האוניברסיטה העברית בירושלים
THE HEBREW UNIVERSITY OF JERUSALEM

Syllabus

HUMAN RIGHTS AND THE LAW OF TERRITORY - 62169

Last update 22-08-2017

HU Credits: *1*

Responsible Department: *law*

Academic year: *0*

Semester: *1st Semester*

Teaching Languages: *English*

Campus: *Mt. Scopus*

Course/Module Coordinator: *Prof M Shaw*

Coordinator Email: *shawmalcolm@hotmail.com*

Coordinator Office Hours:

Teaching Staff:
Prof Malcolm Shaw

Course/Module description:
A brief examination of the international principles concerning the relationship

between human rights and the rules relating to territory.

Course/Module aims:
An appreciation of the nature and scope of international human rights and the international law of territory insofar as they interrelate.

Learning outcomes - On successful completion of this module, students should be able to:
Understand the nature of international human rights law and the principles relating to the acquisition and control of territory. Able to comprehend how such different sets of rules interconnect

Attendance requirements(%):
100

Teaching arrangement and method of instruction: seminars

Course/Module Content:
1. Historical Issues: Rise of territorialism and the acquisition of title in the colonial era

This seminar will trace first the foundations of the international legal system, focusing upon the rise of the sovereign independent state and the consequential change in the status of inhabitants and, secondly, the evolution of European colonialism with emphasis upon the concepts of sovereignty in classical international law and the status of local tribes in the process of acquisition of territory.

Questions
1. How and why did a system of independent sovereign states evolve?
2. What is sovereignty?
3. What effect did this have for the citizens of such states and how did the relationship between state and individual change?
4. What factors impelled the rise of European colonialism, particularly in the 19th century?
5. What, if any, role was ascribed by international law to local peoples in the process of colonization? Has this view changed in recent years?
6. What was the effect of colonialism on international law?

Selected Readings
M. N. Shaw, □Self-Determination, Human Rights and the Attribution of Territory□ in

Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
Acquisition of Teritory in Nineteenth Century Africa: Some Thoughts in Dupuy, Fassbender, Shaw and Sommermann (eds), Essays in Honour of Christian Tomuschat, Kehl, NP Engel Verlag, 2006, p. 1029.

Additional Reading

Western Sahara case, ICJ Reports, 1975, p. 12.
2. Rise of Self-Determination in the 19th and early 20th centuries and its definition and scope today

The seminar will look at the rise of nationalism in 19th century and the effects it had upon the structure of international law. This seminar will also examine the rise and meaning of self-determination since 1945 within the context of decolonisation and with regard to independent states. In addition, the concept of group protection (including minorities, indigenous peoples and other entities) will be covered.

Questions
1. What factors fed into the development of the rights to self-determination and what actually did it mean in the 19th and 20th centuries?
2. What new legal rights and mechanisms began to evolve in this period and why? What did they mean in theory and in practice?
3. What was the role of this concept in the process of decolonisation?
4. Does this right have any role after decolonisation and with regard to already independent states and, if so, how may this be defined?
5. What protections exist in international law for sub-state groups and entities? How may such groups and entities be defined?
Select Reading
M N Shaw, Self-Determination, Human Rights and the Attribution of Territory in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
M. N. Shaw, International Law, 7th ed., 2014, Cambridge, sections on self-determination in chapters 5, 6 and 10
A. Cassese, Self-Determination of Peoples, Cambridge, 1995, generally (the classic work)

Island of Palmas case, II RIAA, pp. 829, 858.

Libya/Chad, ICJ Reports, 1994, p. 12

Cameroon v Nigeria, ICJ Reports, 2002, p. 303

2. Rise of Self-Determination in the 19th and early 20th centuries and its definition

and scope today

The seminar will look at the rise of nationalism in 19th century and the effects it had upon the structure of international law. This seminar will also examine the rise and meaning of self-determination since 1945 within the context of decolonisation and with regard to independent states. In addition, the concept of group protection (including minorities, indigenous peoples and other entities) will be covered.

