

International Treaty Behavior: A Perspective on Globalization
L209 · Spring 2015 (Version 6) · Isobe Room: M-251F
Fridays 10:15 – 12:15

Office Hours: Wednesdays 2 – 5 pm

Office: Cabot 511

<http://bit.ly/1530g5Y>

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Grades: The course grade will be based on (1) your final paper and one short paper (45 percent), (2) participation in treaty drafting simulation (25 percent), (3) class participation (30 percent). The final paper requirement is as in most seminars—25-30 pages of original work; or you are encouraged to make it part of a capstone, and we will negotiate the terms and conditions as well as appropriate subject matter. This seminar is regarded as one of the “incubator” courses if you so choose.

Readings: All readings can be found on the Trunk site for ILO L209 (<https://trunk.tufts.edu>). Where call signs are indicated in the syllabus, the corresponding books are on reserve in the Ginn Library. Please contact TA Xiaodon 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.

Monday, January 12

SHOPPING DAY: COURSE COVERAGE AND EXPECTATIONS

Class 1: Friday, January 16

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

Readings:

1. 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]
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. Antonia Chayes, *International Agreements: Why They Count as Law*, ASIL Panel (Mar. 26, 2009).
4. Andrew T. Guzman, *A Compliance-Based Theory of International Law*, CALIFORNIA

LAW REVIEW, Vol. 90 (2002): 1826-1857 and 1872-1887.*

***Relevant for class discussion, but careful reading not required this week. The article provides another approach to game theory and a good critique of existing IL/IO approaches. Please read carefully before Class 5**

Optional (but important! The following provide an overview of compliance literature):

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]
6. Abram Chayes and Antonia Handler Chayes, *On Compliance*, INTERNATIONAL ORGANIZATION, Vol. 47, No. 2 (1993), pp. 175-205. (This is a shorter version of the chapter #1 and you may read it instead)
7. Rachel Brewster, *The limits of reputation on compliance*, INTERNATIONAL THEORY, Vol. 1, No. 2 (2009), pp. 323-333.
8. And if you love game theory: Todd Sandler, *Treaties: Strategic Considerations*, ILLINOIS LAW REVIEW, Vol. 2008, No. 1 (2008), pp. 155-179.

Class 2: Friday, January 23

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

SOME QUESTIONS AND ISSUES FOR CONSIDERATION:

1. What does the complexity of the negotiation process suggest, if anything, about either commitment or the reasons for “shallowness” of treaties?
2. As you read Putnam, be prepared to discuss your preliminary thoughts, as you will have to put them on paper!

Readings:

1. *Be sure to have completed (and mastered) the reading from Class 1.*
2. Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, INTERNATIONAL ORGANIZATION, Vol. 42, No. 3 (1988), pp. 427-60.*
*** A short written assignment on reflections about the Putnam reading will be given in Class 2 to be completed for Class 3. We consider this to be a seminal article**
3. Kal Raustiala, *Form and Substance in International Agreements*, AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 99, pp. 581-614. Also seminal!!!!
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 on p. 94 to 4.6 on p. 106). [JX4411.S425 1984 C.1]

* The list of current signatories to the UN Convention on the Law of the Sea is available at http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm.

Class 3: Friday, January 30

AGREEMENTS MUST BE IMPLEMENTED (PACTA SUNT SERVANDA)

THE COMPLEXITIES OF SECURITY AGREEMENTS: HOW WMD AGREEMENTS ARE IMPLEMENTED.

SOME QUESTIONS FOR CONSIDERATION:

1. Does “pacta sunt servanda” have real force? What might weaken this “rule?” What might reinforce it?
2. Under what circumstances would a pledge be preferable to a binding treaty?
3. How important are international organizations as aids to implementation?
4. In what ways can it be argued that Iran is violating its commitments to the NPT? (We will have a debate on this question and the class will be divided into teams.)

