

Human Rights and International Law

Professor: Yasmine Ergas
Summer Session I: May 27 to July 3, 2008
Mon/Wed, 1:00-4:00pm
Columbia University, HRTS S4220

This course introduces students to the basic doctrines public international law and the processes through which it develops, is implemented, and changed.

What is international law, how is it relevant to contemporary governance and which institutions are involved in its development, application and enforcement? What are the relations among international, foreign and municipal law? What is the role of states, and how is sovereignty being redefined? What roles do international organizations, such as the United Nations and its specialized agencies, regional organizations, non-governmental organizations and private corporations play? Why, when and by whom is international law observed and what consequences ensue when it is breached? Can it be enforced, and if so, how? And, what theoretical frameworks can assist us in understanding, identifying, interpreting, implementing – and seeking to influence – international law?

Discussion will be grounded in the analysis of particular cases regarding key issues such as the formation and inter-relationships of states, the ways in which states incorporate international law into their own legal orders, the contexts in which international criminal jurisdiction can be asserted, the use of force, and human rights. Students will be asked to identify issues and relevant sources of law, evaluate the usefulness of different theoretical frameworks, draw on empirical data and provide interpretations of applicable law.

Required Reading:

(1) Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, INTERNATIONAL LAW, NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH (2nd Edition, 2006) ["DRW"]

(2) DRW ACCOMPANYING UPDATES, available at:
<http://www.temple.edu/lawschool/drwiltext/updates.htm>

(3) DRW ACCOMPANYING DOCUMENTS available at
<http://www.temple.edu/lawschool/drwiltext/documents.htm>

(4) SELECTED ADDITIONAL READINGS ON ELECTRONIC RESERVE IN LEHMAN LIBRARY ["ER"]

Strongly Recommended:

Peter Malanczuk, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW (forthcoming edition)

Further reading:

Jose' A. Alvarez, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS (2005)

Ian Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (2003)

Lori Damrosch, et al., INTERNATIONAL LAW: CASES AND MATERIALS (4th Edition, 2001)

Louis Henkin, INTERNATIONAL LAW: POLITICS AND VALUES (1995)

Rosalyn Higgins, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT (1994)

Burns Weston, Richard Falk, Hilary Charlesworth, Andrew L. Strauss, INTERNATIONAL LAW

AND WORLD ORDER (4TH Edition, 2006) ["Weston"]

Additional readings will be distributed from time to time and/ or placed on electronic reserve.

The casebook for the course is Dunoff, Ratner and Wippman, *International Law: Norms, Actors Process* (2nd edition, 2006). The casebook has its own website (<http://www.temple.edu/lawschool/drwiltext>), on which you will find the document supplement for the course and updates to several chapters. For each assigned reading, please make sure that you that you are familiar with the accompanying documents (as indicated on the syllabus) and the more recent material in the updates section.

The casebook uses a problem-oriented approach and focuses on the processes through which international law is made, interpreted, applied (or not), and changed. Generally, one or more cases will be presented to illustrate a problem, accompanied by other materials – articles, official documents, excerpts from other cases—that provide varying (and sometimes contradictory) perspectives on the key issues. It is for you – through the course – to understand the implications of the different perspectives presented and eventually make informed choices. I strongly recommend that you use Malanczuk's *AKEHURST* -- an updated revision of a classic text, which students invariably find very useful -- to assist you in this process.

You may also wish to consult other authoritative interpretations of international law. The recommended readings listed above should be of help. The works by Henkin and Higgins are based on their courses to the Hague Academy of International Law and are classics in the field, as is Brownlie's *Principles of International Law*. The two additional casebooks also listed above -- Damrosch et. al. and Weston et al. – are very useful reference sources. There are numerous important treatises on international law in many languages; I encourage you to consult them and bring additional perspectives, derived from your academic or applied experiences, to the class.

This is a moment in which issues of international law are continuously highlighted by current events, generally provoking heated discussions. You and your fellow students will benefit most from this course if you are well-informed of ongoing debates both in law and in foreign affairs, and raise pertinent issues in class. Reading the newspapers is essential to informed class participation and the internet has made access to international news sources easy. The *American Journal of International Law* is a key resource for international law. The journal's publisher, the American Society of International Law, maintains a website with a regularly updated section of current cases and controversies and useful links at www.asil.org.

Availability: The DRW casebook, Malanczuk/Akehrst text, and recommended books will be available from Columbia University Bookstore at Broadway and 115th Street. Books recommended for individual sessions have been placed on reserve at Lehman Library. All required or recommended journal articles are available through electronic reserves.

