

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
4. International Human Rights: The Problem of National Minorities
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:

1. Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt, eds., *International Rules: Approaches from International Law and International Relations* (Oxford University Press 1996)
 2. Council on Foreign Relations, *Toward an International Criminal Court* (1999)
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Week 1/Class 1: History of IR/IL

Readings:

1. Anne-Marie Slaughter, *International Law and International Relations Theory: A Dual Agenda*, 87 *Am. J. Int'l. L.* 205 (April 1993).
2. Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 *Harv. Int'l L.J.* 487 (1997).
3. Hedley Bull, *International Law and International Order*, Chapter 6 in *The Anarchical Society: A Study of Order in World Politics* 127-161 (Macmillan 1977).
4. Daniel Patrick Moynihan, *Introduction from On The Law of Nations*, 1-14 (1990).
5. Kenneth Abbott, *International Relations Theory, International Law and the Regime Governing Atrocities in Internal Conflicts*, 93 *Am. J. Int'l. L.* 361 (April 1999).

Supplementary Readings:

1. *International Rules: Approaches from International Law and International Relations*, 8-17 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**
2. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *Yale L.J.* 2599 (1997).

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?
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Week 1/Class 2: Realism

Readings:

1. Anne-Marie Slaughter, *Liberal International Relations Theory and International Economic Law*, 10 *Am. J. Int'l. L.* 721, 721-24 (Winter 1995). **[Excerpt]**
 2. George F. Kennan *Diplomacy In the Modern World* and Dean Acheson *Remarks in International Rules: Approaches from International Law and International Relations*, 94-109 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**
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3. Michael Smith, Modern Realism in Context and Theory Policy, and Ethics: The Realist Contribution Assessed in Realist Thought from Weber to Kissinger, 1-22, 218-238 (1986).
4. John Mearsheimer, The False Promise of International Institutions, 19 Int'l Security 5, 5-49 (Issue 3, Winter 1994/95).
5. Robert H. Bork, The Limits of International Law, The Nat'l Interest 3-10 (Winter 1989-1990).
6. Tom J. Farer, The Torturer's Response in The Grand Strategy of the United States in Latin America 98-108 (Transaction Books, New Brunswick, NJ 1988).

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?
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Week 2/Class 1: Institutionalism

Readings:

1. Anne-Marie Slaughter, Liberal International Relations Theory and International Economic Law, 10 Am. J. Int'l. L. 721, 724-727 (Winter 1995). **[Excerpt]**
2. Kenneth W. Abbott, Modern International Relations Theory: A Prospectus for International Lawyers, 14 Yale J. Int'l L. 335, 335-341 (1989).
3. Institutional Approaches in International Rules: Approaches from International Law and International Relations, 165 - 166 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**
4. Krasner, Structural Causes and Regime Consequences: Regimes as Intervening Variables in International Rules: Approaches from International Law and International Relations, 167 -186 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**
5. Robert O. Keohane, International Institutions: Two Approaches in International Rules: Approaches from International Law and International Relations, 187 - 205 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**
6. Andrew Hurrell, International Society and the Study of Regimes: A Reflective Approach in International Rules: Approaches from International Law and International Relations, 206-226 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds., 1996). **[Book]**

Supplementary Readings:

1. Robert O. Keohane and Lisa L. Martin, The Promise of Institutional Theory (Response to John J. Mearsheimer), Journal of International Security, vol. 19, p. 7 Winter 94/95), 6/22/95 Int'l Security 39, 39-51 (Summer 1995).
 2. John J. Mearsheimer, A Realist Theory (response to Keohane and Martin et al), 6/22/95 Int'l Security 39, 85-87 (Summer 1995).
 3. Ronald B. Mitchell, Regime Design Matters: Intentional Oil Pollution and Treaty Compliance, 48 Int'l Org. 425-58 (Issue 3, Summer 1994).
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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:

1. Anne-Marie Slaughter, Liberal International Relations Theory and International Economic Law, 10 *Am. J. Int'l. L.* 721, 727-731 (Winter 1995). [Excerpt]
2. Andrew Moravcsik, Taking Preferences Seriously, a Liberal Theory of International Politics, 51 *Int'l Org.* 513-53 (Issue 4, Autumn 1997).
3. M. Doyle, Conclusions: Liberals and Realists: Explaining Differences in Ways of War and Peace: Realism, Liberalism and Socialism, 301-311 (1997).
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:

1. Anne-Marie Slaughter, International Law in a World of Liberal States, 6 *European J. of Int'l L.* 503, 503-538 (No. 4, 1995).
2. Thomas Risse-Kappen, Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures and the End of the Cold War, 48 *Int'l Org.* 185 (1994).

