

**Government 1740: International Law**

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Office Hours: Tuesdays, 2:00-4:00

Fall 2015  
Lecture: T Th, 10:00-11:30  
Sever Hall 113  
Sections: Th or F

## Teaching Fellows:

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This course is an introduction to public international law for students of international relations. The primary purpose of this course is to enhance students' understanding of the ways in which international law orders international (and sometimes domestic) politics. How and to what extent has it been used in resolving conflicts between nations? How and to what extent has it facilitated the achievement of common goals? What is the relationship between international law and states' foreign policies? How does international law interact with domestic politics and legal systems? Emphasis throughout the course is on the relationship between law and politics, on understanding why international law operates as it does, and on historical and recent episodes that illustrate the issues.

A special effort is made to relate the course material to international incidents and conflicts in the past decade or so: the use of drones; use of force for humanitarian purposes; "self-determination" in the Crimea; the issue of war crimes and the formation of an International Criminal Court; the use of international human rights treaties in domestic law and politics; foreign investors' rights versus states' right to regulate economic activity in their jurisdiction; and how international trade law connects (or not) with the problem of climate change. A few of the readings are drawn from law journals and are therefore in a "legalistic" style. Most of the required readings, however, are by political scientists who are grappling with issues at the intersection of international law and international politics. Some reading is drawn from the popular press. In this course, students are encouraged to think politically rather than purely legalistically. Sometimes legal cases are provided to illustrate critical points in the development of international law, but should not be approached as legal precedents to be memorized for their own sake.

This is a lecture course with a *significant* discussion component. Those who take this course agree to treat discussion participation at least as seriously as they do exams. Weekly discussions are an opportunity to explore applications of international law to actual international incidents and issues. Additional reading assignments are made for section discussions. We expect all weekly reading to be completed before attending sections; in turn, we promise to help clarify any confusion resulting from the lectures or readings, and to provide as stimulating a setting as is possible for you to share ideas, air issues, and analyze cases. Your contribution to sections is as important as any other aspect of this course to its (and your) ultimate success.

Grades will be determined on the basis of:

- Three substantive take home essay exams. The first two should be 5-7 pages; the third should be 8-10 pages (20%, 25%, 30% of your final grade respectively), due by 5 p.m. on October 9, November 6, and December 11. Note these are all Fridays.
- Section discussion participation and inner circle participation (25% of your final grade).

The first two substantive papers will draw primarily on the readings and should require minimal if any outside research. You will be given the questions one week in advance. The third paper will allow for (and indeed may require) additional research. We will therefore provide the questions on the first day of reading period and collect your answers on the day the final exam is scheduled.

*Inner circle discussion* is a question and answer session embedded within the lecture between the professor and 7-8 students. The twist: the professor gets to ask the questions, and discussion ensues.. Focus is on the readings. Each student will be randomly assigned a date to participate in these in-class discussions, beginning September 10<sup>th</sup>.

*Juniors Honors Option:*

If you are a Junior and are potentially interested in exploring a thesis topic related to the contents of this course, you may substitute a *research prospectus* (5-7 pages) for the final paper. The purpose of this option is to give you an opportunity to think about thesis topics early, and to get some feedback on your ideas. The Professor and the TF will read/grade all research prospectuses and give it the same weight in your final grade as the final exam would have had.

Toward the end of the semester, juniors will have the opportunity to receive feedback from their discussion section classmates on potential research questions concerning international law and politics. This discussion section (to be scheduled the week of December 1<sup>st</sup>) is intended to provide juniors guidance in developing their research topic, and to provide other students the opportunity to learn and think critically about designing an international law and politics research project. Sharing potential research ideas during this section will not commit you to a final research prospectus.

*Senior active learning options (in lieu of second take-home exam):*

*Virtual interview of Harold Koh*, former Legal Adviser of the State Department, on international legal issues surrounding the use of drones in the war on terror. This interview will be held during lecture on **Thursday November 10**. Students will do extra reading, submit questions in advance of the interview, and conduct the interview with the entire class as audience. Additionally, students will write a 5-page memo on drones and international law, due prior to the interview with Professor Koh. *Limit 6 students.*

*Panel discussion: Non-western Perspectives on International Law.* Students will team with experts on international law from outside of North American and Western Europe to lead a panel discussion on non-western perspectives. The nonwestern experts will be chosen from around the local Boston/Cambridge

area with the assistance of the professor. Involves extra reading, preparation and presentation to the class. Additionally, students will write a 5-page memo on nonwestern perspectives on some aspect of international law, due prior to the panel. *Limit 12 students.*

Two course books are available in the Coop:

Morrow, James D. 2014. *Order within Anarchy : The Laws of War as an International Institution*. New York: Cambridge University Press.

Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press.

All readings are required (unless they are explicitly listed as recommended). All readings that are not in the two course books are available through the course website. Note that you are not required to buy books from the Coop. Students are welcome to purchase in any format, new or used, electronic or paper, or not at all. But the readings are required and we will assume you have done them.

Course Website:

The course website is at: <https://canvas.harvard.edu/courses/5830>.

Our intention is to post all assignments for discussion section a week in advance on this site. You will find the syllabus and readings there as well.

All power-point presentations will be posted, but typically with a lag of a couple of hours after the lecture. The reason for the lag is that we want attention and participation in the lecture and prefer that you use the slides as a reminder of what was covered.

## Schedule of Classes:

### Part I: THEORIES OF INTERNATIONAL LAW

#### September 3: Introduction: What Role for International Law?

Beth Simmons, "International Law." Chapter 14, *Handbook of International Relations*. Sage Publications, 2012, pp. 352-378.

**Week 1:** No sections this week.

#### September 8: International Law and International Relations Theory

Keohane, Robert O. 1982. "The Demand for International Regimes." In Simmons and Steinberg, pp. 18-39.

Morrow, James D. 2014. *Order within Anarchy : The Laws of War as an International Institution*. New York: Cambridge University Press. Chs. 1-2 (pp. 1-57). [Grasp the **logic**, do not worry about the math or the equilibrium terminology. Focus on 1-11; 14-20; 23-40; 46-57.]

Reus-Smit, Christian. 2004. "The Politics of International Law." In *The Politics of International Law*, edited by Christian Reus-Smit (Cambridge; New York: Cambridge University Press), pp. 14-24; 32-44.

#### September 10: Explaining the "Legalization" of International Relations

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54(3), 401-19.

Alter, Karen. 2014. "The New International Courts." Ch. 3 in *The New Terrain of International Law*. pp. 68-111.

#### Week 2 Discussion: Theoretical Approaches to International Law and Politics

Review lecture readings, handout and discussion questions (to be distributed).  
Brief discussion of the main features of the Nuclear Agreement with Iran.

#### September 15: Designing International Legal Agreements

*Interview with Steven Miller, Director of the International Security Program, Belfer Center, HKS, on the Iran Nuclear agreement.*

Koremenos, Barbara. 2015. (manuscript) Chs. 1-2.

Focus example: “Joint Comprehensive Plan of Action” 14 July 2015 (skim text online); see also White House Summary of key features.

### **September 17: Explaining Law Compliance**

Beth Simmons. 2010. “Treaty Compliance and Violation,” *13 Annual Review of Political Science*: pp. 273-296.

Chayes, Abram, and Antonia Handler Chayes. 1993. "On Compliance." In Simmons and Steinberg, pp. 65-91.

Downs, George W, David M. Rocke, and Peter N. Barsoom. 1996. "Is the Good News About Compliance Good News About Cooperation?" In Simmons and Steinberg, pp. 92-111.

### **Week 3 Discussion: Compliance with the Convention against Torture – the U.S. and Abu Ghraib**

Wayne Sandholtz, “Closing off the torture option,” available at: <http://www-bcf.usc.edu/~idjlaw/PDF/18-3/18-3%20Sandholtz.pdf>

Jane Mayer, "Behind the Executive Orders," *The New Yorker Blog*, 25 January 2009. <http://www.newyorker.com/online/blogs/tny/2009/01/behind-the-executive-orders.html>

"CIA torture report sparks renewed calls to prosecute senior US officials" *The Guardian*, 12 December, 2014. <http://www.theguardian.com/us-news/2014/dec/12/cia-torture-report-prosecute-senior-us-officials>

Eric Posner, "Why Obama Won't Prosecute Torturers" *Slate*, Dec. 9, 2014. [http://www.slate.com/articles/news\\_and\\_politics/view\\_from\\_chicago/2014/12/senate\\_torture\\_report\\_why\\_obama\\_won\\_t\\_prosecute\\_cia\\_and\\_bush\\_administration.html](http://www.slate.com/articles/news_and_politics/view_from_chicago/2014/12/senate_torture_report_why_obama_won_t_prosecute_cia_and_bush_administration.html)

## **PART II: STRUCTURES AND MECHANICS**

### **September 22: Sources of International Law: Treaties and Custom**

Slomanson, 1.2, pp. 26-38; 7.1 and 7.2, pp. 351-372.

Review Koremenos Ch.2.

