

Ben Schiff
Rice 213
email ben.schiff@oberlin.edu
Phones:
775-8535 (office)
775-8487 (department)

Office Hours:
Tues. 3:00-5:00
Wed. 4:00-5:00
or by appointment
email ben.schiff@oberlin.edu
Phone: 775-8535

Politics 226
International Law
Spring, 2007
Tuesday, Thursday, 1:30-2:45

Syllabus

Can there be law in an anarchic system? This is the fundamental paradox of international law. Skeptics respond that international law isn't law, because there is no authority behind it. Advocates point out that states sign and mostly adhere to treaties, follow rules, and even submit some of their conflicts for resolution by arbitration or adjudication. This course investigates a broad range of international law questions from the possibility of such law to the intricacies of its implementation in areas ranging from the use of force to the protection of intellectual property rights.

Course requirements:

We meet twice weekly for lecture, discussion, and debate. Students' participation in class discussion and debates will contribute to their final course grade. Each student will participate in one in-class debate, as detailed in the debate attachment. All students other than debate presenters will fill out a debate response form and submit it to the instructor within one day of the debate. Participation in debates and completion of debate evaluations are required parts of the course.

To pass Politics 226, all items of written work must be completed and submitted. Written work will consist of:

- First half case memo, **due Friday, 3/21 at 4:00 p.m.** (see the memo assignments memorandum)
- Second half case memo, **due Friday, 5/9 by 4:00 p.m.** (see the memo assignments memorandum)
- Final exam (in class on assigned final date, written in blue books. Open textbook and class notes, no electronic connections). Final will be administered on Saturday, May 17, 9:00-11:00 a.m.

Grading:

Class participation	15%
Debate participation and responses	15%
First half case memo	20%
Second half case memo	20%
Final exam	30%

Application of honor code:

The Oberlin College Honor Code applies to all work in this class. Questions about how this applies should be raised with the instructor. General information about the honor code can be found in the student regulations, available online at

[http://www.oberlin.edu/students/links-life/rules-regs.html#honor.](http://www.oberlin.edu/students/links-life/rules-regs.html#honor)

Reading Material:

The following is available in the bookstore and should be purchased:

Jeffrey Dunoff, Steven Ratner, and David Wippman, *International Law: Norms, Actors, Process, A Problem-Oriented Approach*, 2nd Edition (noted in syllabus as DRW).

Web sources

Extremely useful web site for the book:

<http://www.temple.edu/lawschool/drwiltext/>

Documents are organized here by the chapters in which they are referenced in the book. Visit early and often!

The further links are also organized by chapter, and very useful, as are the updates.

Lecture and Discussion Topics, Reading Assignments

Week 1: Introduction 2/5-2/7

Topics	Readings, notes
1. 2/5 Introduction: International Politics and International law	
2. 2/7 Two paradigmatic cases Libya/Chad: the Aouzou Strip A classic border dispute, resolved by the International Court of Justice The <i>Rainbow Warrior</i> affair, resolved with the help of the UN Secretary-General	DRW 1-33 See questions 1-5, page 15. Prepare to answer questions 2 and 3 in class. Prepare to argue in class both of these positions: a) International law was irrelevant to the Rainbow Warrior outcomes b) International law significantly affected the Rainbow Warrior outcomes

Week 2: Sources of International Law 2/12-2/14

Topics	Readings, notes
<p>3. 2/12 Law of treaties</p> <p>Cyprus conflict</p> <p>What are treaties and when do states join them? Under what conditions are they valid and how can they become invalid?</p>	<p>DRW 35-74</p> <p>Vienna Convention on the Law of Treaties (full text link on textbook website)</p> <p>Be sure you can identify the interests of the parties to the Cyprus conflict – the U.K., Greece, Turkey, Greek Cypriots, Turkish Cypriots, and (secondarily) the US, USSR, and the United Nations as an organization.</p> <p>Whose interests did the 1960 treaty serve/not serve?</p> <p>Be prepared to answer questions 1, 2, 4 on page 52, read and think about 6.</p> <p>Be sure to read notes 1-3 on page 64, regarding sovereignty in conjunction with the Cyprus case. Be prepared to answer questions 1-3 on page 67.</p> <p>What is good faith, and who can decide on it? Read 68-69 and think about questions 1-4.</p> <p>What are treaty reservations, and when are they valid/invalid?</p>
<p>4. 2/14 Customary law</p> <p>When and how does a custom become a law? <i>Paquete Habana, opinio juris</i></p> <p>Applying customary law to expropriation</p>	<p>DRW 74-87</p> <p>Read carefully through to the top of page 87. Be sure to read 78(B) carefully: can a legal positivist take customary law seriously? Be prepared to define <i>opinio juris</i>.</p> <p>Be prepared to answer questions 1, 2, 3, 5, 8 on pp. 85-86.</p> <p>DRW 87-92, 105 (92-105: Soft Law also recommended).</p> <p>Can custom limit sovereign rights? What are the roles of common agreement, common interest, and common practice in establishing custom?</p> <p>On page 92, be prepared to argue both positive and negative answers to question #2. What do you think the status of UN General Assembly Resolutions should be in establishing customary law?</p> <p>Page 105: be sure to read part F: Principles of Domestic Law.</p> <p>If we have time:</p> <p>Pages 92-97 discuss “soft law,” areas of international regulation short of law but more than unilateral behavior. What is soft law? Who are the actors in soft law? Pages 98-105 discuss development of “guidelines” on Foreign Direct Investment as an example of soft law – particularly if you are interested in Multinational Corporations and their interactions with international organizations and states, you should read this.</p>

