

Reading Guide for International Law Unit I

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Prepared by Jennifer Hainsfurther and Doreen Lustig, building on work by Erin Delaney and Odette Lienau

Unit 1 introduces you to the primary theoretical framework through which you will study international law: the foreign office model versus global governance debate. The issues discussed under international law could frequently fall into one of the three categories: military, markets or morals. These issues are often dealt with by different logics: realism, institutionalism, cosmopolitanism and the political conception. This framework is illustrated through a series of cases dealing with the Vienna Convention on Consular Relations. Which model (foreign office or global governance) more accurately reflects the world today? Which one better captures the dynamics of these cases? Could we trace the struggle between agents who are advocating for the continuation of the foreign office model v. those who seem to acknowledge that a 'new world order' has arrived?

How would you categorize the issues these cases are dealing with (military, markets, morals)? Could only one set of 'logics' be applied to explain their judicial analysis and consequences or maybe we can think of them through more than one theoretical framework? Ask yourself why countries obey the Vienna Convention. It may help you to consider these cases through the analytic lens of game theory, in particular the idea of international law as a 'two-level game'. An international actor such as a state must be sensitive to two levels of pressure: domestic as the first level and international as the second. Think about how these two levels interact, and how legal and political exigencies at one level can limit an actor's freedom at the other. In *Bread*, and moreover in *La Grand* (which we read in Unit II), the domestic limitations of federalism negatively influence the United States' ability to operate internationally. But might there be scenarios where a state's international position is actually strengthened by domestic constraints? (Consider this question in light of the difficulties that might face the world's lone superpower in making credible commitments otherwise.)

In *Breard*, how does the Supreme Court treat the Vienna Convention and the opinion of the ICJ? Does the Supreme Court talk out of both sides of its mouth, paying lip service to the importance of the ICJ's interpretation of the treaty while effectively ignoring it at the same time? Notice the interaction between domestic and international law. What role does U.S. constitutional law play in international law, and vice-versa? Does international law rely on domestic actors for enforcement? Contrast the actions of the executive branch in the Paraguay cases versus the Mexico ones. How does the Supreme Court see itself in relation to the ICJ? How might the Supreme Court's attitude to international legal tribunals affect their purpose? Does it matter if we are confident that we have a higher level of 'meaningful' rights protection here in the U.S. than would be provided by international law?

Notice the different institutions involved in these cases: Virginia/Texas, the executive branch, the ICJ, and the Supreme Court. Who has the better claim to say what the law is? Does it matter? Should it matter? After *Avena*, when the President says US will discharge its obligations under the decision of the ICJ in accordance with general principles of comity, does this mean he does not view the Vienna Convention as creating legally binding obligations?

Note the tension between the diplomatic protection framework, which seems to embody the foreign office model, and an individual/human rights framework that the ICJ tiptoes around

in *Avena*. The death penalty, seemingly a morals issue, has led to global aspirations generated by transnational networks, yet the presence of the Vienna Convention seems to make the cases more about states and their official capacities rather than being about the individuals whose liberty is at stake.

Read the Medellin oral arguments. In this case, we see the disaggregated state in the extreme: the state (i.e. the United States) clearly does not function as a unitary actor. What role should separation of powers and federal concerns play in the interpretation of and acceptance of international law, particularly a treaty regime that the state voluntarily joined. Who is the state? Is it the executive branch? Texas? The Supreme Court? Where does the ICJ opinion fit in? How do you think the case will be decided? Ask yourself who has the better argument.