How to Study International Law Using This Book

This book is an introduction to international law, which we could easily reduce to little more than a dense web of rules, practices, and organizations that help regulate the behavior of international actors. It is, however, so much more than that. International law represents nothing less than the cumulative vision of the human race, a statement of its highest priorities and its future direction as a species. Some of those priorities include the creation and maintenance of peace, the eradication of pandemic disease, the preservation of a livable environment, the provision of basic human needs, establishing the conditions for shared prosperity, and the spread and protection of fundamental human rights. In the chapters that follow, we introduce you to the ways in which international law is a constantly evolving, intensely relevant, and endlessly fascinating subject of study that is operating in your life at all times.

Inspired by the reading habits and questions of our own students as well as the vision of William Slomanson (the book’s original author), we designed this textbook to be a user-friendly introduction to international law, with opportunities for deeper engagement offered online. You will see that each chapter is laid out the same way and has the same features. Every chapter begins with a real-world example of some aspect of international law. We want students to understand the connections between what they might read in the news and the vast array of topics covered in a course on international law. Next, every chapter’s introduction provides a brief roadmap to the contents of the chapter ahead, helping students quickly understand the major issues they are about to encounter.

As you discover decisions of national and international courts in this book, you will find that some are excerpted within the text itself – you will see a few pages of the text of the decision printed right in the chapter – and some direct you to online content (the “Cases” portion of the website). The online cases are edited to make reading important decisions in international law more convenient, so that you are not wading through hundreds of pages to learn about a particular concept. We want students to have
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experience reading the reasoning of courts from around the world, and so actually reading and directly grappling with portions of these decisions (versus reading about them) is a crucial part of your international law education.

You will gain an opportunity to put your knowledge of international law and the cases you have read to use in the “Problems” section of the textbook’s companion website. International law is often very abstract. Working through problems – many of them based on current events – can help it feel more concrete as you see abstract principles of the law applied in practice. We also provide you with a list of links to major treaties, documents, and courts (the “Resources” section of the website) that you may find useful as you proceed in your study of international law. Finally, each chapter ends with a preview of what follows in the next chapter, and hints at how the chapters speak to each other.

Finally, we acknowledge that there is far more to the study of international law than we can cover in a relatively succinct text. New, helpful resources are published every day. To assist you in discovering some of those resources, we have also created an annotated bibliography, housed on the companion website. It is organized by chapter so that you can easily find additional reading to suit your academic needs.

This brief preparatory chapter can serve as a ready reference to some of the key elements of studying international law, designed particularly for those with little experience working with and interpreting legal documents. In the sections that follow, you will find the following “how to” guides that may give you a jumpstart in your study of international law: (1) How to Read a Case in International Law; (2) How to Brief a Case; (3) How to Read a Treaty and UN Documents; and (4) How to Use and Understand Theoretical Approaches in International Law.

1 How to Read a Case in International Law

You will soon discover that there is not just one court that issues judgments on international issues. Rather, courts around the world frequently address issues touching on international law, so you will encounter decisions from multiple perspectives in this book. Often, however, the definitive word on major issues of international law comes from the International Court of Justice (ICJ), the court connected to the United Nations (UN). Thus, in describing how to read and brief a case, we use the ICJ’s caselaw as a baseline. If you know how to read an ICJ case, you will quickly learn how to read and digest cases from other courts as well. What follows are steps you can follow to locate, read, and understand a decision efficiently.
1. **Note the case name.** Only states can bring disputes before the ICJ (which is not true of all courts that decide on issues of international law). This means that the case names can be confusing and difficult to remember if all cases are *State X v. State Y*. Instead, cases often have a descriptive name that is more often used to refer to the case. For example, the ICJ’s 2010 decision in *Argentina v. Uruguay* is usually referred to as *Pulp Mills on the River Uruguay*. Cases from other courts – human rights courts, for example – use the more familiar style of *Party X v. Party Y*, in which Party Y is typically a state that is accused of breaching an obligation under international law (e.g., *Opuz v. Turkey*). Cases in international criminal law, decided by the International Criminal Court (ICC) and dealing with crimes against humanity or genocide, are noted as *Prosecutor v. Defendant* (e.g., *Prosecutor v. Germain Katanga*).

2. **Skim the facts.** Each decision tells a story, and if you know the story it will be easier for you to remember the eventual decision of the court and its significance. Courts will always give a brief sketch of the facts of the case in the opening paragraphs of the decision. You need not memorize every detail, but rather have an overall portrait of the dispute that brought the parties to court. Only the most relevant facts to the issue(s) at hand are included in this summary.

