

Public International Law Seminar

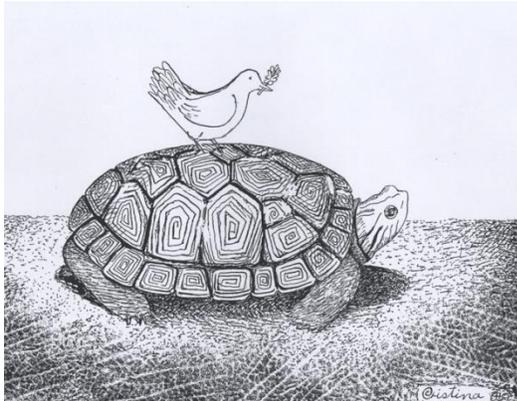
Law 916 Professor Anastasia Telesetsky (Room 207 atelesetsky@uidaho.edu Tel. # 5-8505)

Tuesday and Thursday 3:30- 4:15 Room 108

International Law Overview

In this class we will be learning about what has been traditionally called the law of states or the law of nations but has evolved into a dynamic field involving numerous non-state actors. Over the course of this semester we will be examining the laws, rules, principles, and norms which govern the relations between states and between states and non-state actors. We will learn about:

- 1) Sources of international law
- 2) Major actors in international law including international organizations, individuals, and corporations.
- 3) International dispute resolution.
- 4) Specific international regimes: The Use of Force, The Law of the Sea, and Human Rights Law
- 5) Foreign Relations Law: How international law has been applied in the United States.



Political Cartoon **Christina Martinez del Campo Rendon**

Class Structure and Participation: We have an hour and 15 minutes together each class. The challenge with this time frame is that the average adult human has a concentration span of 20 minutes. I am aware of this reality so will try to structure the classes to be a mixture of lecture and participation. My plan for each class is to begin by reminding you what we learned in the previous class, asking a few questions that will shape our discussion for the class. Thirty minutes into the class, we will take a “break” and one of you will share with the class in 5 minutes or less a “current event” in the world of international law such as a recent WTO decision or an overseas law suit that would be of interest to the class. We will resume after our “break” with additional lecture and discussion.

Grades: We will not have a final exam in this class. We will instead have:

- 1) One major paper assignment minimum of 20 double-spaced pages not counting footnotes (due Tuesday, December 3, 2013) and one 15 minute oral presentation with a Powerpoint or other multi-media presentation to the class based on your paper assignment . The paper may be on any international issue that involves a legal framework or should involve a legal framework. This is 60% of your grade.

Breakdown of the paper grade: 80% of your paper grade will be based on your legal analysis of:

- 1) Primary international law sources that address a specific international problem (e.g. treaty, international court decision, soft law guidelines). In writing your paper, you must look at original legal sources (treaties, ICJ cases, WTO cases, ITLOS cases, UN rules and regulations) and cite them properly. You will be analyzing the legal language not just summarizing the language.
- 2) In order to understand the primary international law sources, you may need to consult secondary international legal sources which may include UN background negotiation documents. You may also want to consult commentators that may include NGO briefs, state policy papers, and academic articles. Keep a healthy skepticism about the sources that you use. Even if something is in print, feel free to disagree with an author, but explain carefully why you disagree with an author.

20% will be based on your original law and policy suggestions in the area you have chosen to research. How should the law be rewritten to address your issue? How should an institution be changed to address the issue that you are concerned with? If there is a concern with national implementation of an international obligation, how would you address this? Using the content of your paper, you will then deliver a 10-15 minute TED-style talk to the class. You will need to engage the class with at least one discussion question as part of your TED talk. To the extent possible, your presentation should be motivational in terms of convincing others that something needs to be done about the international legal issue that you have chosen.

NOTE: If you are intending to use this paper as your upper division writing requirement, you must let me know. Satisfying the writing requirement usually requires at least two semesters (with this being one of the semesters) of work. This means that you will have to enroll for 1 credit of directed study.

- 2) Participation in a multi-party negotiation and international legal drafting exercise involving black carbon. This is 30% of your grade. Assignment will be handed out separately.
- 3) General participation including a) one or two very-short (5 minutes or less) in-class presentations of a current event in the world of international law and b) 1-3 paragraph writing assignments. This is 5% of your grade.

Attendance: You may have two excused absences. Based on my discretion, I may grant additional excused absences. If you have one or more unexcused absences, your final grade will be reduced by one grade slot (e.g. A to A-, B+ to B). Please inform me if you cannot attend class.

My Expectations of You

- 1) I expect you to be “present” for the entire class. What this means is no open laptops during class unless you are sharing your news story or working on a group project.
- 2) I expect you to read the assigned cases and be ready to participate.
- 3) I expect you to respect each other. On some matters that we will discuss in class, you may have a strong personal opinion. I ask each of you to focus your class comments on the legal opinions before us and not your personal opinions.
- 4) I expect you to succeed.

