Doctrinal Area of Study – Public International Law

Law and Justice in a Globalizing World: *Reimagining the Role of International Law*

**Discourse: Public International Law**
**Sub-Discourse: Global Studies**

The course *Law and Justice in Globalizing World* will discuss the framework of international law in a globalizing world with the presumption that globalization is an ongoing, continuous, and complex process. Issues relating to the relationship between international law and globalization pose challenges to establishing a rule of law society. Standing against such challenges necessitates a foundational analysis of the concept and phenomena of globalization. The basic idea is to provide a historical, phenomenological, and epistemological framework to appreciate the causal forces that put the world into a globalizing mode. The framework also helps to delve deep into the dynamics of globalization as to how it works in the various chosen “sites” of globalization through the relevant players. In the process one can witness the resurgence of market and transnational bourgeois, virtually threatening the *status quo* of human beings in the global process.

This analytical standpoint provides means to see the role of “humans” and their “rights” elements in an increasingly globalizing and intensifying world. Question are asked on whether international law and institutions—the means of globalization—sufficiently supports or takes into account human rights concerns given that the focus has been on markets and greater progress has being made in the field of trade and development, simultaneously leading to questions relating to the extent to which human rights law takes into account globalization, trade and economic interests. As a point of departure from these inquiries to further disciplinary domains is the central question whether a
human rights system premised on state responsibility—the foundational doctrine of international law—to respect and ensure human rights can be effective in a globalized world.

The course is divided into three units:

Part I provides an overview of the theory and practice of globalization. It lays emphasis on the phenomenological, spatio-temporal, and socio-economic aspects of globalization. Then the course will introduce students to concepts that make public international law the instrument of global ordering and reordering and those that mark the boundaries between public international law and neighboring conceptions of international order and domestic law. It will situate international law as an ordering device seeking a middle path between morality and coercion, with formal characteristics seeking to be distinct from non-legal (“political”) methods and commitments. Despite the attempt to overcome these antinomies, international law remains reducible to its formal sources on one hand, and sovereign will on the other. In fact the case in question is a case of push-pull between classicism and modernism.

Part II will cover substantive issues of public international law, dealing with Law of State Responsibility, Nature of International Organizations, Means of International Dispute Settlement, Rights and Duties of State and Non State Actors under International Law, Human Rights, and the Law of War.

Part III first aims to throw light on the various notions of justice and the changing conceptions of justice as the global consciousness expands and the material world contracts in the process of globalization. Then particular emphasis will be laid on whether current state of international legal system can be an effective tool to promote economic, social and cultural rights and thus social justice in a globalizing world, and will consider the circumstances under which these international legal norms operate with reference to regulation of transnational corporations, corporate actions resulting in human rights and environmental (in) justices, building on frameworks identified in Part II of the course, and will further consolidate with discussions relating to theoretical, legal and institutional issues of notion of global justice and its implementation. The central idea of the course is to explore how international law in its present form will bring about or impede global justice. Students will in particular be encouraged to develop a developing countries perspective.
Learning Outcomes

STUDENT ASSESSMENT

A. **Class Participation** (10%): Participants will be assessed on the basis of their “effective participation” in class-discussions.

Effective participation means, but not limited to:
1. Spectrum-views on the concept/theory/issue under discussion
2. Ability to provide inputs to the instructor to carry a certain point forward
3. Co-relate course-specific concepts/theory/issue to frontier disciplines
4. Pose foundational challenges, well supported by authorities, as if doubts, to the concepts/theory/issue in question
5. Ability to ratiocinate, build syllogisms, apophasis, and adopt similar discursive practices
6. Correlate social developments with law and legal policy, respectively
7. Identify legal issues (and their possible resolution thereof) around globalization

B. **Fiction** (10 %): A write-up on your personal experience of globalization storyfied and then theorize the same through a discourse drawn on relevant scholarship.

