

## SEMINAR ON INTERNATIONAL COURTS

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The American University  
Washington College of law  
Fall Semester, 1992

### I. COURSE DESCRIPTION

Introduction to the practice of international courts and arbitral tribunals and their role in the development of international law. Offered in a seminar format using lectures, case-studies, and class exercises as teaching methods, the course will outline the evolution and structure of international tribunals, examine the development of international legal principles by international tribunals with reference to "sources" methodology, and discuss issues concerning the effectiveness and future role of international courts in the development of international law.

### II. COURSE GOALS

- 1) Introduce students to the historical evolution, structure, and function of international tribunals within the international legal system.
- 2) Reenforce students' conceptual understanding of the sources of international law and their inter-relationships.
- 3) Examine selected international legal issues and modes of legal argumentation using case studies of international judicial opinions.
- 4) Outline issues concerning the effectiveness of international tribunals as dispute resolution mechanisms and their future.

### III. OFFICE HOURS AND TELEPHONE NUMBERS

John's office is in the W.C.L. Library, on the middle floor beside the Circulation Desk. His office hours are Mondays, 2:00 p.m. to 10:00 p.m., and Tuesdays through Fridays, 9:00 a.m. to 5:00 p.m. John will also be available for a short time after class, and by special appointment. John's office telephone is 202-885-2689, and his home telephone is 202-667-8926.

Chris works downtown and is thus not readily available for walk-in consultation. He will be available after class, and you can always telephone to make arrangements to meet with him. Chris's office telephone is 202-785-0017, and his home telephone is 301-439-7729.

#### IV. COURSE REQUIREMENTS

- 80 % Scholarly Paper: (30+ pages, double-spaced with one inch margins) based on a topic relating to the role and effectiveness of an international tribunal(s) in the development of international law.

In addition to the paper itself, a topic proposal and an outline are also required. While these are not graded, the timeliness of their submission will be factored into the paper grade. They are due as follows:

|                         |   |
|-------------------------|---|
| <u>Topic Proposal</u> : | Due in class on Tuesday, 22 September 1992.                   |
| <u>Outline</u>          | Due in class on Tuesday, 3 November 1992.                     |
| <u>Paper</u>            | Due in JQH's Office by 5:00 p.m. on Tuesday, 8 December 1992. |

- 10 % Class Presentation: 10 minute class presentation on paper topic. The grade will be based on the following factors: preparation, organization, grasp of topic, effective use of time, and responsiveness to questions.
- 10 % Class Participation: evaluation of attendance, preparation for and participation in class room discussion, and participation in class exercises.

#### V. LATE PAPERS AND PLAGIARISM

##### *Late Papers*

Papers are due in John Heywood's office no later than 5:00 p.m. on Tuesday, 8 December 1992. This is the last day of Reading Period. **If you are a student who is graduating this December, you MUST get your paper in to us by this date in order to graduate.** We need time to read and evaluate your work before assigning a grade. If you miss this deadline, we may not be able to turn your grade in to the Registrar in time for you to graduate.

Papers turned in after this date and time without a previously approved extension will be penalized one-half letter grade for every weekday (excluding holidays) after the due date. **The day ends at 5:00 p.m.**

Example: *A paper is turned in at 5:45 p.m. on Thursday, 10 December 1992, without a pre-approved extension. If the paper had been turned in on time, it would have received a B+. The paper was effectively handed in on Friday, and is thus 3 days late. It receives the grade of C.*

Short extensions for worthy causes, such as computer failure, death in the family, my dog ate my disk/paper, etc., will be granted with no penalty **if you apply for it before the time the paper is due.** (i.e., If you are printing out your paper 10 minutes before 5:00 p.m. on the 8th of December and your computer dies, call us immediately.) These extensions will be very short in duration; no more than a day or two.

If you are not a graduating student, and you have a pressing need, you may apply for a longer extension. These extensions have a penalty attached, so as not to unfairly disadvantage those students who manage to turn their papers in on time. The rules for these extensions are as follows:

1. You must apply for the extension **in writing** before the due date and time.
2. The extension may be for one, two, or three months, as desired. This must be specified in the written application for the extension.
3. Papers with a one-month extension are due at 5:00 p.m. on Friday, 8 January 1993. *These papers will be penalized one-half letter grade.*
4. Papers with a two-month extension are due at 5:00 p.m. on Monday, 8 February 1992. *These papers will be penalized one full letter grade.*
5. Papers with a three-month extension are due at 5:00 p.m. on Monday, 15 March 1992. *These papers will be penalized one and one-half letter grade.*
6. These due dates are treated as final, and are subject to the normal penalty rules specified for late papers in addition to the extension penalty. The short emergency extensions are also available.
7. We reserve the right to modify or turn down any application for an extension.

### ***Plagiarism and Related Problems***

Everyone knows that plagiarism is wrong, but not everyone is clear on what exactly is plagiarism. It is the gravest of the academic sins, and it is more than just copying without attribution. We have listed the various forms of plagiarism below in descending order of gravity, (1) being classic absolute plagiarism, and (9) being a much lesser version. All of them should be avoided. Non-*de minimis* plagiarism will be punished. It will result in zero points for the paper, and thus an F for the course. The case will also be turned over to the Associate Dean of Student Affairs for prosecution under the W.C.L. Honor Code.

