

**Actors, Institutions, and Legal Frameworks in
International Affairs**
INTAF 801
Semester: Spring Semester 2022
Larry Catá Backer

Summary Course Information

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|------------------------------|---|
| MEETING ROOM: | 114 Katz |
| MEETING TIME: | Mondays and Wednesdays 09:45 - 11:00 A.M. |
| OFFICE: | 239 Katz Building |
| TELEPHONE: | 814.863.3640 (direct) |
| E-MAIL | lcb11@psu.edu |
| WEBSITE | https://backerinlaw.com |
| BLOG | https://lcbackerblog.blogspot.com |
| CONFERENCE HOURS: | Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT |
| QUESTIONS: | e-mail anytime; e-conferencing encouraged |
| FINAL GRADE: | CLASS RELATED QUESTIONS VIA EMAIL Presentations Plus FINAL PAPER |

COURSE SHORT DESCRIPTION:

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 current landscape within which it is possible to understand the nature and role of actors, institutions, and legal frameworks that relate to international affairs. That requires a strong focus on the principles of economic globalization and its emerging variants, as well as oppositional systems. That introduction will also serve to provide students with an initial exploration of the dynamic political-economic-societal environments within which actors and institutions are identified (and legitimated or outlawed), and within which legal (rule) frameworks are developed and implemented

Second, students will be introduced to the range of organizations that populate the landscape of international affairs. Students will be introduced first to the distinction between public and private institutions. Within public systems of institutionalized authority students will distinguish, as political and legal entities, between the state, public international organizations, and international financial institutions. Within private systems of institutionalized authority students will distinguish between economic organizations (including multinational enterprises), civil society organs (e.g., non-governmental organizations), religious organizations, hybrid institutions (e.g., the International Standards Organization (ISO), and outlaw institutions (e.g., organized crime, and organized non-state political movements).

Third, students will examine more carefully the principal actors, their institutional forms, and the forms of their engagement in international affairs. 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.

(A) 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. Students will be introduced to law as the means through which states communicate authoritatively to order and control their territories and populations. Distinctions between the domestic law of states (that bind the state and its populations) and the international law (that are made between and bind states) will also be considered.

(B) Public International Organizations: Students will consider the way that the collective of states have built the contemporary state system That study focuses first on the development of the United Nations system and the public international organizations established around or through the U.N. system. Students will also consider the regional human rights systems (those of the African Union, European, and the Organization of American), and international financial institutions (World Bank States, International Monetary Fund, and Asian Infrastructure

Investment Bank). Students will also examine the way that law is used as the authoritative method to constitute these organizations, and as the means through which they speak authoritatively through treaty, regulation, and the development of policy. Students will also become familiar with the way that public organizations sometimes use private law (contract) to develop systems of regulation (for example through loan agreements). The differences between formal and informal communication—between hard and soft law, and between public law (the law of states) and private law (the law of non-state actors) is introduced.

(C) Civil Society: Students will be introduced to the elements of civil society—as actors and institutions, and their emergence as key players in international affairs. Key areas of examination will be national regulation, the application of international law and norms, and more specifically the emerging issue of protection for human rights defenders.

((D) Economic Actors: Students will be introduced to the key role of large institutional economic actors—mostly multinational enterprises—in the operation of globalization. The key areas of study will be on the development of data driven governance mechanisms, on the delegation of public authority to private actors (the transformation of economic enterprises into privatized administrative agencies), and the role of these enterprises within the international system.

Fourth, 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 (and their interlinkages), 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.

Fifth, students will be expected to develop some familiarity with the way that law and regulation serve as the language of internal affairs. 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.

Sixth, students will learn how to manage and present information in groups. The object is to provide students with more practical experience in translating theory into practical knowledge that can serve as the basis for policy analysis and recommendations in context.

Learning Outcomes Assessment:

Student achievement in all learning outcomes will be measured by (1) FIVE group presentations (each worth 15% of the grade), (2) Group Summary Reports Assigned throughout the semester (together worth 10% of the grade); and (3) a final paper due on the last day of instruction (worth 20% of the grade). Learning Outcomes will be monitored through student participation in class discussion and in the group presentations.

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., Zoom). This semester in person meetings VIA ZOOM will be strongly preferred. Please be prepared to justify the need for a physical in person meeting.

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 ASSIGNED PROJECTS (PREPARING READING SUMMARIES, SUBMITTING PROJECTS INCLUDING MEMOS AND PPTS). THE GROUP PROJECTS WILL 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. Indeed, the class is meant to focus on key issues and the range of currently plausible approaches to them that are important to sometimes quite contentiously competing points of view (ideologically, culturally, religiously, politically, etc). Our object is exposure to this range of perspective and the way that produces distinctive approaches to policy. There is no expectation in this class that there is one right answer, one singular path, or one best approach. I encourage students to explore and to come to their own conclusions.

Thus, 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 through the end of the examination period.*

No personal recording of class.

[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](#)

All Law School and School of International Affairs 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, both schools have 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 or School of International Affairs courses, a student consents to the school's making and display of class recordings within the scope of this policy. Your professor in each Law School or School of International Affairs course will explain the access rules she or he has established for each class.

PLEASE NOTE that the class recording policy is not a substitute for class attendance and preparation, which still is required for all class sessions (unless excused by the professor on an exceptional basis for good reason) and in order to remain in good academic standing. The class recording policy is intended to enhance your learning experience, not to substitute for regular class attendance and preparation.

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 CANVAS 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. Students should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

Grading will be based on FOUR GROUP PROJECTS, the in class readings summaries, 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. Final Paper.** Students will submit a final paper no later than 5 P-M- on the last day of instruction (29 April 2022). It is expected that each paper will weave together the themes raised in each of the presentations and reports produced by the groups during the course of the semester. The paper may be organized around those presentations ((1) state systems (the organization and characteristics of states as legal entities); (2) public international systems (international organizations of state collectives, organization and characteristics); (3) private international systems (organization and characteristics of non-state actors as collective entities); (4) global and regional trade systems (WTO; Regional trade orgs, BRI); and (5) global and regional systems of human rights (European, Inter-American, and African). In addition,

The [HONOR CODE MAY BE ACCESSED HERE](#).

Late delivery of a paper will result in a lowering of the final grade by one letter (e.g., from an “A” to a “B”; from an “A-“ to a “B-“ etc).

ACADEMIC HONESTY AND INTEGRITY

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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.

Penn State defines academic integrity as “the pursuit of scholarly activity in an open, honest and responsible manner (Senate Policy 49-20). 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. Once a student has been informed that academic misconduct is suspected, the student may not drop the course during the adjudication process. For further details on Academic Integrity please view the School of International Affairs Academic Complaint Process and the Penn State Code of Conduct.

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

For further details on Academic Integrity please visit:
<http://studentaffairs.psu.edu/conduct/AcademicIntegrity.shtml>

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

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. Zoom based meetings are strongly preferred. E-mails are encouraged for questions that do not require face to face meeting. I will respond to all emails.

<lc11@psu.edu>

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.

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) 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.

COUNSELING & PSYCHOLOGICAL SERVICES (CAPS)

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

Many students at Penn State face personal challenges or have psychological needs that may interfere with their academic progress, social development, or emotional wellbeing. The university offers a variety of confidential services to help you through difficult times, including individual and group counseling, crisis intervention, consultations, online chats, and mental health screenings.

These services are provided by staff who welcome all students and embrace a philosophy respectful of clients' cultural and religious backgrounds, and sensitive to differences in race, ability, gender identity and sexual orientation.

[Counseling and Psychological Services at University Park \(CAPS\)](http://studentaffairs.psu.edu/counseling/)
(<http://studentaffairs.psu.edu/counseling/>): 814-863-0395

Penn State Crisis Line (24 hours/7 days/week): 877-229-6400
Crisis Text Line (24 hours/7 days/week): Text LIONS to 741741

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](#). 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](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). 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;

* Consistent with University Policy AD29, students who believe they have experienced or observed a hate crime, an act of intolerance, discrimination, or harassment that occurs at Penn State are urged to report these incidents as outlined on the University's Report Bias webpage (<http://equity.psu.edu/reportbias/>). 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*, and (4) *Detailed Syllabus With Problems and Assigned Readings*.

Course Concept Note:

“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.

For our purposes in this course, this ecology of interaction and exchange will be considered from the interactions and exchanges among two broad but distinct categories of persons with agency—actors and institutions:

Actors: individuals, people, formal collectives (states, public and private organizations), informal collectives (identities, affiliations, etc.); and other abstract actors recognized or given form (territories organized as states; production organized as a multinational enterprises; , objects (of production, symbolic, etc.)

