

SYLLABUS #1

FUNDAMENTALS, PLUS SELECTED TOPICS OF PUBLIC INTERNATIONAL LAW

From Prof. Barry Carter

This syllabus introduces students in a relatively thorough manner to the fundamentals, or building blocks, of international law and then covers other selected topics that are traditionally identified as part of public international law. These fundamentals include: the traditional theories, concepts, and sources of international law; international dispute resolution, ranging from the International Court of Justice through the regional European courts to international arbitration; statehood and international and regional entities, including the United Nations and the European Union; the principles of jurisdiction, including the question of extraterritoriality; and foreign sovereign immunity and the act of state doctrine. The syllabus also includes several classes on the role of international law in the United States and the allocation of foreign affairs powers between the President and Congress.

The selected topics beyond those listed above are human rights law, the law of the sea, international environmental law, international criminal law, and the norms regarding the use of force. (Because of time limitations, this syllabus assumes that the professor will address use of force in some detail, but will need to choose three classes from another from among the other four areas--human rights, law of the sea, international environmental law, and international criminal law.)

The coverage of the introductory material (Chapter 1A and B) is brief, moving quickly to the September 11 case study (Chapter 1E). Of course, materials not covered in this Syllabus might be added to the reading assignments, either as add-ons or as replacements for other materials now assigned. Indeed, the notes following this Syllabus #1 suggest a number of options and modifications for this whole Syllabus.

Prof. Carter has successfully used this Syllabus or minor variants of it at Georgetown and Stanford.

The assigned material is organized into 26 classes of 85 minutes each. The average reading assignment is about 20-35 pages per class.

Class Assignments

These are the class assignments. You are also expected to read the appropriate documents in the Documentary Supplement. The text of the casebook will usually refer you to those documents.

A. Introduction

(Class #1) 1. Casebook, Chapter 1, pp. 1-23 (end of Shaw excerpt). (Sometime during the first two weeks, the student should also read Casebook, pp. 25-35.)

(Class #2) 2. Chap. 1, pp. 64-89.

B. The Creation of International Norms

(Class #3) 1. Casebook, Chap. 2, pp. 93-112; Documentary Supplement, skim Vienna Convention on the Law of Treaties, pp. 49-75.

(#4) 2. Casebook, Chap. 2, pp. 113-131, skim Schachter excerpt at 131-34, read 134-137 (stop at start of section C).

(#5-part) 3. Chap. 2, pp. 137-140, skim 140-141, read 141 (starting with Notes & Questions)-156 (stop at Bibliography).

C. International Law in the United States

(#5-rest) 1. Chap. 3, pp. 159-170 (stop at start of section 2).

(#6) 2. Chap. 3, pp. 170-194 (stop at start of *Youngstown*).

(#7) 3. Chap. 3, pp. 194-200 (skim *Youngstown* if read before), 200-224 (stop at start of *Hamdan*).

(#8) 4. Chap. 3, pp. 224-249 (through Notes & Questions).

(#9) 5. Chap. 3, pp. 249-269, skim *Crosby* at 270-275, read 276-284.

D. Dispute Resolution

(#10) 1. Chap. 4, pp. 285-291, 295-298 (stop at section B). ICJ at 298-304 (but not *Oil Platforms*), 307-319, 320-323, 324, 329-335.

(#11) 2. Chap. 4, pp. 335-339. Regional courts at 339-50 (stop at *Simmenthal*), 353 (start with indented para. before the Notes)-357. Arbitration at 357-359 (stop at Simpson excerpt), 363-375 (but not the problem there), skim 376-378 (stop at *Mitsubishi*).

- (#12) 3. Chap. 4, pp. 378-401 (including start on NAFTA), 406-419, 424-426 (through Note 12).
- (#13-part) 4. Chap. 4, pp. 427-429 (until section 2), 433 (starting with Born excerpt)-437 (stop at section 3), Notes & Questions at 438-42 (but not the problem).

E. States and Other International Entities

- (#13-rest) 1. Chap. 5, pp. 443-466 (stop at section 7).
- (#14) 2. Chap. 5, pp. 466-468 (stop at Watson excerpt), 473-474, 480-489 (stop at Maynes excerpt), 496-502, 509-517 (until section d). (Read 517-520 before the end of the semester.)
- (#15) 3. Chap. 5, pp. 520-534 (stop at section 6), skim 534-536, read 536-539 (stop at section 8), 541-550 (stop at section c). (The rest of the chapter—pages 550-558—should be read before the end of the semester.)

F. Foreign Sovereign Immunity and the Act of State Doctrine

- (#16) 1. Chap. 6, pp. 559-587 (stop at section 7).
- (#17) 2. Chap. 6, pp. 587-598, 600 (start with Notes & Questions)-615 (stop at section 13), 620-628 (stop at section B).
- (#18-part) 3. Chap. 6, pp. 628-653 (until section 4).

