**International Law**

**Summer 2010**

**Professor Hope Lewis**

**Class Meetings: Mondays & Wednesdays 10:15-11:45**

**Office Hours: Tuesdays 1:30-3:30 or contact me for an appointment.**

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WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

* to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
* to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
* to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
* to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

* to practice tolerance and live together in peace with one another as good neighbours, and
* to unite our strength to maintain international peace and security, and
* to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
* to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS. Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations. *--Charter of the United Nations (1945)[[1]](#footnote-1)*

The Issues: Armed conflicts, arbitrary detention and torture, terrorism, unmanned drones, mass internal displacement and refugee flows caused by war or environmental disaster, the proliferation of weapons of mass destruction, human rights violations stemming from gender, religious, racial, cultural, and political discrimination, and the impact of global economic arrangements--international legal problems are as varied and complex as the daily news. What roles should international law play in addressing these issues?

Course Coverage: This course introduces international legal norms, actors, and processes. It lays the foundation for those hoping to practice or study in the many specialized subfields for which international law is relevant. Using case studies from around the world, course materials survey key doctrines, dispute resolution mechanisms, and unresolved controversies.

Course Objectives: Students who complete this course successfully should be able to:

* *critically analyze* the historical origins, theoretical framework, and political implications of international law;
* *apply* substantive international legal doctrines (the “sources of international law”) to real-world problems;
* *understand* the basic premises of key subfields such as international human rights law, international humanitarian law, international criminal law, and legal restrictions on the use of force;
* *describe* the nature and roles of key international actors (*e.g.*, states, international organizations, and non-governmental organizations);
* *distinguish among, and assess* the advantages and disadvantages of, a range of international legal implementation and dispute resolution processes (i.e., national implementation, international monitoring and reporting mechanisms, adjudication, arbitration, and Security Council action).

Prerequisites/Credits: There is no prerequisite for this survey course. Three credits.

This course outline is for guidance purposes only and is subject to change as events warrant.

**Course Requirements**

**Required Materials**

* On-line Readings and Handouts as assigned. Please download, read, and bring to class on-line assigned readings.
* Dunoff, Ratner, & Wippman, International Law: Norms, Actors, Process—A Problem-Oriented Approach (Aspen, 2nd ed., 2006) (“DRW”). DRW maintains an Update and Document Supplement Website (“DRW Website”) at: <http://www.temple.edu/lawschool/drwiltext/>. Note: Aspen will publish a 3rd edition during the summer. They will provide supplements from the new edition, so please save your receipts when you purchase the 2nd edition.
* Noyes, Dickinson, & Janis, *International Law Stories*. (Foundation Press, 2007) (“IL Stories”).
* TWEN Website: Register for the course TWEN site. The site includes pdfs of some readings, helpful on-line research and job-hunting resources, and space for posting your reflection papers (see below).

Accessed through TWEN at:

<http://lawschool.westlaw.com/twen/>

Enter your Westlaw information, then use the password for “International Law—Summer 2010”-- “Nuslintlaw”—to register.

**Optional Background Resources (for current events or further information on issues raised in required readings)**

* Murphy, *Principles of International Law* (Thomson/West, 2006)
* IntLawGrrls Blog: <http://intlawgrrls.blogspot.com/>
* Opinio Juris Blog: <http://www.opiniojuris.org/>
* War Crimes Prosecution Watch E-Newsletter. Available at: <http://www.publicinternationallaw.org/warcrimeswatch/>

**Evaluation**

(1) Class Participation (including short written assignment and in-class discussions)—25%. Regular attendance and active, informed participation in discussions in class and on-line are important aspects of this course.

Each student is also expected to comment briefly (one or two paragraphs) on at least one (1) other student’s reflection paper described below.

If you are unable to participate in a particular class, or are unable to attend a class session due to illness or an unavoidable conflict, please let me know by e-mail as soon as possible.

(2) Reflection Paper— Sign up for a reflection paper slot on the TWEN site. Write a short (2-3 double-spaced pages) comment reflecting on ANY specific aspect of the legal and policy issues raised in the readings assigned for that slot or responding to one of the questions asked in the readings or course outline AND placing the issue in the context of a specific current event.