Institutions: the formal organizational manifestation of collectives, and the manifestation of objects and processes (for example: courts are institutional expressions of law); query whether informally organized collectives can be said to be institutionalized or whether a single individual or object may be constituted an institution—that is do institutions organize collectives or are they better understood as solidified avatars of for any one or group with access to its forms and authority?

The principal focus of the structuring of those interactions and exchanges will on law and legal frameworks. In that context all other frameworks (political, social, cultural, economic, and religious) will be considered through the lens of legal frameworks around which the formal ordering of human society is to some extent and importantly organized.

Legal Frameworks: The language and principles under which individuals and institutions develop and apply rules manifested through a specific ideology of rulemaking to the construction of public (and now private) collectives; understood as the legal system-

ideology of states, of the international constitution and operation of non-state actors; and of other collectives.

One way of imagining the interactions of actors, institutions, and legal frameworks is as a set of interacting closed (self-reflexive) systems of interacting and exchange that are produced through, memorialized by, and that produce legal standards to guide behavior and achieve legitimated and authoritative collective goals.

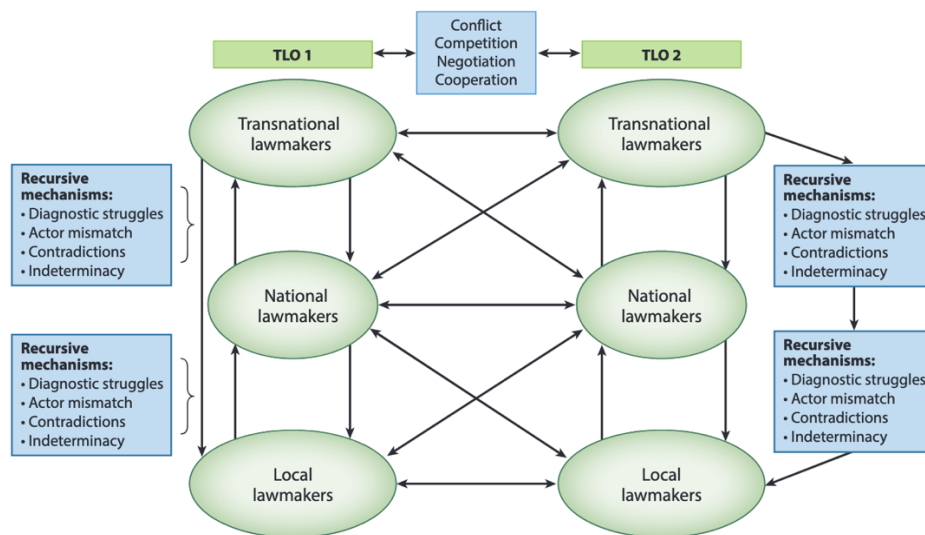


Figure 1
 Recursivity in transnational legal orders (TLOs) (figure adapted with permission from Halliday & Shaffer 2015b,c).

Nonetheless, these complex interactions of these systems themselves rest on a set of more fundamental systemic structures that provide the lens through which these interactions and systemic conceits are given meaning and form. That fundamental lens applies to all means of layering the world with meaning and of signifying objects, people, behaviors, and activity around a set of core approaches to rationalizing the world. These we can understand as the world perception (popularly even in English *Weltanschauung*)

Ideologies or imaginaries or “lifeworlds”: the way that knowledge is organized and rationalized through systems of interpreting, understanding and giving meaning to the world around us (Sartre, Lacan¹). It can also be understood as shared perceptions of the meaning of reality backed by massive background consensus (Habermas²); or as biopolitics (the narratives through which social and political power may be normalized

¹ Jacques Lacan, *Écrits: A Selection* (Routledge, 1997) p. 21; Jean-Paul Sartre, *The Imaginary: A Phenomenological Psychology of the Imagination* (Routledge, 2010 (original 1940), pp. 57-94.

² E.g., Jürgen Habermas, *Between Facts and Norms* (William Rehg (trans) MIT Press, 1996); pp. 22, 322.

over the control and management of the bodies of the living and their relationship to physical and abstract objects and the technologies of control) (Foucault³).

The following table may prove helpful in organizing the analytical framework around which the course organizes the materials to be studied.⁴

Table 1

| Levels of the Social in Relation to Levels of Theoretical Analysis | | | | |
|--|--|--|---|---|
| Levels of the social | Doing | Acting | Relating | Being |
| Levels of analysis | I. Empirical | II. Conjunctural | III. Integrational | IV. Ontological |
| Objects of analysis I | Ideas Beliefs Intuitions | Ideologies | Imaginaries | Ontologies |
| Objects of analysis II | Particularities of practice and meaning | Patterns of practice and meaning <ul style="list-style-type: none"> • Production • Exchange • Communication • Organization • Enquiry | Patterns of inter-relationship <ul style="list-style-type: none"> • Face-to-face • Agency-extended • Object-extended • Disembodied | Patterns of categorical projection <ul style="list-style-type: none"> • Corporeality • Temporality • Spatiality • Performativity • Epistemology |
| Objects of analysis III | General patterns of practice and meaning | Modes and subjectivities of practice and meaning | Modes and subjectivities of integration and differentiation | Modes and subjectivities of Being <ul style="list-style-type: none"> • Tribal-customary • Traditional • Modern • Postmodern |

³ Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-1979* (Graham Burchell (trans) Picador 2004), pp. 75-101.

⁴ Manfred B. Steger and Paul Jones, "Levels of Subjective Globalization; Ideologies, Imaginaries, Ontologies," *PGDT* 12:17-40 (2013); Table 1, p. 24.

From this framing it is now possible to more precisely state the core operating principle of this course—and the fundamental understanding around which meaning will be created and the materials presented—is this:

(1) the global ordering in the contemporary world represents the current state of interactions and exchanges between multiple actors and institutions. These actors and institutions may understand themselves (perceive or understand themselves) and their place in the global order(s) quite differently from the way other actors and institutions perceive them or interpret their character or the meaning of their actions.

(2) The legal frameworks through which those actions and interactions are rationalized is one means, though a very significant one, to seek a common language and basis for exchange and interaction and for signaling not just a shared belief in the existence (and to some extent) meaning of action, but also its legitimacy and the authority of the actor both within their own spaces and in inter-actor activity. There are multiple legal frameworks. They share, however, certain discursive commonalities and modes of operation, and they construct a quite specific meaning universe that has served to organize the way actors, institutions, and their exchanges and interactions are perceived.

(3) Actors, institutions, and the legal frameworks through which their interactions and exchanges are rationalized can be understood only by reference to the core approaches to the way the reality within which these actions take place and these actors and institutions are constituted is given meaning. Under contemporary conditions the global order(s) multiple fundamental imaginaries now compete for shaping the meaning lenses through which legal frameworks and the actors and institutions operating within them are understood and evaluated by providing the core framework for perception—including the perception of values, objectives, taboos and the like. These complex interactive webs, in turn, serve as the basis for the great systems that now dominate life in virtually every part of the globe. The course starts with an examination of organizing system ideologies and then consider six key systems that constitute the driving elements of international interactions and exchanges.

The objectives of this class, then, are to provide students with an introduction to the way in which actors, institutions, legal frameworks, and grounding ideologies may be identified, and understood. From that core understanding, it is then possible to provide students with the tools for identifying the contemporary approaches, and points of convergence and divergence, in the conceptualization and rationalization of global order(s) through (mostly) a legal lens.

On that basis it is possible to add substance to the concepts around which the course is built.

Organizing Ideologies for International Affairs.

Every system, though, is made up of actors, of the institutions within which actors can engage in collective activity. Those systems require a common discourse, a means of communication built

on common perceptions that can be used to institute action and build substantive programs, as well as to assess action. 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. This is the language of the ideologies of globalization that “are part of an extended family that translate a generalized global imaginary into competing political programs and agendas.”⁵ Consideration of each of the systems identified below 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.

A critical set of global ideologies are identified. Most attention will be paid to the dominant ideology of contemporary international affairs—the ideology of post 1945 globalization built around a very specific view of the state system. It identifies the values and key premises of this ideological base and suggests its trajectories. This is a systemic ideology that reached the apex of its power in the first decades of the 21st century. It is grounded in principles of markets driven free movement of goods, capital, investment, and to a lesser extent—people. It embraces the principle of formal equality among states and the supremacy of national law. It creates a community of states through international law that is transformed from mere contracts between states to constituting documents that create government for the management of the duties and responsibilities of states, and for the development of the values to be advanced by that community. It is also a system that encourages the delegation of authority and embraces new sources of governance and new governance actors who operate in transnational space—civil society, multinational enterprises, private standard setting bodies, religious organizations. It is also a system that is increasingly grounded in overarching cultures of compliance and accountability administered through standards overseen by bureaucracies of public and private actors.

