

PS 3396: The International Legal Order

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Office Hours: M 12:00 – 2:00 p.m.

Description:

This is an introductory survey course in international law (IL), designed primarily for those who have not previously studied the subject. The course is organized into three parts. The first part of the course offers a general introduction to international law, asking whether and to what extent international law is “really law,” examining international-relations approaches to IL in political science, and surveying theoretical approaches from legal scholarship. The second section of the course examines general principles of international law, including the key actors, the creation and sources of international law, the interpretation of international law by courts and tribunals, the problem of enforcement, and the relationship between international and national (or “municipal” law). In the third and final part of the course, we examine selected specialized areas of international law, including human rights law, environmental law, and the laws of war. Much of this third section will also be given over to the research and writing of students’ research papers (see below).

The schedule of topics is as follows:

- Week 1: What is International Law? (May 21)
- Week 2: Theoretical Approaches to International Law (May 23)
- Week 3: International Law Creation (Sources) (May 28)
- Week 4: Actors in International Law (May 30)
- Week 5: Interpreting International Law (International Courts) (June 4)
- Week 6: Compliance and Enforcement (June 6)
- Week 7: International Law and Domestic Law (June 11)
- Week 8: Human Rights Law (June 13)
- Week 9. The Law of the Sea and Environmental Law (June 18)
- Week 10: The Use of Force I: Jus ad Bellum (June 20)
- Week 11: The Use of Force II: Jus in Bello and the War on Terror (June 25)
- Week 12: Conclusions and Review (June 27)

Course requirements: This is a writing-intensive course, and therefore includes multiple writing assignments of various lengths and formats.

1. Two non-cumulative exams covering the readings and lectures, to be administered on June 2nd and June 21st, respectively (20%);
2. Four short response papers (1-2 pages, double-spaced) in response to questions on the readings from Weeks 2 through 11, of which at least two should be written by Week 7. These papers should clearly answer one study question from the week, with a clear thesis statement and supporting arguments drawn *from the assigned readings*. These papers are due *on the first day of the assigned week, and late papers will not be accepted* (20%);
3. Rewritten drafts of the first two of your short papers, in response to detailed comments from the professor (10%);
4. Participation – meaning both attendance and informed contribution – in class discussions (10% of the grade);
5. A research paper on a topic of the student’s choice, to be undertaken in three stages:
 - (a) a preliminary statement of the topic and argument of the paper, and a draft outline of the paper, maximum 1-2 pages (5% of the grade), due June 13th;
 - (b) a preliminary annotated bibliography of primary and secondary sources used in the research of the paper (5% of the grade), due June 20th;
 - (c) a final draft paper (approx 10 pages, 30% of the grade), due on June 27th. Late papers will be penalized one letter grade per day of lateness.

As part of the preparation process, all students should sign up for two one-on-one meetings to discuss potential paper topics (May 18 and 23, and June 8 and 13, respectively).

Please note that all of the writing assignments will be assessed primarily on the basis of substantive arguments about the role of law in US foreign policy, but also on the basis of how clearly and carefully they are written.

Required readings: The core text for the course, available at the Temple Bookstore, is:

- Sean D. Murphy, *Principles of International Law* (St. Paul: Thomson/West, 2006), a very good, brief introduction to international law.

We will also draw on selections from two other excellent texts:

- Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), which provides a more detailed sense of international law in practice (abbreviated below as DRW); and

- John F. Murphy, *The United States and the Rule of Law in International Affairs* (New York: Cambridge University Press, 2004), a text by another author named Murphy (don't mistake them!), focusing on the United States' ambivalent relationship with international law.

In addition to these texts, we will also read selections from other books and from articles and court decisions. With the exception of the Sean Murphy textbook, all of the required readings will be made available on electronic reserve – please print these readings and bring them to class, and be prepared to discuss specific points from the readings in class discussion.

By contrast with the required readings, the **recommended readings** are there only for students who wish to learn a bit more about topics that are not well covered in the required readings. Feel free to look up the recommended readings if you like, but it is not necessary to read any of the recommended readings to do well in the course!

Disability policy: Any student who has a need for accommodation based on the impact of a disability should contact me privately to discuss the specific situation as soon as possible. Contact Disability Resources and Services at 215-204-1280 or 100 Ritter Annex to coordinate reasonable accommodations for students with documented disabilities.