Readings:

1. For those who need background: *The Evolution of the Nuclear Nonproliferation Regime*, THE NPT BRIEFING BOOK (April 2005 Ed.), Mountbatten Centre for International Studies and Center for Nonproliferation Studies, sections 2, 3.
2. Additional background: ‘Iran Matters’, website hosted by the Belfer Center for Science and International Affairs, Harvard Kennedy School. <http://iranmatters.belfercenter.org/>
3. UN Security Council, Resolution 1540 (2004).
4. Emma Belcher, *Regime Change of a Different Kind: Exploring Adaptation in the Nuclear Regime*, Ph.D. diss., Tufts University, 2010. Ch 5.
5. Sharon Squassoni, *The Iranian Nuclear Program*, in Nathan E. Busch and Daniel H. Joyner, eds., COMBATING WEAPONS OF MASS DESTRUCTION: THE FUTURE OF INTERNATIONAL NONPROLIFERATION POLICY (Athens, GA: University of Georgia Press, 2009).
6. Jim Walsh, “Learning From Past Success: The NPT and the Future of Non-Proliferation,” No. 41 (Stockholm: Weapons of Mass Destruction Commission, October 2005), pp. 27-47.
7. International Atomic Energy Agency, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, GOV/2011/65, November 8, 2011. <http://www.iaea.org/sites/default/files/gov2011-65.pdf>

Optional but useful for deeper and broader analysis:

8. Jonathan Schell, *The Folly of Arms Control*, FOREIGN AFFAIRS, Vol. 79, No. 5 (Sep. - Oct., 2000), pp. 22-46.
9. Nicholas A. Sims, THE FUTURE OF BIOLOGICAL DISARMAMENT: STRENGTHENING THE TREATY BAN ON WEAPONS (New York, NY; Routledge: 2009), pp. 45-65. [Skim]
10. Douglas Guilfoyle, *Maritime Interdiction of Weapons of Mass Destruction*, JOURNAL OF CONFLICT AND SECURITY LAW, Vol. 12, No. 1 (Spring, 2007), pp. 1-36.
11. Chaim Braun and Christopher F. Chyba, *Proliferation Rings: New Challenges to the Nuclear Nonproliferation Regime*, INTERNATIONAL SECURITY, Vol. 29, No. 2 (Autumn, 2004), pp. 5-49.
12. Jack M. Beard, *The Shortcomings of Indeterminacy in Arms Control Regimes: The Case of the Biological Weapons Convention*, AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 101, No. 2 (Apr., 2007), pp. 271-321.

Class 4: Friday, February 6

FLEXIBILITY IN TREATIES: TREATY CLUTTER OR NECESSARY BUILDING BLOCKS TO REGULATION.

THIS CLASS WILL FOCUS FIRST ON THE CONFUSION OF OVERLAPPING TREATIES- - "TREATY CLUTTER",. THEN WE WILL DISCUSS WHETHER MORE THAN ONE TREATY MAY BE NECESSARY TO ASSURE FLEXIBILITY AND ADAPTABILITY. WE BEGIN WITH A TRADE ISSUE, RECAP NUCLEAR PROLIFERATION AND FINISH WITH A CLIMATE CHANGE ISSUE.

SOME QUESTIONS FOR CONSIDERATION:

1. When does treaty architecture permit forum shopping? Are overlapping treaties a major concern in all cases? Are there situations where multiple treaties are necessary for effectiveness? Do you see a difference among areas of regulation? Would you distinguish trade from to nuclear proliferation? If so, on what basis?

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*, in Martha Finnemore and Judith Goldstein, Eds., *Back to Basics: State Power in a Contemporary World* (Oxford: Oxford University Press, 2013), pp. 280-310. [JC330 .B255 2013]
3. Judgment of: Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council

of the European Union and Commission of the European Communities - *READ CASE SUMMARY ON TRUNK*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML>

4. Robert O. Keohane and David G. Victor, *The Regime Complex for Climate Change*, PERSPECTIVES ON POLITICS, Vol. 9, No. 1 (March 2011), pp. 7 – 23.
5. Gabriella Blum, *Bilateralism, Multilateralism and the Architecture of International Law*, HARVARD INTERNATIONAL LAW JOURNAL, Vol. 49, No. 323 (2008), pp. 348-369. (*Read Sections IV and V*) – *but the entire article is well worth reading*)

Class 5: Friday, February 13

IS REAL ENFORCEMENT NEEDED? THE CASE OF INTERNATIONAL TRADE. MORE GENERALLY, DISCUSSION ABOUT THE STRENGTHS AND WEAKNESSES OF THE INTERNATIONAL ORGANIZATIONS CHARGED WITH IMPLEMENTATION. WHAT ATTRIBUTES OF AN INTERNATIONAL ORGANIZATION TEND TO AID EFFECTIVE IMPLEMENTATION?

Guest Faculty: Professor Robert Lawrence, Harvard Kennedy School

SOME QUESTIONS FOR CONSIDERATION:

1. How should we think about enforcement now that we have learned more about the subtleties of treaty behavior?
2. Do you equate “enforcement” with punishment? Are treaty provisions that punish achievable?
3. How important is a strong IO to compliance? Is WTO the only model? What about CWC with no adjudication?
4. What attributes of an IO tend to aid in effective implementation?

