



INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

International Law

Academic year 2021-2022

The Trade of International Lawyer: Anatomy of a Profession

DI138 - Printemps - 6 ECTS

Monday 10h15 - 12h00

Course Description

International law can be defined in numerous ways. Taking a profession-focused standpoint, this course will approach international law as something that a group of professionals do in various professional capacities (academic, litigation counsel or advocate, activist, legal advisor to a government or an international organization). The objective of the course is to identify and discuss various projects that those professionals pursue under the banner of international law with a particular focus on the professional language, unarticulated background assumptions and blind spots that unite the members of each particular professional group as well as distinctions and hierarchies that separate them from each other.

> PROFESSOR

[Fuad Zarbiyev](#)

[Office hours](#)

> ASSISTANT

Irene Miano

[Office hours](#)

Syllabus

Format of the course

The course will take the form of interactive seminars where active participation in class discussions is wholeheartedly encouraged and expected.

Assessment

Assessment for this course will be based on a reaction paper that each student is required to write (20 %) and on a take-home exam (80 %).

1. The students are free to choose the specific session for which they want to write their reaction papers. The latter, limited to a maximum of 1500 words, shall be based on the readings assigned for the specific sessions, but shall reflect the personal take of the reaction paper writer. The reaction papers must be submitted by midnight on Saturday before the week of the session they relate to.
2. The take home exam will take the form of an essay on a cross-cutting question. The students will have a choice between two essay topics.

Structure

Session 1: Introduction to an Actor-Focused Approach to the Legal Profession

(February 21, 2022)

Readings:

- Mikhail Xiafaras, "The Theory of Legal Characters" (forthcoming in *Colorado Law Journal*).

Session 2: What is International Law and How Does One Do Things with it?

(February 28, 2022)

Readings:

- Ian Hurd, HOW TO DO THINGS WITH INTERNATIONAL LAW (Princeton University Press 2017), pp. 47-57
- David Kennedy, My Talk at the ASIL: What is New Thinking in International Law?, 94 *ASIL Proc* 104 (2000), pp. 104-112
- Martti Koskenniemi, What is International Law For? in Martti Koskenniemi, THE POLITICS OF INTERNATIONAL LAW (Hart Publishing 2011), pp. 241-267

Session 3: The Structure of the International Legal Profession

(March 7, 2022)

Readings:

- Anthony D'Amato, Public International Law as a Career, 1 *American University International Law Review* (1986), pp. 5-16
- Jean d'Aspremont, The Professionalisation of International Law in Jean d'Aspremont et al (eds.), INTERNATIONAL LAW AS A PROFESSION (Cambridge University Press 2017), pp. 19-37
- Pierre Bourdieu, The Forms of Capital, in J.E. Richardson (ed.) HANDBOOK OF THEORY OF RESEARCH FOR THE SOCIOLOGY OF EDUCATION (Greenwood Press 1986), pp. 241-258
- Pierre Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, 38 *Hastings Law Review* (1987), pp. 814-853
- David Kennedy, My Talk at the ASIL: What is New Thinking in International Law?, 94 *ASIL Proc* 104 (2000), pp. 112-125
- Christopher F. Schuetze, A Bigger World of International Law, *New York Times*, 5 October 2014

Session 4: Legal Advisors to Governments: Consigliere or the Voice of Conscience of International Law?

(March 14, 2022)

Readings:

- Gerald Fitzmaurice, Legal Advisers and Foreign Affairs, *The American Journal of International Law*, vol. 59 (issue1, 1965), pp. 72-86
- Martti Koskenniemi, Between Commitment and Cynicism in Jean d'Aspremont et al (eds.), *INTERNATIONAL LAW AS A PROFESSION* (Cambridge University Press 2017), pp. 38-66
- Matthew Windsor, Consigliere or Conscience? in Jean d'Aspremont et al (eds.), *INTERNATIONAL LAW AS A PROFESSION* (Cambridge University Press 2017), pp. 355-388
- Michael Wood, The Iraq Inquiry: Some Personal Reflections, *British Yearbook of International Law*, vol. 87 (Issue 1, 2017), pp. 149–158

Session 5: Legal Advisors to International Organizations: Walking the Fine Line between theAutonomy and Dependence

(March 21, 2022)

Readings:

- Francis Maupain, Gardien du patrimoine ou inventeur juridique? Le rôle du conseiller juridique d'une organization internationale face au changement in *COLLECTION OF ESSAYS BY LEGAL ADVISORS OF STATES, LEGAL ADVISORS OF INTERNATIONAL ORGANIZATIONS AND PRACTITIONERS IN THE FIELD OF INTERNATIONAL LAW* (United Nations New York 1999), pp. 259-284
- The Role of the Legal Advisor of an Intergovernmental Organization Interview with Alfons A.E. Noll, Former Legal Advisor of the International Telecommunication Union, in *COLLECTION OF ESSAYS BY LEGAL ADVISORS OF STATES, LEGAL ADVISORS OF INTERNATIONAL ORGANIZATIONS AND PRACTITIONERS IN THE FIELD OF INTERNATIONAL LAW* (United Nations New York 1999), pp. 285-313
- Guy Fiti Sinclair, From Collective Security to Peacekeeping (Chapter 3 in Guy Fiti Sinclair, *TO REFORM THE WORLD: INTERNATIONAL ORGANIZATIONS AND THE MAKING OF MODERN STATES*, OUP 2017), pp. 113-159

Session 6: International Law as an Advocacy Tool

(March 28, 2022)

Readings:

- Kenneth Anderson, The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society", *European Journal of International Law*, vol. 11 (2000), pp. 91-120
- Jon Elster, Deliberation and Constitution Making, in Jon Elster (ed.), *DELIBERATIVE DEMOCRACY*, Cambridge, CUP, 1998, pp. 97-122 (read p. 111)
- Marlies Glasius, Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court, in M. Glasius and M. Kaldor (eds), *GLOBAL CIVIL SOCIETY* (Oxford University Press 2002), pp. 137-168
- Ryan Goodman & Derek Jinks, *SOCIALIZING STATES. PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (Oxford University Press 2013), pp.150-154
- Marie Törnquist-Chesnier, NGOs and International Law, *Journal of Human Rights*, vol. 3 (issue 2, 2004), pp. 253-263

Session 7: International Adjudicators I: International Judges

(April 4, 2022)

Readings:

- Martti Koskenniemi, The Ideology of International Adjudication and the 1907 Hague Conference, in *TOPICALITY OF THE 1907 HAGUE CONFERENCE* (Brill 2008), pp. 127-152
- Mary Ellen O'Connell & Lenore Vanderzee, The History of International Adjudication, in Cesare PR Romano et al (eds.), *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* (Oxford University Press 2014), pp. 40-62
- Daniel Terris et al (eds.), *THE INTERNATIONAL JUDGE. AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES* (Oxford University Press 2007), pp. 1-38
- Shirley V. Scott, Litigation versus Dispute Resolution through Political Processes, in Natalie Klein (ed.), *LITIGATING INTERNATIONAL DISPUTES. WEIGHING THE BALANCE* (Cambridge University Press 2014), pp. 24-41
- Eric Voeten, International Judicial Behavior, in Cesare PR Romano et al (eds.), *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* (Oxford University Press 2014), pp. 550-568

Session 8: International Adjudicators II: International Arbitrators

(April 11, 2022)

Readings:

- Sir Michael Wood, Choosing between Arbitration and a Permanent Court: Lessons from Inter-State Cases, *ICSID Review - Foreign Investment Law Journal*, vol. 32 (issue 1 2017), pp. 1–16
- Yves Dezalay & Bryant Garth, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (University of Chicago Press 1996), (chapter 2) pp. 18-30
- Christopher R. Drahozal, Contracting out of National Law: An Empirical Look at the New Law Merchant, *Notre Dame Law Review*, vol. 80 (2005), pp. 523-552

Session 9: International Litigation Counsel and Advocates

(April 25, 2022)

Readings:

- James Crawford, The International Law Bar in Jean d'Aspremont et al (eds.), *INTERNATIONAL LAW AS A PROFESSION* (Cambridge University Press 2017), pp. 338-354
- Alain Pellet, The Role of the International Lawyer in International Litigation, in Ch. Wickremasinghe (ed.), *THE INTERNATIONAL LAWYER AS PRACTITIONER* (B.I.I.C.L. London 2000), pp. 147-162
- Sara Dezalay & Yves Dezalay, Professionals of International Justice, in Jean d'Aspremont et al (eds.), *INTERNATIONAL LAW AS A PROFESSION* (Cambridge University Press 2017), pp. 311-337
- Yves Dezalay and Bryant Garth, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (University of Chicago Press 1996) (chapters 4 and chapter 5), pp. 72-120

Session 10: The Invisible Players of International Adjudication: Lawyers in the Administrative Services of International Courts and Tribunals

(May 2, 2022)

Readings:

- Nathalie Wiles, The International Court of Justice in Freya Baetens (ed.), *LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION* (Cambridge University Press 2019), pp. 31-42
- Philippe Gautier, The International Tribunal for the Law of the Sea in Freya Baetens (ed.), *LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION* (Cambridge University Press 2019), pp. 43-50
- Bridie McAsey, International Arbitral Institutions in Freya Baetens (ed.), *Legitimacy of Unseen Actors in International Adjudication* (Cambridge University Press 2019), pp. 51-69

- Daniel Ari Baker & Gabrielle Marceau, The World Trade Organization in Freya Baetens (ed.), LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION (Cambridge University Press 2019), pp. 70-91
- Philipp Ambach, The International Criminal Court in Freya Baetens (ed.), LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION (Cambridge University Press 2019), pp. 92-107
- Ledi Bianku & Peter Kempees, The European Court of Human Rights in Freya Baetens (ed.), LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION (Cambridge University Press 2019), pp. 108-120
- Joost Pauwelyn & Krzysztof Pelc, Who Writes the Rulings of the World Trade Organization? A Critical Assessment of the Role of the Secretariat in WTO Dispute Settlement (Working Paper October 2019)

Session 11: International Legal Scholars: Between the Ethos of Internationalism and National, Ideological and Professional Interests
(May 9, 2022)

Readings:

- Hilary Charlesworth, International Law: A Discipline of Crisis, *Modern Law Review*, vol. 65 (2002), pp. 377-392
- Luigi Condorelli, A propos de l'attaque américaine contre l'Irak du 26 juin 1993: Lettre d'un professeur désespéré aux lecteurs du JEDI, *European Journal of International Law*, vol. 5 (issue 1 1994), pp. 134-144
- Gilles Cuniberti, Three Theories of *Lex Mercatoria*, *Columbia Journal of Transnational Law*, vol. 52 (2014), pp. 369-423
- Yves Dezalay, From Mediation to Pure Law: Practice and Scholarly Representation within the Legal Sphere, *International Journal of the Sociology of Law*, vol. 14 (1986), pp. 89-107
- Gleider Hernández, The Responsibility of the International Legal Academic in Jean d'Aspremont et al (eds.), INTERNATIONAL LAW AS A PROFESSION (Cambridge University Press 2017), pp. 160-188
- David Kennedy, A New World Order: Yesterday, Today, and Tomorrow, *Transnational Law & Contemporary Problems*, vol. 4 (1994), pp. 329-341
- Mario Prost, "The Division of Expert Labor in the International Law Discipline: Genealogies of Fragmentation," *Proceedings of the ASIL Annual Meeting* vol. 105 (2011), pp. 127-30.
- Andrew Abbott, "Status and Status Strain in the Professions," *American Journal of Sociology* vol. 86, no. 4 (1981), pp. 819-35.

Session 12: The International Legal Profession and the Global Gender Divide
(May 16, 2022)

Readings:

- Shashank P. Kumar & Cecily Rose, A Study of Lawyers Appearing before the International Court of Justice, 1999-2012, *European Journal of International Law*, vol. 25 (2014), pp. 893-917
- Marc L. Busch, Eric Reinhardt & Gregory Shaffer, Does Legal Capacity Matter?, *World Trade Review*, vol. 8 (2009), pp. 559-577
- Nienke Grossman, Feminist Approaches to International Adjudication, Max Planck Encyclopedia of Public International Law (online edition, 2019), Section B ("Feminist Approaches to International Adjudication: Decision-Makers")
- Susan D. Franck et al., The Diversity Challenge: Exploring the "Invisible College" of International Arbitration, *Columbia Journal of Transnational Law*, vol. 53 (2015), pp. 429-506

Session 13: The International Legal Profession and the Global North-South Divide
(May 23, 2022)

Readings:

- Liliana Obregón, "The Colluding Worlds of the Lawyer, the Scholar and the Policy Maker: A View of International Law and Foreign Policy from Latin America," *Wisconsin International Law Journal*, vol. 23, no. 1 (2005), pp. 145–72.
- Victor Kattan, "Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the South West Africa Cases," *Asian Journal of International Law*, vol. 5, no. 2 (2015), pp. 310–55,
- Usha Natarajan et al., "Introduction: TWAIL - on Praxis and the Intellectual," *Third World Quarterly*, vol. 37, no. 11 (2016), pp. 1946–56.
- Georges Abi-Saab, "The Third World Intellectual in Praxis: Confrontation, Participation, or Operation behind Enemy Lines?," *Third World Quarterly*, vol. 37, no. 11 (2016), pp. 1957–71.
- M. Sornarajah, "The Myth of International Contract Law," *Journal of World Trade* vol. 15, no. 3 (1981), pp. 187–217.

Session 14: Conclusion: Trends and Prospects in the International Legal Profession
(May 30, 2022)