

Fall 2017

# Public International Law

Zinaida Miller  
*Seton Hall University*

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**PUBLIC INTERNATIONAL LAW**  
**DIPL 3104**  
**Professor Miller**

**Fall 2017**

**COURSE DESCRIPTION**

International law distributes power, resources, and rights to individuals, states, corporations, and other entities. International courts adjudicate key ethical questions such as the expression of religion in public, the rights of groups, or the duty to prosecute or to amnesty heinous violations. States use international law as a justification both for military intervention and for the refusal to intervene. Refugees fleeing war zones encounter international law when they cross borders, enter camps, plead for citizenship, search for food and water, or claim basic rights. Whether considering the international order from the perspective of the most or the least powerful people or groups, comprehending it requires understanding the power, limitations, and functions of international law.

This course will introduce students to the field of public international law. Historically understood as the law governing relations between states, public international law now addresses a multitude of other actors and subjects. Both the subjects and the substance of the field have radically transformed over the course of the twentieth and twenty-first centuries, adding not only non-state actors but substantive areas like human rights, the use of force, criminal law, and humanitarian law. In addition, the field has become associated with questions of global governance and interdependence. This course will explore the foundations of the international legal order by examining the definitions, rights, and obligations of key actors, the sources of international law, substantive areas, and emerging norms and regimes. By the end of the semester, students should have knowledge of key concepts, doctrines and debates involved in the study of international law.

Students will also develop familiarity with legal reasoning and analysis. Law is, centrally, about making arguments; in reading and analyzing a wide variety of international legal cases, issues, and doctrines, students will become skilled at identifying, critiquing, and developing legal arguments. The course will also help students to develop critical reading and writing faculties that extend beyond the legal field. We will pay special attention to the political effects of law and the legal effects of political decisions. In the process, we will identify both the differences between legal and political activity and the inextricable links between them in the global order.

## COURSE REQUIREMENTS

This course has several components, more fully described below: (a) completing assigned readings before class and participating in class discussions and; (b) preparing several case briefs; (c) turning in two papers; (c) taking a mid-term exam; and (d) taking a final examination. **Class participation will be worth 15% of your grade, writing assignments (case briefs and short paper) will be worth 25%, the midterm 25%, and the final 35%.** Case briefs will be graded on a check, check minus, check plus system. I encourage you (1) to prepare an outline of the course as we go along as an aid to studying for the exams and (2) to form study groups to review the materials and issues.

Readings and Participation. Class attendance and participation are a required part of the course, and will be considered in determining your grade. I expect you to read all of the assigned readings before class and to be prepared to discuss them in class.

Case briefs. You will submit a number of case briefs on the dates indicated in the syllabus. Briefs are due **before class. The briefs will be submitted through Safe Assign. Late briefs will be penalized 1/3 a mark; briefs that are more than a week late will not be accepted.** Each brief will be approximately a page in length (single spaced), and should be divided into four sections, with headings to identify each:

- The title of the case, the court deciding the case, and the date of the decision.
- **Facts:** A brief, one to three sentence summary of the facts.
- **Question:** A brief, one-sentence statement, in question form, of the issue(s) in the case.
- **Holding:** A brief description of the court's decision, or "holding," on each of the issues
- **Reasoning/Analysis:** A brief summary/analysis of the court's reasoning.

Mid-Term Exam. The mid-term will be an in-class exam on October 18.

Short Paper. There will be one short paper (1200 words) due November 20. We will discuss the specific expectations and topic later in the semester.

Final Exam. The final, cumulative exam will be taken in class on the last day of classes, December 11.

## PLAGIARISM

Plagiarism and other forms of academic dishonesty will be reported to the administration, and may result in a lowered or failing grade for the course and up to possible dismissal from the School of Diplomacy. See University and School standards for academic conduct here:

<http://www13.shu.edu/offices/student-life/community-standards/upload/Seton-Hall-University-Student-Code-of-Conduct.pdf>

<http://www.shu.edu/academics/diplomacy/academic-conduct.cfm>

In a paper, where you quote language word for word from a source, you must place it in quotation marks or in a block quote and give the exact source for each quoted passage. Where you paraphrase something, you must cite the source. Where you refer to or use an author's insight or idea, you must cite the source. Lifting or paraphrasing language from a web site without indication and citation is plagiarism.

