Faculty Contact Information

You can reach me by email (koplow@georgetown.edu), by phone (202-662-9567) or at my office (room 592). My office hours are Wednesday, 1:30 to 3:30, 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 mostly domestic U.S. 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 several 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." We will also take advantage of frequent opportunities to address various “hot
topics” as they arise during the course of the semester, to illuminate aspects of international law in action in rapidly-unfolding current events.

For those of you who are considering specializing in an international practice field, this course will serve as a general precursor to the many other international law courses in the Georgetown Law curriculum, including offerings in international business and economic law, comparative law studies, and other more specialized topics. For others, this course is intended to provide an introduction and background to questions of international law as they may arise in practice, including an understanding of how international law is made and applied, the relationship between international and domestic law, and an ability to analyze and interpret diverse types of international legal instruments.

More generally, this course aims to provide you with a better understanding of what “law” means in modern society and how international law functions (or fails to function) in the global society, and to empower you to participate in that ongoing dialog.

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 fora, 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. learn some of the basic substantive rules of international law that currently do, or should, govern the behavior of states;

e. 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;

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

g. 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;

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

i. 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);

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

k. 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;

l. 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;

m. understand the role of international law in the U.S. legal system and how the United States organizes itself to participate in international life;

n. know where to find, how to research, how to read, and how to apply public international legal materials;

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

p. 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);

q. appreciate the role of unwritten sources of law;

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

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

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

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

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

w. 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

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

**Required Materials**

I recommend, but do not require, purchase of the accompanying Selected Documents supplement (7th edition, 2019). I assign approximately 30 pages of required reading per class, plus additional pages for you to skim.

In addition, there is a substantial packet of supplementary Course Materials available through the Law Center’s course materials Canvas site, https://georgetownlaw.instructure.com/courses/68883

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

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 during your first semester, 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 10 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.

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 Panopto 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.

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Published course readings (book chapters, articles, reports, etc.) available in Canvas are copyrighted material. These works are made available to students through licensed databases or fair use. They are protected by copyright law, and may not be further disseminated or reproduced in any form for distribution (e.g., uploading to websites, sale, exchange, etc.) without permission of the copyright owner. All rights are reserved.

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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 and C. Keitner, 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 and Fourth) 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](http://www.asil.org/insights.htm).

I do not have any particular recommendations about hornbooks or other study aids; probably, whatever series of publications (Nutshell, Emanuel, 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. Monday, January 14: 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. 284-289
   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. Wednesday, January 16: 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. 1-24
Prepare to discuss Problem 2: Vocabulary (on Canvas)

[No class meeting on Monday, January 21 – Martin Luther King, Jr. Holiday]

3-4. Wednesday, January 23 and Monday, January 28:  
**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. 331-355, 362-364, 366-370
Skim Documentary Supplement p. 28-42
(Statute of the ICJ, also available at: [https://www.icj-cij.org/en/statute](https://www.icj-cij.org/en/statute))
Skim Course Materials Documents B,C,D

5-6. Wednesday, January 30 and Monday, February 4:  
**International Agreements**

--How does a treaty differ from other forms of international agreement?
--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?

Read textbook p. 75-90, 98-123
Skim Documentary Supplement p. 53-78
Skim Course Materials Documents E-O
Prepare to discuss Problem 3: Treaty Reservations (on Canvas)
7. Wednesday, February 6:  
**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. 173-194, 243-249, 305-306  
Skim Course Materials Documents P-V  
Prepare to discuss Problem 4: IL in Space (on Canvas)

8. Monday, February 11:  
**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. 123-143, 95-98, 281-284  
Skim Course Materials Document W  
Prepare to discuss Problem 5: CIL in Space (on Canvas)

9. Wednesday, February 13:  
**International Organizations**

--What role does the U.N. play in international life?  
--Will the post-post-cold war future of the U.N. be any different?  
--What reforms would make the Security Council more effective?  
--What is, and should be, the U.S. role in the U.N.?  
--What other supra-national organizations operate?

