

INTERNATIONAL LAW

Government 2600
Fall 2018
Pickering Room (213 Hubbard Hall)
TR 10:05-11:30

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Introduction

Government 2600 uses a casebook approach to introduce students to the nature of international law and its role in shaping international behavior. The course provides an understanding of key concepts of international law and examines selected cases of its practical application. Specific topics include the development of legal regimes to govern the ocean, protect the environment, and control armed conflict. Government 2600 is limited to 35 students.

Readings

The required text for Government 2600 is Mark Weston Janis and John E. Noyes, *International Law: Cases and Commentary* (5th ed., St. Paul, MN: West Publishing Company, 2014).

It is important that you have regular access to **this** edition of the text. Other required readings are also listed on the syllabus. They can be read via links on Blackboard found on the “Syllabus” page. In addition, I have indicated cases that you will not read, but we will discuss in class and with which you should be as familiar as the cases you have read. Assignments are given on a daily basis. Unless I tell you otherwise, you are expected to complete the assigned readings by the date given next to each sub-heading.

Requirements and Grades

You are required to take three scheduled exams and complete one 6-8 page paper on an assigned topic. This paper can be submitted at any point prior to Tuesday, November 20, at 5:00 p.m. A list of topics is attached to the syllabus. The exams will be held on:

- Thursday, October 4- 1½ hour in-class exam
- Tuesday, November 13- 1½ hour in-class exam
- Monday, December 17 (8:30-11:30 a.m.)- 3-hour comprehensive final exam
- **Please note these dates and make your travel plans accordingly! The final exam is on the morning of the LAST day of exams!! I will not be giving the exam early!!!**

The approximate weight assigned to each of these requirements in determining your final grade is:

- 20%- Exam #1
- 20%- Exam #2
- 20%- Paper
- 40%- Final exam

While you are not required to brief cases, it is highly recommended that you do so. You are expected to come to class prepared to discuss assigned cases. Class participation will be taken into account in determining your final grade.

I plan to communicate with the class (e.g. update you on class assignments, answer questions) via e-mail. Please read your e-mail on a daily basis. You are responsible for being aware of any messages I send out! Important course information can also be found on Blackboard. A copy of the syllabus, with links to the “Documents” listed below, paper topics, optional study problems, and copies of past exams (and answers) can all be found there. Please keep in mind that the cases covered vary from year to year and past exams may refer to cases, principles, etc. different from those we will have discussed.

Class Attendance Policy

Students should attend and participate actively in all classes. You must take the exams on the scheduled dates. However, you are entitled to **two** unexcused absences without penalty, not including exams. Absences due to scheduled athletic competitions must be discussed with me **before** the event. It is your responsibility to sign in at the start of each class.

SYLLABUS

I. Introduction

A. Course Introduction---8/30

B. The Nature of International Law---9/4

Janis and Noyes:

- 1-3, 3-18 (**McCann v. United Kingdom**)
- 18-28 (**Filartiga v. Pena-Irala**), 29-31

II. The Sources of International Law

A. The Law of Treaties---9/6

Janis and Noyes:

- 31-65 (skim)
- 65-71 (**Reservations to Genocide Convention**), 71-75
- 75-82 (**Eastern Airlines v. Floyd**), 82-87
- 95 (para. 7)-96, 96-102 (**Eastern Greenland Case**), 102-104
- 104-105 (**The Nuclear Tests Cases I**)

Online:

- **The Gabcikovo-Nagyamaros Project** (1997)

Class Coverage:

- **Free Zones of Upper Savoy** (1932)

Documents:

- **1969 Vienna Convention on the Law of Treaties**, esp. Arts. 1-2, 18-21, 24-29, 31-32, 34-38, 42-53, 56, 60-64 (in Janis and Noyes text, 1125-1155)

B. International Custom and General Principles of International Law—9/11

Janis and Noyes:

- 119-120 (**The Asylum Case**), 121-122
- 149-157 (**The AM & S Case**)
- 160-161, 174-176 (**The Michael Domingues Case**), 176-179
- 183-186 (**The Cayuga Indians Case**), 186-188
- 190-205 (**The North Sea Continental Shelf Cases**), 205-209

III. The Application of International Law

A. National Application of International Law: United States Practice

1) Treaties and the Constitution---9/13

Janis and Noyes:

