

**IMPORTANT INFORMATION! READ THIS TUTORIAL LETTER FIRST!
PRESCRIBED MATERIAL! COMPULSORY ASSIGNMENT! SEMESTER
MODULE!! START IN TIME!!**

COLLEGE OF LAW

**DEPARTMENT OF PUBLIC, CONSTITUTIONAL, AND INTERNATIONAL
LAW**

**INTERNATIONAL LAW
LCP401H**

Tutorial Letter 101/3/2010

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1 A WORD OF WELCOME

Welcome to international law. Although this is a compulsory module and you therefore don't have any choice but to pass it - we also hope that you will find it interesting and rewarding. We will help where we can, but the first key to success in this module is to start studying today. Plan your assignments and do them thoroughly and with a bit of creative thought.

This tutorial letter contains important information about the module. Read it carefully (now!) and refer to it while working through the study material, completing the assignment(s), preparing for the examination and asking us questions (which you must feel free to do at any stage – before the exam!).

In this tutorial letter, you will find the assignment(s) for both semesters and instructions on writing and submitting them.

You will also find all you need to know about the prescribed study material and how to obtain it. Absorb this information and get hold of the prescribed material as soon as possible.

We have also included certain general and administrative information about the module. Please study this section of the tutorial letter carefully.

Although this may seem obvious to some, **you must read all the tutorial letters** you receive during the semester **immediately and carefully**. They always contain important and, sometimes, urgent information – why else would we write them?

We hope that you will enjoy this module and wish you all the best!

2 TUITION RATIONALE

2.1. Introduction

Although many people think that international law and international politics are the same thing, in fact they are not. There are certain basic legal rules which make up international law, and one of our aims this year is to give you a working knowledge of these rules. How you apply the rules once you have mastered them will be coloured, of course, by your general attitude, and this is indeed your right, provided you can lay a firm legal basis for your opinions. International law is a stimulating and potentially very exciting field. It can, however, also be a dead bore. How you experience it will depend largely on the attitude with which you approach the subject.

In the past practitioners have at times questioned the usefulness of studying international law on LLB-level. However, with the adoption of the Republic of South Africa Constitution 1996 (Act 108 of 1996) the necessity of a sound working knowledge of international law has been firmly established in our law.

Although we aim at providing you with a general understanding of how international law works, we at the same time emphasise the South African position and approach, and those aspects which are of particular relevance to the South African lawyer; in other words we try to make the course relevant for present-day South African lawyers.

2.2. Mutual expectations

Unisa's tuition rationale is directed at facilitating mature, responsible learning with a view to the acquisition of sound knowledge and the ability to apply and develop knowledge and competencies in the workplace and other contexts.

As a student at a distance learning institution, it is important for you to interact with your lecturers and fellow students. You can, therefore, expect us to make contact with you in study guides and tutorial letters, which will provide you with the information you require for your studies. You can also expect us to give you guidance with regard to the study material and feedback on your performance (e.g. in the assignments). From your side, you must take responsibility for your studies, which includes obtaining the necessary study material, reading your tutorial letters, studying the prescribed study material, and completing and submitting your assignments before or on the due dates.

2.3. Outcomes-based learning rationale

The outcomes-based learning model proceeds from the premise that students should acquire certain competencies during their studies. Those competencies refer to knowledge, skills, abilities and other personal attributes. They should help students to achieve the learning outcomes envisaged for the module. Once you have achieved the learning outcomes through the completion of this module, you will also be able to apply those competencies in your work environment and other contexts in which the study topics are relevant.

In law, there are a number of outcomes that a lawyer should achieve. One can say a student is competent if he or she achieves these outcomes successfully. The outcomes for International Law are set out under the next subheading below.

2.4. Outcomes and assessment criteria for International Law

As you are adult students who have already advanced some way in your studies, more will be expected of you than when you first enrolled for your LLB degree. A range of tasks will be set for you in the study guide, tutorial letters, assignments and examination. In performing those tasks you will be expected to show that you meet the following outcomes:

Outcome 1

You must be able to identify and understand the role of international law in current South African Law and everyday life.

In this regard you have to:

- Identify legal problems and issues relating to international law in real or simulated fact scenarios.
- Interpret and analyse daily occurrences regarding international law.

Outcome 2

You must be able to demonstrate an understanding of the history and theoretical framework of, and the most pressing and prevalent issues regarding international law.

