

Introduction

“Inter-national” law, traditionally defined as the rules governing sovereign nations by Jeremy Bentham, is now more of a curriculum than a single course. Its subject matter is no longer limited to “foreign relations”-- at least if foreign relations is understood as limited to how nations behave towards one another as one government to another. Today international law does not govern only, for example, whether and how nations make war on one another. Particularly since its domain has expanded to affect the way governments act toward their own citizens, whether with respect to “human rights” or economic affairs, the subject matter governed by “international law” has expanded at a phenomenal rate, with thousands of treaties, hundreds of intergovernmental organizations, and considerable development of more informal ways to develop rules. As is suggested by the table of contents in the casebook assigned to the course, there are aspects of this course that will remind students of every first year in the traditional US law curriculum (that is, a little bit of civil procedure, contracts, property, torts, and constitutional law) as well as much that overlaps with material in second and third year courses in environmental law, (US) civil rights, federal courts, and corporations. Although traditionally considered part of the “public law” curriculum, much of international law now governs the relations of private parties, such as multinational corporations, and some of its rules involve non-state actors (from business enterprises to non-governmental organizations (NGOs)) as participants in both the making and enforcement of its rules.

International law survey courses present a perennial challenge between depth and coverage. The casebook used in this course focuses on the process by which international law gets made and is enforced. Because international law, as a distinct legal regime, lacks the traditional attributes associated with national legal regimes – that is, it lacks a single legislature, a single judicial branch, or a unitary global executive – much of the course, like the casebook, tries to explain what stands in for these attributes. Although students will be exposed to many of the sub-regimes within international law (including human rights, the trade and investment regimes, and the rules governing the use of force), the emphasis will be on acquiring the analytical tools needed to do real work and research in the field, rather than learning in depth the black letter rules that govern these distinct regimes. Students interested in learning these sub-regimes in depth are likely to find specialized international law courses in most of these fields in Columbia’s rich curriculum.

The assigned, required texts for this class are Dunoff, Ratner, & Wippman, International Law: Norms, Actors, Process (2nd ed. 2006) (henceforth DRW) and Mark W. Janis, An Introduction to International Law (4th ed. 2003)(henceforth Janis). Be sure you have the right editions of these books. These books should be available for purchase at Labyrinth Books (536 W. 112th St.) as well as the Columbia bookstore. For those interested in pursuing particular subjects at greater depth, a number of supplementary texts are identified below which should also be available on course reserve in the law library. Those interested in investing in a solid treatise may want to consider Ian Brownlie,

Principles of Public International Law (various editions available in paperback) but this book is not required for purchase.

Although this is an introductory course, it will emphasize the real practice of international law – whether the lawyers involved work for law firms, governments, multinational corporations, or NGOs. Accordingly, the course will stress the need to work with the primary tools of international law – such as particular treaties – and much of our work in class will involve attempts to apply those tools to the concrete but characteristic problems considered in DRW. The Janis introductory treatise provides the general background for understanding (and perhaps solving) these problems. Most of the primary materials used in the course – from particular treaties to judicial opinions – can be found and downloaded off of the DRW website at <http://teaching.law.cornell.edu/faculty/drwcasebook/>. This website (which substitutes for a documentary supplementary text) also includes supplemental materials as well as current developments (identified as “updates”). Students should print hard copies of whatever documents from the textbook website are incorporated as part of the assigned readings as these may be discussed in class. (Thus, for example, with respect to the reading assignment in the syllabus for class 1, students should bring to class not just the required texts but also the UN Charter which is found in the “documents” section of the textbook website noted above.) Unless otherwise indicated in the syllabus, students are expected to read the “updates” in the website that correspond to the readings assigned in DRW. If supplementary materials from the textbook website are required reading, this will be indicated in the syllabus.

The textbook’s website above should not be confused with the Columbia course website for this class which will contain the syllabus for the course, a discussion page for students, class notices, and, on occasion, professor’s notes.

As an introduction to the field, this survey course is not intended for those who have taken a comparable course elsewhere, whether as part of their undergraduate or graduate education in a US university. Whether this course will be useful for LL.M.s who have taken international law as part of their legal education abroad is a more complicated question. Although this course will cover basic sources and institutions that will be familiar to such students, the practitioner and problem-oriented nature of this course may still be of some interest to foreign students who previously covered this material only through a black-letter treatise on the subject. This survey course will also consider many of these subjects from the standpoint of a US practitioner and the US legal system and will therefore be, at least to that extent, somewhat different from survey courses elsewhere.