3. **Find the legal issue.** Decisions from the ICJ and other international courts are often quite long – sometimes hundreds of pages. You should not expect to read entire cases in this course, but rather only the portions that are the most relevant to whatever concept you are studying. Most decisions touch on multiple elements of international law because the cases that come before the ICJ are complicated. This means the decisions you read will be broken up into different sections; you will see what the different sections are by reading the decision’s table of contents, making it easy for you to find the information you are seeking. Paragraphs are typically numbered. For example, if you are studying international environmental law and you want to understand a state’s procedural obligations in *Pulp Mills on the River Uruguay*, a quick pass through the decision’s table of contents will direct you immediately to paragraph 67. In this way, you can maximize your reading time and begin to understand how courts make decisions. Additionally, you will begin to notice references to other cases within the decisions that you read, giving you a better sense of how decisions build on each other in establishing and following precedents.

4. **Find the court’s reasoning.** Pay attention to how the court comes to a decision on the issue you are interested in. Why were certain arguments more compelling than others? What evidence did the court find...
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persuasive? You will likely not find the court’s reasoning in a single sentence, but in multiple paragraphs. It is crucial to understand the court’s reasoning in context, lest you misinterpret what the court actually said. You will often find a brief restatement of the court’s decision on each issue of the case at the very end of the judgment, but if you read only that portion, you will miss the core of the court’s reasoning.

5. Find the ruling (holding) and dissents. This is the easy part. The court’s ruling (the majority opinion) on each issue is found at the end of the judgment. Be sure to note dissent(s), if any, and the reasoning behind them. Treat concurring opinions the same. Doing so expands your thinking about the law itself and how the court reaches its conclusions. Cases reach international courts because there are no easy solutions; reading dissenting and concurring opinions gives you a fuller portrait of the available options. When you are asked to craft your own arguments about international legal issues, you can use not only the majority opinions of the court but also the minority opinions. Sometimes, today’s minority opinion(s) can become tomorrow’s majority opinion as circumstances change.

Now that you have thoroughly read a case, you are ready to brief it. As you gain more experience, you will be able to brief cases as you read them. To help you with both reading and briefing cases, you will find edited versions of long cases (such as Pulp Mills) on the companion website. Some cases are also reprinted in the text itself. These case excerpts give you enough information about the case so that you can understand the core arguments and the Court’s reasoning. Full citations for most of the cases are also provided, in the event you wish to read further to enhance your understanding or quench your curiosity.

2 Why and How to Brief a Case

What does it mean to “brief” a case, and why should you do it? To avoid confusion, note that there are two kinds of briefs: (1) the kinds that lawyers in a case write to convince the court to accept their client’s legal arguments over the other party’s position; and (2) the academic brief of the case for use in class, which is the type that we are describing here.

Judgments from international courts are long and detailed – they contain too much information to quickly recall. A case brief is in part a memory aid: in a brief, you capture the essentials of a case so that you can remember what it was about and the contribution it made without reading it all again. But
case briefs are more than that: they ensure that you have understood the legal significance of that case and its contribution to the larger body of law. Done well, case briefs are indispensable tools to building effective legal arguments. It is worth noting that there are many online sites that offer pre-written case briefs, especially for famous cases like many we reference in this book. While it is tempting to rely on briefs that others have written, your understanding of international law will suffer if you do not undertake the hard work of sifting through the cases for yourself. Briefs represent your own way of thinking about a case and a court’s conclusions; they are your own, personal notes. While you may wish to consult online case briefs to check your understanding, we encourage you to keep your own set of briefs for this course.

There are many ways to brief a case, and your instructor may have their own preferred method. The “IRAC” method is popular, however, and easy to remember and understand. “IRAC” stands for “Issue, Rule, Application, Conclusion,” the principal building blocks of a good case brief. An IRAC case brief has the following elements:

1. **Case name, date, and the court that made the ruling.** It is good practice to note where the case can be found beyond knowing just the court that made the ruling. It is possible to locate a case through the citation to the reporter. The “reporter” is the concise name of the court or printer that publishes that court’s opinion, along with the volume and page number (e.g., “1949 ICJ Reports 174” is the reporter citation for the classic ICJ case *Reparation for Injuries Suffered in the Service of the United Nations*). Most cases can be found online using the full reporter citation.

2. **Facts of the case.** In a few sentences, explain the details behind the case that are relevant to the court’s eventual decision. You should not write an exhaustive play-by-play, but only record the pertinent facts of the story that brought the parties into conflict. One of the best ways to determine what facts you should include is to ask whether they are directly relevant to the issue(s) in that case (see below). Be sure that you understand who the parties are: who has brought the dispute (the plaintiff; if a state, the state is called the applicant) and who the dispute is with (the defendant; if a state, the state is called the respondent). To avoid confusion, note that the positions of the parties are reversed in a higher court (court of appeals) from the original court; the plaintiff becomes the defendant and the defendant the plaintiff (since they are the ones bringing the new legal action).