*Reference:* Vienna Convention on the Law of Treaties:  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

## September 24: States: Sovereignty, Recognition, and Rights and Responsibilities

Slomanson, 2.1-2.3; 2.5-2.6: pp. 45-59; 73-82

Jackson, Robert H. 1987. "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World." *International Organization* 41:(4): 519-49.

Fragile States Index: <http://fsi.fundforpeace.org/rankings-2015>.

## Week 4 Discussion: Sovereignty and (Non-)Recognition in Ukraine

Brad Simpson, "Self-Determination in the Age of Putin," *Foreign Policy*, 21 March 2014.

Chris Borgen, "Kosovo, South Ossetia, and Crimea: the Legal Rhetoric of Intervention, Recognition and Annexation," *Opinio Juris Blog*, 2 April 2014.

Chris Borgen, "Did Vladimir Putin Call for the Statehood of Eastern Ukraine?" *Opinio Juris*, 31 August, 2014. <http://opiniojuris.org/2014/08/31/putin-just-call-statehood-eastern-ukraine/>

## September 29: "State Recognition and Self-determination: Comparing the legal and political issues surrounding S. Sudan, Kosovo and Crimea"

*Guest Lecture: Professor Sarah Nouwen, University of Cambridge*

Slomanson, pp. 15-19; 7.3, pp. 373-377.

Natalie Shure, "Kosovo unrest reflects transnational and economic anxieties," January 28, 2015 <http://blogs.blouinnews.com/blouinbeatworld/2015/01/28/kosovo-unrest-reflects-transnational-and-economic-anxieties/>

Louise Arbour, "Self-Determination and Conflict Resolution: From Kosovo to Sudan," 22 Sep 2010

<http://www.crisisgroup.org/en/publication-type/speeches/2010/Louise-Arbour-self-determination-and-conflict-resolution-from-kosovo-to-sudan.aspx>.

[note there may be some changes and additions in the readings]

## October 1: Jurisdiction: which rules and whose authority where?

Slomanson, 5.1-5.3, pp. 240-255; 260-271.

Klein, Natalie. 2014. "Assessing Australia's Push Back the Boats Policy under International Law: Legality and Accountability for Maritime Interceptions of Irregular Migrants." *Melbourne Journal of International Law* vol. 15, pp. 414-43.

**Week 5 Discussion: Extraterritorial Migration Control: the Mediterranean  
FIRST PAPER TOPICS TO BE DISTRIBUTED.**

“Steaming Ahead.” *The Economist*. <http://www.economist.com/news/asia/21636365-new-law-gives-immigration-minister-unprecedented-power-full-steam-ahead>.

Additional section readings to be supplied

**October 6: International Organizations: Focus on the United Nations**

Slomanson, 3.1-3.3, pp. 123-153.

Abbott, Kenneth W., and Duncan Snidal. 1998. "Why States Act through Formal International Organizations." *Journal of Conflict Resolution* 42(1), 3-32.

*Recommended:*

Westra, Joel H. 2010. Cumulative Legitimation, Prudential Restraint, and the Maintenance of International Order: A Re-examination of the UN Charter System. *International Studies Quarterly* 54 (2): 513-533.

**October 8: International Courts and the Peaceful Settlement of Disputes**

Alter, Karen. 2014. “International Dispute Settlement.” Ch. 5 in *The New Terrain of International Law*. pp. 163-198.

*Reference:*

*The International Court of Justice:*

United Nations Charter, Chapter XIV: The International Court of Justice  
<http://www.un-documents.net/ch-14.htm>

Statute of the International Court of Justice

<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

**Week 6 Discussion: Dispute Settlement in Asia – The Case of Preah Vihear**

Instructions and background readings for simulation posted on course website.

**October 9: FIRST TAKE-HOME EXAM IS DUE ELECTRONICALLY BY 5PM.**

**PART III: THE SUBSTANCE OF INTERNATIONAL LEGAL REGULATION:  
The Use of Force, Human Rights and International Economic Law**

October 13: **ECON1: From the GATT to the WTO and Beyond**

Slomanson, 13.2, pp. 579-588.

Steinberg, Richard H. 2002. "In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO." *International Organization* 56(2): 339-74

October 15: **ECON2: International Law and the Promotion and Protection of International Investments**

Elkins, Zachary, Andrew T Guzman, and Beth A Simmons. 2006. "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000." *International Organization* 60 (4): 811-46.

Simmons, Beth A. 2014. "Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment." *World Politics* 66(01), 12-46.

**Week 7 Discussion section: Investor-State disputes: The case of cigarette labeling**

“Tobacco company files claim against Uruguay over labelling laws.”

<http://www.ictsd.org/bridges-news/bridges/news/tobacco-company-files-claim-against-uruguay-over-labelling-laws>


In the WTO: Why just Australia, not Uruguay?

