

**International Treaty Behavior: A Perspective on Globalization**  
**L209 · Fall 2009 · Isobe Room: M-251F**  
**Wednesdays 3:20 – 5:20**

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Readings: All readings can be found on the Blackboard site for ILO L209 (<http://blackboard.tufts.edu/>). Where call signs are indicated in the syllabus, the corresponding books are on reserve in the Ginn Library. Please contact Brandon with questions regarding access to reading materials. We will make time for student presentations on subjects covered on the day they are germane. You are not required to present, but encouraged to do so.

Tuesday, September 8

***SHOPPING DAY: COURSE COVERAGE AND EXPECTATIONS***

Class 1: Wednesday, September 9

***INTRODUCTION: THE ROLE OF INTERNATIONAL AGREEMENTS IN GLOBALIZATION AND SOME THEORY ABOUT WHAT COMPLIANCE INVOLVES***

Readings:

1. Abram Chayes and Antonia Handler Chayes, *On Compliance* INTERNATIONAL ORGANIZATION, Vol. 47, No. 2 (1993), pp. 175-205.
2. George Downs, David Rocke & Peter Barsoom, *Is the Good News About Compliance Good News about Cooperation?* INTERNATIONAL ORGANIZATION, Vol. 50, No. 3 (1996), pp. 379-406.
3. Abram Chayes & Antonia Handler Chayes, *A Theory of Compliance*, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (Cambridge, MA: Harvard University Press, 1995), Chapter 9, pp. 197-228. [JX4165.C43 1995 c.1]
4. Antonia Chayes, *International Agreements: Why They Count as Law*, ASIL Panel (Mar. 26, 2009).

OPTIONAL—But important: gives an overview of compliance literature to that date.

5. Kal Raustiala and Anne-Marie Slaughter, *International Law, International Relations and Compliance*, HANDBOOK OF INTERNATIONAL RELATIONS (Thousand Oaks, CA: Sage Publications, 2002), pp. 538-at least top of 546. [JZ1242.H36 2002 c.1]

Class 2: Wednesday, September 16

**COMPLIANCE: THE SERIOUSNESS OF TREATY COMMITMENT; COMPLEXITY OF NEGOTIATION AND THE TWO LEVEL GAME.**

**A SHORT WRITTEN ASSIGNMENT ON REFLECTIONS ABOUT THE PUTNAM ASSIGNMENT WILL BE GIVEN FOR THE NEXT WEEK**

Readings:

1. Be sure to complete the reading for the first class.
2. Kal Raustiala, *Form and Substance in International Agreements*, AM. J. OF INT'L L., Vol. 99, pp. 581-614.
3. Robert D. Putman, [\*Diplomacy Domestic Politics: The Logic of Two-Level Games\*](#), 42 INTERNATIONAL ORGANIZATION, Vol. 42, No. 3 (1988), pp. 427-60.
4. James K. Sebenius, NEGOTIATING THE LAW OF THE SEA (Cambridge, MA: Harvard University Press, 1984), Chapter 1, pp. 17-23 and Chapter 4, pp. 71-109 (skim from 4.5.2 p. 94 to 4.6 p. 106). [JX4411.S425 1984 C.1]

Class 3: Wednesday, September 23

**AGREEMENTS MUST BE IMPLEMENTED (PACTA SUNT SERVANDA)**

**THE COMPLEXITIES OF SECURITY AGREEMENTS: HOW WMD AGREEMENTS ARE IMPLEMENTED; DISCUSSION ABOUT THE STRENGTHS AND WEAKNESSES OF THE INTERNATIONAL ORGANIZATIONS CHARGED WITH IMPLEMENTATION**

Guest: Emma Belcher, The Fletcher School, PhD Student (Presenting on all proliferation and arms control issues including the salient PSI “Pledge”)

Readings:

1. *The Evolution of the Nuclear Nonproliferation Regime*, THE NPT BRIEFING BOOK (April 2005 Ed.), Mountbatten Centre for International Studies and Center for Nonproliferation Studies, pp. 5-29.
2. Michael A. Levi and Michael O’ Hanlon, *Compelling Compliance*, THE FUTURE OF ARMS CONTROL (Washington D.C.: Brookings Institution Press, 2005), Chapter 5.
3. Congressional Research Services Report on the PSI.

