

Fall 2015

Public International Law

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Seton Hall University School of Diplomacy & International Relations

DIPL 3104, PUBLIC INTERNATIONAL LAW

Professor Catherine Tinker

Fall, 2015 - Duffy Hall, Room 62, MON. & WED., 12:30 - 1:45 pm

Syllabus- Rev.#1

This course explores the history and nature of international law and the structure of international institutions as they address particular issues confronting the global community, with a focus on the creation and implementation of international law, global governance, and relations between states and non-state actors. The first part of the course examines the sources of international law; the second part applies this knowledge to particular topics, such as the use of force, human rights, and international environmental law. The course will explore multilateral agreements; treaties; “soft law” resolutions and declarations of the United Nations Security Council, General Assembly, ECOSOC and its working groups and expert committees; and outcome documents of UN conferences on human rights and sustainable development, including the formulation of a new post-2015 sustainable development agenda. The course will explore the roles of state and non-state actors in international law and organizations, including the growing role of the private sector in the United Nations system. By the end of the course, students will possess an understanding of the operation of the international legal system, the difficulties of negotiating and implementing agreements that form its rules, and the role of international law in international affairs.

Students will develop critical thinking through an introduction to legal reasoning and concepts in international law. The course requires students to read closely, to think logically, and to become skilled in formulating convincing positions while understanding opposing arguments. Students will apply these legal reasoning skills throughout the course in assignments and class discussion. The ability to think critically and analytically, and to communicate an analysis clearly, are crucial skills not only for lawyers, but for practitioners of diplomacy and for all professionals.

OFFICE HOURS AND CONTACT INFORMATION:

Office hours will be from 3:00-4:00 pm on Mondays in McQuaid Hall, Room 101C, or by appointment for a meeting in person through email to Prof. Tinker at catherine.tinker@shu.edu or through “class email” on Blackboard directly to Prof. Tinker. I will try to respond within 24 hours.

COURSE REQUIREMENTS:

This course will include several requirements, more fully described below:

- (a) Completing assigned readings before class and participating in class discussions;
- (b) Preparing seven case briefs;
- (c) Taking a mid-term exam;
- (d) Participating in an in-class exercise and submitting a 6-8 page position paper as part of this exercise; and
- (e) Taking a final exam.

Class participation and the case briefs together will be worth 15%; the in-class exercise and the 6-8 page position paper will be worth 20%; the midterm exam will be worth 30%; and the final exam will be worth 35% of your grade. Failure to complete each assignment on time will be reflected in the grade. **No incompletes will be given except for medical or other serious emergency.**

DETAILS OF COURSE REQUIREMENTS:

- (a) **READINGS AND PARTICIPATION:** Class attendance and participation are a required part of the course, and will be considered in determining your grade. I will expect you to read the assigned readings before class and to be prepared to discuss them in class. I will feel free to call on you to contribute even if you have not raised your hand. You are expected to answer. After the first few classes, I will select several students to lead discussion in each class.
- (b) **CASE BRIEFS:** For seven of the cases assigned on the dates indicated in the syllabus, you will submit a one- to two-page typed, double-spaced, 12-point font case brief as described below. **You should submit a paper copy**

(double-sided printing preferred) of your case briefs in class on the day the case is assigned in the syllabus, and through Blackboard (go to this course, then choose “Assignments” in the menu bar on the left; from the drop-down menu choose “assessments” and then choose “assignments”. Look for the correct assignment labelled “Case brief 1”, “Case brief 2”, etc.) If you will be absent, you still must submit your case brief through Blackboard. Late entries will be penalized ½ a mark; entries not submitted before the next class will not be graded.

Each case brief will be approximately one page but not more than two pages in length, and will consist of the following information:

- (1) The title of the case, the court deciding the case, the date of the most recent decision, and the procedural status of the most recent decision;
- (2) A brief, one- to three-sentence summary of the facts;
- (3) A brief, one-sentence statement, in question form, of the issue(s) in the case;
- (4) A brief description of the court’s decision, or “holding,” on each of the issues and a brief summary/analysis of the legal basis for the decision and of the court’s reasoning, including basic legal principles or relevant legal requirements.

