

## Discussion Outline – Ch. 8

- Exams and quizzes
  - Good scores – nice job all around
  - Hand out example essay, go over structure and content
  - Questions?
  - Second exam will look very similar – MC and essay, only on second half of class
- Treaties
  - Questions about the reading guide I sent out?
    - Do you like that better or worse than the table format I used for ch. 4-6?
  - What would you say is the most fundamental rule with regard to treaties?
    - *pacta sunt servanda*?
      - what does that mean in practice?
      - why would the expectation that treaties will be honored be so crucial to states?
        - international law as a framework or structure that supports the workings of the system as a whole
    - treaties cannot be products of coercion or threat of force? (at least since 1980 effective date of VCLT)
      - threat of force...goes against most fundamental norm of UN
      - but what constitutes legitimate duress that would void a treaty?
        - no specific definition in VCLT
        - military? political? economic?
      - *connect back to law/politics, power relations, etc. - inequity*
        - *also reflected in state representation at multilateral treaty negotiations – recognition, skills, etc.*
        - *even in text of VCLT – powerful states able to prevent a specific definition of force in the treaty*
        - *reservations to multilateral treaties*
      - Guantanamo Bay – given to U.S. in treaty with Cuba after Spanish-American War in return for U.S. recognition
        - but Cuba claims treaty is a product of coercion, should be invalid under Article 52 of the VCLT (or CIL)
        - was Cuba essentially forced to agree?
      - *Germany v. Iceland* - dissenting opinion (judge from Mexico)
        - was German “agreement” with Iceland essentially dictated?
          - “political pressures” impinging on small states have the effect of coercion and give rise to treaties and agreements that are supposed to have been freely concluded but perhaps have not been?
        - critique of *pacta sunt servanda*
          - need to protect the “vital interests” of the Icelandic people, who are extremely dependent on their natural resources for national well-being

- new international norms about protecting weak states from the rich and strong, along with technological development making the gap even wider
      - does this constitute a fundamental change of circumstances meriting a revision of existing international arrangements?
    - U.S. practice – does *pacta sunt servanda* apply?
      - U.S. Constitution puts itself, treaties, and laws on an equal plane
      - Constitution trumps all others, but treaties and statutes have been judged by the practice of “the last in time prevails”
        - only refers to domestic effect
          - are there problems with this?
            - states privileged over individuals?
            - *Medellin v. Drake* (2005) case – Texas failed to inform the accused of his right to consult the Mexican consul, which is required by VCLT
              - Appeals Court affirmed conviction because Medellin had not asserted his right, but Supreme Court was going to hear the case
              - *Avena* decision in ICJ said U.S. needed to proactively inform defendants – case was going back to Texas courts, so Supreme Court dismissed for now
              - dissent: we should decide whether state rules on procedural default can be set aside to allow for the “full effect” of a treaty
    - executive agreements vs. treaties
- why aren't treaties as clear and detailed as contracts?
- multilateral treaties – negotiations of broader international practice
  - Kyoto, ICC, CNTB
  - connection to CIL
  - “lawmaking” form of treaties generally
  - usually progressive rather than self-executing