



O.P. Jindal Global University
A Private University Promoting Public Service



Jindal Global Law School
India's First Global Law School

COURSE MANUAL:

**The Many Faces of International Law: Critiques and Limits
(Elective)**

Course Instructor: Rohini Sen

SEMESTER B: 2017 – 2018

Semester B

The information provided herein is by the Course Instructor. The following information contains the official record of the details of the course. This document is illustrative and contains general guidelines and readings for the course. The instructor retains the right to modify the course (without tampering its basic framework and objectives) for its effective implementation and reception.

Part I

Course Title: The Many Faces of International Law: Critiques and Limits

(Elective)

Course Code:

Course Duration: **One Semester**

No. of Credit Units: **4 credits**

Level: **BA, LLB, Five-Year B.A., LL.B., Three year LL.B., One year LL.M**

Medium of Instruction: **English**

Pre-requisites: - **Public International Law (Students studying PIL concurrently are also eligible to apply for this course)**

Pre-cursors: **Nil**

Equivalent Courses: **Nil**

Exclusive Courses: **Nil**

The above information shall form part of the University database and may be uploaded to D space into the KOHA Library system and catalogued and may be distributed amongst students.

Part II

A. Course Outline

Mainstream, Eurocentric foundations of public international law have long been questioned as the sole narrative of the international legal discipline. While there is robust scholarship on TWAIL, feminist critique of international law and other frameworks that challenge this hegemony, the counter narratives of European PIL have rarely been assembled under the same frame. Critiques of international law often escape the general PIL curriculum or are reduced to minimized, capsule versions of themselves while retaining the misplaced narrative of "one" international law as we know it. Learning/teaching public international law in India treads a fine balance between what is presumably normative and acknowledging the value of its situated-ness'. While PIL attempts to rid itself of its inherent maladies, it is important to proceed with these robust counter-narratives simultaneously. Keeping these important considerations in mind, this course will explore the forms, boundaries and limits of international law. It will study the intersection of the critiques and impress upon the student the need to critically evaluate and reimagine the contours of public international law as we know it, or are told to know it. Some of the themes to be covered in the course:

- TWAIL - success, failure, fragmentation and universality.
- Understanding the global south through its scholars, lawyers and judges.
- Feminist approaches to international law and its critiques.
- Intersection of feminist critique and TWAIL: why does it matter?
- International law from below, an overview.
- Boundaries and limits of international law.

B. Course Aims

On completion of this course, students should be able to:

The course aims to:

- i. Display an well founded critical understanding of the theories and debates that form the framework of critiques to PIL.
- ii. Examine the historical forces, political undercurrents and ideological battles that birthed European PIL while subsuming all immediate alternatives.
- iii. Analyse the location, context and thrust of these alternate narratives and engage critically with the founders and scholars of these ideas. **Inter-disciplinary approach is encouraged.**
- iv. Make written presentations which are original, coherent, logically structured and give an interesting insight into the topics at hand. **Unconventional approach to problem solving is encouraged.**

3. Teaching Method

The course will follow a seminar style discussion format where students will be exposed to lectures and discussion. Weekly readings will be assigned to students who will then be divided into reading groups and presentation groups. The instructor will introduce every module through lectures or base-materials (a journal article, book-excerpts and cases). Students are expected to be thorough with the readings. The weekly readings will be minimal but dense. The base-material will be made available to the participants as prior to each week.

C. Grading of Student Achievement

To pass this course, students must obtain a minimum of 50% in the cumulative aspects of coursework: tutorials, class participation and final examination.

The details of the grades as well as the criteria for awarding such grades are provided below.

Letter	Value	Marks	Definition	Explanation
O	7	70 and above	Outstanding	Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyze existing materials and originality in thinking and presentation.
A+	6	65 to 69.75	Excellent	Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability.
A	5	60 to 64.75	Good	Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.
B+	4	55 to 59.75	Adequate	Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
B	3	50 to 54.75	Marginal	Limited Knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills.
F	0	Below 50	Failure	Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.

D. Mode of Assessment:

- 50% Class participation/assignments/miscellaneous activities (Internal Assessment)
- 50% End-term examination.