Week 3: Participants in the International Legal System I 2/19-2/21

Topics	Readings, notes
5. 2/19 States and self-determination Aaland Island Question and the League of Nations Decolonization and secession Yugoslavia and its successor states	DRW 107-130 Think about question 2 on page 116. How would you seek to serve the contending virtues of self-determination and state stability through international law? Was this a legally or politically driven outcome, or does that question not make sense? Be prepared to answer questions 1-5 on page 126. Be prepared to discussion questions 1, 2, 4, 6 on page 130.
6. 2/21 Borders, succession, recognition Highly recommended: Russia succession issues Cambodia	DRW 130(E)-134, 137(G)-143. Everyone: consider questions 1-4 on page 134, question 2 and 3 on page 143. DRW 144-156 Everyone: read DRW 157-170 DEBATE 1: The Vietnamese supported PRK government of Cambodia should immediately have been approved to represent Cambodia at the UN.

Week 4: Participants II: Non-State Actors 2/26-2/28

Topics	Readings, notes
7. 2/26 Library research presentation International Organizations Theories of international organization, UN Charter. IO legal personality UN as arbiter of internal state behavior (apartheid)	Ms. Mitchell visit class to present suggestions and answer your questions about using library resources for research pertinent to the legal briefs. DRW 171(IV)-200 What is the UN Charter, in law? What is binding about it? Be prepared to discuss questions 1-3 on page 180. Be prepared to discuss questions 1, 2 on page 184. Be prepared to discuss questions 1, 2, 3 on page 193, question 1, 3 on page 196. How permeable is sovereignty to an international organization based on sovereignty? Be sure to read through page 200! Should the ICJ be considered a marginal actor in international law?

8. 2/28 Non-governmental organizations	How are non-governmental organizations actors in international law? Are international thematic conferences potential incubators of law?
NGOs, population, women, globalization	DRW 201-216 Be prepared to respond to questions 1-6 on pages 207-208, question 1 on page 211, question 2-4 on page 216. How can NGOs affect law? Soft law?
Multinational Corporations	DRW 216-226 Who regulates?
Be prepared to discuss questions 1, 5, 6 (note connection to topic for 3/6)	

Week 5: Domestic-International Law Interaction 3/4-3/6

Topics	Readings, notes
9. 3/4 The monism-dualism debate	Read: DRW 267-273
Is NAFTA Constitutional?	DRW 273-277, 280(C)-293
<i>Missouri v. Holland</i>	Learn the differences among treaties ratified by the Senate, Congressional-Executive agreements, and Sole Executive agreements. Can treaties trump domestic legislation? What were the Bricker Amendments? How were they defeated? What do you think would happen today were they reintroduced into the Congress?
Executive and Congressional-Executive Agreements	How can we distinguish “political” from “legal” questions? Questions 1, 2, 3, 4, page 285; how powerful is the President? Questions 2, 3, on page 293.
Recommended: Consular notification (or not)	Skim DRW 293-301: do individual rights flow from treaty commitments?
10. 3/6 International law claims in domestic US courts	DEBATE 2: Shell Oil Company should be liable under the Alien Tort Claims Act and penalized in US courts for its actions in Nigeria that have resulted in environmental and personal damages.
DRW 326(V)-353	