You will be required to use a variety of legal documents (case law, scholarly writings, legislation, treaties and other international documents, which you will have to select from the prescribed material) relating to international law. Where feasible and necessary, you will be required to conduct library and internet searches.

In this regard you will be required to:

- Explain and integrate the historical roots and development of international law with regard to the existing legal position.
- Identify problems and issues relating to international law in real or simulated fact scenarios.
- Present substantiated legal arguments, opinions and solutions, based on research.
- Analyse and critically evaluate the relevance and applicability of various legal sources and authorities in respect of identified problems relating to international law.
- Discuss and evaluate different points of view in respect of international law.
- Recognise areas in need of legal development or reform.
- Use language in a manner that is consistent with the conventions in the discipline of law

Outcome 3

You must be able to apply the principles regarding international law in practical situations and solve multi-dimensional legal problems associated with international law.

In this regard you will be required to:

- Solve practical problems from case law and everyday examples using appropriate research methods and applying the principles and rules relating to international law.
- Give responsible and expert advice on an appropriate course of action in respect of issues relating to international law.
- Analyse and critically evaluate the relevance and applicability of various legal sources and authorities in terms of identified problems relating to international law.

- Select the most appropriate and authoritative legal materials to solve identified problems relating to international law.
- Provide substantiated responses, based on an acquired knowledge of the law.
- Provide responsible and expert legal advice on an appropriate course of action.

Outcome 4

You must be able to conduct research.

You will be required to use a variety of legal documents (case law, scholarly writings, legislation, treaties, conventions and other international documents, which you will have to select from the prescribed material) relating to the international law. Where feasible and necessary, you will be required to conduct library and internet searches.

In this regard you will be required to:

- Demonstrate basic literature research skills.
- Find source material to suit the needs of the particular area of research.
- Use authorities appropriately to substantiate arguments and support solutions for problems relating to international law.
- Use legal sources critically and analytically within a contextual framework.
- Act responsibly and ethically as researchers and scholars, e.g. refer appropriately, acknowledge sources and avoid plagiarism.

2.5. Cross-functional outcomes/skills

We are confident that during your studies you will use or develop one or more of the following broad skills in your learning experiences (i.e. as you study your prescribed study material, search for information, complete the learning activities, answer the assignments and examination questions, and/or talk to interested parties about your studies):

- Learning skills: obtaining and exploring knowledge by using various learning methods
- Self-responsibility skills: demonstrating self-management by obtaining and exploring information to complete and submit tasks on time
- Research: obtaining, analyzing, organizing, evaluating and reporting information
- Problem-solving skills: considering information, selecting correct data or alternatives to solve set problems, and developing creative and critical thinking
- Communication skills: using various forms of communication
- Technological literacy: utilizing science and technology effectively and critically
- Developing a broader picture: developing a macro vision, recognizing that various aspects relate to one another and that problems do not exist in isolation
- Cultural and aesthetic understanding: being sensitive to differences in and between groups

These skills pertain to the specific learning outcomes of each study unit in which it is expected of you to demonstrate knowledge, apply this knowledge, to have a positive study attitude, and be able to evaluate the value of the study content and your learning experience.

2.6. Criteria for the evaluation of learning

The outcomes, competencies and skills mentioned above are applicable not only to your approach to your studies (i.e. how you study and process your study material), but also in terms of assessment (self-assessment and assessment by your lecturers).

In the examination, you will get theoretical or direct questions (which require you to demonstrate your knowledge of the study content) and applied or problem questions (which assess your understanding and ability to use your acquired knowledge practically). Both theoretical and applied questions will assess how you use certain competencies, for example, your ability to remember facts, analyze facts or compare ideas.

Since you are a Unisa student who is learning through distance education, you will also be required to evaluate yourself; self-assessment is an important tool for you to assess the extent to which you have achieved the study outcomes. Apart from the feedback on assignments, which will give you specific guidance, you can and must use the outcomes, competencies and skills to ask yourself whether or not you have achieved the required knowledge, understanding and application of the study content. In this way, you will be able to identify areas in which you may need to improve your knowledge, understanding and/or application.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are:

Lecturer's name:	Ms Mirelle Ehrenbeck
Building and office number:	Cas van Vuuren 7-04
E-mail address:	ehrenm@unisa.ac.za
Telephone number:	012 429 8329

Lecturer's name:	Ms Polina Dlagnekova
Building and office number:	Cas van Vuuren 7-28
E-mail address:	dlagnpg@unisa.ac.za
Telephone number:	012 429 8408

Letters about the **content** of the module should be sent to:

The Module leader (LCP401H)
 Department of Public, Constitutional and International Law
 PO Box 392
 UNISA
 0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted in assignments.

