

SYLLABUS #2

INTERNATIONAL LAW

From Prof. Allen Weiner

This syllabus is for a 3-semester unit course that provides a general grounding in public international law and a foundation for more advanced or specialized international law courses. The course begins by considering fundamental questions about the nature of international law – the nature of international law and its origins in the sovereign equality of states, the absence of mechanisms for the authoritative interpretation or enforcement of international law, and the sources and subjects of international law. The course next addresses other core international law concepts and issues such as state responsibility and the bases for states to exercise jurisdiction. Other readings introduce students to the operation of international law in the U.S. legal system and the constitutional allocation of foreign affairs powers.

After reviewing the basic principles and foundational concepts, the second part of the course exposes students to a series of international law topics and issues, including some of particular interest today, such as mechanisms for the settlement of international disputes, the law governing coercion and the use of armed force, international human rights, the law of armed conflict, and the emerging body of international criminal law and international criminal tribunals for its enforcement.

The assigned material is organized into 24 classes of 90 minutes each. The average reading assignment is 30-35 pages per class.

Readings and Topics

Class 1: Introduction; the state system and sovereignty; the Iranian nuclear case

Casebook: 1 – 10 (through end of Shearer excerpt)

21 – 23 (through end of Shaw excerpt)

Supplements

Supplements: 1. Sharon Squassoni, Congressional Research Service, *Iran's Nuclear Program: Recent Developments* (Sept. 6, 2006), available at

<http://www.fas.org/sgp/crs/nuke/RS21592.pdf>

2. Robert G. Joseph, then-Under Secretary for Arms Control and International Security, Statement Before the House International Relations Committee, March 8, 2006, available at

<http://www.state.gov/t/us/rm/63121.htm>

3. Treaty on the Nonproliferation of Nuclear Weapons (Nuclear Non-Proliferation Treaty, or "NPT"), Articles 1-5, 10, available at

<http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>

4. “Paris Agreement” between the Islamic Republic of Iran and France, Germany and the United Kingdom, *available at* <http://www.armscontrol.org/country/iran/ParisAgreement.asp>
5. U.N. Security Council Resolution 1696, go to http://www.un.org/Docs/sc/unsc_resolutions06.htm, then scroll down and click on “S/RES/1696 (2006) Non-proliferation”
6. By Joshua Muravchik, Bomb Iran: Diplomacy is Doing Nothing to Stop the Iranian Nuclear Threat; a Show of Force is the Only Answer, L.A. TIMES, Nov. 19, 2006, *available at* <http://www.latimes.com/news/opinion/la-op-muravchik19nov19,0,1681154.story?coll=la-opinion-center>

Class 2: The nature of international law; theoretical approaches to international law

Casebook: 25 – 55

Class 3: The sources of international law I: Treaties

Casebook: 93 – 123

Supplement

Supplement: Vienna Convention on the Law of Treaties

Skim through Articles 1 – 75;

Read Articles 1-3, 11, 18-23, 26-27, 31-34, 38, 46, 52-53, 60,
available in **Documentary Supplement**

Class 4: The sources of international law II: Customary international law; general principles

Casebook: 123 – 142

144 (starting with subsection 3) – 156 (stop at “Bibliography”)

Class 5: The subjects of international law I: States (determination and recognition); recognition of governments

Casebook: 443-458 (stop at “Taiwan Relations Act”)

462-474

Supplements

Supplements: 1. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, section 203 (1987)

2. Vienna Convention on Succession of States in Respect of Treaties

Read Articles 2(1)(f), 16, 17, 34, 35, *available at*

http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf

3. *Reference re: Secession of Quebec*, 2 S.C.R. 217 (Canadian Supreme Court 1998), *reprinted in* 37 Int’l Legal Materials 1342

Read p. 1342 (questions referred) and pp. 1368 (starting with Question B) – 1374 (stop at “Recognition of a Factual/Political Reality”)

Class 6: The subjects of international law II: International organizations

Casebook: 474 (starting with Section B) – 496 (stop at “Bibliography”)
Supplements

Supplements: 1. Charter of the United Nations

Skim entire Charter;

Read Preamble, Articles 1-2, 4, 7, 9-14, 17-19, 23-25, 27, 33-38, 39-43, 45, 48-49, 51, 52-53, 55, 61-62, 92-96, 97-98, 103-105, 108, available in Documentary Supplement

2. Excerpts from *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174 (Advisory Opinion) (Apr. 11, 1949)

Class 7: International law in the United States I: Treaties

Casebook: 159-189
Supplement

Supplement: Vienna Convention on Consular Relations, available in **Documentary Supplement**

Read Preamble, Articles 2, 5, 36

Class 8: International law in the United States II: Customary international law

Casebook: 239-242 (through end of *The Paquete Habana* excerpt)
Supplement
242-269

Supplement: Excerpts from *The Paquete Habana*, 175 U.S. 677 (1900)

(**NOTE:** After you have read the Casebook excerpt of *The Paquete Habana*, **SKIM** the Supplement to get a sense of the actual practice canvassed by the Court)

Class 9: Foreign affairs and Presidential power

Casebook: 189 (starting with Section B) – 219 (stop at subsection 4)

Class 10: Presidential power and the response to terrorism

Casebook: 219 (starting with subsection 4) – 238
Supplements

Supplements: 1. 18 U.S.C. §§2340-2340A, available through Lexis/Westlaw or at:

http://www4.law.cornell.edu/uscode/html/uscode18/usc_sup_01_18_10_I_20_113C.html

2. Jay S. Bybee, Memorandum for Alberto R. Gonzales, Counsel to the President, *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (Aug. 1, 2002)

