

Fall Semester 2010

MC 362: Public International Law

Monday/Wednesday 3:00-4:20pm, 342 North Case Hall

Professor: Mark Axelrod

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362 North Case Hall

Office Hours: Tuesdays 11:00am-noon and Wednesdays 4:30-5:30pm

I have set aside these times for student meetings, and it is helpful for me if you can meet during those hours. However, I understand that these slots will not fit everyone's schedule. If these times do not work for you, please email to arrange a different time.

Introduction

Public international law has traditionally focused on regulating interactions between sovereign states. This class provides a wide-ranging introduction to the subject, focusing on the tension between legal commitments and national sovereignty. Throughout the semester we will explore areas in which this friction is most clearly experienced. During the first part of the semester, we will address the design and sources of international law, and the conditions under which they apply. Following the midterm exam, we will explore a variety of issue areas ranging from the laws of war to economic responsibilities. The course will conclude with an examination of the broader international legal system and concerns raised by it.

Learning Objectives

By the end of this course, you will be able to:

- Identify and analyze sources of international law
- Recognize the scope of international law and conditions under which it has been effective
- Read, summarize, and grasp the significance of, individual judicial decisions
- Assess the conditions under which legal action is most effective
- Craft legal arguments on the basis of existing international law sources
- Be able to defend your position on whether international law influences state and individual behavior

Course Meetings

We will meet twice every week. Class will focus on discussion of the readings for that week, and their application to current events. It is essential that all class members contribute to the conversation so that we can learn from different points of view. You are expected to prepare, attend, and participate every time we meet. **Please contact me in advance if you are unable to be there.**

We will have animated discussions about many controversial topics. You should be prepared to support your position with evidence, and are encouraged to disagree with me and with each other, but **you must be respectful of each other's views.**

Finally, although laptops may be useful for note-taking and information gathering, they can also provide a major distraction to you and others sitting around you. Recent research shows that "multitasking" significantly reduces your ability to process information (see "Digital Devices Deprive Brain of Needed Downtime," <http://www.nytimes.com/2010/08/25/technology/25brain.html>).

You may use laptops and other electronic devices during class for class-related purposes only. Please do so in a way that is respectful of the shared learning environment.

[Grading details follow on the next page.]

Grading and Assignments

All written assignments must be submitted *on paper*. You are strongly encouraged to discuss all projects with me during office hours.

1. Attendance, preparation, and quality participation (**10% of the final grade**) [This grade may include up to three quizzes on the assigned readings and related current events.]
2. Case Brief (**5% of the final grade**) – Case briefs provide an efficient way to summarize key points of legal decisions. They are useful for identifying important lessons and helping to study for exams. While you are encouraged to brief every case we discuss, each student will be responsible for submitting a brief of one judicial decision (selected in class on September 13). We will practice by preparing one brief together during the third week of class. Your case brief is ***due at the beginning of class on the day your case is discussed***. Following the discussion, you may be encouraged to revise the brief for increased credit. The final version will be shared with classmates and available for final exam preparations.
3. Case Study Assignment – in-class discussion (**7% of the final grade**) and written response (**8% of the final grade**) ***due at the beginning of the following class period*** [Please see details on page 7.]
4. Research Proposal and Paper – For the research paper, you will select one case that has been adjudicated by an international court or tribunal. ***Your proposal is due at the beginning of class September 29, first draft is due at the beginning of class November 15, and the final paper is due at the beginning of class December 6 (25% of the final grade – 5% for proposal; 5% for first draft; 15% for final paper)*** [Please see additional details on page 8.]
5. Midterm Exam – ***in class, October 27 (20% of the final grade)***
6. Final Exam – ***Wednesday December 15, 3:00-5:00pm (25% of the final grade)***

For all assignments, late papers (unless accompanied by a doctor's note or other verified excuse) will receive a reduction of one letter grade for every two days after the deadline (i.e., 1 minute to 48 hours late reduces grade by 1.0; 48-96 hours late reduces grade by 2.0). If you have some extenuating circumstance that requires an extension for the final paper, you must request such an extension at least 72 hours prior to the deadline.

PLEASE NOTE THAT THIS COURSE WILL BE CONDUCTED IN LINE WITH MADISON COLLEGE POLICIES ON ACADEMIC DISHONESTY. Among other requirements, that means that you must cite the source of any and all facts or ideas in your written assignments. Please also remember that the internet is a powerful source of information. While it may ease your research efforts, it can also help to identify your use of other people's work.

IF IN DOUBT, I WILL BE HAPPY TO DISCUSS THE PROPER COURSE OF ACTION.