Questions
1. What factors fed into the development of the rights to self-determination and what actually did it mean in the 19th and 20th centuries?
2. What new legal rights and mechanisms began to evolve in this period and why? What did they mean in theory and in practice?
3. What was the role of this concept in the process of decolonisation?
4. Does this right have any role after decolonisation and with regard to already independent states and, if so, how may this be defined?
5. What protections exist in international law for sub-state groups and entities? How may such groups and entities be defined?

Select Reading
M N Shaw, "Self-Determination, Human Rights and the Attribution of Territory" in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
M. N. Shaw, International Law, 7th ed., 2014, Cambridge, sections on self-determination in chapters 5, 6 and 10
A. Cassese, Self-Determination of Peoples, Cambridge, 1995, generally (the classic work)

Additional Reading
K Knop, Diversity and Self-Determination in International Law (Cambridge University Press, 2002)

3. Meaning of Title to Territory and the Doctrine of Uti Possidetis

This seminar will analyse the methodology of acquiring title to territory, focusing upon the role and nature of boundary treaties and the scope of the doctrine of effective control. The general principles governing the international law of territory will be surveyed. This seminar will also look at the concept of uti possidetis and the relationship between boundaries and peoples in a situation of a transfer of title to territory.

Questions
1. What is the meaning of title to territory?
2. What methods and mechanisms existed and exist with regard to the acquisition of territory in international law and how do they interrelate?

3. How did the concept of uti possidetis arise and where and what did it mean?
4. To what extent has this concept changed from its original meaning?
5. How far does this concept apply? Geographically and theoretically?
6. How does it relate to the principle of self-determination and to human rights?

Select Reading
M N Shaw, "The International Court of Justice and the Law of Territory", in C.J. Tams and J. Sloan, The Development of International Law by the International Court of Justice, Oxford, OUP, 2013, p. 151
"Peoples, Territorialism and Boundaries", 8 (3) European Journal of International Law, 1997, p. 478
M N Shaw, "Self-Determination, Human Rights and the Attribution of Territory" in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
S. Ratner, "Drawing a Better Line" 90 American Journal of International Law, 1996, p. 590
M. N. Shaw, International Law, Cambridge, 7th ed., 2014, chapter 10

Additional Reading
RY Jennings, The Acquisition of Territory in International Law (Manchester: MUP, 1963)
Judge Huber, Island of Palmas case (Netherlands v USA), 2 RIAA 828
Burkina Faso v Mali, ICJ Reports, 1986, pp. 554, 565 and 568
4. Situations of Administration in the Absence of Title: Control and Human Rights

This seminar will examine the balance of rights and duties inherent in situations, such as belligerent occupation and the international administration of territory, with reference to international humanitarian law and human rights and their relationship. Relevant caselaw of the European Convention on Human Rights will also be noted.

Questions
1. What does occupation mean in international law and what rights and duties are involved? How do such situations arise and end?
2. How do situations of the international administration of territory arise and how, if at all, do they differ from traditional occupations under international law?
3. How are internationally administered territories governed under international law? What international legal principles apply?
4. How do the structures and principles of international humanitarian law and international human rights law relate in such situations, if at all?

Select Reading
M N Shaw, "Territorial Administration by Non-Territorial Sovereigns" in The Allocation of Authority in International Law (eds. Broude and Shany), Hart Publications, 2008, p. 369
M. N. Shaw, International Law, Cambridge, 7th ed., 2014, chapter 5
Y. Dinstein, The International Law of Belligerent Occupation, Cambridge, 2009 (generally)

Construction of a Wall case, ICJ Reports, 2004, pp. 136, 178 and following
Congo v Uganda, ICJ Reports, 2005, pp. 168, 230, 242-5

