What is international law?
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The terminology of international law includes International, Transnational, and Comparative Law. I am going to begin by focusing on International law. Many years ago I studied for an LLM in International Law, taking courses on public international law, the law of war and peacekeeping, public international law, where we learned a lot about the law of the sea, the law of international institutions and a course on advanced corporate and securities law. I studied at the same university where I studied as an undergraduate, the University of cambridge. But the students in the LLM were different: they were from all over the world whereas at that time undergraduates in Cambridge were mostly from the UK, and very many of them from the southern part of the country. That changed in UK universities later, because the pressures on university funding encouraged them to admit high fee students, and the development of the European Union meant that UK universities now have students from other EU countries.

International law - public international law - involves issues relating to disputes between states, such as the demarcation of land and sea boundaries between state. The South China Sea case is a recent example: the Permanent Court of Arbitration in the Hague ruled in a case brought by the Phillippines that China had violated international law by building artificial islands in the South China Sea to extend its territorial waters hundreds of miles offshore. An artricle in the New York Times on August 10th showed pictures of the islands in which runways and what were suggested to be hangars for aircraft were visible. Another example of state to state disputes is Iran's suit against the US arguing that the US breached its Treaty of Amity with Iran with respect to seizures of Iranian financial assets after Iran was designated by the US as a state sponsor of terrorism.

Public international law also includes rules about the use of force, armed aggression, self-defence, including collective self defence. In the context of the US Presidential election Donald Trump suggested some uncertaintuy as to whether he would come to the aid of a NATO ally if asked.

Public international law is involved when we consider the actions of international institutions, such as Security Council resolutions to impose sanctions with respect to uses of force, and also treaty-making activities, the lending and other activities of the World Bank and the regional development banks. International treaties, whether bilateral or multilateral, establish rules of international law. Some international treaties guarantee human rights, such as the rights of refugees. And, in addition to rules of

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international law set out in treaties there is customary international law (although it is not always clear what the rules of customary international law are).

For most of the LLM students who come to study at the University of Miami this type of law is probably not the type of law they are most interested in. But there is international or transnational legal practice which is not primarily about relations between states. After I graduated from University I went to work at Freshfields and there I saw some international financial transactions, syndicated loans and eurobond issues with lenders and investors from all over the world. These transactions were negotiated in London because it is an international financial centre. But the transactions were often denominated in US dollars, and therefore there were legal opinions from US lawyers about the application of US law. After that I went to work at the London School of Economics as a lecturer in law wtih special reference to the law of international transactions. They had applied for new money for the position and I got to decide what I would work on. I began to teach and write about international finance and financial regulation. After a while I moved to the University of Miami. Apart from the advanced corporate and securities law course I took with Barry Rider the only aspect of what I studied as an LLM student that I have really ever used was the course I took on international organizations, and then it is really from the perspective of the EU which is its own weird international organization. I got very interested in the idea of comparative law and legal harmonization, partly from that advanced corporate and securities law course. My tenure article was about the market for corporate control. I went to a conference at the LSE where Mervyn King (later Governor of the Bank of England but then a Professor at the LSE) gave a paper about take-overs in which he assumed that the sort of take-over defences you can use in the US (cited in the US literature he was relying on) would be able to be used in the UK. My article looked at the regulatory environment for take-overs in the UK using the mostly US-based economic literature.

Since I studied for an international LLM the world international law deals with has evolved. Here are some examples: there has been a dramatic expansion in bilateral investment treaties; there has been huge technological change as the internet has developed and given rise to a new transnational governance regime (ICANN); the Security Council now imposes sanctions on individuals, even though there is no mechanism in the UN system for individuals to bring challenges in law against such sanctions (although an administrative system of review has developed). This is just one example of how international law and international relations are not now just about states and international organizations, whether governmental or non-governmental. There are megacities, and cities have begun to work together to address issues such as re climate change. Human rights law is about protecting individuals. The recent global financial crisis showed how interconnected the world is: risks developing in the US spread around the world, setting of an EU sovereign debt crisis, and when EU Member States had to bail out their banks this led to the imposition of austerity. This is one example of the idea that risk-management is not transnational. There are others: the concern about security focusing on transnational terrorism since 2001, health risks (e.g. ebola, zika), cyberscurity involving warfare via computers and transnational crime,

and climate change with implications for food security and for people who will want to move to avoid sea level. International criminal law has evolved so that we now have an International Criminal Court and other international criminal tribunals but there is also extradition with respect to transnational rather than international criminal activity.

