

[NOTE: This 2021 syllabus is for general information only. Expect revisions for Fall 2022]

New course number: 3401

**Political Science 358
International Law and International Relations
Fall 2021**

Professor Beth Simmons

Email: simmons3@law.upenn.edu

Wednesdays, 3.30-5.30, location to be announced

Office Hours: Fridays, 9:00 am-10:00 am. <https://upenn.zoom.us/j/96652991976>

Teaching fellows: To be announced

Section times: To be announced

This course is an introduction to public international law for students of international relations. The primary purpose of this course is to enhance students' understanding of the ways in which international law orders international (and sometimes domestic) politics. How and to what extent has it been used in resolving conflicts between nations? How and to what extent has it facilitated the achievement of common goals? What is the relationship between international law and states' foreign policies? How does international law interact with domestic politics and legal systems? Emphasis throughout the course is on the *relationship between law and politics*, on understanding why international law operates as it does, and on issues and developments that illustrate the promise and limits of international law as a way to identify and solve international problems.

The course is divided into four sections. The first embeds international law in international relations theory. The second addresses the nuts and bolts of modern international law, including its sources, the relevant actors, and how those actors organize for common purposes and to resolve disputes. The third section deals with three issue areas that states have attempted to govern through international law: war, commerce, and human rights. Finally, we continue our exploration of international law through a series of contemporary challenges: The rise of new powers such as China; difficult problems of collective action, including that of forced migration and climate change; cultural and legal resistance from beyond the "west," and critiques of international law from varying perspectives.

A word on readings: All assigned readings are mandatory, and to be read before the day they are listed on the syllabus. The first section is heavy on international relations literature. The second section is heavy on traditional legal accounts. The third and fourth sections are a mix. A few of the readings are drawn from law journals and are, therefore, in a "legalistic" style. Some reading is drawn from the popular press. Most of the required readings, however, are by political scientists who are grappling with issues at the intersection of international law and international politics. In this course, students are encouraged to think politically rather than purely legalistically. Readings are posted on Canvas and are easily available electronically from Penn Libraries.

This is a lecture course with a *significant* discussion component. Two-hour lectures will accommodate your questions to me and mine to you. In addition, weekly sections, run by the

Teaching Fellow, are mandatory and are *not* recitations (“the action of repeating something aloud from memory”). I don’t know where this terminology comes from, but we place a low premium on memorization, and a high premium on critical thinking. These weekly discussions are an opportunity to explore applications of international law to actual international incidents and issues. We expect all weekly section discussion reading to be completed before attending sections; in turn, we promise to help clarify any confusion resulting from the lectures or readings, and to provide as stimulating a setting as is possible for you to share ideas, air issues, and analyze theories and cases.

In addition, all students will be tapped randomly at least once during the term for the “Inner Circle,” 24 hours in advance of lecture. This creates the possibility of a discussion of 5-6 students within the lecture period. The Inner Circle will be our focus group. They will be presumed to be ready to answer and raise questions and provide their thoughts and insights, though not to the exclusion of the rest of the class members.

Overall, those who take this course agree to treat discussion participation at least as seriously as they do exams. Your contribution to discussion is as important as any other aspect of this course to its (and your) ultimate success.

Grades will be determined on the basis of:

- Three substantive take-home essay exams. Two to three prompts will be provided for each. The first two should be 5-7 typed pages; the third should be 8-10 pages (20%, 25%, 30% of your final grade respectively), due by 5 p.m. Week 6, Week 11, and the final exam is due by 5 p.m. on December 17. Note all take home exams are due on Fridays. *Students will have one week to write each exam, but there will not be any flexibility on the date the exam is available or due.* Papers must be submitted through the Canvas website.
- Discussion section participation, interview teams, inner circle participation, participation in occasional class polls (25% of your final grade). The emphasis is on quality participation over quantity. If a student is having difficulty participating, it is their responsibility to contact the Professor and/or Teaching Fellow about the issue(s).

Schedule of Topics

WEEK 1: September 1

Organizational Meeting & Introduction: What Role for International Law?

Beth Simmons, “International Law.” Chapter 14, *Handbook of International Relations*. Sage Publications, 2012, pp. 352-378. [Franklin Catalog, Sage Knowledge]

Week 1 Discussion section: Introductions, section expectations, Introduction to IR Theory for International Law (preview)

Part I: International Law and International Relations Theory

WEEK 2: September 8: Theories of International Law and International Relations

Morgenthau, Hans. 1985. "The Main Problems of International Law." In *Politics Among Nations*, "Brief" Edition, pp. 253-268. [Posted in Canvas.]

