**International Law**

Professor James Cooper Fall 2019

Office 310, 225 Cedar Street Mon. & Wed.

jcooper@cwsl.edu 11:10a.m.-12:35 p.m.

 Room: 2G

**Office Hours**: Mondays and Tuesdays from 9:15 to 10:45 a.m.; Wednesdays from 9 a.m. to 11 a.m.; or by appointment.

**Introduction**

International law has a rich history. Its origins can be traced to the great empires of Greece and Rome. The *jus gentium*, for example, was recognized by Roman law as a law “common to all men.” The subsequent development of international law is filled with the distinct customs of diverse political and economic communities—from the Rhodian Sea codes to the law merchant of the Hanseatic League. Its theoretical foundations are equally eclectic, representing the influences of history and philosophy, from the natural law approach of Thomas Aquinas to the positive law writings of Emerich de Vattel. By the 17th century, the *law of nations* had matured into a distinct legal system.

The term *international law* is itself of relatively modern origin. In 1789, Jeremy Bentham coined the term in reference to “the mutual transactions between sovereigns as such.” According to Bentham, only states were the proper subjects of international law.

Today, international law consists of a diverse set of norms, rules, and institutions that regulate a myriad of distinct issue areas (and actors). Environmental law, trade law, human rights law, Intellectual Property law, criminal law—each of these issue areas are addressed by international law. While it maintains a state-centric approach, international law is not limited to states. It regulates a variety of actors, including individuals, multinational corporations, and nongovernmental organizations.

Despite its prominence, critics have challenged the relevance of international law. George Kennan cautioned that the “legalistic approach to international affairs ignores in general the international significance of political problems and the deeper sources of international instability.” Hans Morgenthau was even more caustic in his remarks. “[T]here can be no more primitive and no weaker system of law enforcement than this.” Robert Bork viewed international law as a legal system drained of morality.

And yet, it is difficult to question the existence or influence of international law in world affairs. As noted by Louis Henkin, “[i]t is probably the case that almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.” While such phenomenological observations are accurate, there are even more compelling explanations for the relevance of international law. Quite simply, international law is relevant because it provides an efficient mechanism for regulating the behavior of states and other actors. But with multinational corporations growing in revenues and power, criminal organizations consolidating their operations globally, and non-governmental organizations extending their work into the public realm, states are no longer the only players in the international system. How should international law adapt?

**Learning Outcomes**

The goals of this course are to introduce students to the theory and practice of international law. At the end of the course, students will have developed the following knowledge and skills:

• the ability to identify distinct norms, rules, and institutions in international law

• an understanding of the theoretical debates surrounding international law

• an understanding of the basic sources of international law

• fluency regarding basic terminology in international law

• the ability to conduct research in international law

• an understanding of the domestic application of international law

• an awareness of international legal issues affecting the United States

• the ability to draft legal documents addressing international law

• the ability to identify and articulate the legal issues presented in factual scenarios

**Attendance and Course Communications**

Students are responsible for signing the attendance sheet at the start of each class. The attendance sheet may not be signed by a student who is not in their seat at the start of class. The attendance sheets are the sole method for establishing attendance. Accordingly, a student will be marked absent if their signature does not appear on the attendance sheet. Students will be withdrawn from the course if they exceed five absences, as per the standard CWSL attendance policy.

All course communications will be transmitted through email. Accordingly, students are responsible for regularly checking their respective CWSL email accounts and for responding in a timely manner.

**Course Requirements and Evaluation**

Students have the option of taking a final examination **or** writing a research paper. This option must be indicated at the beginning of the semester. **The final examination or research paper will count for 60% of the course grade.**

1. A three-hour, closed book examination offered at the end of the trimester.
2. A research paper which may be submitted for Scholarly Writing Credit or as a non-scholarly writing paper. (Papers for Scholarly Writing Credit have different requirements than non-scholarly writing papers. These requirements are set forth in the Academic Policies and during the Scholarly Writing Seminar, the latter of which is mandatory for all students submitting papers for Scholarly Writing Credit.) All students writing research papers (for Scholarly Writing Credit or as a non-scholarly writing paper) for must submit a brief summary, provisional bibliography, and outline of their proposed work by email to the instructor (jcooper@cwsl.edu) by 11:59 p.m. on **October 20, 2019**. At least one rough draft should be submitted to the instructor by mid-November for review. The final version should state on the cover page “For Scholarly Writing Credit” in order to satisfy the Scholarly Writing Credit requirement.

