Course Description:
This course explores a range of legal disciplines which purport to explain how we are governed globally and propose projects for improving global governance through law. We will focus on the field of international law and organization, examining the history of ideas, legal doctrines, institutional and administrative structures developed over the last century to organize and legalize international economic and political life. The readings focus on various ways to think about the legal organization of global order, and on the history of legal efforts to organize and institutionalize international affairs. We will spend some time thinking about history. What came before twentieth century international law? How was international legal modernism born and built in the first half of the last century? What happened in the half-century after 1945, after 1989, after 2001? What will happen next?

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

Readings:
Casebook assignments are from Damrosch and Murphy, International Law: Cases and Materials West, Sixth Edition (2014)

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

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


COURSE OUTLINE

I. THE MYSTERY OF GLOBAL GOVERNANCE TODAY

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

II. THE BACKGROUND ARCHITECTURE OF PUBLIC INTERNATIONAL LAW

   Topic 2: The Norms
           Custom

   Topic 3: Sources: Special Problems

   Topic 4: The Entities:
           *Statehood and Recognition*
           *Sovereignty and Sovereign Rights*

   Topic 5: The Entities
           *Individuals and “Other Entities”*

   Topic 6: The Entities
           *International Criminal Law: Individual Responsibility*

   Topic 7: The Powers
           *Jurisdiction*

   Topic 8: The Powers
           *Territory*
           *International Territories*

   Topic 9: Mobilizing the Architecture: Claims and State Responsibility

III. THE ARCHITECTURE IN HISTORY

   Topic 10: Before Modernity
              1648-1815
              1815-1914

   Topic 11: The Turn to Modernism: 1914-1945


IV. NEW THINKING: ADJUDICATION
Topic 13: National Courts in a Transnational Legal Process and Questions of Reception

Topic 14: A Global Juridical Perspective: International Courts and Dispute Resolution

V. NEW THINKING: CONSCIOUSNESS

Topic 15: Consciousness as Governance: Rulership and the Power of Ideas
  Human Rights
  Environmental Protection

VI. NEW THINKING: ADMINISTRATION AND EXECUTION

Topic 16: Statecraft and Diplomacy
  Unilateralism, Bilateralism and ad hoc Arrangements/Multilateral conferences and rulemaking
  GATT and the WTO: Bargaining in the Shadow of the Law/Law in the Shadow of Bargaining

Topic 17: International Institutions
  League of Nations, the United Nations and a History of Reform
  Leadership as Governance: The Secretary General

Topic 18: Administration as Governance
  Global Administrative Law

VII. NEW THINKING: LEGISLATION

Topic 19: Regulation and Private Ordering

VIII. NEW THINKING: THEORIES OF THE WHOLE

Topic 20: Constitutionalism, Systems Theory, Legal Pluralism and Fragmentation

Topic 21: Neocolonialism: Center / Periphery Relations

Topic 22: Distributional Analytics

IX. GLOBAL GOVERNANCE IN ACTION: WAR AS AN INTERNATIONAL LEGAL INSTITUTION

War” or “jus in bello”

SYLLABUS

I. THE MYSTERY OF GLOBAL GOVERNANCE TODAY

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

Casebook: xiii-xv (introduction) and xxxi-xxxiv (summary of contents)

Casebook: xvii-xxix (historical introduction)


DM: David Kennedy, Chart: Intellectual History

II. THE BACKGROUND ARCHITECTURE OF PUBLIC INTERNATIONAL LAW

TOPIC 2: The Norms

Custom

Casebook: 57-69 (Article 38 of the Statute of the International Court of Justice, Schachter, customary law questions, The Paquette Habana (1900), McDougal note 5)

Casebook: 71-76 (The Lotus, 1927)

DM: Nuclear Weapons, 1996 (summary)

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

TOPIC 3: Sources: Special Problems

Casebook: 101-105 (jus cogens)

Casebook: 228-233 (general principles)
Casebook: 263-269 (nonbinding international agreements)


DM: David Kennedy, Chart: *The Structure of Sources Doctrine*

**TOPIC 4: THE ENTITIES**

Statehood and Recognition

Casebook: 281-288 (definition of statehood, Montevideo Convention)
Casebook: 332-333, 351-355 (recognition criteria and effects, *Salimoff* (1933)

Sovereignty and Sovereign Rights

DM: *The Antelope* 23 U.S. (10 Wheaton) 66 (1825)
DM: Henry Maine, *The Kathiawar States and Sovereignty* (1864)
DM: *American Banana v. United Fruit* (1909)
DM: *Corfu Channel Case* (1949) (excerpts)
DM: Chart, *Arguments & Rhetoric: Public International Law Argument: Dynamic*
TOPIC 5: THE ENTITIES

Individuals and Other “Entities”

Casebook: 433-438 (individuals, Lauterpacht)
439-440 (LeGrand, 2001)
443-445, 448-453 (nationality and Nottebohm, 1955)
469-477 (corporations and Barcelona Traction, 1970)

TOPIC 6: THE ENTITIES

International Criminal Law: Individual Responsibility

Casebook: 1271-1272 (background on international criminal law)

DM: Martti Koskenniemi, Between Impunity and Show Trials, 6

DM: Frederic Megret and Marika Giles Samson, Holding the Line of
Complementarity in Libya: The Case for Tolerating Flawed Domestic Trials,