E. Guidelines regarding Assignments and warning against Plagiarism:

Students are encouraged to read, research, think, assimilate and thereafter attempt the take-home exam and research essay. Wherever possible, it will be useful to present ideas in your own words demonstrating your own understanding of the issues involved and analysis thereof. Original thinking and writing as well as adeptness in the use of various sources studied over the semester will be rewarded. A careful reading of various materials prescribed for the course will give the student an idea of the style and academic rigour adopted by scholars in the field. Students should always consult with the instructor about the veracity and authenticity of a particular website and its suitability for researching topics covered in this syllabus. If any student is relying on the authority of another scholar or any website, please acknowledge source by way of footnotes and place such material within quotes.

Plagiarism means “[t]o take the words or an idea of someone else and pass it off as one’s own.” Any idea, sentence or paragraph you cull from a web source must be credited with the original source. If you paraphrase or directly quote from a web source in the exam, presentation or essays, the source must be explicitly mentioned. You should not feel free to plagiarise content, be it from scholarly sources (i.e. books and journal articles) or from the Internet.

Plagiarism is a serious offence against academic integrity and, participants of the course, if found guilty of plagiarism, will be subject to disciplinary action as per the relevant university policy.

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Part III

Course Reading

Articles, book chapters, media and other reading materials will be provided in the course manual and handed out to the students on a weekly basis.

However, the students must refer to the following for a general understanding of the subject and its suggested content.

Primary Sources:

Reference Books:

- 1. R. Kolb, THEORY OF INTERNATIONAL LAW, Bloomsbury, 2016**
- 2. B. S Chimni, International Law and World Order: A Critique of Contemporary Approaches, Second Edition, Cambridge, 2017**

3. H. Charlesworth, C. Chinkin, **THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS** (Manchester UP, 2000). R. Falk, F. Kratochwil, S. Mendlovitz (eds.), **INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE** (Westview, 1985).
4. B. Rajagopal, **International Law from Below: Development, Social Movements and Third World Resistance** (Cambridge UP, 2003).
5. A. Orford (Ed.), **INTERNATIONAL LAW AND ITS OTHERS** (Cambridge UP, 2006).
6. L. Hammer, 'A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues' (Routledge, 2007).
7. M. Koskenniemi, 'From Apology to Utopia: The Structure of International Legal Argument' (Cambridge UP, 2005)
8. M. Koskenniemi, 'The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960' (Cambridge UP, 2002).
9. A. Anghie, B. S. Chimni, K. Mickelson, O. Okafor (eds.), **THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS AND GLOBALISATION**, (Brill, 2004).

Part VI

Teaching Schedule

<p>Weeks 1 and 2: Empire, History and Legacy.</p> <ul style="list-style-type: none"> - Religion and International Law. - The laws of the Empire. - The 'civilizing' mandate of International law. - Introduction to non-European discourses. 	<ul style="list-style-type: none"> • Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' <i>Third World Quarterly</i> Vol. 27, No. 5, Reshaping Justice: International Law and the Third World (2006), pp. 739-753 • C.H. Alexandrowicz, 'An Introduction to the History of the Law of Nations in the East Indies: (16th, 17th and 18th Centuries)' (Oxford: Clarendon, 1967) chapter 1 • KATTAN, V. (2015). The Ghosts of the Temple of Preah Vihear/Phra Viharn in the 2013 Judgment. <i>Asian Journal of International Law</i>, 5(1), 16-25. • Cases Studies: <ul style="list-style-type: none"> - Right of Passage case- Right of Passage over Indian Territory, Portugal v India, Merits, Judgment, [1960] ICJ Rep 6, ICGJ 174 (ICJ 1960), 12th April 1960, International Court of Justice [ICJ] - Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), (Merits) 1962 I.C.J. Rep. 6 (June 15)
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Weeks 2, 3 and 4: Third World Approach to International Law: Ideas, Pioneers and Battles.