Thus, what a lot of lawyers do, rather than international law in any real sense is transnational law. Law is territorial, and having control of territory is what allows a state to regulate, but human activity crosses territorial boundaries, raising issues in which more than one state has a potential interest. This involves transnational law.

The number of people who get to practise international law as such is not huge. There are government lawyers working for states, and lawyers working for international organizations and NGOs. In addition there are private lawyers who act for individuals and firms that have claims against governments (e.g. under bilateral investment treaties (BITs)) with respect to expropriations and regulatory actions. Sometimes these cases challenge regulations like plain packaging rules for tobacco products.

Sometimes claims and arguments based on international law become a component of domestic litigation. A state's acts may be challenged on the basis they violate rules in a treaty. Some treaties are self-executing, meaning that you can invoke rights under the treaty before domestic courts. But many treaties are not self executing, such that you can invoke rights only to the extent they are implemented into domestic law. And there may be issues of sovereign immunity.

Sometimes we're concerned with issues relating to the domestic implications of questions of public international law. Who in government has the right to make decisions about the use of force or other issues of foreign relations. When a state implements a Security Council resolution to limit a person's access to their bank accounts, what rights does the person have to challenge that action? Challenging this sort of act is not likely to be successful in the US. Technically there is a greater chance of success in the EU where the Court of Justice has said there must be access to justice in the context of a limitation of rights involving a judicial adjudication of the issues, and reasons given for the decision. In the UK now there are issues of domestic law with respect to how the UK may give effect to the wishes of the electorate that voted for Brexit as well as issues of EU law. The question whether the Government or Parliament has the right to notify the UK intention to withdraw is an issue of domestic constitutional law

Very large numbers of lawyers, and their clients, are affected by the evolutions in international law I have mentioned. Governmental risk management relating to terrorism, money laundering, and climate change gives rise to the development of policies and standards at the international level which end up being implemented at the national and even sub-national level. This phenomenon of international law and standards increasingly affecting domestic law raises a range of issues, with respect to the processes for development of the standards, such as whether they are sufficiently

transparent and involve adequate levels and methods of consultation. Although there is an evolving literature on global administrative law, the transnational processes are not typically regulated through law. But lawyers are involved in drafting responses to the consultations . Law firms may be involved either writing responses in their firm names or advising individual clients or trade associations that are making submissions . Lawyers work in house for trade associations.
So, lawyers participate in various ways in the development of rules and standards at the international level. Then, when the rules or standards are implemented domestically there are new rounds of consultations. After domestic implementation lawyers are involved in issues of legal compliance, either in setting up compliance systems of dealing with enforcement actions. Professor Rosen is teaching a course on compliance at the University of Miami. A lot of compliance work relates to requirements where there are international standards, and compliance also has international aspects where the rules are designed to control conduct abroad. Examples are anti-money-laundering (AML) rules developed by the Financial Action Task Force (FATF), and OECD entity and anti-corruption rules introduced to implement treaties prohibiting bribery and corruption such as the FCPA in the US. There may be variations in the details of the rules in different jurisdictions and there are variations in how aggressively different regulators enforce these rules (the OECD has been studying how these rules are in fact enforced).

Some recent compliance cases involving banks which do business in different jurisdictions (relating to Libor manipulation and sanctions non-compliance) illustrate that there can be sanctions and liability in more than one jurisdiction. Businesses and their lawyers need to worry about compliance issues relating to privacy, and antitrust or competition law. Businesses which carry on activity in more than one jurisdiction encounter these sorts of issue all the time, and these issues are transnational in the sense that they are cross-border issues. Learning to think about legal issues when activity crosses geographic borders is a large part of what you are doing : becoming lawyers who can operate across borders because you will understand more about different legal systems and about the thought processes lawyers and policy-makers use in different jurisdictions. In addition you are developing a better understanding of the culture in which law is based.

