**Actors, Institutions, and Legal Frameworks in International Affairs**

INTAF 801

Semester: Spring Semester 2019

Larry Catá Backer

Summary Course Information

**MEETING ROOM: 012 Katz**

**MEETING TIME: Mondays and Wednesdays 02:30 P.M. - 03:45 A.M.**

**OFFICE: 239 Katz Building**

**TELEPHONE: 814.863.3640 (direct)**

**E-MAIL lcb11@psu.edu**

**WEBSITE** [**https://backerinlaw.com**](https://backerinlaw.com)

**BLOG** [**https://lcbackerblog.blogspot.com**](https://lcbackerblog.blogspot.com)

**CONFERENCE**

**HOURS: Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT**

**e-mail anytime; e-conferencing encouraged**

**QUESTIONS: CLASS RELATED QUESTIONS VIA EMAIL**

**FINAL GRADE: Presentations Plus 24 Hour Take Home Final**

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[**COURSE SHORT DESCRIPTION**](https://www.sia.psu.edu/courses/actors-institutions-and-legal-frameworks-international-affairs)**:**

This course introduces students to the various levels of international interaction and exchange (supranational, state-to-state, state-to-private, private-to-private); the sources and limitations of law and regulation at each level; and the variety of actors and institutions characteristic of each level. The course explores the roles, authority, and limitations of the institutions and actors at each level and the implications of these for domestic and transnational governance, development, human rights, commerce, migration, and civil society.

**STATEMENT OF LEARNING OUTCOMES AND ASSESSMENT**

***Learning Outcomes:***

The “Course Concept Statement” is included below at the beginning of the Syllabus. Students are expected to acquire a working knowledge of the following.

First, students will be introduced to the range of organizations that populate the landscape of international affairs. In line with the current global framework of hierarchies of political power, that means a focus on the state. The students will consider the state system—that is, the state as a political organization and as an actor among other states and non-state actors. They will be introduced to notions of differences between governors and governed and hierarchies of authority. They will also be introduced to the distinctions between international and domestic law systems, and non-law systems. Together these provide the framework within which international actors operate. Students will be expected to master the conceptual framework of the state system, and its ramifications for the structures of authority and relationship to law of international organizations, corporations and other non-state actors. They will also master developing theories of governance frameworks in which the state plays a role but is not at the center and in which “law” is understood in a variety of different senses. These theories include transnational law and global law.

Second, students will learn about each of these entities. Students start with the state. All other international actors are then considered from the perspective of this touchstone entity—quasi-states (e.g. Somalia, Palestine, Kosovo); international organizations (e.g., United Nations); supra-national organizations (regional trade organization,); transnational corporations (e.g. Nike) and non-economic corporate actors (e.g., Oxfam); and individuals. The focus of this exploration with respect to each of these actors will be similar: how are they constituted, who are their stakeholders, what is the extent of their authority (internal and external), to which other entities are they dependent, how to they operate.

Third, students will consider how each of these entities operates within the global context. They will consider the “rules of engagement” among these institutions. They will also explore the ways in which these institutions communicate with each other (notions of structural coupling), how or to what extent they retain autonomy with respect to internal and external activity), and how their interactions affect policy, culture, economics, and globalization.

Fourth, the context of these investigations will be grounded in the legal frameworks within which these institutions operate, or against which they might function. Students will be expected to acquire a rudimentary knowledge of the international law system, and its distinction from domestic law systems. Students will also explore the quasi-legal nature of governance systems—rules that have the functional effect of “law” but are not produced through the organs of state actors.

Fifth, students will learn how to manage and present information. Students will be expected to work together in groups to develop and present policy positions and background analysis on a number of the topic areas covered in class. To master the materials it will be necessary to show not merely a knowledge of the materials studied but to apply them in a working context.

***Learning Outcomes Assessment:***

Student achievement in all learning outcomes will be measured by FIVE group presentations (each worth 15% of the grade) and a final 24 hour open book take home examination to be administered through the CANVAS system. Learning Outcomes will be monitored through student participation in class discussion and in the group presentations.

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**COURSE MATERIALS**

The course consists of cases, primary source materials and secondary sources of relevance to the subject of instruction for each class session. These will be provided through CANVAS. Additional materials will be made available on occasion as appropriate. Please bring assigned reading to class.

*REQUIRED*:

José E. Alvarez, *International Organizations as Law-Makers*, Oxford University Press, 2006, ISBN 978-0-19-876563-9 (Paperback)

Other Materials to be distributed via CANVAS.

*OPTIONAL (* **need not be purchased but may be useful***)*:

Andrew Moravcsik, *Power, Interdependence, and Nonstate Actors in World Politics* (Princeton University Press, 2009). ISBN: 9780691140278

*Networked Politics: Agency, Power, and Governance* (Miles Kahler, ed.) Cornell University Press, 2009. ISBN 978-0-8014-7476-7 (Paperback).

Sean D. Murphy, *Principles of International Law*, 2d (West Academic, 2012)

ISBN: 9780314262684

Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers*, Oxford University Press 2005. ISBN 978-0-19-922577 (Paperback).

