The Function of Law in the International Community

Hilary Term 2007

Prof Vaughan Lowe and Prof Sir Adam Roberts

Wharton Room, All Souls, Wednesdays 11.00 – 1.00pm

General readings and materials on international law:

D. J. Harris, Cases & Materials on International Law, 6th ed., 2004
Shirley V. Scott, International Law in World Politics, 2004

Blackstone’s International Law Documents (ed. M Evans), 7th ed., 2005 [This text will be available in the Examination Room.]

Recent volumes on international law and international politics:

J. Goldstein et al. (eds.), Legalization and World Politics, 2001 (special issue of International Organization 54 (2000), issue 3)
C. Reus-Smit (ed.), The Politics of International Law, 2004
Philippe Sands, Lawless World, 2005
J. L. Goldsmith and E. A. Posner, The Limits of International Law, 2005
Thomas Schoenbaum, International Relations: The path Not Taken, 2006

Readers:

Harold H. Koh & Oona Hathaway (eds.), Foundations of International Law and Relations, 2004
Session 1: The Politics of International Law: An Introduction

We will consider the role of international law in international relations generally, and focus upon the emergence of the legal doctrine of the continental shelf as a case-study.

Please read:-

* David Harris, *Cases and Materials on International Law* (6th ed., 2004), chs 1, 2 and pp 476-484. Please concentrate on understanding the *North Sea Continental Shelf* cases and related materials at pp 23-41 and 476-484.
* Shirley V. Scott, *International Law in World Politics*, 2004, ch. 5 & 6 (as an introduction)


Martti Koskenniemi, ‘Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations’, in Michael Byers (ed.), *The Role of Law in International Politics*, 2000, 17-34


Questions
1. What is international law?
2. How can States create binding rules of international law when they wish to do so?
3. In what ways may the rules on the continental shelf be given practical effect?
Session 2: International Law in National Security

We will use the Global War on Terrorism as a case study, and focus particularly on the status and treatment of detainees, including the use of torture and the Guantanamo facility.

On torture
* www.cdi.org/news/law/torture.cfm (Please read the Memoranda on torture linked to this page) * www.humanrightsfirst.org/us_law/etn/index.asp

On Guantanamo
* http://writ.news.findlaw.com/dorf/20051121.html and links therein

Cases
http://web.amnesty.org/library/index/ENGAMR511542006

General

Questions
1. Should domestic courts always apply relevant rules of international law?
2. Should international law prevail over national laws?
3. How do international law rules and arguments affect the distribution of political power within States?
Session 3: International Law and the Environment

We will use the Kyoto Protocol and the regulation of CFCs as a case study, focusing on the role of non-State actors in driving legal change and the factors affecting international co-operation.

On Kyoto:-
http://unfccc.int/kyoto_protocol/items/2830.php
fpc.state.gov/documents/organization/7938.pdf

On CFCs:-
http://ozone.unep.org/Treaties_and_Ratification/index.asp

Greenpeace, http://www.greenpeace.org/raw/content/international/press/reports/Guide-to-Nairobi.pdf, and
http://archive.greenpeace.org/climate/climatecountdown/bushvclimate.htm

David Freestone and Charlotte Streck, Legal Aspects of Implementing the Kyoto Protocol Mechanisms (2005)

Questions

1. Why has the regulation of CFCs been a success while the Kyoto Protocol has failed?
2. Should the USA join the Kyoto Protocol, and if so, why?
3. What roles have been played by Governments, NGOs and international organizations in the development of international environmental law? What is the basis of their authority in this field?
Session 4: Use of Force and the Security Council

*Attorney-General (UK) on self-defence: http://www.publications.parliament.uk/pa/ld200304/ldhansrd/vo040421/text/40421-07.htm#40421-07_head0

*Prime Minister on Use of Force, < http://www.number10.gov.uk/output/Page5461.asp


B. Simma, ‘NATO, the UN, and the Use of Force’, European Journal of International Law 10 (1999), 1-22


Questions
1. Does it make sense to speak of an international law on the use of force?
2. Why did the US not rely on pre-emptive self-defence in its letter of March 2003 to the Security Council?
3. What does the inability of the US to secure Security Council approval in March 2003 signify for the role of the Council?
Session 5: International Law and International Trade

We will focus on the WTO and on the concept of special and differential treatment (SDT). We will consider the India-EU dispute as a case study.

General Reading

* www.wto.org and links to *Dispute Settlement System Training Module, Ch. 11. ([http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/signin_e.htm](http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/signin_e.htm))
* http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm Please look at the Appellate Body Report, WT/DS246/AB/R.
* Joseph Stiglitz & Andrew Charlton, *Fair Trade for All*, 2005

Questions

1. Is the correction of extreme economic inequalities a proper role for international law?
2. To what extent should the law constrain the use of trade as an instrument of foreign policy?
3. What should be the goals, and the governing principles, of international trade law?
4. Can a conference of States of widely differing economic, military and political power ever be a satisfactory forum for the creation of a trading system dedicated to the reduction of inequalities between States?
Session 6: International Law-Making: Treaties, Custom and Beyond

*Raustiala, Kal, ‘Form and Substance in International Agreements’, American Journal of International Law 99 (2005), 581-614
*Slaughter, Anne-Marie, ‘Governing the Global Economy through Government Networks’, in Michael Byers (ed.), The Role of Law in International Politics, 2000, 177-205

Goldsmith, Jack L. & Eric A. Posner, The Limits of International Law, 2005, chs. 2 and 4

Questions
1. Why would states choose one form of law-making or another?
2. How does power affect outcomes in the different forms of law-making?
3. Can we expect differences in compliance between different forms of international law?
Session 7: Managing International Disputes

Reading


Questions

1. What are the desiderata of a dispute settlement system from the point of view (a) of a Government and (b) of a private corporation?

2. Why would a State be willing to submit a dispute with another State to settlement by adjudication?

3. To what extent can the Rule of Law and the principle of the sovereign equality of States be secured by the submission of disputes to settlement by peaceful means?
Session 8: International Law in International Politics: Building a Picture


*Martti Koskenniemi, ‘Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations’, in Michael Byers (ed.), The Role of Law in International Politics, 2000, 17-34


Hedley Bull, The Anarchical Society, 1977, ch. 6

Hersch Lauterpacht, The Function of Law in the International Community, 1933


F. Kratochvil, Rules, norms, and decisions: on the conditions of practical legal reasoning in international relations and domestic affairs, Cambridge: Cambridge University Press, 1989


Questions
1. Is international law a vehicle or an obstacle for the powerful?
2. To what extent can rationalist approaches explain the creation of and compliance with international law?
3. Do we need different theories for different areas of international law?