*Plagiarism is:*

1. Word-for-word lifting of seven consecutive words or more, without quotation marks or block quotation, and without attribution to any source.
2. Word-for-word lifting of seven consecutive words or more, without quotation marks or block quotation, with an attribution to a source that was not the original source from which the passage was actually lifted nor the source cited (if any) by that original source.
3. Word-for-word lifting of seven consecutive words or more, without quotation marks or block quotation, with attribution to a source that was not the original source from which the passage was actually lifted, but was a source cited by that original source.
4. Word-for-word lifting of seven consecutive words or more, with attribution to the original source from which the passage was actually lifted, but without indication that these are the words of another.
5. Word-for-word lifting of seven consecutive words or more, without quotation marks or block quotation, with attribution to the original source from which the passage was actually lifted, and with the indication that these are the words of another.
6. Attributing a quoted passage to a source that does not contain that quoted passage.
7. Attributing material to a source that does not support the passage for which it is cited.
8. Misquoting a source.
9. Lifting a quoted passage and its attribution from a source without acknowledgement or other indication. An example of this would be if you were reading an article by Smith that quoted another article by Jones, and you put the quotation in your paper with an attribution to Jones, but no mention that you got it from Smith who was quoting Jones.

**VI. CLASS OUTLINE (Discussion Topics and Assignments)**

**Class 1 Introduction to Course**  
8/25/92

*Discussion Topics:*

- 1) Administrative Matters
- 2) Review of International Legal Sources
- 3) Theoretical Underpinnings of International Law
- 4) Evolution and Structure of International Tribunals
- 5) Introduction to Course Themes

*Reading Assignment:* None

**Class 2 Introduction to the International Court of Justice**  
9/1/92

*Discussion Topics:*

- 1) Basic Structure of the ICJ: Organs, Function, Composition and Selection
- 2) Procedure in the ICJ: Bringing a Case
- 3) Discussion of the Corfu Channel Case
- 4) Problems of Non-Appearance, Non-Participation, and Non-Performance
- 5) The Use of Interim Measures and the Enforcement of ICJ Decisions

*Reading Assignments:*

- 1) The Statute of the International Court of Justice
- 2) Corfu Channel Case (U.K. v. Alb.), 1949 ICJ 12 (Merits)

**Class 3 The Role of International Tribunals in Developing Customary Law**  
9/8/92

*Discussion Topics:*

- 1) Review of Methodology Used to Determine International Custom
- 2) Modern "Instant" Customary Law
- 3) Evolution of the Law of the Continental Shelf
- 4) Discussion of the North Sea Continental Shelf Case

*In-Class Exercise:*

Judicial drafting of naval boundaries in dispute over access to continental shelf.

*Reading Assignment:*

- 1) North Sea Continental Shelf Case (W. Ger. v. Den.), 1969 ICJ 3

**Class 4      Regional Customary Law in an International System**  
9/15/92

*Discussion Topics:*

- 1) Concept of Regional/Local Norms
- 2) Regional Norms and the Respective Roles of International and Regional Tribunals
- 3) Discussion of the Asylum Case
- 4) Discussion of the Rights of Passage Case

*Reading Assignments:*

- 1) Asylum Case (Columbia v. Peru) 1950 ICJ 266
- 2) Right of Passage Over Indian Territory Case (Port. v. Ind.) 1960 ICJ 6

**Class 5      Jurisdiction and Justiciability in International Tribunals**  
9/22/92

*Discussion Topics:*

- 1) The Compulsory Jurisdiction of the ICJ
- 2) Justiciability and the Suitability of So-Called Political Cases for Judicial Resolution
- 3) U.S. Modification/Renunciation of Compulsory Jurisdiction in the Nicaragua Case - Background
- 4) Discussion of the Nicaragua Case Holding on Jurisdiction
- 5) Development of the Law Governing the Threat or Use of Force in the International System

*Reading Assignments:*

- ① United Nation's Charter, Arts. 2(4), 51
- ② Letter to the United Nations Secretary-General Concerning the Non-Applicability of Compulsory Jurisdiction of the International Court of Justice with Regard to Disputes with Central American States (April 6, 1984), reprinted in 23 Int'l Leg. Mat. 670 (1984).
- 3) Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.), 1984 ICJ 392 (Jurisdiction and Admission).
- ④ Department of State Letter and Statement Concerning Termination of Acceptance of International Court of Justice Compulsory Jurisdiction (October 7, 1985), reprinted in, 24 Int'l Leg. Mat. 1742-1745 (1985).

**Class 6**      **Equitable Jurisdiction of International Tribunals**  
9/29/92

*Discussion Topics:*

- 1) Equitable Jurisdiction of the ICJ
- 2) Discussion of the Gulf of Maine Case
- 3) Expertise and Fact-finding by International Tribunals
- 4) The ICJ's Chambers Procedure
- 5) Expanding the ICJ's Equitable Jurisdiction

*Reading Assignments:*

- 1) Statute of the International Court of Justice, Art. 26.
- 2) Gulf of Maine Case (U.S. v. Can.) 1982 ICJ 3 (Constitution of Chamber).
- 3) Gulf of Maine Case (U.S. v. Can.) 1984 ICJ 246 (Merits).