All students will be required to prepare a Position Paper on a topic that will be distributed to the class on October 7, 2019. **The Position Paper will be due on Friday, October 18, 2019 and** **will count for 20% of the course grade. It is to be printed and submitted to Faculty Support Services (FSS) by the close of business (usually 4:30 p.m.), time and date stamped and signed by a member of FSS.**

Class participation is an integral part of this course. Class participation includes: (1) attendance; (2) punctuality; (3) preparation; and (4) professionalism. Students are expected to attend class, to be punctual, and to be fully prepared to discuss the readings. (Students will be called on in class.) Laptop computers may only be used in class for class-related activities, including note-taking. Internet use is only permitted for accessing course documents. Classes may not be recorded under any circumstances. **Class participation will count for 20% of the course grade.**

Professor Cooper also reserves the discretion to award classroom participation points (“Push Points”) in accordance with CWSL’s policies.

This is a three-credit unit course. The American Bar Association (ABA) standards for accrediting law schools contain a formula for calculating the amount of work commensurate for a three-credit unit course.  In addition to attending class and any out-of-class meetings, you will be required to spend a minimum of 432 minutes (or 7.2 hours) outside of class each week preparing for class and completing assignments.

**Course Materials**

***Required****:*

Mark W. Janis and John E. Noyes, International Law: Cases and Commentary (5th ed. 2014) (hereinafter “Textbook”).

All treaty documents and related international materials listed in the Course Readings are readily available online. Supplemental materials will also be distributed to the class.

***Online Classes:***

*Watch Online lectures by Professor Dino Kristiotis (of University of Nottingham, U.K.) on an Uncensored History of International Law.* All online classes with Professor Kritsiotis (Professor K) are posted on Vimeo and the password is: llm\_dino. There are 230 minutes of Professor Kritsiotis’ classes online. They are meant to get you thinking in a critical way about the material and to assist you in understanding an alternative, non-traditional, history of International Law.

***Topics to Explore for Essays and Research Assistance:***

There are a number of areas that a survey course such as ours cannot adequately cover including the law of the sea, conflicts of law, municipal law and international law, and more. A few areas to consider for your essay topics may include a writer on international law for example Hugo Grotius, slavery, or the League of Nations Covenant. See these lectures to explore topics:

* Professor K Class 4 – Hugo Grotius, Freedom of the Sea (10:48), <https://vimeo.com/114766301>
* Professor K Class 6 – Slavery (14:29), <https://vimeo.com/114801736>
* Professor K Class 8 – Covenant of the League of Nations (15:00), <https://vimeo.com/115171225> (40 minutes)

A resource for assisting you with your selection and research for Scholarly Writing Credit (instead of opting for the final examination; see “Course Requirements and Evaluation” section above on pages 2 to 3) is on the CWSL Library Resources page which can be found at <https://guides.cwsl.edu/library/scholarly-writing/find>.

**Course Outline**

**I. An Introduction to International Law**

**Wednesday, September 4, 2019 (Class 1)**

*Course Outline, Themes, Expectations and Evaluation*

*An Overview of International Law*

* Textbook, pp. 1-28

**Friday, September 6, 2019 (Class 2)**

*The Challenge to International Law*

* Robert Bork, *The Limits of “International Law*,” The National Interest 41 (Winter 1989/90)
* James Cooper, *In praise of Justice Kennedy and his legacy of international engagement*, San Diego Union-Tribune (July 13, 2018), <http://www.sandiegouniontribune.com/opinion/commentary/sd-utbg-justice-kennedy-legacy-20180713-story.html>.
* Professor William J. Aceves, *U.S. Legal Imperialism?: The Alien Tort Claims Act*,<https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=fea33a72-6c4a-4086-a541-a93e00ff5a4b> **(40 minutes)**
* Professor K Class 1 – Intro to an Uncensored History of International Law (11:24), <https://vimeo.com/114766296>
* Professor K Class 5 – Possession (9:36), <https://vimeo.com/115166874>

**II. The Sources of International Law**

**Monday, September 9, 2019 (Class 3)**

* Statute of the International Court of Justice (Textbook, pp. 1105-1120)

 *Treaties*

* Textbook, pp. 29-31; pp. 62-65
* Textbook, pp. 65-82
* Textbook, pp. 95-105
* Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.
* Professor K Class 2 – How do we “do” History? (11:32), <https://vimeo.com/114766297>
* Professor K Class 3 – The Treaty of Westphalia, Treaty of Tordesillas (11:40), <https://vimeo.com/114766299>

**Wednesday, September 11, 2019 (Class 4)**

*Guest Lecture by Professor Dino Kritsiotis, University of Nottingham – 50 Years of the Vienna Convention on the Law of Treaties*

* Vienna Convention on the Law of Treaties (1969), signed May 23, 1969, entered into force on Jan. 27, 1980. United Nations, *Treaty Series*, vol. 1155, 331,<http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> (Textbook, pp. 1125-1155).

