IGA 105: The Politics of International Law
Fall 2015
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Professor

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Time and Location

Monday and Wednesday, 11:45 am-1:00 pm, Weil Town Hall

Office Hours: Monday: 2-3 pm; Tuesday, 3-4 (or by appointment)

Course Description

This course starts from the assumption that increasingly policymakers need to know more about international law in order to understand and act in world politics. International politics is now so interpenetrated with international law concepts and practices that one can no longer be an effective policy maker working on international topics without a basic familiarity with international law. The central goal of the course is to familiarize students with a broad range of analytical and policy tools to enable them to think and act critically when drafting and implementing policies related to international law. The course provides an introduction to some aspects of the method and substance of international law, including some key legal concepts like sovereign immunity, jus cogens, general principles of international law, principles of jurisdiction etc. But this is not a law course. We cover legal subjects to understand how politics and law interact in shaping international relations today. We will explore the following issues: How do we explain where particular laws and norms come from? Why do states commit to international treaties and to soft law? How do these affect the shape of global politics and the outcomes of particular events? How often do states obey or comply with international law, and why? We will also examine substantive areas of international law such as the use of force and the laws of war, human rights, environmental law, trade law, and international criminal law. The course uses cases, role-playing, and simulations to help students learn how to work with international law.
Course Reading Materials:

Most readings will be posted on the course page, but there is one required textbook that we will use throughout the semester. It is available for purchase at the Harvard Coop:


Expectations and Evaluation:

This is a graduate-level course and will have the associated standards and assignments: complete attendance at scheduled classes, assignments completed on time, and evaluation according to students’ class participation and quality of written assignments.

Class Participation

You are expected to come to each session prepared to discuss the day’s assignment, readings and cases, and to make thoughtful contributions to the learning of your classmates. Class participation will account for 20% of your grade. Evaluation of participation will be based on attendance, the timely completion of the Three Reading Responses (see below), your comments in class, and your active participation in group exercises, such as the role-play, simulation, debate, treaty group presentations, and case discussions. Being in class and talking is a necessary part of class participation, but it is only a starting point – the quality of your participation also matters. One way to make sure your participation in high quality is to complete all reading before class. Comments informed by the reading, including when you express disagreement with the reading, is one way to have high quality participation. Another way is to ask good questions, not only me but also of your fellow students. If you ask questions of your fellow students or respond to their comments, it will allow us to have a better discussion. Although we take attendance, there will not be any excused absences for class attendance. You are welcome to tell me if you can’t be in class, but I will not be keeping track of excused absences. You have many opportunities for participation, and if you have to miss a class or two, you can compensate for it by more extensive participation in other ways, such as volunteering to participate in the debate on drones.

Reading Responses

After the first two class sessions, you will be expected to briefly answer the Reading Responses in writing for 12 of the remaining class sessions. Answers to the three questions will be graded complete-incomplete. Your answers are to be posted to the course webpage by 10 am.

The first question always is “In what you read for today, what did you find most illuminating? Why?” The second question always is “In what you read for today, what did you find most puzzling? Why?” The third question is the daily topical assignment, which appears in italics on the daily course assignment sheet and on the syllabus.
Your answers to the Reading Responses should be no longer than a few sentences each. In a few sentences, you cannot possibly give a thorough, well-defended answer to the topical question, and a thorough, well-defended answer is not expected. You should, however, give the beginnings of a thoughtful answer.

You are encouraged to discuss the Reading Responses with your fellow students, but your answers must be your own work. In particular, you may not give an answer to the two “In what you read for today …” questions if you have not done the reading yourself. Instead, your answer should simply say, “I have not read enough for today to find something illuminating or puzzling.”

We will not use the Reading Responses for the two class sessions while you are still settling in. The first day of class when the Reading Responses are due is Monday, September 14. On the three days when you are submitting case papers (see below), you do not need to submit answers to the Reading Responses. If you do not submit a case paper, you will be expected to answer the Reading Responses. You may also skip five additional days without penalty. In total, you are required to submit the Reading Responses 12 times.

