Structure. This is a simulation-oriented seminar, meaning that most sessions are structured around a real or hypothetical situation that highlights specific issues addressed by course readings. The simulations are set out below. The object of the simulations is to afford students an opportunity to internalize an analytic framework comprising basic elements of constitutional doctrine—and to recognize the limitations of doctrine—in the process of resolving separation-of-powers disputes in the realm of foreign affairs. In these simulations, students play pre-selected roles. Typically, the setting is one of the two fora in which such a dispute normally is aired—a congressional committee hearing in which some students testify and others ask questions as committee members, or a judicial proceeding in which students argue opposing sides of a case while others act as judges. In practical, real-life contexts, students are thus challenged to perform as real lawyers. The first part of the course is introductory, aimed at acquainting students with recurrent issues that constitute the unifying threads of this subject. The objective of the first four class sessions is to raise to a level of generalized, principled, and enunciated normativity the arguments that students will later be making in the practice-oriented, workaday roles they are to perform in the upcoming simulations. This conceptual vocabulary is addressed in the first chapter of the casebook.

Pre-requisite. The International Legal Order, Law 200, is a pre-requisite for this seminar. Exceptions are permitted with the written permission of the instructor.
**Basic approach.** The required text is a casebook, *United States Foreign Relations and National Security Law*, 4th ed., by Thomas M. Franck. Michael J. Glennon, Sean Murphy & Edward Swaine (West Publishing Company: 2011). Three additional books are required: *Constitutional Diplomacy* (Princeton: 1990), by Michael J. Glennon; and *Foreign Relations Law*, by Philip R. Trimble (Foundation: 2002); and *National Security and Double Government*, by Michael J. Glennon (Oxford University Press, 2014). *The Tools of Argument: How the Best Lawyers Think, Argue, and Win* (2013), by Joel P. Trachtman, is strongly recommended; it will be especially beneficial for non-lawyers in honing cross-examination skills. Entries in this syllabus denominated in brackets are references to pages in the casebook. The casebook is organized around simulations, with one or two per chapter that are designed to illuminate the matter at issue. Students might suppose that an assistant has gathered materials of prima facie relevance; it is for the student to fit those materials together into a cohesive argument—and, most important, to supplement those materials with additional support gleaned from their own research. Students are thus called upon to do what lawyers actually do in a major foreign relations dispute.

**Required readings.** Required readings from these books are indicated below. Also required are the additional materials set out in the Trunk (see below) course document folders for each class session. Further readings may be added throughout the semester as events unfold; therefore, it is important to check the course document folder in Trunk before each class to keep current in reading assignments. The student performing a simulation role should not confine research to the contents of the casebook. The contents of the casebook are suggestive, perhaps even sufficient, but far from exhaustive. In editing the cases, for example, space has been saved by removing citations and footnotes. Students may find it necessary to look up some of these references in order to get important additional sources and research directions. In this research, Westlaw, Lexis-Nexis and even Google will prove invaluable; however, students will find that there is no substitute for old-fashioned searches through library stacks, which should encompass not only Fletcher’s Edward Ginn Library, but local university law libraries as well.

**Student groups and presentations.** Groups of presenters should meet to plan their case, which will be presented in the first half of each class. For the second half of each simulation session, we will break out of the simulation into a class discussion—in which all students should be prepared to address all of the assigned materials.

**Schedule.** Numerical headings in this syllabus each represent one class session (see below).

**Meetings.** The seminar meets Wednesday from 3:20 to 5:20 in the M251f.
Communication of class notices. Email messages concerning class information, including further readings, will be sent to each student’s Tufts email address through the Tufts Trunk. A functioning Tufts email account is therefore necessary to participate in this seminar. (Cross-registrants should provide an email account that will be read daily.) A student who adds the class after late should ensure that email communications about the class will be received. Announcements not made in class will be sent by email and also posted on the course website in Trunk.

Paper. A serious, full-fledged research paper is required, which may provide a useful basis for a MALD thesis. Full footnoting in formal legal citation form is required, consistent with the Harvard Bluebook. (A copy of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, is available at the reserve desk.) The object is to state a thesis and defend it. The thesis must be based on law, not policy. The thesis should relate to, and be provoked by, the simulations, reading materials, and class discussion. Papers should weigh carefully arguments on both sides of an issue and take sides, without constituting a “brief.” It is important to respond fully to opposing arguments. Topics need not be pre-approved. Consultations are of course welcome, but it is for the student to select a topic. Students may elect to write their papers on one of their simulation topics, but other topics within the seminar subject matter are also permissible. The paper should be from 20 to 30 pages, including footnotes, and typed in 12-point type, double-spaced with footnotes placed at the bottom of the page. Number all pages. The thesis should be stated clearly and succinctly in a one-paragraph abstract at the outset of the paper. The paper should be turned in to me at the end of class on April 22. No extensions will be granted absent death or serious illness in the immediate family; papers turned in late will be graded down, with one-half letter grade deducted for each 24-hour period that the paper is late. Also, there is no assurance that it will be possible to grade a late paper before the deadline for turning in grades; graduation in an upcoming ceremony may therefore be impossible. It is possible to fulfill the MALD thesis requirement with this paper provided that the “combination” paper represents an amount of effort equivalent to the amount required for a seminar paper and MALD thesis written separately.