Then post BOTH the paper AND a link to a brief international law-related reliable news report or commentary (news articles, main blog posts, op-eds, or short video clips from recognized sources are appropriate).

Please post the paper using WORD 2007. Post these items before class on the due date you signed up for. Please check for viruses or inappropriate material before posting.

“Current” means “within the last 3 months” for these purposes). As time permits, I may ask some students to share their thoughts from reflection papers with the class. All students are encouraged to read and post constructive observations, comments, or questions in response to the reflections of other students on the Class TWEN site, but each student is required to comment on at least one other student’s paper at some point before the last week of classes. Note: please treat others with the same respect with which you would like to be treated.

(3) Final Take-home Exam—75%: The final take-home exam will be distributed on the last day of class and will require an essay response of approximately 8 double-spaced typed pages in total.

Exam responses are due to be submitted online (instructions will be provided) to the Office of Academic and Student Affairs, NOT to me, and are due by NOON on the last day of exam period. Please see the Student Handbook and OASA with regard to deadlines and procedures for requesting emergency extensions and for disability accommodations.[[2]](#footnote-2)

**Reading Assignments**

**Part I. The Foundations of International Law:**

**A. Introduction To International Law**

**Topic 1. International Law in a Time of Change: Dreams and Realities**

**(Wednesday, June 2)**

* IL Stories 1-10 (introduction)
* Preamble, Articles 1 and 2, Charter of the United Nations. Available at: <http://www.un.org/en/documents/charter/> and elsewhere on-line.
* “Chart: Principle Organs of the UN.” Available at: <http://www.un.org/aboutun/chart_en.pdf>
* Optional (browse): American Society of International Law, *International Law: 100 Ways it Shapes Our Lives (2006).*  Available at: <http://www.asil.org/pdfs/asil_100_ways_05.pdf> or elsewhere on-line.
* Optional (browse): Jose Alvarez and David Lachman, (Draft for American Society of International Law), *International Law: 50 Ways it Harms Our Lives (2006).* Available at: <http://www.asil.org/ilpost/president/50_ways.pdf> or elsewhere on-line.

Introductions. Course Requirements and Overview. What norms, actors, and processes constitute the international legal system? What does international law claim to do? Is it successful? What do international lawyers do? Does international law promise something more than domestic law can deliver? Is international law still relevant or effective in resolving contemporary global problems and disputes?

**Topic 2. The “Evolution” of International Law—From the Chad/Libya Border Dispute to the *Rainbow Warrior* Affair (Chad, Libya, New Zealand, France)**

**(Monday, June 7)**

* Read the course outline carefully and let me know if you have questions.
* Register for the class TWEN website.
* DRW 1-33 (focus on questions at pp. 15, 19, and 24-25)
* Preamble, Articles 1 and 2, and Chapters VI-VII of the Charter of the United Nations. Available on DRW Website or elsewhere on-line.
* TWEN Survey. Before class please post a paragraph or two on the class TWEN site with the following information:
  + your name and class year;
  + any previous or current international, comparative, or immigration related courses (graduate or undergraduate) (if any);
  + international co-ops, study abroad, or other foreign or international law work experiences (if any);
  + interests in particular subspecialties in international law;
  + anything else you would like the class and me to know about you.

How would you describe the distinctions between “traditional” and “contemporary” international law? What general legal commitments do parties to the UN Charter make? Do the arrangements under the Charter seem to support, or undermine, Anghie’s arguments about the colonial origins of international law? Class discussion on the resolutions to the Rainbow Warrior Affair.

**Important Note: Class will NOT meet on Wednesday, June 9.**

**B. Doctrinal Sources of International Law**

**Topic 3. Sources of International Law: Treaties (Cyprus, Greece, U.K., Turkey, U.S.)**

**(Monday, June 14)**

* DRW 35-63 (focus on notes and questions on pp. 52, and 62-63, using specific VCLT rules to answer the questions).

The Vienna Convention on the Law of Treaties (VCLT). What were the implications of treaty law for the Cyprus conflict? Introduction to the process of treaty-making and interpretation.

