

TEACHING “THE NATURE OF PUBLIC INTERNATIONAL LAW”  
TO LL.M. STUDENTS

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*The main aim of elaboration of a study course titled “The Nature of Public International Law” is promoting teaching of International Law in Higher Educational Institutions among all LL.M. students regardless of the chosen specialization. Teaching such a study course also aims at developing and enhancing the analytical skills of the students, argumentation competence and other professional competences and skills, as well as at facilitating the accurate and efficient implementation of International law in national legal system.*

**Key words:** *Public International Law, teaching methodology, LL.M. study course, professional skills and competences, teaching law in Higher Educational Institutions.*

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Elaboration of the study course on “The Nature of Public International Law” aims at promoting international legal studies in the Higher Educational Institutions (“HEI”).

The ongoing globalization, the development of international relations between the subjects of Public International Law (“PIL”), the interconnectedness between the states, international organizations and other actors along with interconnectedness between different spheres of human life, the geopolitical problems existing in the world, the rapid scientific and technological progress and various other factors give rise to a wide range of new and difficult issues in the field of PIL. This in its turn dictates the necessity of initiating discussions and studies in the field of PIL in order to understand the core nature of these problems and possible mechanisms for solving them. The content of PIL has changed and expanded significantly during the past few decades, and nowadays it continues to develop in line with or having the aim to catch up with the realities of the age in different fields, such as economics and finance, environmental protection, human rights, etc. As an integral part of the structure of the international society [1, pp.5-17] the knowledge of PIL is of crucial importance for all lawyers regardless of the field of specialization.

The incorporation of the PIL course in LL.B., and especially in LL.M. and postgraduate studies in all Higher Educational Institutions is of utmost importance for the Republic of Armenia (“RoA”) as a young democracy, which aims at harmonizing its national legal regulations with best practices, international standards and rules. The discussion of the most topical issues in the field of PIL will give an opportunity to glance the dynamics of international legal trends and developments in the world, to get an insight about their influence on the determination of RoA policies and the development of the RoA legal doctrine and practice, and to come up with suggestions for solving different problems.

It is also worth mentioning, that the importance of elaboration of PIL studies is further supported by the fact that the RoA Constitution envisages the importance of efficient and accurate application of the international treaties ratified by the RoA and the prevalence of the norms of such international treaties over the RoA laws, [2, art.5] the RoA obligation to consider “the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, ... when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution” [2, art. 81 part 1], as well as to set up the policies and regulations in different fields (e.g. foreign policy, elaboration of ties with the Armenian diaspora, stipulating restrictions on basic rights and freedoms during state of emergency or martial law) in accordance with the international obligations of the state [2, articles 13, 19 part 2, 76].

It would be fair to state that merely any problematic issue at global scale may also be viewed from the perspective of PIL. The scope of an advanced LL.M course on PIL for law faculty students shall be designed to elaborate a comprehensive discussion and the critical analysis of the nature of PIL, *inter alia*, via covering the contemporary topical issues in the framework of PIL, focusing on the challenges of effective implementation of PIL regulations and its ability to adapt to the rapidly changing realities.

Today the PIL doctrine and practice face such global problems as international terrorism, issues of non-proliferation of nuclear weapons, determination of efficient mechanisms and means to reach sustainable development goals, the issues related to ensuring the protection of environment and possible consequences of global change, the problems of using the outer-space, international security issues, mechanisms and problematic aspects of protection of fundamental human rights and freedoms in the context of the rapid development of science and new technologies, topical issues of the Law of Armed Conflicts and other issues. The taught course shall give an opportunity to understand the main characteristics and peculiarities of PIL as a legal system, its relations with other fields of study, its structure, the object of its regulation, the characteristics of PIL subjects and the trends in expansion of the *ratione materiae* and *ratione personae* of PIL, the mechanisms and challenges of its implementation, based on the analysis of the history and the philosophical background of emergence and the factors influencing the evolution of PIL, as well as the contemporary directions for further development of PIL. Since international legal instruments have through time developed to regulate nearly every human activity, starting from childcare and ending with the use of the Internet, we believe that any lawyer in the 21<sup>st</sup> century must know Public International Law, since it is directly or indirectly applicable on a daily basis.

