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Diplomacy Syllabi

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Fall 2017

## DIPL 6005 Public International Law

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*Seton Hall University*

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**Seton Hall University School of Diplomacy & International Relations**

**DIPL 6005, PUBLIC INTERNATIONAL LAW**

**Professor Catherine Tinker**

**Fall Semester 2017 – Graduate Course, Alfieri Hall, Room 120**

**THURSDAYS, 2:00-4:15 (AA) and 5:00 - 7:15 pm (NA)**

**Syllabus 9-21-2017**

This course explores the history and nature of international law and how international law and courts address selected issues currently confronting the global community. The course will focus on the creation and implementation of international law, global governance, and relations between states and between states and non-state actors, including individuals and international organizations.

The first part of the course examines the sources of international law by examining current topics -- sustainable development, refugees and migration, water resources -- and the various "actors" in international law, including NGOs and the private sector as parts of civil society as well as states. The second part of the course considers how claims in international courts and tribunals are treated under international law, first by examining specific cases at the International Court of Justice related to transboundary water. Next, individual claims against states or officials in the context of human rights tribunals, war crimes tribunals, the ICC, and transboundary law enforcement cooperation are explored. Finally, contentious cases between states will be examined in a classroom exercise where students have an opportunity to advocate for the resolution of a conflict, and in a look at the laws of war and humanitarian law governing armed conflicts. In the final section of the course, international law claims in national courts and other forms of international dispute resolution such as arbitration will be considered.

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 the various forms of agreements that are the rules and principles of international law, and the role of international law in international and national courts and tribunals.

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 also for practitioners of diplomacy.

### **OFFICE HOURS AND CONTACT INFORMATION:**

Office hours will be from 3:00-4:00 pm on Mondays and Wednesdays in McQuaid Hall, Room 101C or by appointment, to be requested by email to Prof. Tinker at [catherine.tinker@shu.edu](mailto:catherine.tinker@shu.edu). The professor will try to respond within 48 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 four journals and two assigned case briefs;
- (c) Taking a mid-term exam in class;
- (d) Writing a take-home final exam.

Class participation, the four journals and the two case briefs (graded as "complete" or "incomplete" to help improve or lower your final grade) together will be worth 20%; the midterm exam will be worth 40%; and the final exam will be worth 40% of your final grade. Failure to complete each assignment on time will be reflected in your final 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.

**(b) JOURNALS AND CASE BRIEFS:** For the journals and cases assigned on the dates indicated in the syllabus, you will submit a one- to two-page typed, double-spaced, 12-point font case paper. **Submit your journals and case briefs by 9:00 am for the AA section and by 11:00 am for the NA section on the day they are due 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. **THIS MUST BE YOUR OWN WORK; DO NOT USE CANNED BRIEFS OR OTHER STUDENTS' BRIEFS.**

Each **journal** will be one to two pages and will reflect your analysis and response to the assigned readings prior to the class discussion.

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:** A take-home mid-term exam will be due on **October 19<sup>th</sup>** no later than midnight **through Blackboard Safe Assign. Give citations.**

**(d) FINAL EXAM:** **IN CLASS December 7<sup>th</sup> at 2:00 pm in classroom for Section AA or at 5:00 pm in classroom for Section NA.** You will be expected to write essay answers to three (3) out of four (4) or five (5) possible questions. Your papers are due through Blackboard with SafeAssign. Be sure to submit your paper early to avoid any problems in submitting it. Failure to take this exam as scheduled will be considered an incomplete grade for the course, absent documentation of serious medical or other emergency.

## **CURRICULUM AND READINGS:**

The required casebook is Janis & Noyes, **INTERNATIONAL LAW: CASES AND COMMENTARY (5<sup>th</sup> ed., 2014)**. All students are expected to purchase this book. Assignments from this casebook are noted below as “text”. Reading assignments are from the 5<sup>th</sup> edition. Two additional readings are Crossing the Divide: Dialogue Among Civilizations and A World in Need of Leadership: Tomorrow’s United Nations, on reserve in Walsh Library.

Optional recommended texts for additional reference or research are Bederman, **INTERNATIONAL LAW FRAMEWORKS**, 3<sup>rd</sup> ed. 2010; and Damrosch and Murphy, **INTERNATIONAL LAW: CASES AND MATERIALS**, 6th ed., 2014.