**Topic 4. Sources of International Law: Treaties (cont.) (Cyprus, Greece, U.K., Turkey, U.S.)**

**(Wednesday, June 16)**

* DRW 63-74 (focus on notes and questions at 73-74)
* U.S. Department of State official position on the VCLT. Available at: <http://www.state.gov/s/l/treaty/faqs/70139.htm>
* “Outline on Treaties” (to be posted in “Other Course Materials” on TWEN website).

VCLT rules on interpretation, denunciation, and reservations. What do you think the drafters of the VCLT were trying to accomplish through the rules on treaty reservations? Were they successful?

**Topic 5. Sources of International Law: Customary International Law (CIL) and “Soft Law”—Foreign Direct Investment (FDI) and Third World Approaches to International Law (TWAIL) (Iran, U.S.A., Libya)**

**(Monday, June 21)**

* DRW 74-105 (focus on notes and questions at 97 and 104).
* Makau Mutua & Antony Anghie, *What is TWAIL?,* 94 ASIL Proceedings 31 (2000). Available in “Other Course Materials” on TWEN site or elsewhere.

How do domestic courts determine the existence of a rule of customary international law? What challenges are posed for international lawyers arguing the legal status of a practice? Is the phrase “soft law” an oxymoron? Why would international actors spend time on its development? Is it clear that the interests of developing countries will be better served by "soft law" and “progressive development” approaches? Should there be a difference between the legal effect of a Security Council resolution and a resolution of the General Assembly?

**Topic 6. Sources of International Law: Customary International Law (cont.), “Soft Law” and General Principles of Law (cont.)**

**(Wednesday, June 23)**

* Same readings as for Topic 5.

**Part II. Participants in the International Legal System**

**Topic 7. Non-Governmental Organizations: “Bringing Human Rights Home” (the United States of America)**

**(Monday, June 28)**

* International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Available at: <http://www2.ohchr.org/english/law/cerd.htm> and elsewhere on-line.
* *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America,* 8 May 2008. Available at <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>
* “Statement of LCCR” and “Statement of Maria Foscarinis” to the U.S. Senate Judiciary Subcommittee on Human Rights and the Law Hearing, "The Law of the Land: U.S. Implementation of Human Rights Treaties," December 16, 2009. Available under “Treaty Implementation Initiative” at current initiative site, Human Rights Institute, Columbia Law School: <http://www.law.columbia.edu/center_program/human_rights/HRinUS/HRinUSProject>
* Optional: Periodic Report (fourth, fifth, and sixth) of the United States of America to the Committee on the Elimination of Racial Discrimination, 1 May 2007. Available at: <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>
* Optional: United States Human Rights Network, *Shadow Report to the UN Committee on the Elimination of All Forms of Racial Discrimination*. Available at: <http://www.ushrnetwork.org/projects/cerd>

States parties bear the primary responsibility for the implementation of international treaties. Multilateral treaties such as human rights treaties can reflect a wide range of political, social, economic, and cultural agendas that involve actors other than states. How do international organizations, states, and non-state actors (like non-governmental organizations (NGOs)) interact to influence the adoption, promotion, and implementation of treaties? Case study from the U.S.

***Tuesday, June 29, 5:30 p.m. (location TBA)***

***Optional PHRGE Event: Guest Speaker: Cathy Albisa, National Economic and Social Rights Initiative (NESRI) and “Coming Home,” a film about post-Katrina human rights advocacy and winner of the New Orleans Human Rights Film Festival Award.***

**Topic 8. States and Self-Determination (The Former Yugoslavia)**

**(Wednesday, June 30)**

* DRW 107-130 (focus on notes and questions at p. 130)

State Formation. Self-determination. Who is the “Self” in Self-Determination? What doctrinal criteria define statehood? Which former Yugoslavia entities that were seeking statehood met these criteria? Who decides how and when to apply the criteria narrowly or broadly? Does the international community apply the legal criteria for statehood consistently? If not, what other considerations are operative? Why is self-determination of peoples considered a fundamental principle of international law?