Communication with the University

If you need to contact the University about matters not related to the content of this module, please consult the publication *Your Service Guide @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (e.g. to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you call the University.

Please note that all administrative enquiries should be directed to the **Unisa Contact Centre**. Enquiries will then be channeled to the respective departments. The details are as follows:

- Calls (RSA only) 0861 670 411
- International Calls +27 11 670 9000
- Fax number (RSA) 012 429 4150
- Fax number (international) +27 12 429 4150
- E-mail study-info@unisa.ac.za

4 STUDENT SUPPORT SYSTEM

4.1 General

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes, language support), please consult the publication *Your Service Guide @ Unisa* which you received with your study material.

4.2 Contact with fellow students

4.2.1 Study groups

We strongly recommend that you form study groups and to have contact with fellow students. The addresses of students in your area may be obtained from:

Department of Undergraduate Student Affairs
PO Box 392
UNISA
0003

Please contact the Unisa contact centre 0861 670 411.

However, once you are part of a study group, please take special note of the dire warnings we provide under assignments below.

4.2.2 myUnisa

The **myUnisa** learner management system is Unisa's new virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the computer and the Internet.

To go to the *myUnisa* web site,

- start at the main Unisa website, <http://www.unisa.ac.za>,
- click on the “Login to **myUnisa**” button link on the right-hand side of the screen.

This will take you to the *myUnisa* website.

You can also get there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *Your Service Guide @ Unisa* which you received with your study material for more information on *myUnisa*.

4.3 Discussion classes

There are no formal discussion classes scheduled for this module.

5 STUDY MATERIAL

5.1 Inventory letter

When you register, you will receive an inventory letter containing information about your tutorial matter. See also the brochure entitled *Your Service Guide @ Unisa* (which you received with your tutorial matter).

Check the study material you have received against the inventory letter. You should have received all the items specified in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

PLEASE NOTE: Your lecturers cannot help you with missing study material. Please contact the Unisa contact centre on 0861 670 411 (RSA only) or +27 11 670 9000 (international calls) (also see par 3 above).

5.2 Study material

The study material for this module consists of the following:

- study guide
- tutorial letters (which you will receive during the semester)
- textbook (which you must buy for yourself)

The Department of Despatch should supply you with the following study matter for this module:

- study guide
- tutorial letters

5.2.1 A study guide

There is **one** study guide for this module. At the beginning of the study guide, you will find detailed instructions on how to use it.

Please see the further note under 5.3 prescribed textbook.

5.2.2 Tutorial letters

Apart from Tutorial Letter 101, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available.

Students who have access to the Internet can view the study guides and tutorial letters for the modules for which they are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>. It is advisable to check this site regularly as the material is available there some time before it reaches you in hard copy.

5.3 Prescribed textbook

Your prescribed textbook for this module for this year is:

John Dugard *International law: A South African perspective* (3 ed 2005) Juta.

(And no, you cannot still use the second edition!)

Please consult the list of official booksellers and their addresses listed in *Your Service Guide @ Unisa*.

If you have any difficulties in obtaining books from these bookshops, please contact the Registrar as soon as possible at telephone number 012 429 4152 or the Unisa contact centre on 0861 670 411 (RSA only) or +27 11 670 9000 (international calls), or send an e-mail to vospresc@unisa.ac.za.

5.4 Prescribed cases

International law (ICJ) cases are not the easiest things on earth to read - each one is generally the length of a substantial textbook! Consequently, while we expect intelligent reference to case law (including the issues covered by the case and how they are relevant to the course) to support your arguments, we do not expect you to study the ICJ cases in detail **unless we expressly tell you to do so**. You will find sufficient detail in the guide read with your prescribed textbook.

The ICJ cases, which you are required to study are listed in paragraph 8.3.3 of this tutorial letter.

5.5 Legislation

The Constitution of the Republic of South Africa 1996 (Act 108 of 1996).

See also par 8.3.3 below.

6 ASSIGNMENTS GENERAL INFORMATION

6.1 General remarks

PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 3 above).

Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

Students may submit written assignments and assignments done on mark-reading sheets either by post or electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

To submit an assignment **via myUnisa**:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

PLEASE PAY VERY CAREFUL ATTENTION TO THE FOLLOWING:

6.1.1 Plagiarism

Plagiarism is theft which occurs when you use the

- WORDS
- IDEAS; or
- THOUGHTS

of another and create the impression that they are your own. If, therefore your answer to an assignment is copied directly (or mostly) from the Guide, a Tutorial letter, Dugard, or another student, you will be guilty of plagiarism and will (at the very least) receive a round 0% for the assignment. Please also note that just as you can't be a "little dead", so too you can't indulge in a "little plagiarism"! We want to know how YOU think, and how YOU express your thoughts – We know what Dugard thinks and (usually) what we think too, so don't put yourself or us in this awkward position.

You all receive the *Disciplinary Code for Students* (2004) on registration. Study the Code, especially Sections 2.1.13 and 2.1.14 (2004 3-4). Please also read the University's *Policy on Copyright Infringement and Plagiarism*.

6.1.2 Assignments and examination admission

In accordance with University policies, there are two compulsory assignments per semester for this module. The FIRST ASSIGNMENT determines admission to the exam and makes up one half of your year mark. It will be corrected and returned to you with commentary.

The second assignment makes up the other half of your year mark.

The combined mark you receive for the first and the second assignment is your year mark for the course and counts 20% towards your final mark.

Please note that the actual assignment questions appear in the Annexure attached at the end of this tutorial letter.

6.1.3 Assignments in summary

- (1) **There is NO automatic admission to the examination.** You **must** submit the first compulsory assignment by **05 March** for the first semester and **13 August** for the second semester, to be admitted to the exam.
- (2) The mark you receive for the first assignment counts one-half (50%) of your year mark. The mark you achieve for the second assignment counts one half (50%) of your year mark. The two marks together represent your year mark for this course and this counts 20% of your final mark.
- (3) **Assignment and examination result.** The examination consists of one two-hour paper which counts 100 marks. The exam mark counts 80% of the final mark for the module and the assignment 20 %.
- (4) **Closing dates for the assignments.** The closing dates for the assignments are as follows:

First semester:	ASSIGNMENT 1:	5 MARCH 2010
	ASSIGNMENT 2:	1 APRIL 2010

Second semester:	ASSIGNMENT 1:	13 AUGUST 2010
	ASSIGNMENT 2:	23 SEPTEMBER 2010

- (5) **As these dates are based on requirements set by the Department of Education, NO extension can be granted for submission of the assignment.**

6.2 Commentaries on assignments

The commentaries on the compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

6.3 Submission dates

First semester: ASSIGNMENT 1: 5 MARCH 2010
 ASSIGNMENT 2: 1 APRIL 2010

Second semester: ASSIGNMENT 1: 13 AUGUST 2010
 ASSIGNMENT 2: 23 SEPTEMBER 2010

6.4 Assessment of assignments

Please note: As noted above, although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. That will amount to plagiarism and none of these assignments will be marked. Furthermore, these students may be penalised or subjected to disciplinary proceedings of the University.

For general information and requirements as far as assignments are concerned, see the brochure. *Your Service Guide @ Unisa* which you received with your study material.

7 EXAMINATION AND ADMISSION TO THE EXAMINATION

7.1 Examination admission

At the end of the semester for which you are registered you will write **one two-hour examination** in LCP401H. The paper counts 100 marks.

As we pointed out above, it has been decided by the university authorities that there **must** be **TWO compulsory** assignments per semester in each module. One of the reasons for this step is that all students are required to prove that they have “studied actively” before writing the (final) examination. The assignments together will count **20%** towards your final mark in the examination, PROVIDED that you achieve a mark of at least 40% in the examination.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2010 and the supplementary examination will be written in October/November 2010.

If you are registered for the second semester you will write the examination in October/November 2010 and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

7.3 Examination paper

This will be discussed in the final tutorial letter.

7.4 Previous examination papers

Previous examination papers are not available to students. You may, however, accept that examination questions will be similar to the questions asked in the activities in your study guide and in the assignments.

7.5 Tutorial letter with information on the examination

To help you in your preparation for the examination, you will receive a tutorial letter that will explain the format of the examination paper, give you examples of questions that you may expect and set out clearly what material you have to study for examination purposes.