Additional Reading

E. Benvenisti, The International Law of Occupation, Oxford, 2nd ed., 2012 (generally)
B. Knoll, The Legal Status of Territories Subject to Administration by International Organisations, Cambridge, 2008;
OR
C. Stahn, The Law and Practice of International Territorial Administration, Cambridge, 2008;
OR
R. Wilde, International Territorial Administration, Oxford, 2008

<u>Required Reading:</u>
1. Historical Issues: Rise of territorialism and the acquisition of title in the colonial era

This seminar will trace first the foundations of the international legal system, focusing upon the rise of the sovereign independent state and the consequential change in the status of inhabitants and, secondly, the evolution of European colonialism with emphasis upon the concepts of sovereignty in classical international law and the status of local tribes in the process of acquisition of territory.

Questions
1. How and why did a system of independent sovereign states evolve?
2. What is sovereignty?
3. What effect did this have for the citizens of such states and how did the relationship between state and individual change?
4. What factors impelled the rise of European colonialism, particularly in the 19th century?
5. What, if any, role was ascribed by international law to local peoples in the process of colonization? Has this view changed in recent years?
6. What was the effect of colonialism on international law?

Selected Readings
M. N. Shaw, □Self-Determination, Human Rights and the Attribution of Territory□ in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
□Acquisition of Teritory in Nineteenth Century Africa: Some Thoughts□ in Dupuy, Fassbender, Shaw and Sommermann (eds), Essays in Honour of Christian

Tomuschat, Kehl, NP Engel Verlag, 2006, p. 1029.

Additional Reading

Western Sahara case, ICJ Reports, 1975, p. 12.
2. Rise of Self-Determination in the 19th and early 20th centuries and its definition and scope today

The seminar will look at the rise of nationalism in 19th century and the effects it had upon the structure of international law. This seminar will also examine the rise and meaning of self-determination since 1945 within the context of decolonisation and with regard to independent states. In addition, the concept of group protection (including minorities, indigenous peoples and other entities) will be covered.

Questions
1. What factors fed into the development of the rights to self-determination and what actually did it mean in the 19th and 20th centuries?
2. What new legal rights and mechanisms began to evolve in this period and why? What did they mean in theory and in practice?
3. What was the role of this concept in the process of decolonisation?
4. Does this right have any role after decolonisation and with regard to already independent states and, if so, how may this be defined?
5. What protections exist in international law for sub-state groups and entities? How may such groups and entities be defined?
Select Reading
M N Shaw, □Self-Determination, Human Rights and the Attribution of Territory□ in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
M. N. Shaw, International Law, 7th ed., 2014, Cambridge, sections on self-determination in chapters 5, 6 and 10
A. Cassese, Self-Determination of Peoples, Cambridge, 1995, generally (the classic work)

Island of Palmas case, II RIAA, pp. 829, 858.

Libya/Chad, ICJ Reports, 1994, p. 12

Cameroon v Nigeria, ICJ Reports, 2002, p. 303

2. Rise of Self-Determination in the 19th and early 20th centuries and its definition and scope today

The seminar will look at the rise of nationalism in 19th century and the effects it had

upon the structure of international law. This seminar will also examine the rise and meaning of self-determination since 1945 within the context of decolonisation and with regard to independent states. In addition, the concept of group protection (including minorities, indigenous peoples and other entities) will be covered.

Questions
1. What factors fed into the development of the rights to self-determination and what actually did it mean in the 19th and 20th centuries?
2. What new legal rights and mechanisms began to evolve in this period and why? What did they mean in theory and in practice?
3. What was the role of this concept in the process of decolonisation?
4. Does this right have any role after decolonisation and with regard to already independent states and, if so, how may this be defined?
5. What protections exist in international law for sub-state groups and entities? How may such groups and entities be defined?

