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## **MC 362 (Spring 2006): Public International Law**

### **Scope of the Course**

This class provides a wide-ranging introduction to the subject of public international law. Accordingly, it addresses: 1) whether international law is really law; 2) the sources and evidence of international law; 3) the concepts of hard and soft law; 4) subjects of international law; 5) courts of law and arbitral boards; and 6) why international actors obey and violate international law. While the focus of this year's course will be the law of force, attention will also be devoted to laws relating to the environment, human rights, international trade and international law and the United States.

### **Reading Requirements**

You are asked to acquire the following two case books; you will be reading a lot of the Carter, Trimble and Bradley volume and you will be reading all of the O'Connell volume. Copies will be available in the assigned reading section at the University's main library and at the Michigan State University College of Law library.

Carter, Barry E., Phillip R. Trimble and Curtis A. Bradley. *International Law*. Fourth Edition. New York: Aspen Publishers, 2003.

O'Connell, Mary Ellen. *International Law and the Use of Force*. New York: Foundation Press, 2005.

In order to maximize learning in the class, including through meaningful and interesting class discussions, students are expected to read all of the required readings in advance of the class for which they are assigned. *It will be especially important for students to read over and try to answer the questions that follow many of the assigned readings and develop the habit and skill of "briefing" legal cases.*

A number of "recommended readings" are also listed at various places in this syllabus. They are not required, but are suggested as supplements to the required readings. They are placed in the syllabus for those students who are fascinated by a particular facet of the course.

## Term-Long Paper Assignment

*Formal Proposal Due:*            *February 6, 2006*

*Draft Due*                                *March 15, 2006*

*Final Paper Due*                    *April 12, 2006*

Each student will be required to write a term-long paper on the topic of compliance with international law. Each student will select a “hard law” (treaty, customary international law or a general principle of international law) and explain why various international actors comply or violate that “hard law” *and* what it would take to close the compliance gap (i.e. get more actors to comply with the law than do). Thus in selecting, the ideal would be to find a hard law where there are examples of both compliance and violation. Papers, for example, could explain why actors adhere to or violate the 1992 Climate Change Convention, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1925 Geneva Protocol for the Prohibition of the Use of War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; customary laws relating to embassies, etc.

See the various links on this website for lists of treaties:

<http://www.msu.edu/~schechte/intlaw.htm>

### *Paper Proposal*

Each student will be required to submit a formal paper proposal no later than February 6, 2006. It should include the following sections:

- Working Title for your Paper
- Statement of Purpose (i.e. what you hope your research will find). This should include a number of questions that you plan to answer or hypotheses that you wish to test as well as your tentative thesis statement. If you are having trouble thinking of hypotheses, you might want to look at Harold K. Jacobson and Edith Brown Weiss, “A Framework for Analysis,” in *Engaging Countries: Strengthening Compliance with International Environmental Accords*. A copy is available at the Madison library.
- Methodology (including library research, internet research, statistical analysis).
- Literature Review (i.e. who has written materials on your subject already; what are the strengths and weaknesses of those earlier works and how does your paper differ from and add to those earlier works).
- Preliminary bibliography (including short annotations as to the relevance of the sources to your paper)
- Problems You Have Thus Far Encountered in Your Research

In looking for articles related to your topic, you will find the following indexes of particular help: *Index to Legal Periodicals and Books* (available online through FirstSearch); *LexisNexis'* index to law reviews (available online through LexisNexis Academic) and *Westlaw* (now available at the MSU College of Law College law library). Also note that a number of major law journals, including the *American Journal of International Law*, are available through JSTOR (i.e. online).

For assistance in proper footnoting see:

<http://www.lib.msu.edu/ref/readyreference/rr17.htm> and  
<http://www.lib.msu.edu/ref/readyreference/rr18.htm>

In addition to turning in a written paper proposal and a draft of the paper (due March 15, 2006), conversations with the instructor about the papers are encouraged both during office hours and during extra sessions because the goal of the written assignments, as they are for all in Madison College, is to have well written and tightly argued, well-documented papers before they are turned in. That often requires frequent revisions and sharing with peers and discussions with the instructor. See the first page of the syllabus for office hours and for a phone number and e-mail address as additional means for communicating with the instructor.

### **Grade Determinants**

First Examination	20%
Formal Paper Proposal	10%
Draft of Term-Long Paper	15%
Term-Long Paper	25%
Final Examination	20%
Classroom Participation	10%

The variety of writing assignments and the required revision of the draft meet the requirements of the University's Tier 2 writing requirements. MC 362 is a part of the I.R. major's Tier 2 "cluster" requirement.