(c) MIDTERM EXAM: You will take an hour-long mid-term exam in class on October 7th.

(d) IN-CLASS EXERCISE: **Please be prepared to participate in the exercise scheduled for class on November 11th and to participate in preparations during the previous week; please plan your schedule accordingly to be sure to participate on November 11th and the preceding week. By November 9th at 10:00 am you will submit a two-page initial non-graded individual analysis of your position for your role, your expected allies and opponents, and your goals for the Security Council meetings resulting in the designated resolutions (SC RES 660, 661, 678, 687, and 1441). On the day of the exercise, **Nov. 11th** you will participate in the simulated SC meetings (1/2 hour for RES 660-678; 15 min. on SC RES 687; then 15 minutes for SC RES 1441 and 15 minutes for debriefing). Afterwards, **due by November 18th** (submitted through Blackboard and the class email) you will write a 6-8 page paper incorporating your initial two pages about your strategy and anticipated goals plus a description of what happened in class and your**

evaluation of the outcome from the point of view of your role with any personal comment on the process and experience. You will be graded on this 6-8 page paper you prepare plus credit for your oral participation in the in-class exercise. The rules of procedure will be those for Model UN simulations and the on-line UN Security Council documents on the UN website.

(e) FINAL EXAM: The final exam will be held in our class room on a date to be determined by SHU.

CURRICULUM AND READINGS:

The required casebook is Janis & Noyes, INTERNATIONAL LAW: CASES AND COMMENTARY (5th ed., 2014). All students are expected to purchase this book.

Assignments from this casebook are noted below as “text”. Reading assignments are from the 5th edition, not from earlier editions of this text.

Optional but recommended texts are Bederman, INTERNATIONAL LAW FRAMEWORKS, 3rd ed. 2010; and Janis, INTERNATIONAL LAW (6th ed.). Either one will serve as a useful resource for extra readings. Two additional optional readings are Crossing the Divide: Dialogue Among Civilizations and A World in Need of Leadership: Tomorrow’s United Nations, on reserve in Walsh Library.

For the in-class exercise, you will use the UN website and Security Council documents relevant to the resolutions assigned from 1990-1991 and 2002-2003. The rules of procedure will be those from the Model UN and the Security Council.

Supplemental information and documents will be posted on the course Blackboard site or will be available on-line. Useful websites are www.un.org; www.icj-cij.org; www.asil.org; www.sustainabledevelopment.un.org and www.untreaty.un.org.

You are responsible for checking Blackboard every few days and before every class, and for checking your email for information about the class, assignments and reminders. You will be expected to know any information that is posted on Blackboard in an announcement or other class information.

No taping or recording in class is permitted. Anyone who violates this rule and tapes or records the class sessions or any part of the classroom time will be subject to discipline, including reduction in grades. The school's honor code applies.

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. The school's honor code applies.

The reading assignments listed below are subject to modification. Some reading assignments may be shortened as the semester progresses. You will be notified in advance in class and on Blackboard of any changes. Be sure to check Blackboard for announcements and check your emails each week to confirm the assignment and receive any other information before each class.

I. FOUNDATIONS OF INTERNATIONAL LAW

AUGUST 31: Introduction and discussion of syllabus.

SEPTEMBER 2: Introduction to nature and history of international law and international organizations. Read the Preamble and Article 1 of the UN Charter and Text, pp. 1-3; Statute of the International Court of Justice, Article 38, on the ICJ website at www.icj-cij.org. Instruction on how to brief a case (ICJ and U.S. Supreme Court).

SEPTEMBER 7 AND SEPTEMBER 9: NO CLASS—LABOR DAY HOLIDAY

SEPTEMBER 14: Sources of International Law: Treaties, text, pp. 29-64, and selected international treaties: Law of the Sea Treaty, Art. 3; skim parts of the UNFCCC and the UN Watercourses Convention, to be found on UN treaty website at www.untreaty.un.org. Vienna Convention on the Law of Treaties, Art. 1-57, Text, pp. 1125-1155.

SEPTEMBER 16: NO CLASS--Mass of the Holy Spirit.

