INTERNATIONAL LAW

Prof. B. Brown
Law 383-001-03
Fall Semester 2008

Chicago-Kent College of Law
Mon. & Weds. 6m-7:25 PM
Room C35

A. Course Description and Purpose

This course is intended to introduce students to the basic concepts and problems of public international law and of the international legal system. The course will cover the traditional major topics in this field such as the sources and subjects of international law, the jurisdiction of states, international law and the use of force, and the relationship between international law and the internal law of states. It will also address newer themes in international law such as the international law of human rights and international criminal law. The course will review and discuss a number of international law cases decided by national and international tribunals, as well as certain treaties, resolutions and other international legal instruments of importance.

The primary focus of this course is upon public international law, which is traditionally considered to encompass the binding normative rules and principles dealing with the conduct of states and of international organizations and with their relations inter se. An important secondary theme will be the effect of public international law upon private activity.

B. Required Texts


Additional readings, as indicated on this syllabus, will be posted to the website for this class and can be accessed from the following page: http://www.kentlaw.edu/classes/

C. Supplemental Readings and Assignments

Supplemental reading assignments, and special questions/problems for research and reflection will occasionally be distributed in class. Class discussions will frequently focus upon the international legal aspects of current events, therefore students will be expected to follow the relevant developments in a major newspaper.

D. Course Requirements and Grading

Students are expected to attend classes and to participate in the analysis and discussion of the assigned readings and problems. The level and quality of participation will be grounds for the adjustment of exam grades by as much as one full letter grade.
Reading Assignments

Assignment 1 The Origins of the International Legal Order and its Nature
Text pp. xxvii-xxxvi, 1-55
De Vattel on the Law of Nations (1758)
Case of the S.S. Wimbledon, Summary (PCIJ 1923)
- When did the present system of international law develop?
- How does the idea of natural law differ from the idea of positive international law?
- What role does natural law play in international law according to De Vattel?
- Does De Vattel’s theory of the Law of Nations (International Law) really depend on his ideas about natural law?
- What does De Vattel see as the role of the positive law of nations?

Assignment 2 The Sources of International Law
Text pp. 56-158.
The Antelope Case (US Supreme Court 1825)
Restatement 3rd on Sources of International Law
- Where does international law come from?
- Why are sovereign States legally bound by customary international law?
- What evidence do courts consider to determine if a new rule of customary international law has developed?
- How do treaties affect the development of customary international law?
- Can the same rule be part of customary international law and of treaty law at the same time?
- Can the rule in a treaty be applied to a state that is not bound by the treaty if the rule is also part of customary international law?

Assignment 3 The Relation of International Law to Municipal Law
Sei Fuji v. California (Supreme Court of California 1952)
La Grand Case (ICJ)
- Can rules of international law be effective within states?
- Must all rules of international law be effective as law within states?
- Does it make a difference if the rule is treaty or custom?
- Are international law and municipal (national) law part of a single system of law or two different systems?
- Are states under an obligation to give effect to treaties within their municipal law?
- If a rule of international law is not given direct effect under domestic law within a state, does this affect the force of the rule under international law?
- Can an international court order a state to change its national law?
- Can rules of municipal law affect the development of international law? How?

Assignment 4 States and Statehood
- What are the necessary characteristics of a state?
- How is it determined when a new state is formed?
- Who acts on behalf of the state for purposes of international law?
- What happens when there is a revolutionary change of government? Does the state stay the same?
Can one part of a state secede from the rest and become a separate state? According to the Canadian Quebec advisory opinion, under what conditions might this be possible?

The former Yugoslavia broke apart into several different countries: Croatia, Slovenia, Macedonia, Serbia & Montenegro (still one country) and Bosnia & Herzegovina (one country). The Albanian population of Kosovo wants to be independent from Serbia in the future. What legal considerations apply to these claims for independence?

Assignment 5  International Organizations
Text pp. 359-395
- What purpose do international organizations serve?
- Why does it matter if an international organization has international legal personality?
- Do international organizations have authority over States?
- What is the source of that authority?
- Should international organizations have the same rights as states? Why or why not?

Assignment 6 Individuals and Private Corporations
Text pp. 396-401, 421-450.
- What is the importance of nationality under international law?
- How do individuals gain nationality?
- How do corporations gain nationality?
- What is diplomatic protection?
- Who may bring a claim for diplomatic protection under international law?
- Is nationality a question of national law or of international law?

Assignment 7  Treaties
- What is a treaty?
- How do states express their consent to be bound by treaties?
- What is a reservation to a treaty?
- What is the difference between a reservation, an understanding and a declaration made when ratifying a treaty?
- Why do states make reservations to treaties?
- Do reservations serve a useful purpose?
- When are reservations unacceptable?
- What is the legal result of an unacceptable reservation?
- Are the HRC’s conclusions about the consequences of an unacceptable reservation consistent with the law of treaties and positive international law in general? Why or why not?

