

The Politics of International Law

Social Sciences

Beijing Foreign Studies University Summer School 2018

William Phelan

Associate Professor

Trinity College Dublin

Timing:

The course is proposed as a three-week course with teaching on three hours a day on three days a week, Type 1 or 2 on the proposed BFSU Summer School arrangements. However, the exact scheduling arrangements will be made by BFSU in light of other courses being offered and scheduling requirements.

Instructor Profile:

William Phelan is Associate Professor of International Relations and Head of Political Science at Trinity College Dublin, Ireland. Phelan obtained his PhD in Political Science at Harvard University in 2007, and was Assistant Professor at Middlebury College, Vermont, USA before joining Trinity College Dublin in 2007. At Trinity, Professor Phelan is instructor for courses on international relations, international law, dispute settlement, and on research design for PhD students. Professor Phelan's research focusses on the politics of international law, including dispute settlement in the World Trade Organization, and on the politics of the European Court of Justice within the European Union. His recent book, "In Place of Inter-State Retaliation" (Oxford 2015). was recently awarded the "Brian Farrell Book Award" for the best book published in 2015 by a member of the Political Studies Association of Ireland. His papers have appeared in *European Journal of International Law*, *International Studies Review*, *European Law Journal*, *International Theory*, *Journal of European Public Policy* and *Journal of Common Market Studies*. He has taught 'International Organization' at the China-European Union School of Law in Beijing, and 'Politics of International Law' at the 2017 BFSU International Summer School. Phelan's current research focusses on the role of individual judges in the history of the European Court of Justice, and on various debates in international relations theory.

Course summary:

This course offers an introduction to the politics of international law, with particular focus on dispute settlement in the World Trade Organization, Investor-State Dispute Settlement, the International Criminal Court, and the European Court of Justice. It will also offer a special discussion of the United States of America and international law. At the end of the course, students will understand the ways that states, international organizations, businesses, and private individuals make use of international law to resolve disputes and enforce treaty obligations. Students will understand both the strengths and limits of dispute settlement in contemporary international law, as well as the challenges involved in any future 'strengthening' of the World Trade Organization and other international institutions. It should be of interest students interested in contemporary world politics, in international relations or political science, and in legal studies, as well as those interested in careers in diplomacy or law. This course does not require any prior knowledge of international law or international relations. The course will be offered either as a lecture or seminar course depending on student numbers. Assessment will be based on attendance and participation in discussion, and on a final exam involving definitions and essays.

The course will be offered either as a lecture or seminar course depending on student numbers. Lectures will offer outlines of the various institutions discussed and concrete analysis of the politics and law involved in various international disputes. Students will be expected to participate with questions and to discuss course readings knowledgeably. Seminars will involve active student participation and debate on course readings, as well as presentations by students on various of the readings.

Assessment

10%	Attendance and Participation in Discussion (including Presentations if in Seminar format).
90%	Final Examination involving Essays and Definitions (Definitions particularly of essential features of dispute settlement mechanisms in different treaty systems).

The course will be organized into separate topics. Proposed readings are set out in the following pages, these may be revised between now and the start of the course. Note that to focus student reading and to improve class discussion, the required readings will often include only selected pages from a longer article or book chapter. The exact page specifications will be set out before each week's readings. Exact allocation of readings to particular class sessions will depend on BFSU scheduling decisions.

Topics:

1. Introduction to the Politics of International Law
2. The World Trade Organization
3. The World Trade Organization 2
4. Investor-State Dispute Settlement
5. The International Criminal Court
6. America and International Law
7. The European Court of Justice
8. Conclusion

Introduction to the Politics of International Law

Carr, E. H. (1940). The Twenty Years' Crisis 1919-1939: an Introduction to the Study of International Relations. London, Macmillan.

Hoffmann, Stanley "Uses and Limits of International Law".

Hull, I. V. (2014). A Scrap of Paper: Breaking and Making International Law during the Great War. Ithaca, NY, Cornell. *Short extract*

Mueller, J. (1990). "The Obsolescence of Major War." Security Dialogue **21**(3): 321-328.

The World Trade Organization

The World Trade Organization is perhaps the most important international organization of which both the United States and China are members. It also has a very developed system of 'dispute settlement' which is both fascinating in itself, and sets a standard for comparison for other international organizations.

Case study of recent WTO dispute, either Indonesia-US Clove Cigarettes, or more contemporary dispute in 2018.

Statement delivered by Colin Murdoch, ambassador of Antigua and Barbuda to the 8th session of the WTO Ministerial Conference 17 December 2011

Davis, C. (2012). Why Adjudicate? Enforcing Trade Rules in the WTO. Princeton NJ, Princeton University Press. Chapter on Vietnam, Peru.

Gerald Wilkinson 'Reciprocal food sharing in the vampire bat' in *Nature* 1984, 308:8 March, pp. 181-184.

Axelrod, R. M. (1984). *The Evolution of Cooperation*. New York, Basic Books. Chapter 4 on the Live and Let Live System in World War One. pp. 73-87

The World Trade Organization 2

RZ Lawrence, Crimes and Punishments? Retaliation under the WTO (Institute for International Economics, Washington, D.C 2003) "Options for Reform".