SEPTEMBER 21: Sources of International Law: Customary International Law and the role of the UN International Law Commission in codification and progressive development of international law; text, pp. 107-149. Brief Paquete Habana, Text, pp. 107-116.

SEPTEMBER 23: Brief Filartiga v. Pena Irala, Text, pp. 18-28. Introduction to human rights law and policy. Reading to be assigned.

SEPTEMBER 28: International Human Rights Law: Guest lecture by Profa. Debora Vicente, UFRGS and attorney in Electoral Court, Porto Alegre, Brazil, on women's rights, violence against women, and the role of women and girls in Brazilian law and international human rights law. Read Convention against all forms of Discrimination against Women ("CEDAW") and the Optional Protocol; and information on the UN Commission on the Status of Women on website for UN Women and UN treaty website; see also the Universal Declaration of Human Rights and the two covenants; Read text, pp. 475-500.

SEPTEMBER 30: Sources of International Law: General Principles, read text, pp. 149-159. Natural Law and Jus Cogens, read text, pp. 160-179; "soft law" and role of UN resolutions and declarations, read text, pp. 180-182.

II. USE OF FORCE AND REFUGEES

OCTOBER 5: LAWS OF WAR: history, Article 2(4) of the UN Charter. Text, pp. 701-763, the Geneva Conventions, read text, pp. 785-812; and see www.ssrn.com site for article by Lt. Col. Shane Reeves of the US Military Academy at West Point to read before class.

OCTOBER 6: "The Future of Migration into Europe": invitation to attend program at CUNY Graduate Center, 34th Street and Fifth Avenue, NYC, 6:00-7:30 pm for extra credit.

OCTOBER 7: **ONE HOUR MIDTERM EXAM IN CLASS**

OCTOBER 12: NO CLASS--FALL BREAK

III. "ACTORS" OF INTERNATIONAL LAW

OCTOBER 14: STATES UNDER INTERNATIONAL LAW: sovereignty, recognition and succession, self-determination, text, pp. 551-620. Brief Avena (Mexico v. US, 2004) on ICJ website and see Text, p. 255.

OCTOBER 19: NON-STATE ACTORS UNDER INTERNATIONAL LAW: civil society, NGOs, international organizations, private sector; text, pp. 621-662, and see Blackboard. Skim A World in Need of Leadership: Tomorrow's UN, see Blackboard.

IV. PEACEKEEPING AND HUMANITARIAN ASSISTANCE

OCTOBER 21: TBD: invited speaker?

OCTOBER 26: Doctrines of humanitarian intervention (responsibility to protect ("R2P") and "responsibility while protecting").

Assign roles for in-class exercise: Security Council on Iraq on Nov. 11th.

V. CLAIMS FOR REDRESS FOR WRONGFUL ACTS UNDER INTERNATIONAL LAW

OCTOBER 28: Introduction to state responsibility for acts contrary to international law, breach of treaty obligations, violations of state sovereignty, text, pp. 441-475.

NOVEMBER 2: Read UN Convention on Refugees (1951) and its protocol on website for UN High Commissioner for Refugees, www.unhcr.org. Read European Migration Agenda. Discuss and prepare for in-class exercise on November 11th

NOVEMBER 4: International Criminal Law: Guest lecture by Ricardo Neves, UFRGS Law School and Brazilian Federal Police agent, Porto Alegre, Brazil (invited) on Interpol, transboundary criminal enterprises, universal jurisdiction, extradition, prosecution. See Blackboard.

NOVEMBER 6: International Law Weekend at Fordham Law School panel on Migration and new European Migration Agenda, 3:00-4:30 pm, for extra credit

November 9: War crimes tribunals and the International Criminal Court, Text, pp. 535-550.

NOVEMBER 11: In-class simulation exercise on international law and the use of force in Iraq, 1991, 2002-03, and 2014. Text, pp. 764-784 (topic and procedure to

be discussed in advance). UN SC RES. 660 and 678 (1990); SC RES. 687 (1991), SC RES. 1441 (2002); ISIS and ISIL (2014). Sign up for roles or be assigned a role.