### **Things to Look for When Reading International Legal Cases**

The following "Things to Note in Reading and Briefing an *International Legal Case*" should assist you in reading, analyzing, and preparing to discuss. But this enumeration should be treated as merely suggestive.

- Who made the decision (i.e., how high in the hierarchy of decision makers is the decision makers, e.g., Permanent Court of International Justice, International Court of Justice, national court of appeals, arbitral board)?
- When was the decision made?
- Why did the decision come about at all? What was contested?

- What are the respective claims? Who are the interested parties and what are the interests involved?
- On what authority was the case decided (i.e., how was the case submitted for jurisdiction, e.g., as part of a previously agreed to treaty)?
- What particular facts are relevant in such a case? What facts were actually presented to the court or arbitral board?
- What exactly was the decision?
- What justification did the decision makers provide for the decision made?
- Why did the decision makers reach the decision they did (i.e., what motivated them)? Remember that motivation may differ from justification. Note other incidental points made; ideas not necessary for the decision that may indicate the general attitude of the court or arbitral board (hinting towards motivation). Note other possible influences that may have determined the decision (beyond the court's or arbitral board's justification and the parties' claims). For example, think about the general political setting in which the dispute was decided and the decision makers' nationalities (or, if national level case, their political party affiliations).
- How does this particular decision fit in with other decisions, norms of the time, etc.?
- How persuasive did you find the decision makers' judgment? Their reasoning? Why?
- Note dissenting opinions and justifications provided for them. At times, dissenting opinions become the basis for the future development of international law, more so than even the formal, majority opinion.

Students with questions about terms in the cases (or elsewhere in the case books) are directed to: James R. Fox, *Dictionary of International Law & Comparative Law*, 3rd edition (New York: Oceana Publications, 2003).

### **Honors Option**

Any student enrolled in MC 362 who is interested in receiving honors credit for this course is encouraged to do so. The focus of our extra sessions will be on the U.S. and the rule of law. We shall be reading and discussing John F. Murphy's *The United States and the Rule of Law in International Affairs* (Cambridge University Press, 2004). Then each student will write a brief (less than 5 page) paper tying the themes of the book together with a U.S. foreign policy action taken during the semester. The awarding of an "H" for this course also requires that a student earn a minimum of a 3.5 in all of the normal requirements of the course. The honors designation for this course requires outstanding work in all aspects of this class and not simply the satisfactory completion of the additional work that will be required of those participating in the honors option session.

## Calendar

### Introduction

#### January 9

Administrative Details (including information on researching and writing a term-long research paper on compliance with international law)

What is International Law?

Required Reading:

Carter, Trimble and Bradley, *International Law*, pp. 1-7.

Recommended Readings:

Louis Henkin, *How Nations Behave: Law and Foreign Policy*, Second Edition.

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*, pp. 165-228.

Harold K. Jacobson and Edith Brown Weiss, "A Framework for Analysis," in *Engaging Countries: Strengthening Compliance with International Accords*. (Copy available in Madison library).

Thomas M. Franck, *The Power of Legitimacy Among Nations*.

Jose E. Alvarez, "The Quest for Legitimacy: An Examination of *The Power of Legitimacy Among Nations* by Thomas M. Franck," 24 *New York University Journal of International Law and Politics* (Fall 1991): 199-268.

Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*.

#### January 11

History of Public International Law and Alternative Perspectives

Required Reading:

*International Law*, pp. 7-62.

Recommended Reading:

Robert J. Beck, Anthony Clark Arend and Robert D. Vander Lugt, *International Rules: Approaches from International Law and International Relations*.

## **January 18**

### International Law in Action

Required Reading:

*International Law*, pp. 63-92.

Recommended Reading:

David J. Scheffer, "Use of Force After the Cold War: Panama, Iraq, and the New World Order," in *Right v. Might: International Law and the Use of Force*, Second Edition, by Louis Henkin, et al.

## **Sources and Evidence of International Law**

## **January 23**

### Treaties and *Jus Cogens*

Required Reading:

*International Law*, pp. 93-120.

Recommended Readings:

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*, pp. 81-162.

Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice*, Revised and Expanded Edition.

**January 25**Customary International and General Principles of International Law

Required Reading:

*International Law*, pp. 120-135 and 150-154.

Recommended Readings:

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*, pp. 21-78.

Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law*.

**International Law in the United States****January 30**International Law and the U.S.

Required Reading:

*International Law*, pp. 157-191.

Recommended Readings:

Louis Henkin, *Foreign Affairs and the U.S. Constitution*, Second Edition.

Phillip R. Trimble, *International Law: United States Foreign Relations Law*.

