

International Law 2019 fall

The Thurgood Marshall School of Law

Professor Craig Jackson

Phone: 713-313-1098

Office Hours: MW 11-12; 1-2. Friday 11-12; 1-4.

Book: Damrosch and Murphy: International Law: Cases and Materials - 6th edition

In this semester's International Law course we will attempt to solve some of the world's problems, or at least try to understand why some of these problems have not been solved using the rules of the Law of Nations--International Law. The course will include an overview of the basic building blocks of international law and theory, the creation of law in the international system, the enforcement of that law, and adjudication of legal problems between the various parties of the international legal system.

The approach will be like this. In addition to studying International Law basic concepts and textual materials, several real life and current problems will be addressed in the form of a case problem. Students will be asked to pick an international law issue in current events and, using course materials from the text, and other journalistic and/or academic materials, produce an executive summary of the topic and provide a description of the international issues involved in a class presentation. Depending on class size the presentation will either be on an individual basis or as part of a group project.

For example, the situation in Syria involves several international law issues—state sovereignty, international human rights, humanitarian law, United Nations law, use of force. The issues involving both North Korea's and Iran's potential development of nuclear capability also involves state sovereignty and United Nations law, but also addresses issues dealing with nuclear proliferation, treaty law, and anticipatory self-defense. Also, U.S. immigration policies can involve aspects of international human rights law, state responsibility, non-refoulement (the obligation to provide asylum from persecution or danger in an immigrant's home state). These issues will be evaluated using either law creation, law enforcement, adjudication of legal problems, or the role of parties in the legal system. Please understand that this is not a paper assignment. The goal is to encourage additional and focused reading on a particular contemporary issue in international law sufficient to prepare an executive summary of the basic issues involved.

Students will be expected to prepare in advance approximately 30 pages of material for each class session. Students will also be expected to keep up with international current events and will be given a list of suggested periodicals, newspapers, websites and monthly publications that can be used for this purpose.

Grading: The final grade in the course will be based on the final in class exam in December (90%) and class presentation during the semester (10%).

Note on skills and competencies: International Law is not a traditional law school course. It is properly taught at upper levels, though exposure in the first year, as offered in some schools, can be useful as an introduction. However, IL pedagogy depends on skills developed in other courses which are then fashioned for the unique environment of international society where legal legitimacy is understood differently from the legitimacy of legal systems governing state societies.

Syllabus

Before the chapters:

Skills and Competencies Developed:

A thorough understanding of the development of international law and knowledge of competing theories of this development from a perspective more diverse from the Eurocentric model. This exposure will allow students to offer critiques of traditional international law solutions to problems in a world of competing interests, and most particularly interests as defined by region, race, ethnicity and anti-colonialism. Students will learn how natural law and positivist theories of law in the traditional and competing models of IL development help form international norms.

Historical Introduction pages xvii – xxix

Levitt, African Origins of International Law

Alvarez, Latin America and International Law

Chapter section

1. Nature of International Law

Skills and Competencies Developed:

To expose students, heretofore taught law through “municipal” law lens, to basic principles qualifying international law as law, while at the same time critically examining the differences between international law and domestic law as well as those areas where the two systems intersect.

1. International Law as binding Law
2. Completeness and Coherence in International Law
4. Differing Methodological Approaches
 - E. International Law and International Relations
 - F. Feminist Jurisprudence

2. Sources: Customary International Law

Skills and Competencies Developed:

Students will learn how state policy, practice, judicial decisions from state courts, and official statements of governmental officials create law and how this law is uncovered for policy-making, scholarly research, and judicial decision-making. Rules regarding the relationship between custom and treaty law will also be discussed.

1. Sources and Evidence of International Law Generally
2. Customary International Law
3. The Relationship of Custom and Treaties

3. Sources: The Law of Treaties

Skills and Competencies Developed:

Students will learn principles and rules of treaty law through use of the Vienna Convention on the Law of Treaties and critically examine how different varieties of treaties impact law enforcement and the legal structure of international relations.