The abovementioned creates firm grounds to conclude that an LL.M. course on the nature of PIL should be designed as a compulsory taught course for all LL.M. students of Law Faculty of Higher Educational Institutions, regardless of their specialization. At the same time, taken into account the “international” aspect of PIL along with the fact that best professional literature in the field is available in foreign languages, specifically in English, and the urgent necessity to develop knowledge of foreign languages among the legal professionals, in our opinion, it would be highly advisable to implement the taught course in English language. This rationale is also in line with the course that RoA has taken in the area of teaching law. Thus, the RoA Strategy on Reforming the System of Legal Competences, Legal Environment and Legal Education, *inter alia*, recommends the HEIs to implement certain professional subjects or topics within certain subjects in a foreign language. [3, annex

1 point 4.8.4] It is worth mentioning that, because of its main elements and characteristics, the PIL course on LL.M. level seems to be a most fit subject for piloting the mentioned recommendation in HEIs.

The implementation in the LL.M. study programmes of a course on the nature of PIL shall aim at promoting international legal studies among LL.M. students specializing in different fields of law in order to provide them with deep knowledge and understanding of PIL as a legal system, to elevate students' mind, elaborate global thinking and trigger imagination and creativity, to develop necessary skills and attitude towards application of the knowledge gained during their everyday work as lawyers, as well as to enhance professional competences and soft skills through application of contemporary and well-structured teaching methodology.

The objectives of the PIL course shall include (but not be limited to):

- analyzing the historical development of PIL, the nature of PIL, stressing the weaknesses and strengths of PIL as a legal system, as well as through understanding of the methodological basis of contemporary International Law;
- discussing the new challenges imposed to PIL regulations, to implementation of PIL, and elaborating opinions on the role of PIL within the framework of national legislation in the age of globalization;
- evaluating the effectiveness and adequacy of PIL rules governing the international-legal order and discuss possible modifications desired for the future or the possibility of implementing a more flexible approach to interpretation of international-legal norms in order to address the new realities;
- discussing and analyzing the main topical issues within the framework of PIL;
- applying PIL principles and regulations within the framework of case-studies, problem questions and role playing;
- develop presentation skills, argumentation skills, negotiation and communication skills, skills of working in teams.

Among all the fields of legal studies PIL is the area, which embraces the widest range topics related to different spheres of life, which provides an opportunity to practice professional flexibility and as described in *Essays in Conversation with Judith Gardam* to be an exploring “alien” traveling in through space and “viewing the world from afar, [...] then coming into law's orbit, [and then] landing and speaking to an individual” [4, pp.264-266], that is to say to conduct both: macro-legal and micro-legal level analysis [4]. It is also the area, which gives space for efficient interdisciplinary studies.

In terms of the suggested content of the Course, in our opinion, it will be most efficient to start and end the “exploration” with open discussions of topics which will give most room for understanding the nature of PIL as a legal system. For this reason the approximate outline of the course should as a minimum include the topics and sub-topics mentioned *infra*.

#### **Topic 1. Introduction to the Subject**

- a) Different approaches to explaining the role and importance of PIL in theory
- b) Practical importance of PIL for lawyers regardless of specialization
- c) PIL and politics
- d) PIL and moral norms
- e) Brief introduction of main aspects of OSCOLA citation style, skills on making PowerPoint presentations, oral presentation skills.

## **Topic 2. PIL: Historical Development**

- a) PIL philosophy: intellectual roots of PIL
- b) Founding the modern PIL (dates, names, historical facts, different approaches to understanding of the nature of PIL in the framework of positivists' and naturalists' schools and an alternative explanation of the nature of PIL)
- c) The beginning of expansion of *ratione personae*, *ratione materiae* & *ratione loci* of PIL before the First World War
- d) Development of PIL after the First World War and challenges to PIL implementation in the early 20<sup>th</sup> century
- e) Development of PIL after the Second World War. Approaches to PIL implementation after the WW II and before the collapse of the Soviet Union
- f) Impact of the collapse of the Soviet Union on the development of PIL in general and on implementation of PIL in the post-soviet republics.
- g) *Ratione tempore*, *ratione materiae* & *ratione loci* of PIL in the 21<sup>st</sup> century.