Academic Conduct: Temple University has adopted standards on academic conduct, and all students in PS 460 are expected to comply fully with those standards, including with reference to the important issue of plagiarism. All students should, in all assignments, fully and unambiguously cite sources from which they are drawing important ideas and/or sizable quotations (for example, more than eight consecutive words or more than 50% of a given sentence or paragraph). Failure to do so constitutes plagiarism, which is a serious act of academic misconduct and will result in a failing grade for the course and notification of the infraction to the Dean of Students. Similarly, cheating during exams, copying written assignments from other students, or providing answers to others during exams are considered acts of academic misconduct. If you are unfamiliar with policies about plagiarism or other types of academic misconduct, you may wish to consult the on-line guide to “Quoting, Paraphrasing, and Acknowledging Sources,” available at the Temple Writing Center (http://www.temple.edu/writingctr/student_resources/student_resources.htm) or if you still have remaining doubts or specific questions, raise them directly with me.

Temple University policy on the freedom to teach and learn: Freedom to teach and freedom to learn are inseparable facets of academic freedom. The University has adopted a policy on Student and Faculty Academic Rights and Responsibilities (Policy # 03.70.02) which can be accessed through the following link: http://policies.temple.edu/getdoc.asp?policy_no=03.70.02.

Part I: Introduction, and Approaches to International Law

Week 1: What is International Law? (May 16, 17)

Required Readings

Sean D. Murphy, *Principles of International Law*, Chapter 1, pp. 1-10.

DRW, pp 1-33.

43 pages

Study Questions (please choose just one of these questions, not both)

1. In their casebook, Dunoff, Ratner and Wippmann review two famous international law cases, regarding the Aouzou Strip and the Rainbow Warrior, respectively, which we will review at some length in class. The author argue that these two cases help illustrate the difference between the old or traditional and the new international law. How, specifically, do these cases illustrate this “old/new” divide, and what does the comparison tell us about what international law is like today?

Recommended Readings

Jost, Kenneth, “International Law,” *The CQ Researcher*, Vol. 14, No. 44, pp. 1049-1072, accessed at <http://www.thecqresearcher.com>; read pages 1049-1058.

Ian Brownlie, *Principles of Public International Law*, sixth edition (New York: Oxford University Press, 2003).

Antonio Cassese, *International Law*, 2nd edition (Oxford: Oxford University Press, 2005).

Mark W. Janis, *An Introduction to International Law*, 4th edition (New York: Aspen Publishers, 2003).

Malcolm Shaw, *International Law*, 5th edition (Cambridge: Cambridge University Press, 2003).

Week 2: Theoretical Approaches to International Law (May 18, 19)

Required Readings

Sean D. Murphy, *Principles of International Law*, pp. 10-28.

David Armstrong, Theo Farrell and Hélène Lambert, *International Law and International Relations* (Cambridge: Cambridge University Press, 2007), Chapter 3, pp. 69-113.

Abbott, Kenneth. Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal, "The Concept of Legalization," *International Organization*, Vol. 54, No. 3 (2000), pp. 401-419.

80 pages

Study Question

1. Two different disciplines – international law and international relations/political science – have produced theories to explain and understand what international law is and what role it plays in world affairs. Based on your readings, (a) list the key approaches from international law and international relations, respectively, and (b) identify which theory you find most useful, and explain what specifically your preferred theory tells us about international law.

Recommended Readings

Steven R. Ratner and Anne-Marie Slaughter, "Appraising the Methods of International Law: A Prospectus for Readers," *American Journal of International Law*, Vol. 93, No. 2 (April 1999), pp. 291-302 (skim pages 295-298).

Anne-Marie Slaughter Burley. "International Law and International Relations Theory: A Dual Agenda," *American Journal of International Law*, Vol. 87 (1993), pp. 205-39.

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005), Introduction and Chapter 1, pp. 3-43.

Richard Steinberg and Jonathan Zasloff, "Power and International Law," *American Journal of International Law*, Vol. 100 (2006), pp. 64-87.

Oona A. Hathaway and Ariel N. Lavinbuk, "Rationalism and Revisionism in International Law," *Harvard Law Review*, Vol. 119 (2006), pp. 1404-1443.

Andrew T. Guzman, *How International Law Works: A Rational Choice Theory* (New York: Oxford University Press, 2008).