**Topic 9. International Organizations in Action (and Inaction): The United Nations and Apartheid (South Africa)**

**(Monday, July 5)**

* DRW 171-200 (focus on notes and questions at pp. 193-194 and 196-197) and focus on the GA and SC resolutions.
* Charter of the United Nations (especially Chaps. I, VI, VII)
* United Nations Chart, “Principle UN Organs.” Available at: <http://www.un.org/aboutun/chart_en.pdf>

Is the UN a collection of states, a separate entity, or something in between? Is it a legal or political body? What difference does legal personality make? Has the UN become merely an expansive “talking shop”? Did it ultimately play a significant role in ending formal apartheid in South Africa? What are the legal and policy implications of the various General Assembly and Security Council resolutions? If you were a UN legal advisor or diplomat during the apartheid era, what might you have done differently, if anything, to make the organization’s efforts to end apartheid more timely or effective?

**Part III. International Legal Processes and Domestic Law**

**Topic 10. International Law in Domestic Context (the United States of America)**

**(Wednesday, July 7)**

* DRW 263-293 (focus on notes and questions at p. 280 and pp. 292-293)
* Relevant articles and amendments of the Constitution of the United States of America. Available on DRW Website Document Supplement.
* Optional: IL Stories 151-174 (Vazquez); 175-206 (Dodge)

How does the U.S. enter into international agreements or contribute to international law-making? What is the legal status of treaties and other forms of international law under the U.S. constitution?

**Topic 11. Breaking International Law: The Vienna Convention on Consular Relations World Court Opinions and the Death Penalty (the United States of America, Mexico)**

**(Monday, July 12)**

* DRW 293-315 (focus on notes and questions at 299 and 305-306)
* IL Stories 207-228 (Janis)
* Updates on Vienna Consular Cases--TBA

Who has the power to break international law under the U.S. constitution? What are the domestic and international implications of doing so? What roles should concepts such as sovereignty and the rights of subnational states play? How should tensions between domestic priorities and international norms be resolved?

**Topic 12. Breaking International Law (cont.): the Domestic Enforcement of International Law (the United States of America, Mexico)**

**(Wednesday, July 14)**

* **Same readings as Topic 10**

**Topic 13. The Extraterritorial Reach of Domestic Law: The Jurisdiction to Enforce (Germany, Argentina, Israel, the Former Yugoslavia)**

**(Monday, July 19)**

* DRW 380-387; 398-410; 412-415 (focus on notes and questions at 402-403)
* Optional: DRW 355-360; 377-380 ("jurisdiction to prescribe")

Is "universal jurisdiction" appropriate in light of strong norms protecting state sovereignty? Pursuing criminals abroad. Irregular rendition: Kidnapping or extradition?

**Part IV. International Law Norms**

**A. Protecting Human Dignity**

**Topic 14. International Human Rights Law: Civil and Political Rights—Torture (the United Kingdom, Israel, the United States of America, Guantanamo Bay, Cuba, Iraq, Paraguay)**

**(Wednesday, July 21)**

* DRW 437-472 (focus on notes and questions at 468-469)
* IL Stories 45-76 (Koh)
* Optional: DRW Website material updating subsequent developments on torture.

Are any human rights absolute? If not, why purport to have “universal” legal standards on human rights at all? If so, why has widespread state compliance been so difficult to achieve? Should the international law on interrogation techniques post-9/11 be different than before the “war on terrorism” or the “war on Al-Qaeda”? Why, or why not? Should the Department of Justice pursue legal proceedings against U.S. officials or their contractors accused of torture and cruel and in human treatment of detainees? If not, why not? If so, against which classes of persons and individuals should such proceedings take place? Would a truth and reconciliation approach be more appropriate? Why, or why not?

