

International Law and China

SOSC 6030Q; Fall 2023, Barry Sautman (沙伯力; Rm 3383; 23587821; sobarrys@ust.hk
TA: TBA; Class discussion meetings: F 10:30-12:20, LSK1026 (Introduction to IL lectures: WF
15:00-16:20, CYTG010; lectures will also be video-recorded)

International law (IL) is based on rules for relations among states (countries), as well as the human rights of people. It covers almost every aspect of human activity and is mainly studied by analyzing legal cases and international agreements (treaties). The topics in an introductory IL course are the same everywhere in the world. The cases used are mostly “classics” that established IL principles. Most topics involve current events of world-wide importance. This course is about basic principles of IL and China’s shaping of international relations through its distinctive perspectives on IL aspects of key global issues.

Course Requirements

This course has four requirements. Students can earn a maximum total of 140 marks by: 1) taking a 64-question, multiple-choice, bilingual exam on basic principles of IL (maximum 64 marks); 2) in a team, researching, writing, and presenting in class a 15 to 20-page paper (maximum 40 marks); 3) in a team, leading one class discussion of one reading (maximum 16 marks); and 4) participating in class discussions (maximum 20 marks).

Students in this course will learn basic principles of IL by attending the instructor’s lectures, either in-person or through viewing online videos of the lectures. These lectures will be presented, at the same time, to two groups of students: to UG students enrolled in their own IL course, SOSC 1270, and to MGCS and SOSC PG students enrolled in this course. The UG students and the MGCS/SOSC PG students will attend these lectures together. They will be graded separately however, as the two courses have different requirements. Students may also choose to read a textbook on IL, either in English or Chinese (see below), to reinforce their knowledge of IL principles. The exam, however, will be based entirely on the instructor’s lectures.

Students in this course will also discuss, in a student-led seminar format, how China interacts with IL. Discussions will take two forms. At the outset of the course, students will be assigned, by surname, to a discussion leaders’ group. At each class meeting (once per week, for 90 minutes), the discussion leaders will present the main ideas of the two readings assigned for that week. They will then lead a discussion of those two readings, based on questions that they will pose to the class. The readings are listed below in this syllabus. The team presentations of each reading will each take 15-20 minutes.

After each class presentation of the readings, students at that class meeting will discuss the ideas in those two readings. Each reading is about China’s involvement in a key aspect of IL; for example, to discuss the law of the sea, there is a reading about the South China Sea dispute. Students in this course are thus only required to read one journal article during the entire semester. They are encouraged however to do additional readings, as the readings illustrate how IL principles are applied. Students who do the week’s readings can also confidently participate in the classroom discussion of those readings.

Discussion leaders can earn a maximum of 16 marks based on their leadership. Students can also earn one mark when they make a substantive comment during the discussion. A maximum of two marks can be earned that way in each class meeting that discusses readings or has student paper presentations, with a total maximum of 20 marks for class participation.

Students will present their group research papers in the last 4 class meetings. The size of the groups (probably 2-3 students) and the length of time they have to present their papers (probably 30 minutes for

each group; 20-minutes for presentation, 10 minutes for questions) will depend on how many students enroll in the course. Students will choose their research paper topics themselves, although the topic must be about China's involvement with a current issue in IL. Students can form paper writing groups themselves, with the number in each group depending on the number of students enrolled in the course.

Textbooks that Introduce IL

If you want to read about the basic principles of IL, here are some textbooks. You can choose one:

In English: Jan Klabbbers, *International Law* (Cambridge: Cambridge University Press, 3rd ed. 2021) (“Klabbers”); Martin Dixon, *Textbook on International Law*, 7th ed. (Oxford: Oxford University Press 2013) (Dixon); Alina Kaczorowska-Ireland, *Public International Law*, 5th ed. (London: Routledge, 2015) (e-book); *Akehurst's A Modern Introduction to International Law*, 8th ed. (London: Routledge, 2018).

In simplified Chinese: 董秀丽, 国际法教程 (北京:北京大学出版社, 2006) (“Dong”); 白桂梅, 国际法 (北京: 北京大学出版社, 2010) (“Bai”); 杨泽伟 国际法 (第四版) (北京:高等教育出版社, 2022) (“Yang”). In traditional Chinese 魏靜芬, 國際法 (台北市; 五南圖書出版公司, 2021) (“Wei”).

Revision books: Stephen Allen, *International Law* 3d ed. (London: Pearson, 2017); Susan Breau, *International Law 2013 and 2014: Questions and Answers* (Oxford: Oxford University Press, 2013). For topics in great detail, Malcolm Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021) or 马尔科姆·N·肖, 国际法: 第六版 (北京: 北京大学出版社, 2011).

These texts are on reserve. The library has many other English and Chinese IL textbooks. You can buy a book. Chinese texts are much cheaper (Y50) than English texts (US\$50) and much easier to understand.