Honors Option: Interested students may participate in an honors option related to human rights law. We will read Beth Simmons' new book, Mobilizing for Human Rights (2009), a political science view of international law effectiveness. It is available at local bookstores or online. As per Madison College rules, you must maintain at least a 3.5 grade in the course to be eligible for honors credit. To receive H-credit, you will participate in all group meetings and prepare a presentation on the book for the rest of your classmates. Please contact me by September 13 if you would like to participate.

Course Readings

The study of law requires that you think critically about complex issues. ***Please do not accept all course readings at face value. I have not chosen them because I agree with everything written, nor do I expect that you agree with their conclusions.*** Rather, I think they represent good entry points into the topics that we will study, and they generally do a good job of identifying the interesting issues on those topics. However, ***you should approach readings (and class discussions) with a healthy degree of skepticism.*** That will help you gain a better understanding of the subject matter and will make you a better student as well.

You will be best served by reading all assigned materials *before* the session noted in this syllabus. I realize that there is a significant amount of reading assigned. This load is necessary to grasp a broad range of cases while simultaneously understanding the nuance provided by each. Class discussion will center around the case material assigned. As a result, you will need to be familiar with these events and ideas before coming to class, and you are also strongly encouraged to bring the book with you for reference.

Please note that questions in the textbook are part of the required readings. You should be prepared to answer them in class, and occasionally in writing.

1) The following book will serve as our class textbook. Unfortunately, it is not available at MSU bookstores due to an ordering error. However, it should be easy to find at low prices online: Dunoff, Jeffrey L., Steven R. Ratner, and David Wippman. **2006.** *International Law: Norms, Actors, Process: A Problem-Oriented Approach. 2nd Edition.* New York: Aspen Law & Business. (ISBN: 0735557349)

[Please note that a third edition was released this summer. While you are welcome to purchase that version, it is significantly more expensive and has different page numbers than those indicated in this syllabus. Please note that other required readings will supplement the textbook with more current events. In addition, the authors have provided updated material for each chapter on their website (<http://www.temple.edu/lawschool/drwiltext/updates.htm>). It is also required reading.]

2) Unless otherwise noted, all journal articles are available online through the MSU library website. Case study materials will be posted on, or linked from, our course Angel page. Book chapters and other readings will be available on reserve, or linked from the Angel page as well. If you prefer, you may instead purchase a course pack with all these materials. Details will be discussed during the first day of class.

3) You are expected to keep track of news and current events about international relations. *The New York Times* (available online or in Case Hall!) has excellent reporting on these topics, and you are expected to be aware of current events reported there. I encourage you to also look at other US and foreign news resources available on line. In addition to newspapers, I recommend the weekly “International Law in Brief” from the American Society of International Law (available to view and subscribe at <http://www.asil.org/electronic-publications.cfm>). Many news articles are included in our case studies, and I will often forward new articles as well. These items are part of your required class readings. You are expected to read them before, and be prepared to discuss them during, class.

4) Finally, I will of course be happy to recommend supplementary readings on topics that interest you, or on which you are writing the course paper.

Schedule and Readings

Wednesday, September 1 – Introduction

- Dunoff/Ratner/Wippman (hereinafter DRW), chapter 1 (pp. 3-33)
- Slaughter Burley, Anne-Marie. 1993. International Law and International Relations Theory: A Dual Agenda, *American Journal of International Law* 87(2): 205-239 [feel free to skip part III of this article]

Monday, September 6 (NO CLASS – LABOR DAY)

September 8 – What is law? What is public law? And is International Law a form of law?

- Selections from: Damrosch, Lori F. 2001. *International Law : Cases and Materials*. 4th ed, *American Casebook Series*. St. Paul, Minn.: West Group. (“Historical Introduction”, pp. xxvii-xxxvi; “International Law As Law”, pp. 16-40) [reserve]
- Recommended: Chris Whytock, *Thinking Beyond the Domestic-International Divide: Toward a Unified Concept of Public Law*, 36 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 155 (2004).

September 13 – Sovereignty and Anarchy: Classic notions, realism, and other ways to imagine a state system [all readings on reserve]

- Krasner, Stephen D. 1999. *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press, pp. 9-25 [reserve]
- Selections from: Herbst, Jeffrey Ira. 2000. *States and Power in Africa: Comparative Lessons in Authority and Control, Princeton Studies in International History and Politics*. Princeton, N.J.: Princeton University Press. [reserve]
- Jackson, Robert H. 1990. *Quasi-States: Sovereignty, International Relations, and the Third World, Cambridge Studies in International Relations*. Cambridge [England] ; New York: Cambridge University Press, chapter 1 [reserve]
- Recommended: Selections from: Gross, Leo. 1948. The Peace of Westphalia, 1648-1948. *American Journal of International Law* 42 (1):20-41.

