

**JOHN PAUL II CATHOLIC UNIVERSITY OF LUBLIN, POLAND
DEPARTMENT OF NEGOTIATIONS AND MEDIATION
FULBRIGHT LECTURES**

GLOBAL FINANCE & INTERNATIONAL FINANCIAL CRIMES

APRIL 4-14, 2016

Professor Rumu Sarkar (LL.M., Ph.D.)(Cantab)

This course gives participating students an introduction to a basic analytical framework of international development law. The course will specifically examine the role of global finance in the process of economic development, and highlight recent trends within emerging capital markets. Following this introduction, the course will critically examine the three principle means of disrupting global capital markets: illicit crimes, financing terrorism, and corrupt practices.

The primary objective of this course will be to focus on the international legal framework for analyzing and providing the means by which international financial crimes, including those done in concert with Transnational Organized Crimes (TOC), are prosecuted and punished. The role of coordinating international and local police forces, gendarmerie and prosecutorial functions will be explored. The convergence of TOC crimes and networks with international extremist-led terrorist groups will be explored at length. The role of corruption will also be critically examined. An overview of the U.S. judicial system and methods for prosecution of such crimes will also be presented for discussion and review.

As part of the teaching approach, the course will emphasize the in-class participation of students. Students will be expected to make in-class group presentations that will give them the opportunity to develop analytical and negotiating skills in dealing with actual problems. In-class presentations of their findings and the results of their negotiated in-class exercises will be required of the student participants.

The class lectures will take place over a condensed period of two weeks and will focus on three discrete aspects of international development law and global finance: (1) the theoretical foundations of the subject; (2) creating, sustaining and innovating a new global financial architecture; and, (3) discussing certain practical aspects in identifying, investigating and prosecuting transnational financial crimes as part of an international effort that has many complex legal and ethical implications.

The course is designed to give students concrete skills in how to: (1) analyze various factors impeding capital market development; (2) develop a structural legal framework based on practical approaches that support economic development; and, (3) prosecute international financial crimes committed by TOC organizations and terrorist networks.

Class Performance: Students will be required, to the extent feasible, to complete readings assigned before the start of the lectures and participate fully in class discussions. An assigned text will be required reading along with recommended readings that may be sourced from the internet. **There will be no final examination or grades assigned.**

CLASS SCHEDULE

APRIL 5, 2016		
Session 1 9:00-9:50am		Introduction and Organization of Course
Session 2 10:00-10:50am		Historical Trends in International Development Law
	Required Reading	Sarkar, INTERNATIONAL DEVELOPMENT LAW (Oxford University Press, 2009), Introduction, Chap. 1.
Session 3 11:00-12:00		International Financial Architecture: Poverty & Inequity
Lunch Break 12:00-1:00pm		
Session 4 1:00-1:50pm 2:00-2:50pm		International Borrowing: A New Financial Architecture?
	Required Reading	Sarkar, INTERNATIONAL DEVELOPMENT LAW , Chap. 5.
Session 5 3:00-4:00pm		Distribution of In-Class Exercise
APRIL 6, 2016		
Session 6 9:00-9:50am		Emerging Capital Markets: Financing Development
	Required Reading	Sarkar, INTERNATIONAL DEVELOPMENT LAW , Chap. 7.
Session 7 10:00-10:50am		Emerging Capital Markets: Trends in Global Finance (Continued)
	Required Reading	Sarkar, INTERNATIONAL DEVELOPMENT LAW , Chap. 7.
Session 8 11:00-12:00pm		In-Class Presentations by Students
Lunch Break 12:00-1:00pm		
Session 9 1:00-1:50pm		Introduction to the U.S. Judiciary System: Separation of Powers, and the Criminal Justice System

Session 10 2:00-4:00pm		[Law & Order Episode]
APRIL 7, 2016		
Session 11 9:00-9:50am		The Anatomy of Prosecuting TOC Crimes in the U.S.
Session 12 10:00-10:50am		A Comparison with Poland's Criminal Justice System: Student Observations & Views
Session 13 11:00-12:00		Transnational Organized Crime (TOC): Definition & History
Lunch Break 12:00-1:00pm		
Session 14 1:00-1:50pm		TOC: A Threat to Global Security
Session 15 2:00-2:50pm		The Convergence of TOC and Terrorist Networks
	Add't Readi ng	Sarkar, <i>The New Soldier in an Age of Asymmetric Conflict</i> (Vij, 2013), Introduction, Chaps. 1, 2, 4.
Session 16 3:00-4:00pm		Distribution of In-Class Exercise
APRIL 11, 2015		
Session 17 10:00-10:50am 11:00-12:00		International Legal Regimes to Identify, Investigate, and Prosecute TOC Crimes
Lunch Break 12:00-1:00pm		
Session 18 1:00-1:50pm		In-Class Presentations by Students
APRIL 12, 2015		
Session 19 10:00-10:50am		Global Terrorism's Impact on the Global Economy
Session 20 11:00-12:00		Distribution of In-Class Exercise
Lunch Break 12:00-1:00pm		
Session 21 1:00-1:50pm		Moral, Religious and Ethical Implications of the Rise of Islamic-Based Fundamentalist Terrorism