Videos: Videos on IL topics at the Library Media Resources, each 30 minutes, are Law of Treaties: KZ1301.L39; Sources of International Law: JX68.L37; States: KZ4002.S73; Use of Force: KZ6355.U84; International Dispute Settlement: KZ5538.I58. Note: these videos are very boring, but may be useful.

Tentative Schedule of Lecture Topics and Optional Readings in Textbooks

A=Akehurst; B = Bai; Di=Dixon; Do= Dong; K= Klabbbers; K-I = Kaczorowska-Ireland; Y= Yang (Not every book covers every topic; use more than one book where needed)

1, 6, 8, 13 Sept. Historical Development of IL (A Ch 2; D Ch. 1; K Ch1; K-I Ch 1; Y Ch 1-2) and Customs and Treaties (A Ch 3-4; B Ch. 2, 7; Di Ch 2-3; Do Ch 9; K Ch 2-3; K-I Ch. 2-3; Y Ch 12)

15, 20, 27, 29 Sept.: States and International Organizations (A Ch 5-7, 11-14; B Ch. 4, 6, 8, 9, 11, 16; Di Ch 5-7; Do Ch 3-4, 8, 10; K Ch 4-5, 7; K-I Ch 5-7, 11; Y Ch 3,-6, 10-11)

4, 6 Oct.: International Human Rights (A Ch 15-16; B Ch 10; Di Ch 12; Do Ch 7; K Ch 6; K-I Ch 12; Y Ch. 9).

11, 13 Oct.: Sea, Air, Space Law (A Ch 8-9; B 12-13; Di Ch 8; Do Ch 5-6; K Ch 13; K-I Ch 8; Y, Ch 7-8)

18, 20 Oct.: Environmental Law (A Ch 17; B Ch 14; K Ch 14)

25 27 Oct.; 1, 3, 8, 10 Nov.: The Use of Force (A Ch 19-21; B 5, 18; Di Ch 11; K Ch 10-11; Y Ch 14) and Peaceful Settlement of Disputes (A Ch 22-23; B Ch 17; 16; Di Ch 12; Do Ch 11; K Ch 8; Y Ch 13)

Tentative Schedule of Discussion Meetings and Readings for Those Meetings

Sept. 1: Introduction to IL and China

Reading (to be presented by the instructor): Cai Congyan, "The Rise of China and the Strategy of Universality of International Law," *China International Strategy Review* 3 (2021): 154-186.

Sept. 8: Customary IL

Readings: Zhang Yue, "Customary International Law and the Rule Against Taking Cultural Property as Spoils of War," *Chinese Journal of International Law (CJIL)* 17 (2018): 943-989.

Huang Xisheng and David Devlaeminck, "The Legal Components of Benefit-Sharing in Transboundary Watercourses: An Analysis of China's Approach," *RECIEL* 32:1 (2023): 18-28.

Sept. 15: Treaties

Readings: Tim Summers, "The Hong Kong Special Administrative Region at 20: Evaluating the Sino-British Joint Declaration," *Asian Education and Development Studies* 7:1 (2018): 89-101.

Esther Song and Joanne Yang, "China's Adherence to International Human Rights Treaties: an Empirical Assessment," *International Area Studies Review* 2023: 1-17.

Sept. 22: States & International Organizations

Readings: Maria Adele Carrai, "Historical Legacies, Globalization and Chinese Sovereignty Since 1989," Ch. 6 of M.A. Carrai, *Sovereignty in China: a Genealogy of a Concept Since 1840* (Cambridge: Cambridge University Press, 2019): 183-219.

Courtney Fung, "Rising Powers and Normative Resistance: China, India, and the Responsibility to Protect," *Journal of Contemporary China* 32:141 (2023): 386-398.

Sept. 29: Human Rights

Readings: Wu Jingjing, "Is China Playing by the Rules? Assessing China's Reservations to International Human Rights Treaties," *CJIL* 19 (2020): 253-281.

Zhang Yongjin and Barry Buzan, "China and the Global Reach of Human Rights," *China Quarterly* 241 (2020): 169-190.

Oct. 6: Law of the Sea, Air and Outer Space

Readings: Wang Jiangyu, "Legitimacy, Jurisdiction and Merits in the South China Sea Arbitration: Chinese Perspectives and International Law," *Journal of Chinese Political Science* 22 (2017): 185-210.

Yan Yongliang, “Anti-Weaponization of Outer Space for Maintaining Long-term Sustainability of Outer Space Activities,” *Space Policy* 63 (2023): 1-10.

Oct. 13: Law of the Environment

Readings: Shi Xinxiang and Zheng Xiaoou, “The Obligations of China and the Role of International Law in the Context of the Coronavirus Pandemic,” *Journal of East Asia and International Law* 14:1 (2021): 101-114.

