INTERNATIONAL LAW

I. Required Texts
   Carter and Trimble, International Law (Aspen, 1999)


   Supplement of Cases, Materials, and Problems (available from the Records Office, on the first floor of Stockton Hall.)

II. Office Hours and List Server
   My regular office hours this semester will be Mondays, 3:00-5:00 p.m, and any time by appointment. I will also be setting up a list server for this course to allow us to discuss issues and questions outside of class. You should certainly not feel compelled to participate in such an arrangement if it doesn’t interest you, but it can be a good way to think through cases or ideas that don’t get enough attention in class. It may also make a large class feel smaller.

III. Reserve Reading
   If you wish to examine in greater detail any of the topics covered in this course, I recommend the following texts, which have been placed on reserve in the library:


   Beck et al., International Rules: Approaches from International Law and International Relations (1996)

   Brownlie, Principles of Public International Law (1998)

   D’Amato, The Concept of Custom in International Law (1971)

   Elias, Africa and the Development of International Law (1988)


### IV. Recommended Websites

(a shamefully partial listing)

Research Guide to International Law on the Internet:
- [www.spfo.unibo.it/spolfo/ILGUIDE.html](http://www.spfo.unibo.it/spolfo/ILGUIDE.html)
- or
- [www.law.cornell.edu/International_Resources/foreignguide/inter.htm](http://www.law.cornell.edu/International_Resources/foreignguide/inter.htm)
- or

United Nations:
- The International Court of Justice: [www.icj-cij.org](http://www.icj-cij.org)
- International Criminal Tribunal for the Former Yugoslavia: [www.un.org/iccy](http://www.un.org/iccy)
- Scholars’ Workstation: [www.library.yale.edu/un/index.html](http://www.library.yale.edu/un/index.html)

Intergovernmental Organizations:
- IGO’s generally: [www.library.nwu.edu/govpub/resource/internat/igo.html](http://www.library.nwu.edu/govpub/resource/internat/igo.html)
- International Labour Organisation: [www.ilo.org](http://www.ilo.org)
- International Monetary Fund: [www.imf.org](http://www.imf.org)
- International Telecommunications Union: [www.itu.int](http://www.itu.int)
- Organization for Economic Cooperation and Development: [www.oecdwash.org](http://www.oecdwash.org)
- UNCITRAL: [www.uncitral.org](http://www.uncitral.org)
- World Trade organization: [www.wto.org](http://www.wto.org)

Regional Intergovernmental Organizations
- Americas: Organization of American States: [www.oas.org](http://www.oas.org)
  - Mercosur: [www.guia-mercosur.com](http://www.guia-mercosur.com)
V. Class Participation and Examination Information
This semester, I’ll be using an on-deck system for class discussion, meaning that roughly
 ten students will be designated in advance to serve as discussants for the following week.

The final grade will be determined primarily by an open-book, three-hour examination
based on the lectures, class discussions, and all assigned material, whether discussed in
class or not. The examination is scheduled for Wednesday, December 13, 2000, at 9:00
a.m. The examination score may be raised by one grade-step (e.g. B+ to A-) to acknowledge the quality (not the quantity!) of a student’s contribution to class discussion.
Needless to say, if you feel disadvantaged by a grading system that takes class participation
into account in this way, I hope you’ll feel free to discuss this with me early in the
semester, so that we can make other arrangements.

VI. Glossary of Foreign Phrases
Not surprisingly, foreign phrases recur in international law cases and materials. These can be an irritating distraction the first time you encounter them, but the sad truth is that they aren’t ornaments. They’re critical in the effort to understand the field, and so I hope that the following glossary will be useful to you:

**compromis**: an agreement or stipulation among states under which they jointly submit a particular dispute to the International Court of Justice for resolution. See the Statute of the International Court of Justice, Article 36(1).

**erga omnes**: the obligations of a State toward the international community as a whole, including the proscription of aggression, genocide, slavery, and racial discrimination. See the *Barcelona Traction Case*, 1970 I.C.J. 3, at para. 33, 34.

**ex aequo et bono**: out of equity or fairness. See the Statute of the International Court of Justice, Article 38(2).

**ipso facto**: by the fact (or act) itself.
**jus (or ius) ad bellum**: law governing nations’ resort to force. Contrast **jus in bello**.

**jus (or ius) civile**: the system of law peculiar to one state or people, *i.e.* the law created within each country. Contrast **jus gentium**.

**jus (or ius) cogens**: peremptory norms of international law from which no derogation by treaty is permitted. See Vienna Convention on the Law of Treaties, articles 53 and 64.