Assignment 8  International Human Rights Law
- What is the relationship between international human rights and the idea of natural law.
- Are international human rights part of positive international law?
- Does the UN Charter establish an international law of human rights?
- Are all human rights equally important?
• Are economic and social rights really human rights?
• What are the obligations of states regarding human rights?
• Are human rights primarily a matter of customary international law or of treaties?
• Are human rights more or less important than the rights of states under international law?
• Can human rights violations within a state legally justify intervention or other actions inconsistent with the sovereignty of that state?

**Assignment 9 International Responsibility and Remedies**


**Draft Articles on Responsibility of States for internationally wrongful acts (ILC 2001)**

• What is the basic principle of state responsibility?
• Is state responsibility a rule of international law or something different?
• When does state responsibility become an issue?
• The Draft Articles on Responsibility of States for internationally wrongful acts were adopted by the International Law Commission in 2001. What legal significance do they have and why? (The ILC is created by the UN General Assembly according to Article 13(1) of the UN Charter.)

**Assignment 10 Peaceful Settlement of Disputes**


**Alabama Claims Arbitration (B.S. Brown Summary)**

• Do states have an obligation to settle their disputes peacefully?
• How does the ICJ gain jurisdiction to decide disputes between states?
• How did the PCIJ gain jurisdiction in the Lotus case? (Topic 8)
• How did the ICJ get jurisdiction in the La Grand case (in Topic 3)?
• How did the court gain jurisdiction in the Nicaragua case?
• Are some disputes just not suitable for judicial decision? Why?
• How is international arbitration different from judicial settlement?
• Why do states sometimes prefer international arbitration to international judicial settlement of their disputes?
Assignment 11 Jurisdiction
Text pp. 68-74, 1088-1196.

- The Lotus case concerns a criminal trial. Who was being tried and for what crime?
- Where did the collision between the two ships (the S.S. Lotus and the Boz Kourt) occur? Why is this important?
- How did the Lotus case come within the jurisdiction of the PCIJ? Did this affect the decision?
- What are the two different philosophies of international law and state sovereignty were advanced by France and Turkey in the Lotus case?
- According to the decision of the International Court in the Lotus Case, which or states have jurisdiction to try the accused and on what basis?
- The Antelope case (Topic 2) states that pirates are the enemies of the human race and held that in 1825 pirate ships could be searched on the high seas, while slave ships could not. What form of jurisdiction was that opinion referring to?
- What different bases of jurisdiction under international law are accepted by the International Court in the Lotus case? Are there any others?
- How does concurrent jurisdiction work?
- If two states have concurrent jurisdiction to try someone, does that mean that either one can legally send police to arrest him? Why not?

Assignment 12 Immunity from Jurisdiction
Text pp. 1197-1225, 1270-1287.

- Who claimed immunity from jurisdiction in the Schooner Exchange case?
- Why was immunity from jurisdiction needed in that case?
- What is the source of that immunity?
- How far does that immunity go? (What is the scope and extent of it?)
- What does the Schooner exchange case say about diplomatic immunity (the immunity of ministers)?

Assignment 13 Study of the Jessup International Law Moot Court Problem for 2009 (available in September or October @ http://www.ilsa.org/)

Assignment 14 International Law and the Use of Force

- Does the UN Charter completely prohibit the use of force?
- When is the use of force in self-defense justified?
- Does the standard for the right to self-defense under the UN Charter differ from the standard under customary international law?
- Is a prior armed attack absolutely required for self-defense under international law?
- Is the use of force for humanitarian intervention permitted under international law?
- Should it be permitted? If so what should be the rules?

Assignment 15 International Criminal Law
Text pp. 1314-1327, 1332-1342, 1367-1382.
Geneva Convention IV (excerpts)  
Soering Case (ECHR)

- Why do states sign extradition treaties?
- What are the basic rules of extradition.
- Are state obligated to extradite suspects on their territory for trial in another state that wants to try them?
• Why obligations of the United Kingdom, as discussed in the Soering case, prevented it from extraditing Soering to the United States for trial?
• To what extent are individuals criminally responsible for violations of international humanitarian law?
• Does the universal jurisdiction referred applicable to pirates (as referred to in the Antelope case) apply to war crimes?
• What form of jurisdiction applies to “grave breaches” of the Geneva conventions?
• How did violations of “Common Article 3” of the Geneva Conventions come to be war crimes under international law? Is this really appropriate?
• Under what legal authority was the International Criminal Tribunal for the Former Yugoslavia created?
• Can the ICTY try people for crimes committed in Iraq?
• How are the definitions of crimes in the ICC Statute different from those in the ICTY Statute? Why are they different?
• The United States government is opposed to the ICC and has not ratified the ICC Statute. Nonetheless it is concerned that US nationals (soldiers and perhaps the US President) could be unfairly charged by the ICC? Could this happen under the ICC Statute? How?

Assignment 16 International Economic Law
Text pp. 1573-1582, 1593-1613.

• Is an international economic system based on law needed?
• What are the key institutions of the international economic order?
• According to what legal principles do these institutions operate?

N.B. We will typically need 2-3 class sessions per assignment. With only 28 class sessions over the 14 week semester we are unlikely to finish this entire syllabus. Any adjustments will be announced later in the semester.