That ideology of post 1945 globalization is now challenged and students will also consider a number of these challenging ideologies. Very briefly, these include neo-imperialism ideologies that are represented by variations of hub and spoke systems of inter-state relations which are then augmented and administered through international institutions and operationalized through deputized private actors. The America First and Chinese Belt and Road Projects may manifest moves toward this ideology. It also includes post-colonial ideologies. These have an older pedigree and arose even as contemporary globalization ideology gained dominance. Post-Colonial ideologies reject the core principles of post 1945-globalization and those of neo-imperialist schools, especially the exercise of hegemonic authority by states and the governance role of private actors. It seeks to deconstruct the current systems based on an objective of dismantling structures of power hierarchies among states and to seek a more equitable division of benefits and obligations that are components of the tasks of increasing human welfare. It is suspicious of the exercise of power beyond state borders and yet understands that community is necessary as a predicate to challenging unbalanced exercises of national power directly or through international organizations.

⁵ Manfred B. Steger and Paul Jones, “Levels of Subjective Globalization; Ideologies, Imaginaries, Ontologies,” *PGDT* 12:17-40 (2013); Table 1, p. 32.

Each of these ideologies are manifested in the construction of systems of international affairs. Students will be introduced to the relationship between ideological perspective and the way that affects and constrains the possibility of building systems of international relations. The focus will be, initially, on introducing students to the conventional master narrative of international relations (and to re-interpret that master narrative through the lens of ideological analysis). It then considers emerging schools of international affairs, focusing students on transnational and plural law theories, and polycentricity in governance. Because one is engaged here in system building, students will also in the process be introduced to the (1) forms of legal discourse (2) in the translation of ideological positions to concrete manifestations (3) in institutional organization, (4) in the management of power and (5) in the creation of values systems (6) through which the politics, culture, and sociology of international affairs is organized.

Actors, Institutions, Law.

Framing ideologies have to frame some community and must occupy some sort of space (concrete or abstract) within which it can be manifested and applied. . In international affairs, the community through which ideologies are manifested include three quite different sorts of structures that move from the more or less concrete to the infinitely abstract.

I. 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). The defining characteristic of actors is that they “act”—*that is that they are capable of agency*. They have the capacity, however constituted, to set things in motion, to perform; they are those who drive other things (people, events, policy, decisions, etc.). Any one or thing, abstract or corporeal can be an actor. Part of what the student will undertake in this course is to begin to develop a method for identifying actors relevant to the study of international affairs. In that context, 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 in 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. But actors are also objects. In this sense they are objects that can be invested with significance, the meaning of which then attributes to it qualities and characteristics against which other actors may react. A few critical actor-objects come to mind. One is physical territory (land); another is abstract territory made real (e.g., patents). Symbols are also sectors that can be deployed by other actors, or they may be tools or aspects of other actors, engagement with which provokes response (pictorial depictions of religious figures, Ikons, flags).⁶

⁶ Discussed at greater length in Larry Catá Backer, “Foreword: Bannermen and Heralds: The Identity of Flags; the Ensigns of Identity,” in *Flags, Identity, Memory: Critiquing the Public Narrative Through Color* (Anne Wagner and Sarah Marusek, eds., Dordrecht: Springer 2020)

2. Institutions. Institutions are establishments through which collectives can become a singularity; they are a thing established as well as its arrangement and characteristics. They are also 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 collectives—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. Institutions are both the sum of its constituents as well as an organism apart from those who come together to create it. It is a means of structuring and aggregating, of collective action, but it is at the same time a singular actor. *In the first half of the 21st century, institutions have also come to be understood as platforms.* It is in this sense a nexus point, a space, within which other actors may operate. In this sense they can be the collectives made up of other actors. For example, the international system includes international organizations that are themselves the representative bodies of states. In this sense, states might be understood as its internal constituency (in the sense that a state is its citizens, or a corporation its shareholders). Nonetheless, such institutions may seek a measure of autonomy from states in the way that the governments of states are autonomous of its citizens or the board of directors from its shareholders. Each represents an aggregation of a collective that is distinct from any one of its members. To represent them all the institution cannot represent any one of them. Yet conventional institutions do not represent the entire universe of institutional existence. For example, markets are also institutions—a space where actors and others can bring objects for exchange. 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. Law. Students are fairly well used to the language of policy, at least in terms in which discourse is constructed and meaning (including values) are given to words, concepts, and taboos. They are less used to the language of law, and of business. Both the language and discourse, the way in which meaning is made and frames of reference constructed through the language of policy and law are themselves subsets of the larger framing language and discourse of core system ideologies. The six great systems to be considered, and identified below 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 world 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.

Six Key Actor-Institutions in their Legal Frameworks in international affairs.

The combination of the framing ideologies of globalization, and the three structural components necessary to give them life, now appear to operate within six systems within which ideology and clusters of actors, institutions, and law operate to give the system its internal character and define the way in which they may interact with other systems. Together this produces the ecology within which it is possible to understand international affairs. The six foundational systems that produce the environment in which international affairs occur include: (1) the state; (2) public international organizations (including regional organizations); (3) private international organizations (civil society and multinational enterprises); (4) private transnational economic systems (MNEs, SOEs); (5) public international judicial systems; and (6) private grievance and dispute resolution systems.

1. The State and its Legal Institutional Framing System. 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 from 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 are 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); they have become banks and insurance companies (Ex-Im Banks). 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 Within and Beyond the State System. 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 (the later to be considered as an exemplar of a public prosecutor-judicial institution). 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 to their capacity to traditional matters of public concern. Critically important to the construction of a globally disciplined economic and financial system embedding the values of markets driven globalization and its governance values has been the role played by international financial institutions (IFIs), principally the World Bank, and the International Monetary Fund, now joined by the Asian Infrastructure Investment Bank and others. Here one encounters the regulatory and policy power of lending and its legalization through contract. 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 and Transnational Organizations as a Supplement, Alternative or Challenge to the Orthodox State-Public Institutional Global System. 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. Private transnational economic systems (MNEs; SOEs) as Global Orders Without a State or as States Without Territory. Globalization has not only made borders more porous, to has created a significant governance gap. While states have great authority within their borders, they generally cannot reach economic activity beyond their borders, though the power of the more powerful states to reach their economic actors outside their borders is greater. And that is the problem. Globalization has made it possible to move from national to global production chains. It has permitted the disaggregation of economic activity. So disaggregated, economic activity can be placed in any number of different places and all coordinated through interlinked relationships of contract or ownership. The resulting aggregation, the multinational corporation, has itself transformed the nature of governance. Since the start of this century, the multinational enterprise has become both a source and an object of international regulation. States and international organizations have increasingly delegated regulatory objectives to MNEs. Legal cultures of compliance and accountability, including anti-corruption efforts, human rights and sustainability obligations, along with efforts to suppress terrorist and international criminal activity (money laundering, modern slavery, have resulted in the creation of law and normative frameworks at the national and international levels that have effectively imposed n MNEs an obligation to monitor their supply chains and to use their control and contract relations to ensure compliance with normative and legal expectations. MNEs have also become, like NGOs an important stakeholder in the creation of international norms. As a result, much operational regulation of economic activity is overseen by or developed through the system of disaggregated coordinated economic production.

5. Public International Judicial Systems as Autonomous Common and Mediating Spaces. 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. .

6. Private International Grievance and Dispute Resolution Systems as Common and Mediating Spaces. 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 arisen, 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 through 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.

Taken together, this matrix of ideologies, 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 from the real world in which they are being applied, and through this application, changed.

The course is thus divided in nine (9) 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. Part 2 then considers the ideological foundations. Parts 3-8 then examines in more detail the different systems of international affairs identified in the Course Concept note: the state, public international organizations, private international organizations, private transnational economic organizations, public dispute resolution systems, and private prosecutorial and judicial 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 the first week of class. A “Summary Syllabus” is provided, along with the comprehensive syllabus which includes readings and assignments.

SUMMARY SYLLABUS

Part I Introduction

Class 1: Introduction; Course Information, course concept note and syllabus review

Part 2 The Global Order(s) Ideology and the Narrative of Law and Legality in International Affairs: Actors, Institutions, Legal Frameworks

Class 2: The Global Orders (Core ideologies in contemporary global orderings): Introduction to the different lenses through which one “sees” and relates to the world and its ordering; imaginaries of globalization; the interlinked role of politics, economics, law, and culture; varieties of ideologically contingent ways of approaching globalization.

