

Seton Hall University

eRepository @ Seton Hall

Diplomacy Syllabi

School of Diplomacy and International
Relations

Spring 2018

DIPL 3104 Public International Law

Catherine Tinker PhD

Follow this and additional works at: <https://scholarship.shu.edu/diplomacy-syllabi>

Seton Hall University School of Diplomacy & International Relations

DIPL 3104 PUBLIC INTERNATIONAL LAW

SECTION AA: Thursdays 11:00 - 1:10 pm, Stafford Hall, SH09

SECTION NA: Thursdays 5:00 - 7:10 pm, Stafford Hall, SH09

Professor Catherine Tinker

Spring, 2018

Syllabus Jan. 18, 2018

This course explores the history and nature of international law addressing selected issues confronting the global community, with a focus on the creation, sources and implementation of international law; institutions of 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 topics such as the use of force and humanitarian law; human rights law; law of the sea and international environmental law. The course will explore bilateral and multilateral agreements and treaties; customary international law; “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 the 2030 Agenda on Sustainable Development and the SDGs. The course will explore the roles of state and non-state actors in international law and organizations, including the growing role of civil society and 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 and international relations.

Students will develop critical thinking through an introduction to legal reasoning and principles of 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 Thursdays in McQuaid Hall, Room 101C or by appointment, to be requested by email to Prof. Tinker at catherine.tinker@shu.edu. Responses to emails or questions will generally be made within 48 hours other than during school holidays.

COURSE REQUIREMENTS:

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

- (a) Completing assigned readings before class and participating in class discussions, both face to face and in the virtual classroom;
- (b) Preparing five case briefs;
- (c) Taking a mid-term exam; and
- (d) Participating in an in-class exercise; submitting a 2-page position paper in advance of the in-class exercise; and submitting a 4-6 page analysis after the exercise evaluating the outcome of your role and your experience in class.

Class participation and the case briefs together will be worth 20% on a “complete/incomplete” basis to be used in computing your final grade up or down; the in-class exercise together with the 2-page position paper and the 4-6 page analysis paper will be worth 40%; the midterm exam will be worth 40%. 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 with notice. There is no make-up for the in-class exercise; all students must participate in order to receive full credit and grade.**

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 may select several students to lead discussion in each class.
- (b) **CASE BRIEFS:** For five 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; entries not submitted before the next class will not be read and no credit will be given for that assignment (“incomplete”).**

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

- (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 a mid-term exam for an hour and a half in class on March 1st. The remainder of the class time that day will be spent discussing the in-class exercise and your assigned roles.
- (d) **IN-CLASS EXERCISE:** **Please be prepared to participate in the exercise scheduled for class on April 26th and participate in preparations during the previous week; please plan your schedule accordingly to be sure to participate on April 26th and the preceding week. Make-ups are not feasible for this in-class group exercise. Roles will be assigned in February, and you should meet in small groups or bilaterally during the class hour on March 22, 2018 or sometime. There are 3 parts to this assignment:**
1. **By April 5th** you will submit a two-page individual paper identifying your initial position on the issues from the perspective of your assigned role; this position paper will outline your expected allies and opponents, and your goals for the results of the Security Council meetings on the subjects and steps in the designated resolutions (SC RES 660, 661, 678, 687, and 1441). You are free to propose or consider additional or different resolutions.
 2. On the day of the exercise on **April 26th** you will participate in the simulated SC meetings (45 minutes for RES 660-678; 15 min. on SC RES 687; 15 minutes for SC RES 1441 and 15 minutes for debriefing). This schedule allows time for brief 5-minute caucuses or hallway discussions among states and any other resolutions introduced. You will have half an hour to discuss the situation in Syria and whether the Security Council can take action, with a vote on any proposed resolutions introduced by member states of the SC and a short debriefing.
 3. **Due by May 1st before midnight** is your final analysis paper, to be submitted through Blackboard; please bring a printout of your analysis paper to class on May 3rd for the professor. You will write a 4-6 page paper expanding your initial two pages about how your strategy and anticipated goals worked out during the preparatory negotiations or the in-class exercise with students in other roles. You will include an evaluation of the outcome from the point of view of your role. You will also make any personal comment on the process and experience with suggestions for a similar exercise in the future. The rules of procedure to be used will be similar to those used for Model UN simulations.

