

## INTERNATIONAL LAW – LAW 366 – LS1

Professor Sophie Clavier

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Class meetings: Tuesday and Thursdays, 8:45 – 10:00 AM, Room 3216

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### Class Attendance & Other Policies

I intend to follow the rules as laid down in the Student Handbook. For avoidance of doubt, I shall enforce mandatory class attendance strictly. If for any reason a student cannot attend any of the classes, I need to be informed as soon as possible. Active class participation shall also be enforced. Class participation will be considered in conjunction with the final examination before a final grade for the course is assigned. All the reading assignments shall be announced in each class ahead of the topic to be discussed at the next class. Any other policies shall be announced at the first class meeting.

### Examination

The final examination is tentatively scheduled for December 6, 2006 at 6:30 PM. The final examination will be three hours in duration.

### Cancellation/Rescheduling of Classes

Any class cancellation shall be notified as soon as possible through the Registrar's office. Rescheduling of a canceled class shall be fixed in consultation and with the consensus of the class provided that there is an available room and no conflict.

## **CASEBOOK AND COURSE MATERIALS**

### **Required Reading**

Laurie Damrosch, Louis Henkin, Richard C. Pugh, Oscar Schachter, Hans Smit: INTERNATIONAL LAW, CASES AND MATERIALS, Fourth Edition, West Publishing Co., 2001.

BASIC DOCUMENTS SUPPLEMENT TO INT'L LAW, 2001 (same publisher as above).

### **Recommended Reading**

D.J. Harris: CASES AND MATERIALS ON INTERNATIONAL LAW, Fifth Edition, Sweet & Maxwell, London, 2000.

Burns Weston, Richard Falk, Anthony d'Amato: BASIC DOCUMENTS IN INTERNATIONAL LAW AND WORLD ORDER, Third Edition, West Publishing Co., 1997.

B.E. Carter & P.R. Trimble: INTERNATIONAL LAW, Little Brown & Co., 1994 (selected documents).

## COURSE OUTLINE

### **WEEK 1: TOPIC I – INTRODUCTION**

Historical Perspective

The Nature, Province, and Functions of International Law

Use of Terms, Definitional and Conceptual Problems

The Prospect of Int'l Law in a Multicultural World

Opposing Trends and Reactions in State Practice: Codification and Progressive Developments

New Techniques in Multilateral Treaty-Making Process

New Elements and Expanding Frontier of Contemporary Law:

ILC and Other Norm-Formulating Agencies

Reading: Casebook - Historical Introduction, pp. XXVII-XXXVI  
- Chapter 1, §§ 1-3, pp. 1-55.

### **WEEK 2: TOPIC II – SOURCES (PRINCIPAL AND PRIMARY)**

Article 38(1) of the Statute of the ICJ

A. TREATIES as a Source of Law (Conventional Law)

- GENERAL CONVENTIONS or Codification Treaties and Treaties Open to Universal Participation (Treaty Law)

Examples: Geneva Convention of 1949 and Protocols of 1977; Geneva Convention of 1958; Vienna Conventions of 1961, 1963, 1969, 1975, and 1986; ILC Draft Articles, State Responsibility; Law of the Sea Convention, 1982, *North Sea Continental Shelf Case*, 1969, ICJ; *UK v Iceland Fisheries Cases*, 1974, ICJ; *USA v Iran (Hostages Case)*, 1980, ICJ; *Nicaragua v USA Case*, 1986, ICJ.

- PARTICULAR CONVENTIONS or Agreements Binding on State Parties or Int'l Organizations, Bilateral, Trilateral, and Multilateral Treaties, as well as Headquarters Agreements and Constituent Instruments of Regional Organizations (30,000 Treaties and Conventions have been registered with the United Nations), Advisory Opinion of April 26, 1988, *Obligation to Arbitrate* under S.21 of UN Headquarters Agreement of June 26, 1947.

Examples of terms used to describe international agreements between states in int'l law: conventions, pacts, protocols, accords, concordats, compromise, etc.

Question: Does the difference in terminology which an int'l agreement between states is styled alter the legal status in any way?