C. **Research Paper and Viva** (30% + 20%)

D. **Endterm Examination** (30%): They will be an end-semester take-home theory examination for all participants of the course who have successfully completed the course work. To pass this course, students must obtain a minimum of 50% of total course marks.
Course Curriculum/Core Topics

- The Concept of Globalization
  Role of International Law in Globalization: What is International Law? (Some Existential Questions)
- “Sources” of International Law
- International Law and the Classicism “Sovereignty”: Statehood
- State Responsibility
- International Settlement of Disputes
- International Organizations
- Human Rights and IHL
- Normative Framework of Justice—Scope, Function and Content of Justice
- Notions of International Justice: Institutions and Enforcement
- Globalization and Implications for Justice – Sovereign Justice v Global Justice
The course combines reading groups, lectures, and discussions. Every module will be introduced by the instructor through lectures or a base-material (a research paper or excerpt from a book or a video for home-watching). In case of the reading group, the instructor will design discursive pattern for the group keeping in mind the nature of the module. Whether the method is a reading group or lecture, the base-material (in case of lectures it will be PPTs) will be made available to the participants as homework-material.

There will be a second-round lecture/discussion on the homeworked-material wherein the instructor will try to epistemologically situate the entire module as a polemical component of an existing discourse. The idea is to situate a certain event/development/doctrine, giving it a certain character in relation to what is deemed as contemporaneity in international law and relations.
COURSE MANUAL

Law and Justice in a Globalizing World

Fall 2019
(AY 2019-20)

Instructor
Sreejith S.G., M.Phil. (JNU), LL.D. (Lapland) Professor and Vice Dean

Assistant Instructor
Vinitika Vij LL.M. (Cantab), Research Associate
## PART I

**General Information**

General Information on, “Law and Justice in a Globalizing World”, offered by the Jindal Global Law School of the AY 2019-20

_The information provided herein is by the Course Coordinator. The following information contains the official record of the details of the course._

_This information shall form part of the University database and may be uploaded to the KOHA Library system and catalogued and may be distributed amongst LL.M. students if necessary._

<table>
<thead>
<tr>
<th>Course Title:</th>
<th>Law and Justice in a Globalizing World</th>
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<tr>
<td>Course Duration:</td>
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<tr>
<td>No. of Credit Units:</td>
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<td>Level:</td>
<td>Postgraduate</td>
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Law and Justice in a Globalizing World: Reimagining the Role of International Law

LLM Fall Semester 2019

**Course Instructors:** Prof. (Dr.) Sreejith S.G.
**Assistant Instructor:** Ms. Vinitika Vij

Professor Sreejith S.G., Office hours (at T1-329, Fourth Floor): Tuesday 6 pm to 8 pm sgsreejith@jgu.edu.in. Appointments can also be fixed through email for other days.

I. Course Overview and Aims

The course *Law and Justice in Globalizing World* will discuss the framework of international law in a globalizing world with the presumption that globalization is an ongoing, continuous, and complex process. Issues relating to the relationship between international law and globalization pose challenges to establishing a rule of law society. Standing against such challenges necessitates a foundational analysis of the concept and phenomena of globalization. The basic idea is to provide a historical, phenomenological, and epistemological framework to appreciate the causal forces that put the world into a globalizing mode. The framework also helps to delve deep into the dynamics of globalization as to how it works in the various chosen “sites” of globalization through the relevant players. In the process one can witness the resurgence of market and transnational bourgeois, virtually threatening the *status quo* of human beings in the global process.

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The course is divided into three units:

Part I provides an overview of the theory and practice of globalization. It lays emphasis on the phenomenological, spatio-temporal, and socio-economic aspects of globalization. Then the course will introduce students to concepts that make public international law the instrument of global ordering and reordering and those that mark the boundaries between public international law and neighboring conceptions of international order and domestic law. It will situate international law as an ordering device seeking a middle path between morality and coercion, with formal characteristics seeking to be distinct from non-legal (“political”) methods and commitments. Despite the attempt to overcome these antinomies, international law remains reducible to its formal sources on one hand, and sovereign will on the other. In fact the case in question is a case of push-pull between classicism and modernism.
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The contents of the course as well as readings are subject to change.