Week 6: Domestic Jurisdiction and its Limits 3/11-3/13

Topics	Readings, notes
11. 3/11 Jurisdiction to prescribe, adjudicate, enforce <i>Lotus</i> Jurisdictional principles Sovereign immunity <i>Antares Aircraft v. Nigeria</i>	DRW 355-360 Why did the Turkish claim of jurisdiction hold? Prepare to argue point 2: is everything not explicitly banned, allowed? How does this compare with domestic law? What happened to <i>Lotus</i> in the 1958 Convention on the High Seas (p. 359-360), and why? DRW 359-387 Be prepared to define the following jurisdictional principles: Territorial Nationality Protective Passive Personality Universal DRW 415(IV)-418, 421-422 (Foreign Sovereign Immunities Act of 1976), 430-432. When is an action that of a state?
12. 3/13 Capturing criminals abroad: Dokmanovic, Eichman, and Alvarez	DEBATE 3: Alvarez’s illegal kidnaping in Mexico should have precluded trial in the US. DRW 398-415

Week 7: Protecting Human Dignity 3/18-3/20

Topics	Readings, notes
13. 3/18 Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention Against Torture	DRW 441-472 Can torture be justified? How close to international agreements do domestic rules need to be? Can domestic legislation narrow, restrict, or over-ride international conventional obligations? Be prepared to answer questions 1, 4 on page 456, questions 1, 2 on page 461, and to discuss questions 2, 3 on 468 and 1, 2 on 472.
14. 3/20 Relativism and rights	DRW 500-526 Are cultural traditions legally sacrosanct? What if they appear to abuse individual rights under international conventions? Be prepared to discuss questions 1, 2, 5, 7 on page 524.

***** **First half case memo due Friday, 3/21 at 4:00 p.m.** *****

***** **SPRING BREAK 3/22-3/31** *****

Week 8: Resources and the Environment I: Sharing common resources 4/1-4/3

Topics	Readings, notes
15. 4/1 Law of the Sea Corfu Channel dispute	DRW Skim 701-714, read 714(D)-736 Be prepared to brief the Corfu case. Identify subsequent LoS rules and concepts: Territorial Sea, Exclusive Economic Zone (EEZ), High Seas, (legal) Continental Shelf; innocent passage, straddling stocks, precautionary approach.
16. 4/3 Trade, environment, shrimps and turtles Highly recommended: Sharing common inland waters	DRW 846-859 Be prepared to discuss questions 3-5 on page 859 DRW 761-782 Question 1 on page 781, 2-4 on page 782.

Week 9: Resources and the Environment II: Preventing ecological destruction 4/8-4/10

Topics	Readings, notes
17. 4/8 Ozone Climate change	DRW 782(II)-808 Note LRTAP on page 783 (impress your friends); Be prepared to answer questions 1, 3 on page 787; 793 question 1, 2; 797 question 4; 805, questions 1, 2. DRW 811-826. Read November, 2007 IPCC Fourth Assessment Report, Summary for Policymakers: < http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf >
18. 4/10 Intellectual property, trade and survival: AIDS drugs	DRW 1044-1058 DEBATE 4: Any infringement of patent rights constitutes a form of expropriation and should therefore entail compensation to the holder of the patents.

Week 10: International Humanitarian and Criminal Law 4/15-4/17

Topics	Readings, notes
19. 4/15 State misdeeds and the laws of war	DRW 587(IV)-605 Law of occupation Be prepared to discuss questions 1-5 on page 599, 1 and 2 on page 602.
20. 4/17 Individual accountability and transitional justice	DRW 667(IV)-688 DEBATE 5: Pinochet should have been tried in Spain

Week 11: The Threat and Use of Force 4/22-4/24

Topics	Readings, notes
21. 4/22 Iraq I and II	DRW 877-915 Be prepared to discuss questions 2, 4 on page 901; 1-4 on page 911.
22. 4/24 Humanitarian intervention	DRW 937-957 Be prepared to discuss questions 1, 3 on page 944, 1, 2 page 949, question 2, 3 on page 956.

Week 12: Threat and Use of Force II 4/29-5/1

Topics	Readings, notes
23. 4/29 The “War on Terrorism”	DRW 983-999 Be prepared to answer questions 2, 3, 4, 6 on page 998-999
24. 5/1 Treatment of irregular combatants	DRW 999-1031 DEBATE 6: The US President, under domestic law as Commander-In-Chief, and under international law as a sovereign actor defending the state, has the right to detain non-uniformed irregular combatants at Guantanamo without recourse to domestic legal remedies.

Week 13: Perspectives on International Law 5/6-5/8

Topics	Readings, notes
25. 5/6 Course review	TBA
26. 5/8 Last thoughts, course evaluations distributed.	TBA

******* Second half case memo due May 9 by 4:00 p.m. *******

******* Final Exam Saturday, May 17, 9:00-11:00 a.m. *******