Class 3: The ideology of Law; Distinctiveness; Obedience; Legitimacy; Authority

Part 3: States in the Global Order (The State System Within the International Ecologies: Sovereignty Looking Inward and Outward)

Class 4: The Foundation: The Theory of the State, Sovereignty, and its Constitution

Class 5: Weak States, Strong States in the State System

Class 6: **Group Presentation 1:** Unpacking Variations of Strong and Weak States Within the Global Order(s) Each Group will be assigned the state indicated below. They are to prepare a 3 slide PowerPoint ((1) The characteristics that make the state weak or strong internally; (2) The role of international engagement as evidence of strength or weakness (does the state project power outward or is power projected inward from outside by other states and international institutions); (3) Analysis and Conclusion: Is the state strong or weak) along with a supporting memo of no less than 5 pages.

Part 4—Public International Systems Within and Beyond the State System

Class 7: Law and the Constitution of Global Orders—The Traditional Orthodox Narrative

Class 8: International Institutional Law: Autonomy of Actors

Class 9: International Institutional Law: International Organization (IO) Law Making

Class 10: Soft Law and IOs as the producers of Private Governance systems

Class 11: **Group Presentations No. 2:** Unpacking traditional IOs. Each Group will be assigned the public international organization (IO) indicated below. They are to prepare a 4 slide PowerPoint ((1) Organization and operation of the IO (e.g., how is the organization constituted and what is its internal legal framework); (2) rulemaking capacity (e.g., what sort of authority does it exercise—hard law (binding rules and standards) versus soft law (guidelines, reports, investigations, capacity building, monitoring and surveillance, ranking, etc.); (3) brief history, key or contemporary controversies, and (4) conclusion: extent of IO autonomy and impact) along with a supporting memo of no less than 5 pages.

Part 5—Public Finance and Trade Systems (Global and Regional)

Class 12: IFIs: The World Bank, IMF and AIIB model

Class 13: World Trade Organization

Class 14 **Group Presentation 3:** Regional Trade Organizations: Each Group will present a summary of the assigned regional trade system and its organization. For each trade organization prepare a 4 slide PowerPoint ((1) Organization of the trade organization (e.g., how is the organization constituted and what is its internal legal framework) and underlying objectives and ideological framework (Marxist, development oriented, markets driven, etc.); (2) rulemaking capacity (e.g., what sort of authority does it exercise—hard law (binding rules and standards) versus soft law (guidelines, reports, investigations, capacity building, monitoring and surveillance, ranking, etc.); (3) brief history, key or contemporary controversies, and (4) interaction with states and other trade organizations—impact) along with a supporting memo of no less than 5 pages.

Part 6 Private International Organizations; States as Private Organizations

Class 15 Non-Governmental Organizations

Class 16: States as Private Actors—Sovereign Wealth Funds and SOEs

Part 7 Private transnational entities as economic systems

Class 17: Multinational Corporations as IOs

Class 18: Third Party standard setting and monitoring organizations

Class 19: **Group Presentation 4**, markets driven regulation: multinational enterprises, State owned enterprises, sovereign wealth funds. Each Group will be assigned the public or private actor in economic or financial markets indicated below. Each is to prepare a 5 slide PowerPoint ((1) brief description of the organizations and of the supply chain or financial universe in which they operate; (2) describe the legal environment in which they operate—what laws, rules bind them and what norms do they embed in their operations; (3) internal governance (how they regulate their internal operations across the different actors that make up their control or production chains, including systems of monitoring and governance functions with a focus on corruption, sustainability, human rights); (4) external effects of regulatory assertions; how they regulate the environment in which they operate and (5) Conclusion: impact and the way they may be understood as fitting within one or more of the ideologies of globalization studied along with a supporting memo of no less than 5 pages.

Part 8 Public International Prosecutor-Judicial Systems

Class 20: The International Court of Justice

Class 21: The International Criminal Court System

Class 22: The Regional Human Rights System: Europe, Africa, Latin America.

Class 23-24 **Group Presentation 5**: International and Regional Courts and their Hard and Soft Impacts on Law and International Affairs. Each Group will be assigned the state indicated below. They are to prepare a 5 slide PowerPoint ((1) Analyze the case assigned for its facts and most important discussion; (2) the way it used the jurisprudence of other courts, including other international tribunals or the decisions of national courts; (3) consider its political, social, and cultural repercussions (what was a mandatory outcome that was binding; what in the opinions would reshape conduct of states and other actors); (4) consider the differences between the soft impact of the case (serving as the development of political or social principle then indirectly affecting actors) and its hard impact (how will the case be used by other courts or incorporated into the domestic order of states) and (5) consider what the case suggests for the role of courts in international affairs, along with a supporting memo of no less than 5 pages.

Part 9 Hybrid, Private and Non State Based International Grievance Mechanisms and Next Frontiers

Class 25-6: International Center for the Settlement of Disputes (ICSID) With a nod to the International Court of Arbitration

Class 27: New Orthodoxies and Counter Narratives of the Legal Structures of the Globalized Order(s)

INTAF 801

Semester: Spring Semester 2022

Larry Catá Backer

9 January 2022

Class 28-9 REVIEW and CONCLUSIONS

SYLLABUS WITH READINGS AND ASSIGNMENTS

Part I Introduction

Class 1: Introduction; Course Information, course concept note and syllabus review

Actors: individuals, people, formal collectives (states, public and private organizations), informal collectives (identities, affiliations, etc.); and other abstract actors recognized or given form (territories organized as states; production organized as a multinational enterprises; , objects (of production, symbolic, etc.)

Institutions: the formal organizational manifestation of collectives, and the manifestation of objects and processes (for example: courts are institutional expressions of law); query whether informally organized collectives can be said to be institutionalized or whether a single individual or object may be constituted an institution—that is do institutions organize collectives or are they better understood as solidified avatars of for any one or group with access to its forms and authority?

Legal Frameworks: The language and principles under which individuals and institutions develop and apply rules manifested through a specific ideology of rulemaking to the construction of public (and now private) collectives; understood as the legal system-ideology of states, of the international constitution and operation of non-state actors; and of other collectives.

Ideologies or imaginaries or “lifeworlds”: the way that knowledge is organized and rationalized through systems of interpreting, understanding and giving meaning to the world around us (Sartre, Lacan). It can also be understood as shared perceptions of the meaning of reality backed by massive background consensus (Habermas); or as biopolitics (the narratives through which social and political power may be normalized over the control and management of the bodies of the living and their relationship to physical and abstract objects and the technologies of control) (Foucault).

Part 2 The Global Order(s) Ideology and the Narrative of Law and Legality in International Affairs: Actors, Institutions, Legal Frameworks

Class 2: The Global Orders (Core ideologies in contemporary global orderings): Introduction to the different lenses through which one “sees” and relates to the world and its ordering; imaginaries of globalization; the interlinked role of politics, economics, law, and culture; varieties of ideologically contingent ways of approaching globalization.

READINGS:

- 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>.

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY)

- Manfred B. Steger and Paul Jones, "Levels of Subjective Globalization; Ideologies, Imaginaries, Ontologies," *PGDT* 12:17-40 (2013)

Class 3: The ideology of Law; Distinctiveness; Obedience; Legitimacy; Authority

READINGS: (Each Group is to prepare 3-5 page summary of the reading assigned)

- Leslie Green, "The Forces of Law: Duty, Coercion, and Power," *Ratio Juris* 29(2):164-181 (2016). GROUPS 1-2
- Anne van Aaken and Betül Simsek, "Rewarding in International Law," *American Journal of International Law* 111(2):195-241 (2021). Emphasize pp. 195-218 GROUPS 2-3
- Harold Hongju Koh, "Why do Nations Obey International Law?, *The Yale Law Journal* 106(8):2599-2659 (1997). Emphasize pp. 2635-2646. GROUP 4-5
- Amir N. Licht, "Social Norms and the Law: Why Peoples Obey the Law," *Review of Law and Economics* 4(3):715-750 (2008). GROUP 6
- Larry Catá Backer, "Reifying Law--Government, Law and the Rule of Law in Governance Systems," *Penn State International Law Review* 26(3):521-563 (2008). GROUP 7.

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY)

- Brian Bix, "Kelson, Hart, and Legal Normativity," *Revus* 34:25-42 (2018).

Part 3: States in the Global Order
(The State System Within the International Ecologies:
Sovereignty Looking Inward and Outward)

Class 4: The Foundation: The Theory of the State, Sovereignty, and its Constitution

READINGS (General)

- [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). GROUPS 1-2
- Restatement (Third) of Foreign Relations Law of the United States, § 201.