Read textbook p. 494-522  
Skim Documentary Supplement p. 1-27  
(Chart of the United Nations, also available at:  
Skim Course Materials Document X
Prepare to discuss Problem 6: Future of the UN (on Canvas)

[No classes on Monday, February 18 (Presidents Day) and Wednesday, February 20 (Faculty Retreat)]

10. Thursday, February 21 (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?
   --Why do countries obey, and not obey, international law?
   --In what direction is the IL system heading?

   Read textbook p. 25-51
   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 25 and Wednesday, February 27:
   **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. 449-494
   Skim Course Materials Documents AA-MM
   Prepare to discuss Problem 8: Recognition (on Canvas)

13. Monday, March 4:
   **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?
--What other types of NGOs are active in IL?

Read textbook p. 145-157, 729-734, 743-752
Skim Course Materials Documents NN-PP
Prepare to discuss Problem 9: Expropriations (on Canvas)

14-15. Wednesday, March 6 and Monday, March 18:
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. 752-780, 783-791 (for class 14), 1155-1158, 1166-1178 (for class 15)
Skim Documentary Supplement p. 446-470 (for class 14), 1052-1090 (for class 15)
(International Covenant on Civil and Political Rights, also at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
(Rome Statute of the International Criminal Court, also at: http://www.icc-cpi.int/NR/rdonlyres/ADD16852-EE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf)
Skim Course Materials Documents QQ and RR
 Prepare to discuss Problem 10: The ICC (on Canvas)

[No classes on Monday, March 11 and Wednesday, March 13 (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 legislative, judicial and executive powers inside its own territory and abroad?
--How may private individuals proceed with claims involving foreign states or officials?
--How is a foreign state’s sovereignty protected in litigation in domestic courts?

16-17. Wednesday, March 20 and Monday, March 25:  
**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?
--How does international cooperation support extraterritorial jurisdiction?

Read textbook p. 555-571, 591-601 (for class 16), 601-626 (for class 17)  
Skim Documentary Supplement p. 1027-1047  
(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 27:  
**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?
--For what types of activities does a foreign state now enjoy immunity?
--What policy rationales support and oppose the doctrine?
--What other types of official immunities exist, and why?

Read textbook p. 641-654, 665-675, 682-691  
Skim Documentary Supplement p. 347-364  
(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 1:
**Other Immunities and The Act of State Doctrine**
--What immunities apply to designated categories of official persons?
--What policy rationales support, and oppose, these privileges?
--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 act of state doctrine affect the relationship between the judiciary, the legislature, and the executive?

Read textbook p. 707-727
Skim Course Materials Document YY
Prepare to discuss Problem 13: Bernstein Letters (on Canvas)

20. Wednesday, April 3:
**Catch-up Day**

No additional reading assignment

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

21-22. Monday, April 8 and Wednesday, April 10:
**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 are the key arguments in favor and in opposition to the United States joining the Law of the Sea Convention?
--What should, and will, happen with the Law of the Sea Convention?

Read textbook p. 823-827, 832-841, 844-857 (for class 21), 857-871, 883-894 (for class 22)
Skim Documentary Supplement p. 633-745
(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 15; Wednesday, April 17; and Monday, April 22:

**The Use of Force: IL as Regulator of Violence**

--What are the legal justifications for an individual state to use military force?
--When does international law permit collective use of violence?
--What types and levels of force are allowed in combat?
--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. 963-987 (for class 23), 994-1004, 1011-1035 (for class 24), 1053-1074 (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 24:

**Wrap-up and Conclusions**

--What are the principal lessons of an introductory course in public international law?
--Has exposure to international law, methods, and materials altered your “perspective” about your other domestic U.S. legal studies?
--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?
Final Examination: Friday, May 10 at 9am (subject to discussion at first class)