

Skidmore College Spring 2011
International Law (GO 229)—Prof. Ginsberg—Tisch 305—TT 9:40-11:00 am
Office Hours (Ladd 314, ext. 5245) TT 11:00 am-12:30 pm and W 11:00 am-1:00 pm

Ten Course Objectives

- introduce students to the history, theories, principles, doctrines, norms, rules, sources, and concepts of modern public international law
- identify the key governmental, nongovernmental, and other actors in the international legal system
- familiarize students with the types, subjects, objects, and instruments of public international law
- analyze the relevance of international law to state sovereignty and international peace and security
- explore the relationships between international law and national law
- examine the scope of and limits to international law by investigating landmark cases, opinions, customs, and practices
- evaluate international law in terms of its use, enforcement, and universal application
- imagine a world without the existence of international law
- sharpen such critical skills as legal analysis and argumentation and written and oral presentation
- prepare students for more advanced coursework in government and international affairs and for those considering a career in these fields and/or in international law

Course Requirements

- three quizzes (15 percent each)
- three five-page think pieces (10 percent each)
- regular attendance and active participation in scheduled classroom exercises, discussion of readings, responses to questions/problems that arise from the reading of cases, and presentation and analysis of legal cases and opinions for their importance (25 percent)

Required Text and Readings Distributed in Class

- Slomanson, *Fundamental Perspectives on International Law* (6th Edition*) (for purchase)
- Ginsberg, “Law of the EU,” in *Demystifying the European Union* (2nd Edition)
- David Armstrong, et al., “Three Lenses: Realism, Liberalism, and Constructivism” in *International Law and International Relations*
- Jonathan Shaw, “The War and the Writ: Habeas Corpus and Security in an Age of Terrorism” in *Harvard Magazine*, January-February 2009

*use textbook website for valuable data and to download case: <http://home.att.net/~slomansonb/txtcsestite.html>

Schedule of Lectures, Reading Assignments,* Quizzes, Paper Submissions

* bring textbook reading to class for each lecture as we refer to it frequently

Part One: International Law in History

- 1-25 Overview of the Course Themes and Objectives. Preface and Ch. 1
- 1-27 States in International Law, Ch. 2, pp. 45-73
- 2-1 Discussion/Exercise, Ch. 2, pp. 73-107

Part Two: International Law in Theory and Practice

- 2-3 International Organizations, Ch. 3, pp. 123-161
- 2-8 International Organizations, Ch. 3, pp. 161-184; Ginsberg, pp. 101-122
- 2-10 Individuals and Corporations in International Law. Ch. 4, pp. 195-218
- 2-15 Discussion/Exercise. Ch. 4, pp. 218-232
- 2-22 Theories of International Law. Armstrong reading, entirety; and review
- 2-24 Guest Speaker, Lt. Col. Robert Resnick, '88 (US Army JAG Corps)

3-1	Extraterritoriality. Ch. 5; review
3-3	First Quiz (Chs. 1-4)
3-8	State Sovereignty. Ch. 6
3-10	Discussion/Exercise. First Think Piece Due at Start of Class
3-22	Treaties. Ch. 7
3-24	Arbitration, Ch. 8, pp. 377-417
3-29	Discussion/Exercise and Review. Adjudication, Ch. 8, pp. 417-448
3-31	Second Quiz (Chs. 5-7)

Part Three: International Legal Issues

4-5	Use of Force. Ch. 9, pp. 461-514
4-12	Use of Force, Ch. 9, pp. 514-551
4-14	Discussion/Exercise
4-19	Human Rights. Ch. 10, pp. 565-591; and Shaw article in entirety
4-21	Human Rights, Ch. 10, pp. 591-642
4-26	International Trade Law, Ch. 12, pp. 699-736. Second Think Piece Due at Start of Class
4-28	Discussion/Exercise, Review, and Evaluation
5-3	Course Conclusions
TBA	Third Quiz (Chs. 8-10) and Third Think Piece Due at Start of the Quiz

Student Participation and Contribution

Students bring assigned reading to class each day, arrive on time to discuss reading/other assignments, and submit responses to study questions/key concepts as assigned. Each student also makes one or two presentations of legal cases/opinions to identify key principles, precedents, and lessons learned. No unexcused absences are permitted. Each unexcused absence beyond the first instance will result in a full letter drop in the participation grade. If students cannot make class, for whatever reason, they are required to let Dr. G. know by phone before the start of class. The professor will recommend that the student drop the course if there are more than three unexcused absences. Since late arrivals to class are disruptive, students are asked to arrive on time. For each late arrival beyond the first two, the student will suffer a half-letter grade drop in the participation grade. Due dates for assignments and scheduled exams, which are detailed in the syllabus, are fixed and cannot be changed. In fairness to students who meet deadlines, and to best prepare for the “zero tolerance” of late work in either graduate/law school or the workplace, no late submissions will be accepted. In order to anticipate last minute hitches, do not wait until it is too late to print out a document. Students are asked not to send the professor their written work by electronic mail.

Instructions for Exercises

Study Guides. Dr. G. has developed study guides for each chapter that feature key concepts, landmark cases/opinions, and study questions. See syllabus.

Key Concepts. Key concepts are building blocks in students’ understanding of the basic principles of international law. Dr. G. assigns key concepts for each chapter. For each key concept, students should provide a crisp definition, offer a date and an example when appropriate, and explain how the concept is relevant to the study or practice of international law. Students are more apt to learn, define, and remember key concepts if they first understand the context and significance of those concepts. Students may wish to reserve a section in their notebooks for a glossary or use note cards. Students should find their definitions in the assigned text/text website or in the lectures (**not** other non-course sources). Dr. G. may require students either to submit their key concepts for evaluation or to come to class prepared to define key concepts in the course of discussion. Students’ knowledge of key concepts is tested in the quizzes.

Key Cases. For each case or opinion, be specific. Offer when appropriate date and court venue, explain

plaintiff and defendant arguments, describe outcome, offer dissenting opinion if available, identify and explain the key international legal principle/concept that the case features, and explain the significance of the case for our study of IL. Students will find the answers in the text and the accompanying website. Dr. G. will assign students to come to class prepared to “unpack” cases or opinions and analyze their significance. Students’ knowledge of key cases and opinions is tested in the quizzes.

Study Questions. Study questions are designed to encourage students to think creatively and analytically on the basis of what they have learned in the reading. For each study question, students write concrete answers and explain what they write with use of examples. Dr. G. may require students to submit their written responses or come to class prepared to discuss them. Answers to study questions are tested in the quizzes.

Think Pieces. Think piece questions offer students the opportunity to respond to a probing question in a creative, compelling, and engaging way. Maximum length is five pages with a sixth page for works cited. Place a good title and subtitle with your name on cover page. Fully proofread. Take to Writing Center for critique. Check for grammar, spelling and good use of paragraphs. Ensure a consistent, holistic, and integrated piece that begins with your main contention(s) and a clear description of how the paper is organized in support of the contention(s). The conclusion nicely summarizes your main points in support of your contention(s) and thus offers closure. Aim for a polished piece. Make an appt. with Dr. G. to go over your choice and how you wish to unpack and repack the topic. Number your pages and staple your paper.

Chapter Study Guides by Concept, Case, and Study Question

Chapter One—Defining and Explaining International Law

public international law	<i>opinio juris</i>
plaintiff and defendant	supremacy clause
scope of public international law	Hickenlooper amendment
sources of international law	act of state doctrine
monist and dualist approaches	political question doctrine
lack of standing to sue doctrine	sovereign immunity
judicial review	CIL and its main elements
tort claim	hard and soft law

<i>Flores v. Southern Peru Copper Corporation</i>	<i>Paquete Habana</i>
<i>Australian Mining and Smelting v. EC Commission</i>	<i>Kadic v. Karadzic</i>
<i>Respondent v. Chief Constable of West Yorkshire Police</i>	<i>Sabbatino case</i>

What is your first cut at defining international law and explaining its relevance? Amend as you learn.
What is the scope of public international law and why is it subject to some controversy?
What impact do NGOs have on international law?
What are major criticisms of the elements and interpretation of CIL?
Why did the plaintiffs fail to establish a viable claim arising from CIL in *Flores v. Southern Peru Copper*?
Did the Srpska Republic insulate Karadzic from being sued in 1995?
Why is there controversy over the place of international law in the U.S. judicial system?
Why is international law still primitive compared to national legal systems?

Chapter Two—States, Diplomacy, and International Law

nation, state, nation-state, and sovereign state	elements and responsibilities of statehood
absolute and restrictive sovereign immunity	neutrality
Vienna Conventions on Diplomatic & Consular Relations	succession and secession
diplomatic recognition (<i>de facto</i> and <i>de jure</i>)	<i>jus cogens</i>
diplomatic asylum	diplomacy and types of diplomacy
diplomatic and consular immunity (and waiver)	diplomatic and consular functions/rules

Case Concerning US Diplomatic Staff in Teheran
Massachusetts Burma Law Case
Aldona case
Rainbow Warrior Arbitration
DRC v. Belgium

Torres v. Mullin
Austria Supreme Court case
Kadic v. Karadzic
Pinochet extradition case
Saudi Arabia v. Nelson

Slomanson wrote, “the state is the principal subject of IL, but the relationship between the state and IL continues to evolve.” What did he mean?
What does it mean for a state to have “legal personality” in IL?
In *Kadic v. Karadzic*, was Karadzic acting as leader of a state under IL? Why is this question important?
What country mentioned in this chapter does not have the requirements of statehood and why?
Why is receiving diplomatic recognition one of the highest ranking policy goals of a new state?
Why did Judge Goodman award \$800,000 deposited in a California bank to Taiwan and not China in 1952?
Do Taiwan, Kosovo, Northern Cyprus, South Ossetia, and Abkhazia have sovereignty today? Explain.
Did Switzerland violate its neutrality during WWII? If so--how and why?
What are five criteria that a state seeking recognition must satisfy (according to the EU)?
Does a successor state take over the obligations/property/debt of the succeeded state?
Why do some states view the body of IL as derived too much from Western thought and practice?
Why did U.S. Defense Secretary Rumsfeld cancel his trip to Germany in 2002? Significance?
Did the ICJ overreact to Belgium’s attempt to enforce provisions of IL in human rights?
What are five ways in which an entity’s international legal personality changes? Explain each.
How and why do states establish and break diplomatic relations?
What is the legal effect of acts within an embassy that do not conform to the laws of the host country?
May a foreign state give diplomatic asylum within its embassy when to do so would offend the host state?
What are the legal principles governing the famous cases involving diplomatic asylum?
Why did some Latin Americans differ with the ICJ in the *Columbia v. Peru* asylum case?

Chapter Three—International Organizations and Law

international (public) organizations & their types
PCIJ, ICJ, and the ECJ
sources of EU law

international nongovernmental organization (INGO)
organizational immunity
supremacy and uniform application of EU law

Commission of the EC v. Microsoft
Broadbent v. Organization of American States

Center for Reproductive Law and Policy v. Bush
ICJ Reparations Case—Advisory Opinion

What are five examples of international organizations created in the 19th century? Why do you suppose the 19th century was a period of growth for the establishment of IOs?
What were the result and significance of the ICJ’s advisory opinion in 1949 on the question of whether the UN is an international legal personality? Explain.
What are the primary legal responsibilities of the UN Security Council, General Assembly, and ICJ? Explain each.
What is it important to understand the role of law and the ECJ in the founding and development of the EU?

Chapter Four—Individual and Corporations in International Law

Nationality—and its scope and acquisition
refugees
corporation (and its rights and obligation in IL)
nationalization from western and nonwestern perspectives

statelessness—and causes and remedies
rights of EU citizens
state responsibility for injury to aliens
primary and secondary subjects of IL

Liechtenstein v. Guatemala
Nuremberg Tribunal and the individual as subject of IL
Hanna case before British Columbia Supreme Court

downing of Iran commercial airliner case
Barcelona Traction, Light, and Power Co. Sale v. Haitian Centers Council, Inc.

Why does the state enjoy virtually exclusive discretion regarding whether or not to pursue a remedy on the international legal level?
Why is the European Convention for the Protection of Human Rights and Fundamental Freedoms the first major accord to offer the possibility for an individual or NGO to function on the international legal level?
Why and how did the Nuremberg Trials, following the atrocities of the Nazi Third Reich, change the capacity of the individual to function on the international legal level?
Is nationality a matter of national law or international law?
Who are refugees under IL? What is the refugee's legal status under IL?
Why hasn't the United States ratified the 1989 Convention on the Rights of the Child? Do you agree/disagree? Explain.
What specific State conduct triggers responsibility for injury to aliens?
Why is piracy the original crime against humanity and why are pirates treated as individual subjects of IL?

Chapter Five--Extraterritoriality

comity
extraterritorial jurisdiction
effects doctrine
principle of territorial jurisdiction
principle of universal jurisdiction
concurrent jurisdiction
extradition

grant of *certiorari*
international criminal law
extraordinary rendition
principle of national jurisdiction
principle of protective jurisdiction
Helms-Burton Act (1996)
extradition limitation

France v. Turkey
Israel v. Eichmann
French Yahoo Case
ICTR case
U.S. v. Humberto Alvarez-Machain

Blackmer v. U.S.
DRC v. Belgium (ICJ President's opinion)
Pan Am Flight 103 case
Milosevic extradition case
Ker v. Illinois

Under what circumstances can a state legally exercise its sovereign powers abroad?
What does the author mean when he writes that "the old Westphalian concept (of sovereignty)--in the context of a state's right to monopolize the exercise of its power with respect to its territory and citizens—has been discredited in many ways..."?
What has helped make possible the internationalization of criminal activity since the 19th century?
Did Argentina seek legal recourse to Israel's violation of its territorial sovereignty? Why does Slomanson conclude that few states were likely to protest an irregular extradition (abduction) of Eichmann?
Why did the ICJ President, Judge Guillaume, characterize Belgium's legislation as exceeding the scope of international criminal law? Why was trial in absentia unacceptable to Guillaume?
How does the principle (used by the French court) of a "link with France" as a basis for jurisdiction in the Yahoo case compare with categories of extraterritorial jurisdiction described in Slomanson?
Was the outcome in *US v Humberto Alvarez* affected by the torture/killing of a DEA agent in Mexico?

Chapter Six—State Sovereignty in International Law

categories of territory
methods of acquiring sovereignty over territory
Fourth Geneva Convention (1949)
compulsory jurisdiction at the ICJ

different zones of sea
UNCLOS
ICJ case and ICJ advisory opinion
innocent passage

ICJ advisory opinion on legal consequences of wall in OT	<i>United States v. Larsen</i>
Danish-Norwegian Greenland Case before ICJ	Chamizal Arbitration
North Sea Continental Shelf Case before ICJ	UN Security Council Resolution on Kosovo

How has freedom of the high seas changed in the past fifty years and why? Give/explain three examples.
What are non-western criticisms of the western historical bases for acquiring territory?
Why has the United States signed but not ratified the UNCLOS?
Choose either the Larsen case or the ICJ opinion on Israel's Palestinian Wall, and state whether as a judge you would agree with the court or offer a dissenting opinion. Explain why.

Chapter Seven—Treaty Law

treaty (include treaty types)	executive agreement
Vienna Convention on the Law of Treaties (VCLT)	unequal treaty
stages of a multilateral treaty's formulation/execution	yardsticks for treaty observance
methods for treaty suspension or termination	
<i>Medellin v. Texas</i>	ICJ Opinion on Genocide Convention
<i>Case Involving the Arbitral Award Made by King of Spain</i>	<i>Germany v. Iceland</i>
<i>Hungary v. Slovakia</i>	<i>Weinberger v. Rossi</i>

Why is treaty-making so important in IL?
What test did the ICJ use to determine if a reservation to a multilateral treaty is permissible, and why?
When does a treaty enter into force and why?
What are the risks to treaty observance that arise from the doctrine of *rebus sic stantibus*?

Chapter Eight—Arbitration and Adjudication

alternative dispute resolution (include four means)	main objectives/tasks of the ICJ
compulsory jurisdiction and the optional clause	sources of IL on which ICJ relies
international criminal law	regional courts
ICTY, ICTR, and ICC--and main objectives	Article 98 Treaties
<i>Dogger Bank Inquiry</i>	<i>Namibia Presence Case</i>
<i>Open Door & Dublin Well Woman v. Ireland</i>	<i>Corfu Channel Case</i>
<i>Tadic Case</i>	<i>Radio Machete Case</i>
Nuremberg Proceedings (1946)	

What did the PCIJ achieve--and what were three of its weaknesses/limitations?
What has the ICJ achieved--and what are four of its weaknesses/limitations?
Compare and contrast the PCIJ and the ICJ: what are three notable similarities and differences?
What are three examples of ICJ advisory opinions? Explain each. Are some opinions quasi judgments?
What are three major arguments for—and three major arguments against--having the ICC? Explain.
Would the U.S. and the world gain or lose if the U.S. joined the ICC?

Chapter Nine—Use of Force in International Law

<i>writ of habeas corpus</i>	preemptive and preventive action
collective security and collective self-defense	POW and unlawful combatant
principles of necessity and proportionality	humanitarian intervention
control and disarmament	UN and non-UN peacekeeping operations

Second Think Piece Assignment (due at start of class on April 28). Choose One.

Is the threat or use of nuclear weapons in any circumstance permitted under IL?

Should the U.S. and other UN members accept and be bound by the ICJ's compulsory jurisdiction? If so, under what circumstances and if not, why not?

What are the main U.S. objections to the Rome Statute? Do you think Obama should/will submit the Treaty to Senate confirmation during his term—or not? Would the Senate actually ratify Rome? Explain.

Refer to Slomanson's scenario on pp. 555-556 of a second looming 9-11 situation (a ticking bomb) and the use of torture: organize your think piece around answers to the first three of his listed questions.

In Alvarez and Eichmann, the different courts accepted forced extraditions. Rendition and extraordinary rendition are two types of extraditions. Some of the 'enemy combatants' or 'prisoners of war' at Gitmo were rendered there by forceful and extralegal means. In the struggle against terrorism, what are your views on extraordinary rendition in two contexts: (a) international law; and (b) the balance between the respect for universal individual rights and the need for states to provide for their security against terrorist actions before they occur?

Explain the origins of the U.S. military's use of Guantanamo Bay (Gitmo), the international and U.S. legal issues and concerns over the use of the base to hold and try detainees, and the challenges of closing the facility down. What recommendation(s) do you offer to close down the facility?

Third Think Piece Assignment (due at start of final quiz). Choose One.

Write the 14th chapter of Slomanson--a concluding chapter that identifies and summarizes the main themes/findings of the book and their significance. Pull together the most interesting and important themes identified by him to write the ending he chose not to do. Make concrete what you write with examples.

Now that you have studied IL fourteen weeks, what are your most salient observations and conclusions about what IL is, where IL has come, where it is now, and where you think it may be going during the next decade. Make concrete what you write with examples.

Evaluative Criteria for GO 229 Think Pieces

- Cover page w/creative title/subtitle _____
- Clear intro. w/provocative/engaging theme _____
- Good structure of ideas set out up front _____
- Good organization (parts relate to whole) _____
- Support argument w/ explanations & examples _____
- Effective delivery/overall quality of presentation _____
- Originality, creativity, persuasiveness _____
- Spelling, grammar, and sentence structure _____
- Page numbers, margins, and paragraphs _____
- Response to query _____
- Accuracy of content _____
- Clear conclusion linked back to intro & theme _____
- Adherence to five-page length _____
- Citation page as needed with proper cites _____
- Consultation with Dr. G. in advance _____