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?
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Week 3/Class 1: Constructivism

Readings:

1. John Gerard Ruggie, What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge, 52 *Int'l Org.* 185 (Issue 4, Autumn 1998).
2. Alexander Wendt, Constructing International Politics (response to John J. Mearsheimer, *Journal of International Security*, vol. 19, p. 5, Winter 1994/95), 6/22/95 *Int'l Sec.* 71 (Vol 20, No. 1, 1995).
3. Martha Finnemore and Kathryn Sikkink, International Norm Dynamics and Political Change, Response to Mearsheimer, 52 *Int'l Org.* 887, 887-917 (Issue 4, Autumn 1998).

Supplementary Readings:

1. Ted Hopf, The Promise of Constructivism in International Relations Theory, 6/22/98 *Int'l Sec.* 171, 171-200 (Vol. 23, 1998).

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?
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Week 3/Class 2: The IR Theories Embedded in IL

Readings:

1. Hugo Grotius, Prolegomena in International Rules: Approaches from International Law and International Relations, 34-55 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds.,1996). **[Book]**
2. Hans Kelsen, The Nature of International Law in International Rules: Approaches from International Law and International Relations, 56-74 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds.,1996). **[Book]**
3. H.L.A. Hart, International Law in International Rules: Approaches from International Law and International Relations, 75-93 (Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt eds.,1996). **[Book]**

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).
2. Tom J. Farer, An Inquiry into the Legitimacy of Humanitarian Intervention, in *Law and Force in the New International Order*, 185-201 (Lori Fisler Damrosch and David J. Scheffer, eds., Westview Press, 1991).
3. Charles W. Kegley, Jr., Gregory A. Raymond and Margaret G. Hermann, The Rise and Fall of the Nonintervention Norm: Some Correlates and Potential Consequences, in *The Fletcher F. World Aff.*, 81-101 (Winter/Spring 1998).
4. Stanley Hoffman, The Politics and Ethics of Military Intervention Survival, 37/No. 4 *The IISS Quarterly* Volume 29-51 (Winter, 1995-96).
6. Susan Rosegrant and Michael D. Watkins, A "Seamless" Transition: United States and United Nations Operations in Somalia-1992-1993 (A), Kennedy School of Government Case Program (C09-96-1324.0). **[to be distributed in class]**
7. John L. Hirsch and Robert B. Oakley, Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping, 101-114; 161-173. (Washington, DC: US Institute of Peace Press, 1995).

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?
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Week 6: International Humanitarian Intervention in Kosovo

Readings:

1. Humanitarian Law Violations in Kosovo, Human Rights Watch, <http://www.hrw.org/hrw/reports98/kosovo/Kos9810-02.htm> (April 18, 1999).
 2. Kosovo: From Crisis to a Permanent Solution, Carnegie Endowment for International Peace (November 1, 1997).
 3. Kosovo: The Road To Peace. Critical Implementation Issues and a "Who's Who" of Key Players, International Crisis Group, 1-23 (March 12, 1999).
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4. Humanitarian Military Intervention: The "Peace Movement" of the '00's, Mark Satin Report, 1-2, 6 (Issue 5, October 1999).
5. Editorial Comments: NATO's Kosovo Intervention: Kosovo and the Law of "Humanitarian Intervention," 93 Am. J. Int'l. L. 831-869 (October 1999).

