

SEMINAR ON INTERNATIONAL COURTS

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Second Revised Edition

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) Reinforce 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 class exercises simulating international judicial dispute resolution.
- 4) Outline issues concerning the effectiveness of international tribunals as dispute resolution mechanisms and their future.

III. OFFICE HOURS, TELEPHONE NUMBERS AND E-MAIL

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. His e-mail address is: heywood@american.edu

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. His e-mail address is: c.brantley@ieee.org

All students at WCL have e-mail accounts on EagleNET. Your address is the first initial of your first name, the first initial of your last name, the last four digits of your student i.d. number, the letter "A", followed by "@american.edu" (without any spaces and, of course, without the " marks). To get onto the system, you need to use your account name. To find out your account name and password, please stop by the Law library Computer Lab office. For example, if your name is Jane Doe and your i.d. number is 123-45-6789: Your e-mail address is jd6789a@american.edu

IV. COURSE REQUIREMENTS

- 40% Final Examination: Take-home essay examination which will be distributed at the third class meeting on 6 September 1994. This examination will be due on the last day of final examinations, 17 December 1994. It is open-notes, open-materials, open-book, open-everything-but-another-person.
- 40 % Scholarly Paper: (15-20+ pages, exclusive of notes, double-spaced with one inch margins) based on a topic relating to the role of an international tribunal(s) in the development of international law. A written topic proposal must be presented for instructor approval by 4 October 1994. With the permission of the instructors, students may opt to write a longer paper satisfying the W.C.L. Upper Level Writing Requirement. An optional additional credit is available if you chose to do this.
- 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. ATTENDANCE

All students are expected to attend and participate in classes. More than three unexcused absences will result in entry of a failing grade for the course.

VI. LATE PAPERS AND PLAGIARISM

Late Papers

Papers are due in John Heywood's office no later than 5:00 p.m. on Monday, 5

December 1994. 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 Wednesday, 7 December 1994, 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 Thursday, 8 December 1994, 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 fifth of December and your computer dies, call us immediately.) These extensions will be very short in duration; no more than a day or two.

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 minimus* 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.

VII. CLASS OUTLINE (Discussion Topics and Assignments)

Class 1 Introduction to Course
8/23/94

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
8/30/94

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

Reading Assignments:

- 1) The United Nations Charter (selected articles).
- 2) The Statute of the International Court of Justice.
- 3) The *Corfu Channel* Case: A Chronology.
- 4) The *Corfu Channel* Case (U.K. v. Alb.)(Merits)(1949).

Class 3 The Role of International Tribunals in Developing Customary Law
9/6/94

Discussion Topics:

- 1) Evolution of Modern "Instant" Customary Law
- 2) Discuss In-Class Exercise on Self-Determination
- 3) Discussion of paper topics and writing techniques

- 4) Discuss and distribute the final examination

In-Class Exercise:

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

Reading Assignment:

- 1) The *North Sea Continental Shelf* Case (W. Ger. v. Den.)(1969).
- 2) Materials for the In-Class Exercise on Self-Determination.

Class 4 Regional Customary Law in an International System
9/13/94

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 *Right of Passage* Case

Reading Assignments:

- 1) The *Asylum* Case (Columbia v. Peru) (1950).
- 2) The *Case Concerning Right of Passage Over Indian Territory (Port. v. India)* (1960).

Class 5 Jurisdiction and Justiciability in International Tribunals
9/20/94

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) International Court of Justice: United States Recognition of Compulsory Jurisdiction.
- 3) 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).
- 4) *The Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.) (Jurisdiction and Admission)*(1984).
- 5) Department of State Letter and Statement Concerning Termination of Acceptance of International Court of Justice Compulsory Jurisdiction (October 7, 1985).
- 6) T. Franck, Judging the World Court, 35-51 (1986).

Class 6
9/27/94

Equitable Jurisdiction of International Tribunals

Discussion Topics:

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

Reading Assignments:

- 1) Statute of the International Court of Justice, Art. 26.
- 2) *The Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (U.S. v. Can.) (Constitution of Chamber)*(1982).
- 3) *The Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (U.S. v. Can.) (Merits)*(1984).
- 4) Schwebel, *Ad hoc Chambers of the International Court of Justice*.

Class 7 Role of the ICJ in the United Nations System
10/4/94

Discussion Topics:

- 1) Enforcement of ICJ Decisions.
- 2) Relation of ICJ and Security Council in Resolution of Disputes Involving International Peace and Security.
- 3) Discussion of Bosnia-Herzegovina Case,
- 4) Discussion of Libyan Case, (Libya v. U.S./U.K.)(1993).
- 5) The Advisory Jurisdiction of the ICJ

In-Class Exercise:

The ICJ and the Conflict in Bosnia.

Reading Assignments:

- 1) *The Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S./Libya v. U.K.)(Provisional Measures)(1992).*
- 2) News Reports for Discussion With the Libyan Case.
- 3) *Advisory Opinion on Certain Expenses of the United Nations (1962).*
- 4) *The Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))(Provisional Measures, 1st request)(1993).*

Class 8 Crime in the International Legal System
10/11/94

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) Meron, *The Case for War Crimes Trials in Yugoslavia*.
- 3) Materials on the War Crimes Tribunal for Yugoslavia.
- 4) Bassiouni, *The Codification of International Criminal Law and the Establishment of an International Criminal Court*.

In-Class Exercise:

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

**Class 9 Introduction to the Inter-American Court of
10/18/94 Human Rights**

Discussion Topics:

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

Reading Assignment:

- 1) Buergenthal, *Introductory Note to the Velásquez Rodríguez Case*.
- 2) *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
10/25/94 and European Court of Human Rights**

Discussion Topics:

- 1) Overview of the Courts
- 2) Discussion of the *Söering* Case
- 3) The Federalization of International Courts

Reading Assignments:

- 1) The *Söering* Case.

Class 11 International Arbitral Tribunals
11/1/94

Discussion Topics:

- 1) Introduction and History of Arbitral Tribunals
- 2) Arbitral Procedures and Choice of Law
- 3) Discussion of France v. New Zealand Arbitration (April 1990)(Extradition & Greenpeace)
- 4) Overview of U.S.-Iran Claims Tribunal

Reading Assignment:

- 1) *Ruling Pertaining to the Differences Between France and New Zealand Arising from the Rainbow Warrior Affair.*

Class 12 Relation of National and International Courts
11/8/94

Discussion Topics:

- 1) International Law in National Legal Systems
- 2) Discussion of *U.S. v. Alvarez-Machain* case
- 3) International Trade Tribunals and Domestic Law

In-Class Exercise:

In Re Chinese Refugees

Reading Assignment:

- 1) *The Paqueta Habana* (1900).
- 2) *U.S. v. Alvarez-Machain* (1992).
- 3) Falk, *Domestic Courts and World Legal Order: A Statement of Purpose and Outlook.*
- 4) *Sale v. Haitian Centers Council, Inc.* (1993).

Classes 13 & 14 Class Presentations
11/15/94 & 11/22/94

Discussion Topics and Reading Assignments:

None