8 INTRODUCTORY REMARKS TO THE STUDY OF LCP401H

8.1 Brief note on the importance of international law

LCP401H is an introductory course to the study of the legal framework within which states interact with one another. However, the legal rules created by states are often translated into provisions of municipal law, which affect us as individuals. Our everyday lives are shaped by legal rules which (initially) originated as rules of international law: extradition of alleged criminals, the question of which state has jurisdiction to prosecute, the extent of immunity enjoyed by diplomatic officers, or head of state, the question of whether one may sue a state in a domestic court over a contractual dispute (to name a few) are all issues that you will probably have to face at some stage during your career. It is therefore essential that you have knowledge of the most important principles of international law, as well as a thorough understanding of how international law 'fits in' with our own, South African law. In addition, you cannot ignore the reality of globalization, as well as the newly established status of South Africa within the international community. All these are some of the factors which render LCP 401H a course of fundamental importance.

8.2 Structure of this course

This course is divided into two sections. **Section A** consists of the following:

- Development and nature of international law
- The sources of international law
- International legal personality
- Jurisdiction
- Enforcement
- International law in SA municipal law

The abovementioned topics are **compulsory** and 75 out of the 100 examination marks will be based on them.

Section B consists of four sections. In the examination one question (counting 25 marks) will be set for each section. **Out of these four questions, you must answer one.** The topics covered in this section are:

- Territory
- Immunity
- Humanitarian law
- State liability and diplomatic protection.

More detailed information on the course content is available in your study guide.

Additional information regarding the structure of the upcoming examination will be given to you in the last tutorial letter for this semester.

8.3 Approaching your study material

8.3.1 General remarks

As we have already mentioned, the study material for this course consists of a study guide, a textbook and tutorial letters. Please note that all of these components are prescribed – **you must study all of them in conjunction with one another.**

8.3.2 The study guide, prescribed textbook and additional material

The **study guide** serves as a ‘wrap-around’ the prescribed **textbook**. It was written to ease your interaction with the textbook and **not to replace it.**

True to its name, it guides you through the various topics and it should serve as your starting point. The study guide explains – simply and accessibly – the gist of the prescribed chapter(s) from the textbook. However, **the information in the study guide must be studied in conjunction with the corresponding textbook chapter(s).** Each study unit will specify which pages, or chapters, of Dugard you must study. **However, under some topics you may be given specific instructions to study sources over and above the prescribed textbook.**

These additional sources (such as cases, articles, legislation, treaties, *etc*) are clearly indicated as being compulsory. They will be made available for you and you will be able to obtain them from the UNISA library site in the following manner:

Excursus: How to retrieve prescribed materials from the UNISA OASIS Library Catalogue

Suggested browser for Electronic Course Reserves: Microsoft Internet Explorer 4.01 plus. The Adobe Acrobat Reader must be loaded on your computer to be able to view / print the scanned PDF documents. The Adobe Acrobat Reader can be downloaded free from <http://www.adobe.com/prodindex/acrobat/readstep.html>.

To access prescribed and recommended electronic journal articles or documents:

1. On the Unisa website <http://www.unisa.ac.za>
2. Click on “Our Library” or on “Quick links” and click on “Library”
3. Click on “Catalogue” - above “Welcome”
4. Click on “View Loans”, in the column on the right, to create your own PIN if you have not already done so; type your name, student number and a PIN of your choosing (any short name or number that you will remember), and click on “Display Record...” at the bottom of the screen. Repeat the **same new PIN twice** on the following screen to confirm it. Click on “Display” again. You can **view** the books you have borrowed (checked out) here and **renew** them if necessary. Please ignore the Modify your PIN link unless you need to change your PIN.
5. After you have created your PIN, click on Start Over to go back to the OASIS catalogue.
6. Click on “Library Course Material”
7. In the block provided, type: LCP401H and click on “Search”
8. Click on “LCP 401H Electronic Reserves 2010”.

When you find the electronic document you need, its location will be “Electronic Reserves”, and its Status “PDF File”. To view or print this PDF file, you need to have the Adobe Acrobat Reader software already loaded on your PC.

9. To retrieve the full-text document, click on the “View or Print”: link to the title.
10. The next screen requires your name, student number and your PIN. Click in the boxes, type the required information and click on. The **full-text article** will be downloaded by the Adobe Acrobat Reader, assuming you have it loaded on your PC. If you do not have the Adobe Acrobat Reader, nothing will happen and you will get a blank screen with the Document Done status at the bottom of the page.

The download: this can take some time, depending on the size of the file, internet transmission times, local bandwidth, a firewall at your place of work and your computer capacity, among others. The Status Bar at the bottom of your screen will briefly display the size of the file in Kilobytes - please be aware that some very large files may take up to 20 minutes to download. You will not be able to download the PDF file if you do not have the Adobe software on your PC.