3. **Issue.** What is the question of law that the court is trying to answer? What is the point of law over which the parties are in conflict? It is often
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helpful, especially when you are new to briefing cases, to begin this part of your brief with the phrase, “The issue is whether . . . .” This construction, while formulaic, can help ensure that you have found the central question the court is attempting to resolve. This is the most important section of the brief, as the rest of the brief is devoted to the court’s resolution of the issue. (Note that most cases have many issues; you may be asked to do an “IRAC” analysis on all or just some of them, depending on your instructor’s objectives.)

4. Rule. Upon what existing legal principles or instrument is the court basing its decision? What is it being asked to interpret? The “rule” section might include decisions from other courts, treaties, different state laws, or even norms and customs (Chapter 1 introduces you to these).

5. Application. How did the court apply the rule to arrive at a decision in this case? How did the court interpret the facts of the case given the rule it applied? In this part of the brief, be sure you understand why the court decided the case as it did; that is, what legal reasoning they used. Did the court use novel reasoning, or did they largely rely on precedents?

6. Conclusion/holding. What did the court decide? This is the answer to the “issue” section of the brief. Was the decision unanimous? Here, you should also record if there are dissents or concurring opinions you would like to remember.

See the sample case brief below. Remember, however, that there is no “perfect” way to write a case brief. The best case brief is one that will be useful to you in your studies and in class.

PULP MILLS ON THE RIVER URUGUAY (ARGENTINA V. URUGUAY)

International Court of Justice, Judgment of April 20, 2010, ICJ Reports 2010, 14

Facts: The River Uruguay forms part of the border between Argentina and Uruguay. The 1975 Statute of the River Uruguay is a bilateral treaty that details the states’ joint management of the river and established the Administrative Commission of the River Uruguay (CARU). Article 7 of the Statute requires that if the states wish to undertake projects that may impact the river, they must first notify CARU. Article 41 requires states to protect marine life and prevent pollution on the river. Uruguay authorized two companies to build pulp mills near the river. Argentina argued that
Uruguay violated the 1975 agreement when it did so. Uruguay insisted it was using state-of-the-art technology that would not endanger the river.

**Issue:** The issue is whether Uruguay, in authorizing the pulp mills near the river, violated the terms of the 1975 Statute.

**Rule:** 1975 Statute of the River Uruguay

**Application:** The ICJ ruled that Uruguay was in breach of its procedural obligations under the 1975 Statute because it did not inform CARU of its plans to authorize the pulp mills, even though it had notified Argentina (but not via CARU). Argentina argued that Uruguay had also breached several substantive obligations to protect the river, but the ICJ did not uphold these claims. Importantly, the ICJ did note that there exists a requirement under international law to conduct environmental impact assessments in situations where there is a risk that an activity by one state may harm another.

**Conclusion:** Uruguay was in breach of its procedural obligations under the 1975 Statute of the River Uruguay. It was not in breach of substantive obligations, though the Court noted a general acceptance among states of a requirement to conduct environmental impact assessments.

**3 How to Read Treaties and UN Documents**

Aside from cases, you will encounter many other types of documents in this book. Treaties – formal agreements made between states – and legally binding documents produced by the UN form the backbone of international law. While it is not likely that you will read entire treaties in this course, it is important to know what to look for as you skim one. Likewise, understanding how to decode UN documents will serve you well in any course with an international component. We offer a brief set of guidelines to assist you.

Treaties are covered in detail in Chapter 3 of this book; we refer you there for information on what treaties are, the forms they take, how states form them, and how states end them. Our focus here is on how to find treaties online, how to tell if they are still in force, and how to quickly ascertain their purpose and limits.

There are many online sources for finding treaties; indeed, a quick online search will reveal the text of many of them. In international law, however,
consulting an authoritative version of a treaty is the best idea. There are several good sources for doing so. For multilateral treaties (treaties involving more than two states), the best resource is the UN Treaty Series (UNTS) online. A link to that database can be found on our companion website under “Resources”; you will also note that the UNTS is the source we used in our footnotes in this book. Full links to each treaty we reference in the book are included in the notes.

For up-to-date information about multilateral treaties, the best resource is the database of Multilateral Treaties Deposited with the Secretary-General. This database is updated daily with the latest information on treaty ratifications, reservations, and other information that might help you in your research. This is the best place to look to find out whether a treaty is still in force. There is a link to this site on our companion website as well.

The major international organizations – the European Union (EU) or the Organization of American States, for example – also maintain sites for their formal documents. In addition, sometimes treaties are made directly between states, some of which publish treaties to which they are a party, and they are registered with Secretariat of the UN. These, too, are linked on our website, though most of these treaties are also collected in the UNTS.