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

The reading assignments listed below and this syllabus are subject to modification. You will be notified in advance in class and on Blackboard of any changes. Be sure to check Blackboard for announcements and check your e-mails each week to confirm the assignment and receive any other information before each class.

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## **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
  - Communication 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.

#### **Policy on 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>**

**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).

**Policy on 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.

Papers should utilize one of the *Chicago Manual of Style* citation formats: Author-Date or Notes and Bibliography. The guidelines for these formats will be posted on the course Blackboard page.

**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.**

## **CLASS SCHEDULE:**

### **I. FOUNDATIONS AND SOURCES OF INTERNATIONAL LAW**

**AUGUST 31: 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](http://www.icj-cij.org). Discussion of legal analysis and reasoning based on Aldisert, *et al*, “Logic for Law Students: How to Think Like a Lawyer,” Vol. 69, No. 1, University of Pittsburgh Law Review, 2007. Available at SSRN: <http://ssrn.com/abstract=966597>.) Instruction on how to brief a case. Introduction to theories of international law. Introduction to theories of international law: internationalists and liberal international law; transnational legal process; global administrative law; originalists; revisionists.

#### **I. THE TRADITIONAL SOURCES OF INTERNATIONAL LAW:**

**SEPTEMBER 7: Sources of International Law: Treaties.** Text, pp. 29-74 and pp. 96-105 (Gabcikovo-Nagymoros, Reservations to Genocide Convention, and Eastern Greenland cases). Read Art. 3 of the UN Convention on the Law of the Sea (UNCLOS), available at <http://www.un.org/depts/los/> and the UN treaty website at [www.untreaty.un.org](http://www.untreaty.un.org) and read Vienna Convention on the Law of Treaties, Art. 1-57, Text, pp. 1125-1155. Journal #1 due.

**SEPTEMBER 14: Sources of International Law: Customary International Law** and the role of the UN International Law Commission (ILC) in codification and progressive development of international law; Text, pp. 107-149 (Paquete Habana, Asylum, and The Lotus cases). General Principles; Read text, pp. 149-160 (AM & S case). Case Brief #1 due on The Lotus case.

**SEPTEMBER 21: Sources of International Law: *Jus Cogens* and *Erga Omnes* Obligations** (Prosecutor v. Furundzija case): Read text, pp. 160-176 and questions, pp. 176-179. “Soft law” and role of UN resolutions and declarations:

Read Text, pp. 180-183 and the UN Sustainable Development Goals, available at [www.sustainabledevelopment.un.org](http://www.sustainabledevelopment.un.org) and skim soft law article at: [http://www.multideiaeditora.com.br/flip/globalizacaoHTML/globalizacao\\_index.html#1](http://www.multideiaeditora.com.br/flip/globalizacaoHTML/globalizacao_index.html#1).



**SEPTEMBER 28: Using Customary Law to Interpret or Fill Gaps in Treaties.** Read pp. 183-205. (Cayuga Indians, The Meuse, and North Sea Continental Shelf cases) and questions, pp. 205-208. See Blackboard for excerpt from Michael Scharf, Customary International Law in Times of Fundamental Change (Cambridge Univ. Press, 2013).

## **II. "ACTORS" OF INTERNATIONAL LAW**

**OCTOBER 5: States Under International Law:** sovereignty and its limitations; recognition and succession of states. Text, pp. 551-566 and pp. 575-577, Notes 2-5. Succession of states, pp. 574-575, Note 1.

**OCTOBER 12: Non-State Actors Under International Law:** NGOs, civil society and the private sector, and international organizations, Text, pp. 647-653 and 659-663, Notes for discussion. On the leadership of the United Nations, see A World in Need of Leadership: Tomorrow's UN, and Crossing the Divide: Dialogue Among Civilizations, on reserve in Walsh Library.