## **Topic 3. PIL and Other Fields of Study**

- a) PIL and Municipal Law (differences and similarities)
- b) PIL and International Private Law
- c) PIL and European Union Law
- d) The main specific characteristics of PIL as a system of Law. Weak and strong sides of PIL as a system of law.

## **Topic 4. Sources of PIL. International Treaties and International Custom**

- a) Statutory and non-statutory sources of PIL
- b) International Treaties as a source of PIL. Vienna Convention on the Law of Treaties of 1969, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986
- c) International customary norms as a source of PIL: elements and main characteristics of customary norms, the concepts of 'persistent objector' and 'instant custom', development of PIL and crystallization of different international legal regulations into international customary norms
- d) Correlation of International treaties and International customary norms. Regulation with an International treaty vs regulation with an International customary norm: drawbacks and advantages

## **Topic 5. Sources of PIL: general principles of law, subsidiary sources of PIL, non-statutory sources of PIL**

- a) General principles of law as a source of PIL
- b) Judicial decisions and the teachings of the most highly qualified publicists as subsidiary sources of PIL in accordance with article 38 of the ICJ Statute
- c) Non-statutory sources of PIL, such as resolutions and decisions of international organizations and conferences, unilateral acts or *jus cogens* norms.
- d) *Jus cogens* norms and International customary norms
- e) The issue of hierarchy of PIL sources

## **Topic 6. Subjects of PIL**

- a) International legal personality
- b) States as subjects of PIL. Montevideo Convention on the Rights and Duties of States of 1933. Recognition of states
- c) International Intergovernmental organizations as subjects of PIL

- d) States fighting for their self-determination and independence as subjects of PIL
- e) State-like entities as subjects of PIL: The Sovereign Order of Malta and Vatican
- f) Contemporary developments to the problem of the tendency to consider non-state actors, such as international NGOs, transnational corporations or organized armed groups
- g) Individuals as subjects of PIL
- h) The case of International Committee of the Red Cross as a sui generis subject of PIL

#### **Topic 7. Responsibility under PIL**

- a) The natures and main elements of state responsibility under PIL
- b) The Draft articles on Responsibility of States for Internationally Wrongful Acts of 2001
- c) Consequences of state responsibility under PIL
- d) Individual criminal responsibility under PIL (ICC, ad hoc tribunals)
- e) Recent developments on responsibility under PIL

#### **Topic 8. Implementation of PIL in national jurisdictions**

- a) Monistic and dualistic approaches to implementation of PIL in national jurisdictions
- b) Contemporary challenges to implementation of PIL in national jurisdictions
- c) The role of PIL in the national legal system of the Republic of Armenia
- d) International Human Rights Law (IHRL) and International Humanitarian Law (IHL): implementation of the mentioned branches of PIL in the RoA national legislation.

Discussions within the abovementioned topics *per se*, however, does not seem to be enough for gaining a deep, comprehensive and multisided understanding of the taught subject. Moreover, in our opinion, advanced studies on LL.M. level shall include a moderate portion of independent student research and learning. Thus, we would recommend identifying an open-ended list of topics in the field of PIL for such independent research, which could include such issues as:

- IHRL as a branch of PIL: historical developments, main sources, universal and regional mechanisms for international protection of human rights
- UN as a subject of PIL
- IHL as a branch of PIL: historical development, main sources, main principles, challenges for IHL implementation
- Rome Statute of International Criminal Court: focus on jurisdictional matters
- The concept of 'territory' in PIL
- Peaceful means for settlement of disputes under PIL
- The issues of jurisdiction under PIL
- Space Law: history, sources and current tendencies of development
- Challenges and perspectives of International Environmental Law
- International Refugee Law: development, sources, principles.