Readings:

1. **CAREFULLY REVIEW:** George Downs, David Rocke, and 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 Grand Theory of Compliance With International Law*, CHICAGO JOURNAL OF INTERNATIONAL LAW, Vol. 11, No. 1 (Summer 2010), pp. 129-160.
4. J.P. Perry Robinson, *Difficulties Facing the Chemical Weapons Convention*, INTERNATIONAL AFFAIRS, Vol. 84, No. 2 (2008), pp. 223-239.

Optional:

5. Amy Smithson, *The Chemical Weapons Convention*, MULTILATERALISM & U.S. POLICY: AMBIVALENT ENGAGEMENT (Lexington, MA: Lynne Rienner, 2002), pp. 247-260.
6. FOR A SUMMARY OF LEGAL FRAMEWORK OF RECENT SYRIA OPCW WORK: Ralf Trapp, *Elimination of the Chemical Weapons Stockpile of Syria*, JOURNAL OF CONFLICT & SECURITY LAW, Vol. 19, No. 1, (April, 2014), pp. 7-23.
7. Rachel Brewster, *Rule-Based Dispute Resolution in International Trade Law*, VIRGINIA LAW REVIEW, Vol. 92, No. 251 (2010), pp. 251-288.
8. Robert E. Hudec, *Thinking about the New Section 301: Beyond Good and Evil*, AGGRESSIVE UNILATERALISM (University of Michigan Press, 1991).
[HF1455.A6151990]
9. OPTIONAL – FOR METHODOLOGY REFERENCE ONLY: Benjamin O. Fordham & Timothy J. McKeown, *Selection and Influence: Interest Groups and Congressional Voting on Trade Policy*, INTERNATIONAL ORGANIZATION, Vol. 57, No. 3 (Summer 2003), pp. 519-549.

Class 6: Friday, February 20

EMPIRICAL EVIDENCE OF COMPLIANCE

Guest Faculty: Professor Beth Simmons, Government Department, Harvard University (also director of Weatherhead Center)

SOME QUESTIONS FOR CONSIDERATION:

1. What is the value of empirical analysis of treaty behavior? Does it provide greater insights than game theory? Or standard IL analysis?

Readings:

1. Beth Simmons, *Chapter 3: Theories of Commitment*, INTERNATIONAL HUMAN RIGHTS LAW, POLITICS AND ACCOUNTABILITY, pp. 57-111.
2. Beth Simmons, *Chapter 4: Theories of Compliance* in draft book: INTERNATIONAL HUMAN RIGHTS LAW, POLITICS AND ACCOUNTABILITY, pp. 112-155.

No Class on Friday, February 27

DC Career Trip

Heavy reading and simulation coming up so please read ahead – especially for the class Mar. 27. I especially recommend, as background as optional:

Jack Goldsmith and Eric Posner, *Introduction*, THE LIMITS OF INTERNATIONAL LAW (Oxford University Press, 2005). Pages XXX **KZ3160.P67.A38 200**

The following are memoranda of two conversations between the Soviet Union and the United States held in July 1974 on a number of arms control topics. You may not be familiar with the subject matter, but the back-and-forth between the two delegations give one example of what a treaty negotiation can be like. These are also optional.

‘Memorandum of Conversation’, July 1, 1974, *Foreign Relations of the United States*, 1969-1976, Vol. XXXV, Soviet Union, June 1972-August 1974, Douglas E. Selvage and Melissa Jane Taylor, Eds., (Washington: U.S. Government Printing Office, 2011), Document 193. Available from <<http://history.state.gov/historicaldocuments/frus1969-76v15/d193>>

‘Memorandum of Conversation’, July 2, 1974, *Foreign Relations of the United States*, 1969-1976, Vol. XXXV, Soviet Union, June 1972-August 1974, Douglas E. Selvage and Melissa Jane Taylor, Eds., (Washington: U.S. Government Printing Office, 2011), Document 195. Available from <<http://history.state.gov/historicaldocuments/frus1969-76v15/d195>>

Class 7: Friday, March 6

FIRST HOUR: WHAT IS EXCEPTIONALISM? DEFINITIONS, MANIFESTATIONS, CAUSES
THE SECOND HOUR WILL FOCUS ON “RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS (RUDs).”