Downs, G. W., et al. (1996). "Is the Good News about Compliance Good News about Cooperation?" International Organization **1996**(3): 379-406. *Selected pages only.*

BP Rosendorff and HV Milner, 'The Optimal Design of International Trade Institutions: Uncertainty and Escape' (2001) 55 (4) *International Organization* 829-857 *selected pages only*

Davis, C. and Y. Shirato (2007). "Firms, Governments and WTO Adjudication: Japan's Selection of WTO Disputes." World Politics **59**: 274-313. *Selected pages only.*

Guohua, Yang (2015). "China in the WTO Dispute Settlement : A Memoir" *Journal of World Trade*.

Shaffer, Gregory and Gao, Henry S., China's Rise: How It Took on the U.S. at the WTO (March 20, 2017). Forthcoming, University of Illinois Law Review, Vol 1, 2018; UC Irvine School of Law Research Paper No. 2017-15; Singapore Management University School of Law Research Paper No. 14/2017. *Short selection.*

Investor-State Dispute Settlement

Investment treaties often establish “Investor-State Dispute Settlement” arrangements that can lead to compensation for investors harmed by regulatory policies in a ‘host’ state. Both China and the United States are involved in such treaty arrangements, which also formed part of the proposed ‘Trans-Pacific Partnership’.

Haley Sweetland Edwards Shadow Courts: The Tribunals that Rule Global Trade (Columbia Global Reports, 2016). *Selected pages only*.

Simmons, B. (2006). "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000." International Organization **60**: 811-846. *selected pages only*

Hufbauer, G. Investor-State Dispute Settlement pp 109-119 in “Assessing the Trans-Pacific Partnership”, Petersen Institute, 2016. *selected pages only*

The International Criminal Court

Neither China nor the United States are members of the International Criminal Court but more than 100 other countries are members, and the International Criminal Court itself demonstrates a very different form of treaty-based dispute settlement which may become more important and widespread in years to come.

David Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics* (Oxford University Press, Oxford 2014) Selection

Jo, H. and B. Simmons (2016). "Can the International Criminal Court Deter Atrocity?" International Organization **70**(3): 443-475. *selected pages only*.

A short reading to be added on the recent announced withdrawals from the International Criminal Court by various African states.

America and International Law

The United States has a particular role in contemporary world politics and a particular approach to international law. This part of the course will discuss various aspects of the United States willingness to accept, or oppose, international law.

Stephen Brooks and William Wohlforth *World Out of Balance: International Relations and the Challenge of American Primacy* (Princeton UP, 2008) Chapter 2: 'Realism, Balance of Power Theory, and the Counterbalancing Constraint' *selected pages only*.

John Bolton and others. Global Structure Convocation 1994, "Human Rights, Global Governance, and Strengthening the United Nations".

Anatol Lieven, *America Right or Wrong: An Anatomy of American Nationalism* (Oxford and New York: Oxford University Press 2004), *short selection*

Andrew Moravcsik, "Why Is U.S. Human Rights Policy So Unilateralist?" in Shepard Forman and Patrick Stewart, eds., *The Cost of Acting Alone: Multilateralism and US Foreign Policy* (Boulder: Lynne Rienner Publishers, 2001). Available at: <http://www.princeton.edu/~amoravcs/library/unilateralism.pdf>

Remember:

Statement delivered by Colin Murdoch, ambassador of Antigua and Barbuda to the 8th session of the WTO Ministerial Conference 17 December 2011

The European Court of Justice

One of the best ways to understand the strengths and limitations of dispute settlement in the World Trade Organization is by a comparison with the European Court of Justice. This section of the course offers an introduction to the politics of the European Court of Justice, and discusses competing explanations for its remarkable power and influence.

Extracts from three famous decisions of the European Court of Justice:

Van Gend en Loos, 1964 “direct effect”

Costa v. ENEL, 1964 “supremacy”

Dairy Products, 1964 “no retaliation”

A-M Burley [Slaughter] and W Mattli, 'Europe Before the Court: A Political Theory of Legal Integration' (1993) 47 (1) *International Organization* 41-76 *selected pages only*

W Phelan, *In Place of Inter-State Retaliation: The European Union's Rejection of WTO-style Trade Sanctions and Trade Remedies* (Oxford University Press, Oxford 2015), *selection*

Éliane Vogel-Polsky: A Woman of Conviction by E. Gubin with C. Jacques

Chapter 3 “Equal Rights for All Workers” pp. 59-95 *selected pages only*

Whole document available at:

http://igvm-iefh.belgium.be/sites/default/files/downloads/13%20-%20Vogel-Polsky_EN.pdf

(The European Court of Justice is often considered an ‘Economic Court’, but it also has developed a role in protecting women’s rights and other social rights.)

Phelan, W. (2016). *Diagonal Enforcement in International Trade Politics*. EUI Working Paper SPS 2016/1. Fiesole, EUI.

Conclusion

We will reconsider various readings from across the course, and add the following:

Eilstrup-Sangiovanni, M. and T. N. Phelps Bondaroff (2014). "From Advocacy to Confrontation: Direct Enforcement by Environmental NGOs." International Studies Quarterly **58**: 348-361 *selected pages only*

Phelan, W. (2017). "The Revolutionary Doctrines of European Law and the Legal Philosophy of Robert Lecourt." European Journal of International Law **28**(3): 935-957 *selected pages only*