

International Law

Academic year 2020-2021

Global South and International Law

DI144 - Autumn - 6 ECTS

Tuesday 08h15 - 10h00 and Thursday 08h15 - 10h00

Please see schedule at end of syllabus

Class delivered by Zoom

Course Description

This class commences its study of the Global South and International Law by examining the role of international law in formulating relations between the European and non-European worlds and, more specifically, in justifying imperialism. We will study the doctrines, principles and theories developed for these purposes. We will then explore the efforts made by the states and peoples of the South to articulate alternative visions of global justice and transform international law. In this context we will examine debates surrounding particular areas of international law such as the use of force. We will approach these broad themes from historical, methodological and doctrinal perspectives by studying cases, classic texts, and contemporary scholarship regarding international legal theory and Third World Approaches to International Law.

> PROFESSOR

[Tony Anghie](#)

[Office hours](#)

> ASSISTANT

[Malavika Rao](#)

[Office hours](#)

Syllabus

Class One:

Introduction:

-Secretary-General Horatio Guterres-Nelson Mandela Annual Lecture

<https://www.un.org/sg/en/content/sg/statement/2020-07-18/secretary-generals-nelson-mandela-lecture-%E2%80%9Ctackling-the-inequality-pandemic-new-social-contract-for-new-era%E2%80%9D-delivered>

-James Gathii, *The Promise of International Law: A Third World View*, The Grotius Lecture, American Society of International Law (2020)

-Peter Malanczuk, *Akehurst's International Law* (Chapter One)

-Dipesh Chakrabarty, *Provincializing Europe* (2000) (extracts)

-Congyan Cai, 'New Great Powers and International Law in the 21st Century', *European Journal of International Law*, vol. 24(3), 755

-Georges Abi-Saab, 'The Third World intellectual in praxis: confrontation, participation, or operation behind enemy lines?', *Third World Quarterly* (2016) pp.1957-1971.

-Luis Eslava 'TWAIL Coordinates'<https://criticallegalthinking.com/2019/04/02/twail-coordinates/>

Class Two:

The Beginnings of International Law: Francisco de Vitoria

-Francisco de Vitoria, *De Indis Et De Ure Bellic Relectiones* ('On the Indians Lately Discovered') extracts.

-Robert Williams, *The American Indian in Western Legal Thought* (extracts)

-Georg Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans', *Journal of the History of International Law*, 10(2008) 181-209

Class Three:

The Beginnings of International Law: Hugo Grotius

-Grotius, *The Free Sea* (1609)

-Martine van Ittersum, 'The long good bye: Hugo Grotius' justification of Dutch expansion overseas', *History of European Ideas* 36 (2010) 386-411

-Benedict Kingsbury and Benjamin Straumann, 'The State of Nature and Commercial Sociability in Early Modern International Legal Thought', *Grotiana* 31 (2010) 22-43

-Jose-Manuel Barreto, 'Cerberus: Rethinking Grotius and the Westphalian System', in Martti Koskeniemi et.al, *International Law and Empire: Historical Explorations*,

Class Four:

Empire, Trade and Slavery:

-Ronald Robinson and John Gallagher, 'The Imperialism of Free Trade', *The Economic History Review*, New Series, vol. 6 No.1 (1953) 1-15

-Eric Williams, 'Capitalism and Slavery' in *From Columbus to Castro: the History of the Caribbean*, Vintage Books, (1970) Chapter 10.

-Mirja Trilsch, 'Protectorates and Protected States', *The Max Planck Encyclopedia of International Law*

-Christine Bell, 'Capitulations', *The Max Planck Encyclopedia of International Law*

-Janet McLean, 'The Transnational Corporation in History: Lessons for Today?', *Indiana Law Journal* vol. 79(2) pp. 363-377

-Koen Stapelbroek, 'Trade, Chartered Companies, and Mercantile Associations', Chapter 14, *Oxford Handbook of International Law*.

Class Five:

The Nineteenth Century and the Standard of Civilization

-John Westlake 'On the Title to Sovereignty' in John Westlake, *Chapters on Principles of International Law* (1894)

-Chi-Hua Tang, 'China-Europe' in *Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters, eds. Oxford University Press, 2013.

-Jorge Esquirol, 'Latin America' in *Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters, eds. Oxford University Press, 2013

-Liliana Obregon, 'The Civilized and the Uncivilized' in *Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters, eds. Oxford University Press, 2013

Treaties Including:

-The Treaty of Nanking (1842)

-The Berlin Act of 1885

Class Six:

The League of Nations and Self-Determination:

-Article 22 of the Mandate System of the League of Nations (see at the end of the Hall Readings)

-H. Duncan Hall, 'On the Roots of the Trusteeship System' *Mandates, Dependencies and Trusteeship* (1948) pp. 91-105

-Mahatma Gandhi, *Hind Swaraj* (1909)

-U.O.Umozurike, *Self-Determination in International Law* (1972) (Extracts)

-The UN Declaration on the Rights of Indigenous Peoples

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Class Seven:

Bandung and the New States:

- The Bandung Declaration
- Louis Eslava, Michael Fakhri and Vasuki Nesiah, *The Spirit of Bandung*, in *Bandung, Global Histories and International Law*, edited by Eslava, Fakhri and Nesiah,, Cambridge University Press, 2017 pp. 3-32
- R.P.Anand, 'Attitudes of the Asian-African States Toward Certain Problems in International Law' *International and Comparative Law Quarterly* vol. 15 (1966)
- James Gathii, 'Africa and the History of International Law', Albany Law School, Legal Studies Research Paper Series, No. 48 of 2011-2012