Keohane, Robert O. 1982. "The Demand for International Regimes." In Simmons and Steinberg (eds.), 2007. *International Law and International Relations*, pp. 18-39. [Franklin Catalog, eBook Central]

Reus-Smit, Christian. 2004. "The Politics of International Law." In Reus-Smit (ed.), *The Politics of International Law*, pp. 14-24; 32-44. [Posted in Canvas.]

Week 2 Discussion Section: IR Perspectives on International Public Health Cooperation: The Case of COVID-19

Taylor, Allyn and Roojin Habibi. "The Collapse of Global Cooperation Under the WHO International Health Regulations at the Outset of COVID-19." ASIL Insights, 24:15 June 5, 2020. <https://www.asil.org/insights/volume/24/issue/15/collapse-global-cooperation-under-who-international-health-regulations>.

WEEK 3: September 15: The Legalization of International Relations, Design and Compliance

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal. 2000. "The Concept of Legalization." In Simmons and Steinberg, pp. 65-91. [Franklin Catalog, eBook Central]

Alter, Karen J, Emilie M Hafner-Burton, and Laurence R Helfer. 2019. Theorizing the Judicialization of International Relations. *International Studies Quarterly* 63 (3): 449-463.

International Agreements: Design and Compliance

Chayes, Abram, and Antonia Handler Chayes. 1993. "On Compliance." In Simmons and Steinberg, pp. 65-91. [Franklin Catalog, eBook Central]

Downs, George W, David M. Rocke, and Peter N. Barsoom. 1996. "Is the Good News About Compliance Good News About Cooperation?" In Simmons and Steinberg, pp. 92-111. [Franklin Catalog, eBook Central]

Recommended:

Simmons, Beth. 2010. "Treaty Compliance and Violation," 13 *Annual Review of Political Science*: pp. 273-296. [Franklin Catalog: <https://www-annualreviews-org.proxy.library.upenn.edu/doi/pdf/10.1146/annurev.polisci.12.040907.132713>]

Week 3 Discussion Section: Legalizing the Exit from Afghanistan: What Were the Options? The Case of 2020 draw down agreement with the Taliban

“United States Signs Agreement with the Taliban, but Prospects for Its Full Implementation Remain Uncertain”, *American Journal of International Law*, <https://www.nytimes.com/2019/02/01/world/europe/inf-treaty.html>

Part II: The International Legal System

WEEK 4: September 22

Sources of International Law: Treaties and Custom

First hour: lecture

Slomanson, 1.2, pp. 26-38; 7.1 and 7.2, pp. 351-372. [Posted in Canvas.]

Scott, Shirley V. 2017. “Reading a Multilateral Treaty”. In *International Law in World Politics*, pp. 127-149. [Posted in Canvas.]

Olufemi, Elias. “Who Can Make Treaties? International Organizations” In Hollis, Duncan B., ed. *The Oxford guide to treaties*. Oxford University Press, 2020.

Second hour: visitor

Why Treaties? Who Makes Them? How? A Discussion with an invited guest [a panel of 4-5 students plan their live interview for the class. *DETAILS TO BE CONFIRMED.*]

Week 4 Discussion Section: Discovering Treaties (instructions posted in Canvas)

WEEK 5: September 29: States: Sovereignty, Recognition, Rights and Responsibilities, Jurisdiction and Immunity

Slomanson, 2.1-2.3; 2.5-2.6: pp. 45-59; 73-82 [Posted in Canvas.]

Jackson, Robert H. 1987. "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World." In Simmons and Steinberg, pp. 92-111. [Franklin Catalog, eBook Central]

Slomanson, 5.1-5.3, pp. 240-255; 260-271. [Posted in Canvas.]

Kal Raustiala. 2006. "The Evolution of Territoriality: International Relations and American Law." In *Territoriality and conflict in an era of globalization*, ed. M. Kahler and B. F. Walter (Cambridge, UK ; New York: Cambridge University Press). [Posted in Canvas.]

Week 5 Discussion Section: Territorial Sovereignty

Dixon, Martin, Robert McCorquodale, and Sarah Williams. Cases and materials on international law. Oxford University Press, 2016. Pages 244, 257-258 (Las Palmas), 249-250 (Western Sahara)

WEEK 6: October 6: International Adjudication and Arbitration

Slomanson, 8.1-8.3, pp. 387-400. [Posted in Canvas.]

