

International Law – Demystified
An Introduction to International Law
October 25, 2006

Executive Summary

Professor Payam Akhavan spoke of the nature of the international legal system as both different from, and similar to other areas of law. The main source and subject of international law is the sovereign state. There is a tension between power and normativity in the structure of international law. While, in a practical sense, international law is easily encountered, to pursue a career in international law requires interest and passion.

Professor Frédéric Mégret spoke of international criminal law, a branch of public international law. The history of international criminal law can be traced to extradition as a rule mediating the tension of prosecuting an individual, yet bringing them in your territory in order to do so. International criminal law further developed with the transnationalization of crimes such as organized crimes and trafficking. Today, the latest development includes *ad hoc* international criminal tribunals and the International Criminal Court in The Hague.

La professeure Geneviève Saumier nous a parlé du droit international privé. Le droit international privé à McGill s'occupe des questions de litiges transfrontalier entre parties privées. Le droit des contrats comportent un aspect international avec une clause qui insère le droit applicable au contrat. Il y a aussi une question de la reconnaissance des jugements étrangers.

Professor Payam Akhavan → Public International Law

- Role is to mystify IL.
- Nature of the international legal system:
- The system is different and similar to other areas of law.
- PIL contains the equivalent of domestic law concepts.
- PIL is also either not law at all or exactly what law should be.
- The main source and subject of IL is the sovereign state. There is no centralized sovereign.
- PIL is developed through treaties and customary law. (like tribal societies that are norm based).
- Internalization of norms or a sense of shame work as enforcement mechanisms.
- The essence of the legal system is not the coercive nature of the state but habitual lawfulness.
- International legal system, contrary to dominant sovereign view, is a reflection of some of the essential attributes of what a legal system should consist of.
- There is a suggestion that one should not look at the exceptional failures.
- Others say that IL is not really law at all. There is a tension between power and normativity in the structure of IL.
- Koskenniemi says that law is an apology for power. IL is no more than a reflection of the power of the state. This is opposed to the utopia of justice.

- Much of international law is enforced in the discourse of IR. It is enforced through the media, discourse, diplomatic notes etc.
- The idea of the state has to be deconstructed. NGO's and other important actors can play a big role in shaping IL.
- Much of IL is formulated and implemented in non judicial settings.
- What can one do with IL?
- A lot of IL is litigated in domestic courts. HR, international state investor arbitration ICSID, etc.
- Even in legal practice in the government and the UN, IL is increasingly merging with domestic law.
- It is therefore not remote but something that we might encounter.
- Carriers in IL are not easy to find.
- Too much demand and the rewards are not always financial.
- Interest and passion are essential.
- Even to be a well informed global citizen, it is important.
- Personal experience.

Professor Frédéric Mégret → International Criminal Law

- It is not clear what ICL is.
- In one sense, it is the branch of PIL
- PIL regulates the relations between states or on occasion it determines that a certain norm is violated.
- Most people think of the ICC when they think about the ICC but it is much more varied in reality.
- It has a long history. Domestic systems realized that crime is a transnational issue.
- The first problem for criminal lawyers is that they cannot restrict themselves only to domestic systems.
- Drug trafficking, kidnapping are broad issues.
- We realized early on that institutional settings were necessary.
- Sovereignty says that you can only investigate in your own states. you therefore need all kind of rules that mediate the tension.
- Extradition is very important. Some states may not want to surrender individuals. Maybe HR issues will arise.
- International HR law. not sending individuals to states where they are tortured or risk the death penalty.
- ICL is something that criminal lawyers do very often.
- There is also the issue of jurisdiction. We have to determine who has jurisdiction? State that the crime was committed, states to which the criminal belongs, etc.
- Can a state prosecute people when it affects their interest.
- What are the limits of jurisdiction as it relates to sovereignty.
- Transnationalization of crime raised new problems: organized crimes, trafficking offences, etc.
- UN and other organizations that encourage states to adopt common formulas to define crimes.

- Try to come up with definitions that are common to all states. this is so criminals do not take advantage of the variation.
- The latest development is supernational criminal law: when the international community gets together and try to collectively enforce criminal sanctions and exercise criminal jurisdiction.
- This include cealing with issues of genocide, war crimes. These can have no transnational element.
- Traditionally, this would be treated as a sovereign matter. But the Nuremberg trials changed this. Today even purely domestic crime can enfringe on ICL.
- There is a rise of hybrid tribunals.
- The ICC is an attempt to make the model more permanent and universal.
- International criminal institution which predates the commission of the crime.
- Issues in the context of ICC: political issues, IR, PIL, international HR law.
- There is a strong link between domestic criminal laws and ICL. Knowledge of many domestic systems.
- You need to be a good comparative criminal lawyer: procedures, sentencing etc.
- In the ICC, there is a tremendous need for people who have a strong comparative background.
- Court of the Sierra Leone comment: McGill gives you a head start.

Professor Geneviève Saumier → Private International Law

- Droit international privee.
- Ce n'est pas simplement un source de droit international.
- Mais c'est un domaine different.
- Des questions jurisdictionnelle se posent mais c'est different.
- Un survole de ce qu'elle fait dans son cours.
- Droit des échanges international inclut beaucoup de DIP.
- DIP a McGill adresse des questions de litiges transfrontalier.
- Tout les domaines du droit privee sont impliquee.
- Gloalisation des echanges et du marche entraine des questions du DPI.
- Pas de relations entre etats mais de parties privee.
- La diversite du droit privee. Comment differents systemes adresse la question.
- Quand est ce que on peut poursuivre quelqu'un ailleurs ?
- Transactions international. Il y a une possibilite que le droit locale s'applique pas.
- Conflits des droits.
- Clause qui insere le droit applicable dans le contrat !
- Le droit des contrats ont un aspect international.
- Il y a aussi la question de reconnaissance des jugements etrangers.
- DIP peut se concevoir dans un optique de litige ou se concevoir dans un optique transfrontalier.
- McGill : certain facon de participer au programme transsystemique.
- Confronter la diversite des solutions avec l'uniformite des approches.
- Le droit comparee.