

NEW YORK UNIVERSITY
Graduate School of Arts and Science
Department of Politics

G53.2900 International Law
Prof. Hsiung

Fall 2004
Mon 6:20-8:10 p.m.

Syllabus

This course explores the interplay of law and politics in international relations. Too often the role of international law in the relations of nations is neglected, under-appreciated, or even villified. If discussed at all, international law is often treated as a static set of “rules” governing (or being broken by) states in the course of their mutual relations. Our approach, following the tradition of Myres McDougal (of the “New Haven School”), postulates that international law is a decision-making process characterized by “functional duality” and “competing claims and mutual tolerances.” As such, it is both an input in foreign-policy making and, in turn, influenced and [re]shaped by state practice (i.e., foreign-policy behavior).

Like its realist precursor, neorealism—which still dominates the contemporary international-politics literature—considers *self-help* an iron law of survival for states in an anarchic system (i.e., a world without an overarching authority over and above sovereign states). It dichotomizes national interest and international law, considering the two incompatible and even antithetical. Furthermore, neorealist stalwarts such as Kenneth Waltz assert that out of the survival instinct under conditions of anarchy, no state will voluntarily accept constraint on its sovereignty. An ultimate purpose of this course is to assess the validity of this realist dichotomy, by examining (1) whether states may find upholding international law to be, however paradoxically, in their national interest, precisely because of systemic anarchy; and (2) how nation states do in fact voluntarily accept curbs on their sovereignty, such as in the outlawry of the use of force (self-help) except in self-defense, and in regard to certain obligations—arising from treaties they freely contracted—as in the areas of environmental control, trade, and arms control. For this part of the course, a familiarity with the neorealist theory of international politics will be a plus (although we will, where appropriate, discuss it in class).

Our study focuses on: (a) international law as a code of conduct; (b) the law’s mitigating effects on state behavior, e.g., on the “security dilemma” and the “relative gains” fixation; and (c) the cumulative effects of state interactions (practice) on the law’s progressive development.

We will be concerned not merely with what international law prescribes, but equally with how nations behave within the parameters set by it, and, *a fortiori*, how state practice, when repeated over time, gives meaning to specific norms of the law. Because of the time constraint, this course does not purport to be an across-the-board study of all aspects of international law (such coverage properly belongs to a good undergraduate course, but cannot be duplicated here). Only a selected number of topics of international law will receive scrutiny –chosen both because of their intrinsic significance and, more especially, because they illustrate (i) the political foundations of international law, (ii) the legal dimensions of international political, economic, and security relations, and (iii) how international law constrains state behavior, often mitigating the self-help effects of systemic anarchy. Nevertheless, within the chosen topics, empirical cases will be examined, to demonstrate how international law is “found” and applied and, ultimately, whether international law makes a difference in the conduct of relations between and among international actors (both states and non-state actors).

The evolution of international law within the parameters of our changing Westphalian system over time will be examined. Questions such as the challenge that power politics poses to international law, and conversely the pull (or constraining effects) of international law on power politics, will be explored.

In the context of the international law-politics interplay, we shall also examine how doctrines such as self-determination and economic sovereignty, which may have arisen initially from domestic political debates but have found their way into modern international law, have helped transform the power configuration of our Westphalian system. For instance, over 80 former colonies and dependencies have gained statehood in exercise of their right of self-determination after World War II. The resultant post-1960 decolonization process has unalterably reshaped the world’s power structure beyond recognition, neorealist demurer (or oblivion) notwithstanding.

TEXTS FOR PURCHASE

^William Slomanson, *Fundamental Perspectives of International Law*, 4th ed.

(Thompson/West, 2003);

^Charlotte Ku and David Diehl, eds., *International Law: Classic & Contemporary Readings*, 2d ed. (Lynne Rienner, 2003); paperback;

^David Bederman, *International Law Frameworks* (Foundation Press, 2001); pb;

^James C. Hsiung, *Anarchy and Order: The Interplay of Politics & Law in International Relations* (Lynne Rienner, 1997; pb "available on demand" only);

ON RESERVE

- *Lori Damorasch, et al., eds. *International Law: Cases & Materials*, 4th ed.,
with *Supplement* (West Publishing, 2001);
 - *Morton Kaplan and Nicholas deB. Katzenbach, *The Political Foundations of
International Law* (John Wiley, 1961);
 - *J. Craig Barker, *International Law & International Relations* (Continuum, 2000);
 - *James C. Hsiung, *Anarchy & Order: The Interplay of Politics & Law in
International Relations* (Lynne Rienner, 1997)
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CLASS CALENDAR & READINGS

(N.B.: Readings below provide varying degrees of depth, to suit student
backgrounds at varying stages of intellectual development.)