***Any indication of plagiarism on a case brief or response paper will result in a failing grade for the assignment and a reduction in the participation grade for the class.*** A repeated incident of plagiarism (i.e., more than one) is likely to result in a failing grade for the class and will be reported to the administration. All materials will be turned in through Safe Assign.

### INCLUSIVE LEARNING

It is the policy and practice of Seton Hall University to promote inclusive learning environments. If you have a documented disability you may be eligible for reasonable accommodations in compliance with University policy, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and/or the New Jersey Law against Discrimination. Please note, students are not permitted to negotiate accommodations directly with professors. To request accommodations or assistance, please self-identify with the Office for Disability Support Services (DSS), Duffy Hall, Room 67 at the beginning of the semester. For more information or to register for services, contact DSS at [\(973\) 313-6003](tel:9733136003) or by e-mail at [DSS@shu.edu](mailto:DSS@shu.edu).

### INCOMPLETES

Incompletes will be given only in exceptional cases for emergencies. Students wishing to request a grade of Incomplete must provide documentation to support the request accompanied by a Course Adjustment Form (available from the Diplomacy Main Office) to the professor *before* the date of the final examination. If the incomplete request is approved, the professor reserves the right to specify the new submission date for all missing coursework. Students who fail to submit the missing course work within this time period will receive a failing grade for all missing coursework and a final grade based on all coursework assigned. Any Incomplete not resolved within one calendar year of receiving the Incomplete or by the time of graduation (whichever comes first) automatically becomes an "FI" (which is equivalent to an F). It is the responsibility of the student to make sure they have completed all course requirements within the timeframe allotted. Please be aware that Incompletes on your transcript will impact financial aid and academic standing.

### ELECTRONICS

More than one study has concluded that taking notes by hand rather than by typing improves learning; when you cannot transcribe but rather have to translate class discussion and lecture into hand-written notes, you are far more likely to retain the information in more detail and for longer.<sup>1</sup> The temptation to multitask while you are on a computer will not only reduce your

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<sup>1</sup> <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>.

participation but will negatively affect those around you.<sup>2</sup> While I do not prohibit the use of laptops for notetaking in this class, I encourage you to consider taking notes by hand and either not using your computer or using it only to refer to readings. **All use of electronics for any purpose other than notetaking or referencing readings is prohibited.** If you use your laptop for anything else, you will be subject to discipline, including reduction in grades. If I find laptops to be a consistent distraction in class, I will ban them. Please know that I have absolutely no tolerance about the use of mobile phones in the classroom. **If I see your cell phone on your desk or in your hand during class, I will confiscate it for the remainder of class.** If you have an emergency situation that requires you to check your phone or email during class, please let me know before class.

#### OFFICE HOURS AND CONTACT INFORMATION.

My office hours are Wednesdays 1-3pm and by appointment. Please do not hesitate to come talk to me. My extension is 2461 and my e-mail address is [Zinaida.Miller@shu.edu](mailto:Zinaida.Miller@shu.edu).

#### COURSE MATERIALS

The required casebook is Janis & Noyes, *International Law: Cases and Commentary* (5th. ed). An optional, but strongly recommended, text is Janis, *International Law* (7th or 6<sup>th</sup> ed.). A number of assigned readings will come from this text; it also serves as a useful resource. Additional readings will be placed the course Blackboard site and other readings are available online. The reading assignments listed below are subject to modification, so please **check your email regularly**, as I will notify you through email with changes as well as posting on Blackboard.

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<sup>2</sup> <http://www.sciencedirect.com/science/article/pii/S0360131512002254#>.

\*\*\* CB = Janis and Noyes, “Cases and Commentary”  
Janis = Janis, International Law  
Any additional materials are listed as Blackboard.

Note: I strongly recommend that you do each reading for an assignment in the order listed on the syllabus.