### **OCTOBER 19: TAKE-HOME MIDTERM EXAM TO SUBMIT THROUGH BLACKBOARD WITH SAFE ASSIGN**

**OCTOBER 19-21, 2017: Invitation to participate:** International Law Weekend at Fordham Law School, sponsored by ILSA and the ILA. Panels beginning Thursday, 6 pm at NYC Bar Association, Friday 9 am until 6 pm and Saturday 9 am until 12:30 pm at Fordham Law School, Manhattan. Registration is free for students, but anyone interested in attending should consult Prof. Tinker in advance. Check schedule of panels on-line and submit a journal for extra credit, if you go. See <https://www.ilsa.org/conferencesILW/ILW2017Program.pdf>.

### **III. CLAIMS IN INTERNATIONAL COURTS AND TRIBUNALS** **UNDER INTERNATIONAL LAW**

#### **A. THE INTERNATIONAL COURT OF JUSTICE (claims by and against states)**

**OCTOBER 26:** International law on transboundary watercourses and aquifers. regional agreements and environmental law. Case Brief #2 due on Pulp Mills on the River Uruguay (Argentina v. Uruguay, 2010) ICJ website at [www.icj-cij.org](http://www.icj-cij.org) (case mentioned in Text, p. 96) (case mentioned in Text, p. 182) using the press release on the ICJ website at [www.icj-cij.org](http://www.icj-cij.org). Compare to other ICJ cases (Chile v. Bolivia, 2016) and (cases between Nicaragua and Costa Rica and Nicaragua and Colombia) found on ICJ website. See Blackboard.

Skim the 2008 ILC Draft Articles on the Law of Transboundary Aquifers at [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/8\\_5\\_2008.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/8_5_2008.pdf).

#### **B. CLAIMS BY AND AGAINST INDIVIDUALS**

**NOVEMBER 2:** Human Rights: Read the Universal Declaration on Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic and Social Rights. Select one multilateral human rights treaty and consider who is protected, against what kind of discrimination or violation of fundamental rights, where and how can a claim be brought and against whom, and what remedies are available for victims of discrimination based on age, sex, national origin, ethnicity, race, religion and other groups. Discuss the role of human rights treaty secretariats and commissions (for example, UN Commission on the Status of Women and UN Women); optional protocols to treaties such as CEDAW providing individual complaint mechanisms to UN bodies such as the Human Rights Council; and the role of other international tribunals in enforcing international human rights.

**NOVEMBER 9:** International Criminal Law: Readings posted on Blackboard on international criminal enterprises, Interpol and transboundary law enforcement cooperation.

Nuremberg judgment, war crimes tribunals and the Rome Statute of the International Criminal Court, Text, pp. 535-550. Review recent decisions of the ICC and withdrawals from the jurisdiction of the ICC on ICC website.

### **C. LAWS OF WAR AND POLICIES**

**NOVEMBER 16:** Laws of War and Use of Force (*jus ad bellum*); Humanitarian Law (*jus in bello*): history, Article 2(4) of the UN Charter, Text, pp. 751-764; the Geneva Conventions, doctrines of humanitarian intervention, responsibility to protect ("R2P") and "responsibility while protecting," text, pp. 785-812. Read article by Lt. Col. Shane Reeves of the US Military Academy at West Point and David Lai, available at [www.ssrn.com/abstract=2375935](http://www.ssrn.com/abstract=2375935).

**NOVEMBER 23: NO CLASS - THANKSGIVING HOLIDAY**

### **IV. INTERNATIONAL LAW CLAIMS IN NATIONAL COURTS AND OTHER FORMS OF INTERNATIONAL DISPUTE RESOLUTION**

**NOVEMBER 30:** International Law in National Law and Courts: questions of jurisdiction, immunity of states and international organizations; interpretation of international law; remedies. Text, pp. 284-297 (Charming Betsy case); pp. 18-28 (Jurisdiction of national courts for human rights violations: when can individuals sue governments? Discussion of US legislation allowing private civil lawsuits against the Government of Saudi Arabia and high government officials and earlier litigation; what is the current status of US law and policy?) Read pp. 18-28 (Filartiga case); p. 255 Avena (*Mexico v. US*, ICJ 2014); and pp. 306-313 (Sosa case) and pp. 314-316, notes 3-6. Kiobel v. Royal Dutch Petroleum (2013), Text, pp. 315-327 and pp. 327-220, Notes 1-5.

**DECEMBER 7: FINAL EXAM IN CLASS Section AA 2 pm and Section NA 5:00 pm**