Reading: Casebook - Chapter 2, §§ 3, Treaties, pp. 108-118  
- Multilateral Treaty-Making Process

- B. INTERNATIONAL CUSTOM as “Evidence of General Practice Accepted as Law” (Customary Law)
- Consistent, Continuing and Widespread State Practice (Acquiescence or Absence of Protest)
  - *OPINIO JURIS* (Recognition by States as Binding Obligation not simply Courtesy or Comity)
  - *The S.S. Lotus*, 1927, PCIJ; *Colombia v Peru*, *The Asylum Case*, 1950, PCIJ; *North Sea Continental Shelf Case*, 1969, ICJ; *Anglo-Norwegian Fisheries Case*, 1951, ICJ (Persistent Dissent); *South-West Africa Namibia Case* (Advisory Opinion 1971); *USA v Iran (Hostages Case)*, 1980, ICJ; *Nicaragua v USA*, 1986, ICJ; *UK v Iceland Fisheries Jurisdiction Case*, 1974, ICJ; *The Paquete Habana*, 1900, 175 U.S. 677.

Reading: Casebook - Chapter 2, §§ 1-2, pp. 56-108

**WEEK 3: TOPIC III: SOURCES (SUBSIDIARY OR EVIDENTIARY)**

- C. GENERAL PRINCIPLES OF LAW Recognized by “Civilized” Nations or Common to Internal Laws of Different Systems
- *Chorzow Factory Case*, 1928, PCIJ, Compensation, Reparation, Good Faith; *Netherlands v Belgium*, 1937, the Meuse, PCIJ, Considerations of Equity and Humanity; *Nicaragua v USA*, 1986, ICJ; *North Sea Continental Shelf Case*, 1969, ICJ, the Concept of Shared Resources, and Equitable Principles, Good Faith, *PACTA SUNT SERVANDA*; *Texaco v Libya Arbitration Case*, 1974, Compare Natural Justice, Equitable Principles and Jurisdiction, *EX AEQUO ET BONO*, Article 38(2) of the Statute of the ICJ.
- D. JUDICIAL DECISIONS AND TEACHINGS OF PUBLICISTS
1. DECISIONS OF ICJ AND PCIJ
    - Int’l Arbitral Tribunals and other Arbitration
    - Municipal Courts
  2. TEACHING of the Most Highly Qualified Publicists
    - Publications and Lectures
    - Opinions of Legal Advisors and Legal Counsel, Doctors’ Commons, Lord McNair, Governmental Practice and the Practice of Int’l Organizations
    - Pleadings, Oral and Written
    - Writings and Statements before Int’l Forums

3. RESOLUTIONS AND DECLARATIONS of United Nations and other Law-Making or Law-Generating Bodies such as UNGA, ILC, UNCITRAL, UNIDROIT, UNCTAD, Institute of Int'l Law, ILA, Bandung, Stockholm, Helsinki, etc

Question: Is there any hierarchy of the sources of int'l law enumerated above?

Reading: Casebook - Chapter 2, §§ 4-6, pp. 118-158

**WEEK 4: TOPIC VI – THE RELATION BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW**

**A. MUNICIPAL LAW IN INTERNATIONAL LAW**

Vienna Convention on the Law of Treaties, 1969, Article 46

- State may not invoke its own laws or constitutional provisions as an excuse for non-performance or failure to fulfill its int'l obligations
- Declaration of Rights and Duties of States, 1949, Article 13
- Supremacy of Int'l Law
- Possibility of Direct Application of Municipal Law, *Serbian Loans and Brazilian Loans Cases*, 1929, PCIJ, Compare *Norwegian Loans*, 1957, the Golden Coin Clause, Warsaw Convention, 1929, and Subsequent Interpretation and Amendments

**B. INTERNATIONAL LAW IN MUNICIPAL LAW**

Theoretical Debate: the Monist and Dualist Schools

The View of Sir Gerald G. Fitzmaurice

**1. INTERNATIONAL LAW IN THE MUNICIPAL LAW OF EUROPEAN STATES: UK**

- Theory of Incorporation, Lord Mansfield, Lord Denning, no need for transformation

*STARE DECISIS*: FRG

- Circumvented, *Trendtex Case*, CA, 1977, Constitution Article 25, and *Costa v E.N.E.L.*, 1964, Constitutional Court Decision No. 14

ITALY, FRANCE, NETHERLANDS, LUXEMBOURG, BELGIUM

- Varying positions as regards Community Law

**2. THE STATUS OF INTERNATIONAL LAW UNDER U.S. LAW**

- “International Law is Part of US Law:” *The Paquete Habana*, 1900 (with Independence 1776 – or Common Law) Reception of Common Law from UK including Int'l Law, Incorporation or Transformation?