Office Hours

I will be available every Tuesday and Thursday to meet with you. If you want to meet me for office, please either let me know before or after class so that we schedule an appointment that will work with both of our schedules. You can also email me to set up an appointment.

Academic Code of Conduct

Every member of the law school community is bound by the honor code obligations. In particular, I take plagiarism very seriously. If you use a source and do not provide proper citations, you will have plagiarized. You will receive an F in this class. I check papers using an external plagiarism detection software.

External Resources for succeeding

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Please notify Dean Dodge, during the first week of class, of any accommodation(s) needed for the course. All accommodations must be approved by Dean Dodge in conjunction with University Disability Support Services located in the Idaho Commons Building, Room 306. Contact DSS

- by phone at 885-6307
- email at <dss@uidaho.edu>
- website at www.access.uidaho.edu

IT IS THE STUDENT’S RESPONSIBILITY TO SEEK A DISABILITY ACCOMMODATION, AND UNTIL AN ACCOMMODATION IS APPROVED THROUGH DEAN DODGE’S OFFICE, NO STUDENT WILL BE ENTITLED TO RECEIVE ANY ACCOMMODATION.

Reading Assignments from International Law: Mark Weston Janis and John E. Noyes, Fourth Edition (2011)

Date	Topic	Assignment
August 27 (T)	History of international law What is international law? Why does international law matter? What does an international lawyer do? TED Talk- How to Combat Modern Slavery (Kevin Bales)	pp. 1-27 Bring in a case that involves international law of interest to you to share with the class. (The case may be from the United States, another national jurisdiction, or an international law case.) Write one paragraph describing what international law is at issue in the case you chose and what the court decided regarding the interpretation of the international law.
August 29 (Th)	International Law-Themes What is sovereignty? Why do States comply with international law? What are international relation theories that are relevant to international legal thinking?	Please read: Oscar Schachter, <i>The Decline of the Nation-state and its Implications for International Law</i> , 36 Columbia J. Transnational Law 7 (1997) Harold Koh, <i>Why Do Nations Obey International Law?</i> 106 Yale L.J. 2634 (1997) Write one paragraph on the following statement by the pre-eminent international lawyer Louis Henkin: “It is probably the case that <i>almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.</i> ” (Emphasis in original <i>How Nations Behave</i> , 2d Ed. 1979)
September 3 (T)	Sources: Treaties- Inductive Thinking Why do States make treaties? Why are States willing to comply with treaty terms? How can treaties be deemed statutory? How can treaties be deemed contractual? How are treaties made? What is the relationship between international law and municipal law?	pp. 28-61 Bring a copy of any treaty to class. Bring to class one paragraph describing the topic that you will be exploring in your substantive paper. Your paragraph should include a thesis statement. NOTE: a thesis statement conveys to the reader that the claim being offered has been thoroughly explored and is defensible by evidence. <ol style="list-style-type: none"> 1) Thesis statements must make a claim or argument. They are not statements of fact. 2) Thesis statements are not opinion statements. Example of a thesis statement: Because consensus voting by the United Nations

		Security Council before undertaking major peacekeeping actions makes it impossible to prevent war between major powers, there is a need for bilateral or regional peace agreements between major powers."
Sept 5 (Th)	Sources: Treaties What is a treaty? What is the Vienna Convention on Law of the Treaties? How does a State indicate that is bound by a treaty? What is a reservation?	Read the Vienna Convention on Law of the Treaties, 1115 U.N.T.S. 331 (1969) Articles 1-23 (VCLT) pp. 61-69
Sept 10 (T)	Sources: Treaties What is treaty interpretation?	Read VCLT 24-41 pp. 69-80 Read Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) 2007 I.C.J. 191 paragraphs 160-179
Sept 12 (Th)	Sources: Treaties Why might a treaty be invalid? What are grounds for treaty termination?	Read VCLT 42-64 and 69-72 pp. 80-89
Sept 17 (T)	Sources: Treaties in US law What is a self-executing treaty? What is a non self-executing treaty? What does federal supremacy in foreign affairs mean? What is the last-in-time rule?	Read U.S. Constitution Article II(2) and Article VI pp. 189-213
Sept 19 (Th)	Sources: Treaties in US Law What tensions are there between US judiciaries and international tribunals? What is the relationship between executive	pp. 216- 259 Hamdan v. Rumsfeld 548 U.S. 557 (2006) Please write a one paragraph summary of either a congressional-executive agreement or an executive agreement.

