



LAW 511

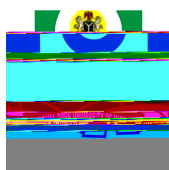
**PUBLIC INTERNATIONAL
LAW 1**

Course Guide



LAW 511
PUBLIC INTERNATIONAL LAW

Adapted From	External Programme, University of London.
Adapted by	Miss Omotayo Tekaron Obayemi, National Open University of Nigeria Victoria Island Lagos.
Course Co-ordinator	Mr. Ayodeji E. O. Ige, National Open University of Nigeria Victoria Island Lagos.
Course Editor	Professor Justus A. Sokefun, National Open University of Nigeria Victoria Island Lagos.



NATIONAL OPEN UNIVERSITY OF NIGERIA

Headquarters
14/16 Ahmadu Bello Way
Victoria Island
Lagos

Abuja Office
No. 5 Dar es Salaam Street
Off Aminu Kano Crescent
Wuse II, Abuja
Nigeria

e-mail: centralinfo@nou.edu.ng

URL: www.nou.edu.ng

Published by:
National Open University of Nigeria 2008

First Printed 2008

ISBN: 978-058-868-X

All Rights Reserved

TABLE OF CONTENTS	PAGE
Introduction	1
Course Aims.....	1 – 2
Course Objectives.....	2
Working through this Course.....	2 – 5
Course Materials.....	5
Study Units.....	5 – 7
Textbooks and References.....	7 – 9
Assessment	9
Tutor Marked Assignments (TMA).....	9
Final Examination and Grading.....	9 – 10
Course Score Distribution.....	10
Course Overview /Presentation Schedule.....	10
How to get the most from this Course.....	11
Tutors and Tutorials	11 – 12
Summary.....	12

Introduction

This course guide is intended to help you study public international law. Public international law was once almost entirely concerned with the regulation of the relations between nations. Particularly since the Second World War, however, it has become increasingly concerned with the rights and obligations of individuals beyond the jurisdiction of the state within which they live. But because it is public international law we will not be concerned with matters of private international law. Thus international commercial disputes and international disputes between individuals will be beyond our focus unless a state or its government is an interested party. For the sake of convenience 'international law' will be used as an abbreviation for public international law in this course guide.

Each unit of this course guide will isolate a topic within international law and will indicate to you its most significant features, will provide a brief overview of the relevant law, and will direct you to essential reading with suggestions for further reading. Obviously all the topics interrelate, and links will be suggested to other units. Within each unit you will find exercises and activities which will enable you to monitor your progress and gain confidence in your comprehension. In addition each unit contains Self assessment Exercises and appropriate answers.

The most attractive feature of studying international law is that it is always topical. It is relevant to all of the major international events of the day whether they be concerned with the international use of force; the activities of such international organisations as the United Nations, the World Bank or the International Monetary Fund; conflict in the Middle East or elsewhere; the international alleviation of poverty and illness; the regulation of the exploitation of the seabed (including the extraction of oil); global warming; or the possession and use of nuclear weapons. Clearly not all these topics can be considered in this course, but those that do make an appearance will have been chosen because they should enable you to understand and explore the possibilities and limitations of international law in resolving (or pre-empting) disputes which may arise. The units will make suggestions concerning the relevance of the topics to contemporary issues.

Course Aim

The aims of the course may be summarized as follows:

- (i) To provide a significant introduction to the concepts, principles and rules of international law; and

- (ii) To provide ways of considering the relevance of international law to particular disputes;

Course Objectives

By the end of this course, you should be able to:

- (i) Formulate arguments in international law directed towards particular outcomes;
- (ii) Be aware of the arguments about the Eurocentric nature of international law; and
- (iii) Evaluate the relationship between international law and social and economic reality.

Working through this Course

How this Course Differs from the Study of a Domestic Law Subject

All legal practitioners who specialise in international law would accept that international law has a very different 'feel' from domestic law. Indeed the most skeptical domestic lawyers often query whether international law should really be described as law at all. International law often seems to be indistinguishable from general international relations. For those of that view, such rules as there are in international law seem excessively malleable and negotiable and often the very sources of international law are questionable. Such perspectives will be considered at the beginning of the course and will remain relevant throughout.

Nevertheless the course will argue that international law, while different to domestic law, is also sufficiently distinctive to international relations to fall easily within the definition of law and that this label is important. It is important because the legal quality of international law has consequences. In particular, if rules are accepted as legal, compliance tends to be much more automatic (although with obvious exceptions). And the centrality of international treaties in international law indicates that states, through their representatives, enter into what they regard as binding legal relations. It is often said that the principle *pacta sunt servanda* (translated as 'pacts (or promises) must be respected (or kept)') underlies the whole of international law.