- International Law as Law of the Land: The US Constitution Article VI; Article I, S. 8, Cl. 10: Offenses against the Law of Nations
- Article VI, The US Constitution Recognizes Treaties “as Supreme Law of the Land,” Missouri v Holland, 1920, 252 US 416
- The restrictive definition of treaties under the US Constitution
- Self-executing and non-self-executing treaties
- US declarations that human rights treaties are non-self-executing
- Int’l Law as Federal “Common Law” Customary Int’l Law in the US  
Conflicts between US Statutes and Customary Int’l Law – Incorporation not Transformation – a Principle Subsequent in Time Supersedes an Earlier One
- Restatement (Revised) §§ 131-132, Int’l Law and Agreements as Part of US Law

Reading: Casebook - Chapter 3, §§ 1-3, pp. 159-248

## **WEEK 5: TOPIC V – SUBJECTS OF INT’L LAW**

### **A. STATES OR NATION-STATES, INCLUDING SUBDIVISIONS**

- Sovereignty: An Attribute of Statehood
- Constitutive Elements: Territory, Population, Effective Government, Political Independence
- Emergence of New States and State Succession: Granting of Independence, Secession, Separation or Dismemberment, Merger or Uniting of Existing States, Discovery of TERRA NULLIUS, Occupation, Usucapion and Unification or Extension of Territories through Self-Determination

### **B. PROLIFERATION OF NEW SUBJECTS OF INTERNATIONAL LAW**

- Int’l Organizations
- Individuals and Corporations
- NGOs and Multinational Entities / Enterprises
- Organs of National Liberation Movements

### **C. RECOGNITION OF TERRITORIES, ENTITIES, BODIES OR AUTHORITIES - SECESSION**

1. As States
2. As Governments, *DE JURE* and *DE FACTO*
3. As Belligerents

4. As Insurgents
  5. As Neutrals
- Legal Effect in the State Extending Recognition
  - Methods of Recognition, Express and Implied

Reading: Casebook – Chapter 4, §§ 1-4, pp. 249-315; Chapter 5, §§ 1-2, pp. 359-395

**WEEK 6: TOPIC VI – JURISDICTION**

**A. TYPE OF JURISDICTION OR COMPETENCE**

- Adjudicative or Judicial
- Prescriptive or Legislative
- Enforcement, Executive, Administrative or Police

**B. LEGAL BASES OF JURISDICTION OR EXERCISE OF SOVEREIGN OR GOVERNMENTAL AUTHORITY**

- **TERRITORY** or Territoriality  
Physical or Legal Presence  
Unqualified, Subject to Waiver or Distribution and Allocation of Concurrent Jurisdiction  
Comprehensive over Persons and Property, Movable and Immovable, Subject to Rare Exceptions
- **NATIONALITY** of Persons, Vessels, Aircraft or Spacecraft as well as Corporate Personalities  
Subject to Waiver or other arrangement for division or priority of exercise of concurrent jurisdiction

**C. OTHER REASONS FOR EXERCISE OR ASSUMPTION OF JURISDICTION**

1. Adjudicative Criminal Jurisdiction

**NON-TERRITORIAL PRINCIPLE**

- a. Protective Principle, to protect security or economic interests, such as treason, official secrets act, coinage offenses, and nationality of the victim
- b. Punitive or Repressive Jurisdiction and Nationality of the Accused (Active Nationality Principle)
- c. Universal Jurisdiction, Nature of the Offenses, e.g., Piracy, Terrorism, and Other Offenses against the Law of Nations (Universality Principle)

**EXTENDED TERRITORIAL AND EXTRA-TERRITORIAL JURISDICTION**

- d. Constructive Presence of the Accused, or Nationality of Vessels, Aircraft, and Spacecraft
- e. Place of Commission of the Offense

*LOCUS DELICTI COMMISSI*

- Subjective Territorial Principle
  - Objective Territorial Principle
- The S.S. Lotus, 1927*

2. Adjudicative Civil Jurisdiction

TERRITORIAL

*Locus Celebrationis, Locus Contractus, Situs* of Property, Place of Performance of Contract, Place of Delivery, Place of Incorporation, Domicile or Residence of Parties, Place of Business Administration or Headquarters or Control, etc.

NON-TERRITORIAL or EXTRA-TERRITORIAL

- a. Nationality of the Deceased or Injured Parties, Nationality of Claims
- b. Proper Law of the Contract
- c. Applicable Law
- d. By Agreement of the Parties, Chosen Law or Chosen Forum, *FORUM PROROGATUM*
- e. Supervisory Jurisdiction in connection with Int'l Arbitration

Reading: Casebook – Chapter 13, §§ 1-9, pp. 1088-1196

**WEEK 7: TOPIC VII – JURISDICTIONAL IMMUNITIES OF STATES**

A. IMMUNITIES OF STATES FROM THE JURISDICTION OF FOREIGN COURTS

Principle: Equality and Sovereignty of States  
PAR IN PAREM IMPERIUM NON HABET

*The Schooner Exchange v McFaddon, 1812*, Chief Justice Marshall's classic dictum

Draft Articles of the Int'l Law Commission, 1986 and 1991

GENERAL PRINCIPLES OF IMMUNITY

- Proceedings considered to be against States without consent
- Consent may be expressed or implied by conduct such as instituting or participating in proceeding
- Exceptions to immunity or non-immunity in areas unconnected with exercise of

- traditional government functions
  - Extent of immunity and limits of exceptions
  - Waiver of immunity not implying waiver of execution
- See case law.