Case Papers

During the semester, you will prepare and submit three two page case papers. You will do so using the third of the Three Reading Responses for that day’s reading and expanding your response into a longer essay. You will find the case paper opportunities listed on the Course Assignment Calendar on the course page and should upload your case papers there. Please also bring a hard copy of your paper to class on the day it is submitted. You will be able to choose your three cases for papers from five opportunities to write case papers. The dates for which you may submit a case paper are as follows:

- International Law Interpretation and Dispute Resolution, the International Court of Justice: Vienna Convention and Angel Breard Case: September 23
- Use of Armed Force: Jus ad Bellum: October 5
- Use of Drones (Debate Paper) October 21
- TRIPS and the Right to Health, November 4

You will write from the point of view of an international political-legal expert both working within the tradition of international law, and aware of the political context and constraints. You should first draw on widely shared legal norms, custom and treaties to inform your analysis. Given that this class is about the intermingling of politics and law, you will follow your legal analysis with a political analysis and see how they relate to one another and whether or not your recommendations change when political considerations are explicitly taken into account. Each paper will account for 10% of your grade (for a total of 30%). They are due at the beginning of class on the day the case is being discussed. Since one of the purposes of the case paper is to promote informed discussion of the case, I will not accept any late case papers. Because you have five case opportunities in which to submit 3 papers, if some emergency arises, you can submit a case paper at a later date.
Final Policy Memo

For your final policy memo you will be able to choose an 8 page policy memo on an international legal/political topic of interest to you and connected to the class. A two-page summary of the topic you have chosen will be due at mid-term time (October 28th), so that I can give you feedback. Ten percent of your grade will be based on the two page draft, and 40% on the memo itself. Imagine you are a staff person writing a memo to your supervisor about what needs to be done on this legal issue. You can be a staff person working for a government (any government, just specify, not only the US government, of course), for an NGO, for an international organization, or for a corporation. Some examples of the kinds of topic you might choose include: 1) Do we need a more well-developed legal framework to regulate the use of drones, and if so, what should it be? 2) How can compliance with the existing UN Framework Convention on Climate Change be enhanced? Or 3) What legal and political strategy would be necessary for the Security Council to refer the case of Syria to the ICC? You might find that one of the three Reading Responses interests you and you will want to develop your answer to that three Reading Response into a longer policy memo.

In each memo, you will survey the existing legal and political situation with regard to the issue, and then make political and legal recommendations about a course of actions. You must refer to class readings so your recommendations for practice are informed by what you have learned in this class. As with our case papers, you will write from the point of view of an international political-legal expert both working within the tradition of international law, and aware of the [primarily international but also some national] political contexts and constraints. You can write your legal policy memo to an NGO, a state official of any state, or an international organization official, but I want you to give your own legal and political evaluation, and not limit or change your recommendations based on the perceived interests of the organization or the state to whom you will submit your memo. Assume your “client” in this case will be best served by your own best evaluation.

If you propose a new legal arrangement in your memo, please spell out what the new framework should look like and why you think it is both legally and politically possible to secure such an outcome. The main point of the exercise is for you to demonstrate your command of the legal and political issues, based on material presented in class related to your issue, and additional research, and to write a clear and persuasive document. Assume that I know the arguments of all the authors we used in class and don’t explain their arguments at any length to me, but rather let your use of them reveal your understanding of their arguments. When you refer to readings from class, just use the author’s last name and give the page number, e.g. (Murphy, 14). When you refer to readings from outside of class provide a brief summary of the argument and a full footnote citation. There is no need for a bibliography. Footnotes will not count in the word total. The paper will be docked one full letter grade for each day it is late.