Grading. One half of every grade will consist of the grade on the paper. One half will consist of the grade for class performance, including presentations, cross-examination, and class discussions.

Class attendance. Students are expected to attend all class sessions. Non-attendance will be reflected in class performance grades.

Office hours. Office is located at 315 Goddard (across from the Crowe Room). Office hours are 2:00 to 4:00 on Thursday, other times by appointment—though if
the door is open, as it usually is, feel free to come in. For conversations about class topics, please stop by rather emailing.

**Contact information.** Email: michael.glennon@tufts.edu. Telephone: (617) 627-3941. Web site: http://www.fletcher.tufts.edu/faculty/glennon.
SCHEDULE

Introductory sessions

1. Origins; concurrent presidential-congressional power [1-12; 29-33; 41-58]; Glennon, 3-18; Trimble, 1-27.

2. Plenary powers of the President [33-41; 72-95]; Glennon, 18-34; Trimble, 47-78; Adam Liptak, A Discredited Supreme Court Ruling That Still, Technically, Stands, N.Y. TIMES, Jan. 27, 2014.

3. Sources of constitutional power; interpretation [58-71; 12-29]; Glennon, 35-70; Trimble, 27-47.

Readings, Simulations, and Roles

4. The war power

Readings: [491-558]; Glennon, 71-87; Trimble, 192-230.

Simulation: #1, p. 1389.

Roles:
   a. Committee counsel
   b. State Department Legal Adviser

5. The war powers resolution

Readings: [558-661]; Glennon, 87-122; Trimble, 231-243.


Roles:
   a. Committee counsel
   b. State Department Legal Adviser

6. Executive agreements

Readings: [401-448]; Glennon, 164-191; Trimble, 113-140.

Simulation: On April 24, 2019, following threats made by Iran against the neighboring country of Moraine, the President announces that the United States has agreed with the Sultan of Moraine that the United States will come to the defense of Moraine if Moraine is attacked, in return for the right by the United
States to pre-position military equipment within the territory of Moraine. Assume that the Senate Foreign Relations Committee is holding a hearing on the issue following increased tensions between Iran and Moraine. Is this agreement within the constitutional power of the President absent Senate or congressional approval?

**Roles:**

a. Committee counsel (arguing the negative)

b. State Department Legal Adviser (arguing the affirmative)

7. **FOREIGN AFFAIRS FEDERALISM**

**Readings:** [749-845].

**Simulation:** The legislature of the Commonwealth of Massachusetts has enacted a statute prohibiting the expenditure of any appropriated funds for the purchase of any good or service produced by any business, corporation, or company doing business with any nation in which women are prohibited from driving automobiles. Assume that the Massachusetts statute is not preempted by any federal law. Wrecktel, an international construction conglomerate, is completing the construction of a major airport in Saudi Arabia, and has, as a result, been precluded from bidding upon a contract let by the Commonwealth for the construction of a new bridge over the Charles River. Wrectel brings an action in the U.S. District Court for the District of Massachusetts seeking to have the Commonwealth’s order overturned. Is the statute invalid under the “dormant foreign affairs power”?

**Roles:**

a. Attorney General, Commonwealth of Massachusetts

b. General Counsel, Wreckel

8. **THE POLITICAL QUESTION DOCTRINE**

**Readings:** [846-915]; Glennon, 314-321.

**Simulation:** #1, p. 1394

**Roles:**

a. White House Counsel

b. CIA General Counsel

c. Counsel, Senate Foreign Relations Committee

9. **PUBLISHING NATIONAL SECURITY INFORMATION**
Readings: [1194-1283]

Simulation: p. 1398.

Roles:

a. Attorney General

b. Publisher

10. National Security and State Secrets

Readings: [1283-1318]

Simulation: #2, p. 1397.

Roles:

a. Counsel for Center for Constitutional Rights

b. Counsel for U.S. Department of Justice

11. Torture

Readings: [95-98; 290-332]; Glennon, 295-313; Trimble, 79-108; the “Senate Torture Report”; Mukasey, The CIA Interrogations Followed the Law, WALL STREET JOURNAL, Dec. 17, 2014. See “resources” folder for additional readings. Questions for discussion: (1) Was torture justified? (2) Was it legal?

12. Detention of Enemy Combatants


Guest speaker: Mark Fleming, Esq.

Conclusion

13. Class Discussion

Michael J. Glennon, NATIONAL SECURITY AND DOUBLE GOVERNMENT (Oxford University Press, 2014).