IMBA 571
PUBLIC INTERNATIONAL LAW
& ORGANIZATIONS

Abu Shouk refugee camp in Sudan
Photo by US Representative Frank Wolf
“A rule of international law is one that has been accepted as such by the international community of states:

a. in the form of customary international law;
b. by international agreement; or
c. by derivation from general principles common to the major legal systems of the world.”
CASE: *The Paquetté Habana*
175 U.S. 677 (1900 U.S. Sup. Ct.)

**FACTS:**
- During Spanish-American War, 2 vessels sailing under Spanish flags were seized by the US as part of the 1989 Cuban blockade
- Spanish owner of vessels (living in Cuba) sued for damages in Florida

**LOWER COURT DECISION:**
- Upheld seizure of ships as war prizes
CASE: *The Paquette Habana*

**Supreme Court Ruling**

- **ISSUE:**
  - whether the ships were subject to capture by the US during the war

- **REASONING:**
  - “... ancient usage ... gradually ripening into a rule of international law ... fishing vessels ... Have been recognized as exempt ... From capture as prize of war.”
**CASE: The Paquette Habana**

Supreme Court Ruling

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<thead>
<tr>
<th>REASONING (cont.):</th>
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<tr>
<td>– Doctrine that exempts fishing vessels from capture has been known to US</td>
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<td>– “International law is part of our law . . . “</td>
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<td>– “Where there is no treaty. . . [we look to] the customs and usages of civilized nations…”</td>
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<td>RULING:</td>
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<td>– US must pay owner for damages</td>
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The Law of Treaties
Vienna Convention, in force 1980

- Codified some customary int’l law
- Applies to bilateral or multilateral
- Not all nations are signatory
- Art. 26 “Pacta sunt servanda”:
  - “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”
The Law of Treaties

- Treaty termination allowed if
  - fundamental change in circumstance, or
  - if treaty violates *jus cogens* (preemptory norm of general international law)

• FACTS:
  – Alvarez-Machain abducted to US for arrest and trial for murder and torture of DEA agent
  – Mexico protested a violation of the extradition treaty between Mexico & US

• LOWER COURT DECISIONS:
  – Indictment dismissed since abduction violated treaty
United States v. Alvarez-Machain, Supreme Court Ruling

• ISSUE:
  – Whether criminal defendant abducted to US from nation with which US has an extradition treaty acquires a defense to US jurisdiction

• REASONING:
  – To infer from the Treaty that it prohibits all means of gaining the presence of an individual outside of its terms goes beyond established precedent and practice
United States v. Alvarez-Machain, Supreme Court Ruling

- **RULING:**
  - Treaty does not obligate states to refrain from abduction, but only provides a mechanism where no other exists
  - Treaty is NO defense
  - US jurisdiction exists
Impact of Treaties on Business

- Treaties impact private individual rights since State’s obligation becomes a citizen’s obligation
Example: **Montreal Protocol**

- **Title:** Montreal Protocol on Substances That Deplete the Ozone Layer  
  - US ratified in 1988; entered into force 1989  
  - Implemented in the US through the Clean Air Act: auto emissions limits, inspections, catalytic converters, fuel ingredients…  
  - “Perhaps the single most successful international agreement to date…”  
    Kofi Anan
Example:
Law of the Sea Convention

- Stalled until 1994 (effective date) because of North-South debate re: “common heritage of mankind” & resource interests
  - Progress made when Deep Seabed Mining agreement applied free market principles rather than common heritage principle
- US signed; Senate has never ratified
Commerce of the Oceans

- > $700 B in goods shipped through U.S. ports annually
- >25% of US oil & gas produced comes from offshore wells
- U.S. fisheries landings exceeded $3 B in 2002
- Telecom industry uses submarine cables

Photo: Yang Ming Lines ship at Wilmington Port

American Petro. Inst., Nat’l Ocean Industries Assoc., & Int’l Assoc. of Drilling Contractors support ratification
INTERNATIONAL ORGANIZATIONS

• Most via the **United Nations**
  - FAO, ILO, UNESCO, WHO, WIPO

• Commissions est. for special purpose
  - UNCTAD, UNICITRAL, UNIDROIT…
### Bretton Woods Orgs.

<table>
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<tr>
<th>Organization</th>
<th>Description</th>
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| Int’l Monetary Fund (IMF)   | - 181 states  
- lends money to developing nations to assist with problems of economic development                                                       |
| World Bank                  | - assists member states, rich or poor, with balance of payment problems and finances development projects in developing nations             |

- **Controversy surrounds these organizations**
- **Photo:** Kyrgyz citizens protest World Bank in '06
GENERAL AGREEMENT ON TARIFFS & TRADE (GATT)

- Grew out of post-WWII economy
  - Purpose was to commit member states to principles of nondiscriminatory trade
  - Eventually led to more formal WTO body
- World Trade Organization
  - now the dispute resolution body for GATT
Role of UN in Public International Law

- **Current issues** are many, including peace & security, economic & social development, human rights, humanitarian affairs, international law, and the environment.
Example: International Court of Justice

- Formed in 1945 under UN charter, ICJ sits at The Hague & bases decisions on Statute of International Court of Justice
- ICJ use rare: only states may bring an action, no compulsory jurisdiction, and decision binding only on parties

Great Hall of Justice, The Peace Palace
Next Time:
Role of Contracts in Int’l Commerce & International Trading of Goods