### Course Evaluation

Grades will be based on a four hour open book examination as well as some points, at the professor’s option, for exceptional class participation. Students interested in writing a research paper, for additional independent study or supervised research credit, on a topic

discussed in this class should submit an outline of their paper proposal and secure the professor's approval in advance.

### Office Hours

Office hours will be posted on the professor's door (Greene 714) from week to week. Students should sign up in advance on the times indicated to avoid conflicts with others. Registered students in this course are strongly encouraged to come by at least once during office hours early in the semester for a "get acquainted" visit.

### Syllabus

#### *Introducing International Law*

Class 1 (Sept. 6):

Read the preface and table of contents of DRW and 1-33; also Janis, 1- top of 16. Also skim the text of the UN Charter (look at documents in the website identified above for chapter 1 of DRW), and read in particular the Charter's Preamble and Article 1, and its Chapters 1-II and VI-VII).

What exactly do parties to the UN Charter commit themselves to doing? Would you compare the UN Charter to a contract or to something else? Does the UN Charter reflect the legacy of colonialism discussed by Anghie in the readings?

Answer the questions at DRW, at 15, 19 and 24-25.

Consider whether the UN Charter, a treaty that binds both Libya and Chad as parties, required those countries to submit their dispute to the International Court of Justice.

Does the UN Charter help to answer some of the other questions posed in the DRW readings? What does the UN Charter say are the powers of the UN Secretary-General? Is it contemplated that the person in that position would be a judge? If not, why did the parties turn to the Secretary-General to resolve their dispute? How do you suppose resort to the Secretary-General differs from going to the International Court of Justice (ICJ) (as in the Libya-Chad case)?

Based on the material for this class, how would you describe the differences between how national law gets made and enforced and how international law gets made and enforced?

#### *How International Law is Made*

Class 2 (Sept. 11): Introducing the International Sources of Law: Treaties  
Janis, 16-40; read and bring to class, the Vienna Convention on the Law of Treaties (VCT), Articles 1-18, 24-64 (from textbook website or other available source). Also

please bring to class the Research Guide on “Researching Public International Law” available from the Columbia Law School library website.

Using Treaties

DRW, 35- 69; focus on notes, comments, and questions at 52 and 62-63, being sure to use the relevant VCT rules.

Class 3 (Sept. 13) : Treaties (continued); Introducing Customary International Law  
DRW (section D), bottom of 69- top of 74. Consider the notes and questions at 73-74. Be sure to bring to class once again the VCT (see prior class). What do the VCT rules governing treaty reservations try to accomplish? Do you have any criticisms of the way the VCT handles treaty reservations?

Customary International Law

Janis, 41- top of 55.

Optional but strongly recommended reading: Report of the International Law Association on customary international law (see “updates” section of the textbook website).

Class 4 (Sept. 18): Customary International Law (continued); Soft Law  
DRW, 74- 92 and 105. Also read the full version of the US Supreme Court decision in *The Paquete Habana* (in casebook website under “documents”). Do you think that today’s Supreme Court, if asked to determine a rule of customary international law, would approach the inquiry in the same way? Would they cite to the same materials as the Court did in 1900?

Soft Law

DRW (section D), 92-top of 105. Answer notes and questions, at 97 and 104.

Does the very idea of “soft” law make any sense? Why do you suppose your casebook includes it?

### *Participants in the International System*

Class 5 (Sept. 20): Introduction to Participants

Background Reading: Janis, pp. 159-170; 185 -197; 199 -215

States: the Basics

For class: DRW, 107-top of 130. Focus especially on notes and questions on p. 130.

Class 6 (Sept. 25): States and IOs: Territory, Succession, Membership

DRW, bottom of 130- top of 166 (through section D). Focus especially on notes and questions on p. 137.

IOs

DRW, 171- 200. Focus especially on notes and questions at pp. 193-194 and on pp. 196-97.

Required reading not to be discussed in class:

NGOs  
DRW, 201- top of 216.

Optional Reading for those interested in IOs:  
Alvarez, International Organizations as Law-Makers (2006), Preface and Chapter 10

Class 7 (Sept. 27): The interplay between the various participants: Lockerbie as Case Study

DRW, (section I) 961-983. Bring UN Charter to class. Consider the various actors involved in this saga – the states demanding action (the U.S., the UK and France), the Security Council, the OAU, the ICJ, and the interest groups involved (e.g., victims’ families and their lawyers). What gives each of these bodies “legitimacy” to act in this case? Would you have recommended turning to other entities to resolve this case (e.g., other UN specialized organizations or national courts)? Do you think international law and its institutions acquitted themselves well or poorly in this case? What is your criteria for making that judgment?