**Monday, September 16, 2019 (Class 5)**

*Guest Lecture by Professor David Brennan, Professor in Resident, University of San Diego School of Law,* <https://www.sandiego.edu/law/faculty/biography.php?profile_id=5522>.

 *Customary International Law I*

* Textbook, pp. 107-136

**Wednesday September 18, 2019 – Class Cancelled**

**Monday, September 23, 2019 (Class 6)**

 *Customary International Law II*

* Textbook, pp. 171-174; 174-179

**III. International Institutions**

**Wednesday, September 25, 2019 (Class 7)**

*Equity*

* Textbook, pp. 183 – 209
* Professor K Class 10 - Jus Cogens (11:19), <https://vimeo.com/115171224>

**Monday, September 30, 2019 (Class 8)**

*Public International Arbitration*

* Textbook, pp. 331-359

*International Institutions: International Court of Justice*

* Textbook, pp. 359-373

**Extra Reading:**

* James M. Cooper, *Access to Justice 1.1*, 30 Cal. West. Int’l L. J. 429 (2000).

**Wednesday, October 2, 2019 (Class 9)**

 *Contentious Cases*

* Textbook, pp. 373-392

 *ICJ Advisory Opinions*

* Textbook, pp. 403-422

*International Courts and Tribunals Gone Wild*

* Textbook, pp. 422-439

**Monday, October 7, 2019 (Class 10)**

 *An Overview of the United Nations*

* Textbook, pp. 621-631; 631-642
* Madeleine Albright, *Think Again: The United Nations*, Foreign Policy (Oct. 29, 2009), <http://foreignpolicy.com/2009/10/29/think-again-the-united-nations/>
* Bret Stephens, *John Bolton Is Right About the U.N*., N.Y. Times (Mar. 23, 2018), <https://www.nytimes.com/2018/03/23/opinion/john-bolton-un-united-nations.html>.

**Wednesday, October 9, 2019 – Class Cancelled**

**Monday, October 14, 2019 (Class 11)**

*National Liberation Movements, Non-Governmental Organizations, International Organizations, and Other Non-State Actors and the Right to Self Determination*

* Textbook, pp. 422-439
* James M. Cooper, *State of the Nation: Therapeutic Jurisprudence and the Evolution of the Right of Self-Determination in International Law*, 17 Behav. Sci. & Law 607 (1999).
* United Nations General Assembly Resolution 1514 (1960), The Declaration on the Granting of Independence to Colonial Countries and Peoples, <http://www.un.org/en/decolonization/declaration.shtml>.

**IV. Statehood**

**Wednesday, October 16, 2019 (Class 12)**

*Act of State*

* *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 83 S. Ct. 923, 11 L. Ed2d 804 (1964) (Textbook, pp. 1056-1064)
* Montevideo Convention on the Rights and Duties of States, signed on Dec. 23, 1933, entered into force on Dec. 26, 1934, <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>

*Recognition*

* *Tinoco Arbitration,* (Great Britain v. Costa Rica) (1923) 1 R.I.A.A. 369 (reading to be distributed)

*Jurisdiction*

* *The Lotus Case Revisited* – Textbook pp. 122-136

**Monday, October 21, 2019 (Class 13)**

*Territory and Borders*

* *Frontier Dispute Case* (Burkina Faso vs. Mali) ICJ Reports 1985, 554
* Meicen Sun, *National borders don’t stop in the physical world – they’re in cyberspace too*, World Economic Forum (Jan. 16, 2019), <https://www.weforum.org/agenda/2019/01/virtual-borders/>.

*State Responsibility Before International Tribunals*

* Textbook, pp. 373-392
* ILC Articles on State Responsibility (reading to be distributed), <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>.

