

Course manual
Joint Master's Programme in
International Humanitarian Action

University of
Warsaw

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**Political changes in Central and Eastern
Europe since 1989 from the perspective
of Public International Law**

Semester 3

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Credits awarded:	4 ECTS, equivalent to 100 work hours (1 ECTS = 25 hours)
Period:	Third semester
Venue & hours:	3.8, Lipowa 4 (CI II), Tuesday 8.00-9.30

1. Introduction

The course is a requirement for obtaining the NOHA Master's degree.

The main objective of the course is that students learn and understand legal framework and legal implications of post-1989 political changes in Central and Eastern Europe (understood broadly to include also the Caucasus and Balkans). The collapse of some states (e.g. Czechoslovakia, German Democratic Republic) and the creation of new ones (e.g. Kosovo) raised questions about the legality of such processes in view of the right of self-determination of peoples and the principle of the protection of states as subjects of international law. Furthermore, they raised questions about the legal identity or lack of the identity between "old" and "new" states (e.g. Soviet Union and Russia, Yugoslavia and Serbia). Responses to these questions had and still have important implications for the continued application (or lack of continuation) of international treaties, of citizenship, of membership in international organizations and many other legal aspects of states presence in international community. In addition to the above problems of legal succession, in some cases territorial changes were accompanied by new claims and disputes. The methods of solving controversial problems ranged from peaceful negotiations to armed conflicts which raised legal questions relating to *ius contra bellum*, *ius in bello* and *ius post bellum* (the latter one being a newly emerging branch of public international law). All these topics will be discussed against a wide background of similar dilemma that arose as a result of political changes in other parts of the world.

2. Learning outcomes

In conformity with the learning outcomes set out by the NOHA network, students should achieve the following learning outcomes by the end of this module:

Knowledge:

- Identifies legal framework and legal implications of post-1989 political changes in Central and Eastern Europe.

- Knows basic notions, concepts and principles relating to the continuation and succession of states and their consequences in International Law.
- Identifies challenges to practical application of International Law concepts to the post-1989 political reality.

Skills:

- Has proven the ability to apply key legal concepts and instruments in practice in the context of recent political developments.
- Has proven the ability to solve legal cases taking into account multidimensional and multi-layered character of international legal regulations relating to international political developments and territorial changes.

Social competences:

- Is ready to advocate for the strict allegiance to the rule of law in international relations.
- Understands that indifference towards “bad faith” and arrogance in international relations is a driving force behind further violations of International Law.

3. Course material

[Provide over here a bibliography of the books/reader used in the course with price estimates and (if necessary) advice where to buy it, as well as a listing of all other types of material that will be used in the module. Please specify explicitly which readings are obligatory and which should be considered suggested readings. Alternatively, you can keep the information general over here and specify the obligatory and suggested readings by page numbers in the programme schedule.

If you put obligatory or suggested course material on NOHA Blackboard (e.g. videos), alert the students on this over here.]

Required reading:

International **multilateral treaties:**

- Charter of the United Nations, of 26 June 1945
 - Vienna Convention on Succession of States in Respect of Treaties, of 23 August 1978
 - Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 8 April 1983
- and
- The Hague Regulations Respecting the Laws and Customs of War on Land, of 18 October 1907
 - Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977
 - The Hague Convention for the Protection of Cultural Property in the event of Armed

Conflict, of 14 May 1954

Further required reading will be provided to students via blackboard a week before each lecture.

Particularly interesting and useful is the Final Report of the International Law Association adopted at the 2008 ILA Conference in Rio de Janeiro on Aspects of the Law of State Succession (available at the website of the International Law Association: <http://www.ila-hq.org/en/committees/index.cfm/cid/11>)

Optional reading

Antonowicz L., The Disintegration of the USSR from the Point of View of International Law“, Polish Yearbook of International Law 19 (1991 – 1992).