**Class 7**      **Role of the ICJ in the United Nations System**  
10/6/92

*Discussion Topics:*

- 1) Relation of ICJ and Security Council in Resolution of Disputes Involving International Peace and Security.
- 2) International Incidents and Their Implications for Judicial Dispute Resolution.
- 3) Discussion of Libyan Case, (U.S./U.K. v. Libya), under consideration (1992).
- 4) The Advisory Jurisdiction of the ICJ
- 5) Discussion of the Certain Expenses Case
- 6) Expanding the Advisory Jurisdiction of the ICJ

*In-Class Exercise:*

I.C.J. Advisory Opinion for the Security Council: Self-Determination for the People of Hong Kong.

*Reading Assignments:*

- 1) Libyan Case materials (to be handed out in class on 9/29/1992).
- 2) Advisory Opinion on Certain Expenses of the United Nations, 1962 ICJ 151.
- 3) Materials for the In-Class Exercise (to be handed out in class on 9/29/1992).

**Class 8**      **Crime in the International Legal System**  
10/13/92

*Discussion Topics:*

- 1) The Nüremberg and Japanese War Crimes Trials
- 2) The Enforcement of International Humanitarian Law by International Tribunals
- 3) Efforts to Develop an International Criminal Court
- 4) Efforts to Develop a Draft International Criminal Code
- 5) Creation of New International Courts: Political, Jurisdictional, and Procedural Issues

*Reading Assignments:*

- 1) Materials on the International Military Tribunal at Nüremberg.
- 2) Bassiouni, A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal, 1-20 (1987).



*In-Class Exercise:*

Prepare and advocate statutory definition(s) for International Environmental Crime.

**Class 9**      **Introduction to the Inter-American Court of**  
10/20/92      **Human Rights**

*Discussion Topics:*

- 1) Overview of the Inter-American Court
- 2) Discussion of the Velásquez Rodríguez Case
- 3) Guest Lecturer (to be determined)

*Reading Assignment:*

- 1) Velásquez Rodríguez Case, Inter-American Court of Human Rights, Judgment of July 29, 1988, (Ser. C, No. 4).

**Class 10**      **Introduction to the European Court of Justice**  
10/27/92      **and European Court of Human Rights**

*Discussion Topics:*

- 1) Overview of the Courts
- 2) Discussion of the Soering Case
- 3) Discussion of the Irish Abortion Case
- 4) The Federalization of International Courts

*Reading Assignments:*

- 1) The Soering Case
- 2) Society for the Protection of Unborn Children, Ireland, Ltd. v. Grogan (Case C-159/90), [1991] 3 Common Market L.R. 849.

**Class 11      Relation of National and International Courts**  
11/3/92

*Discussion Topics:*

- 1) International Law in National Legal Systems
- 2) Discussion of U.S. v. Alvarez-Machain case

*In-Class Exercise:*

Resolution of Hypothetical ICJ Case (Mexico v. U.S.) involving forcible extradition.

*Reading Assignment:*

- 1) U.S. v. Alvarez-Machain, \_\_ U.S. \_\_ , 112 S.Ct. 2188 (1992).

**Class 12      International Arbitral Tribunals**  
11/10/92

*Discussion Topics:*

- 1) Introduction and History of Arbitral Tribunals
- 2) Role of Arbitrations in the Development of Customary International Law
- 3) Arbitral Procedures and Choice of Law
- 4) Discussion of Topco/Calasiatic Arbitration
- 5) Overview of U.S.-Iran Claims Tribunal

*Reading Assignment:*

- 1) Topco/Calasiatic, reprinted in 17 I.L.M. 1 (1978).

**Classes 13 & 14      Class Presentations**  
11/17/92 & 11/24/92

*Discussion Topics:*                  None

*Reading Assignments:*              None

## VII. SUPPLEMENTAL READINGS

## Introduction to Sources of International Law and International Legal Theory

- 1) F. Bonkowsky, International Norms and National Policy 1-20 (1980).
- 2) Boyle, Ideals and Things: International Legal Scholarship and the Prison-House of Language, 26 Harv. Int'l L. J. 327-59 (1986).
- 3) I. Brownlie, Principles of Public International Law 1-32 (3d ed. 1979).
- 4) J. Cohen & Hungdah Chiu, 1 People's China and International Law (1974).
- 5) D'Amato, Is International Law Really Law?, 79 Nw. U.L. Rev. 1293-314 (1985).
- 6) Franck, Is Justice Relevant to the International Legal System?, 64 Notre Dame L. Rev., 945-963 (1989).
- 7) Grzybowski, Soviet Theory of International Law for the Seventies, 77 Am. J. Int'l L. 862 (1983).
- 8) H.L.A. Hart, The Concept of Law 77-96, 208-31 (1961).
- 9) History of the Law of Nations, in 7 Encyclopedia of Public International Law 126-203, 252-73 (1984).
- 10) Kelsen, The Pure Theory of Law (1967).
- 11) Kennedy, Primitive Legal Scholarship, 27 Harv. Int'l L.J. 1-98 (1986).
- 12) C. Krauthammer, "The Curse of Legalism", The New Republic, 44-50 (Nov. 6, 1989).
- 13) McDougal & Lasswell, The Identification and Appraisal of Diverse Systems of Public Order, 53 Am. J. Int'l L. 1-29 (1959).
- 14) McWhinney, Western and Non-Western Legal Cultures and the International Court of Justice, 65 Wash. Univ. L. Quarterly 873-889 (1987)
- 15) Mullerson, Sources of International Law: New Tendencies in Soviet Thinking 83 Am. J. Int'l L. 494-512 (1989).