- 211-214 (**Ware v. Hylton**), 214-216
- 228-231 (**Missouri v. Holland**)
- 233-234 (**Whitney v. Robinson**), 234-235

Online:

- **Reid v. Covert (1957)** (Note in Janis and Noyes, 231)
- **Edwards v. Carter (1978)**

Documents:

- **United States Constitution-** read excerpts in Janis and Noyes text, 1073-1076

2) Self-Executing Treaties and Executive Agreements---9/18

Janis and Noyes:

- 216-219 (**Foster and Elam v. Neilson**), 219-220
- 221-223 (**Asakura v. Seattle**)
- 223-226 (**Sei Fujii v. California**), 226-228
- 235-238 (**United States v. Belmont**)
- 246-254 (**Dames and Moore v. Regan**)
- 255-279 (**Medellin v. Texas**)

3) The Law of Nations---9/20

Janis and Noyes:

- 290-294 (**Murray v. Schooner *Charming Betsy***), 294-297
- 161-163 (**United States v. Smith**), 163-165
- 107-116 (**The *Pacquete Habana***), 116-119
- 297-313 (**Sosa v. Alvarez-Machain**), 313-315
- 315-327 (**Kiobel v. Royal Dutch Petroleum Co.**), 327-330

Online:

- **The *Over the Top*** (1925)

B. International Application of International Law: International Courts and Tribunals---9/25

Janis and Noyes:

- 331, 332-334 (**Alabama Arbitration**)
- 334-341 (**Dogger Bank Arbitration**), 342-344
- 344-348 (**Rainbow Warrior I- 1986**)
- 359-361, 362-370 (**The Minquiers and Ecrehos Case**), 371-373
- 403-419 (**Legal Consequences of Israeli Wall**), 419-422

Online:

- **Military and Paramilitary Activities in Nicaragua I** (1984)

Documents:

- **1945 ICJ Statute**, scan whole thing- esp. Articles 34, 36, 38, 55, 59-60, 65 (in Janis and Noyes text, 1105-1119)
- **1945 UN Charter**, Articles 92-96 (in Janis and Noyes text, 1099-1100)

IV. The Structure of the International Legal System

A. States and Governments and the Issue of Recognition---9/27

Janis and Noyes:

- 551-560, 560-562 (**In Re Duchy of Sealand**), 562-570
- 577-586 (**The Tinoco Arbitration**), 586-588
- 588-597 (**Greek Orthodox Church of Cyprus v. Goldberg and Feldman**), 597-600
- 600-602, 602-610 (**Reference Re Secession of Quebec**), 610-611
- 614-617 (**Advisory Opinion on the Status of Kosovo**), 617-620

B. States Responsibility---10/2

Janis and Noyes:

- 452-457
- 348-356 (**Rainbow Warrior II- 1990**), 356-359

Online:

- **Application of Genocide Convention** (2007)

Class Coverage:

- **Factory at Chorzów** (1927)

EXAM #1- THURSDAY, OCTOBER 4

PAPER TOPIC- TOPIC CHOICE DUE BY 5 P.M ON FRIDAY, OCTOBER 12

C. Individuals, Corporations and Intergovernmental Organizations---10/11

Janis and Noyes:

- 441-450 (**The Nottebohm Case**), 450-452
- 457-468 (**The Barcelona Traction Case**), 468-471
- 621-631, 631-638 (**The Reparations Case**), 639-642

Online:

- **The Chattin Claim** (1927)
- **The Mergé Case** (1955)

V. Jurisdictional Issues

A. Jurisdiction to Prescribe---10/16

Janis and Noyes:

- 122-133 (**The Lotus Case**), 134-135
- 909-910, 910-912 (**American Banana v. United Fruit**), 912-914
- 914-916 (**Blackmer v. United States**), 916-917
- 917-920 (**United States v. Aluminum Company of America**), 920-925

Online:

- **Dresser v. Baldrige** (1982)
- **United States v. Pizzarusso** (1968)

B. Jurisdiction to Enforce and the Challenge of Terrorism---10/18

Janis and Noyes:

- 313-315

Online:

- **United States v. Lira** (1975)
- **United States v. Alvarez-Machain** (1992)
- **The State v. Schumann** (1966)
- **Re Bressano** (1975)
- **United States v. Yunis** (1991)

Documents:

- **1979 Hostages Convention**, esp. Articles 1, 5, 8-10

C. Resolving Jurisdictional Conflicts---10/23, 10/25

Janis and Noyes:

- 950-954 (**Timberlane Lumber Co. v. Bank of America**), 954-956
- 957-966 (**Hartford Fire Insurance Co. v. California**), 966-969
- 969-977 (**Piper Aircraft Co. v. Reyno**), 977-980
- 980-985 (**The Bhopal Case**), 985-987

Online:

- **Laker v. Sabena** (1984)

Class Coverage:

- **The British Nylon Spinners Case** (1952-1954)
- **United States v. Citibank** (1968)

D. Sovereign Immunity

1) State Immunities: U.S. Foreign Sovereign Immunities Act---10/30

Janis and Noyes:

- 1019-1020, 1020-1023 (**The Schooner Exchange v. McFaddon**), 1023-1024
- 1034-1040 (**Texas Trading and Milling Corp. v. Nigeria**), 1040-1043
- 1043-1047 (**Argentina v. Amerada Hess**), 1048-1053

Online:

- **Rein v. Libya** (1998)
- **Sidermans v. Argentina** (1992)

Class Coverage:

- **LETCO v. Liberia** (1986)

Documents:

- **1976 Foreign Sovereign Immunities Act**, esp. Sect. 1602-1605, 1605A, 1607, 1609-1610 (some parts are in the Weston and Noyes text, 1028-1033; all on Blackboard)

2) Immunities of Diplomats and State Officials- 11/1

Janis and Noyes:

- 373-388 (**The Diplomatic and Consular Staff Case**), 389-392

Online:

- **Radwan v. Radwan** (1972)
- **The Pinochet Case** (1998-2000)
- **The Arrest Warrant Case** (2002)

Class Coverage:

- **The Libyan Peoples Bureau incident** (1984)

Documents:

- **1963 Vienna Convention on Diplomatic Relations**, esp. Articles 1-4, 7, 9, 22- 27, 29-46

E. Act of State Doctrine---11/6, 11/8

Janis and Noyes:

- 1053, 1054-1055 (**Underhill v. Hernandez**)
- 1056-1062 (**Banco Nacional de Cuba v. Sabbatino**), 1062-1064
- 1064-1069 (**Kirkpatrick v. Environmental Tectonics**), 1070-1071

Online:

- **Kalamazoo Spice v. Ethiopia** (1984)

EXAM #2- TUESDAY, NOVEMBER 13

VI. The Development of International Law

A. Governing the Oceans---11/15, 11/20

Janis and Noyes:

- 943-950 (**Lauritzen v. Larsen**)
- 813-821, 821-824 (**Case of the Muscat Dhows**), 827-830
- 830-833 (**The M/V Saiga (No. 2)**), 834-837
- 837-843 (**United States v. Dire**), 834-853, 860-862
- 872, 872-877 (**Regina v. Keyn**), 877-878, 881-892

Online:

- **The Wildenhus Case** (1887)
- **The Hoff Case** (1929)
- **The Corfu Channel Case** (1949)

Documents:

- **1982 UN Law of the Sea Convention**, esp. Articles 3, 5, 7, 10, 17-19, 21, 24-25, 37-39, 42, 44-45, 55-59, 62, 64, 66, 69, 76, 94, 111, 121, 136-137, 150-151, 155, 161, 170, 192-233, 246, 286-287

PAPER ASSIGNMENT- DUE NO LATER THAN TUESDAY, NOVEMBER 21, AT 5:00 P.M.!!!

B. Protecting the Environment--- 11/27, 11/29

Online:

- **The Trail Smelter Arbitration** (1938, 1941)
- **The Lake Lanoux Arbitration** (1957)
- **The Nuclear Tests Case II** (1973)
- **The Pulp Mills Case** (2010)

C. Limiting Armed Force--- 12/4, 12/6

Janis and Noyes:

- 701, 731-732, 732-735 (**The Naulilaa Case**), 735-737
- 737-740 (**The Caroline Dispute**), 740-741
- 741-747, 747-749 (**Certain Expenses Case**)
- 774-785 (**2003 Invasion of Iraq**)
- 793-801 (**U.S. Response to Terrorism**)
- 801-806, 806-809 (**2013 U.S. Statement on Syria**), 808-812

Online:

- **Military and Paramilitary Activities in Nicaragua II** (1984)

Class Coverage:

- **The Israeli Raid on Entebbe** (1976)

Documents:

- **1945 UN Charter**, Articles 2, 10-12, 23-54 (in Janis and Noyes, 1078-1090)

FINAL EXAM- MONDAY, DECEMBER 17- 8:30-11:30 A.M.