- Protoideologues of the movement.
- TWAIL I
- TWAIL II
- Constructing the Global South
- Colony to Hegemony
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Relevant Excerpts and Works of:

- R.P. ANAND- Changing Dimensions of International Law: An Asian Perspective (Martinus Nijhoff Publisher – Sept 2006), Lecture I, Towards a New Universal International Law.
- Onuma, Yasuaki, —When was the Law of International Society Born?—An Inquiry of the History of International Law from an Intercivilizational Perspective, *Journal of the History of International Law*, Vol. 2 (2000)
- Mutua, Makau, and Antony Anghie. “What Is TWAIL?” *Proceedings of the Annual Meeting (American Society of International Law)*, vol. 94, 2000, pp. 31–40. JSTOR, JSTOR, www.jstor.org/stable/25659346.
- Okafor, Obiora Chinedu. "Critical World Approaches to International Law (TWAIL): Theory, Methodology, or Both?" *International Community Law Review* 10 (2008): 371-378.
- B.S. Chimni, ‘Third World Approaches to International Law: A Manifesto’, *International Community Law Review*, Volume 8, Issue 1, 2006.
- Foreward to "Draupadi" by Mahasveta Devi by Gayatri Chakravorty Spivak *Critical Inquiry*, Vol. 8, No. 2, Writing and Sexual Difference. (Winter, 1981), pp. 381-402
- Joint symposium run by *EJIL:Talk!* and *Opinio Juris* in relation to Simon Chesterman’s article

Chesterman, Simon, Asia's Ambivalence About International Law & Institutions: Past, Present, and Futures (January 13, 2017). *European Journal of International Law*, 27(4) (2016), 945-978; Available at: <https://ssrn.com/abstract=2694408>

Antony Anghie, Comment on Simon Chesterman, ‘Asia’s Ambivalence about International Law and Institutions: Past, Present and Futures’ on *Opinio Juris* January 16th, 2017. Available at <http://opiniojuris.org/2017/01/16/comment-on-simon-chesterman-asias-ambivalence-about-international-law-and-institutions-past-present-and-futures/>

	<p>B.S. Chimni, 'Asia, International Law and International Institutions: A Comment' on <i>Opinio Juris</i> January 17th, 2017. Available at http://opiniojuris.org/2017/01/17/asia-international-law-and-international-institutions-a-comment/</p>
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<p>Week 5: Critiques of TWAIL</p>	<ul style="list-style-type: none"> • S. G. Sreejith, 'An Auto-Critique of TWAIL's Historical Alternative Manifesto' (2016) <i>THIRD WORLD QUARTERLY</i>. • John Haskell, 'TRAIL-ing TWAIL: Arguments and Blind Approaches to International Law'
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<p>Weeks 6, 7 and 8: Feminist Critiques of International law.</p> <ul style="list-style-type: none"> - Feminist Theories of International Law. - Modes of International Law Making. - Women as Subjects of International Law. - Redrawing the Boundaries of International Law. 	<ul style="list-style-type: none"> • Ratna Kapur, 'Gender, Sovereignty, and the Rise of a Sexual Security Regime in International Law and Postcolonial India' (2013) 14 <i>Melbourne Journal of International Law</i> 317. • H. Charlesworth, C. Chinkin, <i>THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS</i> (Manchester UP, 2000), Chapter 2 • R. Brooks, 'Feminism and International Law: An Opportunity for Transformation', (2002) <i>YALE J. L. & FEMINISM</i> 14, pp. 345-361. • H. Charlesworth, 'Feminists Critiques of International Law and Their Critics', 13 <i>THIRD WORLD LEGAL STUDIES</i>. • J. Alvarez, 'Book Review: The Boundaries of International Law: A Feminist Analysis' (2001) 95 <i>A.J.I.L.</i>, pp. 459-464.
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<p>Week 9: Intersection of TWAIL and Feminist Critiques.</p> <ul style="list-style-type: none"> - Realism and identity. - Third World Feminism 	<ul style="list-style-type: none"> • Nesiah, Vasuki (2003). 'The Ground Beneath Her Feet: "Third World" Feminisms.' <i>Journal of International Women's Studies</i>, 4(3), 30-38. • R. Herr, 'Reclaiming Third World Feminism: or Why Transnational Feminism Needs Third World Feminism' (2014) 12 <i>MERIDIANS</i> 1, pp. 1-30.
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<p>Weeks 10 and 11: Revisiting the Mainstream.</p>	<ul style="list-style-type: none"> • L. Hammer, 'A Foucauldian Approach to International Law:'
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<p>- A Foucauldian Approach.</p>	<p>Descriptive Thoughts for Normative Issues' (Routledge, 2007), Chapters 2, 3 and 7</p>
<p>Weeks 12 and 13: People of International Law: Outliers and Outsiders.</p> <p>- Judgments and judges: resistance and politics.</p>	<ul style="list-style-type: none"> • Radha Binod Pal – selected works and biographies (Nandy, Banerjee,). • V. Kattan, 'Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the South West Africa Cases' (2014) ASIAN J. INT'L L., pp. 1-46. • Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226 (Dissenting Opinion of Weeramantry) • Rev. Mons. Sebastiao Francisco v. State Of Goa, (J. Hidayatullah)
<p>Weeks 14 and 15: Boundaries, Limits and Others.</p>	<ul style="list-style-type: none"> • R. Higgins, 'Conceptual Thinking about the Individual in International Law', BRITISH J. INT'L STUDIES (1978), pp. 1-19. • F. Megret, 'From 'Savages' to 'Unlawful combatants': A Post-colonial Look at International Humanitarian Law's 'Other' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006). • Anghie, 'On Critique and the Other' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).