Jan Klabbers, *An Introduction to International Institutional Law* 2nd ed. Cambridge University Press 2009. ISBN 978-0-521-73616-9 (Paperback).

*Non-State Actors in International Relations* (Bas Arts, Math Noortmann and Bob Reinalda, eds., Aldershot: Ashgate, 2001). ISBN 0 7546 1848 X

**COURSE INFORMATION AND RULES**

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom).

***ATTENDANCE, SEATING, AND CLASS PARTICIPATION***

Administrative practice requires me to notify students of my attendance policy. **Class attendance is required**. I take attendance seriously. The Law School also has in place an Honor System. I will take advantage of the Honor System for purposes of recording attendance. **All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

**You are responsible for marking your attendance.**

**THERE WILL BE SEVERAL GROUP PROJECTS. EACH OF YOU WILL BE ASSIGNED TO A GROUP AND EACH GROUP WILL BE REQUIRED TO MAKE CLASS PRESENTATIONS (WITH POWERPOINT). THE GROUP PROJECTS BE GRADED AND EACH CONSTITUTES 15% OF YOUR GRADE.**

**Class participation is required**. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). All of you will find yourselves participating in at least some of the discussion. At the end of each class I may designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. Outstanding participation may result in an increase in your grade, again at my discretion.

**Seating is assigned**. You will be asked to fill out a seating chart during the second day of class.

**My approach to class**: The principal object of the class is to develop knowledge through discussion in class. That discussion will be framed by the problems and informed by the readings. There is no expectation that one has the correct answer. The expectation is that students will contribute to a discussion that I will guide as necessary to achieve our learning outcome objectives. That means that sometimes you will have an opinion or produce an insight with respect to which there may be objection or disagreement. Disagreement is not disrespect. I expect that through lively discourse the class will be able to learn better. Please let me know if you have questions.

***CLASS NOTES AND RECORDING OF CLASS***

Class Notes and Recording of Class. Take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end, *all of my classes are recorded and you are encouraged to review those recordings at your convenience.*

**No personal recording of class.**

**[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](https://pennstatelaw.psu.edu/intranet/iit/policy-class-recordings)**

All law school courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the law school has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in law school classrooms. The purpose of the recordings is to permit students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor.

Access to recorded classes will be controlled via a secure course management platform, such as CANVAS, and will be restricted to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and law school jointly may decide to retain the edited recording for other purposes).

By registering for or attending law school courses, a student consents to the law school’s making and display of class recordings within the scope of this policy.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

A.  Student Access to Class Recordings; Open Access:

All Class/Open Access.  All class recordings will be posted on the course ANGEL site for access by any student enrolled in this course.  Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B.  Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member.  If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member.  Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member.  Unauthorized use of course materials is a violation of the Honor Code.

Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials.  It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C.  Questions, Special Requests.  You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at [av@law.psu.edu](mailto:av@law.psu.edu).

***GRADING***

Grading will be based on FIVE GROUP PROJECTS and a 24 Hour Take Home Final Exam.

**1. Group Presentations**.

Students will make FIVE presentations during the course of the semester. Each of the presentations will cover one of the core areas of study. The object of these presentations is to provide students with substantial practice in research, analytics, and oral skills within time constraints. Each presentation will count for 15% of the final grade.

**2. 24 Hour Take Home Exam.**

**THE EXAM IS OPEN BOOK. You must work alone.** You will have 24 hours to complete the exam from the time you pick it up. Students will be given the option of choosing the time you take the exam. The exam may be picked up on any day from the first day of final exams to 4:00 P.M. on the last day of the final exams period (Monday – Friday, April 29 - May 3, 2018).

Exams will be made available through CANVAS and will be submitted through CANVAS. More detailed instructions will be made available later in the semester. EXAMS MUST BE SUBMITTED NO LATER THAN 24 HOURS AFTER PICK UP. CANVAS makes it impossible to submit after the end of the 24 hour period. The Clock in CANVAS WILL BE TREATED AS PRESUMPTIVELY ACCURATE. **I will not police you – you are on your honor to comply with final exam rules.**

**The** [HONOR CODE MAY BE ACCESSED HERE](https://pennstatelaw.psu.edu/intranet/honor-code).

**ANY EXAM DELIVERED AFTER 4 P.M. ON MAY 3, 2019 OR ATTEMPTED DELIVERY MORE THAN 24 HOURS AFTER STARTING THE EXAM WILL RECEIVE A GRADE OF “F”.**

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**ACADEMIC HONESTY AND INTEGRITY**

ACADEMIC HONESTY AND INTEGRITY

Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students’ dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For further details on Academic Integrity please visit: <http://studentaffairs.psu.edu/conduct/AcademicIntegrity.shtml>

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, SIA and Graduate School policies.

See also <http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.htlm> *and* <http://its.psu.edu/turnitin/TurnitinHandout.rtf>.

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

***CONFERENCES***

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me. There is little excuse for the complaint – ‘he is not available’ – when communication is possible by telephonic and electronic means.

Technology has made it easy to communicate.

please take advantage of it.