Voeten, Erik. 2019. Populism and Backlashes against International Courts. *Perspectives on Politics*: 1-16. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/22D6468FD3316BB74A63BAD7BBAE8E5C/S1537592719000975a.pdf/populism_and_backlashes_against_international_courts.pdf

Reference:

The International Court of Justice: United Nations Charter, Chapter XIV: The International Court of Justice. <http://www.un-documents.net/ch-14.htm>

Statute of the International Court of Justice: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

Take home exam, Q&A

Week 6 Discussion: Exam due; no formal sections.

(Friday, October 8): FIRST TAKE HOME EXAM DUE 5:00PM. Please upload to Canvas.

Part III: Three Illustrative Issue Areas: **The Use of Force, Commerce and Human Rights**

III.a. The Use of Force

WEEK 7 October 13: The Use of Force and Warfighting

Schrijver, Nico. 2015. "The Ban on the Use of Force in the UN Charter." In *The Oxford Handbook of the Use of Force in International Law*. [Franklin Catalog: Oxford Handbooks Online]

The Downing Street memo [Posted in Canvas]

Dunoff, Jeffrey L., Steven R. Ratner, and David Wippman. *International Law: Norms, Actors, Process*. Wolters Kluwer Law & Business, 2015. Chapter 8, Part I

References:

Charter of the United Nations: <http://www.un.org/aboutun/charter/>

UN Security Council Resolution 660. Available online at <http://unscr.com/en/resolutions/doc/660>

UN Security Council Resolution 678. Available online at <http://unscr.com/en/resolutions/doc/678>

UN Security Council Resolution 687. Available online at <https://www.un.org/Depts/unmovic/documents/687.pdf>

UN Security Council Resolution 1441. Available online at <https://www.un.org/Depts/unmovic/documents/1441.pdf>

Week 7 Discussion: *Fall Break – no sections*

III.b. International Economic Law

WEEK 8: October 20: The International Trade Regime: From the GATT to the WTO

Jackson, John H. 2009. “The Evolution of the World Trading System — the Legal and Institutional Context” In *The Oxford Handbook of International Trade Law* [Posted in Canvas]

Steinberg, Richard H., “In the Shadow of Law or Power? Consensus-based Bargaining and Outcomes in the GATT/WTO,” *International Organization* (2002) Vol. 56(2), 339-374.

World Trade Organization, “The World Trade Organization Can...Help Countries Develop.” https://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi06_e.htm

Week 8 Debate: each section votes to choose one.

(1) “Resolved: Restore the DSM!”

Council on Foreign Relations, “A Reset of the World Trade Organization’s Appellate Body.” <https://www.cfr.org/report/reset-world-trade-organizations-appellate-body> January 4, 2020.

(2) “Resolved: China should retain its ‘Developing Country’ Status at the WTO.”

Modern Diplomacy, “Is it time to review China’s ‘developing country’ status at the WTO, considering its economic might?” <https://moderndiplomacy.eu/2020/05/14/is-it-time-to-review-chinas-developing-country-status-at-the-wto-considering-its-economic-might/>

(3) “Resolved: The WTO has been a boon for developing countries.”

World Trade Organization, “The World Trade Organization Can...Help Countries Develop.” https://www.wto.org/english/thewto_e/whatis_e/tif001_e/tif00106_e.htm

WEEK 9: October 27: Continuation of trade; Investment

Simmons, Beth A. 2014. Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment. *World Politics* 66 (01): 12-46. [Franklin catalog: <https://muse-jhu-edu.proxy.library.upenn.edu/article/535443>]

Recommended:

Elkins, Zachary, Andrew T Guzman, and Beth A Simmons. 2006. Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000. *International Organization* 60 (4): 811-846.

Week 9 discussion: Protecting Investments and Resolving Investment Disputes: Is there a “Problem”? What’s the “Solution”? Role play format.

Dunoff, Jeffrey L., Steven R. Ratner, and David Wippman. *International Law: Norms, Actors, Process*. Wolters Kluwer Law & Business, 2015. Chapter 12, Part III, pp. 646-664.