Arai-Takahashi Y., The Law of Occupation. Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law, Leiden – Boston 2009;

Blum Y.Z. , UN Membership of the ‚New‘ Yugoslavia: Continuity or Break?, American Journal of International Law 86 (1992);

Boelaert-Suominen S., The International Criminal Tribunal for the former Yugoslavia and the Kosovo conflict, International Review of the Red Cross, III 2000;

Bühler K. G., State Succession and Membership in International Organizations. Legal Theories versus Political Pragmatism, The Hague – London – Boston 2001;

Butterworth K., Successor States-Property Rights – Russia and Ukraine Agree to Share Control of the Former Soviet Unions’s Black Sea Fleet, Georgia Journal of International and Comparative Law 22 (1992);

Crawford J., The Creation of States in International Law, Oxford 1979;

Czapliński W., International legal Aspects of Polish-Lithuanian Relations, Polish Yearbook of International Law 19 (1991 – 1992);

Ferraro T. (ed.), Occupation and other forms of administration of foreign territory: expert meeting report, ICRC Geneva, March 2012;

Fox G. H., Humanitarian Occupation, Cambridge 2008;

Gasser H.-P., From Military Intervention to Occupation of Territory: New Relevance of International Law of Occupation (in:) Fischer H., Froissart U., Heintschel von Heinegg W., Raap Ch. (eds.), Crisis Management and Humanitarian Protection: in Honour of Dieter Fleck, Berlin 2004;

Green L.C., Is There a “New” Law of Intervention and Occupation?, *Israel Yearbook on Human Rights*, vol. 35, 2005;

Grzebyk P., Classification of the Conflict between Ukraine and Russia in International Law (Ius ad Bellum and Ius in Bello), *Polish Yearbook of International Law* 34 (2015);

Långström T., Transformation in Russia and International Law, Leiden – Boston 2003;

Marxsen Ch., The Crimea Crisis – an International Law Perspective, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 74 (2014) ;

Mrak M., Succession of States, The Hague – London – Boston 1999;

Oeter S., German Unification and State Succession, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 51 (1991) ;

Pegorier C., Ethnic Cleansing. A Legal Qualification, Oxford 2013;

Piotrowicz R., *Blay S. K. N.* (eds.), The Unification of Germany in International and Domestic Law, Amsterdam – Atlanta 1997;

Sassòli M., The Legal Qualification of the Conflict in the Former Yugoslavia: Double Standards or New Horizons for International Humanitarian Law, (in:) *Wang T.*, *Yee S.* (eds.), International Law in the Post-Cold War World: Essays in Memory of Li Haopei, London 2001;

Sassòli M., Occupation and Peacebuilding, International Humanitarian Law Research Initiative, <http://www.ihlresearch.org> ;

R. Szafarz, The Practice of Poland as the ‘Other State Party’ and as a Depositary, as Regards Succession of Recently Established States in Respect of Treaties, *Polish Yearbook of International Law* 22 (1995 – 1996);

Tolstykh V., Reunification of Crimea with Russia: a Russian Perspective, *Chinese Journal of International Law*, 2014, vol. 13;

Vité S., Applicability of the international law of military occupation to the activities of international organizations, *International Review of the Red Cross*, III 2004;

4. Teaching and learning methodology

The course is a combination of different methods of work – lectures, individual presentations by students and a group discussion (a debate within the General Assembly of the United Nations) on legal implications of a creation of a fictional state. However, this fictional case will be based on real life events that took place in the 20th and 21st centuries and were discussed during the course.

5. Programme and training activities

Week 1 - 3.10.2017

Introduction to concepts relevant for the legal assessment of political changes in Central and Eastern Europe:

- a) definition of a state,
- b) different ways states are created or collapse
- c) notions of: identity / continuation vs. succession of states
- d) different categories of succession
- e) relations with other branches of public international law, e.g. methods of the settlement of international disputes, law on the use of force, international humanitarian law, human rights law, right to self-determination, state responsibility

Week 2 – 10.10.2017

Succession of states in respect of treaties:

- a) basic principles of the law of treaties
- b) different methods of succession applied in international practice
- c) methods of succession provided for in the Vienna Convention on Succession of States in Respect of Treaties, of 23 August 1978

Week 3 – 17.10.2017

Study trip to Geneva

Week 4 – 24.10.2017

Succession of states in respect of other, than treaties, aspects of states' relations with international community:

- a) state debts
- b) state membership in international organizations
- c) state property
- d) state archives
- e) citizenship
- f) methods of succession provided for in the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, of 8 April 1983

Week 5 - 7.11.2017

Partition of Czechoslovakia and “unification” of Germany:

- a) historical background

- b) legal status of Czech Republic and of Slovakia
- c) unification of Germany or incorporation of German Democratic Republic by the Federal Republic of Germany?
- d) problems of succession in respect of treaties and some other aspects
- e) special case of Polish – German relations with regard to the border between the two states