Reading treaties can be tedious, but it is not difficult. What follows are guidelines on how to get essential information from a treaty in a single read.

1. **Why was the treaty necessary?** The preamble is the first section of every treaty. Each clause begins with an action word or phrase: “believing,” “noting with concern,” “affirming,” “recalling.” Reading through this section can quickly give you a sense of why the parties felt it necessary to draft the treaty and prepare you for the meatier portion of the treaty that follows.

2. **What did the parties agree to do?** The longest section of the treaty is its substance, the individual articles that make up the agreement between the parties. The articles are organized into different sections, often set off with subheadings. The first section of articles often defines terms that will be used throughout the treaty and indicates situations in which the treaty applies and when it does not apply. Articles that follow in subsequent sections form the heart of the agreement: this is where you should focus your attention as you read. What are the parties agreeing to do when they sign this treaty? How does the treaty limit or guide their behavior?

3. **What happens in a dispute?** Near the end of the treaty there will likely be a series of articles that do the following: (1) establish an organization with responsibility for overseeing the treaty’s observance; (2) detail how
disputes will be settled; and (3) outline possible ramifications for non-compliance. These sections are crucial in international law; while we know that most states comply with international obligations, a large part of the study of international law is concerned with what happens when they do not.

4. **How will the treaty come into force?** The final section of a treaty is devoted to issues of ratification and entry into force. It is also the section that details whether or not reservations (sometimes also called “declarations”) are allowed. States can enter into some treaties without agreeing to all of its provisions. These “reservations” are typically listed at the end of the treaty or are easily found in the UNTS documentation. As you will read in Chapter 3, states cannot make reservations to a treaty that effectively nullify its purpose. Depending on your reason for reading the treaty, reservations may be important to consider.

In addition to treaties, you will often encounter documents produced by the UN in this textbook (and in your study of international law more generally). Since the UN is a complex organization (detailed in Chapter 6) and since it publishes so much of its work, it can be confusing to figure out what type of document you are reading and what its purpose is.

The most relevant UN documents for the study of international law are listed below, though your instructor may have amendments to this list:

1. **UN Security Council resolutions.** The UN Security Council is the only organ of the UN with the power to compel member states to act to counter a threat to international peace and security. As such, they are powerful documents in international law, particularly related to the use of force and peacekeeping. Security Council resolutions have been continuously numbered since 1946 and follow this pattern: S/RES/[sequential number] (year).

2. **UN General Assembly resolutions.** The General Assembly is the UN’s main deliberative body and it issues non-binding resolutions and declarations. These documents can be useful to ascertain the common interests of states; they carry considerable political weight even if they are not enforceable. General Assembly resolutions, which you will encounter in this book, carry the following tag: A/RES/[session number]/[sequential number].

3. **Reports and decisions from major UN committees.** The UN has a lot of smaller agencies and committees under its umbrella. Notable among them are several human rights committees that issue recommendations and take decisions on situations submitted to them in accordance with
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human rights conventions. The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), for example, publishes its views on situations that are forwarded to it alleging violations of the Convention on the Elimination of All Forms of Discrimination Against Women. These documents carry special tags: CEDAW/C/[session number]/D/[communication number]/[year]. Other committees have their own similar tags. For example, the Human Rights Committee—the committee associated with the International Covenant on Civil and Political Rights—carries this tag: CCPR/C/[session number]/D/[communication number]/[year].

Draft articles and documents of the International Law Commission.
The International Law Commission (ILC) is tasked with the development and codification of international law. When the UN General Assembly adopts the ILC’s “draft articles” on topics of concern in international law, those articles are often incorporated into international agreements and referred to by international courts. You will find several references to specific draft articles throughout this textbook. Documents related to the ILC will bear the following tag: A/CN.4/[sequential number]. The various draft articles carry the tag: A/[sequence number]/10, where “10” refers to Supplement 10 of the UN General Assembly’s Official Records. Draft articles are also published in the Yearbook of the International Law Commission.

4 Using and Understanding Theory/Jurisprudence in International Law

You may not be in the habit of thinking in explicitly theoretical terms. This text has a pragmatic focus and does not dwell on theory. However, theory is behind every subject of study, international law included. It will significantly aid your study of international law to understand what sorts of assumptions (“priors”) are hidden behind the voluminous content of the subject. Theory guides all researchers and writers in international law (textbook authors included) in the key decisions about what material to include and exclude in the first place, and how that material is presented in the text and in what order.

In the following pages you will see a simplified table of the leading theories of international law. In the legal world, jurisprudence is the theory of how law is created/grounded/justified, who should/does make it, and under what circumstances it can/should be enforced or followed. More