*You are encouraged to contact me by e-mail. I will respond promptly.*

<lcb911@me.com>

CANVAS

This year I will be relying on PSU’s CANVAS system for communication with you. Please bear with me as we work through the inevitable glitches that are the price we pay for the convenience of technology. I will post questions to the CANVAS class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

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***Additional University Policies and Statements***

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

Penn State welcomes students with disabilities into the University’s educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus](http://equity.psu.edu/sdr/disability-coordinator): *http://equity.psu.edu/sdr/disability-coordinator.* For further information, please visit the [Student Disability Resources Web site](http://equity.psu.edu/sdr):*http://equity.psu.edu/sdr.*

In order to receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation](http://equity.psu.edu/sdr/applying-for-services): *http://equity.psu.edu/sdr/applying-for-services.* If the documentation supports your request for reasonable accommodations, your [campus’s disability services office](http://equity.psu.edu/sdr/disability-coordinator) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

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COUNSELING & PSYCHOLOGICAL SERVICES (CAPS)

<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

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PROTOCOL FOR RESPONDING TO BIAS MOTIVATED INCIDENTS

Penn State University has adopted a “Protocol for Responding to Bias Motivated Incidents.” It may be accessed [HERE](http://equity.psu.edu/reportbias/reports/protocol-for-responding-to-bias-motivated-incidents). It is grounded in the policy that the “University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others.” That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](https://guru.psu.edu/policies/OHR/hr64.html)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](https://guru.psu.edu/policies/ad91.html)).  Students who experience a possible bias motivated incident, as well as students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

\*  Contact  your  County  Emergency  Dispatch  by  dialing  911  in  cases  where  physical injury has occurred or is imminent;

\* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

\* Contact one of the following offices:

University Police Services, University Park                   814-863-1111

MRC Counselor/Diversity Advocate for Students        814-865-1773

Office of the Vice Provost for Educational Equity        814-865-5906

Office of the Vice President for Student Affairs           814-865-0909

Affirmative Action Office                                               814-863-0471

**SYLLABUS**

This Syllabus consists of a (1) *Course Concept Statement*, (2) *Statement of Course Content and Structure*, (3) *Summary Syllabus (With Weekly Discussion Themes*), and (4) *Detailed Syllabus With Problems and Assigned Readings*.

***Course Concept Statement:***

“Actors, Institutions, and Legal Frameworks in International Affairs” introduces students to the core principles and methods of international interaction and exchange. *Interaction* points to the forms used to engage with others—communication, collaboration, cooperation, association, and their opposites. These can range from the informal and serendipitous, to the formal and meticulously orchestrated. *Exchange* tends to be understood as a consequences of interaction; it is what interaction makes possible in terms of trade or exchange. But it also suggests the quality of the interaction—an argument, an altercation, an airing of difference. Interaction and exchange mark all behaviors among individuals, as well as the institutions and communities within which they may be situated (either by choice, birth, or circumstances). It is around these exchanges and interactions that complex webs of politics, society, economics, religion, and culture are woven.

These complex webs, in turn, serve as the basis for the great systems that now dominate life in virtually every part of the globe. We will consider five key systems that constitute the driving elements of international interactions and exchanges.

*1. The State*. Political systems remain the basic building blocks through which international exchanges and interactions are grounded. Until the middle of the 20th century states were deemed to be the only mechanism for such exchanges that had any authority. But the development of multilateralism, and the rise of governance authority in international public and private organizations—the structural foundations for globalization—have substantially transformed the role and function of states. Still, no understanding of international interactions and exchanges is possible without first understanding the state within these emerging webs of activity—and of governance. In that context it is important to understand the concept of the state, the meaning of sovereignty, and the basic framework within which states have developed rules for governing their inter-relations. It is also important to begin to understand that states do not appear the same from the inside and from the outside. From the outside the state appears as a unitary body corporate onto which all political authority has been vested (through the operation of whatever political theory suits its people). States are formally equal in their inter-relations; functionally the authority and power of states are based on a number of factors. But effectively all states are unequal. States may work in concert, or they may seek to act alone. But all states appear solid form the outside—a single color painted onto maps. From the inside, states may appear far less solid. While states are solid, their government can vary wildly. That variation goes not just to the organization and theory of operation of government. But it also touches on the effective extent of government control of its territory and population. Just as states can cede some authority to institutions created among a group of states, states have also ceded authority down to regions and peoples. While states ae vested the highest authority over politics, economics, and society, it may have a more complex relation with religion and with ethnic nations within a territory. But since 1945, states have also operated in the private sector. States have become enterprises (SOEs or state-owned enterprises); they have become investment vehicles (sovereign wealth fund). This has complicated the traditional understanding of states as public bodies regulating markets, as against private bodies participating in markets or as social actors. The highest expression of state activity is through law or permitted exercises of executive (administrative) discretion. It will be as important for the student to develop an understanding of the language (its ideologies and constraints) that states use to communicate (and to bind themselves and their residents) as it is to develop a clearer understanding of the state itself. To that end a basic grounding in principles of international law and of national formation will be necessary.

