“Inter-national” law, which Jeremy Bentham defined as the rules governing sovereign nations, is now a bit different than in Bentham’s day. First, it is no longer restricted to the “foreign relations” of states—at least if the subject of foreign relations is understood to be limited to how governments behave towards one another. Particularly since its domain has expanded to deal with the way governments act toward their own citizens, whether with respect to “human rights” or economic affairs, the subject matter of international law now covers virtually all the topics that national laws address. This means that international law contains material that will remind students of contracts, torts, criminal law, property, and yes even civil procedure. The law of inter-state treaties resembles (but is not identical to) contracts. The law regarding international responsibility for wrongful acts (that is, acts in violation of international law) looks something like torts. Criminal charges brought for violations of the Geneva Conventions (war crimes), for crimes against humanity, genocide or other crimes defined by treaties (e.g., certain acts of terrorism), whether brought in national court or international criminal courts, are grounded in ideas inspired by national criminal law. International investment law protects the property of foreign investors and a number of human rights treaties include property protections among their rights. Over 20 international courts and tribunals now exist—which means that ideas of jurisdiction comparable to those studied in U.S. civil procedure—are also relevant.

Second, inter-national law is no longer limited to inter-state law. The types of entities governed by and affecting the content of international law has expanded. Today, international law—once consisting solely of rarely negotiated treaties, vague rules of custom, and difficult to find general principles of law drawn from the comparative study of the laws of many nations—includes many of the actions and pronouncements of a number of other actors, including actions taken by inter-governmental organizations such as the World Bank and the UN, international judges and arbitrators, and even hybrid public/private organizations such as the International Organization for Standardization (see http://www.iso.org/iso/home.html). Even NGOs like Amnesty International or the Red Cross engage in many activities intended to affect international law or intended to make that law more effective.

As is suggested by the table of contents in the casebook assigned to the course, although there are aspects of this course that will remind students of other first year classes, there are many things that are unique. International law has its own set of sources and its own approach to getting those subject to the law to comply with it. There is no hierarchically superior international court that engages in “judicial review.” No single international constitution, no single legislature, and no single set of executive agencies in charge of making, for example, environmental regulations for the planet. There is also, of course, no world police force. It is law without a judicial, executive, legislative, or administrative branch that still has characteristics of all of those. To confuse matters further, although it is often called “public international law,” some parts of international law govern the relations of private parties, such as multinational corporations, and some of its rules involve non-state actors (from business
enterprises to non-governmental organizations (NGOs)) as these too are increasingly participants in the making and enforcement of the law.

International law survey courses present a perennial challenge for the teacher forced to choose between depth and coverage. This course, like the casebook chosen for it, focuses on the process by which international law gets made and is enforced and what distinguishes that process from the ways national laws get made and enforced. Because of its unique aspects, much of the course tries to explain what substitutes for traditional institutions like courts and legislatures. The provides a different perspective on what “law” and “law enforcement” might be—and some of those aspects may remind students of courses in political science or even economics (e.g., game theory). Although students in this course will be exposed to many of the sub-regimes within international law (including human rights, the trade and investment regimes, and the rules governing the use of force), the emphasis will be on acquiring the tools to be able to practice and do research in this field.

This is intended to be a practical course that happens to dabble in theory as necessary to make you a better practitioner. Like other courses at NYU, the point is to learn how international law gets made, enforced (or not), and changed. It is not principally about memorizing rules that are likely to change. Students interested in further study of the topics introduced in this course—from the law of the WTO to human rights—are likely to find specialized international law courses in NYU’s exceptionally rich international law curriculum. This course does not substantially overlap (or substitute for) any of those courses. At the same time, taking a basic international law survey course such as this before taking specialized courses in, for example, human rights, international trade, or international investment, is a good idea.