**B. IMMUNITY IN RESPECT OF STATE PROPERTIES FROM MEASURES OF CONSTRAINT**

Inviolability and Unattachability of some Categories of State Properties

ILC Articles

See case law.

Reading: Casebook – Chapter 14, § 1, pp. 1197-1270

**WEEK 8: TOPIC VIII**

**A. NATURE AND DURATION OF IMMUNITIES OF REPRESENTATIVES OF STATES**

*RATIONE PERSONAE* and Inviolability of Persons and Premises

1. Heads of State and Government (Sovereign Immunities)  
See case law, *Mighell v Sultan of Jahore*, 1984, 1 Q.B. 149.
2. Diplomatic Immunities and Inviolability  
Vienna Convention on Diplomatic Relations, 1961  
Convention on Special Missions, 1969  
Convention on Representation of States, 1975
3. Consular Privileges and Inviolability  
Vienna Convention on Consular Relations, 1963

**B. IMMUNITIES OF INTERNATIONAL ORGANIZATIONS**

Reading: Casebook – Chapter 14, § 2, pp. 1270-1295; § 3, pp. 1295-1313

**WEEK 9: TOPIC IX – TERRITORY OF A STATE**

**A. TERRITORIAL LIMITS**

LAND as point of departure

Three Dimensional Extension from Land

1. AIR SPACE – Upwards into super adjacent atmosphere on air space for protection and flight of aircraft  
Exclusive jurisdiction over territorial air space  
Chicago Convention, 1944  
Convention on Exploration of Outer space  
Moon Treaty and Convention on Space Objects  
(See also Air Law and Outer space)
  
2. SUBSOIL – Downwards toward center of earth for construction of tunnels, excavation, and exploitation of mineral resources and oil  
Limits still undetermined  
Possibly by the core of the earth and adjacent  
Delimitation of neighboring States or high seas
  
3. MARITIME AND SUBMARINE AREAS – Seawards gradually into the seas accompanied by extension of super adjacent air space and subjacent seabed and subsoil, base line, territorial waters, 12 miles beyond internal waters  
Contiguous zone additional 12 miles  
Exclusive economic zone 200 miles from base line  
Continental shelf 200 miles or more  
Continental margin 350 miles limit  
Islands, straits, bays  
Law of the Sea: 4 Geneva Conventions, 1958, UN Convention of 1982  
Use of term “Territory” extending to maritime territory and delimitation, *Greece v Turkey, The Aegean Sea Continental Shelf Case*, 1978, ICJ

**B. TITLE: ACQUISITION AND LOSS**

Occupation, Prescription: Voluntary Transfer, Treaties

Reading: Casebook – Chapter 4, § 5, pp. 315-348; Chapter 16, §§ 1-7, pp. 1383-1508; Chapter 18, §§ 1-4, pp. 1538-1557; Chapter 19, §§ 1-2, pp. 1558-1572

**WEEK 10: TOPIC X – THE LAW OF TREATIES**

**A. TREATIES BETWEEN STATES**

- Use of Terms:
1. Int’l Agreement
  2. In Writing
  3. Between States
  4. Consenting to be Bound
  5. Under Int’l Law

Vienna Convention on the Law of Treaties, 1969

Treaties - A Generic Term in Int'l Law  
US Terminology  
Int'l Agreements

Law of Treaties Comparable to

1. Law of Contract
2. Constitutional Law
3. Legislative Process

Treaty-Making Power and Multilateral Treaty-Making Process

Consent to be bound

Expression of consent

Negotiation, participation, adoption of text

Full powers – authorization

Initialing, signature, ratification, accession

Ratification by Senate is only constitutional authorization, not int'l ratification

Acceptance, adherence

Reservation, effect of registration, modification, amendment

Entry into force, application, interpretation

*PACTA SUNT SERVANDA*

*JUS COGENS*

*PACTA TERTIIS NEC NOCENT NEC PROSUNT* and exceptions

Fundamental change of circumstances

Fraud, error, corruption, duress

Void and voidability, validity, duration

Suspension, withdrawal, denunciation, termination

State succession in respect of treaties (Vienna Convention 1978)

