Teaching Materials for Spring 2000

Welcome to a course that I have thought about for years but am teaching for the first time this year. I taught it this past fall at New York University and am looking forward to working through the materials again with you. The course is designed to explore a number of current issues, from humanitarian intervention to international dispute resolution to the participation of NGO’s in international governance, in a way that brings insights from international relations scholarship to bear in important practical questions facing international lawyers. The aim is not simply to study international legal issues in political context, but to integrate the academic disciplines of international law and international relations, e.g. to understand the basic theories that international relations scholars use to analyze the international system and to explore the implications of those theories for designing international legal regimes and institutions.

To that end, the first three weeks of the course will be devoted to mastering these basic theories through an immersion in the relevant political science literature. With this foundation, we will then spend the remaining ten weeks focusing on five different problems in two-week modules. During the first week of each of these modules we will read a range of materials drawn from law, political science and policy studies on the issue at hand. For the second week, I will assign a panel of students to address a specific problem, such as the revision of an existing treaty or the reform of a particular institution to enhance its effectiveness in light of the materials we have read and the theoretical perspectives we have developed. Class discussion during the second week will be led by the panel and will be devoted to offering and critiquing different proposed solutions to the problem.

A note on the materials. I have developed the readings working with a group of students over the past six months; they include two books and many excerpts from articles in the photocopied materials. As this is a new course, some materials may work better than others; the reading load from week to week will also vary. As we go through the semester, I will give you as much guidance as possible on how to approach the readings, indicating which readings can be skimmed and which to focus on for class discussion. In many cases, some of the readings will be most helpful for the students focusing on a particular problem while others will be essential for the entire class to concentrate on. Students on particular panels will also want to go back to the theory section and do some more intensive reading in the area of the theories they are most interested in applying. The supplemental readings are either part of the packet or will be on reserve.

The readings for the first three weeks of the course are available now. The remaining materials addressing the problems will be available by the fourth week of the course. I will assign panels for the different problems during the second week, based to the extent possible on individual student preferences for working on different issue areas.

Part I: Theoretical Overview
1. History of R/IL
2. Realism
3. Institutionalism
4. Liberalism
5. Constructivism
6. The IR Theories Embedded in IL

Part II: Class Problems
1. The Use of Force: International Humanitarian Intervention
2. International Environmental Law: The Role of NGO’s
3. International Trade Law: Dispute Resolution Systems
5. International Criminal Law: Modes of Enforcement

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Part I: History of IR/IL & Overview of Theory (Week 1 - Week 3)

Books To Be Purchased:

Week 1/Class 1: History of IR/IL

Readings:

Supplementary Readings:

Questions for Discussion:
1. Compare and contrast the two accounts of the interrelationship between international relations and international law (IR and IL) by a lawyer (Slaughter) and a political scientist (Keohane). Where do they overlap? What are the principal differences between them?
2. How does Hedley Bull’s analysis of the contribution of international law to international order differ from Keohane’s? Are they addressing the same question? Would Keohane give a different answer to the question Bull poses?
3. How would you approach the question Kenneth Abbott tries to answer: to what extent should individuals be held liable for atrocities committed in internal conflict? How does the application of various IR theories change Abbott’s approach? His conclusions?
4. Can you imagine drawing on international relations theory and empirical work to advance Moynihan’s project of convincing the United States to champion and comply with international law?

Week 1/Class 2: Realism

Readings:

Supplementary Readings: None

Questions for Discussion:
1. Can you distinguish between classical realism (Morgenthau) and neorealism (Waltz)?
2. From a neorealist perspective, why do states seek power?
3. Is there any room for international law and institutions in realist analyses of international relations? How would Kennan respond? How would Bork respond?
4. What is the moral justification for realism?
5. Is there any link between “realist” view of the torturer and realist international relations theory?

Week 2/Class 1: Institutionalism

Readings:

Supplementary Readings:
Questions for Discussion:
1. How does institutionalism (also known as modified structural realism and neoliberal institutionalism) differ from realism?
2. What do institutionalists think that states want?
3. What is the role of international law and institutions in the institutionalist vision of international relations? Under what conditions can international institutions make a difference?
4. What is the difference between Hurrell’s vision of international institutions and Keohane’s? Between Hurrell’s vision and Keohane’s account of “reflectivism”?
5. Does Hurrell’s vision provide for a greater or similar role for international law in establishing international order?
Week 2/Class 2: Liberalism

Readings:
4. Thomas Carothers, The Democracy Nostrum, 11 World Policy Journal 47, 47-53 (1994) [In your photocopied course materials, this is in the “Supplementary Readings” section]

Supplementary Readings:

Questions for Discussion:
1. What is the difference between Moravcsik’s version of liberalism and Kennan’s legalism-moralism?
2. What, if any, are the links between liberal international relations theory and liberal political philosophy?
3. What are the differences between republican, commercial, and ideational liberalism?
4. Is the “democracy nostrum” inevitably entailed by liberal IR theory?
5. What is the role of international law and institutions in the liberal conception of international relations?