*2. Public International Organizations*. Especially since 1945, states have sought to act in concert. That action in concert principle has led to the development of an enormous and enormously variegated universe of international organizations, many of which are vested with forms of executive, legislative or judicial authority. International organizations are the constructs of states. They are created through law; and they function through governance principles constrained by the (international) law form which they were created. International organizations can be organized into complex multi-institutional systems—the classic one is the United Nations system. Or they can be organized into functionally distinctive organs—like the world Trade Organization or the International Criminal Court. Their authority is limited only by their willingness of states to concede to their authority. But since 1945, even non-consenting states may be caught up in their webs of governance. Nonconsenting states may be required to observe the rules of international practice in their relations with consenting states. But international organizations are not limited I their capacity to traditional matters of public concern. Since 1945 international organizations have been organized as banks (the World Bank, the International Monetary Fund, the Asia Infrastructure Investment Bank and others). The great web of international organizations has produced the foundations necessary for the development of economic globalization. They have set global standards, they have provided consensus global normative principles—from principles of development, to human rights, to conflict. Their operation is as varied as their objectives. The understanding of the international system, and their relation to states, and increasingly to individuals and non state entities, forms the key element in the operation of global systems.

*3. Private International Organizations.* States are not the only “bodies corporate” that have embraced the notion of multilateralism. Globalization has also produced a trend toward the development and operation of private international organization. The most well-known of these are international governmental organizations that seek to act as the nexus point for the organization of collective popular will across states. These are usually organized along functionally differentiated lines. Amnesty International and Oxfam are two famous examples. But there are others. And they have become important actors in systems of international public organizations. But beyond NGOs, there are a growing number of private international organizations that function in a variety of areas. These include standard setting organizations, and organizations that create, certify, and monitor compliance with their own standards. They have become an essential element of the move from human rights based to sustainability-based responsibility for economic transactions by public or private bodies. In the process they have developed sometimes autonomous systems of governance that have become important drivers of international exchanges and interactions.

*4. Public International Judicial Systems*. Public judicial system are both the oldest and in some respects the least developed forms of international remedial organs. It is likely that international public judicial organs came late to the scene precisely because of the utility and success of national judicial systems and the willingness of states to tolerate the forum and rule shopping that follows a system fractured along national lines. But from the early 20th century, and increasingly in this century, public international judicial bodies have arisen in response to the needs of states to find a means of peaceful settlement of disputes among them. More importantly, as international organizations have been created to develop international law systems—judicial mechanisms had to be developed to provide a means of vindicating these newly developed systems of rights and duties. Foremost among these efforts has been the development of an international system of criminal law, and the simultaneous development of an International Criminal Court through which those rights are vindicated. But also important are the evolution of regional human rights tribunals. The European, OAS, and African Courts of Human Rights have become powerful actors in the development both of a normative system based on human rights, and as a vehicle for the vindication of such rights, mostly against states indirectly, and private individuals indirectly. .

*5. Private International Grievance Mechanisms and Dispute Resolution Systems*. Since the end of the last century a number of dispute resolution and remedial systems have acquired prominence. These tend to blend elements of public and private organizations. What makes them distinctive is their separation both from the judicial organs of states, as well as from a tight adherence to the domestic legal orders of any state or of international bodies. There is a substantial variety of forms that have emerged. Some of them are almost wholly private and deal specifically with issues related to economic activity. In that respect we will consider the great systems of private arbitration that have arise, both as examples of autonomous systems and for their substantive and operational characteristics. We will also consider hybrid arbitration systems. These include ICSID, a World Bank sponsored system for arbitration of claims between states and private entities related to the protections of bilateral trade agreements. But increasingly, these private systems also include emerging company-based grievance mechanism. These are distinctive for three reasons. First they tend to serve as the creators of enforceable norms specific to the company. Second, these norms tend to be enforced, increasingly, along the entire chain of production over which the company has authority. Third, they give rise to grievance mechanisms that sometimes even displace those offered by states trough their judiciaries. Related to these company grievance mechanisms are multilateral private mechanisms. The most well known of these was established in the wake of the Rana Plaza Factory building collapse, in which a group of companies formed an collective and provided (and funded) a grievance mechanism that substantially displaced the courts and national remedies. Lastly, the importance of religious courts ought to be considered. They sometimes serve a hybrid role—institutions to which the state has devolved authority over certain matters. At other times they serve as autonomous vehicles for applying religious norms enforced through religious courts over economic and social matters in interactions among members of a faith community.

Every system, though, is made up of actors, of the institutions within which actors can engage in collective activity, and the language through which these systems are constituted and which are also used within systems as the basic mode communication. To that end, it become necessary to understand actors, the institutions in which they operate, and the structuring language through which such actions are given effect and meaning. Consideration of each of the systems identified above requires a close examination of the actors, institutions, and framing language through which these systems are constituted and operate. Each requires a slightly different approach.

*1. Actors*. Not all actors are central to each of the five systems described above. It will be necessary to examine which actors tend to be important to a system, and to determine further, the extent to which actors are important across systems (and how that significance is understood). However, it is the character of the actors that themselves are essential elements in the understanding of the characteristics of systems, but also of the ways in which such systems will be constrained. Every actor carries with it a set or self conceptions and principles of actions (including objectives and taboos) that are essential to their own constitution, but also critical to the way n which they operate within systems. That accumulation of those operational objectives and constraints, then provide the system with its character and the limits of evolution (and, as we will see, of reform). The identification and examination of actors, then, will play a large role in the study of the systems through which they act.