International law remains a developing and dynamic subject. When you remember that when the United Nations was created in 1945 only 51 states became members immediately, whereas there are now in excess of 190 members, it becomes obvious that the international community has changed considerably. The great period of decolonisation and self-

determination created myriad new states that were faced with an international legal regime which they had had no part in creating. Much international law had been developed in the interaction between colonial powers. This led not only to stresses and tensions but also to some quite fundamental developments.

As will be clear from the previous section, this course is not primarily concerned with the memorising of rules. Examination questions will require answers that demonstrate knowledge and also provide evidence of **reflection**. This means that even as you read the course guide and the essential reading you should not be simply trying to understand and remember what you read, you should also be **reacting to** it. By this I mean that you should constantly be considering your perspective towards the readings you have been given. If you can respond in this way you will also find it much easier to remember what you have read because you will probably begin by remembering your reaction to the material rather than the material itself. Some people describe this process as not merely learning but **internalising**, by which they mean that your interaction with the course material makes it 'subjectively meaningful'; that is, it becomes a part of how you see the international world.

Perhaps the first and greatest difficulty for those trained in domestic law posed by a study of international law is the breadth of the subject itself. For almost every international dispute involving a state, international law will be relevant. Thus the potential topics for study are vast in number. Those that have been chosen for study have been selected either because they are central to an understanding of the international legal regime, or because they are illustrative of the way in which international law impacts upon international problems.

The second major difficulty lies in the relationship between international law and international politics and power. An understanding of this relationship should develop throughout the course and the greater your interest in current affairs the easier will be this aspect to comprehend. To this end you are urged to read about contemporary international events as much as possible, whether in reputable newspapers, current affairs magazines, or even books analysing particular international crises.

A time of paradoxes

The fall of the Berlin Wall in 1989 presaged, and perhaps precipitated, stupendous changes and developments in the realm of international politics. These changes, which have continued, have greatly altered not only the realm of international organisation and relations, but also the rule regime which ordered them. While the focus of this course will be

upon that rule regime it is obvious that it cannot properly be considered without recognition of the changes in the world it attempts to regulate.

More recently the so-called Second Gulf War of 2003 in which an allied force led by the USA with the UK in a supporting role invaded Iraq and removed the regime of Saddam Hussein continues to reverberate in the world of international law. Concepts central to international law such as self-defence, the pre-emptive use of force and even sovereignty itself may be in the process of change.

Another reverberation is that the centrality of the role of the United Nations, and particularly the United Nations Security Council, in the promotion and maintenance of world peace and order has become highly problematic. The so-called 'unipolar world' which has followed the changes in Eastern Europe has left but one state with unchallenged and almost unchallengeable power. In terms of military power the United States is almost unassailable and will remain so for the foreseeable future. With its military spending outpacing that of all other states its power would seem absolute and its decisions for action, whether to 'effect regime change' or to punish what it perceives to be 'rogue states' either directly with force or indirectly with economic sanctions, indisputable. This in turn is reinforced by its political, economic and physical power which means that objectives can often be gained without the need for action, with other states coerced by the realities before them to support the USA's international policy goals.

This is a time of many paradoxes. One of the most significant for our purposes is that at a time when imperialism has given way to recognition of the validity of a diversity of cultures no longer 'on the road to civilisation', globalisation seems to imply a homogeneity of goals quite incompatible with such real multi-culturalism. So-called 'economic reality' seems to dictate but one economic ideology and one particular form of government both inherent in the idea of 'liberal democracy'. That this ideology is at the heart of the government of the world super-power is clearly not coincidental. Some indeed have effectively argued (they would probably not accept that this is the argument) that the 'road to civilization' has been replaced by the 'road to democratic governance'.

Perhaps it might also seem paradoxical to suggest that at such a time as this, international law can have any real effect or be of any real importance in governing or constraining international events. If realism dictates an appreciation of dramatic political changes, should international law now be seen as either irrelevant or itself subject to such changes as will reflect this new power reality? And if the latter is the case, does this not suggest that the true role of international law is less to

constrain than to legitimate (give legal authority to) what is done through power?

These are substantial questions and ones which underlie much of this course. Before studying them, however, basic ideas and methods of international law must be understood. The course begins with a discussion of the meaning of international law.

