Georgetown University Law Center

International Law I:  
Introduction to International Law  
1L Perspective Elective  
LAWJ-235-50

Professor David A. Koplow

Spring, 2018  
Monday and Wednesday, 11:10 to 12:35, Room 206

SYLLABUS

Faculty Contact Information

You can reach me by email (koplow@georgetown.edu), by phone (202-662-9567) or at my office (room 592). The office hours reserved for IL1 students are immediately following our classes, but if you find it more convenient to meet at some other time, please send me an email and we can usually schedule a conference promptly.

Course Description

Welcome to IL1! This course is designed to provide a “different perspective” on the study of law, to complement the rest of your Georgetown Law first year curriculum, by introducing you to the study of the nature, sources, and operation of contemporary public international law. We hope it will provide multiple opportunities to “compare and contrast” with the other legal elements you are encountering this year.

The course deals principally with public law – the relationships between sovereign states. It addresses a wide range of traditional topics, as detailed on the schedule of classes below, and it explores a number of the most pressing current issues in greater depth. As a survey course, it will move rapidly through a large number of topics, but will try to do more than simply “skim the surface.”
This course is also intended to serve as a general precursor to other international law courses in the Georgetown Law curriculum, including offerings in international business and economic law, comparative law studies, and other more specialized offerings.

Course Goals and Student Learning Outcomes

In the broadest sense, the overall goal for this course is to complement the rest of your 1L studies by helping you learn to “think like an international lawyer.” More specifically, through this course you should:

a. understand the interplay among the key historical, legal, political, ethical and other factors that have influenced the evolution of international law;

b. become familiar with the leading institutions and actors that contribute to international law, and learn the vocabulary they employ;

c. know the basic procedures for creating, interpreting, and applying treaties, custom, and other sources of international law;

d. recognize that non-judicial sources play a major role in creating legal rules, and that lawyers need to know how to identify, interpret and apply diverse sorts of legal materials;

e. ask, in a more sophisticated way, what “justice” requires in the international realm, and what rules, policies and practices will best promote justice;

f. appreciate the pluralism of international law, where different modes of analysis, different types of tribunals, and different rules of engagement can lead to quite different solutions to shared problems;

g. identify the opportunities for legal creativity in shaping and re-directing international institutions, rules and behaviors;

h. explore the idea that international law (like domestic law) is highly contingent upon particular historical, political and social facts, so law is made or chosen, not received or discovered – it is often a strategic calculation (including exercising the strategy of concealing the strategy);

i. become more comfortable with the uncertainty, incompleteness, and contestability of international law, where “black letter” rules are less dominant;

j. gain exposure to some of the main tenets of contemporary international law and to the key public policy issues and alternatives that will help shape the international legal environment in the decades to come;

k. have a better appreciation for the distinctive American voice in international legal affairs, an awareness of the perspectives and contributions from non-U.S. sources, and a more cosmopolitan consciousness of the role that the United States and other countries together exercise in contributing to global affairs;

l. understand the role of international law in the U.S. legal system and how the United States organizes itself to participate in international life;
m. know where to find, how to research, and how to apply public international legal materials;

n. get some practice at reading (i.e., wading through) often-dense original legal materials (treaties, diplomatic notes, decrees, etc.);

o. appreciate the similarities and differences between domestic legal instruments (such as contracts, statutes, and constitutions) and international legal instruments (such as treaties, UN resolutions, and diplomatic notes);

p. appreciate the role of unwritten sources of law;

q. understand the legal aspects of emerging international current events;

r. participate in policy and legal debates in a manner that is simultaneously rigorous and respectful;

s. appreciate the strengths and weaknesses of the international legal system and how it compares to the domestic law system of the United States;

t. ask in a more sophisticated way the basic questions about whether international law really is “law,” and about what the concept of “law” really means – including both “hard” and “soft” law -- especially within a system lacking the usual overt mechanisms for enforcement;

u. see your other Georgetown Law courses, and their introduction to American legal thought, from the vantage point of alternative foreign or international comparisons;

v. be exposed to some of the typical challenges and tasks of a lawyer in the international field, and have some simulated practice in the modes of analysis, argumentation, advocacy, etc. that have partial (but only partial) analogues in the domestic arena; and

w. become better equipped to be a “lifelong learner” in the field of public international law.

Required Materials


In addition, there is a substantial packet of supplementary Course Materials available at through the Georgetown Law Articleworks website.

In most classes, we will devote some time to an issue of “breaking news” that concerns some aspect of international law in action. I will distribute the particular item shortly before class. In addition, I have prepared a series of “Problem” exercises (to be posted on the Canvas site), to provide an opportunity to work through some of the practical applications of the legal doctrines we encounter.
Class Meetings

The class meets in Room 206 on Mondays and Wednesdays, from 11:10 to 12:35 (with no break in the middle), with the usual Georgetown Law calendar modifications. The roster of assignments (below) notes the scheduled topics for each class and the accompanying reading assignments.