II. Teaching method (class specific)

The course combines reading groups, lectures, and discussions. Every module will be introduced by the instructor through lectures or a base-material (a research paper or excerpt from a book or a video for home-watching). In case of the reading group, the instructor will design discursive pattern for the group keeping in mind the nature of the module. Whether the method is a reading group or lecture, the base-material (in case of lectures it will be PPTs) will be made available to the participants as homework-material.

There will be a second-round lecture/discussion on the homeworked-material wherein the instructor will try to epistemologically situate the entire module as a polemical component of an existing discourse. The idea is to situate a certain event/development/doctrine, giving it a certain character in relation to what is deemed as contemporaneity in international law and relations.

III. Reading list

Students are expected to have read the required readings done before each class. Mandatory readings will be sent by the instructor. Suggested readings can be accessed from the library.

IV. Class Policies

Plagiarism (class-specific policy)

Plagiarism, in any form, will be least tolerated. Participants of the course, if found guilty of plagiarism, will be subject to disciplinary action as per the relevant university policy. To avoid plagiarism, the instructor recommends the following:

1. Acknowledge by way of a citation whatever is borrowed
2. Put in quotation any sentence in which more than 12 words are in a sequence
3. To the maximum extent possible, paraphrase others ideas and then acknowledge them through citations
4. Make all borrowings, which are more than 50 words in a sequence, into a block quote
However,

5. Copying lines (more than 12 words in a sequence) or passages from other sources, not citing them, and writing the name of the source as reference in the end of the paper will be deemed plagiarism.

6. After copying lines in which there are more than 12 words in a sequence and providing a citation at the end of a line or paragraph will also be deemed plagiarism.

7. Copying others assignment, though they are original, will be considered plagiarism.

**Cell Phones**

Use of cell phones is strictly prohibited during the class. In case participants happen to have them at hand, they shall be kept switched off or in flight mode.

**Laptops and Similar Gadgets**

Participants can use laptops in the classroom for accessing the reading materials and other learning-related purposes. However, such gadgets shall in no case be used for purposes other than learning-related. In no case social networking sites, emails, etc. shall be access in the classroom.

**V. Assessment (class specific)**

The marks for this course will be given as follows:

E. **Participation** (10%): Participants will be assessed on the basis of their “effective participation” in class-discussions.

Effectively participation means, but not limited to:

9. Ability to provide inputs to the instructor to carry a certain point forward.
11. Pose foundational challenges, well supported by authorities, as if doubts, to the concepts/theory/issue in question.
12. Ability to ratiocinate, build syllogisms, apophasis, and adopt similar discursive practices.
13. Correlate social developments with law and legal policy, respectively.

F. **Fiction** (10%): A write-up on your personal experience of globalization storyfied and then theorize the same through a discourse drawn on relevant scholarship.

G. **Research Paper and Viva** (30% + 20%)

H. **Endterm Examination** (30%): They will be an end-semester take-home theory examination for all participants of the course who have successfully completed the course work. To pass this course, students must obtain a minimum of 50% of total course marks.
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<tr>
<th>Letter Grade</th>
<th>Percentage of marks</th>
<th>Grade Definitions</th>
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<tbody>
<tr>
<td>O</td>
<td>80% and above</td>
<td>Outstanding work with strong evidence of knowledge of the subject matter, excellent organizational capacity, ability to synthesize and critically analyse and originality in thinking and presentation.</td>
</tr>
<tr>
<td>A+</td>
<td>75 to 79.75%</td>
<td>Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize critically and analyse.</td>
</tr>
<tr>
<td>A</td>
<td>70 to 74.75%</td>
<td>Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.</td>
</tr>
<tr>
<td>A-</td>
<td>65 to 69.75%</td>
<td>Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.</td>
</tr>
<tr>
<td>B+</td>
<td>60 to 64.75%</td>
<td>Limited knowledge of the subject matter, irrelevant use of materials and poor critical and analytical skills.</td>
</tr>
<tr>
<td>B</td>
<td>55 to 59.75%</td>
<td>Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials.</td>
</tr>
<tr>
<td>B-</td>
<td>50 to 54.75%</td>
<td>“Pass” in a pass-fail course. “P” indicative of at least the basic understanding of the subject matter.</td>
</tr>
<tr>
<td>F</td>
<td>Below 50%</td>
<td>Fails in the subject</td>
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VI. Institutional Policies