4. Amy Smithson, *The Chemical Weapons Convention*, MULTILATERALISM & U.S. POLICY: AMBIVALENT ENGAGEMENT (Lexington, MA: Lynne Reinner, 2002), pp. 247-260. [E183.7 .M85 2002 c.1]
5. Guilfoyle, *Maritime Interdiction of WMDs*, JOURNAL OF CONFLICT AND SECURITY LAW (Please skim).

#### OPTIONAL

6. Kathleen Bailey, *Why the U.S. Rejected the Protocol to the Biological and Toxic Weapons Convention*, National Institute for Public Policy (Oct. 2002).
7. George Perkovich, *The End of the Nonproliferation Regime?*, CURRENT HISTORY, (Nov. 2006).
8. Ashton Carter, [\*America's New Strategic Partner?\*](#), FOREIGN AFFAIRS (July/August 2006).
9. George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn, *A World Free of Nuclear Weapons*, WALL STREET JOURNAL (Jan. 4, 2007).

#### Class 4: Wednesday, September 30

#### ***FORUM SHOPPING: IS THIS A SERIOUS PROBLEM IN MANY TREATY AREAS? ARE THERE DIFFERENCES BETWEEN INTERNATIONAL TRADE AND SECURITY?***

Guest: Daniel Drezner, Professor of International Politics, The Fletcher School

#### Readings:

1. Review/complete readings from the previous class, as there are comparative issues to discuss.
2. Daniel Drezner, *The Tragedy of Global Institutional Commons* (Feb. 2009).

#### Class 5: SPECIAL CLASS: Friday, October 2

#### ***EMPIRICAL EVIDENCE OF COMPLIANCE***

Guest Faculty: Professor Beth Simmons, Government Department, Harvard University

1. Beth Simmons, *Chapter 3: Theories of Commitment*, INTERNATIONAL HUMAN RIGHTS LAW, POLITICS AND ACCOUNTABILITY, pp. 55-92.
2. Beth Simmons, *Chapter 5: Theories of Compliance in draft book*: INTERNATIONAL HUMAN RIGHTS LAW, POLITICS AND ACCOUNTABILITY, pp. 1-42. (PAGES MY DIFFER AS WE INPUT ACTUAL BOOK)

Class 6: Wednesday, October 7

***IS REAL ENFORCEMENT NEEDED? ACHIEVABLE? ARE DOWNS ET AL CORRECT? THE CASE OF INTERNATIONAL TRADE***

Guest Faculty: Professor Joel Trachtman, The Fletcher School

Readings:

1. CAREFULLY REVIEW: George Downs, David Rocke & Peter Barsoom, [\*Is the Good News About Compliance Good News about Cooperation?\*](#), INTERNATIONAL ORGANIZATION, Vol. 50, No. 3 (1996), pp. 379-406.
2. Robert Z. Lawrence *CRIMES AND PUNISHMENTS? RETALIATION UNDER THE WTO* (Washington, DC: Institute for International Economics 2003).
3. Joel Trachtman, INTERNATIONAL LAW AND DOMESTIC POLITICAL COALITIONS: THE CAUSES OF COMPLIANCE WITH INTERNATIONAL LAW.

OPTIONAL

4. Joel Trachtman, *The WTO Cathedral*, 43 STANFORD J. INT'L L. 127 (2007).
5. Robert E. Hudec, *Thinking about the New Section 301: Beyond Good and Evil, AGGRESSIVE UNILATERALISM* (University of Michigan Pres, 1991). [HF1455 .A6151990]
6. FOR METHODOLOGY REFERENCE ONLY: Benjamin O. Forham & Timothy Mekoewn, *Selection and Influence: Interest Groups and Congressional Voting on Trade Policy*, 57 INTERNATIONAL ORGANIZATION 519 (Summer 2003), available in Cambridge Journals online (browse for INTERNATIONAL ORGANIZATIONS in the journal title list).

Class 7: Wednesday, October 14

***TREATY RESERVATIONS, UNDERSTANDINGS, AND DECLARATIONS: THE CASE OF HUMAN RIGHTS***

Readings:

1. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 (1969), Arts. 2, 19-21.
2. Human Rights Committee, General Comment 24.
3. Catherine Redgewell, *U.S. Reservation to Human Rights Treaties: All for One and None for All?* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW, 392-415 (Michael Byers & George Nolte, Ed. 2003). [KZ1242 .U55 2003]

4. Curtis A. Bradley and Jack L. Goldsmith, *Treaties, Human Rights, and Conditional Consent*, UNIVERSITY OF PENNSYLVANIA LAW REVIEW, Vol. 49, No. 2 (Dec. 2000), pp. 399-468.
5. *Interhandel Case (Switzerland. v. U.S.)*, 1959 I.C.J. 6, 95 (Lauterpacht, H., dissenting).

