

International Law

POSC 4601

Marquette University

Spring 2018
T TH 12:30pm-1:45pm
Wehr Chemistry 107

Professor Mark S. Berlin
mark.berlin@marquette.edu
Office: Wehr Physics 415
Office phone: 414 288-6841
Office hours: T TH 5:00pm-6:30pm

Course description

Virtually all areas of international politics – including war, trade, the environment, and human rights – are now governed by elaborate international legal regimes. This course introduces students to what international law is and how it operates in the context of modern international politics. The course begins with a brief historical overview of how international law has evolved over the past few centuries, before moving on to explore some of the concepts, principles, and rules that form the building blocks of the modern international legal system. Next, the course arrives at its main focus: How is international law enforced in a world of sovereign states? Skeptics contend that the primacy of sovereignty means that international law cannot be enforced at all, making it mostly inconsequential in international politics. Yet we will explore a variety of ways that international law is indeed enforced – including through international courts, domestic courts, monitoring regimes, political pressure, and organizational culture – and we will assess the promises and limits of each. We will do so by looking at a number of different bodies of international law, including the law on the use of force, the laws of war, international human rights law, international criminal law, international environmental law, and international trade law, while examining several in-depth cases concerning their enforcement. All the while, we will draw on what we learn to try to reach some broader insights about how and why international law works (or doesn't) in everyday international politics. Finally, we conclude the course with a short unit that examines some fundamental criticisms of international law from a range of different perspectives.

Course learning objectives

Upon completion of this course, students will be able to:

- Summarize and describe the steps and principles that underlie the international law-making process.

- Offer examples of issues governed by each body of law examined and explain how each body of law is designed to be enforced.
- Identify the variety of ways international law is enforced in general, describe some of the political dynamics they produce, and discuss the strengths and weaknesses of each.
- Identify different criticisms of international law in general and offer examples of how they apply to specific bodies of international law.
- Apply and synthesize concepts and arguments from the class material to analyze current events relating to international law.
- Navigate the text of international treaties, identify their enforcement mechanisms, and assess their prospects for effectiveness.

Grading scale

A	93+	4.0
A-	90-92.9	3.67
B+	87-89.9	3.33
B	83-86.9	3.0
B-	80-82.9	2.67
C+	77-79.9	2.33
C	73-76.9	2.0
C-	70-72.9	1.67
D+	67-69.9	1.33
D	60-66.9	1.0
F	below 60	0.0

Requirements and grading

Office meeting	5%
Participation	10%
Quizzes (10)	15%
Midterm	20%
Paper 1	15%
Paper 2	20%
Paper 3	15%

Attendance: You are required to attend every class. If you must miss class for some reason, you are responsible for everything we cover during your absence. *Do not contact me to find out what you missed.* Instead, it is your responsibility to contact your classmates to get up to speed.

Office meeting (5%): You are required to come to my office hour for a brief one-on-one meeting at some point *prior to March 9*. Scheduling details will be discussed in class.

Participation (10%): You are expected to participate in class discussion and group activities. You will be graded on the quality and quantity of your participation. If you do not participate at all, you will get 0 points for participation. It is my goal to promote an inclusive and encouraging environment for class participation. If you feel that there are factors holding you back from participating, please come talk to me so we can try to figure out how to overcome them.

Quizzes (15%): You will be given up to ten quizzes on the readings throughout the semester. These will be unannounced and short. The point of the quizzes is to ensure that you are doing the reading. They are designed so that if you have done the reading, they will be easy and not require any additional studying. There are no make-up quizzes for missed classes.

Midterm (20%): The midterm will mostly be short answer questions and will be designed to test your knowledge of the material covered through the first half of the semester. I will provide more details in class.

Papers (50%): You will complete three papers for a Treaty Expert Project. See separate instructions on D2L.

Knowledge of current events

This course makes frequent use of examples from current events. You will do better in class and get more out of it if you regularly follow ongoing developments in international politics. I recommend selecting a news source that has extensive international coverage – there are not many – and reading the whole thing every day. The best are the *New York Times*, *Reuters*, the *BBC*, and the *Financial Times*. The *Washington Post*, *NPR*, and the *Guardian* also offer high quality international reporting, though less of it. The *New York Times*, *Financial Times*, and *Washington Post* websites have paywalls, but they are worth it and offer highly discounted student rates. In general, with the exception of the *PBS NewsHour*, avoid any media that are primarily television-based (e.g. CNN, MSNBC, Fox) or those which are sensationally partisan (e.g. Breitbart, Huffington Post). Do not rely on your Facebook feed or news aggregators as your primary sources of news.