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2014/July/WTO\\_plain\\_cigarette\\_packaging\\_case](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2014/July/WTO_plain_cigarette_packaging_case)

[debate format – additional readings to be supplied]

**October 20: The Environment: International Law, Economics and Climate Change**

*Guest Expert: Professor Robert Stavins, Albert Pratt Professor of Business and Government, Belfer Center for Science and International Affairs, Harvard Kennedy School.*

Aldy, Joseph E, and Robert N Stavins. “[Climate Negotiators Create an Opportunity for Scholars.](#)” *Science* 337 (2012): 1043–1044. [Publisher's Version Abstract](#)  [science-2012-aldy-1043-4.pdf](#)

Keohane, Robert O., and David G. Victor. 2011. "The Regime Complex for Climate Change." *Perspectives on Politics* 9(01), 7-23.



[The Problem of the Commons: Still Unsettled After 100 Years.](#) *American Economic Review* 101(2011):81-108. [Read only pp. 81-82, 92-103]

## **October 22: International Economic Law and Development**

Slomanson, 12.4, pp. 736-740.

Gerhring, Markus. 2009. "WTO Law and Sustainable Development." *Routledge Handbook of International Law*, pp. 375-391.

*Recommended:*

Helen Milner. 2005. "Globalization, Development, and International Institutions: Normative and Positive Perspectives," 3(4) *Perspectives on Politics*: pp. 833-854.

*Reference:* UN Declaration on the Right to Development  
<http://www.unhchr.ch/html/menu3/b/74.htm>

## **Week 8 Discussion section: Debating the Options for Climate Change**

["Facilitating Linkage of Climate Policies through the Paris Outcome."](#) *Climate Policy* (2015): 1–17. [Publisher's Version Abstract](#)  
[bodansky\\_hoedl\\_metcalf\\_stavins\\_climate\\_policy\\_article.pdf](#)

"Four Changes to Trade Rules to Facilitate Climate Change Action"  
<http://www10.iadb.org/intal/intalcdi/PE/2013/12370.pdf>

["Is Cheap Oil Good News or Bad?."](#) *The Environmental Forum* 32 (2015): 14.  
[column\\_68.pdf](#)

## **October 27: Use of Force 1: International Law and Justifications for the Use of Force**

David Armstrong et al., "Use of Force." Ch. 4, pp. 125-160

*Reference:*

Charter of the United Nations:  
<http://www.un.org/aboutun/charter/>

## **October 29 Use of force 2: Humanitarian intervention and the Use of Force**

Mark Weller, "Striking ISIL: Aspects of the Law on the Use of Force." March 11, 2015.  
<http://www.asil.org/insights/volume/19/issue/5/striking-isil-aspects-law-use-force>

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Ryan Goodman. 2006. "Humanitarian Intervention and Pretexts for War," 100 *American Journal of International Law*: pp. 107-141.

### **Week 9 Discussion: The Use of Force: Humanitarian Intervention in Syria:**

Mark Kersten, "No Surprise: Why Libya but not Syria," *Opinio Juris*, 5 October 2011.

David Rieff, "Save us from the Liberal Hawks," *Foreign Policy*, 13 February 2012.

Rosa Brooks, "So You Want to Intervene in Syria Without Breaking the Law?" *Foreign Policy*, 20 June 2013.

### **November 3: Use of force 3: The laws of war**

Morrow, James D. 2014. *Order within Anarchy : The Laws of War as an International Institution*. New York: Cambridge University Press. Chs. 4 (pp. 111-143, 144-145); 5 (read either WWI OR WWII; you do not need to read both); and 6 (focus on Chemical Weapons 241-247 and Treatment of Civilians 264-270; also read the into, comparative discussion and conclusion) .

### **November 5: Individual Criminal Responsibility: Options for accountability**

Danner, Alison M, and Beth A Simmons. 2009. "The International Criminal Court" in *Routledge Handbook of International Law*. New York: Routledge. 239-46.

Jo Hyeran, and Beth A. Simmons. "Can the International Criminal Court Deter Atrocity?" manuscript, 8 August 2015.

"A surprising surrender." *Economist*, 2013,  
<http://www.economist.com/blogs/baobab/2013/03/bosco-ntaganda>.