## I. Introduction

### **Class 1 (Aug. 28)**

#### **Introduction to the Course**

### **Class 2 (Aug. 30)**

#### **Introduction to International Law**

##### Blackboard

- Janis 1-8, 169-79, 130-34, 157-59
- Damrosch and Murphy, Preface
- Damrosch and Murphy, 8-17
- Introduction, Anghie, Imperialism, Colonialism and the Making of International Law (1-9)

*Some Questions to Consider:*

- Is international law “law”? How do we know? Why are we arguing about it?
- What are the theories about why states obey or disobey international law?
- What are the different stories the authors tell about international law?
- Come to class prepared to discuss the differing ideas about international law that you find in Janis, Damrosch & Murphy, and Anghie. What are Anghie’s central question and argument? Do you find it persuasive? How does it relate to the portrayal of international law in the two casebooks (Janis & Noyes and Damrosch & Murphy)?
- How does Anghie compare himself to “traditional” understandings of international law?

**\*\*NO CLASS September 4\*\***

## II. Sources of International Law

### **Class 3 (Sept. 6)**

#### **Sources of International Law: Treaties**

CB: pp 29-31 (introducing sources)

##### Blackboard

- Janis 9-14, 16-23 (introducing treaties)

*Skim* CB 1125-33 (Vienna Convention Arts 1-23, focus on articles 19-23, on reservations)

CB: pp 65-75 (*Genocide*)

### Blackboard

- Damrosch and Murphy, 154-62 (Reservations to human rights treaties)

### *Some Questions to Consider*

- What is a treaty?
- What are reservations?
- What does the International Court of Justice decide in the *Genocide* opinion about how reservations should be permitted?
- Should the rules for reservations be different depending on the type of treaty?

## **Class 4 (Sept. 11)**

### **The Law of Treaties**

#### Blackboard

- Materials on the Cyprus Conflict

### *Questions to consider in relation to Cyprus:*

- Who should be the legitimate authority for signing a treaty? How should we decide?
- What grounds can a signatory invoke to legitimately invalidate or terminate a treaty?
- What does “coercion” mean in the context of invalidating a treaty? What counts as coercion and what does not? Should other things be included?
- How do you interpret a treaty? What happens when some terms might mean different things?

## **Class 5 (Sept. 13)**

### **Sources of International Law: Custom**

#### Blackboard:

- Evans, *International Law* 97-103 (Introduction to Custom)

CB: 107-119 (*Paquete Habana*) \*\*\***CASE BRIEF 1: Paquete Habana**

CB: 119-122 (*The Asylum Case*)

### *Questions to Consider:*

- In each case, what do the judges think state practice is? How do they determine what it is?
- What materials do they use to determine whether there is a customary rule?
- Do you think that international law should be based only on what states consent to or on some broader set of community norms?

## **Class 6 (Sept. 18)**

### **Custom and Jus Cogens**

#### Blackboard:

- Damrosch and Murphy 85-88, 91-115 (Custom, cont’d., *Nicaragua*; jus cogens)
- Janis 65-9 (jus cogens)

CB: pp 172-4 (*Furundžija*)

### Questions

- What does the ICJ determine to be the relationship between custom and treaty in *Nicaragua*?
- What role should the resolutions of international organizations, specifically the General Assembly, have in determining customary international law?
- Should some international law rules be more important than others? Why?
- What are *jus cogens* norms? What should be included as such a norm?

### Class 7 (Sept. 20)

#### Sources of International Law Applied Domestically: Customary Law in the US

CB: 18-25 *Filartiga* \*\*\*CASE BRIEF 2: *Filartiga*

CB: 297-315 *Sosa* (Note: You can ignore the discussion of the FTCA in the opinion and concentrate only on the ATS, which is the relevant law for our purposes.)

CB: 315-30 *Kiobel* and notes

### Questions

- How does the Court consider the law of nations in each case? How does it differ?
- How does the definition of the Alien Tort Statute change over the course of these three cases?
- How far should the ATS extend in your opinion? Did the Court decide correctly in *Kiobel* by barring certain lawsuits under the ATS or should it have extended the reach of the statute?