Class 8: Wednesday, October 21

***WHAT IS EXCEPTIONALISM? DEFINITIONS, MANIFESTATIONS, CAUSES***

Readings:

1. Michael Ignatieff, AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS, Introduction (Princeton, NJ: Princeton University Press, 2005). [JC599.U5 A494 2005]
2. Antonia Chayes, *American Treaty Behavior: an Obstacle to National Security*, INTERNATIONAL SECURITY, Vol. 33, No. 1 (Summer 2008), pp. 45-81.
3. Andrew Moravcsik “The Paradox of U.S. Human Rights Policy,” in Michael Ignatieff, AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS, (Princeton NJ: Princeton University Press, 2005). [JC599.U5 A494]
4. Peter Spiro, *The New SOVEREIGNTISTS*, FOREIGN AFFAIRS, Nov./Dec. 2000, pp. 5-9.
5. Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1479-1523 (2003).

OPTIONAL

6. Stewart Patrick, *Multilateralism and its Discontents: the Causes and Consequences of U.S. Ambivalence* in Stewart Patrick and Shepard Forman, MULTILATERALISM AND U.S. FOREIGN POLICY: AMBIVALENT ENGAGEMENT (Colorado: Lynne Rienner, 2002), pp. 1-27. [E183.7 .M85 2002]

Class 9: Wednesday, October 28

***AMERICAN EXCEPTIONALISM: WHERE HAS THE WAR ON TERRORISM LED THE UNITED STATES IN ITS TREATY BEHAVIOR?***

Guest Faculty: Professor Philip Heymann, Harvard Law School for one hour

Readings:

We will focus on the current debate about how the United States has behaved and ought to behave towards those captured as potential terrorists—both as a matter of treaty law and as a matter of U.S. constitutional law, though the latter is not the focus of this seminar. The reading is long but essential to a full understanding of the twin issues of (1) treatment of detainees and (2) detention policy. Because the reading is lengthy, half the class will focus intensely on Bush administration behavior and the other half on Obama administration behavior. Each group will prepare at least three questions to discuss.

1. CASES:

- a. Summary of *Rasul v. Bush*, 542 U.S. 466 (2004);
- b. Summary of *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006);

OPTIONAL:

- c. [\*Hamdan v. Rumsfeld\*](#) [read the Syllabus (pp. 1-8 of PDF file); read the Stevens Opinion: pp. 62-73, beginning with Section VI, Part D; (pp. 70-81 in the PDF file); read the one-page Breyer Concurring Opinion (page 82 in the PDF file)];
- d. Summary of *Boumediene v. Bush*, 553 U.S. --- (2008); excerpts from *Boumediene* case: <http://www.law.cornell.edu/supct/html/06-1195.ZS.html>; (uploaded summaries of *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

2. TREATIES, STATUTES: (all in a document file on blackboard)

- a. [UN Convention Against Torture](#);
- b. Geneva Conventions, Common Article 3;
- c. Excerpts from the 2006 Military Commissions Act of 2006 (highlighted portions only);

OPTIONAL:

- d. Authorization of Use of Military Force Act (AUMF) (2001); 18 U.S.C. §§ 2340, 2340A.

3. BUSH ADMINISTRATION TREATMENT ISSUES:
  - a. Jay S. Bybee, "[Memorandum for Alberto R. Gonzales, Counsel to the President: Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A](#)," U.S. Department of Justice (Aug. 1, 2002) [Read first 8 pages];
  - b. U.S. Senate Report: skim the Executive Summary.
  
4. OBAMA ADMINISTRATION TREATMENT ISSUES:
  - a. Executive Order 13491;
  
  - OPTIONAL:
  
  - b. Executive Summary of DOD Review of Compliance;
  - c. Petition for Rehearing in *Mohamed v. Jeppeson Data Plan*; OPTIONAL: N.Y. TIMES Article.
  
5. BUSH ADMINISTRATION DETENTION POLICY: Cases above, before 2009 outline the government's arguments re: both treaty and constitutional law.
  
6. OBAMA ADMINISTRATION DETENTION POLICY: A work in progress.
  - a. Respondent's Memorandum Regarding the Government's Detention Authority Relative to Detainees Held at Guantanamo Bay, *Detainee Litigation*, Misc. No. 08-442 (Mar. 13, 2009);
  
  - b. Editorial, *Mr. Obama and the Rule of Law*, N.Y. TIMES (Mar. 22, 2009).
  