Makau Mutua, "What Is TWAIL [Third World Approaches to International Law]?" 94

Proc. Am. Soc. Int'l. L. 31, 43-34 (2000).

Hilary Charlesworth, "Feminist Methods in International Law," *The American Journal of International Law*, Vol. 93, No. 2 (Apr., 1999), pp. 379-394.

Finnemore, Martha and Stephen Toope. 2001. "Alternatives to 'Legalization': Richer Views of Law and Politics." *International Organization*, 55:3, 743-58.

Goldstein, Keohane, Kahler, Slaughter. 2001. "Response to Finnemore and Toope," *International Organization* 55:3, 759-60.

Robert O. Keohane, "International Relations and International Law: Two Optics," *Harvard International Law Journal*, Vol. 38, No. 2 (Spring 1997), pp. 487-502.

Thomas Biersteker, Peter J. Spiro, Chandra Lekha Sriram, and Veronica Raffo, eds., *International Law and International Relations: Bridging Theory and Practice* (London: Routledge, 2007).

Oona Hathaway and Harold Hongju Koh, eds., *Foundations of International Law and Politics* (New York: Foundation Press, 2005).

Beth A. Simmons and Richard H. Steinberg, eds., *International Law and International Relations* (New York: Cambridge University Press, 2006).

Christian Reus-Smit, ed., *The Politics of International Law* (New York: Cambridge University Press, 2004).

Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, eds., *Legalization and World Politics* (Cambridge: MIT Press, 2001).

Anne Marie Slaughter, "A Liberal Theory of International Law," *Proceedings of the American Society of International Law* (2000), pp. 240-249.

Martti Koskenniemi, "The Politics of International Law," *European Journal of International Law*, Vol. 1, read pp. 4-13, 20-32.

B. Welling Hall, "The Standing of International Law in Undergraduate IR Texts," *International Studies Perspectives*, Vol. 4, No. 2, pp. 145–155.

Part II: Basics of the International Legal Order

Week 3: International Law Creation (Sources) (May 23, 24)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 3, pp. 65-108.

43 pages

Study Question

1. When most of us think of international law, we think of treaties among states, like the 1948 Peace of Westphalia or the 1992 North American Free Trade Agreement. Treaties are an important source of law, but not the only one. In an essay, identify the various sources of international law, and then describe, compare and contrast the basic features of treaty law and customary international law, respectively.

Recommended Reading

DRW, pp. 31-64, 70-99.

Kenneth A. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," in Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, eds., *Legalization and World Politics* (Cambridge: MIT Press, 2001).

Koremenos, Barbara. Charles Lipson, Duncan Snidal. 2001. "The Rational Design of International Institutions." *International Organization* 55 (4), pp. 761-799.

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005), Chapter 4, pp. 83-106.

Laurence Helfer, *Exiting Treaties*, 91 VA. L. REV. 1579 (2005).

Swaine, Edward T., "Reserving," *Yale Journal of International Law*, Vol. 31, No. 2 (2006).

Laurence Helfer, *Not Fully Committed? Reservations, Risk and Treaty Design*, *Yale Journal of International Law*, Vol. 31, No. 2 (2006).

Andrew Guzman, "Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties," *Virginia Journal of International Law*, Vol. 38 (1998), pp. 639-88.

Raustiala, Kal, and David G. Victor (2004). "The Regime Complex for Plant Genetic Resources," *International Organization*, Vol. 58, No. 2, pp. 277-309.

Berman, Paul, "Global Legal Pluralism," *Southern California Law Review*, Vol. 80 (2007), pp. 1155-1237.

Week 4: Actors in International Law (May 25, 26)

Required Readings

Sean D. Murphy, *Principles of International Law*, Chapter 2, pp. 31-63.

Study Question

1. The term “international law” implies a body of law that is exclusively concerned with states as actors. Is this depiction accurate? Are other types of actors important in international law? If so, which ones, and how do they matter? If not, why not?

Recommended Readings

DRW, pp. 107-143 [on states], 171-197 (on IOs), and 201-234 (on NSAs).

Jan Klabbers, *An Introduction to International Institutional Law* (New York: Cambridge University Press, 2003).

Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions*, 5th edition (London: Sweet & Maxwell, 2001).

José E. Alvarez, *International Organizations as Law-Makers* (New York: Oxford University Press, 2006).