**jus (or ius) gentium**: law established among all people by natural reason, now frequently understood to refer to the law of nations. Contrast **jus civile**.

**jure (or iure) gestionis**: acts that are commercial by nature. Under U.S. law, foreign governments forego immunity for their intrinsically commercial acts. See the Foreign Sovereign Immunities Act, 28 U.S.C. 1605(a)(2). Contrast **jure imperii**.

**jure (or iure) imperii**: acts that are governmental (or sovereign) by nature. Under U.S. law, foreign governments retain immunity for their intrinsically governmental acts. See the Foreign Sovereign Immunities Act, 28 U.S.C. 1605(a)(2). Contrast **jure gestionis**.

**jus (or ius) in bello**: law governing the conduct of warfare, sometimes referred to as humanitarian law or the law of war. Contrast **jus ad bellum**.

**jus (or ius) sanguinis**: the right of “blood,” meaning the principle that a person’s citizenship is determined by the citizenship of the parents (or one of them). Contrast **jus (or ius) soli**.

**jus (or ius) soli**: the law of the soil or place of one’s birth as the basis for citizenship.

**lex ferenda (or de lege ferenda)**: norms in the process of ripening into law. Contrast **lex lata**.

**lex lata (or de lege lata)**: law that is binding and well-established. Contrast **lex ferenda**.

**lex mercatoria**: the law merchant or commercial law, frequently referring to market customs that became binding law in all commercial nations.

**male captus, bene detentus**: the doctrine that a state may try persons brought to its courts through irregular means, even by means of abduction from another state in violation of international law, in the absence of protest by the other state.

**opinio juris sive necessitatis**: the conviction that a behavior is required by law (as distinct from behaviors motivated by other concerns, such as humanitarianism or habit). A requirement before any norm can be considered customary law. See the Statute of the
International Court of Justice, Article 38 (1)(b).

*pacta sunt servanda*: the doctrine that all international agreements must be observed in good faith. See Vienna Convention on the Law of Treaties, Article 26.

*persona non grata*: an undesirable person, generally referring to the ground for expelling or rejecting a diplomat.

*rebus sic stantibus*: “at this point of affairs;” the change-in-circumstances doctrine, defining when a fundamental change in the underlying assumptions and conditions of a treaty allows its termination or suspension. See Vienna Convention on the Law of Treaties, Article 62.

*terra (or res) nullius*: land (or thing) belonging to no one.

*travaux préparatoires*: the legislative history (or preparatory work) of a treaty, sometimes used in the interpretation of the treaty. See Vienna Convention on the Law of Treaties, Article 32.

VII. Syllabus

In the following syllabus, “CT” refers to Carter and Trimble, *International Law* (Aspen, 1999), “Sel. Doc.” refers to Carter and Trimble, *International Law: Selected Documents* (1999), and "Supplement" refers to the supplement of cases, materials, and problems available from the Records Office. When the textbook refers to an item that is in the Selected Documents, you should read that material in its entirety even if it is not separately assigned in this syllabus.

We should cover roughly 25-30 pages of text and/or supplement per class hour, though the pace inevitably varies somewhat. Each class assignment is designed to be completed in 60-90 minutes of concentrated reading. *Special assignments or changes in this syllabus may be announced in class from time to time.*

I. INTRODUCTION TO THE TYPES AND SOURCES OF INTERNATIONAL LAW

Class #1: CT 1-30 (please skim the problems on pp. 4-9)

A. Rules of Conventional International Law

Class #2: CT 112-18 (through ¶ d); 175-84 (p. 184 et seq., Questions 1, 4, 8)

Class #3: CT 189-202 (p. 202 et seq., Questions 1, 2, 4, 5, 7, 9, 11, 13)

Class #4: CT 210-12; 219-21; 223-28 (skim); 228-31; 239-45 (p. 245 et seq., Questions 1, 2, 4, 5, 9, 12, 13). Optional: Crosby v. National Foreign Trade Council (S.Ct., 19 June 2000) (visit http://laws.findlaw.com/us/000/99-474.html)


2. International Principles Governing Treaties
Class #6 and #7 (continued below): Sel. Doc. 49-74 (The Vienna Convention on the Law of Treaties, esp. Arts. 18-23, 26-27, 31-38, 52, 53, 60, 62, 64) CT 122-34

Class #7 and #8: Supplement: Problem: The Reservations Regime of the VCLT and the Convention on the Elimination of All Forms of Discrimination against Women

B. Rules of Customary International Law and “General Principles”
Class #9: CT 134-46 (please skim the questions on pp. 145-6); 169-72
Supplement (at CT 138): The Lotus Case
Supplement (at CT 145): The TOPCO Arbitration