1. Defining and Governing Law
2. Conclusion and Entry into Force
3. Reservation
4. Observation, Application and Interpretation
5. Invalidity, Termination, and Suspension

4. Other Sources of International Law

Skills and Competencies Developed:

Because of the diffuse nature of international society, the system of laws set up by custom and treaties is not complete or not always clearly identified. This section will encourage students to examine additional sources, including secondary sources of law for their impact on enforcement and legitimacy of international law.

1. General Principles of Law
2. Judicial Decisions and Publicists
6. Unilateral Acts

15. Use of Force

Skills and Competencies Developed:

Students will be encouraged to think critically about the utility of international law in the area that most strains the international legal system—use of force. Students will be asked to consider how state interests, survival, and national security can be accommodated in a neutral system of legal decision-making, or whether such accommodation is possible.

1. Use of Force prior to the U.N. Charter
2. The UN Charter Prohibition on Use of Force
3. Exceptions to the Prohibition: Self-Defense
4. Controversial uses of Force for Non-Defensive Purposes
5. Use of Force and the Security Council
7. Use of Force and Regional Organizations

10. International Law in National Law

Skills and Competencies Developed:

Students will learn when and how international law impacts domestic law, and critically examine whether the sovereignty principle accommodates international law in domestic legal matters, and to critique those areas of domestic law held to be off limits to international rules in national courts.

1. General Considerations

[Read Reynaldo Valencia, Craig L. Jackson, Leticia Van de Putte, Rodney Ellis, *Avena and the World Court's Death Penalty Jurisdiction in Texas: Addressing the Odd Notion of Texas's Independence from the World* 23 Yale Law and Policy L. Rev 455 (2005)].

2. Customary International Law in U.S. Law
3. Treaties in U.S. Law
4. Other International Agreements
5. International Law before U.S. Courts

13. Human Rights

Skills and Competencies Developed:

Perhaps as intimate a challenge to the sovereignty principle as use of force is human rights. An examination of the post-World War II development of Human Rights will inform a critical analysis of the extent HR law interferes with domestic policy, whether human rights treaties are effective as applied to specific cases and events, and whether power politics helps shape international human rights law.

1. Foundations of Human Rights
2. Global Norms and Institutions
3. Regional Norms and Institutions
4. Deviating from the Norms
5. Mechanisms for promoting compliance

5. States

Skills and Competencies Developed:

Critical examination of the rules regulating the types of human communities can be regarded as states will be the focus of this section. Students will learn the principles of statehood, and whether those principles serve the purpose of protecting the interests of communities seeking recognition as states. Further, students will be able to evaluate the policy implications of statehood rules.

1. Determination of Statehood
2. Principle of Self-determination of Peoples
3. Entities with Special Status
4. Recognition of Government
5. Acquisition and De-Limitation of Territory

8. Rules on State Responsibility

Skills and Competencies Developed:

In assessing principles for violations of international law students will learn the principles of liability for state actions and critically examine their effectiveness.

1. General principles of State Responsibility
2. Attribution of Conduct of a state
3. Breach of International Obligation
4. Circumstances precluding Wrongfulness
5. Reparation for the breach of an International obligation
6. Countermeasures

9. Dispute Settlement

Skills and Competencies Developed:

Students at this point will have been exposed to a variety of issues in international law. This section is a miniature Civil Procedure course in international dispute settlement. More extensive treatment of the subject can be found in specialty courses, but here students will develop an understanding of the types of dispute settlement available in the international system and the types of cases utilizing these different types.

1. The Obligation to Settle Disputes by Peaceful Means
2. Non-adjudication Procedures
3. Arbitration
 - A. The Nature and Role of International Arbitration
 - B. Key Elements in the Arbitral Process
4. The International Court of Justice

16. International Criminal Law

[Start with chapter 15 section 8]

Skills and Competencies developed:

This is another subject best developed in a specialty course and students will be introduced to another dispute settlement mechanism, international criminal tribunals with a particular emphasis

on the International Criminal Court and its challenges in gaining custody of persons indicted for international crimes, and the sovereignty concerns regarding such a court.

4. The International Criminal Court