1, International Law, Politics, and Political Science

- ^*Hsiung, 3-19
- ^Slomanson, 1-10; 42-45
- ^Bederman, 1-11
- ^Ku & Diehl, 1-22
- *Barker (2000)
- +Coplin (for full citations, see References below)
- +Reisman (2001: in defense of world public order against terrorism)
- +Deutsch & Hoffmann

2. IL & the Changing Systemic Parameters: Universality of International Law (?); IR Theories & IL

- ^*Hsiung, 19-27
- *Kaplan and Katzenbach, chs. 2-3
- *Barker, 70-96 (IR theories & IL)
- *Damrosch, et al., xxvii-xxxvi
- +Reisman (1990a)
- +Vogts (2001: on "hegemonic international law")
- +Reisman (1990a)

3. The International "Legislative Process": Sources & Evidence of IL; Domestic Law & IL; Role of IOs

- ^Slomanson, 11-33; 38-41
- ^Bederman, 12-47; 158-169

^Ku & Diehl, 33-126
*Damrosch, et al., ch. 2

4. U.N. & Systemic Change; Self-Determination and
Economic Sovereignty

^Slomanson, 101-172
^*Hsiung, 129-151
^Ku & Diehl, 155-180
*Damrosch, et al., 790-798 (Texaco Overseas Petroleum v. Libya)
+Halperin

5. Foreign Policy & IL: Diplomacy; Responsibility of States

^Slomanson, 53-99; 303-338
^*Hsiung, 103-106
^Bederman, 80-92; 49-79
+Moynihan
+Perkins, chs. 2-3

6. Jurisdictional Conflict & Jurisdictional Immunities; and
Protection of National & International Interests

^Bederman, 170-204
^Slomanson, 213-244
^*Hsiung, 87-103
*Barker, 137-175
*Damrosch, et al., ch. 13

7. Conflict Resolution: Peaceful Settlement of Disputes

^Slomanson, 383-451
^*Hsiung, chs. 3-4
*Damrosch, et al., ch. 11
+Rosenne

8. Legal and Illegal Use of Force: Self-Defense, Intervention,
Collective Security, U.N. Peace-keeping

^Slomanson, 453-528
^Bederman, 205-232
^Ku & Diehl, 285-332
*Barker, 97-121

- *Damrosch, et al., 920-1054
- +Gardam (on jus ad bellum) (1993)
- +Franck (2001: on terrorism & right of self-defense)
- +Henkin and Hoffmann (1991)
- +ICI (1991)
- +Rostow (1991)
- +Bekker (1997)

9. Regulation of Armaments: Arms Control, Nuclear Weapons and IL

- ^*Hsiung, ch. 2
- *Damrosch, et al., 1056-1059; 1077-1087
- +Jensen
- +Klausen
- +Falk (1997)

10. Regulation of International Economic Relations:

International Trade Law

- ^Slomanson, 613-672
- ^Ku & Diehl, 231-254
- *Damrosch, et al., ch. 20
- +Jackson
- +Lowenfeld

11. Challenge to State Sovereignty: Human Rights and IL

- ^Slomanson, 529-584
- ^*Hsiung, ch. 6
- ^Bederman, 93-109
- ^Ku & Diehl, 333-384
- *Damrosch, et al., ch. 8
- +Forsythe (2000)
- +Reisman (1990b)

12. Community Interests over State Interests: Control Over the Environment and the Global Commons

- ^*Hsiung, ch. 8
- ^Ku & Diehl, 385-504
- ^Slomanson, 585-612
- *Damrosch, et al., ch. 17

+Barros and Johnston
 +Palmer (1992)
 +Richardson (1985)

13. International Law & International Politics: Sovereignty vs. IL

Constraint; Future of IL & IP

^*Hsiung, chs. 9-10

^Ku & Diehl, 505-530

*Damrosch, et al., 880-895; 955-961 (Nicaragua vs. US)

*Kapan and Katzenbach, ch. 13

+Falk (2002)

+Schachter (1991)

+Barton and Carter, 279-294

+Henkin (1979)

Legend: ^ = textbooks used for the course

* = on reserve

+ = recommended, but not on reserve

For all its importance, the topic of diplomatic and consular privileges and immunities (and the immunities of IOs) receives only peripheral attention here. Interested parties, especially current and prospective “practitioners” (foreign service personnel and IO officials), are urged to consult *Damrosch, et al., ch. 14; McClanahan; Bland; Wood & Serres, Sen; and Wilson.

OTHER REQUIREMENTS OF THE COURSE

Class attendance is absolutely essential, as we attempt to weave diverse elements together and update the readings in classroom lectures. In addition to a final exam, a term paper is required, due at the time of the final. The topic of the paper should be chosen in consultation with me no later than the third week of class. A one-page précis on research design, the major hypothesis, a brief bibliographic note (please consult the References below first), and your expected findings, is due during the fifth week. My office hours are Mondays, 2:00-3:15 p.m.; 5:00-6:00 p.m., and other times by appointment. My office is located at 726 Broadway (Rm. 717). My direct line is: (212) 998-8523; and e-mail address: jch2@nyu.edu.

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- Bekker, Peter H.F. 1997. "Legality of the Threat or Use of Nuclear Weapons," *American Journal of International Law* (hereinunder AJIL), 91,1:127-133; +Addendum by Paul Szasz, *id*, 133-134.
- Bland, Sir Nevile. *Sato's Guide to Diplomatic Practice*, various editions. New York: David Mckay.
- Coplin, William. 1966. *The Function of International Law*. Chicago: Rand-McNally.
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- Falk, Richard. 1997. "Nuclear Weapons, International Law, and the World Court: A Historic Encounter," *AJIL*, 91,1: 64-74.
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- Forsythe, David. 2000, *Human Rights in International Relations*. Cambridge University Press.
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- Gardam, Judith G. 1993. "Proportionality and Force in International Law," *AJIL*, 87,3: 391-413 (July).
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- Schachter, Oscar. 1991. "United Nations Law in the Gulf Conflict," *AJIL*, 85,3: 452-473 (July).
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