**Wednesday, October 23, 2019 (Class 14)**

*State Responsibility II*

* *Case Concerning Military and Paramilitary Activities (Nicaragua v. United States)* ICJ Rep. 14 (1986) (readings to be distributed)

*Case Study: International Environmental Law*

* *Trail Smelter Case*, 3 U.N.R.I.A.A. 1905 (1941) (readings to be distributed)

**V. Human Rights Law**

**Monday, October 28, 2019 (Class 15)**

 *Individuals and International Law*

* Textbook, pp. 441-471

 *International Human Rights Law*

* Textbook, pp. 475-491

**Online Class on Students’ Own Time (110 minutes)**

 *Human Rights in Latin America*

* James M. Cooper, *Legal Pluralism and the Challenge to Human Rights in the New Plurinational State Bolivia* 17 Wash. U. Global St. L. Rev. 1 (2018).
* Judge Guzmán Master Class, <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=69f77c40-f9fa-49bc-98ac-a8fc0012d1ac> **(70 minutes)**
* Perpetual Justice and the Prosecution of General Pinochet, **(40 minutes)** <https://vimeo.com/318855707>
* The Inter-American Convention to Prevent and Punish Torture, <http://www.oas.org/juridico/english/treaties/a-51.html>.

**Monday, November 4, 2019 (Class 16)**

*American Human Rights* *Law*

* Textbook, pp. 177-178

*European Human Rights Law*

* Textbook, pp. 517-534

*African Human Rights Law*

* African Charter for Human and Peoples Rights, Adopted in Nairobi June 27, 1981; Entered into Force Oct. 21, 1986, <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>.
* Julie Turkewitz, *Now Streaming on Youtube, Confessions from a Presidential Hit Squad in Gambia*, N.Y. Times (Aug. 31, 2019), <https://www.nytimes.com/2019/08/31/world/africa/gambia-truth-commission-yahya-jammeh.html?action=click&module=Top%20Stories&pgtype=Homepage>.

**Wednesday, November 6, 2019 (Class 17)**

*Immunities from Jurisdiction*

* R*. v. Bow Street Metropolitan Stipendiary Magistrate,* *Ex Parte Pinochet* [2002] 1 AC 147 (readings to be distributed)
* *Arrest Warrant of 11 April 2000* *(Democratic Republic of the Congo v. Belgium)* ICJ Rep. 3 (2002) (readings to be distributed)
* *Trendtex v. Central Bank of Nigeria* (1977) 2 W.L.R. 356 (U.K. Court of Appeal) (readings to be distributed)

**Friday, November 8, 2019 (Class 18)**

*Guest Lecture and Career Talk by Will Carless, Reveal Magazine*; *See* <https://www.pri.org/people/will-carless>.

**Monday, November 11, 2019 – Class Cancelled**

**VI.**  **International Criminal Law**

**Tuesday, November 12, 2019 (Class 19)**

*International Tribunals*

* *Prosecutor v. Tadic*, Case No. IT-94-1, A.C., (Oct. 2, 1995) (reading to be distributed)

*International Criminal Court*

* Textbook, pp. 535-539
* *Prosecutor v. Gaddafi*, ICC-01/11-01/11 (May 31, 2013) (reading to be distributed)

**Wednesday, November 13, 2019 (Class 20)**

 *Jus ad Bellum*

* Textbook, pp. 737-741
* Charter of the United Nations, 1945, <http://www.icj-cij.org/documents/index.php?p1=4&p2=1&p3=0>
* *The Caroline Case*, 1842, <http://avalon.law.yale.edu/19th_century/br-1842d.asp> (reading to be distributed)
* Steven R. Ratner, *Think Again: Geneva Conventions*, Foreign Policy (Oct. 8, 2009), <http://foreignpolicy.com/2009/10/08/think-again-geneva-conventions/>
* Professor K Class 7 – Prohibition on the Use of Force (12:19), <https://vimeo.com/115166876>

**VII. War and the Use of Force (and Rules of War)**

**Monday, November 18, 2019 (Class 21)**

*Humanitarian Intervention and Other Customary International Law Defenses to the Prohibition on the Unilateral Use of Force.*

* *Beric and Others v. Bosnia-Herzegovina*, European Ct. of Human Rights, <http://hudoc.echr.coe.int/eng?i=001-83109>.
* Charles Homans, *Responsibility to Protect: A Short History*, Foreign Policy (Oct. 11, 2011), <http://foreignpolicy.com/2011/10/11/responsibility-to-protect-a-short-history/>

*Guest Lecture by Richard Bainter; See* <http://www.richardbainter.com>.