APRIL 13, 2015		
Session 22 10:00-10:50am		Corruption and Its Impact on the Law: FIFA Case Study
Session 23 11:00-12:00		Anti-Corruption Efforts & The Prevention of Terrorist Financing
Lunch Break 12:00-1:00pm		
Session 24 1:00-1:50pm		In-Class Presentations by Students
APRIL 14, 2015		
Session 25 10:00-10:50am 11:00-12:00		A Critique of International Development Law: Student Observations & Views Wrap Up Session: Q&As from Students Adjournment & Farewell

COURSE OUTLINE

I. THE THEORETICAL FOUNDATION FOR DEVELOPMENT LAW

Session 1: Introduction and Organization:

Explanation of course objectives; course management and academic requirements. Students will be expected to raise questions during the course of class lectures and participate in lively discussions. Three in-class exercises will be distributed, and the students will be divided into teams. The students must negotiate among themselves to come up with legally feasible, creative approaches to solving the problems presented in the exercises, and make in-class presentations. The objective of these exercises is to facilitate clear legal thinking and problem resolution while working collaboratively within a group setting.

Readings, both required and recommended, are set forth in this syllabus, and students will be expected to complete required reading assignments before the class takes place. Recommended readings are not required, but do add a backdrop of factual information and legal analysis that may be useful to students during the course and later.

Session 2: Historical Trends in International Development Law

A basic introduction to the main problems of poverty and underdevelopment and approaches. What is meant by development law, why is it important, and what is its relationship with other disciplines under the international law rubric? How can development law provide an environment in which sustainable development and economic growth can be encouraged? Can traditional Western law survive in light of the changing expectations of the societies of the developing world? The legal framework necessary for supporting economic reforms and institutional changes will be explored.

II. STRUCTURAL LEGAL REFORM OF THE FINANCIAL SECTOR

Session 3: International Financial Architecture: Poverty & Inequity

A key component to sustained economic growth is the reduction of poverty. The relationship of internal poverty and within-country inequalities will be contrasted with the unequal access to global markets. Does the global social compact promulgated by the World Bank and other multilateral and bilateral institutions reduce internal poverty, address social inequalities and bridge the gap to accessing global markets?

Should the social compact address human and social capital and emphasize good governance in the distribution of limited resources, or should development “results” be measured solely in empirical terms? How should a host government respond to the issue of individual and widescale corruption? What should the global community do in terms of corrupt practices: what solutions, approaches and penalties are offered within an international law context?

Who is winning and losing, and why? What can you do to change the results?

Session 4: International Borrowing: A New Financial Architecture?

A basic outline of the institutional context for international development financing will be presented. The multilateral approach of the Bretton Woods institutions and regional development finance institutions (the World Bank, IMF, IFC, MIGA, IABD, ABD, EBRD) will be discussed and compared to the bilateral approach of major donor countries (e.g., USAID, Export-Import Bank, OPIC, TDA). (The New Development Bank and the Asian Infrastructure Investment Bank will also be discussed in further detail in Session 7.)

Economies in transition will be examined to identify their principal dilemmas in instituting profound social change in support of continued economic growth. How should this process be managed and by whom and for what end?

Session 5: Distribution of In-Class Exercise

The Professor will distribute the in-class exercise which is a consolidated fact pattern giving rise to a number of legal and ethical issues. The students will be divided into three (3) teams and have an opportunity to discuss the exercise and pose questions for clarification to the Professor and the class before negotiating a solution to the exercise outside of class, if necessary.

Session 6-7: Emerging Capital Markets: Trends in Global Finance

The legal framework for supporting financial sector reform will be addressed. The flow of private capital to the developing world and the formation of capital markets within this context will also be reviewed. Certain trends in emerging markets will be explored, specifically: (1) different corporate structures; (2) different management styles; (3) new approaches to innovation in the marketplace; and (4) new corporate financing techniques.

Session 8: In-Class Exercise Presentations

Students will be expected to formulate strategies for designing and negotiating their in-class presentations. Students will negotiate the exercise outside of class, if necessary, and make in-class presentations. Students must be prepared to discuss their findings and solution-oriented approaches with their classmates.

III. THE PROSECUTION OF FINANCIAL CRIMES

Session 9: Introduction to the U.S. Judiciary System: Separation of Powers, and the Criminal Justice System

This module will give a brief overview and background into the history, and basic precepts of the U.S. criminal justice system. Constitutional issues such as the separation of powers among the three branches of government, namely, the executive, legislative and judiciary will be discussed and critically examined. The criminal prosecution system, and the roles of the actors in the system will be examined. The basic parameters of the rights of criminal defendants will be set forth and discussed.