September 15 – Treaties and the delegation of sovereignty [discussion will spill over to September 20]

- Krasner, Stephen D. 1999. *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press, pp. 25-40 [reserve]
- DRW, pp. 35-74

September 20 – Customary International Law

- DRW, pp. 74-105

September 22 – States, Part I

- DRW, pp. 107-156
- Case Study: Legality of Kosovo’s Declaration of Independence

September 27 – States, Part II and Inter-governmental Organizations/Courts

- DRW, pp. 157-200
- Raustiala, Kal, and Anne-Marie Slaughter. 2002. International Law, International Relations and Compliance. In *Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse and Beth Simmons, 538-58. Thousand Oaks, CA: Sage, available at [http://www.law.ucla.edu/raustiala/publications/International Law, International Relations and Compliance.pdf](http://www.law.ucla.edu/raustiala/publications/International%20Law,%20International%20Relations%20and%20Compliance.pdf)
- US Department of State, “ADHERENCE TO AND COMPLIANCE WITH ARMS CONTROL, NONPROLIFERATION, AND DISARMAMENT AGREEMENTS AND COMMITMENTS (SKIM Table of Contents and Introduction; READ pp. 8-9 on START compliance), <http://media.washingtonpost.com/wp-srv/nation/documents/july2010compliancereport072710.pdf?sid=ST2010072800064>

Public International Law – Syllabus, Fall 2010

- Recommended: Koh, Harold. 1997. Why Do Nations Obey International Law? *Yale Law Journal* 106: 2598-659.

September 29 – Regional Integration Organizations

[Research Proposal Due at the Beginning of Class]

- Cooley, Alexander, and Hendrik Spruyt. 2009. *Contracting States : Sovereign Transfers in International Relations*. Princeton: Princeton University Press, chapter 5 (pp. 142-185). [reserve]
- New York Times, “Times Topics: Treaty of Lisbon,” <http://www.nytimes.com/info/treaty-of-lisbon/?scp=1-spot&sq=lisbon%20treaty&st=cse>
- BBC News, “Q&A: The Lisbon Treaty,” <http://news.bbc.co.uk/2/hi/europe/6901353.stm>
- Case study: The European Volcanic Ash Crisis
- Recommended:
 - o Helfer, Laurence R., and Karen Alter. 2010. Nature or Nurture? Judicial Lawmaking in the European Court of Justice and the Andean Tribunal of Justice. *International Organization* 64(4), http://scholarship.law.duke.edu/working_papers/3/.
 - o Alter, Karen J. 1998. Who Are The "Masters of the Treaty?:" European Governments and the European Court of Justice. *International Organization* 52(1): 121-47.
 - o Weiler, J.H.H. 1991. The Transformation of Europe. *Yale Law Journal* 100(8): 2403-83.

October 4 – Non-state actors: Non-governmental organizations and individuals

- DRW, pp. 201-234 and 251-265
- Case study: Private participation in WTO cases

October 6 – International and Domestic Law/Politics: Negotiating and Joining International Agreements

- DRW, 273-293
- New York Times, “Uncertainty in Senate Over Hearing on Russia Treaty,” <http://www.nytimes.com/2010/07/29/world/europe/29arms.html>
- Case study: US Participation in the Kyoto Protocol
- Mayer, Frederick. 1998. *Interpreting NAFTA : the science and art of political analysis*. New York: Columbia University Press. Chapter 7, available at: <http://www.ciaonet.org.proxy2.cl.msu.edu/book/mayer/mayer07.html> (MSU login required; if the link is broken, you can search for the title through the library home page).
- Recommended: DeSombre, Elizabeth R. 2000. *Domestic sources of international environmental policy: industry, environmentalists, and U.S. power*. Cambridge, MA: MIT Press.

October 11 – International and Domestic Law: compliance and incorporation

- DRW, 263-267 and 315-353
- Recommended: Whytock, Chris. 2009. Domestic Courts and Global Governance, *Tulane Law Review*, 84: 69.

October 13 – International and Domestic Law: when international and domestic law conflict

- DRW, 234-250 and 293-315

October 18 – Jurisdiction, Part I

- DRW, 355-398
- Case Study: Universal Jurisdiction in Belgium

October 20 – Jurisdiction: criminal law and sovereign immunity

- DRW, 398-435
- Case study: Prosecuting Somali pirates

October 25 – Jurisdiction: using foreign or international law in domestic courts

- Case study 1: Customary International Law in Indian courts
- Case study 2: Alien Tort Claims Act
- Recommended: Putnam, Tonya L. 2009. Courts Without Borders: Domestic Sources of U.S. Extraterritoriality in the Regulatory Sphere, *International Organization*, 63(3): 459-490.