III.c. International Human Rights and Human Mobility

WEEK 10: November 3: The Rise of International Human Rights Law

Simmons, Beth A. 2009. *Mobilizing for Human Rights* [Full text available at Cambridge Core: <https://www-cambridge-org.proxy.library.upenn.edu/core/books/mobilizing-for-human-rights/4922EA5EB91DE8224C456C81D2599AB3>]

“Why International Law? The Development of the International Human Rights Regime in the 20th Century” (Chapter 2; pp. 23-56)

“Theories of Commitment” (Chapter 3; pp. 57-80)

“Theories of Compliance” (Chapter 4; 112-158)

Week 10 discussion: Comparative Case Discussion - Women's Rights and Freedom from Torture

Simmons. 2009. *Mobilizing for Human Rights*. Chapter 6 OR chapter 7.

[Instructions and assignments for case studies of Israel, Chile, Colombia and Japan to be distributed.]

WEEK 11: November 10: International Migration and the Governance of Borders

Chetail, Vincent. 2014. The transnational movement of persons under general international law—Mapping the customary law foundations of international migration law. *Research handbook on international law and migration* 1: 35. Section 3 (pp. 27-60).

Paz, Moria. 2017. The Law of Walls. *European Journal of International Law* 28 (2): 601-624. [available HERE](#).

Simmons, Beth A. 2019. Border Rules. *International Studies Review* 21 (2): 256-283. [Available HERE](#).

Week 11 discussion: Discussion: Exam due; no formal sections.

Friday (November 12): SECOND TAKE HOME EXAM DUE 5:00PM. Please upload to Canvas.

Part IV: Challenges for International Law

Week 12: November 17: Big Problems and Weak Law: Climate Change. A discussion with an invited guest [a panel of 4-5 students plan their live interview for the class. *DETAILS TO BE CONFIRMED*.]

Bodansky, Daniel. 2017. "The Paris Climate Change Agreement: A New Hope?". *American Journal of International Law* 110: 288-319. [Franklin Catalog: http://bi.galegroup.com.proxy.library.upenn.edu/global/article/GALE%7CA462786874?u=upenn_main&sid=summon]

Bodansky, Daniel, Jutta Brunnée and Lavanya Rajamani, "Landmark climate agreement holds its own," 3 July 2017. <https://blog.oup.com/2017/07/landmark-climate-agreement-law/>

Week 12 Discussion: Climate Change and Human Rights

Wang, Uculia. 2018. "International Court Ruling: a Safe Climate Is a Human Right". Climate Liability News. <https://www.climateliabilitynews.org/2018/02/13/inter-american-climate-rights-colombia/>

Drugmand, Dana. 2019. "Pacific Islands Group Pushes for International Court Ruling on Climate and Human Rights". Climate Liability News. <https://www.climateliabilitynews.org/2019/08/13/pacific-islands-climate-change-human-rights>

CIEL. 2019. States' Human Rights Obligations in the Context of Climate Change. Center for International Environmental Law. <https://www.ciel.org/wp-content/uploads/2019/03/HRTB-Feb.-2019-update-2019-03-25.pdf>

Tigre, Maria Antonia. "Inter-American Court of Human Rights Recognizes the Right to a Healthy Environment" <https://www.asil.org/insights/volume/24/issue/14/inter-american-court-human-rights-recognizes-right-healthy-environment>. ASIL Insights 24:14 June 2, 2020.

Week 13: November 24: Thanksgiving travel; no class/no sections

WEEK 14: December 1: Non-western and anti-democratic perspectives. A discussion with an invited guest [a panel of 4-5 students plan their live interview for the class. *DETAILS TO BE CONFIRMED.*]

Powell, Emilia Justyna. 2019. *Islamic Law and International Law: Peaceful Resolution of Disputes*. Oxford University Press. Pp. 1-20; 25-44; 86-124.

Ginsburg, Tom. "Authoritarian International Law?." *American Journal of International Law* 114.2 (2020): 221-260. (selected pages)

Week 14 Discussion: China and International Law

David Suter, China Forging International Law: The SCO Experience, DIPLOMAT (Sept. 7, 2014), at <https://thediplomat.com/2014/09/china-forging-international-law-the-sco-experience>

The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law, June 25, 2016, available at <https://www.lawfareblog.com/text-russia-china-joint-declaration-promotion-and-principles-international-law>

WEEK 15: December 8: The Future of International Law. Summary and conclusions.

Karen Alter, The Future of International Law, In Diana Ayton-Shenker (ed.), *The New Global Agenda*, Rowman & Littlefield (2018). Chapter 2 (25-42). [Available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3015177]

Week 15: no formal sections.

December 11-14: Reading Days

December 17 (Friday): FINAL TAKE HOME EXAM DUE 5:00PM. Please upload to Canvas.