Enrollment

Auditing is limited and by permission of instructor. Those taking the course for credit have precedence at office hours.
Grading

Class grading will follow the recommendations of the HKS Academic Council on grading policy, which include the following curve: A (10-15%), A- (20-25%), B+ (30-40%), B (20-25%), B- (5-10%). You will receive points, not grades, on your assignments. All the points will be added up for the final total and the curve will be applied in order to determine the final grades according to the recommendations of the HKS Academic Council.

Academic Integrity

“We expect you to express your ideas and to sustain arguments in your own words. Failure to do so is plagiarism. It is unethical and often illegal. Plagiarism ranges from the blatant—purchasing a term paper or copying on an exam—to the subtle—failing to credit another author with the flow of ideas in an argument. Properly acknowledging the use of the words of others and avoiding excessive quotation of the work of others will eliminate most plagiarism problems. If you want to quote from a published work, including a Web page, you must put the passage in quotation marks and provide a citation. Simply changing a few words from the writings of other authors does not alter the fact that you are essentially quoting from them. Paraphrasing of this sort, where you use the words of another almost verbatim without acknowledging your source, is the most common form of plagiarism among undergraduates. When you state another author's viewpoint, theory, or hypothesis—especially when it is original or not generally accepted—you must also include a reference to the published work. In general, citations are unnecessary when the information is considered common knowledge or a matter of widespread agreement. Common knowledge can often be identified by its appearance in several of the assigned readings for class…. Failure to maintain academic integrity in any portion of the academic work for the course shall be grounds for awarding a grade of F for that assignment. (This paragraph was drawn in its entirety from Clark Miller’s syllabus at: [http://www.hks.harvard.edu/sdn/syllabi/files/Miller-Science_and_Democracy.pdf])

Class Page

The Course Page is available through Canvas. If you do not already see it by logging into Canvas directly, go to the HKS home page. Select the intranet login button on the screen. Enter your username and password. Select IGA105 in Course Listings and you’re in!

If you are not a KSG student and need access to the Class Page, there is a procedure connected to the cross-registration process. Auditors can also be accommodated through this same process.

Daily Topics and Required Readings:
Session 1 - Wednesday September 2, 2015. Introduction to the Politics of International Law

Why is it useful to know something about international law when working on international politics? Illustrate with a brief discussion of the relevance of international law to understand the nuclear agreement with Iran.

Come prepared to introduce yourself and briefly mention why you are interested in the politics of international law. Also, we will ask all of you to post on the web site a short paragraph description of yourself, mentioning in particular any experience you have had with international law issues. We would appreciate if students would also post photos to the web-site.

Students will complete a brief survey about their expectations for the class

Required Reading:

Shirley Scott, chapter 1, “International Law and World Politics Entwined,” in International Law in World Politics, 1-18.

Sean Murphy, Principles of International Law, Chapter 1, “Foundations of International Law,” pp. 3-30.

September 7, 2015: Labor Day – no class today

Session 2 - September 9, 2015. Why is it useful to know something about international law when working on international politics? The relevance of international law to understand the nuclear agreement with Iran.

Required Reading:


Session 3 - September 14, 2015. International Law Creation

(Sign up today for the treaty you will study and present for next class. You can present a treaty by yourself or sign up as part of a 2-person treaty group. If you are part of a group, you will need to meet with your fellow student at the end of class today to divide up the tasks so that you will be ready to present your treaties to class this coming Wednesday September 16.)

3rd Reading Response: How were transnational networks [or global civil society] able to help create new treaty law to ban landmines?

Required Reading:

Sean Murphy, chapter 3, “International Law Creation,” pp. 77-124.


Session 4 - September 16, 2016. Treaties

3rd Reading Response: Scott says “the precise wording of a legal document matters.”   Give an example for the treaty you chose to examine where you think the precise legal wording may matter.

Required Reading:

Shirley V. Scott, International Law in World Politics, Reading a Multilateral Treaty, 143-159.

