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Class Page: <http://www.angel.msu.edu>

## **MC 362 (Spring 2007): 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 emphasis will be on the law of force, attention will also be devoted to laws relating to the environment, human rights, law of the sea and trade law.

### **Reading Requirements**

You are asked to acquire the following two case books. You are also asked to acquire the Hathaway and Koh reader; it is available in a paperback edition. Copies of the three books are available in the assigned reading section at the University's main library and a copy of O'Connell is available in the Madison College library.

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

Janis, Mark W. and John E. Noyes. *International Law: Cases and Commentary*. Third Edition. St. Paul: Thomson/West, 2006.

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.*

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.

## Writing Assignments

### Case Brief

Each student in the class will be required to write and post on the class's Angel site the briefing of a case in the Janis and Noyes casebook. Assignments of specific cases will be made early in the course. While such briefs should address the questions listed below under "Things to Note in Reading and Briefing an *International Legal Case*", the "briefs" should be concise.

### *Cases to be Studied, Discussed and Briefed*

Title of Case	Subject Matter	Date Discussed in Class	Date Brief Posted on Angel
Reservations to the Genocide Convention	Treaties	January 22	January 19
Eastern Airlines v. Floyd	Treaties	January 22	January 19
Gabcíkovo-Nagymaros	Treaties	January 22	January 19
Eastern Greenland	Treaties	January 22	January 19
Paquete Habana	Custom	January 24	January 21
The Asylum Case	Custom	January 24	January 21
The Lotus Case	Custom	January 24	January 21
Texas/Libya Arbitration	Custom	January 24	January 21
AM & S Case	General Principles	January 24	January 21
U.S. v. Smith	<i>Jus Cogens</i>	January 24	January 21
Prosecutor v. Furundžja	<i>Jus Cogens</i>	January 24	January 21
Michael Domingues	<i>Jus Cogens</i>	January 24	January 21
Cayuga Indians	Equity	January 24	January 21
The Meuse Case	Equity	January 24	January 21
North Sea Continental Shelf Cases	Equity	January 24	January 21
Foster & Elam v. Neilson	U.S. & Int'l law	January 29	January 26
Asakura v. City of Seattle	U.S. & Int'l law	January 29	January 26
Sei Fujii v. California	U.S. & Int'l law	January 29	January 26
Missouri v. Holland	U.S. & Int'l law	January 29	January 26
Crosby v. National Foreign Trade Council	U.S. & Int'l law	January 29	January 26
Whitney v. Robertson	U.S. & Int'l law	January 29	January 26
U.S. v. Belmont	U.S. & Int'l law	January 29	January 26
U.S. v. Curtiss-Wright	U.S. & Int'l law	January 29	January 26
Dames & Moore v. Regan	U.S. & Int'l law	January 29	January 26
Respublica v.	U.S. & Int'l law	January 29	January 26

De Longchamps			
Amerada Hess v. Argentine Republic	U.S. & Int'l law	January 29	January 26
U.S. v. Alvarez-Machain	U.S. & Int'l law	January 29	January 26
Sosa v. Alvarez-Machain	U.S. & Int'l law	January 29	January 26
Alabama Arbitration	Tribunals	January 31	January 28
Dogger Bank	Tribunals	January 31	January 28
Rainbow Warrior	Tribunals	January 31	January 28
Minquiers and Ecrehos	I.C.J.	January 31	January 28
Diplomatic and Consular Staff Case	I.C.J.	January 31	January 28
Western Sahara	I.C.J.	January 31	January 28
ELSI Case	I.C.J.	January 31	January 28
Nottebohm	Individuals	February 5	February 2
Barcelona Traction	Corporate Individuals	February 5	February 2
Nuremberg	Human Rights	February 5	February 2
Damian Thomas v. Jamaica	Human Rights	February 5	February 2
Sunday Times	Human Rights	February 5	February 2
Soering	Human Rights	February 5	February 2
Tinoco Arbitration	State/Gov't Succession	February 7	February 4
Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.	State/Government Succession	February 7	February 4
Kadic v. Karadžić	State/ Gov't Succession	February 7	February 4
Republic of Croatia et al. v. Girocredit bank A.G. de Sparkassen	State/Gov't Succession	February 7	February 4
Reparation Case	IGOs	February 12	February 9
Reference Re Succession of Quebec	Self-determination	February 12	February 9
Hamdi v. Rumsfeld	Use of Force	February 14	February 11
Prosecutor v. Tadić	Use of Force	February 14	February 11
Naulilaa Case	Use of Force	February 14	February 11
Caroline	Use of Force	February 14	February 11
Nicaragua Case	Use of Force	February 14	February 11
Certain Expenses Case	Use of Force	February 14	February 11
Trail Smelter	Environment	February 19	February 16
Nuclear Tests	Environment	February 19	February 16
Shrimp-Turtle Case	Environment	February 19	February 16
Muscat Dhos	Law of the Sea	February 21	February 18
M/V "Saiga"	Law of the Sea	February 21	February 18
Fisheries Jurisdiction	Law of the Sea	February 21	February 18

“La Bretagne”	Law of the Sea	February 21	February 18
Regina v. Keyn	Law of the Sea	February 21	February 18
American Banana Co. v. United Fruit Co.	Conflict of Laws	February 26	February 23
Blackmer v. U.S.	Conflict of Laws	February 26	February 23
U.S. v. Aluminum Co. of America	Conflict of Law	February 26	February 23
Bremen v. Zapata Off-Shore Co.	Conflict of Laws	February 26	February 23
Scherk v. Alberto-Culver	Conflict of Laws	February 26	February 23
Timberlane Lumber Co. v. Bank of America	Conflict of Law	February 26	February 23
Hilton v. Guyot	Conflict of Laws	February 26	February 23
Hartford Fire Insurance Co. v. California	Conflict of Laws	February 26	February 23
Piper Aircraft Co. v. Reyno	Conflict of Laws	February 26	February 23
Schooner Exchange v. McFaddon	Foreign Sovereign Immunity	February 26	February 23
Victory Transport, Inc. v. Comisaría General	Foreign Sovereign immunity	February 26	February 23
Texas Trading & Milling Corp. f. Federal Republic of Nigeria	Foreign Sovereign Immunity	February 26	February 23
Argentine Republic v. Amerada Hess Shipping Corp.	Foreign Sovereignty Immunity	February 26	February 23
Underhill v. Hernandez	Act of State	February 26	February 23
Banco Nacional de Cuba v. Sabbatino	Act of State	February 26	February 23
W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp. International	Act of State	February 26	February 23

*Things to Look for When Reading International Legal Cases*

This enumeration should be treated as 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 a national level case, their political party affiliations or general ideological predilection).
- How does this particular decision fit in with other decisions, norms of the time?
- How persuasive did you find the decision makers' judgment? Their reasoning?
- Note dissenting opinions and justifications provided for them. At times, dissenting opinions become the basis for the future development of international law.

### Term-Long Paper Assignment

*Formal Proposal Due:*                      *February 14, 2007*

*Draft Due*                                      *March 21, 2007*

*Final Paper Due*                              *April 11, 2007*

Each student will be required to write a 15-20 page (double-spaced) term-long paper. It will involve using the comparative method of analysis to investigate compliance or non-compliance with treaty law. There are at least three ways to approach the assignment. You could choose a treaty and describe and especially explain three or more countries' compliance or violation of the treaty's provisions. You could choose several different provisions of a single treaty and explain why a single country complies or violates different provisions of the treaty. You could choose a single country and describe and explain why it violates or adheres to several different treaties. Papers are more likely to be interesting if you find some variations in terms of compliance (i.e. some countries adhere and some violate; some provisions are adhered to and some are violated; a country adheres to some provisions and violates others).

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

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

Additional web sites that may be helpful for your paper include:

[www.eisil.org](http://www.eisil.org) (The electronic information system for international law maintained by American Society of International Law. It has links organized by issue-areas)

[www.un.org/law](http://www.un.org/law) (Connects to the UN's law materials, including its treaty series).

[www.icj-cij.org](http://www.icj-cij.org) (ICJ's homepage, including its cases and judgments)

[www.worldcourts.com/pcij/eng/](http://www.worldcourts.com/pcij/eng/) (Homepage for the PCIJ)

[www.echr.coe/int/ECHR](http://www.echr.coe/int/ECHR) (Homepage for the European Court of Human Rights)

[www.wto.org/english/tratop\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e.htm) (Homepage for the WTO's Dispute Settlement locator)

### *Paper Proposal*

Each student will be required to submit a formal paper proposal no later than February 6, 2006. It should be 3-5 pages (not including the bibliography) and include:

- 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.
- Comparative Method (i.e. what do you plan to compare and how do you expect to explain the similarities and differences that you detect? will you use primary documents – if so, what kinds? will you have enough cases to use any statistical techniques that you have learned in your methodology classes?).
- 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 *HeinOnline* (available online through E-resources/indexes). Also note that a number of major law journals, including the *American Journal of International Law*, are available through JSTOR and almost all are available through *HeinOnline*.

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 (at least 10 pages and due March 21, 2007), 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**

Brief	7.5%
First Examination	20%
Formal Paper Proposal	10%
Draft of Term-Long Paper	15%
Term-Long Paper	20%
Final Examination	20%
Classroom Participation	7.5%

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.

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) or Boleslaw A. Boczek, *International Law: A Dictionary* (Lanham: Scarecrow Press, 2005). A copy of Fox is available the MSU College of law and an older edition of Boczek is on reference at the main MSU library.

### **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 recent approaches of the U.S. and Britain to the rule of law. We shall be reading and discussing Philippe Sands' *Lawless World: America and the Making and Breaking of Global Rules from FDR's Atlantic Charter to George W. Bush's Illegal War* (New York: Viking, 2004). Participants in the honors option will lead discussions about the various case studies in the book, critiquing them as appropriate. Then each student will write a brief (less than 5 page) paper tying the themes of the book together with the chapter they led a discussion about. 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 8

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

What is International Law?

International Law and International Relations

Required Readings:

Janis and Noyes, *International Law: Cases and Commentaries*, Chapter 1.

Hathaway and Koh, *Foundations of International Law and Politics*, Chapter 1.

Recommended Readings:

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

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

#### January 10

The Place of International Law in Theories of International Relations: Realism, Institutionalism, Liberal Theory and Constructivism

Required Reading:

Hathaway and Koh, pp. 26-135.

Recommended Readings:

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

J. Craig Barker, *International Law and International Relations: International Relations for the 21<sup>st</sup> Century*

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.

### **January 17**

#### The Place of International Law in Theories of International Relations: Theories of Fairness and Legitimacy and Legal Process Theories

Required Reading:

Hathaway and Koh, pp. 135-204.

Recommended Readings:

Michael Byers, editor. *The Role of Law in International Politics*.

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.

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

### **January 22**

#### Treaties

Required Reading:

Janis and Noyes, Chapter 2.

Recommended Reading:

John King Gamble, Jr., "The Treaty/Custom Dichotomy," in *International Law: Classic and Contemporary Readings*, edited by Charlotte Ku and Paul F. Diehl.

**January 24**Customary International, General Principles of International Law, Natural Law and *Jus Cogens*

Required Reading:

Janis and Noyes, Chapter 3.

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 29**International Law and “Municipal” Law

Required Reading:

Janis and Noyes, Chapter 4.

Recommended Readings:

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

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

## Courts and Tribunals

### January 31

#### Courts and Tribunals

Required Reading:

Janis and Noyes, Chapter 5.

Recommended Reading:

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

## Subjects of International Law

### February 5

#### Individuals, Human Rights and the International Criminal Court

Required Readings:

Janis and Noyes, Chapter 6.

Hathaway and Koh, pp. 205-242.