**February 1**International Law and the U.S. Continued

Required Reading:

*International Law*, pp. 191-270.

## **International Dispute Regulators and Regulation**

### **February 6**

#### The International Court of Justice

*Formal Paper Proposal Due at the Beginning of Class*

Required Reading:

*International Law*, pp. 284-321.

Recommended Reading:

Howard N. Meyer, *The World Court in Action: Judging Among the Nations*.

### **February 8**

#### International Arbitration

Required Reading:

*International Law*, pp. 339-415.

## **Foreign Sovereign Immunity and the Act of State Doctrine**

### **February 13**

#### The Immunity of Foreign States

Required Reading:

*International Law*, pp. 547-618

Recommended Reading;

Richard Falk, "The Iran Hostage Crisis: Easy Answers and Hard Questions," 74 *The American Journal of International Law* (April, 1980): 411-417.

**February 15**The Act of State Doctrine

*International Law*, pp. 618-646.

## Recommended Reading:

Patrick W. Pearsall, "Means/Ends Reciprocity in the Act of State Doctrine," 43 *Columbia Journal of Transnational Law* (No. 3, 2005): 999-1025.

**State Responsibility****February 20**State Responsibility for Injury to Aliens

## Required Reading:

*International Law*, pp. 743-767.

**February 22**International Human Rights

## Required Reading:

*International Law*, pp. 767-834

## Recommended Readings:

S. James Anaya, *Indigenous Peoples in International Law*, Second Edition.

Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*. Second Edition.

## **International Environmental Law**

**February 27**

International Environmental Law

Required Reading:

*International Law*, pp. 911-960.

Recommended Reading:

Patricia W. Birnie and Alan E. Boyle, *International Law and the Environment*.

**March 1**

*In-Class Midterm Examination*

## **International Law and the Use of Force**

**March 13**

The Meaning of the Use of Force

Required Reading:

Mary Ellen O'Connell, *International Law and the Use of Force*, pp. 2-21.

Recommended Reading:

Christine Gray, *International Law and the Use of Force*, Second Edition.

**March 15**Case Studies on the Use of Force

*Draft of Term-long Paper Due at Beginning of Class*

Required Reading:

*International Law and the Use of Force*, pp. 22-82

**March 20**The Role of Law in the Use of Force

Required Reading:

*International Law and the Use of Force*, pp. 83-104

**March 22**Restrictions on the Use of Force: An Historical Overview

Required Reading:

*International Law and the Use of Force*, pp. 106-149.

**March 27**The History of Regulations on the Application of Force

Required Reading:

*International Law and the Use of Force*, pp. 150-207.

**March 29**International Law and Institutions as they Relate to the Resort to Force

Required Reading:

*International Law and the Use of Force*, pp. 209-239.

**April 3**Unilateral Action: Self Defense

Required Reading:

*International Law and the Use of Force*, pp. 240-285

**April 5**Unilateral Action: Intervention

Required Reading:

*International Law and the Use of Force*, pp. 285-320.

Recommended Reading:

J.L. Holzgrefe and Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*.

**April 10**Collective Use of Force: UN and Regional Organizations

Required Reading:

*International Law and the Use of Force*, pp. 321-382.

Recommended Readings:

Nicholas J. Wheeler, “The Kosovo Bombing Campaign,” in *The Politics of International Law*, Edited by Christian Reus-Smit.

Lori Fisler Damrosch, Editor, *Enforcing Restraint: Collective Intervention in Internal Conflicts*.

**April 12**

Contemporary Laws and Institutions on the Application of Force, Including the International Criminal Court

*Final Paper Due at Beginning of Class*

Required Reading:

*International Law and the Use of Force*, pp. 382-443.

Recommended Reading:

David Whippman, “The International Criminal Court,” in *The Politics of International Law*, Edited by Christian Reus-Smit.

**April 17**

Civilians During Hostilities and Occupation

Required Reading:

*International Law and the Use of Force*, pp. 444-521.

Recommended Readings:

Leslie C. Green, *The Contemporary Law of Armed Conflict*, chapters 10-12.

David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*.

**April 19**Combatants During Hostilities

Required Reading:

*International Law and the Use of Force*, pp. 522-578.

**April 24**The Future Development of International Law on the Use of Force

Required Reading:

*International Law and the Use of Force*, pp. 580-612.

Recommended Reading:

Edward C. Luck and Michael W. Doyle, Editors, *International Law and Organization: Closing the Compliance Gap*.

**April 26**Summary and Conclusions

**Friday, May 5 7:45 a.m. – 9:45 a.m.**

**FINAL EXAMINATION**