**Wednesday, November 20, 2019 (Class 22)**

*Guest Lecture by Professor Dino Kritsiotis, University of Nottingham on the Use of Force by Zoom. Details to be announced.*

 *The United Nations and the Use of Force*

* Textbook, pp. 741-747; 751-758; 761-764
* *Military and Paramilitary Activities In and Around Nicaragua: Nicaragua v. United States of America (Merits),* 1986 I.C.J. Rep. 14 (readings to be distributed)

*Jus in Bello*

* Textbook, pp. 701-708; 715-731
* Professor K Class 9 - War Crimes Tribunals (16:13), <https://vimeo.com/115171221>

**Monday, November 25, 2019 – Class Cancelled**

**Wednesday, November 27, 2019 – Class Cancelled**

**Online Class to be viewed on Students’ Own Time**

*International Trade Law*

* James M. Cooper, *The Complicated Relationship: A Snapshot of the U.S.-Mexico Border*, Konrad Adenauer Foundation Washington Office, June 17, 2010, <http://www.kas.de/usa/en/publications/19916/>, *reprinted in* Konrad Adenauer Stiftung, KAS International Reports (10/10), at 35-58 (<http://www.kas.de/wf/en/33.20667/>).
* James M. Cooper, *The North American Free Trade Agreement and Its Legacy on the Resolution of Intellectual Property Disputes*, 43 Cal. West. Int’l L. J. 155 (2012).

*Watch the following online video classes by Professor Cooper on International Trade Law:*

|  |  |  |
| --- | --- | --- |
| 8:18 | [International Trade Law Prof. James Cooper - Class 1](https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=381d096f-2fe1-4613-8f3f-838c20f29f95) | <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=381d096f-2fe1-4613-8f3f-838c20f29f95> |
| 9:24 | [International Trade Law Prof. James Cooper - Class 2](https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=db5b1247-7ab0-4042-b597-7e83a5a50c8e) | <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=db5b1247-7ab0-4042-b597-7e83a5a50c8e> |
| 7:08 | [International Trade Law / Prof. James Cooper - Class 3](https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=ce3d78cb-58ef-4a04-911f-2e04b0a5ea04) | <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=ce3d78cb-58ef-4a04-911f-2e04b0a5ea04> |
| 7:44 | [International Trade Law Prof. James Cooper - Class 4](https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=ed6a3d60-c952-4c50-92cc-b01d64b0be52) | <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=ed6a3d60-c952-4c50-92cc-b01d64b0be52> |
| 10:35 | [International Trade Law Prof. James Cooper - Class 5](https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=9d36a4d7-6071-4e92-ae26-9f6fd5b34146) | <https://cwsl.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=9d36a4d7-6071-4e92-ae26-9f6fd5b34146> |

**Subtotal: 43 minutes**

**Monday, December 2, 2019 (Class 23)**

**IX. The Border**

* Textbook, pp. 403-419
* *Hernandez v. Mesa*, 137 S. Ct. 2003 (2017)
* James M. Cooper, *The United States, Mexico, and the War on Drugs in the Trump Administration*, 25 Willamette J. Int’l L & Dis. Res. 234 (2018).
* James M. Cooper, *The Rise of Private Actors at the United States-Mexico Border*, 33 Wisconsin Int’l L. J. 101 (Symposium Edition) (2016).
* Extradition Treaty between the United States and Mexico, 1978, <https://www.oas.org/juridico/mla/en/traites/en_traites-ext-usa-mex.pdf>.
* Azam Ahmed & Paulina Villegas, *Judge in Mexico Says El Chapo Can Be Extradited to U.S.,* N.Y. Times, May 9, 2016, <http://www.nytimes.com/2016/05/10/world/americas/mexico-el-chapo-joaquin-loera-guzman.html?_r=0>.

**X. The Future of International Law**

**Wednesday, December 4, 2019 (Class 24)**

* *What is the Future of International Law?* OUPblog (Aug. 27, 2014), <http://blog.oup.com/2014/08/what-is-the-future-of-international-law-esil2014/>
* Eric Posner, *Think Again: International Law*, Foreign Policy (Sept. 17, 2009), <http://foreignpolicy.com/2009/09/17/think-again-international-law/>
* James Cooper, *75 years of Bretton Woods: Time for a change*, The Hill, (July 1, 2019), <https://thehill.com/opinion/finance/450794-75-years-of-bretton-woods-time-for-a-change>.
* James Cooper, *Fixing the global monetary system*,San Diego Union-Tribune, Oct. 6, 1998, at B9.

**Note: An extra 493 minutes of video classes are also part of this syllabus (more than five 85 minute classes (425 minutes)).**