Dan Sarooshi, *International Organizations and their Exercise of Sovereign Powers* (New York: Oxford University Press, 2007).

Ulrike Morth, ed., *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Edward Elgar 2005).

John J. Kirton and Michael J. Trebilcock, eds., *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment, and Social Governance* (London: Ashgate, 2004).

Week 5: Interpreting International Law (International Courts and Tribunals) (May 31)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 4, pp. 109-151.

John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 7, pp. 250-283; Chapter 8, skim 284-312, read 312-319.

82 pages

Study Questions (please choose one, not both!)

1. There are a growing number of international courts and tribunals, ranging from the WTO Dispute Settlement Body to the International Criminal Tribunal for the former Yugoslavia, but there is only one international court with general jurisdiction, and that is the International Court of Justice (ICJ). As you will see in this week's readings, the United States played a key role in the establishment of the ICJ, but has had a difficult relationship with the Court since then. What is the US position toward the ICJ, according to this week's readings? What criticisms of the ICJ do you find in the literature and in the position of the US government, and how convincing do you find them?
2. International humanitarian law has long specified rules for the conduct of armed conflicts, but the development of international tribunals to judge war crimes and other related crimes is a relatively new development, most notably with the establishment in 2002 of a new International Criminal Court (ICC). What are the basic provisions of the ICC? What are the arguments against US accession to the ICC, and what are the arguments in favor? Which do you find more convincing, and why?

Recommended Reading

Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, "Legalized Dispute Resolution: Interstate and Transnational," in Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, eds., *Legalization and World Politics* (Cambridge: MIT Press, 2001).

James McCall Smith, "The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts," *International Organization*, Vol. 54 (2000), pp. 137-180.

Gordon, Edward, Steven J. Burton, Richard Falk, Thomas M. Franck, and Constantine Nezis. 1989. "The Independence and Impartiality of International Judges," *American Society of International Law Proceedings*, Vol. 83, pp. 508-29.

Romano, Cesare. 1999. "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle." *New York University Journal of International Law and Politics*, Vol. 31, pp. 709-51.

Helfer, Laurence, and Anne-Marie Slaughter. 1997. "Toward a Theory of Effective Supranational Adjudication," *Yale Law Journal* 107 (2): 273-391.

Posner, Eric A., and John C. Yoo. 2005. "Judicial Independence in International Tribunals," *California Law Review*, Vol. 93, pp. 1-74.

Helfer, Laurence, and Anne-Marie Slaughter. 2005. "Why States Create International Tribunals: A Response to Professors Posner and Yoo," *California Law Review* 93 (May), pp. 3-58.

Posner, Eric, and Michael de Figueiredo (2005). "Is the International Court of Justice Biased?" *Journal of Legal Studies*, Vol. 34, pp. 599-630.

Daniel Terris, Cesare P.R. Romano, and Leigh Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (Lebanon, New Hampshire: Brandeis University Press, 2007).

Carnegie Council video, "The International Judge,"
<http://www.cceia.org/resources/video/data/000047>.

Week 6: Compliance and Enforcement (June 1, 2)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 5, pp. 153-77.

Von Stein, Jana (2010). "International Law: Understanding Compliance and Enforcement," in Robert A. Denmark, ed., *The International Studies Encyclopedia* (London: Wiley-Blackwell), pp. 1-16.

40 pages

Study Question

1. One frequent question is why states would ever comply with international law, given that there is no global sovereign to enforce the law. Yet, many scholars have observed that most states obey most of their international legal obligations most of the time. What specific reasons do this week's authors give for why states would comply with international law? Which of these reasons seems most important to you, and why?

Recommended Reading

Paulson, Colter (2004). "Compliance with Final Judgments of the International Court of Justice since 1987," *The American Journal of International Law*, Vol. 98 (3), pp. 434-461.

Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance," in Walter Carlsnaes, Thomas Risse and Beth A. Simmons, eds., *Handbook of International Relations* (Thousand Oaks, CA: Sage, 2002), pp. 538-558.

Koh, Harold H. 1997. "Why Do Nations Obey International Law?" *Yale Law Journal*, Vol. 106, No. 8, p. 2599.

Harold Hongju Koh, "Bringing International Law Home," *Houston Law Review*, Vol. 35, No. 3 (Fall 1998), pp. 623-681.