11. Adobe will display the full text of the scanned document, with icons (including the Print icon) at the top of its screen and the number of pages the document contains at the bottom of the screen, with the OASIS Catalogue screen in the background.

Please note: Viewing and printing a large PDF document (8 or more pages) will take some time. Your PC should have at least 64MB of RAM, and your printer a minimum of 2MB of memory for optimal printing performance. Attached printers will operate much faster than networked printers.

To return to the OASIS catalogue: either click the Back button of your browser twice or click on the Return to Catalogue button on OASIS. The Adobe software will close automatically.

This is a process which - as final year students – you should be quite familiar with. In addition, you have been given a fair warning, therefore there can be no excuse for not obtaining the additional material for the topic you have chosen to study.

8.3.3 List of prescribed study material

The following materials are prescribed and must be studied over and above the sections in your textbook prescribed for each topic and in conjunction with your study guide.

Section A

Topic 1

- Article 38(1)(d) of the Statute of the International Court of Justice (re-printed on page 16 of your study guide)

Topic 2

- Article 38 of the Statute of the International Court of Justice (re-printed on page 16 of your study guide)
- Vienna Convention on the Law of Treaties, 1969
- ICJ's Advisory Opinion in *Reservations to the Convention on the Prevention of the Crime of Genocide* 1951 ICJ Rep

Topic 3

- Charter of the UN, 1945

Topic 4

- None

Topic 5

- Charter of the UN, 1945

Topic 6

- Constitution of the Republic of South Africa Act, ss 39, 231, 232, 233
- Botha N & Olivier M 'Ten years of international law in the South African courts: Reviewing the past and assessing the future' (2004) 29 *South African Yearbook of International Law* 42-77

Section B

Please note: The prescribed materials listed below must be obtained only for the specific topic you have chosen to study

Topic 1

- Anyangwe C 'African border disputes and their settlement by international adjudication' (2003) 28 *SAYIL* 29
- *Van Deventer v Hancke & Mossop* 1903 TS 401
- *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* 2004 ICJ Rep 136
- Additional recommended reading: Human Sciences Research Council (2009) "Occupation, Colonialism, Apartheid: A re-assessment of Israel's Practices in the Occupied Palestinian Territories under International Law" Executive summary of the study by the Middle East Project of the Human Sciences Research Council of South Africa, available at www.hsrc.ac.za/DG.phtml.

Topic 2

- *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* 2002 ICJ Rep 3
 - (a) Judgment
 - (b) Dissenting opinion of Judge *ad hoc* Van den Wyngaert
- *Liebowitz v Schwartz* 1974 2 SA 661 (T)
- SA Foreign States Immunities Act 87 of 1981
- SA Diplomatic Immunities and Privileges Act 37 of 2001

Topic 3

- The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949
- The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949
- The Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949
- The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949
- Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977
- Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

- *Legality of the Threat of Use of Nuclear Weapons* 1996 ICJ Reports 257
- *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* 2004 ICJ Rep 136
- *Prosecutor v Tadić (Jurisdiction)*, case number IT-94-1-AR 72 (1996) 35 ILM 32

Topic 4

- The International Law Commission's 'Draft Articles on Responsibility of States for Internationally Wrongful Acts', 2001
- Crawford J 'The ILC's Draft Articles on Diplomatic Protection (2006) 31 *South African Yearbook of International Law* 19-51
- *Kaunda v President of the Republic of South Africa* 2004 10 BCLR 1009 (CC)
- *Nduli v Minister of Justice* 1978 1 SA 893 (A)
- *S v Ebrahim* 1991 2 SA 553 (A).
- *Van Zyl v Government of RSA* 2007 SCA 109 (RSA)
- *Crawford von Abo v Government of RSA* Case 3106/2007 (TPD) 24/7/2008

8.3.4 The importance of the activities contained in the study guide

This is a final-year course. Emphasis is therefore placed on your ability to think critically and to solve problem-type questions, similar to the kind of questions which would one day be posed to you by your clients. It is therefore imperative that you do these activities: not just for the sake of passing the examination, but also because you need to prepare yourself for a successful professional life.

The study guide therefore contains a number of activities, most of which are problem-type questions. You must complete them after you have worked through the information in the textbook, study guide and tutorial letters. It is crucial that you do these exercises, because they help you assess whether you have remembered and understood the information you have studied and whether you are sufficiently conversant with the subject matter so that you are able to apply the law to a practical problem and solve it.