- 16) Tunkin, International Law in the International System, 147 *Recueil des Cours* 77-84 (1975).
- 17) B. Weston, R. Falk & A. D'Amato, International Law & World Order 19-115 (1980).
- 18) Restatement (Third) of the Foreign Relations Law of the United States §§ 101-103 (1987)(Introductory Note & Comments).
- 19) G. Finch, The Sources of Modern International Law 15-29 (1937).
- 20) H. Morgenthau & K. Thompson, Politics Among Nations 293-327 (6th ed. 1985).
- 21) Tunkin, The Contemporary Soviet Theory of International Law, 31 *Current Legal Probs.* 177-88 (1978).
- 22) Kelsen, Principles of International Law 3-16 (R. Tucker 2d rev. ed. 1966).

#### Evolution and Structure of International Judicial Bodies

- 1) Bernhardt, Commentary: The European System, 2 *Conn. J. of Int'l L.*, 299-301 (1987).
- 2) Cerna, The Inter-American Commission on Human Rights, 2 *Conn. J. of Int'l L.* 311-318 (1987).
- 3) Everling, The Member States of the European Community Before Their Court of Justice, 9 *Eur. L. Rev.* 215-241 (1984).
- 4) Hudson, "The Central American Court of Justice", The Permanent Court of International Justice: 1920-1942, 42-70 (1943)
- 5) Jimenez de Arechega, The Work and Jurisprudence of the International Court of Justice - 1947-1986, 58 *Brit. Y.B. Int'l L.* 1-38 (1987).
- 6) Lockwood, Advisory Opinions of the Inter-American Court of Human Rights, 13 *Den. J. Int'l L. & Pol'y* 245-267 (1984).
- 7) Slynn, The Court of Justice of the European Communities, 33 *Int'l & Comp. L. Quarterly* 409-429 (1984).

- 8) Statute of the Inter-American Court of Human Rights, 12 *Lawyer of the Americas*, 787-796 (1980).
- 9) Stewart, The Iran-United States Claims Tribunal: Accomplishments and Prospects, *Private Investors Abroad*, 525-560 (1984).
- 10) Stuart, The Court of Justice of the European Communities: The Scope of Its Jurisdiction and the Evolution of Its Case Law Under the EEC Treaty, 3 *Nw. J. Int'l L & Bus.* 415-451 (1981)
- 11) Rosenne, The World Court, 3-22 (4th ed. 1989).
- 12) 1 Rosenne, The Law and Practice of the International Court, 7-10 (1965).
- 13) Schlochauer, "Arbitration", 1 Encyclopedia of Public International Law, 13-26 (Bernhardt ed. 1981).
- 14) Plender, The European Court as an International Tribunal, 42 *Cambridge L.J.* 279-98 (1983).

### **Introduction to the International Court of Justice - Structure, Procedures, & Jurisdiction**

#### *Generally*

- 1) Elkind, The Duty to Appear Before the International Court of Justice, 37 *Int'l & Comp. L. Quarterly* 674-681 (1988).
- 2) Gordon, Observations on the Independence and Impartiality of the Members of the International Court of Justice 2 *Conn. J. of Int'l L.* 397-426 (1987).
- 3) Hamilton, Jurisdiction of the International Court of Justice, 8 *G. Mason Univ. L. Rev.* 253-284 (1985).
- 4) Jennings, The Internal Judicial Practice of the International Court of Justice, 59 *Brit. Y.B. Int'l L.* 31-47 (1988).
- 5) Lachs, A Few Thoughts on the Independence of Judges of the International Court of Justice, 25 *Columb. J. Trans. L.* 593-600 (1987)
- 6) Lee & McWhinney, The 1987 Elections to the International Court of Justice, 25 *Can. Y.B. Int'l L.* 379-388 (1987).

- 7) McWhinney, Law, Politics, and "Regionalism" in the Nomination and Election of World Court Judges, 13 *Syr. J. Int'l L. & Comm.* 1-28 (1986).
- 8) Rosenne, Procedure in the International Court (1983).
- 9) Rosenne, The World Court, 51-77, 113-53 (4th ed. 1989).
- 10) Panel Discussion, The Independence and Impartiality of International Judges, *Am. Soc'y Int'l L. Proc.* 508-529 (1989).

*Compulsory Jurisdiction of the International Court of Justice and the Nicaragua Case*

- 1) D'Amato, Modifying U.S. Acceptance of the Compulsory Jurisdiction of the World Court, 79 *Am. J. Int'l L.*, 385-405 (1985).
- 2) Glennon, Nicaragua v. U.S.: Constitutionality of U.S. Modification of International Court of Justice Jurisdiction, 79 *Am. J. Int'l L.* 682-689 (1985).
- 3) Hight, "You Can Run But You Can't Hide": Reflections on the U.S. Position in the Nicaragua Case, 27 *Va. J. Int'l L.* 551-572 (1987).
- 4) Panel Discussion, Should the United States Reconsider its Acceptance of World Court Jurisdiction?, 1985 *Am. Soc'y of Int'l L. Proc.* 95-109.
- 5) Oda, Reservations in the Declaration of Acceptance of the Optional Clause and the Period of Validity of those Declarations: The Effect of the Schultz Letter, 59 *Brit Y.B. Int'l L.* 1-30 (1984).
- 6) Reisman, Has the World Court Exceeded Its Jurisdiction?, 80 *Am. J. Int'l L.* 128-134 (1986).
- 7) Scott and Csajko, Compulsory Jurisdiction and Defiance in the World Court: A Comparison of the PCIJ and the ICJ, 16 *Den. J. Int'l L. & Pol'y*, 377-392 (1988).