- Requirements & Evaluation**
- 1) Class Participation: assigned readings and class attendance are required.
 - 2) Discussion sessions: Two discussion sessions will be held weekly; attendance at one per week is not mandatory but strongly recommended. Discussion sessions will begin the 2nd week of the semester, and will normally review the material covered in the previous week's classes. Exams & evaluation:
 - a) Midterm exam -- 30%: 4-hour open-book, take-home examination.
 - b) Final exam -- 70%: 4 to 6-hour open-book, take-home examination, mainly centered on one multi-part problem (background materials distributed before exam) and one conceptual essay.
 - c) Class participation – bonus points will be awarded based on class participation.

Course Plan

Week 1

A) The Nature of International Law

Required reading:

DRW 3-35 Chad & Libya; The Rainbow Warrior Affair.

DRW 176-179 Background on the Structures and Decision- Making of International Organizations (to the top of p.179)

ER Sir Hersch Lauterpacht, The Grotian Tradition in International Law, 23 B. Y. B. I. L. 18-53 (1946) [from Weston, Part III—The Contributions of Law to a Peaceful, Just, Equitable, and Sustainable Global Future at 1270]

ER Hedley Bull, The Grotian Conception of International Society from DIPLOMATIC INVESTIGATIONS: ESSAYS IN THE THEORY OF INTERNATIONAL RELATIONS 51-52, 64-73 (H. Butterfield and M. Wight, eds., 1966) [from Weston, Part III at 1281]

ER Henkin selection in Damrosch et. al.

Doc: Charter of the United Nations

Suggestions for further reading:

Weston International Law and World Order

B) The Concept of International Law

course plan:

1. International Law and International Relations
2. International Law as Law
- 3: Contemporary Perspectives on International Law

Required reading:

DRW 1031-1044

ER Anne-Marie Slaughter Burley, International Law and International Relations Theory: A Dual Agenda, 87 A.J.I.L. 205 (1993)

ER Harold Hongju Koh, Why Do Nations Obey International Law?, 106 YALE L. J. 2599 (1997)

ER John R. Bolton, Is There Really "Law" in International Affairs?, 10 TRANSNAT'L L. & CONTEMP. PROBS. 1-47 (2000)

ER Martii Koskeniemi, "The Politics of International Law," 1 EUR. J. INT. L. (1990)

ER Feminist theories and international law in Hilary Charlesworth and Christine Chinkin (eds.), BOUNDARIES OF INTERNATIONAL LAW 23-61

Suggestions for further reading:

ER Anne-Marie Slaughter Burley et al, International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship, 92 A.J.I.L. 367 (1998)

ER Deborah Z Cass, Navigating the Newstream: Recent Critical Scholarship in International Law, 65 NORDIC J. INT'L L. 341 (1996)

ER Kenneth W. Abbott et al., The Concept of Legalization, 54:3 International Organization 401 (2000)

ER Chandra L. Sriram, International law, International Relations theory and post-atrocity justice: towards a genuine dialogue, 82:3 International Affairs 467 (2006)

Weston 21-78 Chapter One: The Concept of International Law

Additionally, the 1999 American Journal of International Law Symposium Issue on "Methods in International Law", illustrates how scholars and practitioners with different perspectives address a common issue, effectively elucidating the importance of the methodological debates in international law.

C) The Sources and Evidence of International Law (1)

course plan:

1: Sources

2: Creating and Using Treaties

3. Customary International Law

4. Soft Law: What does it mean; how, when and why does it work?

Required reading:

Akehurst 35-62 Sources of International Law

DRW 35-69 Creating and Using Treaties: The Cyprus Conflict

DRW 74-106 Custom and Soft Law: Regulating Foreign Direct Investment

Doc Statute of the International Court of Justice, art. 38

Doc Vienna Convention on the Law of Treaties

Suggestions for further reading:

ER Dinah Shelton, Normative Hierarchy in International Law, 100 AM J. INT'L L. (2006)

ER Charles Lipson, Why Are Some International Agreements Informal? 45

International Organization 495 (1991)

ER Barbara Koremenos, Loosening the Ties that Bind: A Learning Model of

Agreement Flexibility, 55 International Organization 289 (2001)

ER Anthea Elizabeth Roberts, Traditional and Modern Approaches to Customary

International Law: A Reconciliation 95 AM. J. INT'L L. 757-91 (2001)

Doc ILA Report on the Formation of Customary International Law

Week 2

Participants in the International System & International Legal Personality

A) State Formation, Self-Determination, Succession, Government Change

course plan:

A. States

Introduction: Subjects of the Law and International Persons

1: The Determination of Statehood

2: Self-Determination of "Peoples"

3: Acquisition of Territorial Sovereignty

4: State Secession

5. Government Change

Required reading:

DRW 107-144 The Formation Process: New States from the Former Yugoslavia

DRW 144-157 The Secession Process: The End of the USSR

DRW 157-168 The Process of Governmental Change

ER Convention on Rights and Duties of States

ER EC Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union

James Crawford excerpts tbd

Suggestions for further reading

Doc Reference re:Quebec

Doc Burkina Faso v. Mali

B) International Organizations

Course plan:

1. International organizations: structures and decision-making processes

2. Legal "personality"

3. The UN: sanctioning process; treaty-making; dispute settlement

Required reading:

DRW 171-201 International Organizations as Global Actors: The United Nations and Apartheid

Doc Reparation for Injuries Suffered in the Service of the United Nations (excerpts to be determined)

Alvarez 129-139 Legal Personality and Its Consequences

Doc International Convention on the Suppression and Punishment of the Crime of Apartheid

Suggestions for further reading:

Alvarez 585-627 International Organizations as Law-Makers

ER Jose' E. Alvarez, International Organizations: Then and Now 100 AM J. INT'L L. (2006)

C) NGOs, Private Corporations and the Challenge of Non-State Actors

Course plan:

1. Non-governmental organizations

2. Corporations as international actors

Required reading:

DRW 201-216 Non-governmental organizations and the struggle for inclusion
Akehurst 96-100 Non-governmental organizations
Alvarez 154-156 Participation by Non-State Actors
DRW 216-234 Corporations as International Actors

Suggestions for further reading:

ER Charnovitz, Non-governmental organizations and International Law

Week 3

A) International Law and Municipal Law

course plan:

1. Making international law in the United States
2. Breaking international law and remedies
3. International law claims in domestic jurisdictions

Required reading:

DRW 267-285 Making International Law: Is NAFTA constitutional?
Doc Constitution of the United States of America (including Amendments to the Constitution)

DRW 293-313 Breaking International Law: Consular Notification and the Arrest of Foreign Nationals
Doc International Law Commission 2001 Draft Articles on State Responsibility
Doc Vienna Convention on Consular Relations
Doc Inter-American Court of Human Rights opinion

DRW 340-353 Opening and Closing the Courthouse Door to International Claims

Suggestions for further reading:

Weston 179-258 Chapter Three: The Application of International Law
ER ILC, Fourth Report on State Responsibility

B) International Responsibility and Remedies

course plan:

1. General Principles of International Responsibility; Rules of Attribution; Fault and Injury
2. Circumstances Precluding Wrongfulness
3. Counter-Measures and Self-Help
4. Reparation for the Breach of an International Obligation and Procedures to Implement Obligations of Reparation

Required reading:

Damrosch et al. 684-697 General Principles of Responsibility; Rules of Attribution, Fault and Injury
Damrosch et al. 701-741 Circumstances Precluding Wrongfulness; Counter-measures; International obligations for breach

ER ILC, 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts

Suggestions for further reading:

ER ILC, Fourth Report on State Responsibility
ER Excerpts from Bosnia-Herzegovina v. Serbia

Week 4

A) Jurisdiction and its Limits

course plan:

1. Jurisdiction to prescribe and enforce; other bases of jurisdiction
2. Immunity from jurisdiction

DRW 355-387 The reach of domestic law in the international arena
DRW 398-415 Capturing criminals abroad
DRW 415-435 Sovereign Immunity

B) International Criminal Law

Course plan:

1. Attacks on civilian populations, crimes against humanity, and the crime of genocide
2. For a for Justice (from Nuremberg to the ICC and ad hoc tribunals)
3. Transitional justice: the Pinochet case

Required Reading:

DRW 608- 625 Governmental attacks on civilian populations
DRW 646- 667 Fora for justice: Rwanda
DRW 667- 693 Special dilemmas of states in transition: Chile

Doc Statute of the International Criminal Court
Doc Statute of the International Criminal Tribunal for the Former Yugoslavia

Suggestions for further reading:

Martha Minow, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (1998)

ER Jeremy Rabkin, Global Criminal Justice: An Idea Whose Time Has Passed, 38 Cornell Int'l L. J. 753 (2005)
ER Anthony D'Amato, Defending a Person Charged with Genocide, 1 Chi. J. Int'l L. 459 (2000)
ER International Law-Genocide-UN Tribunal Finds that Mass Media Hate Speech Constitutes Genocide, Incitement to Genocide, and Crimes Against Humanity, Prosecutor v. Ferdinand Nahmiman, Jean-Bosco Barayagwiza, Hassan Ngeze, Case ICTR-99-52-T (Judgement of 3 December 2003), 117 Harvard L. Review 2769 (2004)
ER Lars Waldorf, Mass Justice for Mass Atrocity: Rethinking Local Justice As Transitional Justice, Temple L. Rev. (2006)

Doc Inter-American Commission on Human Rights
ER The Nuremberg Charter
ER Principles of International Law Recognized in the Charter of the Nuremberg Tribunal

C) The obligation to settle disputes by peaceful means and the use of force

course plan:

1. Diplomatic and legal methods of dispute settlement
2. The use of Force between States
3. Intervention in Internal Conflicts
4. Self-defense

Required reading

- Akehurst 273-298 Peaceful Settlement of Disputes Between States
DRW 886-915 The Use of Force
DRW 917-925 The ICJ opines on Intervention in Internal Conflicts
ER Editorial Comments (W. Michael Riesman, Jonathan I. Charney, Thomas M. Franck, Detlev F. Vagts), In Defense of World Public Order, 95 AM. J. INT'L L. 833-47 (2001)
ER Covenant of the League of Nations (specified articles)
ER Treaty Providing for the Renunciation of War as an Instrument of National Policy
ER "Definition of Aggression" Resolution

Suggestions for further reading:

- ER Helen Duffy, THE 'WAR ON TERROR' AND THE FRAMEWORK OF INTERNATIONAL LAW 186-214
ER Jane G. Dalton, What is War? Terrorism as War after 9/11, 12 ILSA J Int'l & Comp L 523 (2006)
ER Mary Ellen O'Connell, What is War? When is a War not a War? The Myth of the Global War on Terror 12 ILSA J Int'l & Comp L 535 (2006)

Week 5

Humanitarian intervention, the use of force and humanitarian law

course plan:

A) Collective use of force and humanitarian Intervention

Required reading:

- DRW 937-957 Humanitarian Intervention: Stopping Repression in Kosovo
ER Materials on the Responsibility to Protect
ER Alex De Waal, No Such Thing as Humanitarian Intervention
ER Kofi Anan: Two Concepts of Sovereignty

Suggestions for further reading:

Editorial Comments: NATO's Kosovo Intervention (1999) 93 A.J.I.L., available on-line at: www.asil.org/kosovo.htm.

Please also refer to materials recommended for The obligation to settle disputes by peaceful means & the use of force (1)

B) International humanitarian law

9/10

course plan

1. Placing limits on the conduct of war
2. Protecting non-combatants
3. The law of occupation

Required reading:

DRW 527-553 Placing Limits on the Conduct of War: Nuclear Weapon

DRW 555-573 Protecting Non-Combatants
DRW 587-605 Occupying Enemy Territory

Doc Geneva Convention Relative to the Protection of Civilian Persons in Time of War;
Protocol I & Protocol II

Week 6

Topical foci:

A) Protecting the global commons: the law of the sea and the environment

course plan:

1. The first global commons: the law of the sea
2. Water disputes
3. Combating climate change
4. International Trade Regulation and Environmental Harms

Required reading:

DRW 701-718 The Territorial Sea and International Straits
DRW 763-782 International Waters: Resolving conflict over the Nile
DRW 811-825 Protecting the Planet: Combating Climate Change
DRW 846-859 Balancing Trade and the Environment: the Shrimp-Turtle Dispute

Doc UNCLOS
Doc Kyoto Protocol

Please make sure you read the materials on protecting the planet in the Updates section of the DRW website.

B) Human Rights

course plan:

Human Rights

- 1: International human rights law: Introduction
- 2: Accepting and limiting obligations
- 2: Regional human rights law
- 3: Women's rights

Required reading:

DRW 441-444 The Claims of Individuals on States
DRW 472-487 Narrowing Human Rights Treaties
DRW 500-526 Women's Rights

Doc UNDHR
Doc ICCPR
Doc ICSER
ER European Convention for the Protection of Human Rights and Fundamental Freedoms
ER Conference on Security and Cooperation in Europe, Final Act (Helsinki Accords)
ER African Charter on Human and People's Rights
Doc In re Fauziya Kasinga

Suggestions for further reading:

Doc US Senate Foreign Relations Report on the ICCPR
ER Martti Koskenniemi, The Pull of the Mainstream, 88 MICH. L. REV. 1946 (1990)
ER Kathryn Sikkink, Human Rights, Principled Issue-Networks and Sovereignty in Latin America, 47 International Organization 411 (1993)

C) Bringing it all together: summary of main themes and issues

ACADEMIC INTEGRITY STATEMENT

The School of International & Public Affairs does not tolerate cheating and/or plagiarism in any form. Those students who violate the Code of Academic & Professional Conduct will be subject to the Dean's Disciplinary Procedures. The Code of Academic & Professional Conduct can be viewed online at:

http://sipa.columbia.edu/resources_services/student_affairs/academic_policies/deans_discipline_policy.html

Please familiarize yourself with the proper methods of citation and attribution. The School provides some useful resources online; we strongly encourage you to familiarize yourself with these various styles before conducting your research:http://sipa.columbia.edu/resources_services/student_affairs/academic_policies/code_of_conduct.html

Violations of the Code of Academic & Professional Conduct shall be reported to the Associate Dean for Student Affairs.