Course Description

This course provides a broad overview of international law, including the ways in which international law is created, the entities to whom it applies, and the mechanisms by which it is enforced, or sometimes not enforced. In teaching a course of this breadth and scope, we do not expect students to learn the dizzying array of international legal rules in topics ranging from the jurisdictional immunities of diplomatic and consular personnel, the international law of armed conflict, international trade and investment, international aviation, human rights, extradition of fugitive criminals, the international law of the sea, to the prevention of terrorism, the illicit drug trade and proliferation of weapons of mass destruction. Instead, we hope you will develop the tools for understanding the rules and process by which lawyers determine what are the relevant rules of international law and the possible mechanisms by which those rules might be enforced.

Much international legal scholarship has highlighted the ways in which international law differs from the operation of law in domestic legal systems, most significantly the absence in the international political system of a single legislative (rule creating) body, a comprehensive judicial system of courts to interpret and order compliance with those rules, and a powerful executive branch of government and other institutions (e.g., law enforcement personnel and prisons) to compel such compliance. These limitations in the international legal system put a premium on the legal practitioner’s ability to identify if there is in fact a legally binding obligation on States or other subjects of international law (i.e., international organizations) to take or refrain from taking some action, and if there is such an obligation, to identify some way in which that rule might be enforced. While it is tempting to conclude that, because of these structural limitations in the international political system, international law does not impose meaningful limitations on States (especially powerful States) that are determined to violate those rules, the subject areas discussed in the second half of this course are only some of many examples in which States willingly impose legal obligations to constrain their freedom of action to accomplish objectives that would not be possible in the absence of legally binding rules. Ultimately, our goal is to expand your thinking about international law and its role in the international political system and have you leaving the class thinking like an international lawyer.

Course Objectives and Outcomes

At the end of the course, you will be able to:

- Identify how international law is formed, evaluate assertions that there is an applicable rule of international law in a particular situation and then identify the nature/source of that rule (e.g., a rule based in treaty or in customary international law) based on the tools provided in this class;
• Evaluate whether and how a particular rule of international law is incorporated as law in the United States;
• Analyze fact patterns involving cross cutting international legal concepts (e.g., including principles of state responsibility) and determine whether there may be mechanisms by which there may be a formal determination and enforcement of relevant international law; and
• Apply these tools and concepts in other specialized areas of international law covered in the second half of this class.

In addition, we hope you will have a more informed appreciation of the role that international law plays in the international political system and both the uses and limitations of international law.

Class Attendance and Preparation

Our class will meet on Monday nights from 8:00 p.m. to 10:40. Please note also that the room for the class may change prior to the start of classes. If so, we will inform the class of this fact by email. Please also note below that two of our classes fall on GMU holidays. It is anticipated that the third class, on Labor Day, will be rescheduled for the following Monday, September 12. The class that would be scheduled on October 10 will be scheduled for Tuesday, October 11 at the same time and same place. A final note on scheduling: as we are practicing lawyers in the Office of the Legal Adviser at the Department of State, it is possible that unanticipated official travel might necessitate rescheduling a class at some point during the semester.

GMUSL academic regulations require regular and punctual class participation and attendance for academic credit to be earned. Those regulations also provide that:

“If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent for that session.”

We will take attendance and have a seating chart, to assist us in getting to know you (a challenge in a class that meets only once a week). The syllabus below lists required and suggested background reading. It is essential that all students read the required readings before class and be prepared to discuss that material in class. Please bring these materials to class to facilitate discussion. Please also look on the TWEN site on a regular basis and before each class as we may add required or recommended reading for particular classes. During the course of the semester, we will ask particular students to prepare certain materials and discuss them during class. In some cases we may ask students to work in small teams on these presentations. Note that in November, students will prepare in-class presentations involving a real-world arbitration between the Philippines and China under the United Nations Convention on the Law of the Sea.
Methods of Evaluation

Exam: The grade for the class will be based on an open book exam, 180 minutes in length, and will consist of a section of short answer questions and several elaborate factual scenarios, requiring essay-type responses. The exam is scheduled for Friday, December 16, at a room that has not yet been announced.