### Class 8 (Sept. 25)

#### Soft Law

CB: pp 180-83 (soft law, Rio Declaration)

Blackboard:

- Boyle, “Soft Law” in Evans, *International Law*

#### Equity

CB:190-208 (*North Sea Continental Shelf*) \*\*\*CASE BRIEF 3: *North Sea*

Janis: 78-82 (Equity as a Form of Distributive Justice)

### Questions

- Why do we have soft law? How does it compare to “hard law”?
- How does the Court define equity in the *North Sea* case? Do you agree with its definition? In what other ways could the Court have applied the principle of equity?
- More generally, how far should the principle of equity be taken? Should it apply when judges consider economic questions or when we think about the relationship between developed and developing states? Does equity mean distributive or redistributive justice?

### III. Actors in International Law: States, International Organizations, Individuals

#### Class 9 (Sept. 27)

##### States and Statehood

CB: 551-553, 556-562, 566-70 (Sovereignty; Montevideo; *Sealand*, theories of recognition)

##### Blackboard

- Craven, "Statehood, Self-Determination and Recognition," 203-08, 217-48

##### *Questions*

- What is a state, according to international law? How do we know when an entity should be considered a state?
- What are the different theories of recognition?
- How does the German court determine whether or not *Sealand* can be considered a state?

#### Class 10 (Oct. 2)

##### States Cont'd: Borders and Boundaries

##### Blackboard

- Damrosch and Murphy 377-82 (Burkina Faso/Mali and *uti possidetis*)
- Mutua, "Why Redraw the Map of Africa" A Moral and Legal Inquiry," **1113 - 1126, 1134-1142** [Please note: I've put the whole article in Blackboard, but you only need to read the assigned pages.]

#### Class 11 (Oct. 4)

##### Self-Determination

CB 614-20 (Kosovo)

##### Blackboard:

- McCorqudale, "Group Rights", 335-48 (Overview of self-determination)
- Dunoff, Ratner, Wippman, Chapter 3

\*\*\*NO CLASS Oct. 9\*\*\*

#### Class 12 (Oct. 11)

##### International Organizations

##### Blackboard

- Skim UN Charter

CB: 621-31 (introduction to the League and UN)

CB: 631-41 (through note 5) (*Reparations* and international personality)

CB: 786-793 (Security Council law-making; *Kadi*)

##### Blackboard:

- Alvarez, "Governing the World"

#### Class 13 (Oct. 16)

##### The Individual in International Law

Janis 250-55 (Individuals as objects and subjects of IL)  
CB: 441-52 (*Nottebohm*) \*\*\***CASE BRIEF 4**\*\*\*

## **Class 14 (Oct. 18) \*\*MIDTERM\*\***

### **Class 15 (Oct. 23)**

#### **Human Rights I**

CB 487-91 (Human Rights and the United Nations)

##### Blackboard

- Alston and Goodman, 58-61 (“The International Dimensions of Human Rights Regime”)
- Alston and Goodman, 139-54 (“The Birth of the Regime”)
- Moyn, 1-10 (Prologue)
- DRW 379-91 (ESR and the Right to Food)
- Janis 273-97 (Nuremberg, European and Inter-American Human Rights)

##### *Skim*

- Universal Declaration of Human Rights (CB 1120)
- *International Covenant on Civil and Political Rights*, 16 Dec. 1966, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- *International Covenant on Economic, Social and Cultural Rights*, 16 Dec. 1966, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

### **Class 16 (Oct. 25)**

#### **Human Rights II: Debates and Dilemmas**

Case Study: Torture and US Enhanced Interrogation Techniques

##### Blackboard:

- Dunoff, Ratner, and Wippman, 341-65

## **IV. Responsibility and Jurisdiction**

### **Class 17 (Oct. 25)**

#### **Responsibility: From States to International Organizations**

CB:452-7 (Note on State Responsibility)

CB 344-358 (*Rainbow Warrior*) \*\*\***CASE BRIEF 5**\*\*\*

CB: 642-50 (International Organization Responsibility)