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 or 4th ed. 2016; and Janis, *INTERNATIONAL LAW* (6th ed.). Either one will serve as a useful resource for extra readings, and they are 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. You may also find information on the UN website concerning debates in the Security Council over the situation in Syria and whether the UN should intervene. 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 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.

CLASS ASSIGNMENTS:

I. FOUNDATIONS AND SOURCES OF INTERNATIONAL LAW

JANUARY 18: INTRODUCTION: 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; Read Statute of the International Court of Justice, Article 38, on the ICJ website at www.icj-cij.org

Read Aldisert article, "How to Think Like a Lawyer," posted on Blackboard under "Assignments." Aldisert, Ruggero J. and Clowney, Stephen and Peterson, Jeremy, "Logic for Law Students: How to Think Like a Lawyer," *University of Pittsburgh Law Review*, Vol. 69, No. 1, 2007. Available at SSRN: <http://ssrn.com/abstract=966597>. Instruction on how to brief a case from a court applying international law (International Court of Justice and U.S. Supreme Court).

JANUARY 25: SOURCES OF INTERNATIONAL LAW: TREATIES. Read text, pp. 29-64, and skim selected articles of the UN Convention on the Law of the Sea (on territorial sea, continental shelf, archipelagic states, EEZ, and high seas beyond national jurisdiction), to be found on UN treaty website at www.untreaty.un.org. Summary posted on Blackboard. Skim Vienna Convention on the Law of Treaties, Art. 1-57, Text, pp. 1125-1155. Discuss maritime delimitation cases at ICJ and ITLOS. Brief Case #1: *North Sea Continental Shelf* cases, pp. 190-209 and ICJ website, and submit assignment through Blackboard.

FEBRUARY 1: SOURCES OF INTERNATIONAL LAW: CUSTOMARY INTERNATIONAL LAW. Creation and evidence of customary law; the role of the UN International Law Commission in progressive development of international law and codification; text, pp. 107-149. Brief Case #2: *Paquete Habana*, Text, pp. 107-116. Gift of *Crossing the Divide: Dialogue Among Civilizations*.

FEBRUARY 8: SOURCES OF INTERNATIONAL LAW: GENERAL PRINCIPLES. Read text, pp. 149-159. NATURAL LAW and *Jus Cogens*, read text, pp. 160-179. SECONDARY SOURCES: writings of jurists, professors; “soft law” and role of UN resolutions and declarations. Read text, pp. 180-182. Sustainable Development as a general principle of international law. Brief Case #3: *Gabcikovo-Nagymoros Project* (Hungary/Slovakia, 1997) on ICJ website at www.icj-cij.org; see also Text, p. 96.

II. “ACTORS” OF INTERNATIONAL LAW

FEBRUARY 15: STATES UNDER INTERNATIONAL LAW: sovereignty, recognition and succession, self-determination, text, pp. 551-620.

FEBRUARY 22: NON-STATE ACTORS UNDER INTERNATIONAL LAW: civil society, NGOs, international organizations, private sector; text, pp. 621-662, and see Blackboard.

MARCH 1: MIDTERM IN CLASS (1 ½ hour); remainder of class: assignment of roles for in-class exercise scheduled for April 26, 2018. Sign up for roles by the time you leave the classroom or you will be assigned a role by the professor. See Blackboard.

MARCH 8: NO CLASS - SPRING BREAK

III. INTERNATIONAL HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT

MARCH 15: WOMEN’S RIGHTS: Watch any UN WEB TV coverage of UN Commission on the Status of Women (CSW) meetings in March, 2018. Skim Convention Against All Forms of Discrimination against Women (“CEDAW”) and the Optional Protocol on website of UN Women at www.unwomen.org. Read the Universal Declaration of Human Rights, and the two covenants. Read text, pp. 475-500.

MIGRATION AND REFUGEES: Skim UN Convention on Refugees (1951) and its protocol on website of UN High Commissioner for Refugees, www.unhcr.org. Read materials to be posted on Blackboard on UN negotiations for a Global Compact on Migration in 2018. Differences between migration and refugees; gender, age and disability implications. Brief Case #4: to be assigned.