A seating chart will be distributed shortly. Procedures for calling on students will be determined at our first meeting.

The course carries three credits.

Course Requirements

I expect everyone to attend every class, on time; to prepare for class by carefully reading the assigned materials and thinking deeply about them; and to engage in classroom discussion in a thoughtful, critical, respectful, and open-minded way.

To help focus your consideration of the readings, each student will prepare occasional “Reflections,” of approximately 300 words, reacting to any one selected aspect of the assignment. These will be posted on the course’s Canvas site by 8:00 am on the day of the class. This aspect of the course is described in more detail in a separate handout.

My pedagogical theory is that it is better not to try to “cover the readings” in class, at least not in the way you might have undertaken during some other courses, such as by going through the assignment, item by item, to highlight the writer’s intentions and meanings. Instead, I prefer to use the class time to “cover the topic,” by using the readings as the “launch pad” for initiating a more sophisticated, more searching discussion.

The roster of assigned readings, below, includes “Study Questions” for each topic; these can help focus your attention and guide your preparation for class. Ordinarily, they will form the core of the agenda for our class discussions.

Assessment Plan and Grading Rubric

A three-hour examination is scheduled for Friday, May 11 at 9am, subject to discussion at the first class. The exam will attempt to be comprehensive and usually consists of a variety of types of questions. It will cover both material that is in the assigned readings and material addressed in class. Samples of exams used in several previous years, as well as the feedback about them, are available
via the law library. At our first meeting, we will decide whether to make the final exam "open book" or "closed book."

There will also be a voluntary, ungraded mid-term exam, to be described later.

I will use Georgetown Law’s usual grading scale and curve.

The final examination will count for 90% of the grade; class participation will count for 10%. For the class participation component, I take into account both the substantive strength of your contributions and the seriousness of your efforts to engage with the course. If you have any concerns about the level of your participation, please see me; together we can develop a personalized strategy for approaching this aspect of law school and the profession.

If you will miss a class, please let me know in advance.

Like other 1L courses, this course not may be taken on a pass-fail basis.

**Laptop Use**

At our first class, we will set a policy regarding the use of laptop computers during the class. In any event, you may not use your laptop during class time for purposes unrelated to the class. Please do not allow your attention to be diverted during class (and do not distract and annoy your neighbors) by checking your email or using other functions on your laptop.

**Class Recordings**

Our classes will routinely be video recorded by the Law Center using the Echo360 ALP recording platform that has been integrated into the Canvas system. Those class recordings will be made available for personal use by all students in the course. However, students are not authorized to copy, download, or disseminate those recordings to others, and are not permitted to make their own audio or video recordings of classes. You should also be aware that the automatic recording may capture collateral and private conversations and behavior, such as those occurring just before or after class.

**Canvas Site**

A site has been organized for this course on the Law Center’s Canvas Learning Management System, and all students will be automatically enrolled in it. I will post onto the site the classroom handouts and other course materials,
and I will use the Canvas “Announcements” function to distribute news. You will use the Canvas site’s “Discussion” section to post your weekly “Reflections” about the assigned readings.

Recommended Reading

If you want to do some additional reading, to pursue a particular issue in greater depth or to expand your familiarity with other specialized international topics, you might consult the following sources (on reserve or in the open stacks of our Library):

--M. Akehurst, A Modern Introduction to International Law
--D. Bederman, International Law Frameworks
--T. Buergenthal and S. Murphy, Public International Law in a Nutshell
--S. Burr, Quick Review: International Law
--L. Henkin, How Nations Behave
--M. Janis, An Introduction to International Law
--S. McCaffrey, Understanding International Law
--S. Murphy, Principles of International Law
--J. Noyes, et.al., International Law Stories
--American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States
--American Journal of International Law (quarterly)
--M. Whiteman, Digest of International Law (multivolume)

You may also wish to subscribe to the free electronic publication services of the American Society of International Law, available at www.asil.org/insights.htm.

I do not have any particular recommendations about hornbooks or other study aids; probably, whatever series of publications (Nutshell, Gilberts, Emmanuel, etc.) that you have found valuable in your other courses could be helpful here, as well.
Part I.  

Introduction: The Nature and Scope of International Law

1. Wednesday, January 17:  
   Introduction to the Course and the Topic

   --What is international law? How powerful is it?  
   --What are the key issues to address in the study of IL?  
   --How does IL compare to domestic U.S. law?  
   --How far should U.S. law reach into foreign activities?

   Read textbook p. 244-253
   Skim Course Materials Document A
   Problem 1: Introductory Quiz

Part II.  
The Sources and Institutions of International Law

--Where does international law come from?  
--What is the role of "consent" in creating IL?  
--How does IL operate in the real world?  
--How effective is IL in altering the actions of states?