Select Reading
M N Shaw, "Self-Determination, Human Rights and the Attribution of Territory" in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
M. N. Shaw, International Law, 7th ed., 2014, Cambridge, sections on self-determination in chapters 5, 6 and 10
A. Cassese, Self-Determination of Peoples, Cambridge, 1995, generally (the classic work)

Additional Reading
K Knop, Diversity and Self-Determination in International Law (Cambridge University Press, 2002)

3. Meaning of Title to Territory and the Doctrine of Uti Possidetis

This seminar will analyse the methodology of acquiring title to territory, focusing upon the role and nature of boundary treaties and the scope of the doctrine of effective control. The general principles governing the international law of territory will be surveyed. This seminar will also look at the concept of uti possidetis and the relationship between boundaries and peoples in a situation of a transfer of title to territory.

Questions
1. What is the meaning of title to territory?
2. What methods and mechanisms existed and exist with regard to the acquisition of territory in international law and how do they interrelate?
3. How did the concept of uti possidetis arise and where and what did it mean?
4. To what extent has this concept changed from its original meaning?
5. How far does this concept apply? Geographically and theoretically?

6. How does it relate to the principle of self-determination and to human rights?

Select Reading
M N Shaw, "The International Court of Justice and the Law of Territory", in C.J. Tams and J. Sloan, The Development of International Law by the International Court of Justice, Oxford, OUP, 2013, p. 151
"Peoples, Territorialism and Boundaries", 8 (3) European Journal of International Law, 1997, p. 478
M N Shaw, "Self-Determination, Human Rights and the Attribution of Territory" in Essays in Honour of Bruno Simma, (ed D. Khan), Oxford, OUP, 2011, p. 590
S. Ratner, "Drawing a Better Line" 90 American Journal of International Law, 1996, p. 590
M. N. Shaw, International Law, Cambridge, 7th ed., 2014, chapter 10

Additional Reading
RY Jennings, The Acquisition of Territory in International Law (Manchester: MUP, 1963)
Judge Huber, Island of Palmas case (Netherlands v USA), 2 RIAA 828
Burkina Faso v Mali, ICJ Reports, 1986, pp. 554, 565 and 568
4. Situations of Administration in the Absence of Title: Control and Human Rights

This seminar will examine the balance of rights and duties inherent in situations, such as belligerent occupation and the international administration of territory, with reference to international humanitarian law and human rights and their relationship. Relevant caselaw of the European Convention on Human Rights will also be noted.

Questions
1. What does occupation mean in international law and what rights and duties are involved? How do such situations arise and end?
2. How do situations of the international administration of territory arise and how, if at all, do they differ from traditional occupations under international law?
3. How are internationally administered territories governed under international law? What international legal principles apply?
4. How do the structures and principles of international humanitarian law and international human rights law relate in such situations, if at all?

Select Reading
M N Shaw, "Territorial Administration by Non-Territorial Sovereigns" in The Allocation of Authority in International Law (eds. Broude and Shany), Hart Publications, 2008, p. 369
M. N. Shaw, International Law, Cambridge, 7th ed., 2014, chapter 5
Y. Dinstein, The International Law of Belligerent Occupation, Cambridge, 2009 (generally)
Construction of a Wall case, ICJ Reports, 2004, pp. 136, 178 and following
Congo v Uganda, ICJ Reports, 2005, pp. 168, 230, 242-5

Additional Reading

E. Benvenisti, The International Law of Occupation, Oxford, 2nd ed., 2012 (generally)
B. Knoll, The Legal Status of Territories Subject to Administration by International Organisations, Cambridge, 2008;
OR
C. Stahn, The Law and Practice of International Territorial Administration, Cambridge, 2008;
OR
R. Wilde, International Territorial Administration, Oxford, 2008

Additional Reading Material:

Course/Module evaluation:
End of year written/oral examination 100 %
Presentation 0 %
Participation in Tutorials 0 %
Project work 0 %
Assignments 0 %
Reports 0 %
Research project 0 %
Quizzes 0 %
Other 0 %

Additional information: