

# INTERNATIONAL LAW SYLLABUS

**Prof. Sonia Elise Rolland**

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## Office hours:

Wednesdays 3.30 pm – 4.30 pm

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## Casebook and course materials:

The casebook for this class is **B. Carter, P. Trimble, A. Weiner, *International Law*, 5th ed. Aspen Publishers**. Readings in the casebook are referred to as “CB pp. \_\_\_\_” in the syllabus. You do not need to buy the document supplement.

**A number of additional materials are posted on TWEN (noted as “course website” in the syllabus). They are also required readings. You must register for the class on TWEN to access the documents.**

The course website also includes some more general resources that might be useful to you. In particular, it includes some fundamental documents (UN Charter, Vienna Convention on the Law of Treaties, etc.) and research guides.

I also encourage you to subscribe (for free) to the American Society of International Law’s newsletter (ASIL Insights) and news brief (International Law in Brief (ILIB)). They are high quality resources, they keep you informed of current developments and they help you built knowledge about who is who in international law. They also include information about fellowships and conferences. You can also become an ASIL member as a student for a modest fee. See generally [www.asil.org](http://www.asil.org) (go to the “Publications” section to subscribe to ASIL Insights and ILIB).

## Class preparation and attendance:

Both are mandatory! Attendance is a requirement imposed by the school and the American Bar Association and is key to your success in this class.

If you need to miss a class, email me ahead of time (up to the day before the class). If you can attend but have been unable to prepare for some exceptional reason, also do let me know ahead of time. I will not call on you in class. However, more than occasional absence or lack of

preparation will be sanctioned. If you are prevented from attending class for an extended period of time, you should talk to me or to the Dean of Students.

International law materials tend to be long despite having been mercilessly edited for you. **You will soon realize that they require a different reading style than what you are used to in Contracts or Constitutional Law.** An important step is to hone in on the language that presents legal obligations and arguments and to distinguish it from the language of politics that may also be used. For example, a treaty preamble is mostly a political statement and not every word needs to be studied carefully. Yet, it is useful to understand the intent of the treaty parties and the general object and purpose of the treaty. By contrast, certain key treaty provisions have been very carefully worded and need to be read closely.

**When you prepare for class, you should focus on:**

- understanding the substance of the materials,
- understanding the process by which a particular rule or decision has come about,
- relating the materials to earlier segments of the class so that you progressively build a full picture of the international legal system.

*Finally, whether you missed a class, you fell behind in your readings, you feel confused for any reason, or you just want to take stock of how you are doing do come to my office and we will work it out. Feel free to come on your own or with your study group, for 5 minutes or for an hour.*

**Exam, Final Paper and Evaluations:**

The evaluation for this course will be based on a short closed book in class exam, a final paper and your class participation.

*Exam:*

This “objective” exam will consist in short answers to short questions to assess whether you understand and master the basics (about 20 questions; 45 minutes). I will give you examples of typical questions as we progress in the course. This exam will be closed books and in class during exam week.

*Paper:*

The final paper will consist in a comment and analysis of a case of your choosing from the class materials. See a list of cases by topic in the “General Resources” tab of the course website). It will be a minimum of 3,750 words and a maximum of 4,000 words, including footnotes. You will be required to read the full judgment (as opposed to the edited version in your materials), along with any concurring, dissent or separate opinion and your paper will analyze, discuss and criticize the judgment in light of the knowledge you have gained from the course. Some limited amount of outside research will be required.

You will be required:

- To pick a case that will be the topic of your paper by September 30. Include your name and the full case reference in the Assignment drop box on the course website.
- To produce a detailed outline of your paper by October 22. Submit in the Assignment drop box of the course website.;

- To meet with the instructor during the week of October 25 to receive feedback on your outline.
- **If you wish to satisfy the Upper Level Writing Requirement with this paper:** to produce a first draft of your paper by November 5. You will receive written feedback from the instructor shortly thereafter.
- to write your final draft based on your outline and the oral and written feedback that you will have received from the instructor for this course. Your paper is due on the final day of the exam week: **Friday November 19th, 2010**. You should turn in your paper to Student services with your exam number as identifier.

**These deadlines are not negotiable absent proven unforeseen hardship or other extraordinary circumstances to be discussed with the instructor as soon as they arise.**

Active class participation is part of the course requirements to pass this class. Exceptional class participation will be rewarded in your evaluation and poor class participation will be noted. If you wish to contest your final evaluation, you must go through the official channels and I will **not** reconsider any exam marking or evaluation if you contact me directly because it will breach the requirement of blind evaluation.

## SYLLABUS

**While the readings are broken down by session, the dynamic of the discussion will require some flexibility. As the situation may require, the readings for one session may spill over to the next class.**

1. August 31 **International law: what is it, where does it come from, why do we have it?**

Assignment:

- Read pages 1-3 of this syllabus CAREFULLY and make note of the deadlines
- Read the World Chronology (course website – “General Resources” tab)
- CB pp. 1-23
- CB pp. 49-50 (Ratner and Slaughter excerpt)
- Browse *100 Ways* (ASIL publication) (course website – “Course Materials” tab)

Think about...

- What are the fundamental characteristics of a legal system? How do they compare to international law?
- Law, politics and legitimacy: is it all the same when it comes to international law?
- What is sovereignty? Why does it matter?
- Universalism versus particularism: how does that affect our understanding of international law?

2. Sept. 2 **Actors of international law: States**  
**Determination, recognition, succession**

Assignment:

- CB pp. 444-458.
- CB pp. 466-top of 473
- P. Dumberry on state succession (course website) read pp. 413-421 (excluding footnotes) and **pick one of the case studies in the article** (ie, Germany, USSR, Czechoslovakia, Namibia, or Yugoslavia), read the section of the article discussing it and be prepared to summarize the issues pertaining to it in class. NOTE: “state responsibility” is akin to the concept of liability. The issue explored in this article is whether successor states are “responsible” (or liable) for breaches of international law by the prior state.

Think about...

- How much does a purported state have a say in whether it will be, in

fact, considered as a state under international law?

- Why does it matter to be (widely) recognized as a state?

3. Sept. 7

**Actors of international law: International organizations**

Assignment:

- CB pp. 478-488 (excluding the Notes): understand what is the UN, what it does and how it functions. You should also browse the UN Charter at [www.un.org](http://www.un.org) (skip the technical provisions on financing, etc).
- CB pp. 510-516 (excluding Notes and Questions). Alternatively look at the WTO website at [www.wto.org](http://www.wto.org) (in the tab “The WTO” top right look at “What is the WTO” and the list of members). Either way, the goal is that you understand what the WTO is, where it comes from, what it does, how it functions.
- WTO Marrakech Agreement (course website): preamble and arts. I-IV, VIII, IX.
- ICJ–Injuries Suffered at the Service of the UN (advisory opinion excerpt) (course website)

Think about...

- What are international organizations?
- Are international organizations more than the sum of their parts (the states)?
- Is the WTO an international organization?
- Why do international organizations need legal personality?
- What legal personality do they have?
- Do international organizations make international law?

4. Sept. 14

**Actors of international law: Individuals, non-governmental organizations (NGOs), corporations**

Assignment:

- ICJ, Barcelona Traction case (course website)
- Browse the International Covenant on Civil and Political Rights (ICCPR) (course website)
- Toonen v. Australia (course website)
- Rome Statute of the International Criminal Court (course website)
- US-Argentina Bilateral Investment Treaty (BIT) (course website): focus on arts. II & VII
- Mini research assignment: Look for an example where a corporation got sued for a purported violation of international law. Be ready to discuss briefly the background of the alleged violation, the parties and the outcome. Subject areas where there has been a lot of activity include allegations of human rights violations (forced labor in particular) and environmental violations (transboundary pollution, etc).

Think about...

- You do not need to remember all the substantive rights and obligations in the reading materials; rather, you should review them with a view to determining what is the legal position of individuals, corporations and states in those documents. **Who has rights? Who has obligations and to whom?**
- Do individuals have rights under international law?
- Can individuals make international law?
- Can individuals be held liable for an international law violation?
- Same questions for corporations.
- What is the role of NGOs in international law? Are they subjects of international law, do they make international law? Can they be liable for an international law violation?

5. Sept. 16 **Sources of law: Treaties (I) – Formation and interpretation**Assignment:

- CB pp. 93-99
- CB pp. 101 (starting at Section C)-106
- Glossary of Treaty Terms (course website): focus on the terms adoption, signature, approval, entry into force, ratification, accession, definitive signature, deposit, exchange of letters, registration and publication.
- 1969 Vienna Convention on the Law of Treaties: Arts. 2, 3, 4, 11, 18, 26, 27, 30-33 (course website)
- Libya/Chad Territorial Dispute (ICJ Judgment excerpt) (course website)

Think about...

- What is the source of the authority of states to conclude treaties?
- Can any other entity conclude treaties?
- When you read the ICJ *Libya/Chad* opinion, focus on the method of treaty interpretation by the Court.
- How does the International Court of Justice and the US Supreme Court compare in their method of treaty interpretation? What legal sources do they use to guide them? What about the dissent in *Alvarez-Machain*?
- Why doesn't the Vienna Convention on the Law of Treaties give more weight to (international) courts' judgments as a source of law or precedent?

6. Sept. 21 **Sources of law: Treaties (II) –Reservations, declarations and termination**Assignment:

- US v. Alvarez-Machain (excerpt) (course website) (Relates to session 5 materials)

- 1969 Vienna Convention; Arts. 19-23.
- CB pp. 107-top of page 114. Pay particular attention to the Notes and Questions but skip Note 5 on p. 111.
- CB pp. 116-118.
- ICJ, Advisory Opinion on Reservations to the Genocide Convention (course website)

Think about...

- How effective is the reservations system? Is it a useful safeguard? Does it simply create loopholes? Is it practical? Does it actually do the job?
- Termination or suspension of treaties: what does that tell us about the nature of international commitments?
- Withdrawal and denunciation: is it too hard or too easy to get out of international commitments?

7. Sept. 23

**Sources of law: Customary law**

**A super-customary law: Jus Cogens?**

Assignment:

- CB pp. 123-middle of 127
- CB pp. 131 (section 2)-136
- CB pp. 239-middle of 249
- CB pp. 120.

Think about...

- What are the two defining elements of customary law?
- Does the Supreme Court's interpretation of customary law match the definition of the Restatement?
- How do the *Paquete Habana* and the *Filartiga* opinions compare?
- Isn't state consent the precondition to the making of an international law rule? How does that compare with customary law rules?
- Why is jus cogens so controversial? Can you think of an existing rule of jus cogens? Think back to the introductory class and the debate about universalism: are jus cogens universal norms?

8. Sept. 28

**Sources of law: General principles, judicial decisions, soft law**

Assignment:

- CB pp. 151-155 (excluding Notes and Questions on p. 155)
- ICJ-Wall advisory opinion (course website)
- CB pp. 137-138 (intro to Section C)
- Pierre-Marie Dupuy, Soft law article (course website)
- Global Witness v. Afrimex: skim (course website)

Think about...

- General principles or how public international law meets comparative law... What are general principles and where are they to be found? How

does that differ from other substantive rules of international law?

- As exemplified in the Wall opinion, the ICJ often refers to earlier decisions it has made. How does that differ from the use of precedents in US courts?

- Is “soft law” really law? What is it useful for?

- What does the development of soft law and the increased use of references to judgments mean for state consent? Do you think it is a desirable evolution?

- To conclude on sources: Reflect on the diversification of sources of international law and the blurring of the lines between what is law and what is not. Why are we witnessing such a trend? Can you relate it to the historical evolution of international law and of the makers of international law (recall the intro class)?

9. Sept. 30

### **Enforcing international law: International courts**

#### Assignment:

- CB pp. 298-310 (omit discussion on Yugoslavia at 301-302 and omit all notes and questions)
- CB pp. 313 (Section d)-320 (excluding Section e)
- CB pp. 324-330
- CB pp. 339-340 (intro to Section C)
- CB pp. 357-358 (intro to Section D) and pp. 371-375 (omit Problem)
- CB pp. 401-409
- CB pp. 414-419
- Refresh your memory on the Rome Statute establishing the International Criminal Court (Class 4)

#### Think about...

- Objectives of the readings:
  - Understand how international adjudication between countries work in general and more specifically at the ICJ and the WTO (making a flowchart of the procedure at those two institutions could be helpful; look up the section on “Dispute Settlement” on the WTO website in the tab “Trade Topics”).
  - get a sense of the different processes: formal court (ICJ) versus ad hoc panels under a permanent mechanism (NAFTA and WTO) versus entirely ad hoc arbitration.
- What is the point of international courts? Are courts useful without a police power?
- What role does state consent play in international adjudication?
- Can a state ever be sued without having accepted the court’s jurisdiction beforehand?
- International courts don’t involve juries (not even the ICC): Can you think of some reasons why that is the case?
- Recalling your earlier readings, what can you say about admission of



evidence and fact finding in international adjudication?

10. Oct. 5 **Enforcing international law: state responsibility, countermeasures, sanctions**

Assignment:

- ILC articles on state responsibility (course website)
- PCIJ, Factory at Chorzow (course website)
- ICJ Congo Uganda case overview (course website)
- ICJ Bosnia Genocide case overview (course website)
- UN Charter Chapters VI and VII (course website)
- UN 1991 Iraq resolution (course website)

Think about...

- What is “state responsibility”?
- Find an example to illustrate each of the situations described in articles 5 to 11 of the ILC articles on state responsibility.
- Who decides whether a state is responsible for a breach?
- What are the consequences of a state being found responsible for a breach of international law?
- What is the difference between sanctions and countermeasures?
- Can you reconcile the PCIJ and the two ICJ decisions in terms of the reparations granted? Do you think those cases were decided correctly? Fairly?
- What type of reparations does the Security Council order Iraq to make? What else does the Security Council impose in Resolution 687?
- What types of sanctions may be imposed under international law and by whom?

11. Oct. 7 **International law and domestic law: Monism, dualism, U.S. specificities**

Assignment:

- Dunoff, Dualism and monism (course website)
- Kirgis, International agreements (course website)
- CB pp. 159-167 (omit Notes and questions)
- CB pp. 170-171 (excluding *Asakura*)
- CB pp. 267-275
- (CB pp. 239-249 refresh your memory from Class 7)

Think about...

- Is the U.S. a monist or dualist country?
- What is the legal source of the self-executing/non-self-executing distinction?
- How are rules of customary law incorporated in US law?

12. Oct. 12 **International law and US law: The Consular rights saga**

Assignment:

- CB pp. 180 (Section c)-185 (a quick overview of the cases)
- ICJ Avena case (course website)
- Medellin case (course website)

Think about...

- What exactly are the alleged international law violations in the Avena case?
- What is the requirement of exhaustion of local remedies to what does it apply with respect to the Avena claims?
- Why does it matter whether consular rights are individual rights or are solely rights and obligations between states?
- Consider the ICJ's interpretation of "without delay" (paras. 83-88): does it comport with the Vienna Convention on the Interpretation of Treaties that we discussed earlier in the term? Refresh your memory on the topic...
- Are US domestic laws regarding procedural default a valid defense against a claim that the US has breached its international obligations? Refresh your memory on the law of state responsibility (Class 9)
- Does the ICJ tell the US what its courts (or other agencies of the US) should do ensure that the US is in compliance with the judgment?
- Who is bound by the ICJ judgment and vis-à-vis whom?
- Is Simma and Hoppe's optimism still warranted after Medellin?

13. Oct. 14 **International law and US law: Immunities (act of state doctrine and FSIA)**

Assignment:

- FSIA excerpt (course website)
- CB pp. 568-576
- CB pp. 588 (bottom of the page)-594
- CB pp. 613 (Section 12)-615 (excluding Dellapenna article)
- CB pp. 620-621
- CB pp. 624 (Section 16)-628
- Act of State Doctrine (course website)
- CB pp. 648-652 (Kirkpatrick v. Environmental Tectonics, excluding Notes and Questions)

Think about...

- Why are states afforded certain jurisdictional immunities from judgment by the courts of another state?
- What entities are covered by the FSIA?
- What activities or incidents are not covered by the FSIA?

- What is the act of state doctrine? What is the difference between immunity and the act of state doctrine?