The assigned, required texts for this class are Dunoff, Ratner, & Wippman, International Law: Norms, Actors, Process (4th ed. 2015) (henceforth DRW) (be sure to purchase the 4th edition of the casebook) and Sean D. Murphy, Principles of International Law, (2nd edition 2012) (henceforth “Murphy”). Most of the primary materials used in the course, from particular treaties to judicial opinions, can be found and downloaded off of the DRW website at https://www.law.umich.edu/facultyhome/drwcasebook/Pages/default.aspx. That website substitutes for a documentary supplementary text; apart from supplemental documents (some of which will be part of the required readings) it includes “updates” for material after the casebook went to press. Students should have available or have print copies of whatever documents from this textbook website are included in the assigned readings as these may be needed to follow class discussions. Other supplementary materials from the casebook website or elsewhere that are required reading will be indicated in the syllabus. Other optional readings will be suggested from time to time either in class or in the readings lass for those interested in pursuing particular subjects at greater depth. In addition, a number of supplementary texts are available on course reserve in the law library (see below). Those interested in investing in a solid treatise (not required for purchase for this course) may want to consider Ian Brownlie, Principles of Public International Law (various editions available in paperback).

Although this is an introductory course, it will emphasize the real practice of international law, especially for those practicing within the United States—whether with respect to work at law
firms, within government, as general counsel to multinational corporations, or a lawyer working for an NGO. The course will stress the need to work with the primary tools of international law, including particular treaties, to be able to make arguments on both sides and in all the venues that international lawyers practice.

The casebook website above should not be confused with the course website for this class under NYU Classes which contains this syllabus and under “resources” other assigned readings as well as the professor’s powerpoints as used in class. (Usually these powerpoints will be posted shortly after the class.) Also under “resources” in NYU Classes are some of the professor’s prior exams in this course. Last year’s exam will be reviewed during a special session towards the end of the semester.

Books on Course Reserve:

José E. Alvarez, International Organizations as Law-Makers (2005) (also available in paperback)

American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States (1986) (also available in paperback student edition)

Ian Brownlie, Principles of Public International Law (various editions)


Louis Henkin, Foreign Affairs and the U.S. Constitution (2nd ed. 1996)

Peter Malanczuk, Akehurst’s Modern Introduction to International Law (7th ed. 1997)

Course Evaluation

Grades will be based on a four hour open book examination as well as points, at the professor’s option, for class participation. Class attendance is essential to success in this class. Students who anticipate needing to be absent for more than a single class should probably not take this course.

Office Hours

Students are welcome to visit Professor Alvarez during his office hours. Prof. Alvarez’s office hours will be posted on the professor’s door (VH 325) from week to week; students should sign up in advance at the times indicated to avoid conflicts with others. Registered students in this course are encouraged to come by at least once during office hours early in the semester for a get acquainted visit. In addition, the teaching assistant for this course, Katerina Wright (Knw28@nyu.edu) will be available to answer questions as they come up as well. Ms. Wright also will be conducting one hour working group sessions at various points in the semester to address particular questions raised by the readings or prior exams. While attendance at those working sessions is optional, students are strongly urged to attend.
Syllabus

Part A: Introducing International Law

Class 1: Introducing the Sources and Content

Readings:
Murphy, Chapter 1 (pp. 3-30)
DRW, Preface and Table of Contents

Questions for class discussion:
1. Based on the above readings, what is “international law”?
2. Who makes international law? For what purpose?
3. Do the 100 Ways and the 50 Ways illustrate the basic theoretical approaches to international law discussed in Chapter 1 of Murphy? How would a “legal realist” (perhaps a political scientist) explain why states comply with the many rules reflected in the 100 Ways? Do the 50 Ways merely identify the many reasons states have to avoid complying with international law or do they suggest other theoretical perspectives?
4. Based on the 100 Ways, what do you think international lawyers do? If a law firm says it practices “international law,” what do you suppose they might mean? What does a government lawyer who practices international law do?
5. Why do you think that the American Society of International Law, during its 100th anniversary, put out a document like the “100 Ways”?
6. How is international law different from U.S. law?
7. Prof. Alvarez wrote the 50 Ways back in 2006. Can you think of additions to his 50 Ways that reflect current events? (Note: Prof. Alvarez has announced that he plans on issuing a new version of his 50 Ways to coincide with the Society’s expected “update” on its 100 Ways. He welcomes suggests from students of this class at any time during the course of this semester.)