Read pp. 1-13, 31-39

3. Foreign Intelligence Surveillance Act of 1977, as amended, 50 U.S.C. §§ 1801 *et seq.*, available through Lexis/Westlaw or at:

http://www4.law.cornell.edu/uscode/html/uscode50/usc_sup_01_50_10_36.html (under Subchapter I)

Read sections 1801, 1802, 1804, 1805, 1806, 1809, 1811

4. Letter from William E. Moschella, Assistant Attorney General to Congressional Leaders (Dec. 22, 2005)

Class 11: Bases of jurisdiction

- Casebook:** 657 – 665 (stop at Notes and Questions)
667 (starting with Note 5) – 675
685 (starting with subsection 2) – 691 (stop at *Compagnie Européenne des Pétroles v. Sensor Nederland B.V.* case)
696 (start with Lowenfeld excerpt) – 701 (stop at Notes and Questions)
703 (starting with subsection 3) – 709 (stop at Notes and Questions)
713 (starting with subsection 5) – 714 (stop at Bradley excerpt)
722 (starting with Section B) – 725 (stop at *Alvarez-Machain* case)

Class 12: State responsibility: General principles; attribution; circumstances precluding wrongfulness; reparation; countermeasures

- Casebook:** 761 (starting with subsection 2) – 766 (stop at subsection 3)
Supplements

- Supplements:** 1. Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission in 2001, in Report of the International Law Commission, Fifty-Third Session (U.N. GAOR Doc. A/56/10), available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf

Read articles 1-3, 20-27, 31, 34-39, 40-41, 42, 48, 49-54

2. *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, 1980 ICJ 3
Read paragraphs 14-27, 56-75, available through Westlaw or at: <http://www.icj-cij.org/docket/files/64/6291.pdf>
3. Excerpts from *Barcelona Traction (Belgium v. Spain)*, 1970 I.C.J. 3 (Feb. 5)
4. Excerpts from *Air Services Agreement Case, France v. United States* (Dec. 9, 1978), 18 R.I.A.A. 416; 54 ILR 304 (1979)
5. Declaration of the Government of the Democratic and Popular Government of Algeria (General Declaration), 19 January 1981, available at <http://www.iusct.org/general-declaration.pdf>
Read first paragraph, General Principle A, and paragraphs 3 and 9

Class 13: State responsibility II: Diplomatic protection/responsibility for injury to aliens

- Casebook:** 753 – 760 (stop at Problem)
766 – 772 (stop at Note 10)

Supplement
773 (starting with subsection 4) – 777 (stop at Section B)
Supplement: Allen S. Weiner, *Indirect Expropriations: The Need for a Taxonomy of “Legitimate” Regulatory Purposes*, 5 INTERNATIONAL LAW FORUM 166-175 (2003)

Class 14: Human rights I: Substantive human rights law

Casebook: 777 (starting with Section B) – 808 (stop at section 8)
Supplement
Supplement: International Covenant on Civil and Political Rights
Skim Articles 1-27, available in **Documentary Supplement**

Class 15: Human rights II: Mechanisms for enforcement; United States human rights practice; regional human rights regimes

Casebook: Supplement
808 (starting with subsection 8) – 817 (stop at subsection b)
823 (starting with subsection c) - 845
Supplement: International Covenant on Civil and Political Rights
Skim Articles 28-45, available in **Documentary Supplement**

Class 16: Dispute settlement: Negotiation, mediation, conciliation, and arbitration

Casebook: 286 (starting with Section A) – 291
363 (starting with “Recent public arbitrations”) – 370 (stop at “Leading Arbitral Institutions”)
401 (starting with subsection 5)
405 (starting after the Hufbauer & Schott excerpt) – 427 (stop at Section D)

Class 17: Dispute settlement and the International Court of Justice

Casebook: 298 (starting with Section B) – 339

Class 18: The use of force I: The prohibition on the use of force; self defense

Casebook: 985 – 1015
Supplement
Supplement: *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, 1986 ICJ 14, available at <http://www.icj-cij.org/docket/files/70/6503.pdf>
Read paragraphs 191-195, 199, 201-202, 210-211, 227-238

Class 19: The use of force II: Collective security: peacekeeping, peace enforcement, and regional organizations

Casebook: 1038 – 1055 (stop at Notes and Questions)

1057 (starting with subsection b) – 1074 (stop at Note 5)
1075 (starting with Note 7) – 1077

Class 20: The use of force III: The Kosovo case and humanitarian intervention; terrorism and the Afghanistan case

Casebook: 1019 – 1038
1074 (starting with Note 5) – 1075 (stop at Note 7)

Class 21: International humanitarian law (the “law of war”)

Casebook: 1077 (starting with Section D) – 1098 (stop at Section E)
Supplements

Supplements: 1. 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, available at:
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5>

Read Articles 1-8, 13-34, 47-59, 64-67

2. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), available at:

<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079?OpenDocument>

Read Articles 1-4, 35-37, 40-41, 43-47, 48-58, 59, 75

Class 22 (Thursday, March 22): International environmental law

Casebook: 923 – 928 (stop at “Comment”)
930 (read Rio Declaration Principle 2)
932 (starting with “International Environmental Law: General Principles”) – 966 (stop at Note 11)

Class 23: International criminal law I: Substantive international crimes

Casebook: 1136 – 1174 (stop at Note 4)

Class 24: International criminal law II: Institutions and mechanisms of accountability

Casebook: 1175 (starting with background to *Yunis* case) – 1177
1178 (starting with Section C) – 1209