Each Group is to prepare 3-5 page summary of the reading assigned below

- Alexander Passerin D'Entrèves, *The Notion of the State: An Introduction to Political Theory* (Oxford, 1967, pp. 1-11). GROUP 1
- Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999), pp. 1-41. GROUP 2

- 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. GROUP 3
- Westel W. Willoughby, *The Fundamental Concepts of Public Law* (New York: MacMillan, 1924). Excerpts. GROUP 4
- Michael Gow, “The Core Socialist Values of the Chinese Dream: towards a Chinese integral state,” *Critical Asian Studies*, 49(1):92-116 (2017). GROUP 5.
- Peter Nedergaard, “The Ordoliberal Theory of the State,” *German Politics* 28(1):20-34 (2019) GROUP 6
- Mathias Hein Jessen and Nicolai von Eggers, “Governmentality and Stratification: Towards a Foucauldian Theory of the State,” *Theory, Culture, Society* 37(1):53-72 (2020). GROUP 7.

Class 5: Weak States, Strong States in the State System

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned)

- Jessica Steinberg, “‘Strong’ States and Strategic Governance: A Model of Territorial Variation in State Presence,” *Journal of Theoretical Politics* 30(2):224-245 (2018). GROUP 1
- Michael M. Atkinson and William D. Coleman, “Strong States and Weak States: Sectoral 19(1):47-67 (1989). GROUP 2
- Stein Sundstol Eriksen, “‘State failure’ in theory and practice: the idea of the state and the contradictions of state formation,” *Review of International Studies* 37(1):229-247 (2011). GRPUP 3
- OECD (2011), *International Engagement in Fragile States: Can’t we do better?* OECD Publishing, available <https://www.oecd.org/countries/somalia/48697077.pdf>. GROUPS 4
- Peter T. Leeson and Claudia R. Williamson, *Anarchy and Development: An Application of the Theory of Second Best*, LAW & DEVELOPMENT REVIEW 2009. GROUPS 5
- Ken Menkhaus, *Governance Without Government in Somalia: Spoilers, State Building and the Politics of Coping*, *International Security* 31(3): 74-106 (2007). GROUPS 6
- Christopher J. Coyne, “Reconstructing Weak and Failed States: Foreign Intervention and The Nirvana Fallacy,” *Foreign Policy Analysis* 2(4):343-360 (2006). GROUP 7

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY

- 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>.
- 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.

- Stewart Patrick, *Weak States and Global Threats: Assessing Evidence of Spillovers* (January 2006). Center for Global Development Working Paper No. 73, Available at SSRN: <https://ssrn.com/abstract=984057> or <http://dx.doi.org/10.2139/ssrn.984057> GROUPS 13-14
- Larry Catá Backer, “The Clash of Empires? Playing With Fire in the Shadow of the Umbrella Movement,” *HONG KONG BETWEEN “ONE COUNTRY” AND “TWO SYSTEMS” ESSAYS FROM THE YEAR THAT TRANSFORMED THE HONG KONG SPECIAL ADMINISTRATIVE REGION (JUNE 2019 – JUNE 2020)* (Little Sir Press, forthcoming 2021).

Class 6: Group Presentation 1: Unpacking Variations of Strong and Weak States Within the Global Order(s)

Each Group will be assigned the state indicated below. They are to prepare a 3 slide PowerPoint ((1) The characteristics that make the state weak or strong internally; (2) The role of international engagement as evidence of strength or weakness (does the state project power outward or is power projected inward from outside by other states and international institutions); (3) Analysis and Conclusion: Is the state strong or weak) along with a supporting memo of no less than 5 pages.

- Group 1–Kazakhstan
- Group 2–Laos
- Group 3–Mali
- Group 4–Bolivia
- Group 5–Belize
- Group 6–Sri Lanka
- Group 7–Georgia

Part 4—Public International Systems Within and Beyond the State System

Class 7: Law and the Constitution of Global Orders—The Traditional Orthodox Narrative

READINGS:

–Mireille Delmas-Marty, “Governing Globalisation Through Law,” *European Journal of Risk Regulation* 11:195-201 (2020).

–Alvarez Chapter 1 pp. 1-57;

Everyone read pp. 1-17; 45-57

Group summaries (pp. 17-45)

Each Group is to prepare a 1-2 page summary of each of the analytical frameworks as follows:

Groups 1: Functionalism (pp. 17-29)

Groups 2-3; Realism (pp. 29-32)

Groups 4-5: Disaggregationists (pp. 32-39)

Group 6 Critical Theory (pp. 39-43)

Groups 7: Constructivism (pp. 43-45)

Class 8: International Institutional Law: Autonomy of Actors

READINGS

–Alvarez, Chapter 2

Indicated Group is to prepare 3-5 page summary of the reading assigned)

Sections 2.1-2.2: GROUPS 1-3

Section 2.3-2.4 GROUPS 4-7

Class 9: International Institutional Law: IO Law Making

–Alvarez, chapter 3.

Indicated Group is to prepare 3-5 page summary of the reading assigned)

Sections 3.1-3.2: GROUPS 1-3

Section 3.3 GROUPS 4-7

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY)

– Lindseth, Peter L., Supranational Organizations (September 14, 2014). In Ian Hurd, Ian Johnstone, and Jacob Katz Cogan, eds., Oxford Handbook of International Organizations (OUP, 2016) , Available at SSRN: <https://ssrn.com/abstract=2517896>

Class 10: Soft Law and IOs as the producers of Private Governance Systems

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned)

– Anna di Robilant, *Genealogies of Soft Law*, 54 AMERICAN JOURNAL OF COMPARATIVE LAW 499 (2006). GROUP 1

– Shelton, Dinah L., “Soft Law,” in Handbook of International Law (Routledge Press, 2008), GWU Legal Studies Research Paper No. 322, GWU Law School Public Law Research Paper No. 322, Available at SSRN: <https://ssrn.com/abstract=1003387> GROUP 2

– Abbott, Kenneth Wayne and Genschel, Philipp and Snidal, Duncan and Zangl, Bernhard, *Orchestration: Global Governance through Intermediaries* (August 6, 2012). Available at SSRN: <https://ssrn.com/abstract=2125452> or <http://dx.doi.org/10.2139/ssrn.2125452>; GROUP 3

–Larry Catá Backer, “On the Evolution of the United Nations “Protect-Respect-Remedy Project”: The State, the Corporation and Human Rights in a Global Governance Context,” Santa Clara Journal of International Law 9(1):37-80 (2011). GROUP 4

–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. GROUP 5

–OECD Guidelines for Multinational Corporations 2011 (Preface, Concepts and Principles) <http://www.oecd.org/dataoecd/43/29/48004323.pdf> GROUP 6

- UN Conference of the Parties, Adoption of the Paris Agreement FCCC/CP/2015/L.9/Rev.1 (12 Dec. 2015). Available <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>. GROUP 7

Class 11: Group Presentations No. 2: Unpacking traditional IOs.

Each Group will be assigned the public international organization (IO) indicated below. They are to prepare a 4 slide PowerPoint ((1) Organization and operation of the IO (e.g., how is the organization constituted and what is its internal legal framework); (2) rulemaking capacity (e.g., what sort of authority does it exercise—hard law (binding rules and standards) versus soft law (guidelines, reports, investigations, capacity building, monitoring and surveillance, ranking, etc.); (3) brief history, key or contemporary controversies, and (4) conclusion: extent of IO autonomy and impact) along with a supporting memo of no less than 5 pages.