*Advisory Jurisdiction of the International Court of Justice*

- 1) Butcher, The Consonance of U.S. Positions on International Law with Advisory Opinions of the International Court of Justice, 30 *How. L. J.* 45-91 (1987)
- 2) Goldkang, House Approves Proposal Permitting International Court of Justice to Advise Domestic Courts, 77 *Am. J. Int'l L.* 338-340 (1983).

- 3) McLaughlin, Allowing Federal Courts Access to International Court of Justice Advisory Opinions: Critique and Proposal, 6 Hastings Int'l & Comp. L. Rev 745-772 (1983).
- 4) Rosenne, Preliminary Rulings by the International Court of Justice at the Instance of National Courts: A Reply, 29 Va. J. Int'l L. 401-412 (1989).
- 5) Schwebel, Preliminary Rulings by the International Court of Justice at the Instance of National Courts, 28 Va. J. Int'l L. 401-412 (1989).
- 6) Schwebel, Authorizing the Secretary-General of the United Nations to Request Advisory Opinions of the International Court of Justice, 78 Am. J. Int'l L. 869-878 (1984).
- 7) Schwebel, Widening the Advisory Jurisdiction of the International Court of Justice Without Amending Its Statute, 32 Cath. Univ. L. Rev. 355-361 (1984).
- 8) Sohn, Broadening the Advisory Jurisdiction of the International Court of Justice, 77 Am. J. Int'l L. 124-129 (1983).

#### **Treaty Law in International Tribunals**

- 1) Bederman, The 1871 London Declaration, Rebus Sic Stantibus and a Primitivist View of the Law of Nations, 82 Am. J. Int'l L. 1-40 (1988).
- 2) Belilos Case, 132 Eur. Ct. H.R. (ser. A)(1988), reprinted in 10 Eur. Hum. Rts. Rep. 466 (1988)(treaty reservations).
- 3) Bourguignon, The Belilos Case: New Light on Reservations to Multilateral Treaties, 29 Va. J. Int'l L. 347-86 (1989).
- 4) Grenville & Wasserstein, The Major International Treaties Since 1945: A History and Guide with Texts, 1-18 (1987).
- 5) Lukashuk, The Principal Pacta Sunt Servanda and the Nature of Obligation Under International Law, 83 Am. J. Int'l L. 513-18 (1989)(Soviet perspective).
- 6) McGinley, Practice as a Guide to Treaty Interpretation, 9 Fletcher Forum 211-230 (1985).
- 7) Sinclair, The Vienna Convention on the Law of Treaties 1-28, 114-58 (2d ed. 1984).

- 8) Yambrusic, Treaty Interpretation: Theory and Reality, 55-145 (1987)(jurisprudence of the ICJ).
- 9) Singh, The Role and Record of the International Court of Justice, 156-165 (1989).
- 10) Vienna Convention on the Law of Treaties (1969), Arts. 19, 20, 26, 38, 53, 61, 62, 64, 71.
- 11) Lee, The Law of the Sea Convention and Third Parties, 77 Am. J. Int'l L. 541-568 (1982).
- 12) Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion), 1951 ICJ 15-55 (treaty reservations).
- 13) Nuclear Tests Case (Australia v. France), Judgment, 1974 ICJ 253, 257-258, 265-270.

#### **Development of Customary International Law by International Tribunals**

- 1) Christianson, Jus Cogens: Guarding Interests Fundamental to International Society 28 Va. J. Int'l L. 585-648 (1988).
- 2) Colson, How Persistent Must the Persistent Objector Be?, 61 Wash. L. Rev. 957 (1986).
- 3) D'Amato, The Concept of Custom in International Law 3-20 (1971).
- 4) Jessup, Non-Universal International Law, 12 Colum. J. Transnat'l L. 415-29 (1973).
- 5) Kunz, The Nature of Customary International Law, 47 Am. J. Int'l L. 662-69 (1953).
- 6) Restatement (Third) of the Foreign Relations Law of the United States §102(2).
- 7) Rozakis, The Concept of Jus Cogens in the Law of Treaties (1976).
- 8) Stein, The Case of the Persistent Objector, 26 Harv. Int'l L. Rev. 457-82 (1985).
- 9) Vienna Convention on the Law of Treaties, Arts. 34-38.
- 10) Whiteman, Jus Cogens in International Law, With a Projected List 7 Ga. J. Int'l & Comp. L. 609-26 (1977).