For additional coverage, *Foreign Policy* magazine and the Council on Foreign Relations (which publishes *Foreign Affairs* magazine) both publish excellent daily email news briefs that summarize the day's international news and which you can subscribe to for free. The following blogs also publish commentary by experts on current events specifically related to international law:

- *Opinio Juris* (opiniojuris.org)
Leading international lawyers and legal scholars on current events and developments related to international law.
- *Justice in Conflict* (justiceinconflict.org)
Commentary on the politics of international criminal justice, particularly the International Criminal Court.
- *IntLawGrrls* (ilg2.org)
Highlights the voices of women scholars, lawyers, policymakers, leaders, and activists on issues related to international law.
- *Lawfare* (lawfareblog.com)
Lawyers (many former government appointees) on current events and developments at the intersection of national security and law, mostly from a conservative perspective.
- *Just Security* (justsecurity.org)
Lawyers (many former government appointees) on current events and developments at the intersection of national security and law, mostly from a liberal perspective.

Required texts

There is one required book for this course. All other readings will be uploaded to D2L.

- Bederman, David and Keitner, Chimène. (2016). ***International Law Frameworks***. 4th edition. Foundation Press. (ISBN: 9781634592932)

Other policies

Reading: You are expected to complete all the assigned readings prior to the meeting in which they are due. You are responsible for everything contained in them – even material I do not discuss in class. You are also required to bring the readings with you to class.

Paper formatting: You are required to use the Chicago style author-date in-text citation system for your papers (not footnotes). I will deduct points for failure to adhere to the Chicago style parenthetical citation system. A guide to the Chicago style citation system can be found here: http://www.chicagomanualofstyle.org/tools_citationguide/citation-guide-2.html

Late and make-up assignments: No late assignments will be accepted without notice and permission at least 24 hours prior the start of class in which the assignment is due. If you are unable to attend class in person to turn in your assignment, I expect you to email it to me no later than the start of class in which the assignment is due. There are no make-up exams without notice and permission at least 24 hours prior the start of class in which the exam is scheduled to take place. Make-up exams will only be granted for exams missed due to the following circumstances: 1) Absences resulting from legal obligations (such as jury duty); 2) Absences due to religious observances; 3) Absences resulting from university sanctioned activities and related travel; 4) Absences resulting from a serious illness; 5) Absences resulting from a family emergency.

Electronics: In general, laptops *may not* be used in class. An exception is if I ask you to bring your laptops to class in order to carry out an activity that I assign. If you believe that you benefit greatly from using your laptop to take notes, then you may receive a waiver *only* if come to my office hour and ask for permission. You may not use your cell phones during class for any purpose.

Disabilities and accessibility: If you have any disabilities that require special accommodations, please bring them to my attention as early as possible in the semester so that we may determine what remedies are available.

Academic integrity: Academic dishonesty, including plagiarism, cheating, or fraud, will not be tolerated whatsoever on any assignment. Any and all cases of academic misconduct will be reported immediately to the administration. I operate on the assumption that you know what constitutes an act of plagiarism. If you are ever unsure whether your writing would constitute plagiarism, you should contact me to clarify. The University's definitions of and policies on academic misconduct can be found here: <http://bulletin.marquette.edu/undergrad/academicregulations/#academicintegrity>

Help with your writing

The Ott Memorial Writing Center offers free one-on-one consultations for all writers, working on any project, at any stage of the writing process. Marquette's writing center is a place for **all** writers who care about their writing, because *every* writer can benefit from conversation with an interested, knowledgeable peer. Writing center tutors can help you brainstorm ideas, revise a rough draft, or fine-tune a final draft. You can schedule a 30- or 60-minute appointment in advance (288-5542 or www.marquette.edu/writing-center), but walk-ins (in 240 Raynor or the other satellite locations) are also welcome.

Academic work and mental health

As a student, you may experience a range of challenges that can interfere with learning, such as strained relationships, increased anxiety, substance use, depression, trauma, a loss of loved ones, eating disorders, or bullying. These mental health concerns or stressful events may diminish your academic performance and/or reduce your ability to participate in daily activities. Confidential services are available at the Marquette Counseling Center 24 hours a day, and treatment does work. You can learn more about confidential mental health services available on campus at <http://www.marquette.edu/counseling/>. Getting help is a smart and courageous thing to do – for yourself and for those who care about you.

If someone you know needs support, is distressed, or exhibits concerning behavior, help them by reaching out and offering to accompany them to the counseling center or to identify relevant services.

Schedule

I. Introduction

January 16: Course introduction

- *International Law: 100 Ways It Shapes Our Lives* (skim).