- Group 1—World Health Organization
- Group 2—Organization for Economic Cooperation and Development (OECD)
- Group 3—UN Educational, Scientific and Cultural Organization (UNESCO)
- Group 4—International Labor Organization (ILO)
- Group 5—International Organization for Standards (ISSO)
- Group 6—Office of the UN High Commissioner for Human Rights and Special Procedures of the Human Rights Council
- Group 7—UN Conference on Trade and Development (UNCTAD)

Part 5—Public Finance and Trade Systems (Global and Regional)

Class 12: IFIs: The World Bank, IMF and AIIB models

- World Bank Organization
 - World Bank Annual Report 2021 (“Data for Better Lives”)
- IMF Organization
 - “The IMF at a Glance”
 - IMF 2021 Annual Report (“Build Forward Better”)
- AIIB Organization
 - AIIB at a glance
 - AIIB, Corporate Strategy: Financing Infrastructure for Tomorrow (September 2020)

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned)

- Anthony Anghie, “Time Present and Time Past: Globalization, International Financial Institutions, and the Third World,” *N.Y.U. J. Int’l Law and Policy* 32:243 (2000) READ 243-275 GROUP 7

- Sarah Babb, “The Washington Consensus as transnational policy paradigm: Its origins, trajectory and likely successor,” *Review of International Political Economy* 20(2):268-297 (2013) GROUP 6
- Axel Dreher, “IMF Conditionality: Theory and Evidence,” *Public Choice* 141:233-267 (2009) Group 5
- Diego Hernandez, “Are ‘New Donors’ Challenging World Bank Conditionality?,” *World Development* 96:529-549 (2017) GROUP 4
- Jacqueline Best, “Ambiguity and Uncertainty in International Organizations: A History of Debating IMF Conditionality,” *International Studies Quarterly* 56(4):674-688 (2012) GROUP 3
- Martin A. Weiss, “Asian Infrastructure and Investment Bank (AIIB),” *Current Politics and Economics of South, Southeastern, and Central Asia*, 27(1/2):1-29 (2018). GROUP 2
- Xiaohui Wu, “Friendly Competition for Co-Progressive Development: The Asian Infrastructure Investment Bank vs. the Bretton Woods Institutions,” *Chinese Journal of International Law* 16:41-76 (2017). GROUP 1

Class 13: World Trade Organization

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- WTO 2021 Annual Report GROUPS 1-2 FOCUS on PP 1-38
- Meyer, Timothy, From Contract to Legislation: The Logic of Modern International Lawmaking (January 13, 2014). *Chicago Journal of International Law*, Vol. 14(2), pp. 559-623 (2014), UGA Legal Studies Research Paper No. 2014-02, Available at SSRN: <https://ssrn.com/abstract=2378870> GROUS 4
- Lamp, Nicolas, How Some Countries Became ‘Special’: Developing Countries and the Construction of Difference in Multilateral Trade Lawmaking (June 17, 2014). *Journal of International Economic Law* 18(4), 2015, 743-771, Queen’s University Legal Research Paper No. 2015-017, Available at SSRN: <https://ssrn.com/abstract=2455952> GROUP 5
- Ghias, Shoaib A., International Judicial Lawmaking: A Theoretical and Political Analysis of the WTO Appellate Body (July, 22 2008). *Berkley Journal of International Law (BJIL)*, Vol. 24, No. 2, 2006, Available at SSRN: <https://ssrn.com/abstract=1168562> GROUP 6
- Mazumder, Rabin, Trade Liberalization & WTO: Impact on Developing Countries (January 16, 2008). Available at SSRN: <https://ssrn.com/abstract=1084394> or <http://dx.doi.org/10.2139/ssrn.1084394> GROUP 7
- Gary P Sampson, “Challenges Facing the World Trade Organization: An Overview,” *The Australian Economic Review* 51(4): 453–473 (2018) GRPOUP 3

Class 14 **Group Presentation 3:** Regional Trade Organizations:

Each Group will present a summary of the assigned regional trade system and its organization. For each trade organization prepare a 4 slide PowerPoint ((1) Organization of the trade organization (e.g., how is the organization constituted and what is its internal legal framework) and underlying objectives and ideological framework (Marxist, development oriented, markets driven, etc.); (2) rulemaking capacity (e.g., what sort of authority does it exercise—hard law (binding rules and standards) versus soft law (guidelines, reports, investigations, capacity building, monitoring and surveillance, ranking, etc.); (3) brief history, key or contemporary controversies, and (4) interaction with states and other trade organizations—impact) along with a supporting memo of no less than 5 pages.

–Group 1: Belt & Road Initiative:

–Wang, Heng, China’s Approach to the Belt and Road Initiative (May 20, 2018). *Journal of International Economic Law*, Volume 22, 2019 (Forthcoming), UNSW Law Research Paper No. 18-82, Available at SSRN: <https://ssrn.com/abstract=3283660>

–Yong Wang, “Offensive for Defensive: The Belt & Road Initiative and China’s New Grand Strategy,” *The Pacific Review* 29(3):455-463 (2016).

–Wang, Heng, Divergence, Convergence or Crossvergence of Chinese and US Approaches to Regional Integration: Evolving Trajectories and Their Implications (June 30, 2018). *Tsinghua China Law Review*, Volume 10, Number 2, 149-185, UNSW Law Research Paper No. 18-77, Available at SSRN: <https://ssrn.com/abstract=3145058>

–Broude, Tomer, Belt, Road and (Legal) Suspenders: Entangled Legalities on the ‘New Silk Road’ (November 17, 2019). Forthcoming, Nico Krisch (ed.), *Entangled Legalities*, Hebrew University of Jerusalem Legal Research Paper 20-01, Available at SSRN: <https://ssrn.com/abstract=3489749>

–Group 2: ALBA

– Backer, Larry Catá and Molina, Augusto, Cuba and the Construction of Alternative Global Trade Systems: ALBA and Free Trade in the Americas (May 20, 2009). *University of Pennsylvania Journal of International Economic Law*, Vol. 31, No. 3, 2010, Available at SSRN: <https://ssrn.com/abstract=1407705>

–Kepa Artaraz, “Cuba’s Internationalism Revisited: Exporting Literacy, ALBA, and a New Paradigm for South–South Collaboration,” *Bulletin of Latin American Research* 31(1):22-37 (2012)

–Group 3: Trans Pacific Partnership

–Backer, Larry Catá, The Trans-Pacific Partnership: Japan, China, the U.S. and the Emerging Shape of a New World Trade Regulatory Order (March 18, 2014). *Washington University Global Studies Law Review*, 13(1), 2013, Penn State Law Research Paper No. 20-2013, Available at SSRN: <https://ssrn.com/abstract=2237523>

- Vy Thi Tuong Nguyena and Loan Thanh Le, “Without United States’ Trans-Pacific Partnership Agreement and Vietnam’s Apparel Industry,” *Emerging Markets Finance and Trade* 57(1):138-162 (2021)
- Group 4: European Free Trade Association
 - Daniel Yuichi Kono, “Are Free Trade Areas Good for Multilateralism? Evidence From the European Free Trade Association,” *International Studies Quarterly* 46(4):507-527 (2002)
 - Sieglinde Gstöhl, and Christian Frommelt, “Back to the Future? Lessons of Differentiated Integration from the EFTA Countries for the UK’s Future Relations with the EU,” *Social Sciences* 6(4):121 (2017)
 - Iver B. Neumann, “The European Free Trade Association: The Problems of an All-European Role,” *Journal of Common Market Studies* 28(4):359 (1990)
- Group 5: CAFTA-DR (Dominican Republic Central America Free Trade Agreement)
 - Raymond Hicks, Helen V. Milner and Dustin Tingley, “Trade Policy, Economic Interests, and Party Politics in a Developing Country: The Political Economy of CAFTA-DR,” *International Studies Quarterly* 58(1):106-117 (2014)
 - Mary Finley-Brook and Katherine Hoyt, “CAFTA Opposition: Divergent Networks, Uneasy Solidarities,” *Latin American Perspectives* 169(36):27-45 (2009)
- Group 6: MERCOSUR
 - Paula Bustos, “Trade Liberalization, Exports, and Technology Upgrading: Evidence on the Impact of MERCOSUR on Argentinian Firms,” *The American Economic Review* 101(1):304-340 (2011)
 - Carlos Closa and Stefano Palestoni, “Tutelage and Regime Survival in Regional Organizations’ Democracy Protection: The Case of MERCOSUR and UNASUR,” *Princeton* 70(3):443-476 (2018)
 - Ricardo Caichiolo, “Mercosur: Limits of Regional Integration,” *Erasmus Law Review* 12(3):246-268 (2019)
- Group 7: COMESA (Common Market for Eastern and Southern Africa)
 - Samar H. Albagoury, “African pathway to achieve inclusive growth: COMESA case study,” *Journal of Humanities and Applied Social Sciences* 3(2):108-11 (2021)
 - Isaac M.B. Shinyekwa, Corti P. Lakuma, Martin L. Munu, “The Effects of Regional Economic Communities on Industrialization: The Case of COMESA,” *African Development Review* 31(49):506-515 (2019)
 - Ebaidalla M. Ebaidalla and Abdelrahim M. Yahia, “Performance of Intra-COMESA Trade Integration: A Comparative Study with ASEAN’s Trade Integration,” *African Development Review* 26(1):77-95 (2014).