## B. TREATIES BETWEEN INTERNATIONAL ORGANIZATIONS AND STATES

Vienna Convention of 1986

Confirmation is ratification by int'l organizations

## C. STATE CONTRACTS AND GOVERNMENT CONCESSIONS

*Libya Arbitration Cases, Texaco, Liamco and B.P. (1977-1981)*

Reading: Casebook – Chapter 7, §§ 1-7, pp. 451-585

## WEEK 11: TOPIC XI – STATE RESPONSIBILITY

Reading: Draft Articles by ILC, Part 1, 35 articles, Roberto AGO

### A. GENERAL ENGAGEMENT OF STATE RESPONSIBILITY

Act of a State, attributable to the State, internationally wrongful act  
Breach of an int'l obligation (Primary)  
Incumbent on the State  
With or without injury, compensation notwithstanding, entailing State responsibility  
Obligation under customary or general int'l law including treaty obligations  
regardless of sources  
Delicts and Crimes (Article 19)

**B. CIRCUMSTANCES PRECLUDING WRONGFULNESS**

Self-defense proportional to danger  
Force-majeure and fortuitous event  
State of necessity  
Legitimate countermeasures proportional to imminent danger, retorsion, reprisal,  
retaliation  
Self-protection, self-help  
Consent not contravening *JUS COGENS*  
Distress  
Permissible sanctions – individual and collective boycotts

**C. SECONDARY OBLIGATIONS FOLLOWING BREACH**

Part II and Part III of Draft Articles

*EX NUNC; EX TUNC; EX ANTE* – The Three Parameters  
- Restitution or re-establishment, cessation of act  
- Indemnity, reparation, equivalent  
- Satisfaction

Procedures to obtain remedies  
Requirement of exhaustion of local remedies for injuries suffered by nationals

**D. STATE RESPONSIBILITY FOR INJURY SUFFERED BY ALIEN**

Expropriation and Compensation

Reading: Casebook – Chapter 9, §§ 1-8, pp. 684-741; Chapter 10, §§ 1-8, pp. 742-819;  
For Human Rights, see Chapter 8, §§ 1-3, pp. 586-683

**WEEK 12: TOPIC XII – INTERNATIONAL LIABILITY FOR INJURIOUS  
CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY  
INTERNATIONAL LAW**

Article 35, Part I: State Responsibility  
Report of ILC on Topic and Draft Articles  
Quentin-Baxter and Julio Barbosa

Moving Frontier of Progressive Prohibition by Int'l Law such as Nuclear Tests on the Ocean

*Nuclear Test Case*, 1974, ICJ

*Australia v France, New Zealand v France*

US Test and Compensation *EX GRATIA* to Japanese fishermen, 1954

THEORIES: Causation  
- Injurious Consequences – Flowing from Activities  
- Rule SIC TUO UTERE UT ALIENUM NON LAEDAS  
- ABUS DU DROIT, Strict or Absolute Liability  
- RISQUE CREE, Ultra Hazardous Substance, “Oil Spills”  
- Environment “Common Benefit of Mankind”  
- Entailing Liability without Fault or Wrongfulness: Transboundary Pollution of the Air, Marine Environment, Care, Standard of Care, Extent of Relevancy

PRACTICE: CASE LAW  
*Trail Smelter Case, USA v Canada*, 1941  
*Lake Lanoux Arbitration, Spain v France*, 1957  
*USA v Canada, GUT DAM*, 1968  
*Belgium v Netherlands, River Meuse Diversion*, 1937, PCIJ

TREATY: Geneva Convention on Long Range Transboundary Air Pollution, 1979, Entry into Force, 1983

ACCIDENTS: Acid Rain – The Chernobyl Nuclear Explosion, 1986  
Bhopal Explosion, Union Carbide, 1984  
The River Rhine, 1986

RESOLUTION: Institute Resolution, 1979  
Pollution of Rivers and Lakes, Transboundary Air Pollution, 1987

Reading: Casebook – Chapter 17, §§ 1-7, pp. 1509-1537; Chapter 18, §§ 1-4, pp. 1538-1557

### **WEEK 13: TOPIC XIII – REGULATION OF THE USE OF FORCE**

Non-Intervention, Non-Interference, Bandung  
Non-Aggression – Definition of Resolution, Non-Use of Force