Week 3/Class 1: Constructivism

Readings:

Supplementary Readings:

Questions for Discussion:
1. Ruggie writes, “constructivism is not itself a theory of international relations, the way balance-of-power theory is, for example, but a theoretically informed approach to the study of international relations.” What does he mean? How do we distinguish constructivist theories from other kinds of theories? Is it possible to be a constructivist realist? A constructivist liberal?
2. What are the differences between constructivists and rationalists?
3. What is the role for international law and institutions in the constructivist conception of international politics?
Week 3/Class 2: The IR Theories Embedded in IL

Readings:

Supplementary Readings: None

Questions for Discussion:
1. Is Grotius a realist? An institutionalist? A liberal? Is he more rationalist or constructivist?
2. How would you categorize Kelsen and Hart?
3. If these different authors made different assumptions about the nature of international politics, would it change their arguments about the nature and function of international law?

NOTE: NO WEEK 4
Week 5: The Use of Force: International Humanitarian Intervention

Readings:
1. Lori Fisler Damrosch, Changing Conceptions of Intervention in International Law, in Emerging Norms of Justified Intervention, 91-110 (Laura W. Reed and Carl Kaysen eds., 1993).

Questions for Discussion

Class 1:
1. How has the law of humanitarian intervention changed?
2. What are the problems with the current state of the law, as you would formulate it?
3. How, if at all, does the Kegley et.al. reading change your view?
4. How, if at all, does the Hoffman reading change your view?
5. What is the best justification for the “classical” view of humanitarian intervention?
6. What is the best justification for what Farer calls the “realist” view. Is it consistent with classical realism? With neo-realism?

Class 2:
1. What are the major problems with the intervention in Somalia?
2. Was it an example of “humanitarian” intervention?
3. How would you analyze the underlying problems in Somalia?
4. Are they problems that the international community can fix? If so, can we craft a doctrine of humanitarian intervention that will maximize the chances of successful intervention?

Week 6: International Humanitarian Intervention in Kosovo

Readings:


Panel Assignment

To the Panel: please divide yourselves into groups of 2-3 (or only one, if that is the way it breaks out) each supporting the realist, institutionalist, and liberal positions, at least for purposes of discussion. Within each group, try to formulate an instrumentalist versus constructivist perspective. For the Monday class, please analyze the problems that needed to be addressed by the international community in Kosovo prior to the NATO action and distill the various proposed courses of action suggested in the reading. What are the assumptions underlying each of these courses of action in terms of the diagnosis of the problem and the most effective means of resolving it? For Tuesday’s class, please read the Secretary General’s September 1999 Address to the General Assembly (attached to this syllabus). Guided by his admonition to the Permanent Members, please draft a resolution authorizing action in Kosovo following the breakdown of the Rambouillet negotiations. If you cannot agree on one resolution, the dissenters among you may draft a counter-resolution. Please make copies of your resolution(s) for the entire class.

Week 7: International Environmental Law: The Role of NGOs

Readings:
5. P.J. Simmons, Learning to Live with NGOs, Foreign Policy 82-96 (Fall 1998).

Questions for Discussion

Class 1:
1. How do transnational advocacy networks work?
2. Under what conditions are they most effective?
3. How does the Keck and Sikkink analysis of transnational advocacy networks compare with the Sands and Raustiala analyses of NGOs in international environmental law?
4. Are these NGOs playing the same role as the transnational advocacy networks Keck and Sikkink describe?
5. Under what conditions are the NGOs most effective?
6. Should we change international law to acknowledge and accommodate these actors? In general? In specific issue areas?

Class 2:
1. What are the problems with NGOs?
2. Do these problems justify maintaining a state-centric focus in international law?
3. Can we distinguish between interest groups and public interest groups?
4. Can NGOs be brought inside international law making processes without compromising their own integrity?

Week 8: A CITES for the New Millenium?

Readings:
1. Thomas Princen, Creating a Niche in Environmental Diplomacy in Environmental NGOs in World Politics: Linking the Local and the Global, 29-47 (Thomas Princen and Matthias Finger, 1994).

Panel Assignment

To the Panel: please divide yourselves into groups of 2-3 (or only one, if that is the way it breaks out) each supporting the realist, institutionalist, and liberal positions, at least for purposes of discussion. Within each group, try to formulate an instrumentalist versus constructivist perspective. For the Monday class, please identify and analyze the major problems with CITES as it currently exists. Are these problems that international law can and/or should address? For the Tuesday class, please propose a set of amendments to CITES designed to improve its effectiveness, with a particular focus on Article XI(7). If you cannot agree on one set of amendments, the dissenters among you can draft an alternative set. Please make copies of your proposals for the entire class.
Week 9: International Trade Law: Dispute Resolution Systems

Readings:
2. WTO Panel Process for Settling Disputes from WTO Website 1-2 (www.wto.org/ / wto/ about/ dispute1.htm).