January 18: Historical background of international law

- *Read course syllabus and Treaty expert project instructions. Begin investigating what treaty you are interesting in studying.*
- Chapter 1 in Bederman and Keitner, "Nature and History of International Law."
- Jane Perlez, "Tribunal Rejects Beijing's Claims in South China Sea," *New York Times* (July 12, 2016).
- Dionne Searcy, "Hissène Habré, Ex-President of Chad, Is Convicted of War Crimes," *New York Times* (May 30, 2016).

II. The Sources of International Law

January 23: Treaty-making and the law of treaties

- Chapter 3 in Bederman and Keitner, "Treaties." *Omit section "The Relationship between Treaties and Custom."*
- Andrew Restuccia, "The One Word that Almost Sank the Climate Talks," *Politico* (December 12, 2015).
- Steven Mufson et al., "Trump Twitter Bombs and a Negotiating Standoff: How NAFTA Talks Could Fail," *Washington Post* (October 6, 2017).

January 25: Case study in treaty analysis: The Convention Against Torture

- *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984)

January 30: Case study in treaty analysis: The Convention Against Torture (continued)

- Jayne Huckerby and Nigel Rodney, "Outlawing Torture: The Story of Amnesty International's Efforts to Shape the UN Torture Convention." Ch.1 in *Human Rights Advocacy Stories*, eds. Deena Hurwitz and Margaret Satterthwaite (2009).
- Geoffrey Robinson, "The Case of General Pinochet" (excerpt). Ch. 8 in *Crimes against Humanity* (3rd ed., 2013).
- Nick Cumming-Bruce, "China Faces Sharp Questioning by U.N. Panel on Torture," *New York Times* (November 17, 2015).

February 1: Customary international law

- Chapter 2 in Bederman and Keitner, "General Principles and Customary International Law."
- Chapter 3 in Bederman and Keitner, *pp. 29-32 only*.
- Basil Katz, "U.S. Lacked Jurisdiction in Panama Drug Case: Appeals Court," *Reuters* (November 6, 2012).

III. Enforcing International Law

February 6: International courts

- Chapter 5 in Bederman and Keitner, "International Dispute Resolution."
- Marlise Simons and Tim Weiner, "World Court Rules U.S. Should Review 51 Death Sentences," *New York Times* (April 1, 2004).

February 8: The International Court of Justice and the Law on the Use of Force

- *Charter of the United Nations*, articles 2(1), 2(4), 2(7), 24(1), 24(2), 42, and 51.
- Mary Ellen O’Connel, “The *Nicaragua* Case: Preserving world peace in the World Court.” Ch. 11 in *International Law Stories*, ed. Noyes et al. (2007).

February 13: International trade law

- *PAPER 1 DUE*
- Chapter 14 in Bederman and Keitner, “International Economic Law,” section “*International Trade and Monetary Law*” only (pp. 217-223).
- Bruce Wilson, “Compliance by WTO Members with Adverse WTO Dispute Settlement Rulings: The record to Date.” *Journal of International Economic Law* (vol. 10, no. 2., 2007).
- Krzysztof Pelc, “Why The Deal To Pay Brazil \$300 Million Just to Keep U.S. Cotton Subsidies Is Bad for the WTO, Poor Countries, and U.S. Taxpayers.” *Washington Post* (October 12, 2014).

February 15: International humanitarian law

- Chapter 16 in Bederman and Keitner, “Laws of War.”
- International Committee for the Red Cross, “International Humanitarian Law and Terrorism: Questions and Answers” (2011).
- Beth Van Schaack, “Mapping the Law That Applies to War Crimes in Syria,” *Just Security*, (February 1, 2016).

February 20: Domestic courts and enforcement of IHL

- Oona Hathaway, “*Hamdan v. Rumsfeld*: Domestic Enforcement of international law.” Ch. 8 in *International Law Stories*, ed. Noyes et al. (2007).

February 22: Organizational culture and enforcement of IHL

- Laura Dickinson, “Abu Ghraib: The Battle over Institutional Culture and Respect for International Law within the U.S. Military.” Ch. 13 in *International Law Stories*, ed. Noyes et al. (2007).
- Memorandum from William Taft to John Yoo, Re: Your draft memorandum of January 9 (January 11, 2002), pp. 1-2 only.

February 27: International human rights law

- Chapter 10 in Bederman and Keitner, “Human Rights and Global Migration.”
- Amanda Taub, “How Countries Like the Philippines Fall Into Vigilante Violence,” *New York Times* (Sep. 11, 2016).

March 1: Civil society and the enforcement of IHRL

- Stephen Ropp and Kathryn Sikkink, “International Norms and Domestic Politics in Chile and Guatemala.” Ch. 6 in *The Power of Human Rights*, ed. Risse et al. (1999).
- Naomi Roht-Arriaza, “El Salvador’s Constitutional Court Invalidates Amnesty Law: Will Prosecutions Follow? *IntLawGrrls* (July 16, 2016).