October 27 – **Midterm Exam** (covering all material through October 25)

November 1 – Use of Force I

- DRW, 873-937
- Case Study: Andean Crisis of 2008

November 3 – Use of Force II: Humanitarian Intervention

- DRW, 937-957
- Chesterman, Simon, and Michael Byers. 1999. Has Us Power Destroyed the UN? *London Review of Books* 21(9).
- Annan, Kofi. 18 September 1999. Two Concepts of Sovereignty. *The Economist*.
- Case Study: Darfur

November 8 – Humanitarian Law

- DRW, 527-605
- Case Study: Extraordinary Rendition

November 10 – Human Rights I

- DRW, 437-487

November 15 – Human Rights II

[First Draft of Paper is due at the beginning of class]

- DRW, 487-526
- Case Study: Sakineh Mohammadi Ashtiani

November 17 – International Criminal Law and Tribunals/ICC

- DRW, 607-693
- New York Times, “Khmer Rouge Figure Is Found Guilty of War Crimes,” <http://www.nytimes.com/2010/07/26/world/asia/26cambo.html>
- Jackson, Robert H. 1949. Nuremberg in Retrospect: Legal Answer to International Lawlessness. *American Bar Association Journal* 35: 813-16, 81-87. <http://www.roberthjackson.org/files/thecenter/files/bibliography/1940s/nuremberg-in-retrospect.pdf>

Evening Film Viewing: *The Trial of Adolf Eichmann* (1997) (time and location to be announced)

- Other Recommended Films: *Ghostwriter* (2010) and *Judgment at Nuremberg* (1961)

November 22 – Law of the Sea [By class vote, we may instead cover the chapter on “Protecting the International Environment”]

- DRW, 701-760 [or 761-826]
- Case Study: Russia's Claim in the Arctic [or Argentina-Uruguay Pulp Mill Dispute]

November 24 – NO CLASS; replaced with film screening, November 17

November 29 – Economic Law: Trade/Investment (states v states and individuals v states)

- DRW, 827-846 and 859-872
- Case study: WTO Foreign Sales Corporations case

December 1 – Systemic Approaches to the Negotiation and Implementation of International Law

- Kingsbury, Benedict. 1999. "Foreword: Is the Proliferation of International Courts and Tribunals a Systemic Problem?" *N.Y.U. Journal of International Law & Policy* 31:679.
- Case Study: the Chilean Swordfish Case
- Helfer, Laurence. 2009. Regime Shifting in the International Intellectual Property System, 7 *Perspectives on Politics* 7:39-44.

Public International Law – Syllabus, Fall 2010

- Recommended: Pauwelyn, Joost and Luiz Eduardo Salles. Forum Shopping Before International Tribunals: (Real) Concerns, (Im)Possible Solutions. *Cornell International Law Journal* 42 (1): 77-118. <http://organizations.lawschool.cornell.edu/ilj/issues/42.1/CIN104.pdf>

December 6 – Challenges of legitimacy and relevance?

[Final paper due at the beginning of class]

- DRW, 959-1031

December 8 – Conclusion and 3 optics of international law

- DRW, 1031-1071
- Chimni, B.S. 2004. International Institutions Today: An Imperial Global State in the Making. *European Journal of International Law* 15(1): 1-37. <http://www.ejil.org/pdfs/15/1/334.pdf>
- Recommended: Anghie, Antony. 2006. The Evolution of International Law: Colonial and Postcolonial Realities. *Third World Quarterly - Journal of Emerging Areas* 27: 739-53.

Final Exam Review Session – Date/Time to be determined

Final Exam Period – Wednesday December 15, 3:00-5:00pm

Case Study Assignment

During the semester, we will discuss 15 case studies of recent and ongoing international disputes. Many of these cases are more recent than even the new edition of our textbook. The readings are drawn from news articles, internet resources, and the ASIL Insight series. Professor Axelrod will often provide additional questions, in advance, to focus the discussion. All cases, and their supporting materials, are required course readings and may be included on the midterm and final exam. In addition, based on in-class signup September 8, you will each be assigned to write about, and lead discussion on, one of the case studies. The assignment involves the following:

1. Each student will be assigned one side in the discussion of a case. Your position will address legal or other alternatives to solve the dispute in question. You are strongly encouraged to discuss your position in advance of class with your colleague on the other side of the issue.
2. *Participate actively in the class discussion.* You will be called upon to present your position on the case during class, providing support for your position and challenging the position taken by the other student. We will not undertake a formal debate format, but you should be prepared to represent your position and respond to questions from other students and Professor Axelrod. Your leadership in the classroom discussion counts for 7% of your overall semester grade.
3. *Write a 3-5 page double-spaced memo in support of your assigned position. Memos (in hard copy) are due at the beginning of the class period following our discussion of the case.* Although your memo should draw on class discussions, it must be your own individual work. Obviously, in 3-5 pages you will not be able to address all issues raised in the case. Therefore, I recommend that you select one or two unique aspects, providing the strongest possible legal and policy support for your conclusion and identifying any potential weaknesses in your position. This memo counts for 8% of your overall semester grade.

Whether you are leading discussion or participating in your regular capacity, you will learn a lot more from these cases if you prepare carefully. I suggest the following webpage for ideas about successful case preparation and classroom participation strategies:

<http://www.soc.ucsb.edu/projects/casemethod/guidelines.html>

Research Paper Assignment

Your final research paper will assess the history of a case that has been adjudicated by an international court or tribunal, but has not been discussed in class this semester.¹ This assignment requires you to grasp the origins and influences of a particular international dispute. It is designed to strengthen your legal research abilities, learn about particular cases in international law, and enhance your writing skills. You may select a case from any international court or tribunal, but the following list identifies some of the more active institutions:

International Court of Justice (<http://www.icj-cij.org/>)

International Criminal Court (<http://www.icc-cpi.int/>)

International Criminal Tribunal for the Former Yugoslavia (<http://www.icty.org/>)

International Criminal Tribunal for Rwanda (<http://liveunictr.altmansolutions.com/>)

World Trade Organization Dispute Settlement Body and Appellate Body

(http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm#results)

Inter-American Court of Human Rights (<http://www.corteidh.or.cr/index.cfm?CFID=616240&CFTOKEN=80999452>)

European Court of Justice (http://curia.europa.eu/jcms/jcms/j_6/)

European Court of Human Rights (<http://www.echr.coe.int/echr/>)

The project will take place in three stages, all of which are due in hard copy on the dates noted below. First, **research proposals are due** at the beginning of class **September 29**. Proposals should be 1-3 pages, and include: a) a citation and description of the case you have selected; b) an explanation of why you believe the case is worth studying; and c) At least 3 preliminary sources.

Second, a preliminary draft of the paper, *including all sections*, **is due at the beginning of class, November 15**. As this course meets the Tier 2 writing requirement, you will have an opportunity to revise the paper following comments from Professor Axelrod. This draft must be at least 2000, and no more than 2500, words long. You should first explain why the case arose, and why it was not settled prior to reaching the dispute settlement body in question. Having established the contentious nature of the dispute, you should indicate how the litigants supported their positions, and whether you believe they could have been more effective by employing different legal arguments. Please note, in particular, whether you would have raised other legal precedents or international agreements in support of one of these positions. After explaining those positions, you should assess whether the judge(s) made an appropriate decision based on the laws available for consideration, and whether the result would have been different if considered by a different institution. Finally, in the last part of the paper, you will analyze the implementation of this decision by providing evidence for whether the losing party followed the decision, and if not what would have strengthened the court's influence. In addition, you should identify any long-term implications of this decision, including changed behaviors of other countries and new agreements negotiated as a result.

Your **final paper (no more than 3000 words)** is due at the beginning of class **December 6**. Although no formal presentation is required, you should expect to be called upon in class when related cases are discussed.

Every fact or idea drawn from external sources must be identified with a footnote, endnote, or parenthetical documentation. You may use any citation format, as long as it is consistent and provides sufficient detail for your sources to be checked. The library provides a number of well-known formats at: <http://www2.lib.msu.edu/research/cite-resources.jsp> If you plan to attend law school, I recommend that you follow the Blue Book format, which is required for all legal research.

You are strongly encouraged to meet and discuss your research paper with Professor Axelrod and classmates throughout the semester. One goal of this research project is to learn more about a substantive topic. Perhaps more importantly, it is designed to enhance your research and writing skills, including your familiarity and comfort with legal documents. By receiving and integrating instructor and peer feedback along the way, you will strengthen those skills.

¹ If you are interested in writing a different type of paper for this assignment, please speak with me early in the semester to discuss that research idea and why you have chosen to undertake it. You must adhere to the same timeline and length requirements described here.