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:

1. Margaret E. Keck and Kathryn Sikkink, Chapter 1 Transnational Advocacy Networks in International Politics: Introduction and Chapter 4 Environmental Advocacy Networks, in *Activists Beyond Borders*, Advocacy Networks in International Politics, Preface, 1-38, 121-133, and 160-163 (Cornell University Press, 1998).
2. Margaret E. Keck and Kathryn Sikkink, Chapter 4: Environmental Advocacy Networks, Tropical Deforestation, in *Activists Beyond Borders*, Advocacy Networks in International Politics, 133-163 (Cornell University Press, 1998).
3. Philippe Sands, The Environment, Community, and International Law, in *International Environment Law and World Order*, 1107-1115 (Guruswamy, Palmer and Weston eds., West Publishing, 1994).
4. Kal Raustiala, The "Participatory Revolution" in International Environmental Law, 21 *Harv. Env'tl. L. Rev.* 537, 537-586 (1997). **[Excerpts]**
5. P.J. Simmons, Learning to Live with NGOs, *Foreign Policy* 82-96 (Fall 1998).
6. Peter J. Spiro, New Global Potentates: NGOs and the Unregulated Marketplace, 18 *Cardozo L. Rev.* 957, 957-969 (December, 1996).
7. Great Reputations, 3/1/99 *Accountancy* 30.
8. Crocker Snow Jr., NGO Overreach: Greenpeace Pours Oil on Troubled Waters But Can't Clean It Up, 21-FALL *Fletcher F. World Aff.* 161 (Summer-Fall 1997).
9. Peter J. Spiro, Globalization, International Law, and the Academy, *N.Y.U. J. Int'l L. & Pol.* (forthcoming 2000) (symposium edition).

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?
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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).
2. Thomas Princen, The Ivory Trade Ban: NGO's and International Conservation in Environmental NGOs in World Politics: Linking the Local and the Global, 121-159 (Thomas Princen and Matthias Finger, 1994).
3. Kevin D. Hill, The Convention on International Trade in Endangered Species: Fifteen Years Later, 13 Loy. L.A. Int'l. & Comp. L.J. 231-278 (December 1990).
4. Michael J. Glennon, Has International Law Failed the Elephant?, 84 Am. J. Int'l L. 1-43 (1990).
5. CITES overview and CITES Treaty as amended on 6/22/1979.

Panel Assignment

To the Panel: please divide 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:

1. Settling Disputes, The WTO's 'Most Individual Contribution', in WTO Website 1-6 (www.wto.org/wto/about/dispute1.htm).
2. WTO Panel Process for Settling Disputes, from WTO Website 1-2 (www.wto.org/wto/about/dispute1.htm).
3. Robert E. Hudec, The New WTO Dispute Settlement Procedure: An Overview of the First Three Years, 8 Minn. J. Global Trade 1-53 (Winter 1999).
4. Andrea K. Schneider, Democracy and Dispute Resolution: Individual Rights in International Trade Organizations, 19 U. Pa. J. Int'l. Econ. L. 587 (1998).
5. G. Richard Shell, Trade Legalism and International Relations Theory: An Analysis of the WTO, 44 Duke L.J. 829 (1995).

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?
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Week 10: International Trade Law: Dispute Resolution Systems

A New Model for Dispute Resolution?

Readings:

1. Judith Hippler Bello, *The WTO Dispute Settlement Understanding: Less Is More*, 90 *Am. J. Int'l L.* 416 (1996).
2. John H. Jackson and William J. Davey, *Legal Rules or Government Discretion – Which Rule is Best?*, in *Legal Problems of International Economic Relations*, 1220-1241 (West Publishing Co., 1986).
[Excerpt]
3. Laurence R. Helfer and Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 *Yale L. J.* 273 (1997). **[Excerpts]**
4. Andrea K. Schneider, *Getting Along: The Evolution of Dispute Resolution Regimes in International Trade Organizations*, 20 *Mich. J. Int'l L.* 697 (Summer 1999).
5. Alec Stone Sweet, *Judicialization and the Construction of Governance*, 32 *Comp. Political Studies*, 147-184 (No 2, April 1999).
6. Judith Goldstein, *International Law and Domestic Institutions: Reconciling North American “Unfair” Trade Laws*, 50 *Int'l Org.* 541 (Autumn 1996).