*2. Institutions*. Institutions are a curious hybrid—like the state. On the one hand it is a singularity. An institution is spoken of and understood in the singular. And yet that singular personality is a construct—of law, of social norms and expectations, and of the collective consent of those who choose to operate within it. At the same time, institutions might be understood as systems—as the means through which individuals can aggregate something (capital, effort, political or religious authority) and manage collective objectives, aspirations and rules to create communities of shared interest. Yet institutions might be understood as its internal constituency (in the sense that a state is its citizens, or a corporation its shareholders). Depending on the circumstance, these different characteristics may be emphasized. But together they play a key role in understanding the way that collective organizations work. During the course of study we will consider the way that different systems approach the construction of institutions differently, and the consequences of those differences in terms of the exchanges and interactions possible among them.

*3, Framing language*. Students are fairly well used to the language of policy. They are less used to the language of law, and of business. And yet, the five great systems to be considered are essentially framed by and operate using language, concepts and principles that touch both on law and on business. Familiarity with legal concepts and orientation, as well as the tropes used to express (and manage) political, economic, social, and religious issues through law will be highlighted. But the language of business has also become important. We live in a word of accountability, whose rules are implemented not through the coercive police power of the state but rather by the constant and repetitive process of assessment. Accounting and accountability, risk management, and compliance will also be considered as the means through which systems are now operated. As well the differences in the ways that framing language (of law and accountability) between these systems tell the student much about how they operate and the way they are conceived. Attention will be paid to similarities and differences between systems in the way they use the language of law and of accountability.

Taken together, this matrix of systems and their actors, institutions and framing language, produce the rich environment in which international activity is now managed. That matrix suggest that this environment is dynamic and constantly changing. It also suggests that the systems created are volatile, even if internally stable.

This course will examine each of these elements of the matrix of the environment within international exchanges and interactions are possible. Though it is a large class, the intention is to teach it in a modified seminar style. **Each week’s discussion will be built around a group of materials that suggest the central themes to be discussed. That discussion, in turn, is built around presentations derived from student group work.** Each of the presentations will be centered on the five systems described above, each of which will serve as a separate section of the course. The object is to teach “law and policy in action” at the operational level, and to avoid, to the extent possible, too great an emphasis on abstract concepts detached form the real world in which they are being applied, and through this application, changed.

The course is thus divided in six parts. Part I serves as introduction. That will set the tone for the course, one in which the student will be asked to apply abstract knowledge to the concrete problems. Parts II through VI then focuses on the different systemic forms of international interactions: the state, public international organizations, private international organizations, public judicial systems, and private grievance mechanisms. Each is built around readings and student presentations. Students will be responsible for their presentations as well as expected to participate meaningfully in discussion of other presentations and the readings. Team assignments will be distributed during he first week of class.

**SYLLABUS**

**Part I Introduction**

Class 1: Introduction

-- Course Information & Syllabus memo

Class 2: Different Paths for Dividing the World

--Larry Catá Backer, “Economic Globalization Ascendant: Four Perspectives on the Emerging Ideology of the State in the New Global Order.” *University of California, Berkeley La Raza Law Journal*, Vol. 17, No. 1, 2006. Available at SSRN: <http://ssrn.com/abstract=917417>.

Class 3-4: The traditional Approaches: Conceptual Background

--Alvarez Chapter 1 pp. 1-57;

Class 3 Sections 1.1-1.3 (pp. 1-45);

Class 4 Section 1.4 (pp. 45-57).

Class 5: An Alternative--International Institutional Law as Transnational Law

-- Larry Catá Backer,[*The Emerging Normative Structures of Transnational Law: Non-State Enterprises in Polycentric Asymmetric Global Orders,*](https://ssrn.com/abstract=2755324) 31 BYU J. Pub.L. 1 (2016)). Also available HERE: <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1527&context=jpl>

-- Philip C. Jessup, Transnational Law (New Haven: Yale University Press, 1956), pp. 1-16.

-- Peer Zumbasen, *Transnational Law*, CLPE Research Paper 09/2008 Vol. 04(2). Available <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105576>.

-- Craig Scott, *“Transnational Law” as Proto-Concept: Three Conceptions*, 10(7) German Law Journal 859 (2009).

-- Reza Dibadj, *Panglossian Transnationalism,* 44 Stanford Journal of International Law 253 (2008).

-- Anders Esmark, The Functional Differentiation of Governance: Public Governance Beyond Hierarchy, Market and Networks, Public Administration Vol. 87(2): 351-370 (2009).