So, if you have a client who is a foreign national or who wants to move to or do business in another jurisdiction, they may have personal legal issues relating to immigration, divorce, or succession. They may have business law issues relating to business formation, capital raising, tax issues, transactions, employment law and supply chain management issues. And they will have a range of compliance issues, for example relating to ongoing securities disclosures. And concerns about liability.

But the question of what law applies isn't necessarily a given. Your clients will make choices about the jurisdictions in which they do business as well as how to comply with local law once that choice has been made. One question to think about is what aspects of the business activity can be subject to some other law. Are there

opportunities for regulatory arbitrage: can you arrange to have your business activity subject to the rules you would like to apply or do some rules have mandatory characteristics that make it hard to displace them? From a policy perspective we might ask whether regulatory arbitrage is a good thing or not. Generally, do we like the idea of allowing people to choose the rules that govern them or not? Opinions vary. Courts in different countries have different views on this issue. One context in which this is visible relates to arbitration agreements in contracts, which are used as a way of insulating the agreement from the application of rules of public policy. Sometimes academics and businesses argued that issuers should be able to decide what securities regulation regime they want to opt in to. Avoiding regulatory arbitrage is sometimes a reason given for the harmonization of law.

Contractual choice of law, combined with a choice of jurisdiction that will support it is a way to choose what law governs a particular transaction (this is an issue of private international law). But there are issues about what the proper law of a contract governs, and what it does not govern. Why choose a particular law? You might choose law you are familiar with, or law that is suitable for the transaction in question. For example, English law and New York law are common as choices for the governing law for international financial transactions. Partly this is because of predictability: in those jurisdictions courts tend to deal with the issues in ways that are predictable for participants. This does not always happen, for example Argentina's holdout creditors recently argued that a pari passu clause should be interpreted to prevent payments to holders of Argentina's new bonds, and won in a way that surprised at least some observers. The UK has a Financial Markets Law Committee, set up a number of years ago after a surprise reult in a case involving local authority swap transactions. The Bank of England encouraged the setting up of a body to think about the issue of uncertainty of English law because uncertainty was seen as a problem. And the UK has recently established a financial list, which is an example of a specialized court which will allow judges with particular expertise to decide cases involving significant issues of financial law.

Uncertainty can arise where disputes are brought in different courts. For example there have been recent cases where asymmetric jurisdiction clauses (e.g., a clause that states that a bank may only be sued in England, whereas the borrower can be sued anywhere) which are acceptable under English law have been held not valid (for example in France).

Having discussed international and transnational law, a few words about comparative law. For civilian lawyers studying in the US involves an introduction to common law. Why are New York and English law commonly used for international financial transactions. As well as the idea that English and New York courts develop expertise through the volume of commercial litigation they deal with and that they tend to be predictable, common law is flexible, and allows for creativity. A common lawyer approaching a transaction asks " how can I make this work?" The law provides opportunities as well as constraints. US lawyers learn to think about the law as allowing

an opportunity to make arguments. The law constrains the sort of arguments that can be made, sometimes more than others

There are differences between different common law regimes. The US has its own, written constitution, its own particular history, and a legal profession that evolved in a particular way. The unauthorized practise of law is a real issue in the US because law is a guild activity. In contrast to other jurisdictions where policy-makers worry a lot about ensuring appropriate competition for lawyers to in the interests of consumers of legal services, lawyers in the US have not had to worry so much about competition from non-lawyers (although technology is changing the competitive environment for lawyers in the US). An international LLM allows you to study law in a new environment, to learn about the thinking process that lawyers in that new place adopt. And a lot of what cross-borde or transnational lawyers do is communicate across cultures, which is a large part of what you are learning this year.