SOME QUESTIONS FOR CONSIDERATION:

1. Why only “American Exceptionalism” If other nations are also exceptional, is it possible that no nation conforms completely? Or is the United States more egregious? Or is it a matter of disappointing less powerful nations?
2. Under what circumstances do RUDs offer needed flexibility, or do they always weaken and undermine a treaty?

Readings:

1. Antonia Chayes, *American Treaty Behavior: an Obstacle to National Security*, INTERNATIONAL SECURITY, Vol. 33, No. 1 (Summer 2008), pp. 45-81.
2. Michael Ignatieff, *Introduction*, AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS, (Princeton, NJ: Princeton University Press, 2005). **[JC599.U5 A494 2005]**
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 Sovereignists*, FOREIGN AFFAIRS, Nov./Dec. 2000, pp. 5-9.

5. Catherine Redgewell, *U.S. Reservation to Human Rights Treaties: All for One and None for All?* in Michael Byers & George Nolte, eds., *UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW* (2003), 392-415. [KZ1242.U55 2003]
6. Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDS*, *UNIVERSITY OF ST. THOMAS LAW JOURNAL*, Vol. 3, No. 2 (2005), pp. 311-327.
7. UN Human Rights Committee, General Comment 24 (1994).
8. *Interhandel Case* (Switzerland. v. U.S.), 1959 I.C.J. 6, 95 (Lauterpacht, H., dissenting)
9. Elena Baylis, *A General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties*, *BERKELEY JOURNAL OF INTERNATIONAL LAW*, Vol. 17, No. 277 (1999).

Optional:

10. ABA/ASIL Joint Task Force on Treaties in U.S. Law Report, March 16, 2009.
11. *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331 (1969), Articles 2, 19-21.
12. 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]
13. Harold Hongju Koh, *On American Exceptionalism*, *STANFORD LAW REVIEW*, Vol. 55, No. 1479 (2003), pp. 1479-1523.

Class 8: Friday, March 13

EXCEPTIONALISM CASE 2: THE CASE OF ISLAMIC LAW & HUMAN RIGHTS AND THE ROLE OF CULTURE

Guest Faculty: Professor Frank Vogel, Harvard Law School Professor Emeritus.

Readings:

1. Maududi, S. Abdul A'la, *Fundamentals of Islamic Constitution*, from *ISLAMIC LAW AND CONSTITUTION* (Islamic Publications, Ltd., 1955).
This piece is by an Indian/Pakistani political and religious leader who is one of the intellectual founders of the tradition now known as fundamentalism or political Islam. The views stated here are basic to the positions of many Islamic political groups as to questions of constitution, democracy, and human rights.
2. An-Na'im, A., *TOWARD AN ISLAMIC REFORMATION* (Syracuse: Syracuse Univ. Press, 1990) pp. 170-72, 175-181, and notes. (JX1568 .N35 1990 c.1)

An-Naim is a well-known advocate for an Islamic human rights, and is a law professor at Emory University, originally from the Sudan. He argues for wholesale embrace by Muslims, on religious grounds, of human rights – though this entails drastic revision to Shari`a. Currently his argument – captured in many lectures in various fora and the book *Islam and the Secular State* (2008) – is that Muslims can live a truly Islamic life only under a secular state, in which political positions may be advanced only on grounds of shared “public reason.”

3. Mayer, A.E., *Islam and Human Rights*, 5th ed. (Boulder: Westview Press, 2013), pp. ix – xiv.

Ann Mayer, a professor at Wharton School of Business, is skeptical of claims by Muslim countries and activists that Islam compels deviation from human rights.

4. Esposito and Mogahed, *What Muslims Think*, Gallup poll results from 2007
This is a summary, somewhat dated but still of interest as a baseline prior to the Arab spring, of a comprehensive polling of Muslims in the Middle East about the relationship between Shari`a and various human rights.

What follows are two attempts, not since revised or replaced, by Muslim international organizations to state an Islamic UDHR, with all that implicitly entails as to the authors’ opinion as to UDHR’s universal validity.

5. “The Cairo Declaration in Human Rights in Islam,”
<http://www1.umn.edu/humanrts/instree/cairodeclaration.html> (and elsewhere).

This declaration was endorsed August 1990 by the foreign ministers of the Organization of the Islamic Conference (OIC), a sort of League of Nations for Muslim-majority countries.

