*

- International Covenant on Economic, Social and Cultural Rights (1966)
- Trade Related Aspects of Intellectual Property Rights (1994)
- “Constitutional Conceits: The WTO’s ‘Constitution’ and the Discipline of International Law” *The European Journal of International Law* Vol. 17 no.3, Dunoff (2006)
- “Regulatory Space In International Investment Law And International Trade Law”, forthcoming *University of Pennsylvania Journal of International Law*, Vol. 36, No. 1, Wagner (2014-2015)
- “Non -state actors and human rights: corporate responsibility and the attempts to formalize the role of corporations as participants in the international legal system.” in Jean d'Aspremont (Ed.), *Participants in the International Legal System. Multiple Perspectives on Non -State Actors in International Law* pp. 268 – 283, De Brabandere (2011)
- Human Rights and International Investment Law: Investment Protection as Human Right?, *Goettingen Journal of International Law*, Klein (2012)

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***Sessions VIII—IX Legal Regime: Environmental Law***

*Readings Session VIII*

- Chapter 12, pp. 369-399 in *Principles of International Law*, Murphy (2006)
- Chapter 2, pp. 26-47; Chapter 13 pp. 265-283; and Chapter 15, pp. 303-319 in *Research Handbook on International Environmental Law* Fitzmaurice et. Al (ed.) 2010

*Readings Session IX*

- *United Nations Framework Convention on Climate Change* (1992)
- *Kyoto Protocol* (1997)
- *The Nagoya Protocol on Access and Benefit-Sharing* (2010)
- Part III: Substantive Principles pp. 203-264 in *Research Handbook on International Environmental Law* Fitzmaurice et. Al (ed.) (2010)

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***Sessions X—XI From International Law and Policy to Global Law and Policy: Convergence and Competition****Readings Session X*

- “What Is Global Governance?” in *Global Governance*, Vol. 1, No. 3, p. 367-372, Finkelstein (1995)
- “Emerging Global Administrative Law” pp. 244-257 in *International Organizations as Law-Makers*, Alvarez (2005)
- Part I pp. 3-129 in *The Perils of Global Legalism*, Posner (2009)
- “Defining Global Public Goods” pp. 2-19, Call et al in *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century*, Kaul (ed.) (1999)

*Readings Session XI*

- “Global Justice Beyond International Equity” pp. 116-125, Sen in *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century*, Kaul (ed.) (1999)
- Chapter 1, pp. 1-21 in *The Future of International Law*, Trachtman (2013)

- Chapter 4, pp. 66-84 in *The Future of International Law*, Trachtman (2013)
- Conclusion, pp. 585-645 in *International Organizations as Law-Makers*, Alvarez (2005)

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***Session XII—XIII Lessons on the Way Forward***

- Chapter 5 pp. 273-306 in *Gridlock*, Hale et al (2013)