**Topic 15. International Human Rights Law: Cultural Norms, Violence, and the Rights of Women in the Global Economy (Mali and the United States of America**

**(Monday, July 26)**

* Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Available at: <http://www.un.org/womenwatch/daw/cedaw/>
* IntLawGrrls posts on FGM (and read statement by American Academy of Pediatrics linked there): <http://intlawgrrls.blogspot.com/search?q=FGM>
* Hope Lewis, *Female Genital Mutilation and Female Genital Cutting*, in Encyclopedia of Human Rights 200-213 (David P. Forsythe, *et al*, eds. (Oxford University Press, 2009). Will be posted on TWEN site under “Other Course Materials.”
* *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo* , Human Rights Council, 19 April 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/14session/reports.htm>.
* Optional: DRW 500-526 (focus on notes and questions at 523-524)
* Film excerpt (in class): *Mrs. Goundo's Daughter* (Barbara Attie & Janet Goldwater, 2009) <http://www.wmm.com/filmcatalog/pages/c757.shtml>.

Are international legal norms and processes helpful in protecting the well-being of girls and women in practicing regions? Does it matter whether those working toward eradication of FGM-FGC are locals or foreigners from non-practicing regions? How should domestic legal actors implement the international prohibitions? Are legal approaches more helpful than educational, public health, or cultural approaches? Should FGM-FGC be addressed in isolation from other human rights violations?

**Topic 16. International Humanitarian Law—Limits on the Conduct of War: The International Court of Justice and the Nuclear Weapons Case**

**(Wednesday, July 28)**

* DRW 527-553

What is the jurisdiction of the ICJ? Can legal rules make the conduct of war more “humane”? How so? Is humaneness influenced by the presence or absence of law? How is law relevant to the decision to use weapons of mass destruction?

**Topic 17. Introduction to International Criminal Law: Genocide, Crimes Against Humanity, and War Crimes (Germany, Cambodia, The Former Yugoslavia)**

**(Monday, August 2)**

* DRW 607-646 (focus on notes and questions at 623-624)
* IL Stories 11-44 (Meron & Galbraith)
* Documentary excerpts on the ICC: “The Reckoning” (in class), http://intlawgrrls.blogspot.com/2009/07/look-on-view-icc-film-reckoning-in-dc.html
* Handout: Chart on International Criminal Tribunals (to be provided)
* IntLawGrrls posts on the ICC and the crime of aggression. Available at: <http://intlawgrrls.blogspot.com/search?q=Aggression>

What are the purposes of international criminal tribunals? What legal and ethical challenges do international criminal tribunals pose for judges, lawyers, and legal scholars? How would you weigh the foreign policy implications in comparison to the legal implications? How should the “crime of aggression” be defined?

**B. International Law and the Use of Force**

**Topic 18. The Use of Force (Iraq, Afghanistan)**

**(Wednesday, August 4)**

* DRW 875-915 (focus primarily on the various Security Council resolutions)
* DRW Website. Related updates.
* IL Stories 263-306 (Noyes); 239-370 (O’Connell)

Which provisions of the UN Charter provided legal support for the Gulf War of 1991? How would you have argued for and against the legality of the March 2003 invasion of Iraq?

**Topic 19. The Use of Force (cont.)**

**(Monday, August 9)**

**Same readings as for Topic 18.**

**Topic 20. Humanitarian Intervention and the Responsibility to Protect (Rwanda, Kosovo, and Darfur)**

**(Wednesday, August 11)**

* UN Convention on the Prevention and Punishment of the Crime of Genocide. Available at: <http://www.preventgenocide.org/law/convention/text.htm>
* DRW 937-957
* View Documentary (at home): Frontline: *On Our Watch,* webcast available at: <http://www.pbs.org/wgbh/pages/frontline/darfur/>

Rwanda. Kosovo. Darfur. Burma/Myanmar. What are the conditions and criteria under which international intervention is legally and morally required? How should the responsibility to protect principles apply to Darfur and Burma? If moral requirements should always trump legal requirements, how do political and military considerations affect implementation?

**Rev. 05/10**

1. Photo: UN Security Council meets on independence for Kosovo (February 18, 2008). Credit: UN (Eskinder Debebe) [↑](#footnote-ref-1)
2. **Accommodations:** Please advise the Office of Academic and Student Affairs and Professor Melinda Drew, the law school's Disability Resources Coordinator, immediately if you have a disability that requires accommodation with regard to any course requirements. [↑](#footnote-ref-2)