Session 10: Video Presentation and Discussion of an Episode from Law & Order (U.S. Television series)

Session 11: The Anatomy of Prosecuting TOC Crimes in the U.S.

This session will give a hands-on glimpse into how a TOC crime would be prosecuted in the United States. This lecture will examine new trends in prosecuting financial and illicit crimes by the U.S Department of Justice, the

Securities and Exchange Commission, and by the New York Attorney General and other prosecutors in the United States. Several contrasting legal schemes of federal courts and military commissions and tribunals will be examined and contrasted. Case studies and new case law developments will be reviewed.

Session 12: A Comparison with Poland's Criminal Justice System

A basic discussion of Poland's criminal justice system will be explored and contrasted with the U.S. criminal justice system. Student participation in contrasting the rights of victims and criminal defendants in both systems will be vigorously pursued with lively in-class discussions expected.

Session 13: Transnational Organized Crime (TOC): Definition, & History

The definition of what comprises Transnational Organized Crime (TOC), the history of 22 major TOC organizations and networks, and their perpetuation of 19 major TOC crimes will be explored. The role of failed and failing states, ungoverned territories and a new emerging 21st paradigm of lawlessness and disorder as the backdrop for TOC will be explored.

Session 14: TOC: A Threat to Global Security

The trade in illicit goods and services, the hubs of the illicit global economy, and the formation of global TOC networks will be mapped out. The constant reformulation of TOC networks, and their combination with terrorist networks to support similar, but different, objectives through the use of fluid, ever changing alliances will also be reviewed. The role of corruption in government officials in furthering TOC crimes will also be addressed.

Session 15: The Convergence of TOC and Terrorist Networks

The use of illegal and underground networks, money laundering, and other schemes to generate funds through illicit trafficking in order to finance TOC and terrorist networks will be discussed. The theft of bank and national assets, and the use of other financial schemes will be critically examined.

Session 16: Distribution of In-Class Exercise

The Professor will distribute the in-class exercise which is a consolidated fact pattern giving rise to a number of legal and ethical issues. The students will be divided into three (3) teams and have an opportunity to discuss the exercise and pose questions for clarification to the Professor and the class before negotiating a solution to the exercise outside of class, if necessary.

Session 17: International Legal Regimes to Identify, Investigate, and Prosecute TOC Crimes

Several international legal regimes for combating TOC and related crimes will be discussed including, but not limited to: United Nations Convention Against Transnational Organized Crime (UNTOC) and its six protocols; United Nations Convention Against Corruption (UNCAC); Racketeering Influenced Corrupt Organization (RICO) Act, 18 USCA 1961, et seq.; Asset Forfeiture and Money Laundering Act, 18 USCA 1956; USA PATRIOT ACT, Public Law 107-56, (Oct 26, 2001); Foreign Corrupt Practices Act (FCPA), 18 USCA 78dd-1 (1977); and the Electronic Communications Privacy Act (ECPA), 18 USCA 2510 (1986).

The use of interagency and international collaboration to identify, investigate and combat TOC crimes will also be explored, including the roles of Interpol, the U.S. Federal Bureau of Investigation (FBI) and its role in the Paris bombings of 2015, and the U.S. Department of Defense in its counterterrorism efforts. The use of national and transnational strategies and tactics to control the contagion of TOC crimes will be explored. Using police as well as military forces on a national and international level will also be addressed and critically examined in terms of its legality and efficacy.

Session 18: In-Class Exercise Presentations

Students will be expected to formulate strategies for designing and negotiating their in-class presentations. Students will negotiate the exercise outside of class, if necessary, and make in-class presentations. Students must be prepared to discuss their findings and solution-oriented approaches with their classmates.

Session 19: Global Terrorism's Impact on the Global Economy

This wrap up session will examine how to measure the cumulative impact of global terrorism and TOC crimes in terms of its impact on the global economy. The downstream consequences of terrorist regimes and criminal networks on the international community will be open for discussion by the students.

Session 20: Distribution of In-Class Exercise

The Professor will distribute the in-class exercise which is a consolidated fact pattern giving rise to a number of legal and ethical issues. The students will be divided into three (3) teams and have an opportunity to discuss the exercise and pose questions for clarification to the Professor and the class before negotiating a solution to the exercise outside of class, if necessary.

Session 21: Moral, Religious and Ethical Implications of the Rise of Islamic-Based Fundamentalist Terrorism

How should the international community react to the rise of Islamic-based fundamentalism within Europe, Africa and North America? Is there a difference in combating terrorism within an advanced state vs. fighting it on a foreign territory? Should foreign policy and international military intervention be informed by moral, religious and ethics doctrines? If so, which doctrines should be applied?