2. Monday, January 22:  
   Sources of International Law

   --What does the Statute of the ICJ identify as the leading sources of IL?  
   --How does the IL claims process work?  
   --What alternate dispute resolution processes exist in IL?  
   --What are the enforcement mechanisms for IL judgments?
Read textbook p. 1-22
Prepare to discuss Problem 2: Vocabulary (on Canvas)

3-4. Wednesday, January 24 and Monday, January 29:

**International Adjudication in the ICJ and Other Tribunals**

--How does the ICJ operate? How effective has it been?
--What has been the U.S. relationship to the ICJ?
--How well does the ICJ deal with contemporary crises?
--What other international judicial and arbitral tribunals exist?
--How can international adjudication be strengthened?

Read textbook p. 295-318, 325-334
Skim Documentary Supplement p. 28-42
(Statute of the ICJ, also available at: http://www.icj-cij.org/en/statute)
Skim Course Materials Documents B,C,D

5-6. Wednesday, January 31 and Monday, February 5:

**International Agreements**

--What role do treaties play in international life?
--How are treaties formed, interpreted, and enforced?
--What happens in the event of a breach?
--How do reservations operate?
--What role have treaties played in creating and shaping the European Union?

Read textbook p. 85-112, skim p. 501-524
Skim Documentary Supplement p. 43-68, 201-224
(Vienna Convention on the Law of Treaties, also available at:
Skim Course Materials Documents E-O
Prepare to discuss Problem 3: Treaty Reservations (on Canvas)
7. **Wednesday, February 7:**
**U.S. Treaty Law**

---What are the "hierarchies" among treaties, constitutions, and statutes under both U.S. law and IL?
---How is authority for international affairs allocated among the branches of the U.S. federal government?
---What are the respective roles of the 50 states and the federal government regarding international agreements?
---What is the difference between a "treaty" and an "executive agreement"?
---When is an agreement "self-executing"?

Read textbook p. 153-180, 202-207
Skim Course Materials Documents P-V
Prepare to discuss Problem 4: IL in Space (on Canvas)

8. **Monday, February 12:**
**Custom and Other Sources of International Law**

---How does a custom become binding on states?
---How may a state opt out of a norm of CIL?
---What is the effect of CIL inside the U.S.?
---What is jus cogens, and how does it operate?
---What are the other sources of international law and near-law?

Read textbook p. 112-133, 146-150, 240-243, 267-268
Skim Course Materials Document W
Prepare to discuss Problem 5: CIL in Space (on Canvas)

9. **Wednesday, February 14:**
**International Organizations**

---What role does the U.N. play in international life?
---Will the post-cold war future of the U.N. be any different?
---What is, and should be, the U.S. role in the U.N.?
---What other supra-national organizations operate?
---What will be the role of the G8 and G77 in the future?

Read textbook p. 463-479, 499-501
Skim Documentary Supplement p. 1-27
Skim Course Materials p. Document X
Prepare to discuss Problem 6: Future of the UN (on Canvas)
10. Thursday, February 22 (Monday classes meet):
   **Interim Assessment: Is International Law Really "Law"?**

   --How does IL compare with domestic law on key operational variables?
   --What are the principal theories about international law?
   --How much does IL really matter in the world of politics?
   --In what direction is the IL system heading?

   Read textbook p. 22-32, 38-58
   Skim Course Materials Documents Y and Z
   Prepare to discuss Problem 7: Is IL Really Law? (on Canvas)

Part III. **The Participants in the IL System**

   --Who are the key players active in the IL system?
   --How has IL evolved to embrace additional relevant actors?
   --What status and rights does each participant enjoy?
   --How does the concept of “nationality” apply to each category of actor?

11-12. Monday, February 26 and Wednesday, February 28:

   **States**

   --What are the defining characteristics of a state?
   --How does the definition apply to contemporary close cases?
   --What are the principles of state succession?
   --What is the effect of diplomatic recognition of a state or government?
   --What are the fusion and fission pressures on states?

   Read textbook p. 429-463
   Skim Course Materials Documents AA-MM
   Prepare to discuss Problem 8: Recognition (on Canvas)

13. Monday, March 5:

   **Corporations and NGOs**

   --What role do multinational corporations play in international law?
   --What is the standard of care a host country must accord a foreign corporation?
   --Which state is authorized to espouse the claim of a multinational corporation?
--What is the IL on expropriation and compensation?

Read textbook p. 32-33, 133-146, 721-728, 733-744
Skim Course Materials Documents NN-PP
Prepare to discuss Problem 9: Expropriations (on Canvas)

14-15. Wednesday, March 7 and Monday, March 19:

Persons

--How does a person acquire and lose nationality in one or more states?
--What are the rights of aliens?
--How are fundamental human rights protected by IL?
--Why has the United States declined to join several human rights treaties?
--What should be the U.S. strategy for promoting basic rights?
--How does international criminal law provide individual international responsibilities, as a counterpart to international rights?