To complete this Course, you are advised to read the study units, read recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course, there is a final examination. The course should take you about 13 weeks to complete. You will find all the components of the course listed below. You need to allocate your time to each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

1. Course guide
2. Study units
3. Textbooks
4. Assignment File
5. Presentation schedule

Study Units

There is no one way to study international law. There is however considerable consensus about the topics that are central for an understanding of international law. A plethora of modern textbooks has appeared recently and as a generalisation they may be divided between those that are rule focused and those which are context focused. The former seem to regard international law as a 'pure' subject in the sense that it is seemingly sensible to study the rules in isolation from events. For various reasons this approach is rejected in this course guide, primarily because it is a very dull way of learning. It also has the effect of disguising the politics which always underlie international law. You will be required to read material which will always emphasise this aspect. Much of the information you will be given is about events to which international law is applicable, rather than simply about the rules themselves.

We deal with this Course in 10 study units divided into 2 Modules as follows:

Module 1

- Units 1 & 2 The distinctive nature of international law I & II. Here we will consider just how international law differs from domestic law and will seek to justify its description as a legal regime.
- Units 3 & 4 The sources and method of international law I & II. This is primarily but not exclusively concerned with treaty and customary international law. It will also consider a recent phenomenon which has come to be known as 'soft law'.
- Unit 5 The dynamic quality of international law - I. Here we will illustrate the changing nature of international law.

Module 2

- Unit 1 The dynamic quality of international law - II. Here we will illustrate the changing nature of international law by considering concepts of sovereignty, legal personality and the rise of the individual.
- Unit 2 Jurisdiction in international law. This will explain the powers of a state regime beyond its own borders and consider the limitations of such power.
- Unit 3 Immunity from jurisdiction. This will explain the immunities from jurisdiction that are granted to individuals and states, sometimes in particular circumstances.
- Unit 4 The law of treaties. Although treaty law is largely governed by the Vienna Convention on the Law of Treaties, 1969, the centrality of treaties in international law necessitates consideration of important issues concerning the validity of treaties and their interpretation and enforceability.
- Unit 5 The amendment and termination of treaties.

Each study unit consists of one week's work and includes specific objectives; directions for study, reading material and Self Assessment Exercises (SAEs). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the Course.

This course guide takes you through the international law course in a structured and systematic way. Each unit covers a particular topic or group of topics. The order is loosely based upon the three primary textbooks listed below, but because we are also concerned with contemporary issues in international law there is no total correlation.

Textbooks and References

Certain books have been recommended in the course. You should read them where you are so directed.

Primary Textbooks

Dixon, M. *Textbook on International Law* (Oxford: Oxford University Press, 2005) fifth edition [ISBN 0199260729].

Cassese, A. *International Law* (Oxford: Oxford University Press, 2005) second edition [ISBN 0199259399].

Kaczorowska, A. *Public International Law*. (London: Old Bailey Press, 2005) third edition [ISBN 1858366070].

These texts will be referred to in an abbreviated form, for example: 1. Dixon, Chapter 2: 'The sources of international law', pp.xx-xx.

These books are very different in their approach but are complementary in their content. The most 'legal' is Kaczorowska and the course guide usually relies upon you to have read at least this. It is very 'user-friendly' and clear with a lot of interesting context. Dixon often raises academic questions in a helpful and comprehensible form. Cassese is the least orthodox, but in its own terms very interesting with an approach that might be described as 'continental'. His categories and themes do not always fit easily with more orthodox approaches but he is a stimulating author.

Supplementary Texts

Evans, M. *International Law*. (Oxford: Oxford University Press, 2003) (ISBN 0199251142)

Cassese, A. *International Law in a Divided World*. (Oxford: Clarendon, 1986) (ISBN 0198761945)

Brownlie, I. *Principles of Public International Law* (Oxford: Oxford University Press, 2003) sixth edition [ISBN 0199260710]

Van Dervort, T. *International Law and Organization*. (Thousand Oaks, CA: Sage, 1998) [ISBN 0761901892].

Shearer, I. *Starke's International Law* (London: Butterworths, 1994) eleventh edition (new edition expected soon) [ISBN 0406016232]

Documents

Evans, M. *Blackstone 5 international law documents*. (Oxford: Oxford University Press, 2005) seventh edition [ISBN 0199283125].

Reports and Journals

There are large numbers of these but you should occasionally consult (if possible) any of the following:

European Journal of International Law (EJIL)

International and Comparative Law Quarterly (ICLQ)

American Journal of International Law (AJIL).

