

11/1/2007
Public International Law
Prof. Michelle McKinley
michelle@uoregon.edu
Office: Room 311
346-5191

This course will introduce students to the foundations of public international law and the contemporary international legal process. Public international law has evolved from its exclusive domain of “law among sovereigns” to an interdependent process of global governance, largely managed by inter governmental and non-governmental institutions. We will consider the implications of global interdependence and the increasingly robust international judicial system for the principles and practice of public international law. Special emphasis will be placed on the application of public international law to the human rights of women and ethnic minorities, humanitarian intervention, war and terrorism, refugees and internally displaced peoples, and transnational advocacy.

Attendance, Class Participation, Course Requirements

Students will be evaluated on the basis of a take home mid-term exam (30% of the final grade) and a final take home exam (50% of the final grade). Although this is an introductory course to the discipline of public international law, our class sessions will be the place for analysis and discussion. I will facilitate this process, but active participation of all class members is essential. To this end, class participation will count for 20% of the student’s final grade.

Knowledge of current events will play a leading role in our discussions of public international law. Students will be expected to read the international section of a reputable national newspaper in preparing for weekly classes and should subscribe to the American Society for International Law’s email bulletin: “International law in Brief.” (To subscribe, go to: <http://www.asil.org/ilibindx.htm>). During the first week, students will choose a geographic region of the world and consult the national newspapers of that region to gain a comparative perspective on world events that may not be paramount to the United States journalism empire. Try to streamline your choices according to a region of the world you may be interested in learning more about or where you have linguistic fluidity (if there is no English language version of the paper). Every two weeks, we expect briefings from those teams to keep the rest of the class abreast of world events and international law responses.

Clearly, reading class material is essential for success in this class. Because this is an upper level class, I have long dispensed with the illusion that students come prepared to every class session. I also have read the material many times over, so I am not interested in a passive lecture format. To strike a balance, I ask students to sign up for four sessions during which they will facilitate discussion. The position taken by the discussion groups

is up to the participants, but the aim of this exercise is to summarize the readings for the class, demonstrate the student's understanding of the readings, and their relevance to public international law.

A sample range of discussion topics might include:

- Humanitarian intervention in Sudan, Liberia, or Iraq
- State responsibility for human rights violations of women
- Environmental crimes and remedies
- International Law in domestic courts
- Collaborative approaches to enforcing fair labor standards
- International Criminal Tribunals (promises and prospects)

We will use the text *An Introduction to International law* (4th Edition) by Mark W. Janis, together with supplementary reading materials available on the 3rd floor of the Law building.

Films: A number of course related films will be shown during the semester. Titles & projection times will be announced in class. There are no make-up opportunities for missed film viewings if the movies are not part of the Law school's collection.

Week One: Introduction (August 21-23)

- Administrative matters
- Course objectives and requirements
- Selection of thematic groups and discussion of press presentations

Reading Assignment:

SM: Mahmood Mandami "The Politics of Naming: Genocide, Civil War, Insurgency" *London Review of Books* 29:5, March 2007.

Samantha Power, "Dying in Darfur: Can the Ethnic Cleansing in Sudan be stopped?" (*New Yorker*, August 30, 2004).

Discussion Group: Questions to think about:

1. Who is doing the killing in Darfur, and why? According to Power? Mandami?
2. Why did the Janjaweed become involved?
3. Why do you think the international community is unwilling to intervene to help stop the genocide in Darfur?

Week Two: (August 28-30)

Traditional and critical understandings of the discipline of public international law

Reading Assignment:

Janis: An Introduction to International Law (Fourth edition) Chapters 1-3

SM: Francisco de Vitoria—Political Writings: On The American Indians

SM: Hugo Grotius, On Laws of War and Peace

SM: Aaland Islands case: League of Nations October 1920. Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question.

SM: The Case of the S.S. "Lotus", PCIJ September 7th, 1927.

Questions for Discussion group:

What are the sources of international law that international jurists draw upon in *Lotus*, and in the *Aaland Islands* cases to resolve the issues of jurisdiction, self-determination, sovereignty?

What is the view of sovereignty exemplified in Vitoria? Are the American "Indians" sovereign nations? According to Vitoria, is there one over-arching "universal" system of law which binds all peoples—even "savages" and infidels? What are the responsibilities of each state? Where does authority lie?

Week Three (September 4-6)

International Relations vs. International Law—can there be law among sovereigns? Issues of enforcement, legitimacy, globalization, & *real politick*

Janis: Chapter 5: The International Court (skim)

SM: Thomas Franck, Legitimacy in the International System 82 Am. J. Int'l L. 705 (1998)

Janis: Chapter 6: States and International Law

SM: Anthony D'Amato: "Is International Law Really "Law" 1985 Northwestern L. Rev (pp 17-38)

Harold Hongju Koh, "How is International Human Rights Law Enforced?" 74 Indiana L.J. 1397-1417 (1998-99).

Questions for Discussion group:

Why do we believe that law is only contingent upon enforcement or enforceability? What about consent, self-interest, cooperation, mutual aid? Why do nations obey international law almost all of the time in the absence of a sovereign?

Week Four (September 11-13)

International Institutions

Janis Chapter 7: International Organizations and Regimes pp. 199-238

SM: Junne: International Organizations in a period of globalization: New (problems of) legitimacy (pp. 68-84);

SM: Women's Legal Rights Initiative, Annual Report on Best Practices, Lessons Learned and Success Stories: Illustrations from Albania, Guatemala and Southern Africa.

SM: UN materials.

Discussion group will be joined by the press group for this week. Press briefers, download the UNGA agenda for the week of 9/11-13; and disseminate a UN institutional chart. Highlight any special charters of the various bodies meeting that week. What representatives are in attendance, check whether there is any national press attention to the issues in front of the General Assembly or other bodies (UNCTAD, UNIFEM, UNAIDS etc.)

Week Five (September 18-20)

Non State Actors

Film: China Blue

SM: Margaret Keck & Kathryn Sikkink: Activists Without Borders "Transnational Advocacy Networks in International Politics" (pp.91-110)

SM: Does v. The Gap Inc., No. CV-01-0031, 2001 WL
Does I v. The Gap, Inc.: Can a Sweatshop Suit Settlement Save Saipan?
Erin Geiger Smith 23 Rev. Litig. 737

For Whom? And for What? Reflections on the Legal Aftermath of Bhopal, Rajeev Dhavan 20 Tex. Int'l L. J 295 (1985); Litigation and Activism: The Bhopal Case, Michael Anderson 1993 Third World Legal Stud. 177, 1993.

Questions for Discussion group: Is transnational advocacy/global justice dependent upon international law? How do advocates deal with issues of sovereignty in light of globalization, universal jurisdiction, open markets and the need for economic development in struggling economies?

Week Six (September 25-27)
10/15/0711/1/2007Genocide

SM: Samantha Power: A problem from Hell: America and the Age of
genocide. Chapters 9-12

Week Seven (October 2-4)
Prof. McKinley out of town October 4

International Law in US Domestic Courts
The Antelope 23 U.S. 66 (1825)
The Paquete Habana 175 U.S. 677 (1900) pp. 5-11
Filartiga v. Peña-Irala 630 F 2d 876 (1980) pp. 12-16

Janis Chapter 4: International law and Municipal law

Week Eight: (October 9-11)
International Law in US Courts cont'd

SM: Jack Goldsmith: Should International human rights law
trump US Domestic law? 1 Chicago J. Int'l L. 327 (2000)

Kenneth Roth: The Charade of U.S. Ratification of
International Human Rights Treaties. 1 Chi. J. Int'l L. 347
(2000)

Sosa v. Alvarez-Machain et .al 542 U.S. (2004)

Questions for Discussion group: What should the role of international law play in US
courts? Why is the United States loath to ratify international treaties? What are the
different interpretations of the Alien Tort Claims Act in *Filartiga* as opposed to
Alvarez Machain?

Week Nine: (October 16-18)
International Criminal Law

Prosecutor vs. Jean-Paul Akayesu
Case No. ICT-R-96-4-T

Questions for Discussion group:
What are the criteria for punishing atrocities? Is this justice/law, morality or is it

politics? Can a nation “move on” and construct a new identity in a post-genocidal situation? Is the trend only to punish the ones who bear the greatest responsibility for atrocities worth the monumental financial and legal effort?

Mid term exam available Thursday October 18th, (take home)
Due Monday October 22nd by 5 p.m.

Week Ten: (October 23-25)
International Human Rights

- *Velásquez-Rodriguez v. Honduras*
Inter-American Court of Human Rights, 1988
- *Olga Tellis v. Bombay Municipal Corporation* (Supreme Court of India 1985)
- *Soobramoney v. Minister of Health (KwaZulu-Natal)* (CCSA, 1997)
- *DeShaney v. Winnebago County Department of Social Services* 489 U.S. 189 (1989)

Questions for discussion group: What are the core set of principles of justice that should form the foundation of a globally acceptable, effective system of human rights? Under what conditions can the contemporary human rights regime contribute to the realization of global justice? What are the limitations of the human rights regime and international institutions in the realization of that goal?

Week Eleven (October 30-Nov 1)

War on Terror

Jay S. Bybee, Memorandum for Alberto Gonzales, Counsel to the President, Standards of Conduct for Interrogation under 18 USC 2340-2340A (August 1, 2002)

Hamdan v. Rumsfeld 126 S.Ct. 2749

Week Twelve (November 6-8)

Feminist Approaches to International Law

Mejía v. Egocheaga v. Peru (Case 10.970, Report 5/96).
Petition Alleging Violations of the Human Rights of Jessica Gonzalez by the United States of America and the State of Colorado, With request for an Investigation and Hearing on the Merits (Submitted to the IACHR, December 23, 2005).

Week Thirteen (November 13-15)

Case study of International Institutions: Office of the United Nations High
Commissioner for Refugees
SM: 1951 Refugee Convention

SM: Ambiguity and Change: Humanitarian NGOs Prepare for the
Future. Executive Summary, Chapter 2, Chapter 3, chapter
4, Epilogue

Questions for Discussion group: What are the agency's priorities? How does it get
funded? What is its mission? Is this relief work, is it long term
community development? What are the goals of relief organizations and
humanitarian NGOs today, given the protracted problems caused by war,
drought, famine, earthquakes?

November 20th

No class, Thanksgiving break

November 27th

International Environmental Law

The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua
Inter-American Ct. H.R., Judgment August 31, 2001

End of semester!