This course explores a range of legal disciplines which purport to explain how we are governed globally and which propose projects for improving global governance through law. We will focus on the field of international law and organization, examining the history of ideas, legal doctrines, institutional and administrative structures developed over the last century to organize and legalize international economic and political life. The readings will focus on various ways to think about the legal organization of global order, and on the history of legal efforts to organize and institutionalize international affairs.

The course takes the discipline of “public international law” as a starting point. Across the twentieth century, the discipline consolidated a community of lawyers and jurists with a common vocabulary, a shared sense of history and a shared range of professional activities. They continue to offer accounts of how the world is organized and projects for its reorganization. The casebook presents itself as a “classical” treatment, the distributed materials juxtapose various alternative historical, theoretical and avant-gardist points of views. The start of the twenty-first century has been characterized by a variety of challenges and proposals to rethink and reorient our modes of collective problem solving and policy making at the global level. As a result, we will spend some time thinking about history. What came before twentieth century international law? How was international legal modernism born and built in the first half of the last century? What happened in the half-century after 1945, after 1989, after 2001? What will happen next?

**Evaluation:**

This four credit course will require one 2,000 word final exam essay and two 500 word papers, which will be weighted proportionately in the final evaluation. The two papers combined will be worth one third of the grade, the final essay will be worth two thirds. The take home exam will be distributed on the last day of class and due on the last day of the exam period. Each of the two 500 word essays should comment on the readings for one assignment. These papers must be turned in to me in hard copy before the class in which that assignment is discussed. At least one paper must concern an assignment considered prior to October 15.

**Materials:**


Materials marked DM are available in the distributed materials and should be available on the course website.

You may also wish to purchase the following books at the bookstore:


Course Outline

I. The Mystery of Global Governance Today

   Topic 1: The Disciplines of International Law and International Institutions: People with Projects and a History of Ideas

II. The Background Architecture of Public International Law

   Topic 2: The Norms
      - Custom
      - Special Problems

   Topic 3: The Entities:
      - Statehood and Recognition
      - Sovereignty and Sovereign Rights

   Topic 4: The Entities
      - Individuals and “Other Entities”
      - International Criminal Law: Individual Responsibility

   Topic 5: The Powers
      - Jurisdiction

   Topic 6: The Powers
      - Territory
      - International Territories
      - Law of the Sea: Architecture and Regulation

   Topic 7: The Powers
      - Conflicts

   Topic 8: Mobilizing the Architecture: Claims and State Responsibility

III. The Architecture in History

   Topic 9: Before Modernity
      - 1648-1815
      - 1815-1914

   Topic 10: The Turn to Modernism: 1914-1945

IV. New Thinking: Adjudication

Topic 12: National Courts in a Transnational Legal Process and Questions of Reception

Topic 13: A Global Juridical Perspective: International Courts and Dispute Resolution

Topic 14: Consciousness as Governance: Rulership and the Power of Ideas
   *Human Rights*
   *Environmental Protection*

V. New Thinking: Administration and Execution

Topic 15: Statecraft and Diplomacy
   *Unilateralism, Bilateralism and ad hoc Arrangements /
   Multilateral conferences and rulemaking
   GATT and the WTO: Bargaining in the Shadow of the Law /
   Law in the Shadow of Bargaining*

Topic 16: International Institutions
   *League of Nations, the United Nations and a History of Reform
   Leadership as Governance: The Secretary General*

Topic 17: Administration as Governance
   *Global Administrative Law
   Restructuring the Transnational Social State: The European Union, Market Freedoms and Technocratic Order*

VI. New Thinking: Legislation

Topic 18: Regulation and Private Ordering

VII. New Thinking: Theories of the Whole

Topic 19: Constitutionalism, Systems Theory, Legal Pluralism and Fragmentation

VIII. Global Governance in Action: The Law of Peace and Humanitarianism

Topic 20: Humanitarian Policy and the “Law of Cooperation”
   *Case Study: Refugees and the UNHCR*
IX. **Global Governance in Action: War as an International Legal Institution**


Syllabus

I. The Mystery of Global Governance Today

Topic 1: The Disciplines of International Law and International Institutions: People with Projects and a History of Ideas


- **DHMS** xv-xvii (introduction) and xxxi-xxxiv (summary of contents)


- **DHMS** xix-xxx (historical introduction)

- **DM** David Kennedy, *Charts: Schools of Thought*, and *Intellectual History*

II. The Background Architecture of Public International Law

Topic 2: The Norms

Custom

- DHMS 55-67 (Article 38 of the Statute of the International Court of Justice, Schachter, customary law questions, The Paquette Habana (1900), McDougal note 4)

- DHMS 68-76 (The Lotus (1927))

- DHMS 79-87 (Nuclear Weapons (1996))

- DHMS 112-119 (treaties and customs compared)

- Optional: (In broad terms, the law of treaties should be familiar from study of contract law. Those with a special interest in the ways in which common private law ideas have and have not been given expression in the law of treaties may wish to skim DHMS, 122-215)

Special Problems

- DHMS 105-107 (jus cogens, hierarchy of norms, Weil, “relative normativity”)


- DHMS 292-295 (unilateral acts, Eastern Greenland (1933), Nuclear Tests (1974))

- DHMS 286-291 (nonbinding international agreements)