--Backer, Larry Catá, “Inter-Systemic Harmonization and its Challenges for the Legal-State” (March 17, 2011). *The Law of The Future And The Future Of The Law*, Sam Muller, Stavros Zouridis, Laura Kistemaker and Morly Frishman, eds., Torkel Opsahi Academic Editor, 2011; The Pennsylvania State University Legal Studies Research Paper No. 13-2011. Available at SSRN: <http://ssrn.com/abstract=1789190>

**Part II The State and the New Players**

Class 6: The Foundation: Strong States and their constitutions

--[Convention on Rights and Duties of States (inter-American); December 26, 1933](http://avalon.law.yale.edu/20th_century/intam03.asp) (<http://avalon.law.yale.edu/20th_century/intam03.asp>)

---- Restatement (Third) of Foreign Relations Law of the United States, § 201.

--Larry Catá Backer, God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21st Century. Mississippi Law Review, Vol. 27, 2008. Available at SSRN: <http://ssrn.com/abstract=1070381>.

--J.P. Nettl, “The State as a Conceptual Vehicle,” in *The State: Critical Concepts*. Volume: 1 (John A. Hall, ed., London: Routledge, 1994) 9-24.

--Vienna Convention on the Law of Treaties

Is the United States a party to the Vienna Convention on the Law of Treaties? No. The United States signed the treaty on April 24, 1970. The U.S. Senate has not given its advice and consent to the treaty. The United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties. (<https://www.state.gov/s/l/treaty/faqs/70139.htm>).

--Westel W. Willoughby, The Fundamental Concepts of Public Law (New York: MacMillan, 1924). Excerpts.

Class 7: Weak States in the State System

--Backer, Larry Catá, Are Supply Chains Transnational Legal Orders? What We Can Learn from the Rana Plaza Factory Building Collapse, UC Irvine Journal of International, Transnational, and Comparative Law: Vol. 1(1), 11 et seq. .Available at: <https://scholarship.law.uci.edu/ucijil/vol1/iss1/3>.

-- Peter T. Leeson and Claudia R. Williamson, *Anarchy and Development: An Application of the Theory of Second Best*, Law & Development Review 2009.

-- Ken Menkhaus, Governance Without Government in Somalia: Spoilers, State Building and the Politics of Coping, International Security 31(3): 74-106 (2007). READ PP: 83-93

-- Larry Catá Backer, [Of Somali Pirates, Global Corporations and the State: Governance Without Government, Government without a State and Military Power](http://lcbackerblog.blogspot.com/2009/06/of-somali-pirates-global-corporations.html), Law at the End of the Day, June 28, 2009.

-- Larry Catá Backer, [Regulating Global Capital Markets: Somali Pirate Capital Markets, the South Sea Bubble and the Limits of Law](http://lcbackerblog.blogspot.com/2010/01/21st-century-has-seen-its-share-of.html), Law at the End of the Day, Jan. 1, 2010.

-- David Sogge, Weak States and the Savage Wars of Peace, available <https://www.cidac.pt/files/4013/8316/2850/weak_states_and_the_savage_wars_of_peace.pdf>.

--OECD (2011), International Engagement in Fragile States: Can’t we do better? OECD Publishing, available <https://www.oecd.org/countries/somalia/48697077.pdf>.

Class 8: Speaker

Class 9 and 10: **Team presentation No. 1**—The State in a World of States and Others

Each team is to prepare a presentation, to be delivered in class (PowerPoint required), making the case that the state assigned their group might be a weak state and the way they ae embedded in the international system:

Team A—Yemen

Team B—Myanmar

Team C—Democratic Republic of the Congo

Team D—Bolívia

Team E—Sri Lanka

Team F—Spain

Team G—Canada

**Part III—Public International Systems**

Class 11: International Institutional Law: Autonomy of Actors

--Alvarez, Chapter 2.

Class 12: International Institutional Law: IO Law Making

--Alvarez, chapter 3.

Optional Readings:

--American Law Institute, Restatement 3rd of the Law of Foreign Relations (1987) handout; Sec. 103; 221.

Class 13: Soft Law and Private Governance

-- Anna di Robilant, *Genealogies of Soft Law,* 54 AMERICAN JOURNAL OF COMPARATIVE LAW 499 2006).

--OECD Guidelines for SOEs (Preface, Concepts) . Available <http://www.oecd.org/document/33/0,3343,en_2649_34847_34046561_1_1_1_1,00.html>.

--OECD Guidelines for Multinational Corporations 2011 (Preface, Concepts and Principles) <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

Class 14-15: Team Presentations No. 2: Traditional International Organizations

-- Each team is to prepare a presentation (PowerPoint required) describing the organization and its rule making functions:

Team A— World Health Organization (WHO)

Team B— Organisation for Economic Cooperation and Development (OECD)

Team C—International Organization for Standards (ISO)

Team D—International Labor Organization (ILO)

Team E—International Civil Aviation Organzation (ICAO)

Team F— World Trade Organization (WTO)

Team G—UN Educational, Scientific and Cultural Organization (UNESCO)

**Part IV Private International Organizations**

Class 16 Non Governmental Organizations

--Math Noortmann, *Non-State Actors in International Law, in* Non-State Actors in International Relations (Bas Arts, Math Noortmann and Bob Reinalda, eds., Aldershot: Ashgate, 2001. READ PAGES 63-73.