Read textbook p. 744-779 (for class 14), 1130-1151 (for class 15)
Skim Documentary Supplement p. 384-408 (for class 14), 942-974 (for class 15)
(International Covenant on Civil and Political Rights, also at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
Skim Course Materials Documents QQ and RR
Prepare to discuss Problem 10: The ICC (on Canvas)

[Skip Monday, March 12 and Wednesday, March 14 (Spring Break)]

Part IV. The Interpenetration of International and Domestic Law
--How do concepts of international law affect domestic U.S. litigation?
--What limits does IL place upon a state’s exercise of judicial and executive powers inside its own territory and abroad?
--How may private individuals proceed with claims involving foreign states?
--How is state sovereignty protected in litigation in domestic courts?
16-17. Wednesday, March 21 and Monday, March 26:

**Jurisdiction**

--What are "jurisdiction to prescribe" and "jurisdiction to enforce"?
--What are the six most commonly asserted bases of jurisdiction?
--How does the international system cope with conflicting claims of jurisdiction?
--How does extradition work?

Read textbook p. 637-650, 659-660 (for class 16), 670-705 (for class 17)
Skim Documentary Supplement p. 917-937
(U.S.-France MLAT, also available at:
http://www.state.gov/documents/organization/121413.pdf
(U.S.-U.K. Extradition Treaty, also available at:

Skim Course Materials Documents SS-UU
Prepare to discuss Problem 11: Jurisdiction Jeopardy! (on Canvas)

18. Wednesday, March 28:

**Foreign Sovereign Immunity**

--How has the doctrine of foreign sovereign immunity evolved?
--How is the doctrine now dealt with in the United States and in other countries?
--What policy rationales support and oppose the doctrine?
--What other types of official immunities exist, and why?

Read textbook p. 535-544, 570-587, 592-596
Skim Documentary Supplement p. 301-316
(Foreign Sovereign Immunities Act, also available at:
http://www.law.cornell.edu/uscode/text/28/part-IV/chapter-97)

Skim Course Materials Documents VV-XX
Prepare to discuss Problem 12: The Letelier Assassination (on Canvas)

19. Monday, April 2:

**The Act of State Doctrine**

--How has the act of state doctrine evolved in the United States and elsewhere?
--Where is this jurisprudence headed today?
--Is it a useful, prudent and just aspect of law?
--How does the doctrine affect the relationship between the judiciary, the legislature, and the executive?

Read textbook p. 613-636
20. Wednesday, April 4:
Catch-up Day

No additional reading assignment

Part V. International Law Applied: Two Case Studies
--How does IL operate in key sectors of international life?
--How well can IL adapt to rapidly changing political and economic circumstances?
--How does IL function as a planning mechanism?
--How does IL function in conflict situations?
--Does IL help bend the arc of the moral universe toward justice?

21-22. Monday, April 9 and Wednesday, April 11:
The Law of the Sea: IL as a Planning Device

--What are the international rules regarding the use of maritime areas and resources?
--How are control and access allocated in the various maritime zones between coastal and seafaring states?
--What role has the U.S. played in the development of emerging LoS norms?
--What should, and will, happen with the Law of the Sea Convention?

Read textbook p. 813-817, 822-853 (for class 21), 857-861, 865-875 (for class 22)
Skim Documentary Supplement p. 541-652
(Law of the Sea Convention, also available at:
(Implementing Agreement on Part XI, available at:
Skim Course Materials Documents ZZ-CCC
Prepare to discuss Problem 14: The US and the LoSC (on Canvas)
23-24-25. Monday, April 16; Wednesday, April 18; and Monday, April 23: 
**The Use of Force: IL as Regulator of Violence**

--What are the legal justifications for an individual state to use military force?
--What types and levels of force are allowed in combat?
--When does international law permit collective use of violence?
--How will international legal and political mechanisms change the law of force in the post-cold war era?
--How can IL respond to the emerging threat of modern terrorism?

Read textbook p. 944-973 (for class 23), 977-1013 (for class 24), 1033-1051 (for class 25)
Skim Course Materials Documents DDD-FFF
Prepare to discuss Problems 15: When Would You Use Force and 16: Force Trivia (on Canvas)

Part VI: Conclusion

26. Wednesday, April 25: 
**Wrap-up and Conclusions**

--What are the principal lessons of an introductory course in public international law?
--How might knowledge of IL principles be relevant to your future practice?
--Where will international law (and your work with it) progress in the future?

Skim Course Materials Document GGG

Final Examination: Friday, May 11 at 9am (subject to discussion at first class)