- Students will make group presentations of the treaty they signed up for on Monday.
  - Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979)
  - The Nuclear Non-Proliferation Treaty (NPT)
  - Convention against Torture (CAT)
  - Montreal Protocol on Substances that Deplete the Ozone Layer
  - United Nations Framework Convention on Climate Change (and its Kyoto Protocol)
  - WTO treaty (and its TRIPS protocol)
  - UN Charter
  - Geneva Conventions
• **In-class presentations of the treaty groups:** We will divide up into treaty groups, based on the treaty you read. Each individual or group will prepare and present a report to the class about the essential aspects of the treaty, including: What is the object/purpose of your treaty? When did it enter into force, how many ratifications does it have (and by what kinds of states?); how many and what kinds of reservations. Finally, what can you tell us about the political process that led to the creation of this treaty? Who were the main state sponsors of the treaty? Was the political process leading to treaty creation a long one? Were non-state actors involved, such as NGOs, corporations, scientists or other academics, etc.?

**Session 5: September 21, 2015. Why do States Commit to International Treaties?**

*3rd Reading Response:* Do you think Simmons’ three main explanations for why states ratify human rights treaties useful to explain why states ratified your treaty specifically?

Each of the treaty groups will be asked to look at the list of countries that have ratified their treaty, and try to think about whether its ratification was sincere or strategic, and be prepared to discuss. Be prepared for a discussion of each treaty, using Simmons’ categories.

**Required Reading:**

Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* Chapter 3, “Theories of Commitment,” pp. 57-111;

**Session 6: September 23, 2015. International Law Interpretation and Dispute Resolution: The International Court of Justice: Vienna Convention and Angel Barseard Case**

**First case paper due in class today on the following question:** Imagine you are a legal advisor to Governor Gilmore and you need to provide him with a memo that summarizes the international law issues that he needs to take into account when he makes his decision how to respond to Secretary Albright’s letter. See instructions at end of the syllabus for case papers.

**Required Reading:**

Sean Murphy Chapter 4: “International Law Interpretation and Dispute Resolution,” pp. 125-170. (You have already read pp. 140-151, buy skim that part quickly again to remind yourself about the ICJ, a major actor in this case).
Sean Murphy, Chapter 7, “Foreign Relations Law of the United States,” *Principles of International Law*, pp. 223-270. [read carefully 249-257 on federal-state relations and International Law as part of US law and skim the rest.]

Case 248: Governor Gilmore and the Execution of Angel Breard: International Law versus States’ Rights,” Curtis H. Martin, Pew Case Studies in International Affairs

In-class: Students receive Part B of Breard case.

**Session 7: September 28, 2015. International Law Compliance and Enforcement**

*3rd Reading Response:* According to Chayes and Chayes, is enforcement necessary for compliance with international law?

Treaty groups come prepared to discuss your treaty: Is it enforced? How? Do you think there are high levels of compliance? Why or why not? How would you define and measure compliance with your treaty? Do you think that there would be more compliance if there were more enforcement?

**Required Reading:**

Sean Murphy, Chapter 5 “International Law Compliance and Enforcement” pp. 173-200.


**Recommended Reading:**


**Session 8: September 30, 2015. What difference does international law make and who benefits? The Case of the World Trade Organization (WTO)**

*3rd Reading Response:* In your opinion, who won and who lost in the end in the WTO Shrimp-Sea Turtle case?

**Required Reading:**


Come prepared to discuss the Shrimp-Sea Turtle case as presented in the reading by Gregory Shaffer and the WTO website: “ENVIRONMENT: DISPUTES 8 India etc versus US: ‘shrimp-turtle’” at https://www.wto.org/english/tratop_e/envir_e/edis08_e.htm


2nd case paper due in class today on the following question: Given your reading of Murphy, the two case studies and the UN Charter, do you think the war in Kuwait (the 1st Gulf War) was legal or illegal under international law? What about the decision to go to war in Iraq in 2003?

Required Reading:

Sean Murphy, chapter 14, pp. 491-515 only.