- 11) Asylum Case (Columbia v. Peru) 1950 I.C.J. 266, 272-79, 288-89, 335-39, 369-72 (regional norms).
- 12) Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116, 124-25, 190-193 (Read, J., dissenting).
- 13) Summary of the North Sea Continental Shelf Case from I.C.J. Yearbook.
- 14) North Sea Continental Shelf Case (W. Ger. v. Den.), 1969 I.C.J. 3, 28-29, 41-46.
- 15) Right of Passage Over Indian Territory Case (Port. v. Ind.) 1960 I.C.J. 6, 27-32, 36-46.
- 16) Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116, 131-32
- 17) Asylum Case (Colom. v. Peru), 1950 I.C.J. 266, 277-78
- 18) Statement by the President of July 1982, 18 Weekly Comp. Pres. Doc. 887 (July 12, 1982).
- 19) Statement by the President of March 10, 1983 on United States Oceans Policy, reprinted in 22 Int'l Leg. Mat. 464-465 (1983)
- 20) Proclamation 5030 of March 10, 1983 Concerning the Exclusive Economic Zone of the United States, reprinted in 22 Int'l Leg. Mat. 465 (1983).
- 21) Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14, 22, 100-101, 199-200
- 22) Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.), 1984 I.C.J. 14, 614-616
- 23) Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W. Africa) Not With-standing Security Council Resolution 276 (1970), 1971 I.C.J. 16, 73-75, 89-90
- 24) South West Africa Cases (Ethiopia v. S. Africa; Liberia v. S. Africa), 1966 I.C.J. 6, 297-300
- 25) Vienna Convention on the Law of Treaties, Arts. 53, 64, 71.

**The Application of General Principles of Law Common to All Nations and the Use of Subsidiary Sources By International Tribunals**

- 1) 1 H. Lauterpacht, International Law: Collected Papers 68-77 (E. Lauterpacht, ed. 1970).
- 2) I. Brownlie, Principles of International Law 15-20 (3d ed. 1979).
- 3) Restatement (Third) of the Foreign Relations Law of the U.S., §102, Comment 1 & Reporters' Note 7 (1986).
- 4) Tunkin, International Law in the International System, 147 *Recueil des Cours* 98-106 (1975).
- 5) Virally, Sources of International Law, in Manual of Public International Law 116, 143-48 (M. Sørensen ed. 1968).
- 6) Akehurst, The Application of General Principles of Law by The Court of Justice of the European Communities 52 *Brit. Y.B. of Int'l L.* 29-51 (1981).
- 7) Cheng, General Principles of Law as Applied by International Courts and Tribunals 1-26 (1953).
- 8) Summary of the South West Africa Cases from the I.C.J. Yearbook.
- 9) South West Africa Cases (Ethiopia v. S. Africa; Liberia v. S. Africa), 1966 *I.C.J.* 6, 294-301.

**Assessing the International Court of Justice***Non-Appearance, Non-Participation and Non-Performance*

- 1) Dillard, Law, Policy and the World Court - Attacking Some Misconceptions, 17 *Willamette L. Rev.* 13-25 (1980).
- 2) Elkind, Non-Appearance Before the International Court of Justice: Functional and Comparative Analysis, 31-77 (1984).
- 3) Fitzmaurice, The Problem of the Non-Appearing Defendant, 51 *Brit. Y.B. Int'l L.* 89-122 (1980).

- 4) Hight, Nonappearance and Disappearance Before the International Court of Justice, 81 Am. J. Int'l L. 237-254 (1987).
- 5) Scott & Csajko, Compulsory Jurisdiction and Defiance in the World Court: A Comparison of the PCIJ and the ICJ, 16 Den. J. Int'l L. & Pol'y 377-392 (1988).
- 6) Charney, "Disputes Implicating the Institutional Credibility of the Court: Problems of Non-Appearance, Non-Participation, and Non-Performance", The International Court of Justice at a Crossroads, 288-319 (L. Damrosch ed. 1987).
- 7) Gross, Underutilization of the International Court of Justice, 27 Harv. Int'l L. J., 571-597 (1986).

*U.S. Non-Appearance in the Nicaragua Case*

- 1) Chayes, Nicaragua, the U.S. and the World Court, 85 Columbia L. Rev. 1445-1482 (1985).
- 2) D'Amato, Nicaragua and International Law: The "Academic" and the "Real", 79 Am. J. Int'l L. 657-664 (1985).
- 3) Hight, Litigation Implications of the U.S. Withdrawal from the Nicaragua Case, 78 Am. J. Int'l L. 992-1005 (1985).
- 4) Meara, Applying the Critical Jurisprudence of International Law in the Case Concerning Military and Paramilitary Activities in and Against Nicaragua, 71 Va. L. Rev. 1183-1210 (1985).
- 5) Nanda, United States Intervention in Nicaragua: Reflections in Light of the Decision of the International Court of Justice in Nicaragua v. United States, 9 U. Haw. L. Rev., 553-565 (1987).
- 6) Norton, The Nicaragua Case: Political Questions Before the International Court of Justice, 22 Va. J. Int'l L. 459-526 (1987).
- 7) Panel Session, The Jurisprudence of the Court in the Nicaragua Decision, 1987 Am. Soc'y Int'l L. Proc. 258-277.
- 8) Panel Session, The World Court, 1986 Am. Soc'y Int'l L. Proc. 201-221.
- 9) Rowles, Nicaragua versus the United States: Issues of Law and Policy, 20 Int'l Lawy. 1245-1288 (1986).