Class participation: Instructors have discretion to add or subtract no more than 5 points (one half-step: e.g., B plus to A minus) based on “Classroom Performance.” To encourage active, informed participation during class, we will avail ourselves of this. During the semester, we will assign students questions from the reading (typically found on TWEN for that class session) to address orally during class. As noted below, students will be participating on November 23 as advocates for the Philippines and China in a mock arbitration under the UN Convention on the Law of the Sea.

Contacting us: We anticipate staying after class to answer questions or engage in course-related discussion. We can also be contacted by e-mail and phone:

- Bob Harris, harrisrk2@state.gov: 202-647-4035
- Josh Kretman, kretmanj@state.gov: 202-647-2731

Course Materials:

- Required casebook: Carter and Weiner, International Law (Sixth Edition)

- Optional document supplement: Carter, International Law Selected Documents (2013-2015 Edition). Students who do not purchase the book should determine that they can obtain the assigned readings and documents through independent internet sources. We will also put many of these readings on the course TWEN site.

- Required hornbook: Murphy, Principles of International Law (2nd Edition) (Students who want to find other ways of having access to this material may do so, but this is a very useful book to have in your personal law library.)

- Other required and recommended materials will be distributed on the course’s TWEN site or will be available on the Internet. Some will be available on reserve in the Law Library.

- We recommend that you try to be aware of current developments in international law and recommend looking periodically at an international law blog, http://opiniojuris.org.
Course Schedule and Reading

A. **Introduction**

---Class 1: August 22

**Introduction to (the nature of) international law**

Required Reading:
1. Casebook 1-10, 22-44
2. Murphy 3-10, 19-24
4. Skim: Scenario – hostilities in eastern Ukraine (TWEN)

Read quickly and consider questions on TWEN about:
2. *International Law: 50 Ways it Harms our Lives*, available on TWEN

B. **Sources of International Law (Creation of International Law)**

---Class 2: August 29

The law of treaties Part 1: Evolution of treaty law; the formation, invalidation, interpretation of treaties; and *pacta sunt servanda*

Required Reading:
1. Casebook 85-99 (be prepared to discuss questions)
3. Additional materials available on TWEN:
   - The International Law Commission discussion of the Vienna Convention
   - State Department “Guidance on Non-Binding Documents”
   - State Department “Circular 175 Procedure”

Recommended Reading:
1. Murphy 77-92
2. The Case-Zablocki Act (TWEN)

Break

The law of treaties Part 2: reservations, termination, suspension and “material breach”

Required Reading:
1. Casebook 99-115 (be prepared to discuss questions)
3. U.S. reservations, understandings and declarations related to the International Covenant on Civil and Political Rights (TWEN)
4. U.S. Statement on its Treaty Practice (TWEN)

--Class 3: September 12

Other sources of international law, part 1: customary international law

Required Reading:
1. Casebook 115 – 132
2. Murphy, 92 – 101

Break

Other sources of international law, part 2: jus cogens, general principles, and subsidiary sources

Required reading:
1. Casebook 112-115; 133-150

Recommended reading:
1. Murphy 33 – 46

Case study on customary international law and the law of the sea

Required reading:
1. Two documents on TWEN, Reading and questions to be discussed in class
C. **Subjects of International Law**

---**Class 4:** September 19

States and self-determination/territorial integrity/recognition of governments and state succession

Required reading:
1. Casebook 429 – 459
2. ICJ *Kosovo Advisory Opinion*, paras. 78 – 84 (TWEN)
3. Ed Williamson on state succession (TWEN)
4. Quebec secession, pages 1368-1374 (TWEN)

Recommended reading:
1. Murphy 33 – 46

**Break**

Other actors; allocation of legal authority among States (bases of national jurisdiction)

Required reading:
1. Casebook 463 – 479; 637 – 644 (stop at Notes and Questions); 670 – 674 (stop at BV case); 684 – 700

Recommended reading:
1. Murphy 47 -74; 276 - 292

D. **International Law in U.S. Law**

---**Class 5:** September 26

Treaties and CIL in U.S. law

Required reading:
2. U.S. Senate resolution of advice and sent to ratification of the ICCPR pages 6 – 10 (TWEN)