Electronic Resources

A vast amount of international law material is available on the web. A very useful portal is LAWLINKS which is organised by the University of Kent Law Librarian. It is to be found at:

<http://library.kent.ac.uk/library/lawlinks/>

Useful web sites

United Nations Homepage - <http://www.un.org>

International Law Commission (ILC) -
<http://www.un.org/law/ilc/index.htm>

International Court of Justice (ICJ) - <http://www.icj-cij.org>

European Union (EU) - <http://www.europa.eu.int/index-en.htm>

The African Union (AU) - <http://www.africa-union.org>

International Court of Justice (ICJ) - <http://www.icj-cij.org>

For current declarations of states recognising the compulsory jurisdiction of the ICJ, see UN Treaties Collection (<http://www.untreaty.un.org>), Multilateral Treaties, Chapter 1 (4).
International Criminal Court - <http://www.icc-cpi.int/home.html>

Amnesty International - <http://www.amnesty.org>

University of Minnesota Human Rights Library is at:
-<http://wwwl.umn.edu/humanrts/>
A fantastic human rights website which includes the full text of treaties, UN docs, regional docs, US docs, asylum/refugee docs, etc.

For Africa, see the joint project of Minnesota and Makerere University at - <http://wwwl.umn.edu/humanrts/africa/index.html>.

Assessment

There are two aspects of the assessment of this course; the Tutor Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge acquired during the Course. The assignments must be submitted to your Tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the *Assignment file*. The work that you submit to your Tutor for assessment will count for 30% of your total score.

Tutor Marked Assignment (TMA)

There is a Tutor Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your Tutor. Make sure that each assignment reaches your Tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your Tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for LAW 511 – Public International Law I, is three hours and will carry 70% of the total course

grade. The examination will consist of questions, which reflect the kinds of Self Assessment Exercises and the Tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self Assessment Exercises and Tutor Marked Assignments before the examination.

Course Score Distribution

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments, marked out of 10% Totaling 30%
Final examination	70% of overall course score
Total	100% of course score

Course Overview and Presentation Schedule

Module 1 Unit	Title of Work	Week's Activity	Assessment (End of Unit)
	Course Guide	1	
1	The distinctive nature of international law I	1	Assignment 1
2	The distinctive nature of international law II	1	Assignment 2
3	The sources and method of international law I	1	Assignment 3
4	The sources and method of international law II	1	Assignment 4
5	The dynamic quality of international law I	1	Assignment 5
Module 2 Unit 1	The dynamic quality of international law II	1	Assignment 6
2	Jurisdiction in international law	1	Assignment 7
3	Immunity from jurisdiction	1	Assignment 8
4	The law of treaties	1	Assignment 9
5	The amendment and termination of treaties	1	Assignment 10
	Revision	1	
	Examination	1	

	Total	13	
--	-------	----	--

How to get the most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times.

You should begin your studies with this course guide. The sequence of units has been carefully chosen and you will find it easiest to follow the order provided and reading the recommended textbook pages for each unit as you proceed. The course should develop both in a linear way and in a spiral way in that all the units are interrelated even if the relationship is initially difficult to perceive. Frequently in the subsequent units you will find references to units you have already completed and some you have yet to reach. This is inevitable because of the nature of international law. Although the course is divided into topics, they are not truly discrete and everything affects, and is affected by, the other topics.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

Tutors and Tutorials

There are 15 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials,

together with the name and phone number of your Tutor, as soon as you are allocated a tutorial group.

Your Tutor will mark and comment on your assignments, keep a close watch on your progress, and on any difficulties you might encounter and provide assistance to you during the course. You must send your Tutor Marked Assignments to your Tutor well before the due date. They will be marked by your Tutor and returned to you as soon as possible.

Do not hesitate to contact your Tutor by telephone or e-mail if you need help. Contact your Tutor if:

1. You do not understand any part of the study units or the assigned readings;
2. You have difficulty with the Self Assessment Exercises;
3. You have a question or a problem with an assignment, with your Tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your Tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

Summary

While the course is intended to provide an understanding of the role and function of international law, several themes permeate the entire content. We can summarise these as follows:

1. The question of the reality of international law and its similarities with, and
1. differences to, domestic law;
2. The relationship between international law and international relations;
3. The relationship between international law and European history;
4. The relationship between political power and the use or abuse of international law;
5. The limitations inherent in the legal method that constitutes international law.

We wish you success with the Course and hope that you will find it both interesting and useful.