Article 2(4) Charter, Article 51, Chapter VII

*Nicaragua v USA*, 1986, ICJ

OAS, Charter UN Resolutions

Customary Int'l Law

Use of Force by States: Might is not always right

Prohibited except under Article 51 and Chapter VII  
Self-help, Armed Sanctions not Permitted except by UNSC  
No Gun-Boat Diplomacy  
No Intimidation: Blockade forbidden for humanitarian considerations save by UNSC  
Convention on Acts of Terrorism  
Attributable to State in whose Territory Acts of Terrorism were Organized, Initiated, Supported, or Tolerated  
Control and Regulation by Int'l Law  
Geneva Conventions, 1949, Protocols, 1977  
Humanitarian Law – Hague Regulations, 1899-1907  
Self-Defense as Inherent Right of States only possible following an armed attack or act of aggression – pre-emptive defense measure preceded by real and imminent threat of aggression or armed attack  
Conditions of Self-Defense  
Legitimate if Limited in Time, Scope, and Location  
Proportionality is the Rule beyond which self-defense becomes counter-measures which may or may not satisfy tests of legitimacy

Case-Studies: Pre-emptive Strike, *Iraq v Israel*, 1981; Anticipatory Defense, *Libya v USA*, 1986; *Persian Gulf Incidents*; *USA v Iraq*, 1987; *Iran v USA*, 1988; *Corfu Channel*, ICJ, 1949-1950; *The Entebbe Incident*, Uganda, 1976; *The Achille Lauro Interception*, 1985

Compare Peace-Keeping Coalition in the case of the invasion of Kuwait by Iraq, 1990-1991

Peace-keeping and peace-making role of the UN in former Yugoslavia

Reading: Casebook – Chapter 12, §§ 1-4, pp. 920-1087

#### **WEEK 14: TOPIC XIV – PACIFIC SETTLEMENT OF DISPUTES**

Obligation not to Resort to the Use of Force but to Settle Disputes by Peaceful Means of Own Choice or Agreed Choice

Negotiations – Mediation – Conciliation – Good Offices – Enquiry – Arbitration –  
Judicial Settlement

ICJ Article 36(2) Declaration of Acceptance; Consent or Acceptance of  
Compulsory Jurisdiction

The US and the court's compulsory jurisdiction

The US, compulsory clauses, and the court

Procedure: Preliminary Phase  
- Jurisdictional or Preliminary Objection or Exception



## Syllabus Undergraduate International Relations Program

**Spring 2007**  
**IR 330**  
**World Law**

### **Course Objective**

The purpose of this course is to provide students with a general and integrated overview of the legal context of contemporary international relations.

### **Requirements**

Regular attendance is key to the successful completion of this class. I cover a lot of difficult concepts.

- Reading: Text Book: Malanczuk, Peter, Akehurst's Modern Introduction to International Law, Routledge
- Students are also required to become familiarized with reference books and journals in International Law.
- I will also have on electronic reserve a list of treaties and cases relevant to the class
- Press: Each week, students are expected to read the press or to go on the Internet and identify stories involving legal issues studied in class. We will discuss those current events weekly. Students need to turn in 4 press reports according to the attached schedule. These press reports should include: a copy of the article (s), a summary of the situation, a summary of the legal issues at stake. You need to find articles dealing with issues that we have studied in class in the weeks preceding your press report. For example, when we talk about sources of law it would be appropriate to bring in an article dealing with the ratification of a treaty and when we talk about States, it would be appropriate to bring in an article dealing with States' succession, or creation, or recognition, etc...
- **Please submit your work on time! No late work will be accepted without a documented emergency.**

### **Evaluation and Grading**

- Press Reports: 20% (or 5% each)
- There will be a mid term: 30% on March 20.
- There will be a final examination on May 24. It is a challenging, law school level final that will ask you to discuss contemporary issues of international law using a variety of sources of law. I will of course give you more indications in class. (50%)

### **Expected Learning Outcomes**

- Students should acquire some understanding of the particularities of a legal system that operates outside and between states, international organizations, and in certain cases, individuals.
- Students should improve their critical thinking by learning how to identify legal issues and how to use legal sources to build an argument

### **Class outline/Reading/Important dates**

Jan. 25: Introduction to class. Introduction to International law, How to find information on International law. Chapters 1 & 2 + go on the Internet and identify legal search engines  
(Findlaw, Westlaw, Lexus Nexus etc... Or sites that you are comfortable with)

Jan 30. Feb 1: Sources of International Law. Chapters 3 & 9 (**Note: these are probably our most important classes. DO NOT MISS!!!**)

Feb 6 Relations between International Law and Municipal Law/US and International law. Chapter 4 **Press report #1**