Optional Reading:

Class 2: The Unique Nature of International Law

Readings:
DRW, Remedies (pp. 3-31)
Also skim the UN Charter’s Preamble, and the UN Charter, Chapters I-II and VI-VII)(see documents section of the DRW website cited above for text of the UN Charter, at https://www.law.umich.edu/facultyhome/drwcasebook/Pages/default.aspx).
Class Discussion:

Answer the questions at DRW, pp. 15 and 22. Does the UN Charter help to answer some of the questions posed in the DRW readings? Does the UN Charter require the parties in these two cases to resolve their disputes peacefully? Does the UN Charter anticipate that the parties to these disputes use a particular method to solve their disputes? Does the UN Charter contemplate that the UN Secretary-General should act as a judge or arbiter of inter-state disputes? If not, why did the parties in the Rainbow Warrior incident turn to the Secretary-General to resolve their dispute? How do you suppose resort to the Secretary-General differs from going to the International Court of Justice (ICJ) (as in the Libya-Chad case)? Why do you think that Libya and Chad went to the ICJ to resolve their dispute? What would make those governments comply with the judgment issued by that Court?

Based on the assigned readings for this class, how would you describe how parties to international disputes use international law to resolve their disputes? Based on the two problems discussed in the text, how would you say international law gets “enforced”? Optional Reading:

Murphy, Chapter 4, sec. A-C (pp. 125-top of 140)

Part B: The Sources of International Law

Class 3: The Mechanics of Using and Interpreting Treaties

Readings:
Murphy, Chapter 3, sec. A (Treaties)(pp. 77-top of 92)
The Vienna Convention on the Law of Treaties, Articles 1-18, 24-64 (see casebook website under documents)

Class Discussion:

This class introduces this important source of international law by looking at some of the clauses in the Vienna Convention on the Law of Treaties (VCT).

Use the VCT articles above to answer the following questions:

1. What exactly is a “treaty” for purposes of the VCT? Can states conclude a legally binding agreement that is not subject to the VCT? Can states enter into a binding commitment that is not a treaty?
2. How do states bind themselves to a treaty?
3. Can states ever withdraw from a treaty and if so, do they have to give notice to other treaty parties prior to withdrawing?
4. What happens when a state’s treaty obligations and its domestic (or national) law conflict? Which prevails as a matter of international law? Does it matter for this purpose if the conflicting national law is the state’s constitution?
5. Look carefully at Articles 31 and 32. How does one interpret a treaty? What precisely does the interpreter of a treaty (like a national or international court judge) look to in deciding what a treaty means? What is included in “context”? Where do you suppose you can find the “object
and purpose” of a treaty? Can interpreters of a treaty take into account its negotiating history, such as what the respective state parties said in the course of negotiating the treaty? Do you think that treaty interpreters should be as free to examine that negotiating history as U.S. judges are with respect to the interpretation of a statute passed by Congress? Do you think that the VCT rules for interpreting a treaty should apply in the same way to all treaties, including the UN Charter?

6. Can a state seek to get out from a treaty obligation because the underlying circumstances have changed? Because the state was originally economically coerced into entering the treaty? Because it was forced to conclude the treaty by force? Because another party to the treaty breaches it? Are there other reasons that a state can terminate or suspend the operation of a treaty?

7. How exactly do states enforce their treaty commitments vis-à-vis each other?

Class 4: Using Treaties: A Case Study

Readings:

DRW, 35-68; focus on the notes and comments in the casebook at p. 39, 46-47, 56, 65-66. Students should also bring to class or have available the VCT.

Background Reading (in connection with reservations above):
Tentative Syllabus for Rest of Course

Classes 5-7: Custom and other sources of international law

Part C: The Participants in the International System

Class 8: States
Class 9: International Organizations and International Courts
Class 10: NGOs, MNCs, and States of the United States

Part D: International Law as (U.S.) Domestic Law

Class 11: Making International Law in the United States
Class 12: Breaking International Law and Remedies
Class 14: The Act of State Doctrine/Sovereign Immunity
Class 15: Jurisdiction to Prescribe
Class 16: Jurisdiction to Enforce

Part E: The Protection of Human Dignity

Class 17: Introduction to Human Rights
Class 18: The United States and the Covenants
Class 19: CEDAW
Class 20: Torture

Part F: Select International Regimes

Class 21: Limits on the Conduct of War and Occupation
Class 22: International Criminal Law and Tribunals
Class 23: The Trade Regime
Class 24: The International Investment Regime
Class 25: Use of Force I: The Gulf War
Class 26: Use of Force II: Iraq 2003
Classes 27-28: The Challenge of Terrorism