- 10) United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 ICJ 3.

*Fact-Finding by the I.C.J.*

- 1) Hightet, "Evidence and Proof of Facts", The International Court of Justice at a Crossroads 355-375 (L. Damrosch ed. 1987).
- 2) Hightet, Evidence, the Court and the Nicaragua Case, 81 Am. J. Int'l L. 1-56 (1987).
- 3) Thirlway, Dilemma or Chimera? - Admissibility of Illegally Obtained Evidence in International Adjudication, 78 Am. J. Int'l L. 622-641 (1984).
- 4) Panel Discussion, "Factfinding by the International Court with Particular Regard to 'Fluid' Situations", 1987 Am. Soc'y Int'l L. Proc. 484-501 (1987).

*International Incidents*

- 1) Reisman & Williard, eds., International Incidents: The Law That Counts in World Politics, 3-24 (1988).
- 2) Falk, The Validity of the Incidents Genre, 12 Yale J. Int'l L. 376-85 (1987).
- 3) Bowett, International Incidents: New Genre or New Delusion?, 12 Yale J. Int'l L. 386-95 (1987).
- 4) A. Chayes, The Cuban Missile Crisis 8-40 (1962).
- 5) Malone, The Chernobyl Accident: A Case Study in International Law Regulating State Responsibility for Transboundary Nuclear Pollution, 12 Colum. J. Env. L. 203-41 (1987).
- 6) Stein, Contempt, Crisis, and the Court: The World Court and the Hostage Rescue Attempt, 76 Am. J. Int'l L. 499-531 (1982).

*Enforcement and the Use of Interim Measures*

- 1) Gross, The Case Concerning U.S. Diplomatic and Consular Staff in Tehran: Phase of Provisional Measures, 74 Am. J. Int'l L. 395-410 (1980).
- 2) Haven, The Status of Interim Measures of the International Court of Justice After the Iranian Hostage Crisis, 11 Cal. West. Int'l L. J. 515-542 (1981).
- 3) M.E. O'Connell, The Prospects for Enforcing Monetary Judgments of the

- International Court of Justice: A Study of Nicaragua's Judgment Against the United States, 30 Va. J. Int'l L. 891-940 (1990).
- 4) Schacter, The Enforcement of International Judicial & Arbitral Decisions, 54 Am. J. Int'l L. 1-24 (1960).
  - 5) Statute of the International Court of Justice, Art. 41.
  - 6) Sztucki, Interim Measures in the Hague Court: An Attempt at Scrutiny 221-302 (1983).
  - 7) Schacter, Enforcement of International Judicial & Arbitral Decisions, 54 Am. J. Int'l L. 1-24 (1960).

#### **The Evolving International Court of Justice**

- 1) Brauer, International Conflict Resolution: The ICJ Chambers and the Gulf of Maine Dispute, 23 Va. J. Int'l L. 463-486 (1983).
- 2) Hubbard, Separation of Powers Within the United Nations: A Revised Role for the International Court of Justice, 38 Stanford L. Rev. 165-194 (1985).
- 3) McWhinney, Special Chambers Within the International Court of Justice: The Preliminary Procedural Aspect of the Gulf of Maine Case, 12 Syracuse J. of Int'l L & Commerce 1-13 (1985).
- 4) Oda, Further Thoughts on the Chambers Procedure of the International Court of Justice, 82 Am. J. Int'l L. 556-562 (1988).
- 5) Ostrihansky, Chambers of the International Court of Justice, 37 Int'l & Comp. L. Q. 30-52 (1988).
- 6) Schneider, The Gulf of Maine Case: The Nature of an Equitable Result, 79 Am. J. Int'l L. 539-577 (1985).
- 7) Trendl, Maritime Delimitation and the Gulf of Maine Case: A Guide for the Future or Merely "Slicing the Pie"?, 12 S. Ill. Univ. L. J. 599-653 (1988).
- 8) Zimmerman, Ad Hoc Chambers of the International Court of Justice, 8 Dick. J. Int'l L. 1-32 (1989).
- 9) Statute of the International Court of Justice, Art. 26.

- 10) Schwebel, Ad Hoc Chambers of the International Court of Justice 81 Am. J. Int'l L. 831-854 (1987).
- 11) Fisheries Jurisdiction Case (U.K. v. Iceland), 1974 ICJ 3, 20-22 (¶ 42-48), 148-49 (¶ 34) (Merits).

### The Future of the International Court of Justice

- 1) R. Falk, Reviving the World Court, 1-24, 173-192 (1986).
- 2) T. Franck, Judging the World Court, 35-76 (1986).
- 3) Daly, Is the International Court of Justice Worth the Effort?, 20 Akron L. Rev. 391-407 (1987).
- 4) Kelly, The Changing Process of International Law and the Role of the World Court, 11 Mich. J. Int'l L. 129-166 (1989).
- 5) Kelly, The International Court of Justice: Crisis and Reformation, 12 Yale J. Int'l L. 342-375 (1987).
- 6) La Calamita, The "World Court": Coping with Political Realism and the Sovereign Tribe in International Adjudication, 17 Ottawa L. Rev. 553-588 (1985).
- 7) Lachs, Thoughts on the Recent Jurisprudence of the International Court of Justice, 4 Emory Int'l L. Rev. 77-94 (1990).
- 8) Lachs, Some Reflections on the Contribution of the International Court of Justice to the Development of International Law, 10 Syracuse J. of Int'l L. and Comm., 239-277 (1983).
- 9) McWhinney, The World Court and the Contemporary International Law-Making Process, 162-169 (1979).
- 10) Rogoff, International Politics and the Rule of Law: The United States and the International Court of Justice, 7 Boston Univ. Int'l L. J. , 267-299 (1989).
- 11) Schwebel, Reflections on the Role of the International Court of Justice, 61 Wash. L. Rev. 1061-1071 (1986).
- 12) Waldock, The International Court of Justice As Seen From the Bar and Bench, 54 Brit. Y.B. Int'l L. 1-5 (1983).