- FURTHER OPTIONAL READING FOR THE CURIOUS:
  
7. David Cole, "[Why the Court Said No](#)," THE NEW YORK REVIEW OF BOOKS, Vol. 53, No. 13, August 10, 2006.
  
8. Part 1 of Derek Jinks and David Sloss, *Is the President Bound by the Geneva Conventions*, 90 CORNELL LAW REVIEW pp. 97-202.

Class 10: Wednesday, November 4

***EXCEPTIONALISM CASE 2: IS CHINA EXCEPTIONAL IN ITS TREATY BEHAVIOR?***

Guest Faculty: Professor Alistair (Iain) Johnston, Professor of Government, Harvard University

1. Excerpts from Alistair Ian Johnston, SOCIAL STATES: CHINA IN INTERNATIONAL INSTITUTIONS, 1980-2000 (Princeton, NJ: Princeton University Press, 2007).
  
2. Excerpts from William P. Alford, TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION (Stanford CA: Stanford University Press, 1995). (KNN1155 .A958 1995)

**NO CLASS ON WEDNESDAY, NOVEMBER 11—FLETCHER FOLLOWS MONDAY CLASS SCHEDULE**

Class 11: Wednesday, November 18

**TENTATIVE: *EXCEPTIONALISM CASE 3: THE CASE OF ISLAMIC LAW & HUMAN RIGHTS AND THE ROLE OF CULTURE***

Guest Faculty: Professor Frank Vogel, Harvard Law School

Readings:

1. S. Abul A'la Maududi, *Fundamentals of Islamic Constitution* in ISLAMIC LAW AND CONSTITUTION, Islamic Publications, Ltd., Chapter 7.
2. Allahbukhsh K. Brohi, *Human Rights and Duties in Islam: A Philosophic Approach* in ISLAM AND CONTEMPORARY SOCIETY, ed. Salem Azzam.
3. Khalid M. Ishaque, *Human Rights and Islamic Law* in INTL. COMM. OF JURIST REV. (1974).
4. Abdullahi Ahmed An-Na'im, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW (Syracuse, NY: Syracuse University Press, 1990): 170-181. (JX1568 .N35 1990 c.1)
5. Ann Elizabeth Mayer, ISLAM AND HUMAN RIGHTS: TRADITIONS AND POLITICS 3<sup>rd</sup> Ed. (Boulder CO: Westview Press, 1999): xiii-xv. (BP173.6 .M38 1991)
6. Cairo Declaration of Human Rights.
7. Universal Islamic Declaration of Human Rights.

Handouts for Class:

1. Human Rights Treaties, Ratifications, and Reservations by Muslim States (chart)
2. Reservations Relating to Shari'a Law Applicability and Conflict for International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966
3. Treaty Ratification and Reservation by Declared Islamic States – most common reservations
4. Reading rationale for assigned readings

**NO CLASS AS SUCH ON NOV. 25: MEETINGS MONDAY AND TUESDAY INDIVIDUALLY WITH STUDENTS ON PAPERS. Possible review session if requested.**

Class 12: Wednesday, December 2

***STRATEGY MATTERS: US STRATEGIES TO PROMOTE OR DEFEAT TREATIES; SUCCESS AND FAILURE WITH ENVIRONMENTAL TREATIES***

Guest Faculty: Professor William Moomaw, The Fletcher School

Readings:

1. Richard Benedick, *OZONE DIPLOMACY* (Cambridge: Harvard University Press, 1998), pp. 51-67. [K3593 .B46 1991 c.1 ]
2. Harold K. Jacobson, *Climate Change: Unilateralism, Realism, and Two-Two-Level Games*, *MULTILATERALISM & U.S. POLICY: AMBIVALENT ENGAGEMENT* (Lexington, MA: Lynne Rienner, 2002). [E183.7 .M85 2002 c.1]
3. TBA: POST-KYOTO treaty drafts; more.
4. OPTIONAL: Thomas Schelling, [\*What Makes Greenhouse Sense?: Time to Rethink the Kyoto Protocol\*](#), *FOREIGN AFFAIRS*, May-June 2002.

Class 13: Wednesday, December 9

***FINALE: SUMMING UP; MORE ABOUT STRATEGY AND ALTERNATIVE APPROACHES***

Final discussions with Professor Jack Goldsmith.

Readings TBD but will likely include Prof. Goldsmith's work on the limits of international law and analysis of American RUDS.