--Bob Reinalda and Bertjan Verbeek, *Theorizing Power Relations Between NGOs, Intergovernmental Organizations, and States, , in* Non-State Actors in International Relations (Bas Arts, Math Noortmann and Bob Reinalda, eds. Aldershot: Ashgate, 2001. READ PAGES 145-158.

--Bob Reinalda, *Private in Form, Public in Purpose: NGOs in International Relations Theory, in* Non-State Actors in International Relations (Bas Arts, Math Noortmann and Bob Reinalda, eds., Aldershot: Ashgate, 2001. READ PAGES 11-40.

--Networked Politics, pp. 127-170.

-- *We the peoples: civil society, the United Nations and global governance Report of the Panel of Eminent Persons on United Nations–Civil Society Relations* (2004) (Cardozo Report) READ 7-13; 23-31.

OPTIONAL:

--Peter R. Baehr, Non-Governmental Human Rights Organizations in International Relations (Palgrave 2009) ISBN 978-0-230-20134-7 (hrdbk) pp. 1-48.

Class 17: States as Private Actors—Sovereign Wealth Funds and SOEs

--Abdullah Al-Hassan, Michael Papaioannou, Martin Skancke, and Cheng Chih Sung, Sovereign Wealth Funds: Aspects of Governance Structures and Investment Management, IMF Working Paper WP/13/ 231 (2013). <https://www.imf.org/~/media/Websites/IMF/imported-full-text-pdf/external/pubs/ft/wp/2013/_wp13231.ashx> .

--International Working Group of Sovereign Wealth Funds, Generally Accepted Principles and Practices (GAPP)—Santiago Principles. Available for download at <https://www.ifswf.org/sites/default/files/santiagoprinciples_0_0.pdf> AND Kuwait Declaration 2009, available <https://www.ifswf.org/sites/default/files/2010%20Kuwait%20Meeting%20-%20Kuwait%20Declaration.pdf>

-- Larry Catá Backer. "Sovereign Investing and Markets-Based Transnational Rule of Law Building: The Norwegian Sovereign Wealth Fund in Global Markets." American University International Law Review 29 no. 1 (2013): 1-122. READ pp. 2-55; <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi>?

--Larry Catá Backer, Sovereign Wealth Funds, Capacity Building, Development, and Governance , 52 Wake Forest Law Review (2017) ([HERE](http://www.backerinlaw.com/Site/wp-content/uploads/2017/12/Backer_Backerinlaw2017.pdf))

OPTIONAL

--Larry Catá Backer, [*SWFs in Five Continents and Three Narratives: Similarities and Differences,*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2403867) *in* Research Handbook on Sovereign Wealth Funds and International Investment Law  57-98 (Fabio Bassan, ed., Cheltenham, Eng.: Edward Elgar, 2015).

Class 18: Multinational Corporations as IOs

-- Larry Catá Backer, Multinational Corporations as Objects and Sources of Transnational Law, 14 ILSA Journal of International and Comparative Law499 (2008). <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1092167>.

--Larry Catá Backer, Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board and the Global Governance Order,17 Indiana Journal Global Legal Studies (2011). Available <http://ssrn.com/abstract=1658730>.

Class 19-20: **Team Presentation No. 3** Private International Organizations

-- Each team is to prepare a presentation (PowerPoint required) describing the organization and its rule making functions:

Team A— IFRS Foundation and the International Accounting Standards Board (IASB)

Team B— GRI

Team C— World Wide Web Consortium

Team D— International Press Telecommunications Council

Team E— Hedge Fund Standards Board

Team F— The Bangladesh Accord on Fire and Building Safety in Bangladesh

Team G— New York Stock Exchange

**Part V Public International Judicial Systems**

Class 21: The International Court of Justice

--The ICJ at a Glance

--ICJ General FAQs

--ICJ Advisory Opinion FAQs

--Medellin v. Texas, 552 U.S. 491 (2008).

Teams A-C

--Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, ICJ, July 22, 2010, Gen, List No. 141 (Advisory Opinion). Available <http://www.icj-cij.org/docket/files/141/15987.pdf>.

Teams D-G

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion 2004 July 9 General List No. 131 (July 9, 2004) (available <http://www.icj-cij.org/docket/files/131/1671.pdf>). The opinion is very long. Please read Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion) *Summary of the Advisory Opinion of 9 July 2004*(<https://unispal.un.org/DPA/DPR/unispal.nsf/0/3740E39487A5428A85256ECC005E157A)> and then focus on

1. Jurisdiction: Paragraphs 14-15, 24-25, 36, 38, 40.

2. Consent: Paragraphs 46-47, 49.

3. Legal Basis: Paragraphs 86-89, 102-111 (especially 89 on jus cogens)

4. Application of Law: Paragraph 115 (de facto annexation) versus Paragraph116 (proportionate anti-terrorism measures).

5. Legal Consequences: Paragraphs 148-158.

6. Remedies: Paragraph 159-160.

Class 22: The International Criminal Court System

<http://www.icc-cpi.int/> (English)

<https://www.icc-cpi.int/?ln=fr> (Français)

Use the MENU to read the following:

-- ICC Overview.

-- ICC About.

-- ICC About: How the Court Works.

-- ICC About: IN the Courtroom

-- ICC About: Interacting with Communities.