Recommended Readings:

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

Francisco Forrest Martin, et al., *International Human Rights and Humanitarian Law: Treaties, Cases, & Analysis*

Kingsley Chiedu Moghalu, *Global Justice: The Politics of War Crimes Trials*

Todd Landman, *Protecting Human Rights: A Comparative Study, Advancing Human Rights*.

**February 7**States and Governments

Required Reading:

Janis and Noyes, Chapter 7.

Recommended Reading:

MJ Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*

**February 12**Intergovernmental Organizations, International Non-Governmental Organizations and “Peoples”

Required Reading:

Janis and Noyes, Chapter 8

Recommended Readings:

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

**Some Key Issues in International Law****February 14**The Use of Force

*Formal Paper Proposal Due at the Beginning of Class*

Required Reading:

Janis and Noyes, Chapter 9.

**February 19**The Environment and Common Spaces

Required Readings:

Janis and Noyes, Chapter 10.

Hathaway and Koh, pp. 242-272.

Recommended Readings:

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

Philippe Sands, editor, *Greening International Law*.

Elizabeth R. DeSombre, *Global Environmental Institutions*.

**February 21**Law of the Sea

Required Reading:

Janis and Noyes, Chapter 11.

**February 26**Trade Law and Conflict of Laws

Required Readings:

Janis and Noyes, Chapter 12.

Hathaway and Koh, pp. 272-307.

**February 28***In-Class Midterm Examination*

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

### **March 12**

#### The Meaning of the Use of Force

Required Reading:

Mary Ellen O'Connell, *International Law and the Use of Force*, Chapter 1.

Recommended Reading:

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

### **March 14**

#### Case Studies on the Use of Force

Required Readings:

O'Connell, Chapter 2.

Hathaway and Koh, pp. 366-391.

### **March 19**

#### The Role of Law in the Use of Force

Required Reading:

O'Connell, Chapter 3.

**March 21**Restrictions on the Use of Force: An Historical Overview

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

Required Reading:

O'Connell, Chapter 4.

Recommended Reading:

David Kennedy, *Of War and Law*.

**March 26**The History of Regulations on the Application of Force

Required Readings:

O'Connell, Chapter 5.

Hathaway and Koh, pp. 339-365.

**March 28**International Law and Institutions as they Relate to the Resort to Force

Required Reading:

O'Connell, Chapter 6.

**April 2**Unilateral Action: Self Defense

Required Reading:

O'Connell, pp. 240-285.

**April 4**Unilateral Action: Intervention

Required Readings:

O'Connell, pp. 285-320.

Hathaway and Koh, pp. 307-337.

Recommended Readings:

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

Febrice Weissman, Editor, *In the Shadow of 'Just Wars': Violence, Politics and Humanitarian Action*.

Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*.

**April 9**Collective Use of Force: UN and Regional Organizations

Required Reading:

O'Connell, Chapter 8.

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*.

Terry Nardin and Melissa S. Williams, editors. *Humanitarian Intervention*. New York: New York University Press, 2006.

**April 11**Contemporary Laws and Institutions on the Application of the Law of Force

*Final Paper Due at Beginning of Class*

Required Reading:

O'Connell, Chapter 9.

Recommended Reading:

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

**April 16**Civilians During Hostilities and Occupation

Required Reading:

O'Connell, Chapter 10.

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 18**Combatants During Hostilities

Required Reading:

O'Connell, Chapter 11.

Recommended Readings:

Michael Byers, *War Law: Understanding International Law and Armed Conflict*

Louis Fisher, *Military Tribunals and Presidential Power: American Revolution to the War on Terrorism*

Peter Rowe, *The Impact of Human Rights Law on Armed Forces*.

### **April 23**

#### The Future Development of International Law on the Use of Force

Required Reading:

O'Connell, Chapter 12.

Recommended Reading:

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

### **April 25**

#### Summary and Conclusions

**Tuesday, May 1 7:45 a.m. – 9:45 a.m.**

**FINAL EXAMINATION**