

POLS 3035

Politics of International Law

FINAL EXAMINATION STUDY GUIDE

Course Overview: Topics

Part I. Theoretical Approaches to International Law

- Week 2: What are the basic tenets of the realist approaches to international law?
- Week 3: What are the basic tenets of the liberal approaches to international law?
- Week 4: What are the basic tenets of the constructivist approaches to international law?

Part II. Basics of International Law

- Week 5: What is the current state of international law in the recognition of states? What is the legal status and role of international organisations and nongovernmental organisations in international law? How do treaties and customary international law work as the sources of international law?
- Week 6: What are the permissible bases of national jurisdiction under international law? What are the main principles of extradition? How does each of realism, liberalism, and constructivism explain state compliance with international law?

Part III. Topics in International Law

- Week 7: What are the basic principles of the laws of war? How and when do they shape (or not shape) state behaviour?
- Week 8: What are the basic principles of international human rights treaties? What factors make them work domestically?
- Week 9: What explains patterns of state ratification of the Rome Statute of the International Criminal Court in the field of international criminal law? What is the impact of the International Criminal Court on sovereign states?
- Week 10: What are the basic principles of international trade law? How and when does it shape (or not shape) state behaviour?
- Week 11: What are the basic principles of international environmental law? How and when does it shape (or not shape) state behaviour?
- Week 12: How can we put what we have learned together in a meaningful way?

Week One

What Is International Law

Definition

- A body of principles, customs, and rules recognised as effectively binding obligations by sovereign states in their mutual relations.

The Focus of Our Course

- Our course is about public international law, **not** private international law.
- We will focus on so-called hard law (i.e. multilateral treaties and customary international law), **not** soft law (i.e. non-legal social norms).
- We will examine the interrelationship between international politics and international law from an International Relations perspective, rather than taking the classical, “black-letter” approach to international law: treaty case analysis and legal reasoning is taught by the College of Law.

Key Questions: Causes of International Law Creation

1. What factors cause the legalisation trend in the 20th and 21st centuries? What are the political determinants of international law creation?
2. Why and when do sovereign states ratify an international treaty?
3. Why and when states choose to use an international judicial body over other alternatives (e.g. war) for conflict resolution?

State Compliance with International Law

Definition of Compliance

- “When actual behavior of a given subject conforms to prescribed behavior. Non-compliance is when actual behavior departs significantly from prescribed behavior” (Oran Young).

Question of Compliance as a Major Faultline

- The dominant position of legal scholarship on compliance: “Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time” (Louis Henkin).
- IR scholars take the issue of states’ international law compliance far more seriously than legal scholars. Current ICJ Judge James Crawford also suggests the need to go beyond Louis Henkin’s naïve legalism (read Crawford

Key Observations

- Democracies are more likely to ratify the CAT than dictatorships.
- Human-rights-respecting democracies are more likely to ratify the CAT than torturing democracies.
- **Torturing** dictatorships are **more** likely to ratify the CAT than non-torturing (i.e. human-rights-respecting) dictatorships.

Key Questions: Causes of International Law Compliance

1. The question of state compliance challenges legalistic optimism and requires a political science/IR explanation
2. What political factors cause the level of state compliance with international law in a given issue area? In other words, how and when does international law influence state behaviour?
3. As our course’s general question, how have international politics and international law shaped each other?