

# The course

- Home page

<http://www.uio.no/studier/emner/jus/jus/JUR5540/h10/>

- Evans / Cassese – one is sufficient!
- Get a treaty collection as soon as possible!
  - Relevant treaty collections and notations:  
<http://www.jus.uio.no/studier/regelverk/auxiliary-materials.html>
  - The treaty database: <http://www.jus.uio.no/treaties/>
- Reading list
- Mix of lectures and case studies
- Mock exam

# What is international law?

- Two main perspectives
  - The natural law perspective
  - The positivist perspective
- State sovereignty as the basic concept
  - State consent as a condition for legally binding norms
  - Horizontal structure
- Is international law really "law"?
- Law and policy
  - The relationship between international law and international policy
  - The need to distinguish between *lex lata* and *lex ferenda*
  - Is "rule of law" relevant in int'l law?

# Developments in international law

- The law of co-existence and the law of co-operation
- Erga omnes and jus cogens obligations
- Non-state actors
  - International organisations
  - The individual
    - International human rights
    - International criminal law
- Fragmentation of international law
- The increasing public character of international law
- International law and effectiveness
- International law and legitimacy
- New perspectives on international law
  - Global administrative law
  - The constitutionalisation of international law

# Where do we find int'l law

- Art. 38 of the Statute of the ICJ
- Treaties
  - Bilateral, regional, multilateral, global
  - Contractual and law-making
  - The Vienna Convention on the Law of Treaties
- Customary law
  - State practice
  - Opinio juris
- General principles of law
- Judgments from international courts
- Legal literature
- Unilateral acts
- Decisions by IOs
- What is 'soft law'?

# Int'l law and domestic law

- Comparison between the two legal systems
  - Law-making, executive and dispute settlement institutions
  - Vertical vs horizontal
  - Sources of law
- The relationship between the two systems
  - Monism and dualism
  - Transnational law

# Case study

## **CASE OF DEMİR AND BAYKARA v. TURKEY**

European Court of Human Rights (Grand Chamber)

*Application no. 34503/97*

“85. The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases.

86. In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies (see, *mutatis mutandis*, *Marckx*, cited above, § 41).”

**Discuss the reasoning of the European Court of Human Rights in the light of the Vienna Convention on the Law of Treaties, article 31 (3) (a), (b), and (c), the principle of state consent, and the need to develop international law.**