#### *International Law in Domestic Law*

Class 8 (Oct. 2): Making International Law in the United States

Background Reading: Janis, pp. 85-112

DRW, 267-293 (but material on the EU from bottom of p. 269 to top of 273 will not be discussed in class); also read section III, 234-250. Focus particularly on notes and questions on p. 280 and 292-93 in DRW. Read and bring to class those portions of the Constitution of the United States and its Bill of Rights (in documents section of casebook website) relevant to these readings.

Class 9 (Oct. 4): Breaking International Law and Remedies

DRW, (Part III): bottom of 293- top of 315. Focus particularly on the notes and questions in DRW, at p. 299 and pp. 305-06. In August 2001, the International Law Commission, an expert body that reports to the UN General Assembly, released its Draft Articles on the Responsibility of States for Internationally Wrongful Acts (see documents section of the casebook website for chapter 14). Read and bring to class the Articles on State Responsibility. Assuming that these articles correctly indicate the state of the law, are they relevant to the remedies to which states ought to be entitled once a breach of the Vienna Convention on Consular Relations is shown? Relevant to what remedy the U.S. Supreme Court ought to provide in cases like *Breard* or *Le Grande*? Do you agree with the position that the United States took in these cases that all that Mexico and Germany are owed is an apology with respect to such cases as a matter of international law?

Class 10 (Oct. 9): Pursuing International Law Claims in U.S. Courts: The ATCA  
DRW, section D, 323-top of 326; section V, 326- middle of 340; focus especially on notes and questions at 338- 340; also read section II, 216- 234. What are the prospects for successful ATCA claims directed either against individuals or corporations after the Sosa decision? What do you suppose the ATCA was originally intended to accomplish? If you were a legislator in another country, would you propose adopting something comparable to the ATCA? Or would you recommend relying on the instruments and fora suggested by pp. 216-234? Does the ATCA and the option to litigate such claims in U.S. courts really advance the cause of international human rights or undermine it?

Class 11 (Oct. 16): Pursuing Claims: Act of State/Sovereign Immunity

Background Reading: Janis, pp. 353- 360

DRW (section D): 340-353. Also read (from documents section of casebook website) Underhill v. Hernandez. When, in your view, is “act of state” applicable under existing U.S. precedents? When is this defense not available?

Sovereign Immunity

Background Reading: Janis, pp. 347-353

DRW (section IV): 415-435. Focus especially on notes and questions at p. 428-430.

Read closely and bring to class the following portions of the Foreign Sovereign Immunities Act (from casebook website): 28 U.S.C. §§ 1602-1605.

### *The Reach of Domestic Law Abroad*

Class 12 (Oct. 18): Jurisdiction to Prescribe

Background Reading: Janis, pp. 317 - top of 347

DRW, 355- middle of 373 (through notes and questions on 372-73); section C: 375- bottom of 387 (end before section E).

Class 13 (Oct. 23): Jurisdiction to Enforce

DRW, section III: 398- top of 415

Focus especially on Notes and questions at 402-403.

### *The Protection of Human Dignity*

Class 14 (Oct. 25): Introduction to Human Rights

Janis, pp. 239 - 285

DRW, pp. 437- 443. Also read and bring to class the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (from casebook website). Enumerate the differences between these two statements of the rights owed to human beings. Are there instances in which you would try to use one document as opposed to the other? Is the statement of rights broader in one context over the other? If so, what explains the differences between these two documents?

Class 15 (Oct. 30): The United States and the Covenants

DRW, section II: 472 - the middle of 496. Do you agree with the United States' reservations to the ICCPR? Are the U.S. reservations, understandings, and declarations consistent with the object and purpose of the ICCPR? Do you think that the U.S. ought to ratify the ICESCR?

Class 16 (Nov. 1): The Rights of Women

DRW, section IV, 500-526. Focus on notes and questions at 523-24. Read and bring to class the CEDAW (from the documents section in the casebook website). Why have a separate treaty on this subject? Weren't these rights secured by preceding human rights treaties? How are the rights provided to individuals or the obligations imposed on states in CEDAW different from those imposed under the ICCPR?

Class 17 (Nov. 6): Torture/Cruel, Degrading Treatment

DRW, 444 - 472. Focus on the notes and questions on pp. 468-69. Also be sure to read and bring to class the Torture Convention (from casebook website). Also read: Bilder and Vagts, "Speaking Law to Power: Lawyers and Torture," 98 AJIL 689 (2004)(can download from [www.jstor.org](http://www.jstor.org)).