Part 6 Private International Organizations; States as Private Organizations

Class 15 Non-Governmental Organizations

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- Peter Willetts, “NGOs, Social Movements, and Civil Society,” in pp. 6-31; 114-134
GROUP 1
- 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. GROUP 2
- 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. GROUP 3
- 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. GROUP 4
- Mary Kaldor, “Civil Society and Accountability,” *Journal of Human Development* 4(1):4-27 (2003). GROUP 5
- *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 7-31. GROUP 6
- Larry Catá Backer, “From Guiding Principles to Interpretive Organizations: Developing a Framework for Applying the UNGPs to Disputes the Institutionalizes the Advocacy Role of Civil Society,” in *Business and Human Rights: Beyond the End of the Beginning* (César Rodríguez-Garavito (ed) Cambridge, 2017), pp. 97-110. GROUP 7

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY:

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

Class 16: States as Private Actors—Sovereign Wealth Funds and SOEs

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- 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>. GROUPS 1-4
- 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> GROUPS 5-8

- 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/auilr/vol29/iss1/1/> GROUPS 9-12
- Larry Catá Backer, *Sovereign Wealth Funds, Capacity Building, Development, and Governance*, 52 *Wake Forest Law Review* (2017) ([HERE](#)) GROUPS 13-17

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY of either or both)

- Larry Catá Backer, *SWFs in Five Continents and Three Narratives: Similarities and Differences*, in *Research Handbook on Sovereign Wealth Funds and International Investment Law* 57-98 (Fabio Bassan, ed., Cheltenham, Eng.: Edward Elgar, 2015).

Part 7 Private transnational entities as economic systems

Class 17: Multinational Corporations as IOs

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- Larry Catá Backer, "Multinational Corporations as Objects and Sources of Transnational Law," *ILSA Journal of International and Comparative Law* 14:499 (2008). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1092167. GROUPS 1-2
- Larry Catá Backer, *Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board and the Global Governance Order*, *Indiana Journal Global Legal Studies* 18(2):751-802 (2011). Available <http://ssrn.com/abstract=1658730>. GROUP 3
- Peter Muchlinski, *Multinational Enterprises and the Law* (2nd Ed.; Oxford: Oxford University Press, 2007) read chapter 1. GROUP 4.
- Larry Catá Backer, "Regulating Multinational Corporations – Trends, Challenges and Opportunities, 22(1) *Brown Journal of World Affairs* 153-173 (Fall/Winter 2015). AVAILABLE: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3126866 GROUP 5
- Larry Catá Backer, *The Emerging Normative Structures of Transnational Law: Non-State Enterprises in Polycentric Asymmetric Global Orders*, 31 *BYU J. Pub.L.* 1 (2016)). Also available [HERE](#):

<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1527&context=jpl>, pp. 1-29(Parts I-III). GRPUP 6

- 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>. GROUP 7

Class 18: Third Party standard setting and monitoring organizations

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- Kenneth W. Abbott & Duncan Snidal, “International ‘standards’ and international governance,” *Journal of European Public Policy* 8(3): 345-370 (2017) GROUPS 7
- Axel Marx, “Global Governance and the Certification Revolution: Types, Trends and Challenges” (November 19, 2010). Leuven Centre for Global Governance Studies Working Paper No. 53, Available at SSRN: <https://ssrn.com/abstract=1764563> or <http://dx.doi.org/10.2139/ssrn.1764563> GROUPS 5
- Khalid Nadvi, “Global standards, global governance and the organization of global value chains,” *Journal of Economic Geography* 8(3):323-343 (2008) GROUP 4
- Alan J. Richardson & Burkard Eberlein, “Legitimizing Transnational Standard-Setting: The Case of the International Accounting Standards Board,” *Journal of Business Ethics* 98:217-245 (2010) GROUP 3
- Timothy M. Smith Miriam Fischlein, “Rival private governance networks: Competing to define the rules of sustainability performance,” *Global Environmental Change* 20(3):511-522 (2010). GROUP 2
- Lukas Giessen, Sarah Burns, Muhammad Alif K. Sahide, Agung Wibowo, “From governance to government: The strengthened role of state bureaucracies in forest and agricultural certification,” *Policy and Society* 35(1):71-89 (2016). GROUP 6
- Errol Meidinger, “Forest Certification and Democracy,” *European Journal of Forest Research* 130:407-419 (2011).GROUP 1

Class 19: **Group Presentation 4**, markets driven regulation: multinational enterprises, State owned enterprises, sovereign wealth funds.

Each Group will be assigned the public or private actor in economic or financial markets indicated below. Each is to prepare a 5 slide PowerPoint ((1) brief description of the organizations and of the supply chain or financial universe in which they operate; (2) describe the legal environment in which they operate—what laws, rules bind them and what norms do they embed in their operations; (3) internal governance (how they

regulate their internal operations across the different actors that make up their control or production chains, including systems of monitoring and governance functions with a focus on corruption, sustainability, human rights); (4) external effects of regulatory assertions; how they regulate the environment in which they operate and (5) Conclusion: impact and the way they may be understood as fitting within one or more of the ideologies of globalization studied along with a supporting memo of no less than 5 pages.

- Group 1: Apple, Inc.
- Group 2: Chile Sovereign Wealth Funds
- Group 3: Moody's Credit Rating Agency
- Group 4: Rio Tinto (Australia)
- Groups 5: Pfizer
- Group 6: Norsk Hydro
- Group 7: GIC (Singapore SWF)

Part 8 Public International Prosecutor-Judicial Systems

Class 20: The International Court of Justice

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- Introduction to the ICJ (2020) (from the ICJ Website) Groups 1-3
- Medellin v. Texas, 552 U.S. 491 (2008); available [<https://www.law.cornell.edu/supct/html/06-984.ZS.html>]. Groups 4-6
- Richard Goldstone and Rebecca Hamilton, “Bosnia v. Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia,” *Leiden Journal of International Law* 21:95-112 (2008). Group 7

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY of one or both)

- 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 [<https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>].
- 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 [<https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.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* (available [<https://www.icj-cij.org/public/files/case-related/131/1677.pdf>]) 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 Paragraph 116 (proportionate anti-terrorism measures).
5. Legal Consequences: Paragraphs 148-158.
6. Remedies: Paragraph 159-160.

Class 21: The International Criminal Court System

–The ICC at a Glance ALL GROUPS

– [Core ICC texts](#) (*for reference only*)

- 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

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

–Introduction to the ICC (drawn from the ICC Website) . GROUPS 1-2

–Martha Minnow, “Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court,” *Harvard International Law Journal* 60(1):1-44 (2019). GROUPS 3-4.

–Leila Ulrich, “Beyond the ‘Global-Local Divide’,” *Journal of International Criminal Justice* 14:543-568 (2016). GROUP 5

–Chinedu Thomas Ekwealor, “The African Union and the International Criminal Court: Lessons From Sudan for Africa,” *Journal of African Union Studies* 7(1):31-48 (2018). GROUPS 6-7

Class 22: The Regional Human Rights System: Europe, Africa, Latin America.

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. GROUPS 12-17

GROUP READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

– The [ECHR System](#): GROUP 7

- A. ECHR [Court in Brief](#)
- B. ECHR [In 50 Questions](#)

- C. ECHR [Questions & Answers](#)
- D. ECHR [Overview 1959-2015](#)
- E. ECHR [Facts & Figures](#)
- F. ECHR [Case Processing and Working Methods](#)
- G. ECHR [Convention and Protocols](#)
- H. ECHR [Convention Reservations](#)
- I. ECHR [Rules of Court](#) (Generally [here](#))
- J. ECHR [Practice Directions](#)
- K. ECHR [Resolution on Judicial Ethics](#)

- Louis Wildhaber, “The European Court of Human Rights: The Past, the Present, The Future,” *American University International Law Review* 22(4):521-538 (2007). GROUP 6
- Patricia Palacios Zuloaga, “Judging Inter-American Human Rights: The Riddle of Compliance with the Inter-American Court of Human Rights,” *Human Rights Quarterly* 42(2):392-433 (2020). GROUP 5
- Svetlana Tyulkina, “Fragmentation in International Human Rights Law: Political Parties and Freedom of Association in the Practice of the UN Human Rights Committee, European Court of Human Rights and Inter-American Court of Human Rights,” *Nordic Journal of Human Rights* 32(2):157-175 (2014). GROUP 4
- Alejandro Fuentes, “Protection of Indigenous Peoples’ Traditional Lands and Exploitation of Natural Resources: The Inter-American Court of Human Rights’ Safeguards,” *International Journal on Minority Group Rights* 24:229-253 (2017). GROUP 3
- Ricardo Rösch, “Indigenesness and peoples’ rights in the African human rights system: situating the Ogiek judgement of the African Court on Human and Peoples’ Rights,” *Verfassung und Recht in Übersee VRÜ* 50(3):242-258 (2017). GROUP 2
- Tom Gerald Daly and Micha Wiebusch, “The African Court on Human and Peoples’ Rights: Mapping resistance against a young court,” *International Journal of Law in Context* 14:294-313 (2018). GROUP 1

Class 23-24 Group Presentation 5: International and Regional Courts and their Hard and Soft Impacts on Law and International Affairs.