But, do the interesting subject matter and well-chosen topics for class discussions and independent student research activities guarantee the success of the course? The answer to this question lies in the various studies on the impact of teaching methodology on the behavior and perceptions of the students in general and the same with regards to legal studies in particular. In one such survey in the framework of a methodological research it has been revealed that: "59% of students find their lectures boring half the time and 30% find most or all of their lectures to be boring". [5, p.243] Moreover, the study found direct correlation between the teaching methodology and students' attendance and academic performance, where students were not properly attending classes or performing during the classes and

achieving less by the end of the course in case of (in their perception) boring lectures. [5, pp.247-253] Students do not enjoy “passive learning environment” and unengaged strict vertical relations with the teacher [5, p.245]. Thus, in order hold them back from texting on the mobile, chatting with a friend next desk, writing love notes, dreaming about summer plans or yawning during the classes, the lecturer shall use well-thought, structured and interactive teaching methodology in order to motivate students and get them actively involved in the study process. The said is true for any subjects and more so for studying PIL. The Course shall be designed to ensure a high level of involvement of the students in the educational process. We believe that there should be no strict division of classes on lectures and seminars: every class shall include both: theoretical and practical components and shall take place in the format of discussions, debates, role-plays, individual presentations or small group presentations on different topical issues in the framework of PIL, teamwork and creating of semi-horizontal relations between the teacher and the students, as well as an environment of professional collaboration among the peers. The supportive learning atmosphere is very important especially for poorly motivated students and students who lack confidence, [6, p.389] as well as those who lack certain soft skills, such as communication, negotiations, presentation skills, etc.

One of the key elements of any teaching method being implemented at the given point in time, in our opinion, should be encouraging students to ask questions to themselves, to their peers and the lecturer, since only through questions an “alien” of the *Essays in Conversation with Judith Gardam* can deeply and comprehensively explore the subject. Students should not be afraid of asking questions or expressing their point of view. Thus, it should be well acknowledged that there are no stupid or clever questions – every question should be dealt individually, and there are no right or wrong answers – there are well-reasoned responses supported by convincing arguments, and responses, which are supported by poor arguments and reasoning.

Another important element of teaching the nature of PIL could be assigning the students to make a comprehensive presentation on a topical issue in the framework of PIL with prior determination and dissemination of reading materials for the class and a follow-up discussion with peers. During such an assignment students should be given an opportunity to freely choose the topic. At the same time the student, making the presentation, shall work closely with the teacher in determining the proper reading materials, which then should be circulated among peers before the class to ensure their informed involvement in the follow-up discussion. This exercise makes the students feel control not only over the process of the classes but also over the content, and motivates them for active engagement and cooperation. The mentioned exercise should be conducted either individually or in small groups.

Writing legal texts is also one of the most important competences for any lawyer, which can be efficiently taught during the PIL course. The students shall not only know the techniques of structuring of legal text, but should also be aware of referencing rules, applying international standards and eliminating the practice of plagiarism (probably the most convenient citation guide for legal scholars is the Oxford Standard for the Citation of Legal Authorities [7]).

The non-exhaustive list of topics for student presentations and essays could include such topics as:

- The spirit of PIL: past and present perceptions and perspectives for development
- Moral basis of the PIL

- Sources of PIL: hard law vs. soft law
- Problems of determining jus cogens norms
- The role of judicial decisions and writings of publicists in the system of the sources of PIL

- The brief analysis of selected treaties in the field of IHRL
- IHL: the current 3 topical issues for the international community (open-ended)
- 3 topical International Legal issues for the Republic of Armenia (open ended)
- The nature of correlation of IHL and IHRL as branches of PIL
- Humanitarian intervention and R2P
- Nuclear Weapons case: critical analysis of the advisory opinion (ICJ).
- Perincek vs. Switzerland case: critical analysis of the judgment (ECtHR).
- Protection of human rights under ICCPR and ICSECR
- Ensuring compliance and better protection of the economic, social and cultural rights

in the international legal framework

- Climate change: implications on international legal regulations
- International legal regulations on protection of refugees and IDPs
- International Criminal Court: cons and pros (analysis of reasoning)
- Problematic aspects of international legal regulations of using of outer space
- The right to privacy in the Internet
- Data protection and data retention regulations under IHRL
- New means of warfare: is IHL adequately regulating the conduct of in the 21<sup>st</sup> century?