Questions for Discussion

Class 1:
1. What are the distinctive features of the WTO dispute resolution process?
2. What are the goals of the process?
3. How would you rate its performance in light of the first three years chronicled by Hudec?

Class 2:
1. What are the arguments for granting individuals standing and other rights of participation in WTO dispute resolution?
2. What are the arguments against?
3. Where do Schneider and Shell differ?
4. How, if at all, does the IR analysis help to clarify the issues at stake and buttress the normative positions they develop?

Week 10: International Trade Law: Dispute Resolution Systems

A New Model for Dispute Resolution?

Readings:
Panel Assignment

To the Panel: please divide yourselves into groups of 2-3 (or only one, if that is the way it breaks out) each supporting the realist, institutionalist, and liberal positions, at least for purposes of discussion. Within each group, try to formulate an instrumentalist versus constructivist perspective. For the Monday class, please identify and analyze the major problems with the WTO dispute resolution process as it currently exists. Are these problems of effectiveness? of legitimacy? Are they distinct problems of dispute resolution or do they reflect problems with the WTO as a whole? For the Tuesday class, please recommend a set of reforms to the WTO dispute resolution process, identifying the goals you seek to achieve and the support in the readings for the particular strategies you adopt to achieve them. Please make copies of your proposals for the entire class.

Week 11: International Human Rights: The Problem of National Minorities

Readings

Class 1:
5. [Focus on Introduction, Part 1, and Part 8]

Class 2:

Questions for Discussion

Class 1:

1. As lawyers, what is your account of how human rights law works? Does Moavcsik contradict that account? Deepen it? How about Sikkink?
2. How does Berman account for the rule of law?
3. How, if at all, do the various efforts McGoldrick describes fit Berman’s models?

Class 2:

1. What are the different approaches we can identify to address minority rights?
2. How do these approaches link up to assumptions about what the problem is?
3. Which approaches do you find most promising?

Week 12: International Human Rights:
Minority Rights in Developed and Emerging Democracies

Readings


Supplementary Reading

Panel Assignment

To the Panel: Please divide yourselves into groups of 2-3 (or only one, if that is the way it breaks out) each supporting the realist, institutionalist, and liberal positions, at least for purposes of discussion. Within each group, try to formulate an instrumentalist versus constructivist perspective. For the Monday class, please select 5-6 proposals from Haight’s list that you find most promising and be prepared to explain why. Do you agree with her overall approach? What does it reflect about her underlying diagnosis of the problem? For the Tuesday class, please design an institutional framework that would maximize the chances of implementation/enforcement of the proposals you agree with. You are welcome to draw on the existing institutional machinery operating in Europe (ECHR, OSCE, etc.), but be prepared to explain the theory behind your choices. Finally, would consociational solution be better? Why or why not?

Week 13: International Criminal Law: Modes of Enforcement

Class 1: The Limits of Law in the Face of Mass Atrocities

Readings:


Questions for Discussion:

1. How can we use law to address mass atrocities? What do you conclude from Weisburd’s account?
2. Is law perhaps counter-productive? A culturally specific solution?
3. How do Minow’s solutions diagnose the underlying problems?

Class 2: The Limits of Courts

Readings:

Supplementary Reading:


Questions for Discussion:

1. How should we apportion responsibility between national and international courts? What are the advantages and disadvantages of each?
2. How should we structure the relationship between national and international courts?
3. How can we internalize or act on Falk’s critique?

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**Week 14: The Proposed International Criminal Court**

**Readings**

Panel Assignment

To the Panel: This assignment has three parts. Begin by assuming that the purpose of the ICC is to help establish a measure of global justice, defined as both punishing those who commit genocide, war crimes, and crimes against humanity and helping to deter the commission of those crimes at least to the extent that domestic laws against murder deter the commission of murder.

The first part of the assignment is to decide whether or not you support the ICC in its present form, in a revised form, or not at all, from the perspective of the President of the United States. I do not expect that the panel will be able to come up with one position, but you may group yourselves in terms of different positions.

Secondly, take the perspective of a global policymaker. Is the ICC a good idea? Will it work to achieve its intended objectives? Why or why not? Please divide yourselves into groups of 2-3 (or only one, if that is the way it breaks out) each supporting the realist, institutionalist, and liberal positions, at least for purposes of discussion. Within each group, try to formulate an instrumentalist versus constructivist perspective.

Third, what revisions would you make to the ICC statute to make the court work better? (We will not get to this question until the Tuesday class).