Feb. 8 & Feb 13: Subjects of International Law: States, Principles of Jurisdiction. Chapters 5, 7, 10, & 11

Feb. 15: Immunity from Jurisdiction. Chapter 8

Feb 18: State's responsibility/States' liability for illicit acts. Chapter 17

Feb 22: Other subjects of International law. Chapters 6 & 21 **Press report #2**

March 27 & March 6: Peaceful Settlement of Disputes. Chapter 18

### **NOTE: THERE WILL BE NO CLASS ON MARCH 1ST**

March 8: The Use of Force. Chapter 19

March 15: Humanitarian law and the Law of Armed Conflict Chapter 19 **Press report #3**

March 20: Review

March 22: **Mid-term Bring Blue Book**

March 27- Emergence of International Criminal law. Chapter 20 29

March 29 April 3 April 5: Human Rights Law. Chapter 14

SPRING BREAK APRIL 10/12

April 17: The Law of the Sea. Chapter 12

April 19: the Law of Airspace and Outer-space. Chapter 13 **Press report #4**

April 24- 26 International Environmental Law. Chapter 16

May 1 / May 3: International Economics and the Law. Chapter 15

May 8 /May 10/ May 15: Conclusions and Review

**Final Examination: Thursday , May 24 from 8-10:30 (O**

## Syllabus- Graduate Classes in International Relations

IR 738  
Contemporary International Legal Issues  
FALL 06

### **Course Objective**

The purpose of this seminar is to provide students with an understanding of the legal context of contemporary international relations. Emphasis will be placed on the questions raised by the nature and function of a legal system that operates outside and, between states, international organizations, and in certain cases, individuals. The selected issues will highlight current major debates in the field of international public law.

### **Required Reading**

1. Damrosch, Lori et al. International law Cases and Materials, St Paul: West Group, 2001

Please keep in mind that I don't expect you to do the reading word for word. The material can be quite complex and lengthy. You need to get a general idea of the topic and go in depth whenever you feel it necessary.

2. I strongly recommend that you subscribe to FINDlaw headlines by email <http://news.findlaw.com/> and that you keep abreast of current development in International law and International relations
3. In addition every time I mention an important case, you need to get a summary of that case. (Jurisdiction, merit, judgment, concurring and dissenting opinions).
4. Finally you need to download and/or print several key articles from important conventions.

### **Research**

They are of course many books in International Law, over 100 periodicals and many electronic sources. A good place to start your research is with the American Society of International Law. Go to <http://www.asil.org/> and follow their links.

### **Seminar Structure**

I will start each class with a lecture and present an overview of the weekly topic. Students are expected to have read relevant chapters of the book, as indicated in the attached schedule. I will email you weekly some questions to ponder as you do the reading. I also expect every student to prepare all the questions for discussion but each student, in turn, will have to lead one of these discussion topics and offer a brief presentation (10 minutes or so, no more than 15) of his/her findings and conclusions. 20% of your grade will be based on your informed participation during every class. I may ask questions – at random- to see if you have done the reading and prepare for class. 30% of the grade will come from your formal presentation and your ability to lead the class discussion. You may use note cards during your presentation but you may not read the full text of your findings. If you need for me to duplicate some documents to hand out to the rest of the class, give me a bit of notice.

It is imperative that you come to class prepared to engage in active and meaningful participation. Attendance is of course mandatory and non excused absence will lower your grade.

### **Final Paper**

The final paper needs to be 20 to 30 page long and argue or discuss an issue of international law. You may choose one of our topics of discussion or another topic. The key is to develop a legal argument using sources of international law. Keep in mind that you can argue either side of the argument. Here are some suggestions:

The death penalty is a form of torture and violates international standard (or not),

Tibet has legal ground for independence, (or not),

Chechnya has legal ground for independence (or not),

Write Saddam Hussein's defense,

Discuss how environmental damage during conflict can be constructed as a war crime,

Discuss the legality of humanitarian intervention not authorized by the Security Council.

Your paper will be graded for the strength of the argument presented and your ability to use sources of law. Keep in mind that what I am looking for is a legal argument or discussion not a political one. Papers need to be appropriately documented and need to cite sources from which materials were taken. Use any manual of style you want but be consistent. Each paper should also include a bibliography. The paper represents 50% of your grade. It is due on December 7<sup>th</sup>. **NOTA BENE:** In order for me to be able to help you with your work, I would like to meet every student on a one on one basis at least once during the semester. We will schedule appointments.

