

POL 494.2 SPECIAL TOPICS IN POLITICAL SCIENCE:  
INTERNATIONAL LAW

Revised Course Outline: 20 January 2003

Reserve Texts:

Brownlie Principles of Public International Law (1998) JX3091 B88 1998. Available on reserve at DAL LAW

Brownlie Basic Documents in International Law (2002) JX3091 B88B31 2002

Harris Cases and Materials on International Law (1998) JX68 H31 1998

Heinze Landmark Cases in Public International Law (1998) JX68 L25

Higgins Problems and Process: International Law and How We Use It (1994) JX3091 H631

Shaw International Law (1997) JX3091 S53 1997. Available on reserve at DAL LAW

Shearer Starke's Introduction to International Law (1994) JX3091 S79 1994

Steiner and Alston International Human Rights in Context: Law, Politics and Morals (1996) JX4000 S821 I61

Reserve articles: All articles are available on reserve in the SMU library, with the above-noted exceptions.

6 January 2003: Welcome and Introductions

Select special topics to be addressed by students in the research component of the course

Prepare presentation schedule

Q & A

13 January 2003: Nature and Function of International Law

Required reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapter 1 (pp. 1-8)

Harris, Cases and Materials on International Law, chapter 1 (pp. 1-20).

Higgins, Problems and Process: International Law and How We Use It, chapter 1 (pp. 1-16).

D'Amato, "The Domain of International Law" in International Law Anthology, D'Amato (ed.), Anderson Publishing Co, 1994, pp. 3-9.

Recommended reading:

D'Amato, "Part B: Illustrative Historical Topics" in International Law Anthology, D'Amato (ed.), Anderson Publishing Co, 1994, pp. 16-24.

Fried, "International Law – Neither Orphan Nor Harlot, Neither Jailer Nor Never-Never Land" in International Law: Classic and Contemporary Readings, Ku and Diehl (eds.), Boulder, Lynne Rienner Publishers, 1998, pp. 25-51.

Ku and Diehl, "International Law as Operating and Normative Systems: An Overview" in International Law: Classic and Contemporary Readings, Ku and Diehl (eds.), Boulder, Lynne Rienner Publishers, 1998, pp. 3-15.

Shaw, International Law, 4<sup>th</sup> edition, chapters 1 and 2 (pp. 1-53).

Questions to guide your reading:

1. Consider the extent to which international law has as its objective the creation of an ordered, rather than just, system of international relations.
2. Is it accurate to describe international law as a set of rules governing the relations between states alone?
3. What are the functions of international law?
4. Assuming international law is binding, what makes it so?

20 January 2003: Sources of International Law and Treaties

Sources

Required Reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapter 3 (pp. 35-62).

Shaw, International Law, 4<sup>th</sup> edition, chapters 1 and 2 (pp. 1-53).

Higgins, Problems and Process: International Law and How We Use It, chapter 2 (pp. 17-38).

Further Reading:

Akehurst "Custom as a Source of International Law" BYIL (1976) pp. 1-53 (on reserve)

Akehurst "The Hierarchy of the Sources of International Law" BYIL (1976), pp. 273-285 (on reserve).

Cassese, "Attitudes of States Towards International Law" in *International Law in a Divided World* Oxford, Clarendon Press, 1986, pp. 105-125.

Harris, *Cases and Materials on International Law*, chapter 2 (pp. 21-67).

Questions to guide your reading:

1. Define, and then distinguish, material and formal sources of law.
2. Discuss whether there is a hierarchy of priority in article 38 of the ICJ statute.
3. How do UN General Assembly Resolutions feature as sources of law under article 38, ICJ statute?
4. What do you understand by state practice?
5. Is the principle of the persistent objector equitable to a newly independent state?

Treaties

Required reading:

Malanczuk, Akehurt's *Modern Introduction to International Law*, chapter 9 (pp. 130-146).

Shearer, *Starke's International Law*, chapter 16 (pp. 397-426).

Further Reading:

Harris, *Cases and Materials on International Law*, chapter 2 (pp. 21-67).

Briggs, "Unilateral Denunciation of Treaties: The Vienna Convention and the ICJ" 68 *Am. Jour. Int. Law.* (1974), pp. 51-68 (on reserve).

Questions to guide your reading:

1. Define a treaty. Is the VCLT definition, in your opinion, too restrictive?
2. What is the rationale behind the principle of *pacta sunt servanda*?
3. To what extent do you agree with the practice that unilateral declarations having the force of law should be treated the same way as treaties?
4. Explain the legal position of a third state or third party attempting to claim rights under a treaty entered into between several other states.
5. Why does international law regard treaty ratification as paramount to the law of treaties?
6. What is a reservation? Explain the position of international law in regard to reservations.
7. What limitations, if any, are there to a state's right to make reservations?

8. What is the effect of jus cogens in the law of treaties?

27 January 2003: Municipal and International Law and Subjects of International Law

Municipal and International Law

Required reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapter 4 (pp. 63-74).

Shaw, International Law, 4<sup>th</sup> edition, chapter 4 (pp. 99-136).

Higgins, Problems and Process: International Law and How We Use It, chapter 12 (pp. 205-218).