Week 6 – 14.11.2017

“Partition” of the Soviet Union:

- a) legal status of the Russian Federation – continuity or succession with regard to the Soviet Union?
- b) legal status of other post-Soviet republics, with special focus on Belarus and Ukraine
- c) problems of succession in respect of treaties and some other aspects

Week 7 - 21.11.2017

Legal status of Baltic states (Estonia, Latvia, Lithuania):

- a) historical background
- b) problems of succession in respect of treaties and some other aspects in each of the three Baltic states
- c) special case of Polish – Lithuanian relations

Week 8 – 28.11.2017

Legal problems with regard to the Caucasus:

- a) quasi-states and territorial disputes (Nagorno-Karabakh, South Ossetia, Abkhazia)
- b) Chechen wars:
 - (i) from the perspective of International Humanitarian Law
 - (ii) from the perspective of Human Rights Law – case law of the European Court of Human Rights
- c) armed conflict between Russia and Georgia (2008) from different legal perspectives

Week 9 – 5.12.2017

Legal assessment of the developments in Ukraine since 2014:

- a) annexation of Crimea
- b) status of Crimea as an occupied territory
- c) armed conflict in Western Ukraine under International Humanitarian Law
- d) role of international community in preventing and mitigating violations of international law
- e) special case of Polish – Ukrainian relations

Week 10 – 12.12.2017

Legal implications of the partition of Yugoslavia:

- a) legal status of the Former Yugoslavia – continuity or succession with regard to Yugoslavia?

- b) legal status of other former Yugoslav republics
- c) problems of succession in respect of treaties and some other aspects
- d) armed conflicts in Croatia and in Bosnia & Herzegovina under International Humanitarian Law
- e) impact of armed conflicts in the Former Yugoslavia on the development of International Criminal Law

Week 11 – 19.12.2017

Legal implications of the Kosovo crisis:

- a) NATO intervention in 1999 under *ius ad bellum* and *ius in bello*
- b) the impact of the Kosovo crisis on the evolution of the “humanitarian intervention” concept into the “responsibility to protect” (R2P) doctrine
- c) Kosovo’s declaration of independence under Public International Law – Advisory Opinion of the International Court of Justice of 22 July 2010
- d) present legal status of Kosovo
- e) birth of *ius post bellum*?

Week 12 – 9.01.2018

“Role playing game” - a **fictional debate in the General Assembly of the United Nations** on legal implications of the creation of a fictional state. However, this fictional case will be based on real life events that took place in the 20th and 21st centuries and were discussed during the course.

Week 13 – 16.01.2018

Written exam composed of few questions testing theoretical knowledge and one fictional case based on facts known from real-life cases discussed during classes. Using notes and other materials is allowed.

Week 14 – 23.01.2018

Joint evaluation of the exam’s results. **Wrap up of the course.**

6. Workload

Total workload of one student - 100 hours:

- a) organized work = 28 hours
- b) individual preparation to classes (reading materials, preparation of individual presentations, preparation to a fictional debate at the United Nations General Assembly) - 4 hours in a week = 56 hours
- c) preparation to a final exam - 16 hours

7. Assessment methods

20% - student's regular participation in classes and in group discussions. Student has a right to be absent twice and only during these weeks when she/he does not perform a presentation. However, as the course is relatively short and quite intensive, attendance at each of the classes is highly recommended

30% - case study - individual oral and written presentation on legal implications of a concrete territorial / political change

10 % - individual preparation to a fictional debate at the United Nations General Assembly

40 % - written exam composed of few questions testing theoretical knowledge and one fictional case based on facts known from real-life cases discussed during classes. Using notes and other materials is allowed.

Please be aware that in order to be able to take a second chance exam if you need to, you should come to the first chance exam and attempt to answer the exam questions. In the event you are not able to attend the first chance exam you need to demonstrate a valid reason for non-attendance, such as a certificate from a medical doctor. No-show without a valid reason forfeits the possibility of taking the second chance exam and you will have to redo the course.

8. Assessment criteria

During all the activities mentioned under 7. above the coordinator will assess the knowledge of the contents of the course and student's ability to apply this knowledge in real life situations.

9. Appendices

[Any supporting documents to explain parts of the module more in detail.]