### **Grading**

Attendance and Participation as described above: 20%  
Leading class discussion and presentation, as described above: 30% (sign up will be ASAP)  
Research paper, as described above: 50% (due last class meeting)

**Section I introduces the basic concepts and principles of Public International Law**

**Week 1**

- 1. History and development of International law/
- 2. Sources of law

READ: p. xix to p.55

**Week 2**

- 3. Sources of law (Continued)

READ: p56 to p.158 and p.451 to p.585

Question for discussion:

Would you establish a hierarchy among sources? Explain the reasons behind your argument  
...1.....2.....

**Week 3**

- 4. Incorporation into domestic law, including US municipal law

READ: p.159 to p.248

Questions for discussion:

Pdt. Bush's legal team has argued that the Pdt is not bound by the Geneva Conventions, the Convention against Torture, or customary law regarding torture.? Explain and propose either a concurring or a dissenting opinion. (Use sources of law)  
3.....

**Week 4**

- 5. Subjects of law: states and non state actors

READ: p249 to p. 450

Questions for discussion:

What is the growing impact of non state actors in the international legal system? Individuals, NGOs, groups, religion, IOs, corporations  
5..... 6.....  
Would you favor an objective determination of statehood based on the facts and a subjective determination for recognizing a government? Why or not? Provide examples  
7.....  
Can self determination mean a right to secession?  
Yes 8..... No 9.....

**Week 5**

READ: p.1383 to p. 1508 and p. 1558 to p. 1572

6. Territorial issues: land, sea and airspace

Question for discussion?

Is current International law adequate to deal with ongoing outer space activities?

10 .....

**Week 6**

7. Jurisdiction

8. Immunity from Jurisdiction

9. Consular relations

READ: p.1088 to 1313

Questions for discussion

Define and explain the Act of State Doctrine.

11 .....

.In the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), ICJ. 14 February 2002, the Court, in operative paragraph 78 of its Judgment,

"(2) by thirteen votes to three,

Finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law; ..."

a) Assess the historic significance and legal implications of this finding by the International Court of Justice.

12.....

b) Does the immunity from criminal jurisdiction belong to the individual who happened to be a foreign minister or ultimately to the State, of which his ministry forms part? Explain with illustration.

13.....

Discuss the Breard, Walter Lagrand, and Mexican Nationals cases.

14.....

**Week 7**

1. State's responsibility.
2. Individual liability and International criminal law

**READ: 684 to p.819 and p.1314 to p1379**

Questions for discussion

What are the circumstances precluding the wrongfulness of an act under international law?

15.....

To what extent should individuals be held liable for atrocities committed in armed conflicts

16.....

Review the Nuremberg trials and other relevant case law at International Criminal Tribunals and explore the legal issue at stake in the Iraqi prison scandal

17 .....

Section II introduces contemporary theoretical paradigms and methods in International Law and how they intersect with theories of International Relations.

**Reading and discussion questions will be handed out later in the semester,**

**Week 8**

1. Natural law and legal positivism
2. Realism and liberalism and institutionalism
3. The New Haven School

**Week 9**

4. The New Stream
5. Feminism
6. International relations and International law in a constructivist perspective

**Section III explores current debates in the field of International law.**

**Week 10**

1. Peaceful Settlement of Disputes

**READ: p.820 to p.913**

Questions for discussion:

Using the Nicaragua v. US case as an example, discuss the strengths and weaknesses of the ICJ. (Don't forget to discuss the "optional clause")

18 .....

**Week 11**

2. the use of force

**READ: p.920 to p.1054**

Questions for discussion

Discuss the legality of NATO intervention over Kosovo in 1998, of the use of force against Afghanistan in 2001, against Iraq in 2003

19..... 21.....  
Discuss terrorism in international law  
20..... ..

**Week 12.**

3. Human Rights

READ: p.684 to p.732

Question for discussion

Build a legal argument demonstrating that domestic violence can be a violation of the International Legislation on Human Rights. You need to identify the circumstances in which it could be true, and the legal documents, principles, customs, judicial decisions or relevant precedents that can support your case

21 .....

Discuss the Alvarez Machain case and its impact on the Alien Tort Act (US Supreme Court June 2004)

22 .....

**Week 13**

4. International Economic Law and Organization

READ: 1573 top. 1613

Questions for discussion

Using relevant case law from the WTO's DS body discuss the impact of International trade law on sovereignty

22.....

What is the role of non state actors in International Trade Law?

23.....

**Week 14**

5. International Environmental Law

READ: 1509 to p.1536

Questions for discussion

What are the most constraining principles of international environmental law?

24 .....

Under what conditions are environmental NGOs the most effective?

25 .....

**Week 15 Conclusions**