Robert O. Keohane, "When Does International Law Come Home?" *Houston Law Review*, Vol. 35, No. 3 (Fall 1998) pp. 699-713.

Paulson, Colter. 2004. "Compliance with Final Judgements of the International Court of Justice since 1987," *The American Journal of International Law*, Vol. 98 (3), pp. 434-461.

Ronald B. Mitchell, "Regime Design Matters: International Oil Pollution and Treaty Compliance," *International Organization*, Vol. 48, No. 3 (Summer 1994), reproduced in Martin & Simmons, *International Institutions*, pp. 103-136.

David G. Victor, Kal Raustiala, and Eugene B. Skolnikoff, *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (Cambridge: MIT Press, 1998), chapters 1, 16 (pp. 1-46, 659-707).

Oran Young, ed., *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms* (Cambridge: MIT Press, 1999), chapters 1, 5 (pp. 1-32, 249-279).

Harold K. Jacobson and Edith Weiss, "Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Comparative Project," *Global Governance*, Vol. 1 (1995), pp. 119-48.

Abraham Chayes and Antonia Handler Chayes, "On Compliance," *International Organization*, Vol. 47, No. 2 (1993), pp. 172-205.

George W. Downs, David M. Roche, and Peter M. Barsoom, "Is the Good News About Compliance Good News About Cooperation?" *International Organization*, Vol. 50, No. 3 (Summer 1996), pp. 379-406.

George W. Downs, "Enforcement and the Evolution of Cooperation," *Michigan Journal of International Law*, Vol. 19, No. 2 (1998), pp. 319-44.

George W. Downs, "Constructing Effective Environmental Regimes," *Annual Review of Political Science*, Vol. 3 (1998), pp. 25-42.

George W. Downs, David M. Roche, and Peter M. Barsoom, "The Transformational Model of International Regime Design: Triumph of Hope or Experience?" *Columbia Journal of Transnational Law* (2000).

Raustiala, Kal (2000). "Compliance and Effectiveness in International Regulatory Cooperation," *World Politics*, Vol. 49, No. 4, pp. 482-509.

Jonas Tallberg, "Paths to Compliance: Enforcement, Management, and the European Union," *International Organization*, Vol. 56 (August 2002), pp. 609-43.

Week 7: International Law and Domestic Law (June 6, 7)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 7, pp. 199-234.

John F. Murphy, *The United States and the Rule of Law in International Affairs*, Introduction, pp. 1-10; and Chapter 2, pp. 74-109.

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), pp. 657-69 [on the use of foreign and international sources in constitutional interpretation].

82 pages

Study Questions (please choose one, not both!)

1. One major element of US foreign relations law has to do with the constitutional separation of powers when it comes to the making of US foreign policy. What are the core powers of the legislative, executive and judicial branches in the making of US foreign policy, and especially in wartime? Is this division of powers clear and unambiguous? Why or why not?
2. What is the general status of international law in United States courts? Summarize the general situation in a few paragraphs, and then explore the difficulties posed by *one* of the three following situations: (1) the use of the Alien Tort Statute to punish foreign individuals for violations of law in US courts; (2) the rights of foreign citizens to consular assistance in US criminal cases (discussed in the readings from Week 5); or (3) the use of foreign or international law sources by US governments in interpreting the US constitution or US law.

Recommended Reading

DRW, Chapters 5 and 6.

Sean D. Murphy, *Principles of International Law*, Chapter 8, pp. 237-58, on jurisdiction.

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), pp. 569-609 [on customary international law in US courts, and the Alien Tort Statute], and pp. 657-69 [on the use of foreign and international sources in constitutional interpretation].

Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach*, second edition (Aspen Law and Business Publishers, 2006), pp. 293-306 [on Breard and consular cases].

Peter J. Spiro, "The New Sovereignists: American Exceptionalism and its False Prophets," *Foreign Affairs*, Nov/Dec 2000.

David Zaring, "The Use of Foreign Decisions by Federal Courts: An Empirical Analysis," *Journal of Empirical Legal Studies*, Vol. 3, No. 2 (July 2006), pp. 297-331.

Part III: Topics in International Law

Week 8: Human Rights Law (June 8, 9)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 7, pp. 293-337.

John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 9, pp. 325-338.