Illustrative Articles and Chapters:

1. H. Lauterpacht, 'The Grotian Tradition in International Law' (1946) 1 BRIT. YB INT'L L.
2. M. Bedjaoui, 'Poverty of the International Order' in R. Falk, F. Kratochwil, S. Mendlovitz (eds.), INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE (Westview, 1985).

3. T. Franck, 'Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States' 64 A.J.I.L. (5), pp. 809-837.
4. L. Henkin, 'The Reports of the Death of Article 2(4) are Greatly Exaggerated' (1971) 65, A.J.I.L. p. 544.
5. R. Higgins, 'Conceptual Thinking about the Individual in International Law', BRITISH J. INT'L STUDIES (1978), pp. 1-19.
6. R. Brooks, 'Feminism and International Law: An Opportunity for Transformation', (2002) YALE J. L. & FEMINISM 14, pp. 345-361.
7. C. Douzinas, 'Speaking Law: On Bare Theological and Cosmopolitan Sovereignty' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
8. S. G. Sreejith, 'An Auto-Critique of TWAIL's Historical Fallacy: Sketching an Alternative Manifesto' (2016) THIRD WORLD QUARTERLY.
9. I. Duncanson, 'Law as Conversation' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
10. D. Kennedy, 'Reassessing International Humanitarianism: The Dark Sides' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
11. J. Grbich, 'Secrets of the Fetish in International Law's Messianism' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006), pp. 197-220.
12. A. Orford, 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice' (2015) LEIDEN J. INT'L L.
13. F. Megret, 'From 'Savages' to 'Unlawful combatants': A Post-colonial Look at International Humanitarian Law's 'Other'' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
14. D. Otto, 'Lost in Translation: Re-scripting the Sexed Subjects of International Human Rights Law' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
15. A. Anghie, 'On Critique and the Other' in A. Orford (Ed.), INTERNATIONAL LAW AND ITS OTHERS (Cambridge UP, 2006).
16. V. Kattan, 'Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the *South West Africa* Cases' (2014) ASIAN J. INT'L L., pp. 1-46.
17. M. Attar, R. Thompson, 'How the MultiLevel Democratisation of International Law-Making Can Effect Popular Aspirations Towards Self-Determination' (2011) 3 TRADE,

LAW AND DEVELOPMENT.

18. B.S Chimni 'The Past, Present and Future of International Law: A Critical Third World Approach' (2007) 8 MELBOURNE J. INT'L L.
19. M. Berger, 'After the Third World? History, Destiny and the Fate of Third Worldism', (2004) 25 THIRD WORLD QUARTERLY.
20. B.S. Chimni, 'Third World Approaches to International Law: A Manifesto' in THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS AND GLOBALISATION, A. Anghie, B. S. Chimni, K. Mickelson, O. Okafor (eds.), (Brill, 2004) pp. 47–73.
21. J. Gathii, 'International Law and Eurocentricity' (1998) E.J.I.L. 9, pp. 184–21.
22. A. Nandy, 'The Other within: The Strange Case of Radhabinod Pal's Judgment on Culpability' (1992) 23 NEW LITERARY HISTORY 1, pp. 45-67.
23. B.S. Chimni, 'Alternative Visions of Just World Order: Six Tales from India' 46 HARV. INT'L L. J.