DM: Marko Milanovic, Understanding the ICTY’s Impact in the Former
Yugoslavia, EJIL:Talk! (2016)

TOPIC 7: THE POWERS

Jurisdiction

Casebook: 733-735, 752-755 (jurisdiction defined and Restatement sections 402,
403 and 404)


DM: Robert Malley, Jean Manas and Crystal Nix, Constructing the State
Extra-territorially: Jurisdictional Discourse, the National Interest, and
Transnational Norms, 103 Harvard Law Review 1273 (1990) (excerpts),
1273-1275, 1280-1287, 1290-1291, 1293-1303

DM: Paul Schiff Berman, The Globalization of Jurisdiction, 151 University of

TOPIC 8: THE POWERS

 Territory


International Territories

DM: Nathaniel Berman, Legalizing Jerusalem or, of Law, Fantasy, and Faith, 45 Catholic University Law Review 823 (1996)

TOPIC 9: MOBILIZING ARCHITECTURE: CLAIMS AND STATE RESPONSIBILITY

Casebook: 485-487 (general principles of State Responsibility) 521-529 (countermeasures, retorsion, reprisal)


DM: Chart, State Responsibility

III. THE ARCHITECTURE IN HISTORY

TOPIC 10: BEFORE MODERNITY

1648-1815


1815-1914

The Antelope (review from Topic 4)


TOPIC 11: THE TURN TO MODERNISM: 1914-1945


DM: Philip Jessup, The Functional Approach as Applied to International Law, Third Conference of Teachers of International Law (1928)


DM: Detlev Vagts, International Law in the Third Reich, 84 American Journal of International Law 661 (1990) (excerpts)


DM: Hans Kelsen, Lecture III: International Law and the State, Law and Peace in International Relations (1942) (excerpts)

DM: Corfu Channel (1949) (excerpt)

DM: Myres McDougal, Law and Power, 46 American Journal of International Law 102 (1952)


DM: Anne Orford, Rethinking the Significance of the Responsibility to Protect Concept, Remarks at ASIL Proceedings (2011)

Casebook: 1-4


DM: David Kennedy, Chart: Schools of Thought

IV. NEW THINKING: ADJUDICATION
**Topic 13: National Courts in a Transnational Legal Process and Questions of Reception**


**Topic 14: A Global Juridical Perspective: International Courts and Dispute Resolution**

**Casebook:** 552-556 (ICJ, structure and jurisdiction)

**DM:** US v. Iran (1979)

**Casebook:** 578-583 (*Nicaragua v. US* (1984))


**V. New Thinking: Consciousness**

**Topic 15: Consciousness as Governance: Rulership and the Power of Ideas**

**DM:** Wilhelm Ropke, *Economic Order and International Law*, 86 *Recueil des Cours* 203 (1954 II) (excerpts)


**DM:** Chart, *Disciplinary Sensibilities*
Human Rights

Casebook: 915-921 (introduction to human rights)


Environmental Protection


Casebook: 1473-1478 (general principles, Trail Smelter (1941), Gabcikova (1997))


VI. NEW THINKING: ADMINISTRATION AND EXECUTION

Topic 16: Statecraft and Diplomacy

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


DM: Obama’s Nobel Prize Speech (2009)

DM: Obama’s Statement on ISIL (2014)

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


Optional background:

**TOPIC 17: INTERNATIONAL INSTITUTIONS**

**DM:** Roland Barthes, *The Eiffel Tower and Other Mythologies*, Hill and Wang, 3-17 (1979)

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

**DM:** P.E. Corbett, *What is the League of Nations?* 5 *British Yearbook International Law* 119 (1924) (excerpts)

**Leadership as Governance: The Secretary General**

**DM:** Oscar Schachter, *Dag Hammarskjold and the Relation of Law to Politics*, 56 *American Journal of International Law* 1 (1962)


**TOPIC 18: ADMINISTRATION AS GOVERNANCE**

**Global Administrative Law**


**Experts As Rulers**

**DM:** Sheila Jasanoff, “The Practices of Objectivity in Regulatory Science” 1-7


VII. NEW THINKING: LEGISLATION

**TOPIC 19: REGULATION AND PRIVATE ORDERING**


VIII. NEW THINKING: THEORIES OF THE WHOLE

**TOPIC 20: CONSTITUTIONALISM, SYSTEMS THEORY, LEGAL PLURALISM AND FRAGMENTATION**

Casebook: 29-34 (coherence and fragmentation of international law)


**TOPIC 21: NEOCOLONIALISM: CENTER / PERIPHERY RELATIONS**


Optional Background:


**TOPIC 22: DISTRIBUTIONAL ANALYTICS**

IX. GLOBAL GOVERNANCE IN ACTION: WAR AS AN INTERNATIONAL LEGAL INSTITUTION

**TOPIC 23:** “THE LAW OF ARMED CONFLICT,” “HUMANITARIAN LAW,” THE “LAWS OF WAR” OR “JUS IN BELLO”

**Casebook:** 1225-1231, 1260-1266 (law of war, control of weapons)

**DM:** Sigmund Freud, *Thoughts for the Times on War and Death* (1919)


**TOPIC 24:** THE LAW OF FORCE AND THE USE OF FORCE: MODERN WAR AND MODERN LAW

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