Andrew Moravcsik, "Why Is U.S. Human Rights Policy So Unilateralist?" in Shepard Forman and Patrick Stewart, eds., *The Cost of Acting Alone: Multilateralism and US Foreign Policy* (Boulder: Lynne Rienner Publishers, 2001), pp. 345-376.

88 pages

Study Question

1. International human rights law is an area of intense debate in international law and international relations, particularly with respect to whether the raft of universal and regional human rights treaties really makes a difference to the behavior of states and their respect for the human rights of their citizens (see recommended readings). But our focus this week is on a different question: Why, according to this week's readings, has the United States, despite its strong record of human rights protection and its championing of human rights abroad, been reluctant to champion, or even to sign and ratify, international treaties devoted to the protection of human rights? Are these reasons compelling, in your view, or should the United States overcome its reluctance and embrace all existing human rights treaties?

Recommended Reading

DRW, Chapter 7.

Goldsmith and Posner, *The Limits of International Law*, Chapter 4.

Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, Vol. 111 (2001-2002), pp. 1935-2042.

Moravcsik, Andrew. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54(2), pp. 217-252.

Week 9. The Law of the Sea and Environmental Law (June 13, 14)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 11, pp. 339-367, and Chapter 12, pp. 369-402.

John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 6, pp. 226-49 (on the Law of the Sea) and 338-44 (on environmental law and the Kyoto Protocol).

92 pages

Study Question

1. This week, we encounter two related bodies of law: the first, the law of the sea, is one of the oldest areas of international law, while the second, environmental law, is a relatively recent and rapidly growing area of international law. In both areas, however, we find the United States deeply conflicted about whether to embrace international treaties such as the Law of the Sea Convention (LOSC) or the Kyoto Protocol. We will discuss both issues in class, but for your essay, please focus on LOSC: What are the core provisions of this convention, and what has been the United States position toward the treaty? What are the arguments for and against US participation? Which do you find more convincing, and why?

Recommended Reading

DRW, Chapter 10 (skim) and 11 (read).

John Norton Moore and William L. Schachte Jr., "The Senate Should Give Immediate Advice and Consent to the UN Convention on the Law of the Sea: Why the Critics are Wrong," *Journal of International Affairs*, Vol. 59, No. 1 (Fall/Winter 2005), pp. 1-23.

Doug Bandow, "Don't Resurrect the Law of the Sea Treaty," *Journal of International Affairs*, Vol. 59, No. 1 (Fall/Winter 2005), pp. 25-41.

Daniel Bodansky, Jutta Brunnée, and Ellen Hey, eds., *The Oxford Handbook of International Environmental Law* (New York: Oxford University Press, 2007).

Philippe Sands, *Principles of International Environmental Law* (New York: Cambridge University Press, 2003).

Philippe Sands. 2006. *Lawless World*. Chapter 4 (Global Warming: throwing Precaution to the Wind), esp. pp. 76- 89; and 323-328 (Treaty texts).

Week 10: The Use of Force I: Jus ad bellum, Humanitarian Intervention, and Pre-Emptive War in Iraq (June 15, 16)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 14, pp. 439-55.

John F. Murphy, *The United States and the Rule of Law in International Affairs*, Chapter 4, pp. 142-181.

DRW, Chapter 13, pp. 875-915 (on the wars in Iraq).

Study Questions

1. International law has long made a distinction, drawn from medieval just war theory, between *jus ad bellum* and *jus in bello*. What do these two terms mean, and what are the basic provisions of international law relating to *just ad bellum*?
2. Much of the international legal system in general, and the UN Charter in particular, are based on the notion of state sovereignty, which would seem to rule out any possibility of “humanitarian” military intervention by one state in the internal affairs of another state. As a matter of law – as opposed to politics or morality – is it possible to posit a legal basis for a right to intervene in the internal affairs of another state for humanitarian purposes? If so, what would be the legal basis and the legal conditions for engaging in such an intervention?
3. In 2003, with the support of some of its allies such as the United Kingdom, invaded Iraq and overthrew the government of Saddam Hussein. Was this invasion legal? In a brief essay, spell out the basic case in favor and against the legality of the US invasion. Which argument do you find more convincing, and why?

Recommended Reading

DRW, Chapter 13, pp. 932-957 (on UN peacekeeping, humanitarian intervention, and the case of Kosovo).

Michael Byers, *War Law*, Part III, chapters 7-9, pp. 85-111.