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:

1. Andrew Moravcsik, *Explaining the Emergence of Human Rights Regimes: Liberal Democracy and Political Uncertainty in Postwar Europe*, Weatherhead Center for International Affairs Working Paper No. 98-17, 1-49 (1998).
2. Kathryn Sikkink, *Reconceptualizing Sovereignty in the Americas: Historical Precursors and Current Practices*, 19 *Hous. J. Int'l L.* 705 (1997). **[Excerpt]**
3. Nathaniel Berman, Chapter 1: *The International Law of Nationalism: Group Identity and Legal History in International Relations and Ethnic Conflict*, 25-57 (David Wippman ed., Cornell University Press, 1998). **[Excerpt]**
4. Daniel McGoldrick, *From Yugoslavia to Bosnia: accommodating National Identity in National and International Law*, 6 *International Journal on Minority and Group Rights*, 1-63 (1999).
5. **[Focus on Introduction, Part 1, and Part 8]**

Class 2:

1. David Wippman, *The Evolution and Implementation of Minority Rights*, 66 *Fordham L. Rev.* 597 (1997).

2. Diana Chigas, Elizabeth McClintock and Christophe Kamp, Preventive Diplomacy and the Organization for Security and Cooperation in Europe: Creating Incentives for Dialogue and Cooperation, in Preventing Conflict in the Post-Communist World: Mobilizing International and Regional Organizations, 25-97 (Abram Chayes and Antonia Handler Chayes eds., Washington, DC: The Brookings Institution Press, 1996).
3. Csaba K. Zoltani and Frank Koszorus, Jr., Group Rights Defuse Tensions, 20:2 Fletcher F. World Aff. 133-146 (Summer/Fall, 1996).

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

1. Geri L. Haight, Unfulfilled Obligations: The Situation of the Ethnic Hungarian Minority in the Slovak Republic, 4 ILSA J. Int'l & Comp. L. 27 (1997).
2. Steven R. Ratner, Does International Law Matter in Preventing Ethnic Conflict? 32 N.Y.U. J. Int'l L. & Pol. 101-199 (forthcoming 2000). **[Focus on Parts I-III, skim rest]**
3. David Wippman, Chapter 8: Practical and Legal Constraints on Internal Power Sharing, in International Relations and Ethnic Conflict, (David Wippman ed., Cornell University Press, 1998).

Supplementary Reading

1. Anne-Marie Slaughter, Chapter 5: Pushing the Limits of the Liberal Peace: Ethnic Conflict and the "Ideal Polity," in *International Relations and Ethnic Conflict*, 129- 144 (David Wippman ed., Cornell University Press, 1998).

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:

1. A.M. Weisburd, Implications of International Relations Theory for the International Law of Human Rights, 38 *Colum. J. Transnat'l L.* 45 (1999).
2. David M. Smolin, The Future of Genocide: A Spectacle for the New Millennium? 23 *Fordham Int'l L. J.* 460 (1999).
3. Martha Minow, Chapters 4 & 6: Truth Commissions and Facing History, in *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* 52-90, 118-147, 163-177, and 186-199 (Boston: Beacon Press, 1998).

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:

1. Steven R. Ratner and Jason S. Abrams, *The Forum of First Resort: National Tribunals*, in *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 139-161, (Oxford: Clarendon Press, 1997).
2. Jose E. Alvarez, *Book Review: Accounting for Accountability*, 37 *Colum. J. Transnat'l L.* 1003 (1999).
3. David Wippman, *Atrocities, Deterrence, and the Limits of International Justice*, 23 *Fordham Int'l L. J.* 473 (1999).
4. Bartram S. Brown, *Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals*, 23 *Yale J. Int'l L.* 383 (1998). **[Excerpt]**
5. David Forsythe, *Politics and the International Tribunal for the Former Yugoslavia*, 5 *Crim. L.F.* 401-422 (1994).
6. Richard Falk, *Telford Taylor and the Legacy of Nuremberg*, 37 *Colum. J. Transnat'l L.* 693 (1999). **[Excerpt]**

Supplementary Reading:

1. *The Statute of the International Criminal Tribunal for the Former Yugoslavia in S/25704: Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993)*. (Note: there are 3 parts: the statute, an addendum and the corrigendum).

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

1. Human Rights Watch, *Summary of the Key Provisions of the ICC Statute*. (September, 1998).
 2. David Rieff, *Court of Dreams*, 9/7/98 *The New Republic* 16 (1998).
 3. Ruth Wedgwood, *The Pitfalls of Global Justice*, 6/10/98 *The New York Times Section A*; Page 20 Column 1(1998).
 4. *Toward an International Criminal Court*. Council on Foreign Relations Council Policy Initiative (1999).
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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).