Class Eight:

The New States and the New International Economic Order

- Declaration on a New International Economic Order
- Charter of Economic Rights and Duties of States
- Foreign Investment Materials (extracts)
- Texaco Overseas Petroleum Company et.al v. Libyan Arab Republic* (extracts), 17 I.L.M (1978)
- Margot Salmon, 'From NIEO to Now and the Unfinishable Story of Economic Justice', *International Comparative Law Quarterly*, pp. 31-54 (2013)
- Mohammed Bedjaoui, (1979) *Towards a new international economic order*, Holmes and Meir: UNESCO pp. 97-115, 125-193.

Class Nine:

Human Rights

- Universal Declaration of Human Rights (1948)
- Douglas Moeckli., Sangeeta Shah, Sandesh Sivakumaran, *International Human Rights Law* (Oxford) (extracts)- Pillay, Roth, Jilani.
- Mutua, 'Savages, Victims and Saviour', *Harvard International Law Journal*, volume 42, Number 1, Winter 2001.
- Ratna Kapur, 'Taking a Walk on the Wild Side', *Sydney Law Review* vol. 28, p. 664
- Balakrishnan Rajagopal, 'Recoding Resistance: social movements and the challenge to international law' in *International Law From Below* (Cambridge University Press) (extracts) (2003)

Class Ten:

Globalization and International Economic Law

- Manfred Steger, *Globalization: a Very Short Introduction* (extracts)
- Martin Wolf, *Why Globalization Works* (extracts)
- B.S.Chimni, 'International Institutions Today: an Imperial Global State in the Making' *European Journal of International Law* (2004) 15, No. 1, 1-37
- Anne Orford, 'Locating the International: Military and Monetary Interventions after the Cold War', *Harvard International Law Journal* vol. 38(2) Spring 1997 pp.443-487

Class Eleven:

War, Intervention and Self-defence

- International Law Association Final Report on Use of Force (2018)
- Elridge Colby, 'How to Make War on Savage Tribes', 21 *Am.J.Int'l.L.* 279 (1927)
- Mohamed S. Helal, 'The Unknown Unknowns of Humanitarian War', *AJIL Unbound*, vol. 111 297
- Harold Koh, *Humanitarian Intervention: Time for a Better Law*, *AJIL Unbound* vol. 111 286
- Daniel Bethlehem, 'Principles Relevant to the Scope of a State's Right of Self-Defense', *American Journal of International Law*, vol. 106 1
- Ntina Tzouvala, 'TWAAIL and the "Unwilling or Unable" Doctrine: Continuities and Ruptures', *AJIL Unbound*, vol. 109, 2015 pp. 266-270

Class Twelve :

The Environment

-The Rio Declaration 1992

-Karin Mickelson, 'Beyond a Politics of the Possible? South-North Relations and Climate Justice', *Melbourne Journal of International Law* vol. 10

-Usha Natarajan and Kishan Koday, 'Locating Nature: Making and Unmaking International Law', in *Leiden Journal of International Law* vol. 27(3) September 2014, pp. 573-593

-Judge C.G.Weeramantry, Gabcikovo-I.C.J.Reports (extracts)

Class Thirteen:

What is to be Done?

-B.S.Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review*: 8: 3-27

-Report of the Special Rapporteur on Racism, E. Tendayi Achiume, 'Contemporary Forms of racism, racial discrimination, xenophobia and racial intolerance', United Nations, G.A. Doc A/74/321, 21 August 2019,

-Human Rights and International Solidarity

<https://www.ohchr.org/EN/Issues/Solidarity/Pages/IESolidarityIndex.aspx>

-James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', in Jeffrey Dunoff and Mark Pollack (eds) *International Legal Theory: Foundations and Frontiers*, (Cambridge University Press, 2019)https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3304767

-M.Sornarajah and Jiangyu Wang, 'China, India and International Law: a Justice Based Vision Between the Romantic and Realist Perceptions', *Asian Journal of International Law*, vol.9(2) July, 2019.

Class Fourteen: Review

Assessment:

Assessment will be by a written exercise of 1000 words (worth 10%), Class Participation (10%) and a take-home paper (4000 words) worth 80%.

Delivery of course:

Needless to say, these are unprecedented times.

This course will be delivered by Zoom. It will be conducted as a seminar. As such, class attendance and participation are important. Please keep your video on during the class to enable discussion and engagement. If you are unable to do this, please let me know, so we can make the adjustments needed.

Class Schedule:

Please note the days and times at which class will be held.

GENEVA SCHEDULE

INTERNATIONAL LAW AND THE SOUTH

Tony Anghie

Classes will be held from 08.15 to 10 a.m. Geneva Time

Class One: Sep 15th

Class Two: Sep 22d

Class Three: Sep 24th

Class Four: Sep 29th

Class Five: Oct 1st

Class Six: Oct 6th

Class Seven: Oct 8th

Class Eight: Oct 13th

Class Nine: Oct 15th^h

Class Ten: Oct 20th

Class Eleven: Oct 27th

Class Twelve: Nov 3rd

Class Thirteen: Nov 10th

Class Fourteen: Nov 17th