Guidance on the activities will be sent to you in subsequent tutorial letters. . It is, however, of the utmost importance that you attempt to answer them yourselves before reading our feedback. . You must compare your own answers with those provided in our feedback, and if there are discrepancies, or if you are for any reason uncertain about any of the study matter – contact us immediately. The activities in the study guide are similar to the *type of* questions we will ask you in the exam, so if you have acquired the skills and knowledge necessary to complete them, you should be able to cope with the exam.

8.3.5 Additional tutorial letters

We have already mentioned a number of times that you will receive additional tutorial letters throughout the semester. They will contain feedback on the activities in the study guide, on the assignments you submitted, as well as comments on past exam questions. We will also include more information relevant to the upcoming examination. The tutorial letters could, if necessary, contain new information, which would keep you up-to-date with current developments.

All tutorial letters form part of your prescribed (compulsory) study material and must be approached as such.

9 CONCLUSION

There is nothing much for us to say but give you the old (and always true) advice: Start studying on time and keep in touch with us. All our details appear above: e-mail us, or phone us. If we happen to be out of the office – do leave a message detailing your name and contact number – we **will** return your call as soon as we can. You are also welcome to make an appointment with us in connection with the content of this course.

We hope that you will enjoy this module and we wish you success with your studies.

Ms Mirelle Ehrenbeck

Ms Polina Dlagnekova

ANNEXURE: ASSIGNMENTS FOR 2010**Assignment 1 / Semester 1: Total: 30 marks****Due date: 5 March 2010**

- **Compulsory assignment for admission to the examination.**
- **The result obtained will make up half of your year mark and will therefore count 10% towards your final mark.**
- **If you do not submit this assignment, you will not be admitted to the exam.**

These assignment questions are based on topic 2 and topic 6 of Section A.

Question 1

Four states (A, B, C and D) conclude a treaty regulating their trade relations. State A enters a reservation to one of the articles of the treaty. The reservation is not forbidden by the provisions of the treaty and it does not contradict its object and purpose. State B does not respond to the reservation, while states D and C object to the reservation. With reference to relevant authority, explain the consequences of A's reservation to the operation of the treaty between the parties. (15)

Question 2

It is said that public international law has a dual function in the South African Constitution of 1996. Discuss this statement critically. Use sections 231 and 233 to highlight the difference in these two functions, and the practical effect which they may have on the application of public international law in South African municipal law. (15)

Assignment 2 / Semester 1: Total: 30 marks**MCQ Unique number 221872****Due date: 1 April 2010**

- **The result obtained will make up half of your year mark and will therefore count 10 % towards your final mark.**

These assignment questions are based on the whole of Section A.

Indicate whether the following statements are true or false:

1. The United Nations Organization has legislative powers over its member states.
(1) True
(2) False
2. A bilateral treaty concluded as a result of a fraudulent action of the other negotiating state results in a voidable treaty, which is valid and operative, but the defrauded state is given the option to terminate it.
(1) True
(2) False
3. Judicial decisions and the teachings of the most highly qualified publicists do not create rules of public international law.
(1) True
(2) False
4. Soft law is never binding on states.
(1) True
(2) False
5. An entity with a nomadic population does not, in terms of the requirements set out in the Montevideo Convention of 1933, qualify as a state.
(1) True
(2) False
6. The primary function of the UN Security Council is to maintain international peace and security.
(1) True
(2) False
7. When a person violates the rights of a foreigner, the foreigner's state of nationality may claim jurisdiction to prosecute the perpetrator on the basis of nationality.
(1) True
(2) False

8. The Security Council may take decisions binding on member states under Chapter VI of the UN Charter.
(1) True
(2) False
9. In terms of the South African Constitution of 1996, an international agreement of an administrative nature becomes part of the law of the Republic without approval by the National Assembly and the National Council of Provinces.
(1) True
(2) False
10. In terms of section 39(1)(b) of the South African Constitution, only binding international law must be considered when a court, tribunal or forum interprets a provision in the Bill of Rights.
(1) True
(2) False
11. *Rebus sic stantibus* is always a valid ground on which a treaty can be terminated.
(1) True
(2) False
12. In *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*(1970) 1971 ICJ Rep the court followed a textual approach to treaty interpretation.
(1) True
(2) False
13. International law allows for the existence of a local custom.
(1) True
(2) False
14. The principle that a state may exercise jurisdiction in its own territory over acts which have occurred on the territory of another state was laid down by the Permanent Court of International Justice in the *Lotus* case 1927 PCIJ Rep Ser A no 10.
(1) True
(2) False
15. Before a state may use force in self-defense in terms of article 51 of the UN Charter, it is obliged to obtain authorization from the Security Council.
(1) True
(2) False