- DM David Kennedy, Chart: The Structure of Sources Doctrine
II. The Background Architecture of Public International Law

Topic 3: The Entities

Statehood and Recognition

- DHMS 300-313 (definition of statehood, Montevideo Convention)
  348-359 (recognition)
- DHMS 370-375 (recognition criteria and effects, Salimoff (1933))

Sovereignty and Sovereign Rights

- DM The Antelope 23 U.S. (10 Wheaton) 66 (1825)
- DM American Banana v. United Fruit (1909)
- DM Corfu Channel (1949) (excerpts)
II. The Background Architecture of Public International Law

Topic 4: The Entities

Individuals and Other “Entities”

- DHMS 447-451 (individuals, Lauterpacht)
  453-455 (LeGrand (2001))
  458-467 (nationality and Nottebohm (1955))
  481-490 (corporations and Barcelona Traction (1970))

International Criminal Law: Individual Responsibility

- DHMS 1306-1313 (background on international criminal law)

II. The Background Architecture of Public International Law

Topic 5: The Powers

Jurisdiction

- DHMS 755-761 (jurisdiction defined, overview of principles)
  761-762, 767-776 (the territorial principle and “effects”-based jurisdiction, Alcoa (1945), Hartford Fire (1993))
  780-784 (Helms-Burton Act, sanctions)
  793-796 (passive personality, Yousef (2003))
  798-802 (protective principle, Vasquez-Velasco (1994))
  804-815 (universality principle, Pinochet (1999), Yousef (2003))


II. The Background Architecture of Public International Law

Topic 6: The Powers

Territory

- DHMS 1384 (El Salvador v. Honduras (1992))

International Territories


Law of the Sea: Architecture and Regulation

- DHMS 1372-1379 (introduction, basic principles: freedom and commonage, status of the treaty, the concept of “zones”)
II. The Background Architecture of Public International Law

Topic 7: The Powers

Conflicts

- DHMS 851-859 (jurisdictional immunities)
- DM Schooner Exchange v. McFaddon, 11 U.S. 116 (1812)
- DM American Banana v. United Fruit (1909)
- DHMS 835-836 (conflicts of jurisdiction)
II. The Background Architecture of Public International Law

Topic 8: Mobilizing the Architecture: Claims and State Responsibility

- DHMS 498-502 (general principles of State responsibility)
  532-541 (countermeasures, retorsion, reprisal)

- DM France v. US Air Services (1978) (excerpts)


III. The Architecture in History

Topic 9: Before Modernity

1648-1815


1815-1914

- DM The Antelope 23 U.S. (10 Wheaton) 66 (1825)


Optional Background:

III. The Architecture in History

Topic 10: The Turn to Modernism: 1914-1945

III. The Architecture in History


- DM  Corfu Channel (1949) (excerpt)


- DMHS  1-36 (nature of international law)


Optional background:

IV. New Thinking: Adjudication

Topic 12: National Courts in a Transnational Legal Process and Questions of Reception

IV. New Thinking: Adjudication

Topic 13: A Global Juridical Perspective: International Courts and Dispute Resolution

- DHMS 582-587, 638-641 (ICJ, jurisdiction, other international courts and tribunals)
- DM US v. Iran (1979)
- DHMS 598-610 (Nicaragua v. US (1984))
IV. New Thinking: Adjudication

Topic 14: Consciousness as Governance: Rulership and the Power of Ideas


Human Rights

- DHMS 956-961, 975-988 (introduction to human rights)

Environmental Protection

- DHMS 1486-1502 (general principles, Trail Smelter (1941), Chernobyl)
V. New Thinking: Administration and Execution

Topic 15: Statecraft and Diplomacy.

Unilateralism, Bilateralism and ad hoc Arrangements / Multilateral Conferences and Rulemaking


GATT and the WTO: Bargaining in the Shadow of the Law / Law in the Shadow of Bargaining


V. New Thinking: Administration and Execution

Topic 16: International Institutions


League of Nations, the United Nations and a History of Reform

- DM Julian Corbett, *What is the League of Nations?*, 5 British Yearbook International Law 119-148 (1924) (excerpts)

Leadership as Governance: The Secretary General


V. New Thinking: Administration and Execution

Topic 17: Administration as Governance


Global Administrative Law


Restructuring the Transnational Social State: The European Union, Market Freedoms and Technocratic Order


VI. New Thinking: Legislation

Topic 18: Regulation and Private Ordering


VII. New Thinking: Theories of the Whole

Topic 19: Constitutionalism, Systems Theory, Legal Pluralism and Fragmentation


- DHMS 36-41 (fragmentation of international law)


VII. Global Governance in Action: The Law of Peace and Humanitarianism

Topic 20: Humanitarian Policy and the “Law of Cooperation”

- DM Wolfgang Friedmann, The Changing Structure of International Law, Stevens & Sons 365-381 (1964)

Case Study: Refugees and the UNHCR

VIII. Global Governance in Action: War as an International Legal Institution


- DM Sigmund Freud, Thoughts for the Times on War and Death (1919)
- DHMS 1276-1296 (law of war, control of weapons)
VIII. Global Governance in Action: War as an International Legal Institution


- DM Clausewitz, *On War* 101-122, 399-410 (1832)