	<p>interpretation of a treaty and judiciary interpretation of a treaty?</p> <p>What is an executive agreement?</p> <p>What is a congressional-executive agreement?</p> <p>What are presidential powers to make international agreements that have force in U.S. domestic law?</p>	
Sept 24 (T)	<p>Sources: Customary International Law</p> <p>What is customary international law?</p> <p>What constitutes general practices?</p>	pp. 97-108
Sept 26 (Th)	<p>Sources: Customary International Law</p> <p>What is opinio juris?</p> <p>What is a persistent objector?</p> <p>What is a peremptory norm (jus cogens)?</p> <p>What is lex generalis? What is lex specialis?</p>	<p>North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) 1969 I.C.J. 3 (para. 70-78)</p> <p>pp. 108-111</p> <p>pp. 145-163</p> <p>Please write one paragraph about either an existing peremptory norm or something that you believe should be recognized as having jus cogens status.</p>
Oct 1 (T)	<p>Sources: Customary International Law</p> <p>What are critiques of the concept of Customary International Law?</p> <p>What are some contemporary view points on customary international law?</p>	<p>International Law Association's Statement of Principles Applicable to the Formation of General Customary International Law – You will be assigned between 3 to 4 principles that you will be responsible for sharing the content of these principles with the class</p> <p>Formation and evidence of Customary International Law, Special Rapporteur Michael Wood, A/CN.4/653</p> <p>Dan Bodansky, Customary and (Not so Customary) International Law http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1060&context=ijgls</p>

Oct 3 (Th)	Sources: Customary International Law What is the role of Customary International Law in the U.S.?	pp. 259-289
Oct 15 (T)	Sources: General Principles and Other Sources What is a general principle in public international law? What is equity? What is a subsidiary source of law? What is soft law?	pp. 134- 144 Dinah Shelton, Normative Hierarchy in International Law, 100 A.J.I.L. 291, 319-322 (2006)
Oct 17 (Th)	Actors: States What is a State? What is a failed State? What is the constitutive theory of recognition? What is the declaratory theory of recognition?	pp. 472-482
Oct 22 (T)	Actors: States What is the difference between de facto control vs. de jure governments? What issues arise regarding State matters in succession?	pp. 482-514 Vienna Convention on Succession of States in Respect of Treaties 17 I.L.M. 1488 (1978)
October 23 (Wednesday)	DIGITAL NEGOTIATION WITH UNIVERSITY OF BALTIMORE	
Oct 24 (Th)	Actors: State Responsibility What is state responsibility? What is the concept of attribution? What are defenses to state responsibility? What are potential consequences for wrongfulness?	pp. 383-387 International Law Commission Articles Responsibility of States for Internationally Wrongful Acts Military and Paramilitary Activities in an Against Nicaragua 1986 I.C.J. 14 (para. 107-116) Case Concerning United States Diplomatic and Consular Staff in Tehran 1980 I.C.J. 3 (para. 80-89) Application of the Convention on the

		Prevention and Punishment of the Crime of Genocide 2007 I.C.J. (para. 459-469)
Oct 29 (T)	Actors: State What is the principle of self-determination?	pp. 514-529
Oct 31 (Th)	Actors: International Organizations What is the United Nations? Why does the United Nations have legal personality? What reforms have been proposed for the Security Council?	pp. 530-549 pp. 683-688
Nov 5 (T)	Actors: International Organization What is the International Court of Justice? What is contentious jurisdiction? What is compulsory jurisdiction? What is advisory jurisdiction?	pp. 312-325 pp. 342-344 pp. 344-362 Please bring a one paragraph summary of a current legal dispute before the ICJ.
Nov 7 (Th)	Actors: Individuals How is an individual an object of international law? What is a State's relationship to nationality? How is an individual a subject of international law?	pp. 373-383 pp. 400-415 PLEASE TURN IN FINAL PAPER DRAFTS
Nov 12 (T)	Specialized Area: Jus in Bello What is international humanitarian law?	Geneva Conventions pp. 565-585 pp. 592-598
Nov 14 (Th)	Specialized Area: Jus Ad Bellum What criteria are there for the lawful use of force? What is lawful self-defense? What is the scope of UN peacekeeping? What is collective security?	pp. 608-626 pp. 634-654

Nov 19 (T)	Specialized Area: Law of the Sea	pp. 762-768 pp. 780-781 pp. 786
	What are the maritime jurisdictions under the law of the sea?	pp. 799-801 pp. 807-809
	What rights and duties do States have in relation to the high seas and the exclusive economic zone?	
	What is the international regime on the deep seabed?	
	What are the duties of the flag state?	
	How can State combat illegal fishing?	
Dec 3 (T)	Presentations	FINAL PAPERS DUE
Dec 5 (Th)	Presentations	