6. “Universal Islamic Declaration of Human Rights,”
<http://www.alhewar.com/ISLAMDECL.html>

This document was prepared by representatives from Egypt, Pakistan, Saudi Arabia, and other countries under the auspices of the Islamic Council, a private, London-based organization affiliated with the Muslim World League, an international, nongovernmental organization headquartered in Saudi Arabia that tends to represent the interests and views of conservative Muslims. The declaration was presented with great public fanfare to the [UNESCO] in Paris." Mayer, p. 21.

Note from Vogel: The following documents can be skimmed to ascertain a pattern in how Muslim countries have chosen to enter international human rights treaties subject to certain reservations avoiding conflict with Islamic norms:

7. Human Rights Treaties, Ratifications, and Reservations by Muslim States (chart).
8. 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.
9. Treaty Ratification and Reservation by Declared Islamic States – most common reservations.

Finally, AFTER the class concludes, please read:

10. Tariq Ramadhan's call for a moratorium on corporal punishment, stoning and the death penalty in the Islamic World.

<http://www.tariqramadan.com/spip.php?article264>

A western liberal Islamic thinker, a strong advocate for a reformed Islam who yet wishes to be on good terms with all schools of thought, proposes postponing application of several explicit injunctions of the Qur'an on the ground of social and political conditions. His proposal provoked much controversy.

No Class on Friday, March 20

Spring Break

Class 9: Friday, March 27

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

SOME QUESTIONS AND ISSUES FOR CONSIDERATION:

1. How would you characterize American treaty behavior since 9/11? Does fear of attack constitute a valid reason for the behavior exhibited by the United States toward suspected terrorists? Would you characterize US behavior as "exceptional" or a rational response to threat?
2. How are drone attacks justified in a non-war zone? Do they amount to exceptional behavior? Do they violate any treaty?
3. A major issue is where attacks may legitimately occur under international law. Do you agree with the US position or the European position? And if the latter, is the United States an outlier in taking the approach that it may strike a threat anytime anywhere if a state is "unwilling or unable" to take care of the threat
4. We will review but NOT focus as much on the 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. The reading is important and we suggest that you at least look at the major case summaries so you will understand the full set of international treaty issues involved in the aftermath of 9/11.

Readings:

*****Important note: Everyone should read the Tarin-Chayes memo (on Trunk) first as it will guide you through the background of the important case law.*****

On Targeted Killings and Drone Strikes:

1. Excerpt from Harold Koh, "The Obama Administration and International Law," delivered at the annual meeting of the American Society of International Law, March 25, 2010.
2. Authorization of Use of Military Force Act (AUMF) (2001); 18 U.S.C. §§ 2340, 2340A.

3. Office of Legal Counsel (Acting Assistant Attorney General David J. Barron), 'Memorandum for the Attorney General Re: Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi', U.S. Department of Justice, Washington, D.C., Jul. 16, 2010 (Released Jun. 23, 2014).
4. "Remarks by the President at the National Defense University" (Washington, DC, 23 May 2013). Available at: <<http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>>
5. European Parliament resolution on the use of armed drones (2014/2567(RSP)), Feb. 25, 2014. Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0201+0+DOC+XML+V0//EN>>
6. Micah Zenko, Reforming U.S. Drone Strike Policies (Council on Foreign Relations Report, Jan. 2013), p. 8. Available at: <<http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736>>
7. *The Alston Report on Extrajudicial, Summary or Arbitrary Executions*, (Alston Report) pages 9- 26. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

On U.S. Detention Policy and Treatment Issues:

8. BACKGROUND INTO DETENTION ISSUES CASES:
 - a. Summary of *Al Maqaleh v. Gates*, D.C. Ct. App., 09-5265 (2010);
 - b. Summary of *Rasul v. Bush*, 542 U.S. 466 (2004);
 - c. Summary of *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).
 - d. [*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)];
 - e. 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).
9. 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) [Skim first 8 pages];
 - b. U.S. Senate Report: skim the Executive Summary.
10. OBAMA ADMINISTRATION TREATMENT ISSUES:
 - a. Executive Order 13491;
 - b. Executive Summary of DOD Review of Compliance: read p.1 to top of p. 10.
 - c. Petition for Rehearing in *Mohamed v. Jeppesen Data Plan*;
 - d. *Mohamed V. Jeppesen Data Plan Inc*, 563 F.3d 992 (9th Cir. Apr. 28, 2009).
11. BUSH ADMINISTRATION DETENTION POLICY: Cases above, before 2009 outline the government's arguments re: both treaty and constitutional law.

12. OBAMA ADMINISTRATION DETENTION POLICY:

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).