March 6: Treaty monitoring bodies and the enforcement of IHRL

- Jasper Krommendijk, “The Domestic Effectiveness of International Human Rights Monitoring in Established Democracies: The Case of The UN Human Rights Treaty Bodies.” *Review of International Organizations* (vol. 10, no. 4., 2015).
- UN Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America” (September 25, 2014).
- Henry McDonald, “Ireland Compensates Woman Forced to Travel to Britain for an Abortion,” *Guardian* (November 30, 2016).

March 8: Enforcing human rights at home: Police torture and extreme poverty

- G. Flint Taylor, "A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases," *Loyola Public Interest Law Reporter* (vol. 17, no. 3, 2012).
- Kevin Clark, "A U.N. Mission Offers a Sobering Assessment of Poverty in America," *America: The Jesuit Review* (vol. 218, no.1, 2018).

SPRING BREAK!!

March 20: International environmental law

- Chapter 13 in Bederman and Keitner, "International Environmental Law."
- Carol Davenport, "Nations, Fighting Powerful Refrigerant That Warms Planet, Reach Landmark Deal," *New York Times* (October 15, 2016).

March 22: International law on climate change

- Coral Davenport, "A Climate Deal, 6 Fateful Years in the Making," *New York Times* (December 12, 2015).
- *Paris Agreement, Annex*
- *Statement by President Trump on the Paris Climate Accord* (June 1, 2017).

March 27: MIDTERM

EASTER BREAK

IV. The politics of international criminal justice

April 3: The birth of international criminal law

- Theodor Meron and Jean Galbraith, "Nuremberg and its Legacy," Ch. 1 in *International Law Stories*, ed. Noyes et al. (2007).

- Nina Lakhani, “Justice at Last for Guatemalan Women as Military Officers Jailed for Sexual Slavery,” *The Guardian* (March 1, 2016).

April 5: *IN-CLASS FILM TBA – PROFESSOR BERLIN AT INTERNATIONAL STUDIES ASSOCIATION ANNUAL CONVENTION*

April 10: International criminal justice in Yugoslavia and Rwanda

- Kingsley Chiedu Moghalu, “The Balkans: The Trial of Slobodan Milosevic.” Ch. 3 in *Global Justice: The Politics of War Crimes Trials* (2006).
- Marlise Simons, “Yugoslavia Tribunal Leaves Rich Legacy, but ‘Immense’ Challenges Remain,” *New York Times* (December 23, 2017).

April 12: Intro to the International Criminal Court

- Geoffrey Robinson, “The International Criminal Court” (excerpts). Ch. 10 in *Crimes against Humanity* (3rd ed., 2013), pp. 502-522, 525-530, 532-535, 546-559.
- Marlise Simons, “Congolese Politician, Jean-Pierre Bemba, Is Convicted of War Crimes,” *New York Times* (March 21, 2016).

April 17: The Politics of the ICC: The case of Kenya

- James Verini, “The Prosecutor and the President,” *New York Times Magazine* (June 22, 2016).
- Mark Kersten, “South Africa and Burundi Withdrawals Expose Faults and Fault-Lines in ICC Opposition,” *Justice in Conflict* (November 11, 2016).

April 19: Considering the options for justice in Syria

- *PAPER 2 DUE*
- Anne Barnard, Ben Hubbard, and Ian Fisher, “As Atrocities Mount in Syria, Justice Seems Out of Reach,” *New York Times* (April 15, 2017).

- Anthony Faiola and Rick Noack, “For Syrian victims, the Path to Justice Runs through Europe,” *Washington Post* (March 2, 2017).

V. What’s wrong with international law?

April 24: Imperialism and victor’s justice

- Latha Varadarajan, “The Trials of Imperialism: Radhabinod Pal’s Dissent at The Tokyo Tribunal,” *European Journal of International Relations* (vol. 21, no. 4, 2015).

April 26: Feminism and the Laws of War

- Judith Gardam and Hilary Charlesworth, “Protection of Women in Armed Conflict,” *Human Rights Quarterly* (vol. 22, no. 1, 2000).
- UN Women and the Office for the Coordination of Humanitarian Affairs, “Needs of Women and Girls in Humanitarian Action in Gaza: Gender Alert for the 2016 Response Plan” (August 2015).

May 2: Anti-globalism

- John Bolton, “Should We Take Global Governance Seriously?” *Chicago Journal of International Law* (vol. 1, no. 2, 2000).
- Jack Goldsmith, “The Trump Onslaught on International Law and Institutions,” *Lawfare* (March, 17, 2017).

May 4: The (in)effectiveness of international human rights law?

- Eric Posner, “The Case against Human Rights,” *The Guardian* (December 4, 2014).