14. Oct. 19

**International law and US law: Jurisdiction—how far and to whom does US law apply in transboundary situations?**

Assignment:

- CB pp. 657-658 (introduction)
- CB pp. 659 (Section A)-670
- CB pp. 685 (Section 2)-686 (excluding Lowenfeld article)
- CB pp. 696-701 (excluding Notes and Questions)
- CB pp. 703 (Restatement only)
- CB pp. 706 (Restatement only) and Notes 6 & 10 at 710-713
- CB pp. 713 (Section 5)-716 (excluding Bin Laden case)
- CB pp. 737 (Section 2)-742 (excluding Choice of Law)

Think about...

- What is the difference between the jurisdiction to prescribe and the jurisdiction to adjudicate?
- Why are limits to jurisdiction an international law problem?
- What are the two traditional bases for jurisdiction (to prescribe and to adjudicate)?
- The materials present US rules pertaining to limits to its jurisdiction. How else could the problem be dealt with?
- A suggestion: you may want to make a flowchart of the various jurisdictional categories.

15. Oct. 21

**Humanitarian law (I)**

Assignment:

- CB pp. 1077 (Section D)-1080
- Geneva Convention Excerpts (course website) (focus particularly on arts. 2-4)
- CB pp. 1085 (Section c)-1092 (excluding Notes and Questions)
- Status of Detainees in armed conflicts (course website)

Think about...

- What categories of people do the Geneva Conventions protect?
- To what situations do the Geneva Conventions apply?
- What do the wars with Afghanistan, Iraq and the so-called “war on terrorism” imply with respect to the Geneva Conventions?

16. Oct. 26

**Humanitarian law (II)**

Assignment:

- Military Commissions Act and humanitarian law (course website)

- ASIL Insight on Boumediene v. Bush (course website)
- Convention against Torture excerpts (course website)
- Private Military Contractors (course website-skim)
- Browse through the Memoranda on Torture released to the public in April 2009 (see link entitled "TORTURE MEMOS GUIDE" on TWEN)

Think about...

- Can the Geneva Conventions cope with the evolutions of contemporary warfare (terrorism, private military contractors, etc)?
- Is torture ever allowed?
- Pay attention to the drafting style of the Memos on Torture: what is the objective of the drafters?

17. Oct. 28

**International Criminal Law**

Assignment:

- CB pp. 1127-1139 (pay particular attention to the Notes on pp. 1134-1136 regarding rendition)
- CB pp. 1145-1156 (omit all notes and Questions)
- CB pp. 1160 (section b and Ratner article)-1163 (omit Notes)
- CB pp. 1180-1182 (excluding Notes and Questions)
- CB pp. 1191 (section 3)-1193
- CB pp. 1195-1201
- browse the ICC website ([www.icc-cpi.int](http://www.icc-cpi.int)) and read the overview of current cases at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>

Think about...

- Who can be tried at the ICC and for what?
- When can a national of a country that is not a party to the ICC be prosecuted and tried at the ICC?
- If the US ratified the Rome Statute, under what circumstances could members of the US military be prosecuted and tried at the ICC?
- Recommended movie: "The Reckoning: The Battle for the International Criminal Court" (available at NUSL Law library)

18. Nov. 2

**International environmental law**

Assignment:

- CB pp. 923-934 (excluding Notes and Questions)
- CB pp. 937-942
- CB pp. 955 (Section B)-959
- Copenhagen Conference report (course website)
- Kyoto documents (course website) skim
- Mass v. EPA (course website)

Think about...

- How does environmental regulation differ from more traditional international law commitments?
- States undertake environmental commitments vis-à-vis whom?
- What is a “framework convention”?
- What do you think of the Supreme Court’s characterization of the Climate Change Framework Convention’s legal value?
- What issues are raised by the enforcement of international environmental commitments?

19. Nov. 4

**WTO law, intellectual property and public health**Assignment:

- Smoot-Hawley (course website)
- WTO-Draft chapter (course website)
- Benvenisti, Distributive politics (course website)

Think about...

- What is a tariff? What is a quota?
- How does liberalization on trade in services operate in practice? Think about particular examples of service transactions and decide which type of service it is and how the prohibition on restrictions in GATS Article XVI would apply.
- What does the 2003 Public Health Decision allow WTO members to do?
- Go on the WTO website and find out how many members and which ones have made notifications that they intend to use the 2003 Decision mechanism:  
[http://www.wto.org/english/tratop\\_e/trips\\_e/pharmpatent\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm)
- Is the 2003 Decision useful?

20. Nov. 9

**Review session**