Further reading:

Harris, Cases and Materials on International Law, chapter 3 (pp. 68-100).

Shearer, Starke's International Law, chapter 4 (pp. 63-81).

Collier "Is International Law Really Part of the Law of England" 38 ICLQ (October 1989), pp. 924-935 (on reserve).

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Questions to guide your reading:

1. To what extent is it reasonable to view international law as distinct from municipal law?
2. Is the debate between monism and dualism "unreal, artificial and strictly besides the point"?
3. What is the transformation theory? The delegated theory?
4. When may a rule of municipal law be used in an international claim or action?

Subjects of International Law

Required reading: (Note: read the sections on state and government recognition as background only.)

Malanczuk, Akehurt's Modern Introduction to International Law, chapters 5 and 6 (pp. 75-81 and pp. 91-108)

Shaw, International Law, 4<sup>th</sup> edition, chapter 5 (pp. 137-195).

Higgins, Problems and Process: International Law and How We Use It, chapter 3 (pp. 39-55).

Further reading:

Crawford, The Creation of States in International Law, Oxford, Clarendon Press, 1979.

Harris, Cases and Materials on International Law, chapter 4 (pp. 101-162).

Shearer, Starke's International Law, chapter 3 (pp. 51-62).

Questions to guide your reading:

1. What is the relevance of legal personality?
2. What are the forces (or entities) that have induced the extension of legal personality to entities other than states?
3. Define an international institution.
4. To what extent are individuals recognised as subjects of international law?
5. Explain the phrase “objective international personality”.

3 February 2003: State Jurisdiction and Immunities

Required reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapters 7 and 8 (pp. 109-117 and pp. 118-129)

Higgins, Problems and Process: International Law and How We Use It, chapters 4 and 5 (pp. 56-77 and 78-94).

Shaw, International Law, 4<sup>th</sup> edition, chapter 12 (pp. 458-490).

(Note: read the sections on immunities as background only.)

Further reading:

Harris, Cases and Materials on International Law, chapter 6 (pp. 264-367).

Shearer, Starke's International Law, chapter 8 (pp. 183-217).

Black-Branch “Sovereign Immunity Under International Law: The Case of Pinochet” in The Pinochet Case: A Legal and Constitutional Analysis, D Woodhouse (ed). Oxford, Hart, 2000 (on reserve).

Questions to guide your reading:

1. What does “jurisdiction” refer to? What are the limits of the right of a state to exercise jurisdiction within its territory?
2. Discuss the time honoured rule of international law that a state has absolute right to extend its nationality to whomsoever it pleases.
3. What problems for the practice of international law does the universality principle raise?
4. What is extra territorial asylum? What is the position of international law as far as this right (or duty) is concerned?

5. “Jurisdiction over criminals will not be defeated by the fact that the criminal had been unlawfully brought within jurisdiction”. Comment.
6. Why should diplomats and consular agents be granted diplomatic immunity?
7. Explain the term *persona non grata* as contained in the Vienna Convention of 1961.
8. Why are consular agents not accorded the same immunities as diplomats?

10 February 2003: State Responsibility

Required reading:

Malanczuk, Akehurt’s *Modern Introduction to International Law*, chapter 17 (pp. 254-272)

Shaw, *International Law*, 4<sup>th</sup> edition, chapter 14 (pp. 541-584).

Higgins, *Problems and Process: International Law and How We Use It*, chapter 9 (pp. 146-168).

Further reading:

Harris, *Cases and Materials on International Law*, chapter 8 (pp. 484-623).

Shearer, *Starke’s International Law*, chapter 10 (pp. 264-289).

Questions to guide your reading:

1. Explain the basis of state responsibility in international law.
2. Under what circumstances is a state responsible for the acts and omissions of its agents?
3. Should aliens be afforded a higher standard of treatment than that afforded to nationals?
4. Discuss the circumstances where a successful revolution will be held responsible for acts committed and approved by an overthrown government.
5. Is it true to say that since states are never capable of performing acts on their own, but are wholly dependent on its nationals, the individual is ultimately the subject of international law?

17 February 2003: Study Break – no class

24 February 2003: Human Rights

Required reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapter 14 (pp. 209-221)

Steiner and Alston, International Human Rights in Context, "Introduction to Human Rights Issues and Discourse: Global Snapshots" pp. 3-17; "Rights, Duties and Cultural Relativism" pp. 323- 366; "The Spread of State Constitutions in the Liberal Model" pp. 988 – 1021; "Universal Jurisdiction and International Crimes" pp. 1132 – 1142.

Monshipouri and Welch, "The Search for International Human Rights: Coming to Terms with New Global Realities" 23 Human Rights Quarterly (2001), pp. 370-401.

Higgins, Problems and Process: International Law and How We Use It, chapter 6 (pp. 146-168).

Further reading:

Alston, "The UN's Human Rights Record: From San Francisco to Vienna and Beyond" in International Law: Classic and Contemporary Readings, Ku and Diehl, Boulder, Lynne Rienner Publishers, 1998, pp. 355-368.