Class #10: Supplement: Problem: State Behavior and the Emergence of Custom: The Temple of Preah Vihear Case and The Norwegian Fisheries Case

Class #11: CT 252-64

Class #12: Supplement: Kadic v. Karadzic, Doe v. Unocal

Class #13: Supplement: Problem: The Relationship between Customary Law and Treaties: The North Sea Continental Shelf Cases and the Nuclear Weapons Case

C. International Organizations as “Creators” of Law
Class #14: CT 146-49 (up to ¶2); 499-512 (up to notes); 523-29 (up to Driscoll); 538-42 (up to Lowenfeld) (skim); 549-52 (up to Hartley) (skim); 581-93 (skim)

Class #15: The United Nations and the Law of Force
II. DISPUTE SETTLEMENT AND THE APPLICATION OF RULES IN EXEMPLARY INTERNATIONAL SETTINGS

A. Negotiation, Mediation, and Conciliation
Class #17 (continued below): CT 287-94 (skim)

B. The International Court of Justice
Class #17 and #18: Sel. Doc. 23-24 (U.N. Charter, arts. 92-96); 28-47 (I.C.J. Statute, note especially articles 34-38);
CT 302-310 (skim); 310-34


C. Regional and Specialized Courts
Class #20 and #21: CT 344-359 (p. 359 et seq., Questions 3, 4, 5, 6, 8, 10)
Supplement: The Inter-American Court of Human Rights: Velásquez-Rodríguez

D. International Arbitration
Class #22: Supplement: The Fundamentals of Arbitral Practice: Exhaustion of Local Remedies, Waiver, and Espousal
CT 372(§2)-81

Class #23: Supplement: “Public” Arbitration: Trail Smelter and Rainbow Warrior
III. THE CONCEPT, CONSEQUENCES, AND LIMITATIONS OF STATEHOOD

A. Statehood’s Prerequisites
   Class #24: CT 461-83
   Class #25: CT 493-93; Supplement: Tinoco Claims Arbitration and Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg

B. Statehood’s Perquisites
   Class #26: Supplement: The Right to Grant and Withhold Nationality: Nottebohm

C. Allocation of Authority Among States
   1. Jurisdiction to Prescribe
      Class # 27 and #28: CT 709-24, 747-55 (Helms-Burton), 767-77 (Younis)

   2. Jurisdiction to Enforce and Adjudicate
      Class #29: CT 777-781; 795-801

   3. Choice of Law
      Class #30: CT 801-12; 723-734

D. Limitations on the Exercise of Jurisdiction
   1. Foreign Sovereign Immunity
      Class #31: CT 595-606; 614-18 (through ¶ a)
      Sel. Doc. 297-310 (at CT 605)

      Class #32: CT 624-34 (¶ 4 and 5)
      Supplement (at CT 634, after ¶ 5): Cargill Int’l v. M/T Pavel Dybenko

      Class #33: CT 634 (¶ 6)-646; skim 647-51 (through ¶ 12)
      Supplement: The FSIA in Overview: Siderman v. Republic of Argentina

   2. Diplomatic, Consular, and Head-of-State Immunity
      Class #34 (continued below): CT 651(¶ 13)-60
      Sel. Doc. 310-23 (Arts. 2, 4, 5, 23, 26, 27, 31, 33, 35, 41, 43, 45)

   3. The Act of State Doctrine
      Class #34: CT 661-81 (skim 662-64)

      Class #35: CT 687-708

      Class #36: Supplement: Suing Ferdinand Marcos
IV. INTERNATIONAL PROPERTY LAW AND THE TRANSITION FROM RULES OF ABSTENTION TO RULES OF COOPERATION

A. The Law of the Sea
Class #37: CT 927-931; 936-41; 950-66
Class #38: CT 966-81 (up to Problem); 986-93

B. Airspace
Class #39: CT 1017-1025 (p. 1025 et seq., Questions 2, 4, and 5); 1035-45

C. Outer Space
Class #40: CT 1045-67 (p. 1049 et seq., Questions 1, 3, 4, 5; p. 1064 et seq., Questions 2, 3, 6)

D. The Transition Exemplified: International Environmental Law
Class #41: CT 1069-73; 1078 (Restatement 601)-83
Sel. Doc. 751-55
Class #42: CT 1088-91; 1129 (Section C)-43
Supplement (at CT 1091): Contemporary International Environmental Law

V. “FINE. BUT IS ANY OF THIS REALLY LAW?”
CT 31-78 (optional, but recommended)