-- ICC [Basic facts about the ICC](https://www.icc-cpi.int/tell-others)

-- [Core ICC texts](https://www.icc-cpi.int/resource-library#legal-texts) (for reference)

a. Rome Statute

b. Elements of Crimes

c. Rules of Procedure and Evidence

d. Regulations of the Court

e. Agreement on Privileges and Immunities

f. Regulations of Prosecutor

g. Staff Regulations of the Court

h. Code of Judicial Ethics

Class 23-24: *Class Exercise*: ICC Actions

**Team presentations N. 4**

--Each team is to prepare a presentation (PowerPoint encouraged but not required) (1) for individuals already indicted describing the arguments that can be made for and against the arrest and prosecution; and (2) for those no yet indicted describing the arguments for and against indictment under the rules.

Team A— [Gbagbo and Blé Goudé Case](https://www.icc-cpi.int/cdi/gbagbo-goude) [Côte d'Ivoire](https://www.icc-cpi.int/cdi)

Team B— [Bemba et al. Case](https://www.icc-cpi.int/car/Bemba-et-al) [Central African Republic](https://www.icc-cpi.int/car)

Team C— [Ntaganda Case](https://www.icc-cpi.int/drc/ntaganda) [Democratic Republic of the Congo](https://www.icc-cpi.int/drc)

Team D— [Al Mahdi Case](https://www.icc-cpi.int/mali/al-mahdi) [Mali](https://www.icc-cpi.int/mali)

Team E— [Katanga Case](https://www.icc-cpi.int/drc/katanga) [Democratic Republic of the Congo](https://www.icc-cpi.int/drc)

Team F— [Lubanga Case](https://www.icc-cpi.int/drc/lubanga) [Democratic Republic of the Congo](https://www.icc-cpi.int/drc)

Team G—[Ruto and Sang Case](https://www.icc-cpi.int/kenya/rutosang) (Kenya)

Class 25: The Regional Human Rights System: Europe, Africa, Latin America.

Everyone will read the materials on the European Human Rights system. Analysis and Evaluation of African and OAS Systems in comparison to European System will be based on teams assigned for class 16.

READINGS:

International Human Rights Institutions: European System

-- Thomas Buergenthal, The Evolving International Human Rights System, 100 *Am. J. Int'l L.* 783 (2006). READ INTRODUCTION AND PARTS I & IV.

-- The [ECHR System](http://www.echr.coe.int/):

A. ECHR [Court in Brief](http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf)

B. ECHR [In 50 Questions](http://www.echr.coe.int/Documents/50Questions_ENG.pdf)

C. ECHR [Questions & Answers](http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf)

D. ECHR [Overview 1959-2015](http://www.echr.coe.int/Documents/Overview_19592015_ENG.pdf)

E. ECHR [Facts & Figures](http://www.echr.coe.int/Documents/Facts_Figures_2015_ENG.pdf)

F. ECHR [Case Processing and Working Methods](http://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c=#newComponent_1346158325959_pointer)

G. ECHR [Convention and Protocols](http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=)

H. ECHR [Convention Reservations](http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=&CL=ENG&VL=1)

I. ECHR [Rules of Court](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf) (Generally [here](http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676_pointer))

J. ECHR [Practice Directions](http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347877334990_pointer)

K. ECHR [Resolution on Judicial Ethics](http://www.echr.coe.int/Documents/Resolution_Judicial_Ethics_ENG.pdf)

-- Frank Hoffmeister, *Germany: The Status of European Convention on Human Rights in Domestic Law*, 4(4) International Journal of Constitutional Law 722 (2006).

**Part VI Hybrid, Private and Non State Based International Grievance Mechanisms**

Class 26: Hybrids: International Organizations as Financial Institutions: IMF & World Bank

-- IMF Background Materials

--Pakistan Readings

--Request for Stand-By Arrangement—Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Pakistan (READ PAGES 1-19).

-- International Bank For Reconstruction And Development And The International Development Association And The International Finance Corporation Country Assistance Strategy For The Islamic Republic Of Pakistan For The Period Fy06-09(April 4,2006) **(READ 12-32)**

Class 27-28: **Team Presentation No. 5**: *Class Exercise*: Negotiating a National Agreement with IMF.

Teams will divide into two sub groups. Half of each team will represent the state, the other half the officials from the IMF.

--Team Country Assignments and initial research source for presentations:

Team A—El Salvador (<http://www.imf.org/external/country/SLV/index.htm>).

Team B—Portugal (<http://www.imf.org/external/country/PRT/index.htm>).

Team C—Mongolia (<http://www.imf.org/external/country/MNG/index.htm>).

Team D—Peru (<http://www.imf.org/external/country/PER/index.htm>).

Team E—Ethiopia (<http://www.imf.org/external/country/ETH/index.htm>).

Team F—Indonesia (<http://www.imf.org/external/country/IDN/index.htm>).

Team G—Nepal (<http://www.imf.org/external/country/NPL/index.htm>).

--Group Presentations of results of negotiations and terms of loan for each state assigned. PowerPoints to be turned in and available to class at least the day before the presentations.