Case 278: “Going to the United Nations: George W. Bush and Iraq by Curtis H. Martin,

- Please read or reread parts of the UN Charter to prepare for this case discussion, http://www.un.org/en/documents/charter/
  o Preamble
  o Ch. I: Purposes (Articles 1-2)
  o Ch. V: The Security Council (Articles 23-32)
  o Ch. VI: The Pacific Settlement of Disputes (Articles 33-38)
  o Ch. VII: Action with respect to threats to the peace, breaches of the peace and acts of aggression (Articles 39-51)

Session 10: October 7, 2015. Jus ad Bellum II: The Kosovo Case and the Indeterminacy of International Law

3rd Reading Response: Why is the war in Kosovo categorized as illegal but legitimate? Do you agree?

Required Reading:

Case 252, “Coercive Diplomacy Before the War in Kosovo: America’s Approach in 1998.”

Shirley Scott, chapter 7 “Legal Argument as Political Maneuvering,” in *International Law in World Politics*, 121-142.

**October 12, 2015: Columbus Day – No class today**

**Session 11: October 14, 2015. Jus Ad Bellum III: Humanitarian Intervention, Responsibility to Protect (R2P): Libya and Syria**

3rd Reading Response: *Knowing what you now know about the laws of war and humanitarian intervention, should the U.S. and/or the Security Council authorize the use of force in Syria?*

**Required Reading:**


Rosa Brooks’ blog post on Syria: [http://www.foreignpolicy.com/articles/2013/06/20/so_you_want_to_intervene_in_syria_without_breaking_the_law?page=0,1](http://www.foreignpolicy.com/articles/2013/06/20/so_you_want_to_intervene_in_syria_without_breaking_the_law?page=0,1)


**Session 12: October 19, 2015. Laws of War: Jus in Bello I: (Iraq war video and exercise)**

Sign up today for participation in the debate on Monday.

3rd Reading Response: *Michael Walzer argues, “The war convention requires soldiers to accept personal risks rather than kill innocent people.”  Sometimes it may be difficult, however, to determine who is a civilian and who is a combatant, as we see in the Iraq video.  What guidance does the ICRC give on how to determine who is a civilian?*

**Required Reading:**

Sean Murphy, Chapter 14 “Use of Armed Force,” 2nd half: pp. 515-529.


**Session 13: October 21, 2015. Jus in Bello II. Debate: Is the U.S. use of drones in Pakistan illegal and/or immoral?**

| 3rd case paper due in class today on the following question: | Is the US use of drones in Pakistan illegal and/or immoral? |

In addition to handing in your paper, some of you should come prepared to volunteer to present a 5 minute argument on any side of this topic.

**Required Reading:**


**Session 14: October 26, 2015. Can you fight Terrorism and Still Comply with the Laws of War?**

*Third Reading Response:* In one of your readings for today, Jens David Ohlin argues that “In the war on terror, international law is our best friend, not our worst enemy.” Do you agree or not agree? Why or why not?


Session 15: October 28, 2015. Human Rights Law I:

Two-page summary of the topic and question for your final policy memo due today!

3rd Reading Response: Which of the human rights institutions discussed by Murphy could be used more effectively to respond to the violations of rights of the Rohingya people of Burma?

Required Reading:

Sean Murphy, Chapter 10 “Human Rights,” pp. 333-381.

Case #3 “The Rohingya of Burma,” See case and listen to the video on hrcases.org

Recommended reading:


3rd Reading Response: Do you agree with the decision of the South African Supreme court in the Sobremoney case: Why or why not?

Required Reading:

Case: Soobramoney v. Minister of Health (Kwazulu-Natal), South African Constitutional Court, pp. 1-35.

Read/Listen to Case #1: The Kichwa Indigenous People of Sarayaku; on hrcases.org

Session 17: November 4, 2015. When Different Aspects of International Law come into conflict with one another: WTO/TRIPs vs. the Right to Health.

4th case paper due in class today on the following question: When two different aspects of international law come into conflict with one another, as in this case of the TRIPS agreement and the right to health, how should the conflict be resolved?