**International Courts and the Laws of War**

- 1) Fogelson, The Nüremburg Legacy: An Unfulfilled Promise, 63 S. Cal. L. Rev. 833-85, 903-05 (1990).
- 2) Latenser, Looking Back at the Nüremburg Trials with Special Consideration of the Processes Against Military Leaders, 8 Whittier L. Rev. 557-80 (1986).

**International Arbitrations - The U.S.- Iran Claims Tribunal**

- 1) Brill, No Gold at the Hague, 4 Am. Law. 1 (1982).
- 2) Lillich, The Iran-United States Claims Tribunal, 1981-1983 (1984)
- 3) Newman & Burrows, Principles of Law in the Iran-U.S. Claims Tribunal, 198 N.Y. L. J. 1 (Nov. 24, 1987).
- 4) Stewart, The Iran-U.S. Claims Tribunal: Accomplishments and Prospects, Private Investors Abroad, 525-560 (1984).
- 5) Declaration of the Government of the Democratic and Popular Republic of Algeria (January 19, 1981), reprinted in Kahn, The Iran-United States Claims Tribunal: Controversies, Cases, and Contributions 268-274 (1990)
- 6) Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (January 19, 1991), reprinted in Kahn, The Iran-United States Claims Tribunal: Controversies, Cases, and Contributions 275-279 (1990).
- 7) Lagergren, "Iran-United States Claims Tribunal" in Realism in Law-Making 113-127 (Bos & Siblesz, Eds., 1986).

**International Courts and Human Rights***Generally*

- 1) Benamati & Voisinet, Selected Readings on International Courts and the Protection of Human Rights, 2 Conn. J. Int'l L. 391-396 (1987).

- 2) Rodley, Human Rights and Humanitarian Intervention: The Case Law of the World Court, 38 Int'l & Comp. L. Quarterly 321-333 (1989).

*The Inter-American Court of Human Rights*

- 1) Buergenthal, Human Rights in the Americas: View From the Inter-American Court, 2 Conn. J. Int'l L. 303-310 (1987).
- 2) Buergenthal, The Advisory Practice of the Inter-American Human Rights Court, 79 Am. J. Int'l L. 1-27 (1985).
- 3) Buergenthal, The Inter-American Court of Human Rights, 76 Am. J. Int'l L. 231-245 (1982).
- 4) Cerna, The Inter-American Commission on Human Rights, 76 Am. J. Int'l L. 311-318 (1987).
- 5) Lockwood, Advisory Opinions of the Inter-American Court of Human Rights, 13 Den. J. Int'l L. & Pol'y 245-267 (1984).
- 6) Statute of the Inter-American Court of Human Rights, 12 Lawy. of the Americas 787-796 (1980).
- 7) Buergenthal, The Inter-American Court of Human Rights, 76 Am. J. Int'l L. 231-245 (1982).
- 8) Deodar, The First Contentious Cases Before the Inter-American Court of Human Rights, 3 Am. U.J. Int'l L. & Pol'y 283-97 (1988).

*The European Court of Human Rights*

- 1) Bernhardt, Commentary: The European System, 2 Conn. J. Int'l L. 299-301 (1987).
- 2) Duffy, Procedural Innovations of the European Court of Human Rights, 1983 Public Law 32-33 (1983).
- 3) Lester, Merger of the European Commission and the European Court of Human Rights From the Perspective of the Applicants and their Legal Representatives, 8 Human Rights L. J. 34-41 (1987).
- 4) Walsh, The European Court of Human Rights, 2 Conn. J. Int'l L. 271-284 (1987).
- 5) M. Janis & R. Kay, European Human Rights Law 87-116 (1990).



**New International Courts: Problems and Prospects**

- 1) Dumas, Enforcement of Human Rights Standards: An International Human Rights Court and Other Proposals, 13 Hastings Int'l & Comp. L. Rev. 585-608 (1990).
- 2) Ferencz, An International Criminal Court: Step Toward World Peace: A Documentary History and Analysis (1980).
- 3) Kutner, A World Genocide Tribunal - Rampart Against Future Genocide: Proposal for Planetary Preventive Measures Supplementing a Genocide Early Warning System, 18 Valparaiso L. Rev. 373-414 (1984).
- 4) Postiglione, A More Efficient International Law on the Environment and Setting Up an International Court for the Environment Within the United Nations, 20 Env. L. 321-328 (1989).
- 5) Prunty, Toward Establishing an International Tribunal for the Settlement of Cultural Property Disputes: How to Keep Greece from Losing its Marbles, 72 Georgetown L. J. 1155-1182 (1984).