Optional: J.E. Alvarez, "Torturing the Law," 37 Case Western Res. J. Int'l L. 175 (2006)(Note: this volume of this Journal also contains the full texts of many of the Bush Administration "torture" memos. The volume is on course reserve.)

### *International Humanitarian Law*

Class 18 (Nov. 8): Limits on the Conduct of War

Background Reading: Janis, pp. 170 - top of 185  
DRW, 554 -573.

Class 19 (Nov. 13): The Law of Occupation

DRW, 587 - 605. Also download from the UN website ([www.un.org](http://www.un.org)) (Go to main bodies: Security Council: Resolutions (by year)) Security Council Resolutions 1483 (of May 22, 2003) and Security Council Resolutions 1546 (of June 8, 2004). What do you understand is the legal impact of these resolutions? Are they consistent with the pre-existing law of occupation? Is Iraq still under the law of occupation?

Class 20 (Nov. 15): International Criminal Law (I)

DRW, 607-46. Focus on notes and questions at 623-24.

Optional: Rent and view: Judgment at Nuremberg (Hollywood film). (Those who watch the film may also be interested in reading Michael Asimow's description of the factual basis for the film at [www.usfca.edu/pj/articles/Nuremberg.htm](http://www.usfca.edu/pj/articles/Nuremberg.htm).)

Class 21 (Nov. 20): International Criminal Law (II)

Background: Janis, 282-85.

DRW, 646-667. Also read and bring to class the following articles from the Rome Statute for the International Criminal Court (see textbook website, under documents): articles 5-8, 11-17, 20, 25, 27, 28, and 33. Based on these provisions, would you recommend that the United States ratify the ICC Statute?

More generally, based on your readings on the ICC and the ICTR, when should international crimes be prosecuted at the international level, by international judges? Should international courts enjoy jurisdictional primacy over national courts or is the complementarity scheme of the ICC (where national courts get first crack) preferable? What goals are sought to be achieved by the ICTR? by the ICC? Do you believe these goals were achieved for the ICTR?

Optional: J.E. Alvarez, Crimes of States/Crimes of Hate: Lessons from Rwanda, 24 Yale. J. Int'l L. 365 (1999)

Class 22 (Nov. 22): Trade and the Environment

Background Reading: Janus, 232 -238; 293-297.

DRW, 827-859.

Class 23 (Nov. 27): The Foreign Investment Regime

Background reading on international arbitration (not for class discussion): Janis, 113-122; 309-316.

DRW, 859 - 872; read and bring to class three documents: the arbitral decision in *Metalclad v. United Mexican States*, *Metalclad v. Mexico* (British Columbia Supreme Court) and NAFTA Free Trade Commission Interpretation of Certain Chapter 11 Provisions (all from DRW website, documents). Also read the case summary of *Methanex Corp. v. United States*, at 100 AJIL 683-689 (authored by Sanford E. Gaines)(available from [jstor.org](http://jstor.org), accessible through the CLS network only-- this is a paid journal service).

Optional evening Pizza Party (date/time to be announced) for viewing of PBS film, Bill Moyers: Trading Democracy

Class 24 (Nov. 29): Use of Force

DRW, 875-915. What provision of the UN Charter authorized the Gulf War of 1991? What is the best legal argument for the legality of Operation Iraqi Freedom of 2003?

*Putting It Together*

Class 25 (Dec. 4th): The “War On Terror”: Part I  
DRW, section II, bottom of 983- 1012. Also read and bring to class (from un.org website), Security Council Resolution 1373 (Sept. 28, 2001).

Class 26 (Dec. 6th): The “War on Terror”: Part II  
Print and read “The Hamdan Teaching Moment” at <http://www.asil.org/ilpost/president/pres060901.html>. Read those portions of the Hamdan Supreme court opinion (see hotlink in column itself for text of the opinion) referred to in this column; you need not read those portions of the justices’ opinions not referred to in the column. Also read the summary of the Military Commissions Act (passed by Congress in reaction to the Hamdan decision) at <http://www.asil.org/insights/2006/11/insights061114.html>.

Class 27 (Dec. 11): Review  
Reading (which may not be discussed in class): DRW, section E, 1031-1044.  
Review International Law exam for Fall 2003 in this course (G drive). (But note that references to casebook pages in that exam refer to the first edition of the DRW casebook).