James Fearon, "How is the ICC Supposed to Work?"  
<http://themonkeycage.org/2013/04/02/how-is-the-icc-supposed-to-work/#more-28916>

### **Week 10 Discussion –A Delicate Balance: The International Criminal Court's Process for Identifying New Cases (Simulation) (HKS case #2032.0 )**

**November 6: SECOND TAKE-HOME EXAM IS DUE ELECTRONICALLY BY 5PM.**

**November 10:** The use of force, laws of war, and drones: International Law and the modern war Arsenal.

*Guest Interview via skype with Harold Koh, former Legal Adviser, US State Department.*

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Harold Hongju Koh, "The Obama Administration and International Law," Annual Meeting of the American Society of International Law, 25 March 2010. Available at: <http://www.state.gov/s/l/releases/remarks/139119.htm>

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O'Connell, Mary Ellen. 2010. "The International Law of Drones." <http://www.asil.org/insights/volume/14/issue/37/international-law-drones>

Kellman, Barry. Exporting Armed Drones – The United States Sets Policy. ASIL Insights. 24 July 2015, <http://www.asil.org/insights/volume/19/issue/17/exporting-armed-drones-%E2%80%93-united-states-sets-policy>.

Kreps, Sarah, and John Kaag. 2012. "The Use of Unmanned Aerial Vehicles in Contemporary Conflict: A Legal and Ethical Analysis." *Polity* 44(2), 260-85.

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**November 12: Human Rights 1: The Individual and International Human Rights**

Beth A. Simmons. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press). Chapters 1 and 2.

Human Rights Documents *References*: <http://www.hrweb.org/legal/undocs.html>

**Week 11 Discussion: Drones and Human Rights: Worth the price? (debate format).**

Sanders, Rebecca. 2014. "Legal Frontiers: Targeted Killing at the Borders of War." *Journal of Human Rights* 13(4), 512-36.

**November 17: Human Rights 2: Why Commit?**

Simmons. 2009. *Mobilizing for Human Rights*. Chapter 3.

Andrew Moravcsik. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." In Simmons and Steinberg, pp. 622-652.

**November 19: Human Rights 3: Why Comply?**

Simmons. 2009. *Mobilizing for Human Rights*. Chapter 4.

**Week 12 Discussion: Comparative Case Discussion - Women's Rights and Freedom from Torture**

Simmons. 2009. *Mobilizing for Human Rights*. Chapter 6 OR chapter 7.

Instructions and assignments for case studies of Israel, Chile, Colombia and Japan to be distributed.

**PART IV:**

**INTERNATIONAL LAW AND INTERNATIONAL POLITICS FROM A BROADER PERSPECTIVE**

**November 24:** Non-western perspectives on International Law: Perspective from the Middle East, East Asia, and the Global South.

Confirmed Guests: Mohamed Helal (Egypt), Fikremarkos Merso (Ethiopia), Min Gyo Koo (Rep of Korea).

Those interested in pursuing the *junior honors option* will distribute 1-page descriptions of their proposed research questions to their section classmates. Further guidelines will be provided. Other students will be expected to provide comments on proposals.

**Week 13:** No sections - Happy Thanksgiving!

**December 1: International Law and American Policies and Interests**

Scott, Shirley. 2009. "The Nature of US Engagement with International Law: Making Sense of Apparent Inconsistencies." *Routledge Handbook of International Law*, 210-221.

Kyl, Jon, Douglas J. Feith, and John Fonte. 2013. "The War of Law: How New International Law Undermines Democratic Sovereignty." *Foreign Affairs* 92(4), 115-25.

Koh, Harold Hongju, and Michael Doyle. 2013. "The Case for International Law: A Response to "The War of Law"." *Foreign Affairs* 92(6), 162-65.

"Why the Sheriff should Follow the Law." *Economist*. May 23, 2014.  
<http://www.economist.com/blogs/democracyinamerica/2014/05/america-and-international-law>.

*Recommended:*

G. John Ikenberry. 2011. "The Future of the Liberal World Order: Internationalism After America." *Foreign Affairs* 90: 56-68.

**December 3: Conclusions: Law, Governance, and the Future of World Order**  
FINAL PAPER TOPICS TO BE DISTRIBUTED

Eric A. Posner, "Sorry, America, the New World Order is Dead," *Foreign Policy*, 6 May 2014.

Karen J. Alter, "International Law's Legacy vs. The Cases of Ukraine and Syria," *Huffington Post*, 27 March 2014.

Bodansky, Daniel. "The legitimacy of international governance: a coming challenge for international environmental law?" *American Journal of International Law* (1999): 596-624.

**Week 14 Section discussion to be scheduled:** for Juniors choosing the research prospectus option in lieu of the final exam only. Memo on your research idea (approximately a page) must be submitted to your TF by Dec. 1

**December 11 Friday: FINAL ESSAYS AND JUNIOR RESEARCH PROPOSALS DUE** (as per registrar's exam schedule). Please hand in electronically by 5 p.m.