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School of Diplomacy and International
Relations

Fall 2016

DIPL 3104 Public International Law

Zinaida Miller PhD
Seton Hall University

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PUBLIC INTERNATIONAL LAW

DIPL 3104

Professor Miller

Fall 2016

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 10% of your grade, writing assignments (case briefs and response papers) will be worth 25%, the midterm 30%, 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. I will select a few students to lead discussion for each 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 ½ a mark; briefs that are more than a week late will not be accepted.** Each brief will be approximately a page in length, and will consist of the following information:

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

Writing Assignments. Over the course of the semester, you will have two writing assignments based on questions that I hand out in class. The first will be a short response paper (500 words) due **October 5**. The second, due **December 3**, will be 2000 words. We will discuss these assignments in more detail as the semester progresses. Neither paper will entail any outside research.

Mid-Term Exam. **There will be one in-class mid-term exam on October 31.**

Final Exam. You will be expected to take the final exam during the scheduled time, barring extreme circumstances. Please do not make conflicting travel arrangements.

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 6th 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.

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.

PLAGIARISM

All forms of dishonesty, whether by act or omission, including, but not limited to, cheating, plagiarism, and knowingly furnishing false information to the University, are prohibited.

Work submitted in courses must be the product of the efforts of the student presenting the work, and contributions of others to the finished work must be appropriately acknowledged. The presentation of another's work as one's own is a serious violation of the academic process.

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>>

Plagiarism. 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. Exception: in a case brief, you may quote the language of the case itself without a citation.

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.

LAPTOPS

Electronic equipment such as laptops, notebooks or tablets can only be used to take notes in class or to access information at the instructor's direction during class hours. Anyone found misusing this equipment to read emails, search the internet, play games or anything other than participating in classroom work will be subject to discipline, including reduction in grades. I reserve the right to restrict the use of any electronic equipment in class.

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 or by e-mail at DSS@shu.edu.

OFFICE HOURS AND CONTACT INFORMATION.

My office hours are Mondays 1:30-4:30pm in McQuaid 101-B. **Please sign up for a slot by Monday morning on the form on my door.** I am also available after class 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.

*** CB = Janis and Noyes, “Cases and Commentary”

Janis = Janis, International Law

Any additional materials are listed as Blackboard.

Please try to do the readings in the order listed on the syllabus.

I. Introduction

Class 1 (Aug. 29)

Introduction to the Course

Class 2 (Aug. 31)

Introduction to International Law

Janis 1-8, 167-81, 128-34

Blackboard

- Damrosch and Murphy, 8-17
- Introduction, Anghie, Imperialism, Colonialism and the Making of International Law

NO CLASS September 5

II. Sources of International Law

Class 3 (Sept. 7)

Sources of International Law: Treaties

CB: pp 29-31 (introducing sources)

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*) *****CASE BRIEF 1: *Genocide***

Blackboard

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

Class 4 (Sept. 12)

Sources of International Law: Treaties cont'd.

Blackboard: Materials on the Cyprus Conflict

Class 5 (Sept. 14)

Sources of International Law: Custom

CB: 107-119 (*Paquete Habana*) *****CASE BRIEF 2: *Paquete Habana***

CB: 122-36 (*Lotus*)

Class 6 (Sept. 19)

Sources of International Law: Custom cont'd.

Janis 65-9 (jus cogens)

Blackboard: Damrosch and Murphy 95-112 (*Nicaragua*; jus cogens)

CB: pp 172-4 (*Furundžija*)

Class 7 (Sept. 21)

Equity and soft law

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

CB:190-208 (*North Sea Continental Shelf*)

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

Class 8 (Sept. 26)

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

CB: 18-25 *Filartiga*

CB: 297-315 *Sosa* *****CASE BRIEF 3: *Sosa***

CB: 315-30 *Kiobel* and notes

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

Class 9 (Sept. 28)

States and Statehood

Janis: 194-207 (What is a state?)