G. Allocation of Legal Authority Among States

- (#18-rest) 1. Chap. 7, pp. 657-668 (stop at section 1).
- (#19) 2. Chap. 7, pp. 668-689 (just first three lines), 691 (start with *Sensor* case)-696 (stop at Lowenfeld excerpt), skim Chap. 8 at pp. 773-777.
- (#20) 3. Chap. 7, pp. 703-714 (stop after Comment), 721-722 (Notes 3-6), 722-725 (stop at *Alvarez-Machain*), [brief lecture on *Alvarez-Machain*(1992)], 737-751.

H. State Responsibility: Injuries to Aliens and International Human Rights

- (#21-23)* 1. Chap. 8, pp. 753-66 (but not the Problem at 760), skim Henkin at 777-779, read 779-top of 781, 783-785 (stop at Committee excerpt), 795-802 (stop at section 7), 817 (start with section b)-818, 820-822 (including Notes 1-4), 825-831 (stop at *Soering*), 835 (start with Notes)-838 (stop at section b).

I. Law of the Sea

- (#21-23) 1. Chap. 9, 847-854, 857-61 (including the charts; stop at *Fisheries* case), 867 (islands), 868 (starting with section 2)-877 (stop at section b), 879-882 (stop at Truman Proclamations), 916 (start with I)-919.

J. International Environmental Law

- (#21-23) 1. Chap. 10, pp. 923-942, 944-top of 948, 951 (start with Notes)-top of 954, 963-965 (Notes & Questions 1-3, 5-7, 10).

K. International Criminal Law

- (#21-23) 1. Chap. 12, pp. 1130 (start with section 2)-1141, 1184 (stop at Report), 1186-1192 (stop before Sierra Leone), 1195-1205.

L. Use of Force

- (#24) 1. Chap. 11, pp. 969-971 (until Brownlie), skim 971-976, read 977-1006 (stop at section b).
- (#25) 2. Chap. 11, pp. 1006-1009 (stop at section c), 1015-1021 (stop at Weiner), 1024 (start with Notes)-1036 (stop at Glennon), 1037-1053.
- (#26)** 3. Chap. 11, pp. 1061-1069 (part of Iraq case study), 1069-1077.

* As indicated in the introduction, the assumption in this Syllabus is that the professor will choose to teach three classes from among the four specific subject areas on human rights, law of the sea, international environmental law, and international criminal law. Hence, these subjects are numbered with a range of 21-23. Other possible modifications to this Syllabus are suggested in the Notes at the end.

** The assignment for the last class is purposely shorter on the assumption that the professor might have some administrative matters (e.g., discussion of the exam procedures) to discuss. See Notes below for possible additions if desired.

Notes on Syllabus #1:

Here are a few possible variants. They might well be more appropriate depending on the number of credits, the length of your semester, or your or your students' preferences.

--For Chapter 3, Syllabus #1 assigns essentially the whole chapter and moves through the chapter in a brisk way. Students might already have covered some of the cases (e.g., *Youngstown Sheet & Tube*, *Dames & Moore*, or even the recent *Hamdan*), which can affect the pacing of the actual assignments. Or, the teacher might prefer to dwell more on one case (e.g., *Hamdan*) and assign less for a particular class. Or, the teacher might choose to skip a particular section, such as section E on federal-state relations.

--Chapter 4 addresses many interesting dispute resolution systems. Syllabus #1 includes only short readings on NAFTA (pages 401 and 406-412) and on the WTO (pages 412-419 and 424-426). NAFTA's multiple approaches can be confusing and the teacher might just lecture on them, rather than assign the reading. In contrast, the WTO could well use more time. Rather than (or in addition to) the excerpted article in the casebook, the teacher could use the Documentary Supplement and assign the relevant sections from the GATT (at pages 171-172) and the WTO Dispute Settlement Understanding (at pages 183-203, without the appendices).

--For Chapter 5, Section C (international and regional institutions), Syllabus #1 primarily assigns basic descriptive readings, which can get a little dry. Other, more evaluative material in the chapter on the UN and the IMF is skipped because of time constraints. The teacher might choose to assign some of that material, cutting elsewhere. Syllabus #1 does spend almost a whole class (#15) on the European Union. The EU is undergoing extraordinary evolution and growth, now with 27 member states and a population and GDP larger than that of the United States.

--Chapter 11 on the use of force is long and replete with many events and issues. One could well spend more time on this Chapter than the nearly 3 classes now in Syllabus #1. Even if you want to limit your time expenditure to about the same period, there are many choices among the materials. For example, one could allocate some time to international humanitarian law (Section D) and nonproliferation (Section F).

--Other obvious alternatives are to add more reading on human rights (Chapter 8), the law of the sea (Chapter 9), international environmental law (Chapter 10), or international criminal law (Chapter 12) beyond the present assignments in the Syllabus for one class each (with room in the Syllabus for other three classes total).