MARCH 22: VIRTUAL CLASS (no meeting in classroom) ON BLACKBOARD DISCUSSION GROUP FEATURE: Read *Crossing the Divide: Dialogue among Civilizations* and select a chapter or section to post a comment or summary with a discussion question for the class. Relate this to the class discussions so far in the semester on various themes. Post on Blackboard on Discussion Group following the professor's thread. Post your initial comment/summary by the end of the class period on **March 22nd**. Write something meaningful (not just "I liked it" or "I disagree"; give reasons or examples). Different sections of the book or different themes may be addressed.

After you see other students' posts, you will comment, respond or post a further question for the class based on someone else's post as you might in a live classroom discussion. Post your response/comment or further question for the class no later than **April 4th at midnight**. Additional responses may be posted for extra credit if there is substance and purpose to them. All posts must observe "netiquette" and respect for one another's opinions and the school's codes of conduct.

Students may wish to meet during the class hours in the classroom in small groups to negotiate with others as preparation for the in-class exercise on April 26th.

MARCH 29: NO CLASS - HOLY WEEK, EASTER

APRIL 4: INITIAL POSITION PAPERS DUE FOR IN-CLASS EXERCISE VIA BLACKBOARD BY MIDNIGHT. You need to be preparing in advance for April 26th and meeting with other students. You can use the classroom during class hours on March 22nd to meet one another, or arrange any other meetings or communications. Describe your strategy and your planned bilateral or small group meetings. Your positions may change over time, which will be reflected in your final analysis paper.

APRIL 5: COOPERATION AND INTERNATIONAL ENVIRONMENTAL LAW: Brief Case #5: *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. Discuss status of new ICJ cases involving transboundary water, navigation, environmental protection and natural resources: *Nicaragua v. Costa Rica* and *Nicaragua v. Colombia*. Read SDGs (Goals, Targets and Indicators) especially SDG Goals 6, 13, 14 and 16, and information on the High Level Political Forum (HLPF) at www.sustainabledevelopment.un.org. Water, sustainability, and peace.

IV. USE OF FORCE, LAWS OF WAR AND HUMANITARIAN LAW

APRIL 12: LAWS OF WAR: history, Article 2(4) of the UN Charter. Text, pp. 701-763; the Geneva Conventions, text, pp. 785-812; and see Blackboard.

HUMANITARIAN LAW: history; differences between *jus ad bellum* and *jus in bello*. Article by Lt. Col. Shane Reeves and David Lai, "A Broad Overview of the Law of Armed Conflict in the Age of Terror" posted on Blackboard. Assignment of roles for in-class exercise on April 26th.

APRIL 19: INDIVIDUAL CRIMINAL RESPONSIBILITY: relationship to just war theory and laws of war. Kellogg-Briand Pact, Nuremberg Trials, war crimes tribunals (ICTY, Rwanda, Cambodia) and the International Criminal Court, Text, pp. 535-550.

Is there a responsibility to protect and responsibility/accountability while protecting? If so, only for states? for the UN? for NGOs and private sector relief efforts? Text, pp. 751-764; 801-812.

APRIL 26: IN-CLASS SIMULATION EXERCISE. Council on Foreign Relations “Model Diplomacy” exercise on the South China Sea; meeting of the US National Security Council and meeting of the UN Security Council. Students take different roles and represent the interests of those roles. Materials accessible on-line; to be discussed in advance in class.

ANALYSIS PAPER DUE MAY 1, TWO DAYS BEFORE LAST CLASS (May 3rd).

V. INTERNATIONAL DISPUTE RESOLUTION

MAY 3: INTERNATIONAL COURTS AND TRIBUNALS AND DISPUTE SETTLEMENT: regional and international organizations; negotiations, arbitration, and litigation in international courts and tribunals. Read text, pp. 422-439. Read the Rainbow Warrior arbitrations (1986 & 1990), Text, p. 344-361.

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.

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.**

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>>

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/>.

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.

4. 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.

5. 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.