Optional readings for the curious:

13. TREATIES, STATUTES: (all in a document file on Trunk)

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

14. Department of Justice White Paper, Lawfulness of a Lethal Operation Directed Against a US Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force (2013). Available at: <<http://www.fas.org/irp/eprint/doj-lethal.pdf>

15. David Cole, "Why the Court Said No," THE NEW YORK REVIEW OF BOOKS, Vol. 53, No. 13 (August 10, 2006).

<http://www.nybooks.com/articles/archives/2006/aug/10/why-the-court-said-no/>

16. Part 1 of Derek Jinks and David Sloss, *Is the President Bound by the Geneva Conventions*, CORNELL LAW REVIEW, Vol. 90, pp. 97-202.

17. Kenneth Anderson, "Targeted Killing and Drone Warfare: How We Came to Debate Whether There Is a 'Legal Geography of War,'" Koret-Taube Task Force on National Security and Law, Hoover Institution, Stanford University.

18. Jeremy Waldron, *Can Targeted Killing Work as a Neutral Principle?* NYU SCHOOL OF LAW WORKING PAPER NO. 11-20 (2011).

Simulation: Saturday, March 28

SIMULATION: ROUND ONE

Overviews and roles will be distributed ahead of time. Time should be set aside over the previous two weeks for simulation prep, including studying roles and meeting with other participants.

Class 10: Friday, April 3

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

Guest Faculty: TBD

SOME QUESTIONS FOR CONSIDERATION:

1. What are the characteristics of a successful strategy for US ratification? Why has Climate Change presented so many more obstacles than the Montreal Protocol (ozone layer) strategy?

2. Do other nations face the same or different strategic issues for those who are trying to support ratification? What have we learned from the Simmons' research?

Readings:

1. Richard Benedick, *OZONE DIPLOMACY* (Cambridge: Harvard University Press, 1998), pp. 51-67. [K3593 .B46 1991 c.1]
2. REVIEW Robert O. Keohane and David G. Victor, *The Regime Complex for Climate Change*, *PERSPECTIVES ON POLITICS*, Vol. 9, No. 1 (March 2011), pp. 7 – 23.
3. Harold K. Jacobson, *Climate Change: Unilateralism, Realism, and Two-Two-Level Games*, *MULTILATERALISM & U.S. POLICY: AMBIVALENT ENGAGEMENT* (Lexington, MA: Lynne Rienner, 2002), Chapter 16. [E183.7 .M85 2002 c.1]
4. William Moomaw, *Can the International Treaty System Address Climate Change?*, *THE FLETCHER FORUM OF WORLD AFFAIRS*, Vol. 37, No. 1 (Winter 2013), pp. 105-118.
5. Remarks of Daniel A. Reifsnyder, Deputy Assistant Secretary for Environment U.S. Department of State at the 24th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer Geneva, 15, November 2012
6. William Moomaw & Mihaela Papa, "Creating a Mutual Gains Climate Regime Through Universal Clean Energy Services," Discussion Paper (6). Medford, MA: Sustainable Development Diplomacy and Governance, CIERP, The Fletcher School, May 2012

Optional:

7. Thomas Schelling, *What Makes Greenhouse Sense? Time to Rethink the Kyoto Protocol*, *FOREIGN AFFAIRS*, May-June 2002.

Class 11: Friday, April 10

EXCEPTIONALISM CASE 3: IS CHINA EXCEPTIONAL IN ITS INTELLECTUAL PROPERTY TREATY BEHAVIOR?

Guest Faculty: Professor Mark Wu, Harvard Law School

Readings:

1. **For a list of the class readings, and how to approach them, please see the following document on Trunk: "Overview – China and TRIPS Agreement – Fletcher"**

Optional:

2. Excerpts from Alistair Ian Johnston, *SOCIAL STATES: CHINA IN INTERNATIONAL INSTITUTIONS, 1980-2000* (Princeton, NJ: Princeton University Press, 2007). (JZ1251.J64 2008)

3. 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) [Not on Trunk, but the book is on reserve in Ginn]

Simulation: Saturday, April 11
SIMULATION: ROUND TWO

Class 12: Friday, April 17
SIMULATION DEBRIEF

Class 13: Friday, April 24
Extra Class for Summing Up, If Desired

SOME ISSUES FOR CONSIDERATION:

This class gives you a chance to evaluate what you have learned about treaty behavior and test it against two powerful minds, classified by some as the “sovereignists.” In what ways are their arguments persuasive? In what ways not? Review all that we have read to muster your arguments.