- The crime of Genocide: issues of qualification and responsibility
- The impact of integration processes on the development of PIL
- The impact of globalization on PIL development
- International legal regulations related to the use of natural resources
- Protection of cultural heritage under PIL in times of armed conflict
- Protection of natural environment in times of armed conflict
- Diplomatic and consular immunities and privileges: comparative analysis.

Problem solving and application of the gained theoretical knowledge in practice is also an utterly important competence for lawyers, which can and should be efficiently taught in the framework of the PIL study course.

*Infra* is an example of a problem solving exercise in the framework of PIL.

### ***Problem Solving Exercise***

#### **Background information**

On 1 February 2021 the Representative of Honorary Consuls of the Republic of Pilland raised an issue before the Minister of Foreign Relations related to providing official interpretation on applicable regulations in Pilland concerning consular privileges.

#### **The facts**

1. For more than 20 years since the year of 2000 the Honorary Consuls of different states in Pilland were granted exemption from all national taxes related to performing their functions. Honorary consuls were also granted the privilege to use up to two consular cars with special diplomatic numbers, which are not subject to administrative fees in case of traffic violations.
2. On 20 December 2020 the Honorary Consuls representative in Pilland received an official notification from the Ministry of Foreign Relations, which informed that on 1 January 2021:
  - a) 15 out of 50 Honorary Consuls (with the list of the mentioned 15 consuls attached to the

letter as annex 1) would be deprived of their right to have 2 consular cars with diplomatic number, they could retain only one such car; b) 20 out of 50 Honorary Consuls (the list of the mentioned 20 consuls attached to the letter as annex 2) would be deprived of the privilege to have any consular car with diplomatic numbers; c) the remaining 15 Honorary Consuls could retain both cars with special diplomatic numbers.

3. After one month, on 20 January 2021 the representative of the Honorary Consuls in Pilland received another notification informing that starting from 1 February 2021 premises of 45 Honorary Consuls out of 50 present in Pilland (the list of such consuls attached to the notification as annex 1) would not be exempt from taxes, given that the state has no obligation to exempt the premises of Honorary consuls from taxes, and that the state has discretion to decide whether such exemption should be provided to Honorary consuls or not.

4. The Minister of Foreign Relations assigned the reference-request for official interpretation of regulations concerning immunities and privileges of Honorary Consuls to the Head of the Legal Department of the Ministry of Foreign Relations to provide in depth legal analysis of the issues raised in the reference-request of the Representative of Honorary Consuls in Pilland and prepare a respond on behalf of the Ministry of Foreign Affairs.

5. The Pilland Law on Taxation (Law) does not stipulate the obligation of the state to provide any tax exemptions to the premises of Honorary Consuls. The relevant obligation in the Law on Taxation covers only career consular offices (officers). There is no provision in the Law concerning Honorary Consuls and their premises. Republic of Pilland is a state party to the Vienna Convention on Consular Relations of 1963. At the same time, according to article 7 of the Constitution of the Republic of Pilland international customary norms, as well as treaties ratified by Pilland prevail over the national legislation in case of collisions.

#### Task

*As the Head of the Legal Department of the Ministry of Foreign Relations prepare an official response to the Representative of the Honorary Consuls in Pilland and a report with suggestions for the Minister of Foreign Relations.*

For completing the given task the students shall have the basic knowledge in the field of PIL, the ability to identify the applicable international and national legal instruments, the skills of using international instruments (treaties, customary norms, soft law), the skills of comparing national regulations with the requirements of international standards, the competence of dealing with facts and filtering information, analytical skills and out-of-box thinking in suggesting legal solutions, reasoning and argumentation competences, legal writing skills.

Another point, which we find important to emphasize, is the importance of creating collaborative environment through team-building and teamwork exercises. Law students all over the world, and especially so in Armenia, graduate HEIs without sufficient knowledge of teambuilding techniques and competences to work in teams. In fact, it is nowadays acknowledged that teambuilding and teamwork can be taught. For instance, in Northeastern University School of Law teamwork is taught in the framework of the innovative interdisciplinary first-year Legal Skills in Social Context Program, during which the upper class students guide and mentor first-year students to conduct social change projects. [8, p. 44] Thus, a very brief introduction to teamwork theory and further practicing teamwork in completing different assignments in the framework of the course could be very useful for law students and could have a positive impact on students' achievement. [8, p.57]



It should be mentioned, that the separate methods, techniques and recommendations described *supra* are only singled out examples of efficient teaching methodology designed specifically for international legal studies, which can, certainly, be complemented by a variety of other methods and techniques.