Christine Gray, *International Law and the Use of Force* (New York: Oxford University Press, 2004).

Nicholas J. Wheeler and Alex J. Bellamy, “Humanitarian Intervention,” in *The Globalization of World Politics*, in John Baylis and Steve Smith, eds. (Oxford University Press, 2004), pp. 555-578.

On the War in Iraq

W. Michael Reisman, *Assessing Claims to Revise the Laws of War*, 97 AM. J. INT'L L. 82 (2003).

John Yoo, *International Law and the War in Iraq*, 97 AM. J. INT'L L. 563 (2003).

Thomas M. Franck, *What Happens Now? The United Nations After Iraq*, 97 AM. J. INT'L L. 607 (2003).

Jane E. Stromseth, *Law and Force after Iraq: A Transitional Moment*, 97 AM. J. INT'L L. 628 (2003)

Frontline film, "Bush's War," <http://www.pbs.org/wgbh/pages/frontline/bushswar/>.

Week 11: The Use of Force II: Jus in Bello, and the War on Terror (June 20, 21)

Required Reading

Sean D. Murphy, *Principles of International Law*, Chapter 14, pp. 455-66.

DRW, pp. 983-1031 [you can skim pp. 984-999].

Jeffrey Rosen, "Conscience of a Conservative," *The New York Times Magazine*, Sept. 9, 2007, available on-line at:

http://www.nytimes.com/2007/09/09/magazine/09rosen.html?_r=1&oref=slogin.

70 pages

Study Questions

The September 11th, 2001, attacks on the United States, and the Bush Administration's subsequent "war on terror" raised an enormous variety of legal as well as political and moral questions, including the impact (if any) of international law (e.g., the Geneva Conventions) in US behavior; the power of the Presidency vis-à-vis the other branches of government in US foreign relations law; and specific questions about the designation of detainees, the use and institutional set-up of military commissions, the use of extraordinary rendition and/or torture, and the conduct of warrantless wiretapping. We cannot cover all of these issues this week, but in a brief essay, consider one of the two following sets of questions:

1. What do the Geneva Conventions say about the rights of prisoners of war? To whom did the Bush Administration decide that the rights spelled out in the Geneva Conventions applied – put more simply, who's covered, and who isn't? Is the Bush position legally defensible? Why or why not?
2. In terms of US foreign relations law, what new or novel claims did the Bush Administration make about executive powers to conduct an ongoing war on terrorism, particularly vis-à-vis the other branches of government? Did the Bush Administration's reading of Article 2 of the Constitution undermine the Constitution, or simply adapt it to the realities of a war against a new type of enemy?

Recommended Reading

Curtis A. Bradley and Jack L. Goldsmith, *Foreign Relations Law: Cases and Materials*, third edition (New York: Wolters Kluwer, 2009), Chapter 5 [War on Terrorism], pp. 289-383.

Jack L. Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (New York: W.W. Norton, 2007), Chapters 3-6 and Afterward, pp. 71-233.

DRW, 625-637 [on wartime abuses and Abu Ghraib], 652-667 [on the ICC].

Philippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values* (New York: Palgrave Macmillan, 2009).

Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals* (New York: Doubleday, 2008).

John Yoo, *War by Other Means: An Insider's Account of the War on Terror* (New York: Atlantic Monthly Press, 2006).

Derek Jinks, *The Rules of War: The Geneva Conventions in the Age of Terror* (New York: Oxford University Press, 2005).

Frontline film: "Rules of Engagement," available at:
<http://www.pbs.org/wgbh/pages/frontline/haditha/>.

Jack Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (New York: W.W. Norton, 2007).

Catherine A. McKinnon, "Women's September 11th: Rethinking the International Law of Conflict," *Harvard Journal of International Law*, Vol. 47, pp. 1-31.

Frontline film, "Cheney's Law," <http://www.pbs.org/wgbh/pages/frontline/cheney/view/>.

Frontline film, "The Torture Question,"
<http://www.pbs.org/wgbh/pages/frontline/torture/view/>.

Jack Goldsmith, "Influence of Lawyers in the War on Terror,"
<http://video.google.com/videoplay?docid=-8871010591802593792&q=Jack+Goldsmith+terror&ei=neVfSJ-FA5WgqgKWpomhDQ>.

Week 13: Conclusions and Review (June 27)