*Academic Integrity and Plagiarism*
Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

Disability Support and Accommodation Requirements

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student’s overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality of its discussions. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will approve of and coordinate all disability related services such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

All faculty members are requested to refer students with any of the above-mentioned conditions to the Disability Support Committee for addressing disability-related accommodation requirements.

Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.

Part I

Week 1 to 4: The Concept of Globalization

Topics

2. The Role of Markets in Globalization
3. Major players in a globalizing world
4. “Sites” of globalization
5. Globalization as it is in law—a rights-based perspective

**Key questions:**

- Has space-time been an effective analytic, beyond a metaphor, in understanding the forces of globalization and in addressing global problems?
- Has market interest become a mindset? How is it in contrast to common interest?
- What is the role of Transnational Capitalist Class in globalization?
- Of what utility are the various “sites” of globalization?
- What transformation has happened to the form and substance of law in globalization?

**Reading Group/s**


**Reading List (Selected)**


**FLIGSTEIN, NEIL, MARKETS, POLITICS, AND GLOBALIZATION** (1997).


**Week 5 and 6: Role of International Law in Globalization: What is International Law? (Some Existential Questions)**

**Reading Group/s**


**Topics**

1) International law as the means and medium of globalization  
2) International law post its normative existence  
3) The organic idea of international law  
4) A post global international law?

**Week 7: “Sources” of International Law**

**Readings**


Y. Dinstein, Customary International Law


Topics
- Role of Article 38(1) in international law
- Sources of international law from a rationalist perspective
- Role of scholars in international norm making
- Contribution of ICJ in international law making—dissenting and separate opinions

Week 8: International Law and the Classicism “Sovereignty”: Statehood

Readings


Kanishka Jayasuriya, Globalization, Law, and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance


After a series of short passages and discussions on the normative foundations of sovereignty (state based order) and cosmopolitanism (order and cooperation beyond the state), we will read three long articles surveying three core aspects of this class.

Week 9: State Responsibility

Reading

United States Diplomatic and Consular Staff in Tehran (United States v. Iran), ICJ (1980)

Discussion Questions

1.) What is diplomatic protection? How does it differ from judicial protection?

2.) What standard of treatment applies in cases of diplomatic protection?

3.) Who can make complaints under the law of diplomatic protection, and on whose behalf can such complaints be made?

4.) What are the two requirements for an internationally wrongful act of State?


6.) What are circumstances precluding wrongfulness, and what role do they play in the law of State responsibility?

7.) Discuss the legal duties of a State which has committed an internationally wrongful act of State.

8.) What role do “serious breaches” of *jus cogens* play in the law of State responsibility?

9.) Discuss standing in the context of State responsibility.
10.) In *Terrorism and the State: Rethinking the Rules of State Responsibility* (2006), Becker argues that, at least in the context of terrorism, State responsibility principles of agency and after-the-fact ratification should be supplemented by a focus on causation. He asserts that “State involvement in terrorism is not a case of marionette and puppeteer. It is more about acquiescence than direction and control, more about facilitation by quiet encouragement than specific instructions, more about omission than commission” (258). Do you agree? Argue both sides.

**Week 10: International Settlement of Disputes**

**Reading**

Gabčíkovo Nagymaros

Nuclear Weapons

UN Charter, at arts. 33-38, 52-54


For further information on international courts and tribunals and their case law, see [http://pict-pcti.org/](http://pict-pcti.org/).