ASSIGNED PAPER TOPICS

Each of you is expected to write a 6-8 page paper on one of the following topics or another one I have approved. These topics have been chosen to allow you to explore in more depth than we can in the course the complex relationship between international law and politics. All of the quotes are entirely fictitious. You may agree or disagree with them in whole or in part; there are no “correct” responses. However, from the first paragraph of the paper you should develop an argument that makes clear the nature of **your** “response.”

Most topics will **not** be linked directly to cases and materials we will be studying. Indeed, there are few for which **any** of the cases or international agreements will be directly relevant. Therefore, it is entirely possible (and very desirable) for you to choose a topic and begin research for the paper early in the course.

You can suggest a topic other than those listed below, but any alternative topic must be proposed in writing no later than 5:00 p.m. on Friday, September 28, in a form similar to those below. This is something we can negotiate, so feel free to come in to discuss possible topics. I will circulate a list of all the approved topics before fall break.

To force you to at least to get started on the paper, by 5:00 p.m. on Friday, October 12, you must email me a paragraph indicating which topic you plan to choose and giving me a “preliminary” sense of the argument you intend to make. Your argument can change, but this will be helpful for both of us if you want to meet to discuss how you plan to approach it.

You may hand in your paper at any time, but no later than 5:00 p.m. on Tuesday, November 20.

#1- “The fundamental problem facing the International Criminal Court is not that it is too strong. It is too weak.” Respond.

#2- “Since it is no longer party to the Non-Proliferation Treaty, North Korea has the same legal right as any sovereign state to develop nuclear weapons for deterrence purposes.” Respond.

#3- “Effective management of the Arctic region requires a new legal regime similar to that developed for Antarctica through 1959 Antarctic Treaty system.” Respond.

#4- “Sovereign immunity is an unfortunate anachronism. Domestic courts must refuse to exempt people and companies from the rule of law, simply because of their connection to a state.” Respond.

#5- “The Russian invasion of Crimea is a *fait accompli* and the Russians are now in effective control of the Crimean peninsula. It is time to acknowledge Russian sovereignty over the region.” Respond.

#6- “All human beings facing political persecution have a right to seek asylum in other countries. Efforts by any European state to curb these rights violate international law.” Respond.

#7- “The time has come to acknowledge Palestinian statehood and admit Palestine as a full member of the United Nations.” Respond.

#8- “The Paris Climate Change Agreement must be revised.” Respond.

#9- “The US decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) and to reimpose sanctions against Iran were both lawful actions and good policy.” Respond.

#10- “All international agreements formally entered into by the United States should be presumed by American courts to be non-self-executing.” Respond.

PREPARING A BRIEF

Below is an outline of **one** way to prepare a brief of a legal case. Briefs are not required, but many students have found them helpful for learning cases and for preparing for exams. Feel free to modify this structure in any ways you find useful.

Whatever approach you use, **keep your brief short!** If it gets too long, you might as well reread the whole case. Isolate the facts that are crucial to the outcome of the case, something you may be unable to do until you have read the case through several times or until we have covered it in class. Use descriptive or memorable words and phrases to trigger your recollection of all the information your brief cannot contain.

NAME OF THE CASE

FACTS

- **Parties**
- **Date of decision**
- **Forum:** Where is the case being decided?
 - In a national court? If so, at what level (State, Federal District, Supreme, etc.)?
 - If on an international level, which court (International Court of Justice, an ad hoc tribunal, International Criminal Court, etc.)?
- **What happened-** Summarize the progression of events that created the dispute and, if relevant, brought this case to this forum. This may include key dates and may require fuller explanation of relationship between the parties. It may also be helpful to indicate any actions taken by "lower courts."

ISSUES- What does the **court** perceive as the legal question(s) before it? (Note: Some judges, for political or other reasons, may deliberately avoid what might seem to be the "real" issues presented by the case.)

DECISION

- **"Winner"** (if there is one)
- **Legal consequences of decision-** What is the effect of the decision? (compensation, jail term, etc.)

LOGIC- By what line of reasoning did the Court reach its decision? Did it apply or enunciate a "doctrine" to support it?

SIGNIFICANCE- Why is the case important to Government 2600? Why is it placed where it is in the syllabus?