Annie Young Song, et al., “China’s Approach to Global Fisheries: Power in the Governance of Anti-Illegal, Unreported and Unregulated Fishing,” *Environmental Politics*, 32:3 (2023): 407-426.

Oct. 20: Use of Force

Readings: Liang Zhuo, “Chinese Perspectives on the Ad Bellum/In Bello Relationship and a Cultural Critique of the Ad Bellum/In Bello Separation in International Humanitarian Law,” *Leiden Journal of International Law* 34 (2021): 291-320.

Wan Ming, “International Humanitarian Law and US-China Rivalry: National Interests and Human Rights Linkage,” *Asian Perspective* 46:4 (2022): 605-625.

Oct. 27: Peaceful Settlement of Disputes

Readings: Yu Tao and Li Bingyao, “Island Territorial Disputes and China’s ‘Shelving Disputes and Pursuing Joint Development’ Policy,” *Island Studies Journal* 15:2 (2020): 37-54.

Li Xiaoling and Zhang Xiaowen, “Is the WTO Dispute Settlement System a Disaster for the US? An Evaluation of US-China WTO Disputes,” *Journal Chinese Political Science* 27 (2022): 567-584.

Nov. 3: Student Paper Presentations

Nov. 10: Student Paper Presentations

Nov. 17: Student Paper Presentations

Nov. 24: Student Paper Presentations

Dec. 1: Exam (64 bilingual MC questions)

Some Suggested Paper Topics

International Environmental Law

1. China’s attitude toward IL regulation of natural resources
2. Hong Kong and the trade in ivory
3. The World Health Organization Framework Convention on Tobacco Control: China and the US
4. China and the implementation of the international tropical timber agreement
5. International regulation of electronic waste exports: implications for Hong Kong and the Mainland
6. China’s obligations to curb pollution under IL
7. Does the IL of the environment have a role in China reducing its building of coal-fired power plants?
8. China’s participation in the Antarctic Treaty

9. China and the Arctic Council
10. Is China meeting its climate change mitigation obligations?

International Human Rights

1. Should the death penalty be banned in China?
2. Can China's national laws on free speech be enforced on the internet?
3. Is the Xinjiang government's ban on women wearing face veils a human rights violation?
4. Does China's ban on the advocacy of secession violate IL?
5. The extent of China's implementation of the Convention on the Rights of People with Disabilities
6. Implications of China's ratification of International Labor Organization conventions on forced labor
7. Animal rights in China and IL
8. Are China's Covid-19 lockdowns a violation of international human rights?
9. Would IL allow China to make vaccination against Covid-19 mandatory?
10. Does IL permit Hong Kong National Security Law's provisions on secession, sedition and collusion?
11. The National Security Law's long-arm jurisdiction: can actions taken overseas be prosecuted?
12. IL and racial discrimination in Hong Kong
13. The Article 23 requirement under Hong Kong's Basic Law and IL
14. Hong Kong's obligations to asylum seekers
15. Did Xinjiang's "vocational training and education centers" violate human rights?

Sea, Air and Space Law

1. The China-Japan East China Sea exclusive economic zones quarrel
2. China, the US, Russia and the Open Skies mutual surveillance treaty
3. China's Air Defense Identification Zones: IL dimensions
4. China's role in confronting sea pirates
5. Attitudes toward undersea mining and the International Seabed Authority: China and the US
6. Diaoyutai/Senkakus: a China/Japan quarrel that won't go away
7. Can the US authorize private maritime warfare ("privateers") to attack Chinese ships?
8. Territorializing airspace in the East and South China Seas
9. China's regulations allowing seizure of illegal intruders into territorial waters
10. Can IL help solve fishing disputes in the South China Sea?
11. China's national space law and the IL law of outer space
12. China and the utilization of space resources
13. Should China join the Moon Treaty?
14. Does the US ban on China accessing the International Space Station violate IL?
15. Is a new US/Hong Kong air services agreement needed?

Other IL Topics

1. Can China lawfully respond to the UK's grant of citizenship to Hong Kong people with BN(O) passports by withdrawing their Chinese citizenship and Hong Kong residency?
2. Was China's arrest of two Canadians as an act of "retortion" for Meng Wanzhou's arrest lawful?
3. IL and the protection of intellectual property in China
4. China's use of extradition to catch corrupt officials who have fled abroad
5. Can China (or the US) be sued for Covid-19-related negligence?
6. China, India and neutrality during the Russia/Ukraine war
7. China and the WTO disputes resolution system
8. China, the US and military warships passing through exclusive economic zones
9. China's role in the United Nations Human Rights Council

10. The US government's genocide claims and China
11. The debate in Taiwan about the "undecided status" of Taiwan
12. Is quarantining of US diplomats in China during the pandemic a violation of IL?