**Discussion Questions**

4.) Discuss the distinct approaches that Judges Higgins and Guillaume and Koskenniemi take to the “babel of judicial voices.”

**Week 11: International Organizations**

**Reading**


Reparation for Injuries Suffered in the Service of the United Nations, ICJ (1949)

Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, ICJ (1980)

Legality of the Use by a State of Nuclear Weapons in Armed Conflict, ICJ (1996)

Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (1975)

Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986)

International Law Commission, *Text of the Draft Articles on Responsibility of International Organizations Adopted By the Commission on First Reading*, in Report on the Work of Its Sixty-First Session (2009), supp. no. 10 (A/64/10), 19

**Discussion Questions**

1.) What is an international organization? Discuss.

2.) Discuss the concept of international legal personality, making reference to the International Court of Justice’s *Reparations* Advisory Opinion (1949) in your answer.

3.) Discuss the effectiveness/implied powers doctrine that the International Court of Justice referred to in *Reparations*. Does this doctrine mean that the constitutive instruments of international organizations are “blank slates” upon which can be painted whatever powers the interpreter wishes the international organization at issue to possess? Discuss.

4.) In paragraph 10 of its *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* Advisory Opinion (1996), the International Court of Justice stated: “Consequently, three conditions must be satisfied in order to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion must be duly authorized, under the Charter, to request opinions from the Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency (cf. *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I. C. J. Reports* 1982, pp. 333-334).” What did the International Court of Justice conclude as regards each of these three conditions? Pay particular attention to the third condition in your response.

5.) Does paragraph 94 of the International Court of Justice’s *Kosovo* Advisory Opinion (2010) provide a useful template for interpreting resolutions adopted by principal organs of international organizations generally, or is its applicability limited to the specific context of Security Council Resolutions? Discuss. *Note:* The relevant paragraph will be handed out during seminar, and no prior preparation is necessary.

**Week 10: Human Rights and IHL (Class by Swati Bisen)**

**Reading**


Read the ICCPR and three regional instruments

Samuel Moyn, *The Last Utopia*

Stefan-Ludwig Hoffmann, *Human Rights in the Twentieth Century: Human Rights in History*


http://www.icrc.org/eng/resources/documents/misc/57jmrt.htm

http://www.nytimes.com/2014/03/14/world/us-affirms-stance-that-rights-treaty-doesnt-apply-abroad.html?_r=0

Danchin_Claims-of-Culture-and-Religion.pdf


Fredric Megret, 18 Vignettes on the Critique of Rights (will forward book)


**Key Questions:**

1) What is the relationship between human rights law and IHL (law of armed conflict)?

2) Are human rights “categorical” (by their very nature non-derogable) and IHL rules by their nature consequentialist (relying on cost-benefit calculations)?

3) What are the stakes of the confrontation between conceptions of human rights and conceptions of “culture”?

4) How can rights be a tool of emancipation notwithstanding their historical, philosophical, and political limitations?

**Part III**

**Week 11.** Normative Framework of Justice—Scope, Function and Content of Justice

**Week 12:** Notions of International Justice: Institutions and Enforcement

**Week 13:** Globalization and Implications for Justice – *Sovereign Justice v Global Justice*

**Week 14:** Concept Mapping/Global Constitutionalism: Future Directions in Achieving Justice in a Globalizing World.

**Key Questions:**

After the completion of Part III, students should be in a position to address the following key questions, drawing from their course reading and disciplinary understanding in other modules:

With the structural transformation that is taking place in the international society – whether the current state of international legal system and its rules are enablers in realization of the goals of law and justice?

1. Whither concrete definitions of justice in an international society.
2. What is the role of international law in ensuring justice in a globalizing world?

3. What is the changing role of Nation State in a globalizing world?

4. What is the importance of global constitutionalism for international legal framework? And its role in ushering economic and social change?

**Essential Readings**