Assignment 1 / Semester 2: Total: 30 marks**Due date: 13 August 2010**

- **Compulsory assignment for admission to the examination.**
- **The result obtained will make up half of your year mark and will therefore count 10% towards your final mark.**
- **If you do not submit this assignment, you will not be admitted to the exam.**

These assignment questions are based on Topic 2 and Topic 6 of Section A.**Question 1**

South Africa and State B have concluded an extradition treaty. When extradition proceedings are instituted in a South African court against X (a national of State B), the court is required to interpret article 3 of the extradition treaty. If the article were to be interpreted in accordance with the South African rules of interpretation, Mr. X would benefit. However, if the court were to follow the rules of treaty interpretation contained in articles 31-32 of the Vienna Convention on the Law of Treaties of 1969, the outcome would be in favor of the state. It is argued on behalf of Mr. X that since South Africa is not a party to the Vienna Convention on the Law of Treaties; its provisions cannot and may not be applied.

- 1.1. Explain whether Mr. X's submission is correct. Substantiate your answer with reference to authority. (15)
- 1.2. Suppose that the court does find articles 31-32 of the Vienna Convention to be applicable. Explain the rules of treaty interpretation contained therein. (15)

Assignment 2 / Semester 2: Total: 30 marks**MCQ Unique number 179032****Due date: 23 September 2010**

- **The result obtained will make up half of your year mark and will therefore count 10 % towards your final mark.**

These assignment questions are based on the whole of Section A.

Indicate whether the following statements are true or false:

1. No state may deviate from a rule of *jus cogens*, unless it is a state which has objected persistently to the formation of such a rule.
(1) True
(2) False
2. When a private multinational company registered in state A enters into a written agreement with state B, this agreement will be considered to be a treaty in terms of article 2(1) of the Vienna Convention on the Law of Treaties of 1969.
(1) True
(2) False
3. In South African law, the term "international agreement", as used in section 231 of the South African Constitution of 1996 is synonymous with the term "treaty", as defined in article 2(1) of the Vienna Convention on the Law of Treaties, and includes informal agreements.
(1) True
(2) False
4. If a rule of customary international law is codified in a treaty, the custom ceases to exist.
(1) True
(2) False
5. The Vienna Convention on Succession of States in Respect of Treaties of 1978 espouses the "clean-slate" theory of state succession.
(1) True
(2) False

6. In the *Arrest Warrant Case (DRC v Belgium)* the majority found that in terms of customary international law an incumbent Minister of Foreign Affairs did not enjoy immunity from prosecution, because the negative state practice of not instituting criminal proceedings against foreign ministers was not accompanied by the necessary *opinio juris*, i.e. a feeling of a legal duty not to prosecute on the part of states.
(1) True
(2) False
7. In *S v Banda* 1989 4 SA 519 (Bop) the court discussed the constitutive and declaratory theories of recognition and concluded that the declaratory theory was preferable because it was the more objective of the two theories.
(1) True
(2) False
8. In terms of the decision in the *Lotus case (France v Turkey 1927 PCIJ Rep Ser A no 10)*, a state has jurisdiction in the territory of another state, unless there is an international law rule prohibiting the exercise of such jurisdiction.
(1) True
(2) False
9. A state may exercise universal jurisdiction provided it can show that its own safety has been endangered.
(1) True
(2) False
10. The Permanent Court of Arbitration was the predecessor of the International Court of Justice.
(1) True
(2) False
11. The Rome Statute of the International Criminal Court of 1998 has jurisdiction over genocide, crimes against humanity, international treaty crimes and war crimes.
(1) True
(2) False
12. In terms of section 231 of the South African Constitution, self-executing agreements must only be tabled before Parliament before they bind South Africa internationally.
(1) True
(2) False
13. Soft law features as a source of international law in article 38 of the Statute of the International Court of Justice.
(1) True
(2) False

14. A state which has a disputed border would still qualify as a state in terms of the Montevideo Convention of 1933.
- (1) True
 - (2) False
15. "Hot pursuit" is always illegal in international law.
- (1) True
 - (2) False