Each Group will be assigned the state indicated below. They are to prepare a 5 slide PowerPoint ((1) Analyze the case assigned for its facts and most important discussion; (2) the way it used the jurisprudence of other courts, including other international tribunals or the decisions of national courts; (3) consider its political, social, and cultural repercussions (what was a mandatory outcome that was binding; what in the opinions would reshape conduct of states and other actors); (4) consider the differences between the soft impact of the case (serving as the development of political

or social principle then indirectly affecting actors) and its hard impact (how will the case be used by other courts or incorporated into the domestic order of states) and (5) consider what the case suggests for the role of courts in international affairs, along with a supporting memo of no less than 5 pages.

GROUP 1: Juridical Condition and Rights of the Undocumented Migrants, Mexico, Advisory opinion, Advisory Opinion OC-18/03, IACHR Series A No 18, IHRL 3237 (IACHR 2003), 17th September 2003, Inter-American Court of Human Rights [IACtHR]
https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf

GROUP 2: SAS v. France, European Court of Human Rights Application no. 43835/11 (1 July 214); <http://jus.igjk.rks.gov.net/193/1/CASE%20OF%20S.A.S.%20v.%20FRANCE.pdf>

GROUP 3: Jurisdictional immunities of the state (Germany v. Italy; Greece Intervening) (3 February 2012) International Court of Justice
<https://www.icj-cij.org/public/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>

GROUP 4: Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan (ICC-02/17-138) 05 March 2020 https://www.icc-cpi.int/CourtRecords/CR2020_00828.PDF (related documents <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-138>)

GROUP 5: The Case of “The Last Temptation of Christ” (Olmedo-Bustos et al. v. Chile), Judgment of 5 February 2001, Inter-American Court of Human Rights (available https://www.corteidh.or.cr/docs/casos/articulos/seriec_73_ing.pdf)

GROUP 6: In the Matter of Richard Robert v. United Republic of Tanzania (judgment 2 December 2021) African Court of Human and Peoples Rights. Available <https://www.african-court.org/cpmt/storage/app/uploads/public/61b/741/5bd/61b7415bddbd8935712474.pdf>. Dissenting opinion available <https://www.african-court.org/cpmt/storage/app/uploads/public/61c/c31/a9f/61cc31a9f0c0d962294259.pdf>.

GROUP 7: Matter of Laurent Munyandikirwa v. Republic of Rwanda (judgment 2 December 2021) African Court of Human and Peoples Rights. Opinion available <https://www.african-court.org/cpmt/storage/app/uploads/public/61b/31f/bac/61b31fbac3786517851723.pdf>. Dissenting opinion 1 (Kioko, J.) available

<https://www.african-court.org/cpmt/storage/app/uploads/public/61b/70a/6bd/61b70a6bd269b674842879.pdf>. Dissenting opinion 2 (Achour, J.) available
<https://www.african-court.org/cpmt/storage/app/uploads/public/61b/73e/8e5/61b73e8e59b7c573745491.pdf>.

Part 9 Hybrid, Private and Non State Based International Grievance Mechanisms and Next Frontiers

Class 25-6: International Center for the Settlement of Disputes (ICSID) With a nod to the International Court of Arbitration

READING

–The U.S. Model Bi-Lateral Investment Treaty (BIT) 2012

GROUP READINGS (Each Group is to prepare 3-5 page summary of the reading assigned):

- Andreas F. Lowenfeld, “The ICSID Convention: Origins and Transformation,” *Georgia Journal of International and Comparative Law* 38:47 (2010). GROUP 7
 - Ole Kristian Fauchald, “The Legal Reasoning of ICSID Tribunals—An Empirical Analysis,” *European Journal of International Law* 19(2):301-364 (2008). GROUP 6
 - Ling He and Razeen Sappideen, “Investor-State Arbitration under Bilateral Trade and Investment Agreements: Finding Rhythm in Inconsistent Drumbeats,” *Journal of World Trade* 47:215 (2013). GROUP 5
 - Meg Kinnear, “An Introduction to ICSID,” Conference PPTs (3 February 2016); available [https://pdfslide.net/documents/an-introduction-to-icsid-world-an-introduction-to-icsid-meg-kinnear-icsid-secretary-general.html] (31 Slides). GROUP 4
 - David Gantz, “Resolution of Investor-State Controversies in Developing States,” *The Law Development Review* 5(2):82-127 GROUP 3
 - ICSID, 2021 Annual Report [https://icsid.worldbank.org/sites/default/files/publications/ICSID_AR21_CRA_b11_web.pdf] GROUP 2
- ICSID Primary Source Documents:
- ICSID Rules
 - ICSID Additional Facility Rules:
 - Permanent Court of Arbitration Overview
 - ICSID Annual Report 2006
 - 11 ICSID CASE NOTES
- Linda Silberman, “The New York Convention After 50 Years: Some Reflections on the Role of National Law,” *Georgia Journal of International & Comparative Law* 38:25-46 ((2009) GROUP 1

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY)

- Meg Kinnear, “2019 John E.C. Brierley Memorial Lecture - Continuity and Change in the ICSID System: Challenges and Opportunities in the Search for Consensus (20 March 2020) available [https://icsid.worldbank.org/news-and-events/speeches-articles/2019-john-ec-brierley-memorial-lecture-continuity-and-change]
- Meg Kinnear, An Introduction to ICSID Process Meg Kinnear, ICSID Secretary-General November 19, 2015 CIL Investment Law & Practice Conferences Singapore (161 SLIDES), available [https://cil.nus.edu.sg/wp-content/uploads/2015/10/Day2-ICSID-ICSID101.pdf]
- Jeoncho Nam, “Model Bit: An Ideal Prototype or a Tool for Efficient Breach?,” *Georgetown Journal of International Law* 48:1275-1308 (2017)
- Christophe Schreuer, “International Centre for Settlement of Investor Disputes,” 100 ICSID

Class 27: New Orthodoxies and Counter Narratives of the Legal Structures of the Globalized Order(s)

READINGS (Each Group is to prepare 3-5 page summary of the reading assigned)

Group 1

- Larry Catá Backer, “The Structural Characteristics of Global Law for the 21st Century: Fracture, Fluidity, Permeability, and Polycentricity,” *Tilburg Law* 17(2):177-199 (2012).

Group 2

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

Group 3

- Craig Scott, “*Transnational Law*” as Proto-Concept: *Three Conceptions*, 10(7) *German Law Journal* 859 (2009). GROUS 7-9

Group 4

- Terrance Halliday and Gregory Schaffer, “Transnational Legal Orders,” in (Halliday & Schaffer (eds) *Transnational Legal Orders* (Cambridge University Press, 2015), pp. 1-22; 45-51.

Group 5

- Teubner, Gunther, “Global Bukowina: Legal Pluralism in the World-Society”, in *Global Law Without State* (Gunther Teubner, ed., Dartmouth, 1996) pp. 3-28, 1996, Available at SSRN: <https://ssrn.com/abstract=896478>

Group 6

- Paul Schiff Berman, “Global Legal Pluralism,” *Southern California Law Review* 80:1155-1237 (2007) (READ 1155-1196)

Group 7

–Feng Zhang, “The Xi Jinping Doctrine of China’s International Relations,” *Asia Policy* 14(3):7-23 (2019).

OPTIONAL (EXTRA CREDIT FOR PREPARATION OF A 3-5 PAGE SUMMARY of either or both)

–Backer, Larry Catá, The ‘Cri de Jessup’ Sixty Years Later: Transnational Law’s Intangible Objects and Abstracted Frameworks Beyond Nation, Enterprise, and Law (March 12, 2019). In Peer Zumbansen (ed.), *Jessup’s Bold Proposal. Critical Engagements with Transnational Law* (Cambridge UP, 2019) , Coalition for Peace & Ethics Working Paper 3/1 (March 2019) , Available at SSRN: <https://ssrn.com/abstract=3350824>,

–Mark Drumbl and Katerina Uhlirova, “Actors and Law Making in International Environmental Law,” *Research Handbook of International Environmental Law* (Cambridge 2019).

Class 28-9 REVIEW and CONCLUSIONS