Session 22: Corruption and Its Impact on the Law

What are the root causes of corruption and how does this affect an individual? The case study of FIFA will be examined in detail. What should the global community do in terms of corrupt practices: what solutions, approaches and penalties are offered within an international law context?

Session 23: Anti-Corruption Efforts and the Prevention of Terrorist Financing

This lecture will examine the vicious circle of committing illicit crimes by TOCs, using the ill-gotten gains to, in part, finance extremist-led terrorism, and the inner corruption of government and other officials fueling the process. What can be done to stop the vicious circle? Is prosecution enough? Should terrorists be militarily engaged? What role, if any, does the failure of development and the failure of the state play in this vicious circle?

Session 24: In-Class Exercise Presentations

Students will be expected to formulate strategies for designing and negotiating their in-class presentations. Students will negotiate the exercise outside of class, if necessary, and make in-class presentations. Students must be prepared to discuss their findings and solution-oriented approaches with their classmates.

IV. STUDENT-LED INTERVENTION

Session 25: Critique of International Development Law

In light of the foregoing discussions, this session will present some concluding thoughts, a critical analysis of International Development Law, and some observations and suggestions on how to strategize for the 21st century. What questions remain unanswered? The students will be expected to share in the concluding session by offering their own opinions on the relative successes and failures of International Development Law as a global undertaking for the past 60 years.

Wrap Up Session: Q&As from Students

REQUIRED READING

Rumu Sarkar, **INTERNATIONAL DEVELOPMENT LAW** (Oxford University Press, 2009), Introduction, Chaps. 1, 5, 7.

RECOMMENDED READING LIST AND INTERNET RESOURCES

Rumu Sarkar, **The New Soldier in an Age of Asymmetric Conflict** (Vij, 2013), Introduction, Chaps. 1, 2, 4. For an in-depth examination into Islamic-based fundamentalist terrorism, this is recommended reading.

Michael Miklaucic & Jacqueline Brewer (eds.), **Convergence: Illicit Networks and National Security in the Age of Globalization** (Center for Complex Operations, Washington, DC 2013).

Mustafa Akyol, “A Medieval Antidote to ISIS,” *New York Times*, (December 21, 2015), available at http://www.nytimes.com/2015/12/21/opinion/a-medieval-antidote-to-isis.html?_r=0 (Last visited on January 15, 2016).

Graeme Wood, “What ISIS Really wants,” *The Atlantic* (March 2015), available at <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/v> (Last visited on January 15, 2016).

FBI, “A Brief Description of the Federal Criminal Justice Process,” (undated), available at https://www.fbi.gov/stats-services/victim_assistance/a-brief-description-of-the-federal-criminal-justice-process (Last visited on January 15, 2016).

Unanimously Adopting Resolution 2199 (2015), Security Council Condemns Trade with Al-Qaida Associated Groups, Threatens Further Targeted Sanctions (February 12, 2015), available at <http://www.un.org/press/en/2015/sc11775.doc.htm> (Last visited on January 15, 2016).

United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2004, available at https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf. (Last visited on January 15, 2016). Contains the following Protocols:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
- Protocol; Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplanting the United Nations Convention against Transnational Organized Crime.

UN Convention against Corruption (2000), available at <https://www.unodc.org/unodc/en/treaties/CAC/>. (Last visited on January 15, 2016).
See generally UN Office on Drugs and Crime website, available at <http://www.unodc.org/unodc/index.html?ref=menutop> (Last visited on January 15, 2016).

U.S. Deputy Attorney General Sally Quillian Yates Delivers Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing (September 10, 2015) available at <http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school>. (Last visited on January 15, 2016).

For information concerning the much-publicized U.S. Department of Justice’s prosecutions of the LIBOR and Foreign Exchange (F/X) scandals, *see generally*, <http://www.justice.gov/criminal-fraud/libor-and-fx>. (Last visited on January 15, 2016).

For official DOJ FCPA Opinions, *see* <http://www.justice.gov/criminal-fraud/fcpa-opinions>. (Last visited on January 15, 2016).

For FCPA-related International Agreements, *see* <http://www.justice.gov/criminal-fraud/international-agreements>. (Last visited on January 15, 2016).

For a listing of anti-corruption sites from the United States and many other countries, *see* <http://www.justice.gov/criminal-fraud/anti-corruption-sites>. (Last visited on January 15, 2016).

Crime & Society (Poland), *see* <http://www-rohan.sdsu.edu/faculty/rwinslow/europe/poland.html>. (Last visited on January 15, 2016).

University of Minnesota Human Rights Library (Poland) Ratification of International Human Rights Treaties – Poland, *see* <https://www1.umn.edu/humanrts/research/ratification-poland.html> (Last visited on January 15, 2016).