Required Reading:


“Treatment Action Campaign case” from the hrcases.org website


3rd Reading Response: Is it possible to hold powerful countries like the US accountable for human rights violations?

Required Reading:


November 11, 2015: Veterans Day: no class today

Session 19: November 16, 2015. International Criminal Law and the rise of individual criminal accountability models:

Sign up today for your role in the role-play next Monday on the Creation of the ICC
3rd Reading Response: What is the difference, according to Murphy, between International Crimes and transnational cooperation concerning important sectors?

Required Reading:

Murphy, Sean D. Chapter 12, “International Criminal Law,” pp. 453-489; and Sean Murphy, Chapter 9, “Immunity from National Jurisdiction,” pp. 295-329 (skim)


Session 20: November 18, 2015. The International Criminal Court I

3rd Reading Response: What role did the NGO community play in the negotiation for the ICC?

Case: “Establishing an International Criminal Court: The Emergence of a New Global Authority” Pew Case Studies in International Affairs #258

Benjamin Schiff, “River of Justice,” 14-41 in Building the International Criminal Court.

Check out the Council on Foreign Relations interactive timeline of leaders facing international criminal prosecution.

Session 21: November 23, 2015. International Criminal Court II: How does the ICC Office of the Prosecutor (OTP) select cases? Simulation of OTP

3rd Reading Response: List a situation that in your mind should be placed under preliminary examination by the ICC.

Required Reading: Review all sections of the Multimedia case completely, and come prepared to participate in the simulation in class:

November 25: No class: Thanksgiving Break


5th case paper due in class today on the following question: Why was it easier to reach agreement on the Ozone Treaty than on a comprehensive treaty for Climate Change?
3rd Reading Response: why was it easier to reach agreement on the Ozone Treaty than on a comprehensive treaty for Climate Change?

Required Reading:


Session 23: December 2, 2015. Last day of class – The Future Role of International Law in World Politics:

Required Reading:


Case Papers: Detailed Instructions:

3 times during the semester you will be asked to prepare a 2 page case paper from three of the five cases listed in the syllabus.

Objective:

- To apply a theory or concept from the reading to a real situation.
- To generate animated class discussion.
- To allow you to explore a problem by sorting out relevant facts, developing logical conclusions and presenting them to your peers.
- To familiarize you the problems that real life policy makers face including coping with ambiguity and decision-making in complex situations.
- To help you develop your analytical and problem solving skills.

Requirements:

- Case papers are between 2 pages long (12 point font, double spaced with 1 inch margins).
I am not asking you to write how you personally would respond to these cases. I am asking you to put yourself in the shoes of an international political-legal expert working within the tradition of international law, and to make judgments based on that role. You should first draw on widely shared legal norms, custom and treaties to inform your analysis. Only after that, may you provide personal and/or political commentary on the case the relevant moral and legal standards under discussion. Given this class is about the intermingling of politics and law it may be useful to follow your legal analysis with a political analysis and see how they relate to one another and whether or not your recommendation varies any when political considerations are explicitly taken into account.

Follow the directions for each specific case outlined below.

The main point of the exercise is for you to demonstrate your command of the legal and political issues, based on material presented in class. Assume that I know the arguments of all the authors we used in class and don’t explain their arguments, but rather let your use of them reveal your understanding of their arguments. Because it is important always to footnote your sources in any academic work, add one general footnote at the start of the case paper citing the readings from class that you used as your sources, just using the author’s last name and date. If you use a direct quote, you must cite to the source, using the author’s last name and the page number, e.g. (Murphy, 14). If you refer to any readings from outside of class (and this is not required) provide a full footnote citation. There is no need at all for a bibliography. Footnotes will not count in the word total.

Evaluation:

- Evidence of a clear thesis statement that is well supported in a coherent and persuasive essay that is responsive to the assigned question or topic.
- Very good writing which includes proper spelling, good grammar and appropriate prose and uses citation correctly and where needed.
- Thoughtful engagement of legal concepts while paying attention to political practice.