##### Blackboard

- Excerpts, *Al Jedda*
- Milanovic, Commentary on *Al-Jedda*

### **Class 18 (Oct. 30)**

#### **Jurisdiction**

##### Blackboard

- What is Jurisdiction? (Bederman 291 – 303)
- CB: 122-36 (*Lotus*)

### Blackboard

- Problem: Capturing Criminals Abroad (DRW 299-314)
- DRW 295-298 (Eichmann excerpt)
- Damrosch & Murphy 790-802 (universal jurisdiction: *Eichmann, Pinochet*)

## **Class 19 (Nov. 1)**

### **Immunities**

#### Blackboard

- Damrosch and Murphy, 875-88 (Head of State immunity: *Pinochet, Arrest Warrant*)
- Excerpts, *The Minister of Justice and Constitutional Development v The Southern African Litigation Centre*
- Akande, *The Bashir Case: Has the South African Supreme Court Abolished Immunity for all Heads of States?*
- The Guardian, “South African Court Rules Failure to Detain Omar al-Bashir was ‘disgraceful’
- The New York Times, “South Africa to Withdraw from International Criminal Court”

## **v. Regulating War and Peace**

## **Class 20 (Nov 6)**

### **Prohibitions and Permissions for the Use of Force**

CB 49-51 (Kellogg Briand Pact)

CB 751-64 (Commentary on Art 2(4)) ‘

#### Blackboard

- Dunoff, Ratner and Wippman 717-46 (Iraq 1991 and 2003)

## **Class 21 (Nov 8)**

### **Self-Defense, Consent, and Intervention**

#### Blackboard

- Excerpts, *International Law Stories* 339-48 (*Nicaragua*)
- Damrosch & Murphy 1121-1132 (*Nicaragua*) \*\*\***CASE BRIEF 6**\*\*
- Dunoff, Ratner, and Wippman 757-63 (*Armed Activities, DRC v. Uganda*)
- Dunoff, Ratner, and Wippman 820-33 (Use of Force after 9/11)

## **Class 22 (Nov 13)**

### **Peacekeeping, Humanitarian Intervention, and Responsibility to Protect**

Review UN Charter Chapter VI and VII (CB 1085-89)

CB 743-51 (Peacekeeping and *Certain Expenses*)

#### Blackboard

- Damrosch and Murphy 1192-94, 1200-1214 (Peacekeeping)
- Dunoff, Ratner, and Wippman 771-93 (Humanitarian Intervention and Kosovo)

- Robert Knox, “Civilizing Interventions: Race, War, and International Law”, Cambridge Review of International Affairs (2013)

**Class 23 (Nov. 15)**

**Regulating Conduct in War**

CB: 701-8 (Jus in Bello)

CB: 717- 31(*Tadic; Hamdan*)

Blackboard:

- DRW, 421-26 (Evolution of IHL)
- DRW, 436-454 (The Qana Incident)

*In-Class Exercise:* We will divide into two groups, one representing the Government of Israel and one representing the UN investigatory commission, arguing about the legality of Israel’s actions in Qana. Be prepared with arguments from both sides – preparing both will strengthen your case, since you will be better able to anticipate the other side’s claims.

**Class 24 (Nov 20) \*\*Paper Due\*\***

**Regulating Conduct in War: Case Study on Occupation**

Blackboard

- Ben-Naftali, Gross, and Michaeli, “Illegal Occupation,” 561-570
- Dunoff, Ratner, and Wippman, “Occupying Foreign Territory: Israel’s Wall in the West Bank”, 458-475
- Kretzmer, “The Advisory Opinion: The Light Treatment of International Humanitarian Law”

**\*\*Nov. 22: NO CLASS\*\***

**Class 25 (Nov 27)**

**International Criminal Law: Holding Individuals Responsible**

TBA

**Class 26 (Nov. 29)**

**Peace and Justice: Is Prosecution Always Best?**

Blackboard

- Dunoff, Ratner, and Wippman, “Prosecute or Punish?”

**Class 27 (Dec 4)**

TBA

**Class 28 (Dec. 6)**

TBA

**Class 29 (Dec. 11)**

**FINAL EXAM**