Buergenthal "The Normative and Institutional Evolution of International Human Rights" 19 Human Rights Quarterly (1997) pp. 703-723,

Donnelly, "Human Rights as an Issue in World Politics" in International Human Rights, 2<sup>nd</sup> Edition, Boulder, Westview Press, 1998, pp. 3-17.

Harris, Cases and Materials on International Law, chapter 8 (pp. 484-623).

Higgins "Conceptual Thinking about the Individual in International Law" 24 New York Law School Law Review (1978) pp. 11-29.

Shaw, International Law, 4<sup>th</sup> edition, chapter 6 (pp. 196-254). (Useful for understanding the organs of international human rights law (UN, etc)).

Questions to guide your reading:

1. Explain the relationship between the concept of international personality and the protection of human rights by international law.
2. What, in your assessment, is the chief failing of international law in the protection of human rights?
3. Is customary international law a source of protection in international law?
4. Discuss the origin of human rights as an area of international law.

5. How has the international law of human rights developed since 1945? Are 1<sup>st</sup> generation rights more or less justiciable than 2<sup>nd</sup> and 3<sup>rd</sup> generation rights? What are the 'generations' of human rights?

3 March 2003: Peaceful Settlement of Disputes: The ICJ

Required Reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapter 18 (pp. 273-305)

Shaw, International Law, chapter 18 (pp. 717-776).

Higgins, Problems and Process: International Law and How We Use It, chapters 11 and 13 (pp. 186-204 and 219-237).

Further reading:

Brownlie "The Peaceful Settlement of Disputes" in The Rule of Law in International Affairs, The Hague/London/Boston, Martinus Nijhoff Publishers, 1998, pp. 107-121.

Harris, Cases and Materials on International Law, chapter 12 (pp. 985-1047).

Questions to guide your reading:

1. Is there a requirement on states to first resort to diplomatic means of dispute resolution before turning to the judicial and legal framework?
2. Is the ICJ effective in peacefully resolving international disputes?
3. Assess the operation of Article 36 of the Statute of the ICJ.
4. What is meant by "compulsory jurisdiction" of the ICJ?
5. Explain, in the context of the ICJ Statute and Procedures: (a) preliminary objections; and (b) intervention.
6. Discuss how the optional clause of the ICJ statute has been applied in light of state practice and case law.

10 March 2003: Use of Force

Required reading:

Malanczuk, Akehurt's Modern Introduction to International Law, chapters 19 and 20 (pp. 306-318 and 338-341; 342-361)

Harris, Cases and Materials on International Law, chapter 11 (pp. 859-940). If you are interested in the UN and the use of the force, then see also pp. 940-984.

Higgins, Problems and Process: International Law and How We Use It, chapters 14 and 15 (pp. 238-266).

O'Connell "The UN, NATO and International Law after Kosovo" 22 Human Rights Quarterly (2000) pp. 57-89.

Further reading:

Arend and Beck "International Law and the Recourse to Force: A Shift in Paradigms" in International Law: Classic and Contemporary Readings, Ku and Diehl, Boulder, Lynne Rienner Publishers, 1998, pp. 355-368.

Shaw, International Law, 4<sup>th</sup> edition, chapter 19 (pp. 777-823).

Questions to guide your reading:

1. Examine the definitions applied to war and use of force.
2. Discuss whether or not the use of economic sanctions/coercion should be classed as 'use of force' at international law.
3. Examine the right of a state to use force in self-defence.
4. Under what circumstances would the collective use of force be legitimate?
5. Comment on the right that there is a general right to restore democracy in another state

17 March 2003: Research Paper Presentations

Clay Urquhart: The creation and impact of the International Criminal Court

Rayna Sanford: Environmental law

24 March 2003: Research Paper Presentations

Dennis Merner: Minority Rights

Karinne Lantz: TBD

31 March 2003: Research Paper Presentations

Aldo Mayo: Terrorism

7 April 2003:            Research Paper Presentations/Course Wrap-Up

Some International Law Periodicals and Journals

American Journal of International Law  
American University Journal of International Law and Policy  
Australian Yearbook of International Law  
British Yearbook of International Law  
Bulletin of Legal Developments  
Canadian Yearbook of International Law  
Cornell International Law Journal  
Denver Journal of International Law and Policy  
Duke Journal of Comparative and International Law  
East African Journal of Peace and Human Rights  
European Journal of International Law  
German Yearbook of International Law  
Hague Yearbook of International Law  
Harvard International Law Journal  
Hasting International and Comparative Law Review  
Human Rights Quarterly  
International and Comparative Law Quarterly  
International Law Quarterly  
International Lawyer  
International Legal Perspectives  
International Peacekeeping  
Italian Yearbook of International Law  
Journal of Armed Conflict Law  
Journal of Conflict and Security Law  
Netherlands Yearbook of International Law  
New York University Journal of International Law and Policy  
Nigerian Annual of International Law  
Philippine Yearbook of International Law  
South African Yearbook of International Law  
UCLA Journal of International Law and Foreign Affairs  
United Nations Law Reports  
Yale Journal of World Public Order  
Yearbook of the International Legal Commission

Journalistic sources:

Harper's  
The Economist  
The New Republic  
etc