By the end of the Course LL.M. students shall gain knowledge, skills and competences in accordance with the identified aim and the objectives of the Course. Thus, in the framework of the LL.M. course on the nature of PIL, by the end of the Course the students are expected to know, *inter alia*, the theoretical basics of PIL, understand the historical development of PIL and the nature of PIL, the role of PIL for the evolution of international-legal order in the age of globalization, the role of PIL within the framework of the national legislation. The students will also be expected to have among others the following competences: the ability to critically analyze the gaps of existing PIL regulations and evaluate the efficiency of existing regulations, the state of implementation of PIL in the RoA and analysis of new mechanisms for more efficient implementation of PIL, the competence of elaborating on the ways for enhancement of the national legislation taking into consideration the trends of development of PIL. By the end of the Course the students shall also have gained such skills as, for example, doing research (including research via professional web-sites, using professional literature: primary and secondary sources), presentation skills (including making PowerPoint presentations and oral presentations), working in teams, out-of-box thinking and finding creative solutions of different legal problems, skills of interpretation of International legal norms and proper implementation of PIL when drafting national legislation and others.

Last but not the least, a detrimental factor for success of the taught course is choosing sufficient and interesting reading materials, that would consist of main books (probably best options would be Malcolm Shaw's International Law (7th edn); Lauterpacht's The Function of Law in the International Community; Hugh Thirlway's The Sources of International Law; Samantha Besson's & John Tasioulas's The Philosophy of International Law; etc.), other selected up-to-date secondary sources chosen for each topic, as well as the selection of the relevant primary sources such as treaty instruments, legal acts, court cases decisions. At the same time, throughout our teaching experience we have observed that students find it helpful when along with the main reading materials suggestions for additional reading are also provided. This helps them in conducting independent research and problem solving activities.

## LITERATURE

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#### **ԱՄՓՈՓՈՒՄ**

#### **“Միջազգային հանրային իրավունքի բնույթը” դասընթացի դասավանդումը մագիստրատուրայի իրավաբան ուսանողներին ԵՐԵՄՅԱՆ Լ.Ա.**

“Միջազգային հանրային իրավունքի բնույթը” վերտառությամբ ուսումնական ծրագրի մշակման հիմնական նպատակն է խթանել միջազգային հանրային իրավունքի (ՄՀԻ) դասավանդումը ԲՈՒՀ-երում իրավագիտության ոլորտում մագիստրատուրայի բոլոր ուսանողների շրջանում՝ անկախ մասնագիտացումից: Ուսումնական ծրագիրն ունի նաև խնդիր զարգացնել ուսանողների վերլուծական, փաստարկներ բերելու և այլ մասնագիտական կարողություններն ու հմտությունները, ինչպես նաև խթանել ներպետական իրավունքում միջազգային իրավունքի ճշգրիտ իմպլեմենտացիայի իրականացմանը:

#### **РЕЗЮМЕ**

#### **ПРЕПОДАВАНИЕ КУРСА “ПРИРОДА МЕЖДУНАРОДНОГО ПУБЛИЧНОГО ПРАВА” СТУДЕНТАМ МАГИСТРАТУРЫ ПО СПЕЦИАЛЬНОСТИ “ЮРИСПРУДЕНЦИЯ” ЕРЕМЯН Л.А.**

Основной целью учебного курса “Природа международного публичного права” является дальнейшее развитие в ВУЗ-ах преподавания международного публичного права всем учащимся в магистратуре по направлению “Юриспруденция”, не зависимо от выбранной ими узкой специальности. Одной из задач данной учебной программы также является способствование развитию у студентов аналитических компетенций, компетенций аргументации и других профессиональные компетенций и навыков, а также способствовать аккуратной и правильной имплементации норм международного права в национальное законодательство.