NOVEMBER 16: Dispute Settlement; negotiations, arbitration, and litigation in international tribunals (ICJ, Law of the Sea Tribunal), read the Rainbow Warrior arbitrations (1986 & 1990), Text, p. 344-359; and read text, pp. 359-361; 373-394; and 422-439.

V. SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS LAW

NOVEMBER 18: Sustainable Development as a general principle of international law. Brief Gabcikovo-Nagymoros Project (Hungary/Slovakia, 1997) on ICJ website at www.icj-cij.org; see also Text, p. 96. Submit assessment of in-class exercise from November 11th.

NOVEMBER 23: New UN "Sustainable Development Goals" on website www.sustainabledevelopment.un.org. Brief Pulp Mills on the River Uruguay (Argentina v. Uruguay, 2010) case in Text, p. 182 and use the press release on the ICJ website at www.icj-cij.org.

NOVEMBER 25: NO CLASS---THANKSGIVING VACATION

NOVEMBER 30: Discussion of legal analysis and reasoning. Aldisert, *et al*, "Logic for Law Students: How to Think Like a Lawyer," available on SSRN website, abstract no. 966597 (Aldisert, Ruggero J. and Clowney, Stephen and Peterson, Jeremy, Logic for Law Students: How to Think Like a Lawyer (2007). University of Pittsburgh Law Review, Vol. 69, No. 1, 2007. Available at SSRN: <http://ssrn.com/abstract=966597>.)

DECEMBER 2: International law on transboundary watercourses and aquifers. Regional agreements, European Union law and relation to international law.

DECEMBER 7: International Law in National Law and Courts; questions of jurisdiction, interpretation, remedies, text, pp. 284-314; brief Kiobel v. Royal Dutch Petroleum (2013), Text, pp. 315-330.

DECEMBER 9: TBD

DECEMBER 14: REVIEW AND SUMMATION; QUESTIONS

DECEMBER 18: FINAL EXAM from 12:20-2:20 pm, Duffy Hall, Room 61.

SETON HALL UNIVERSITY POLICIES:

1. LEARNING GOALS AND STUDENT OUTCOMES:

In terms of the learning goals and student outcomes the School's Faculty have identified as key for students, students will:

- ❖ Increase their knowledge and understanding of:
 - Key concepts, models, theories, and debates in international relations
 - The institutional backdrop underpinning international politics, including international organizations and international law
 - The normative aspect of international relations as reflected in international law, including human rights and sustainable development
 - The prevailing global issues, such as international conflict, global health, water and sanitation, and environmental challenges;
- ❖ Develop skills to:
 - Collect, sort, and evaluate information
 - Analyze complex situations and synthesize information
 - Integrate different fields of study in analysis of a complex world
 - Communicate effectively in oral and written form;
- ❖ Develop a sense of global citizenship and how to employ a global perspective to:
 - Recognize and understand differences among a diversity of cultures and viewpoints
 - Employ a global perspective and self-awareness regarding their own culture and responsibility as world citizens
 - Demonstrate leadership qualities and other essential skills of diplomacy.

2. PLAGIARISM AND OTHER SERIOUS ABUSES OF ACADEMIC INTEGRITY:

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

result in a failing grade on the assignment in question, a failing grade for the class, or suspension and dismissal from the University. 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. In a paper, where you quote language word for word, 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 language from a web site without indication and citation is plagiarism.**

3. STUDENTS WITH DISABILITIES:

Students who have a physical, medical, learning, or psychiatric disability, either temporary or permanent, may be eligible for reasonable accommodation. In order to receive such accommodation, students must identify themselves at the Office of Disability Support Services (DSS), provide appropriate documentation and collaborate with the development of an accommodation plan. The DSS phone number is 973-313-6003. Further information is available at the DSS website at <http://www.shu.edu/offices/disability-support-services/>.

4. GRADING SCALE

The grading scale used for most assignments will be:

93 AND ABOVE = A; 90-92 = A-; 87-89 = B+; 83-86 = B; 80-82 = B-;
77-79 = C+; 73-76 = C; 70-72 = C-; 67-69 = D+; 63-66 = D; 60-62 = D-;
BELOW 60 = F.