CB: 551-70 (Sovereignty; Montevideo; theories of recognition)

*****NO CLASS Oct. 3*****

Blackboard: Readings for the Response Paper

***** Response Paper Due Oct. 5 (500 words)*****

Class 10 (Oct. 5)

Acquisition of Territory and Self-Determination

CB: 601-20 (Self-Determination, *Quebec*, Kosovo Declaration of Independence)

Blackboard

- Damrosch and Murphy 377-82 (Burkina Faso/Mali and *uti possidetis*)
- Mutua, "What is TWAIL?" (*Proceedings of the Annual Meeting of the American Society of International Law*) Vol. 94 (April 5-8, 2000), pp. 31-38

*****NO CLASS Oct. 10*****

Class 11 (Oct. 12)

TBA

Class 12 (Oct. 17)

International Organizations

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

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

Blackboard: Skim UN Charter

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

Blackboard: Excerpts, Alvarez, International Organizations as Law Makers

Class 13 (Oct. 19)

The Individual in International Law

Janis 250-55 (Individuals as objects and subjects of IL)

CB: 441-52 (*Nottebohm*) *****CASE BRIEF 4: *Nottebohm***

Class 14 (Oct. 24)

Human Rights I

CB 487-91

Blackboard

- Excerpts, Goodman and Alston

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>

Janis 273-94

Blackboard (Compare the following historiographical approaches to the development of human rights):

- Alston and Goodman 58-61
- Moyn, Prologue

Class 15 (Oct. 26)

Human Rights II: Debates and Dilemmas

Come to class ready to debate the decisions of the European Court on religious attire

Blackboard

- “The Affair of the Scarf”
- Stephanie Berry, “SAS v. France: Does anything Remain of the Right to Manifest Religion,” *EJIL:Talk!* (July 2, 2014) <http://www.ejiltalk.org/sas-v-france-does-anything-remain-of-the-right-to-manifest-religion/>

Class 16 (Oct. 31) ***MIDTERM***

IV. Responsibility and Jurisdiction

Class 17 (Nov. 2)

Responsibility: From States to International Organizations

CB:452-7 (Note on State Responsibility)

Skim ILC Articles on State Responsibility

Blackboard: Excerpts, Application of the Convention on Genocide (*BiH v. Serbia & Montenegro*)(ICJ 2007)

CB: 642-50 (International Organization Responsibility)

Blackboard: Excerpts, *Behrami and Saramati*

Class 18 (Nov. 7)

Jurisdiction and Immunities

Blackboard

- Damrosch and Murphy, 733-6 (What is jurisdiction?)
- Excerpts, *Eichmann* *****CASE BRIEF 5: *Eichmann***
- Damrosch and Murphy, 875-88 (Head of State immunity: *Pinochet, Arrest Warrant*)

Class 19 (Nov. 9)

Universal Jurisdiction

Blackboard

- Damrosch & Murphy 790-802 (universal jurisdiction)
- Julien Seroussi, "The Cause of Universal Jurisdiction: The Rise and Fall of an International Mobilisation" in Dezelay and Garth, Lawyers and the Construction of Transnational Justice

V. Regulating War and Peace

Class 20 (Nov 14)

Prohibitions and Permissions of the Use of Force

- CB 49-51 (Kellogg Briand Pact)
- CB 1078 (UN Charter Art. 2)
- CB: 741-46 (on Art 2(4))
- CB 751-64 (Commentary on Art 2(4))

Class 21 (Nov 16)

Self-Defense

Blackboard

- Damrosch & Murphy 1121-1132 (*Nicaragua*) *****CASE BRIEF 6: *Nicaragua***
- Excerpts, International Law Stories
- Excerpts, *Armed Activities on the Territory of the Congo*

Class 22 (Nov 21)

Justifications for Intervention: Protecting Humanity

- CB 1084, 1085-90 (UN Charter Articles 24, 25, and Chapters VI, VII, and VIII)
- CB 746-51 (Peacekeeping and *Certain Expenses*)
- CB 764-785 (Iraq 1990 and 2003)
- CB 800-812 (Humanitarian Intervention and R2P)

THANKSGIVING BREAK

Class 23 (Nov. 28)

Regulating Conduct in War

- CB: 701-8 (Jus in Bello)
- CB: 717- 31(*Tadic; Hamdan*)
- Blackboard: Geneva Convention Common Article 3

Class 24 (Nov 30)
Regulating Conduct in War: Case Study on Occupation
Readings TBA

*****PAPER DUE DECEMBER 3*****

Class 25 (Dec 5)
International Criminal Law: Holding Individuals Responsible
CB: 534-49 (Introduction to International Criminal Law; *Lubanga*)
Blackboard: Rome Statute

Class 26 (Dec 7)
Peace and Justice: Is Prosecution Always Best?
Readings TBA

Class 27 (Dec 12)
Review