Recommended reading:
1. Murphy 253 – 265

**Break**
Foreign affairs, the Constitution and Presidential powers; Federalism and international law

Required reading:
   1. Casebook 269 – 282

Recommended reading:
   1. Murphy 223-252

E. **Violating International Law: Responsibility and Remedies**

---Class 6: October 3

State responsibility: attribution and breach; circumstances precluding wrongfulness; reparations; countermeasures

Required reading:
   1. Casebook 728 – 733

Recommended reading:
1. Murphy 201-221

**Break**

**Espousal/diplomatic protection**

Required reading:
1. Casebook 721 – 728; 733 – 744

--Class 7: Tuesday, October 11

**Regional tribunals; “tailored” dispute settlement mechanisms; arbitration; negotiation, mediation, and conciliation**

Required reading:
1. Casebook 283 – 289; 334 – 336 (stop at Hartley article); 350 – 363; 390-391 (NAFTA) (stop at Hufbauer and Schott), 401-402 (WTO) (stop at Jackson), 415 (mass claims processing)
2. “Tailored dispute settlement and assigned class discussion questions (on TWEN)
3. UN Convention on the Law of the Sea (Document Supplement and on TWEN) arts 279-299 (read for general content, but note that the compulsory dispute settlement articles will be relevant later in the semester)

Recommended reading:
1. Murphy 125-128, 162-169

**Break**

**International dispute resolution: The International Court of Justice**

Required reading:
1. Casebook 295 – 330
2. Other readings on TWEN

Recommended reading
F. Topics in International Law

--Class 8: October 17

Law of Armed Conflict Part 1:
-- *Jus ad bellum*

Required reading:
1. Casebook 931-940 (Stop at Section 2); 943-968; 977-981; 1013-1023
2. Murphy 491-515

**Break**

Law of Armed Conflict Part 2:
-- *Jus in bello*
- -- War crimes

Required reading:
1. Casebook 1033-1044
2. Murphy 515-526

--Class 9: October 24

Immunities:
-- Jurisdictional immunity: foreign sovereign immunity
-- Diplomatic immunity, foreign official immunity and head of state immunity
-- Immunity of international organizations
-- Act of State doctrine

Required reading:
1. Casebook 535 – 566; 569 – 572; 579 – 587; 597 – 599; 604 – 613

--Class 10: October 31

International human rights law

Required reading:
1. Casebook 744-779, 787-794, 800-812
2. Assigned questions for students from the Casebook appear as a separate document on TWEN
3. *Kiobel v. Royal Dutch Petroleum* (TWEN)
4. Note that the texts of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights appear on TWEN

--Class 11: November 5

The international law of the sea

-- General overview (maritime zones, rights of coastal states vs. other users of the sea, regime of islands, etc.)

Required reading:
1. Casebook 813-817 (stop at nationality of vessels), 822-826 (stop at Fisheries Case), 832, 835-838 (stop at passage through international straits), 841-861
3. Law of the Sea Convention Part XV Dispute Settlement Provisions articles 279-299 (on TWEN)

Optional reinforcement reading:
1. Murphy 383-402

-- Maritime boundary delimitation

Required Reading:
1. LOS Convention articles 15, 74 and 83

Break

-- Case Study: the creation of customary international law, its progressive development, codification and the relationship between CIL and treaties: the continental shelf. (Be prepared to discuss in class the questions on TWEN based on careful reading of the material)

Required Reading:
1. Available on TWEN

--Class 12: November 16

International law and territorial and maritime disputes in the South China Sea
Required Reading:
1. Read for general content *Agora: The South China Sea*, 107 American Journal of Intl Law, 95-163 (available on TWEN)
2. Materials related to Philippines v. China arbitration (available on TWEN)

Recommended Reading:


Break

-- Teams meet to discuss presentations on LOS Convention arbitration. Each sub-team prepares summary arguments (2 pages in bullet form) posted on class TWEN site by noon, November 20.

--Class 13: November 23 -- Team Presentations (Philippines v. China)
- Jurisdiction
- Merits

Break

-- Discussion (stepping back)
- What bodies of international law are relevant to these disputes?
- To what extent and on what issues is the relevant international law based in treaty or in customary international law?
- Are there available dispute settlement mechanisms available to enable the parties to resolve the various types of disputes?
- What does this problem tell you about the role of international law in the current international political system?
--Class 14: November 30 -- Review

Reading: Template for considering international law problems
(on TWEN)