



UnB/Universidade de Brasília
FD/Faculdade de Direito
Programa de Pós-Graduação em Direito

SISTEMAS DE DIREITO CONTEMPORÂNEO 2

Código: 384267

*Syllabus**

DEVELOPING STATES IN A CHANGING WORLD ORDER

University of Brasilia
Semester One, 2016
Reading Assignments-Part One
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Professor George R. B. Galindo

DRAFT

Introduction

[Explanatory Note: I have been teaching this course for some years, and this is a syllabus of the course co-taught with Prof George Galindo of the University of Brasilia. I teach the course as a seminar-that is, students are required to write a 8,000 to 10,000 word research paper by way of assessment.]

Will emergence of the BRICS result in a significant change in international relations and world order, and in the making and content of international law? Does the success of China for instance suggest a vindication of a universal international law which works effectively for all states if they manage their affairs properly? Not since the 1970s and the efforts of the recently independent states to create a 'New International Economic Order' has it seemed so important to rethink the position of 'Developing States' in the international system. These developments are taking place even while, on a global scale, inequality is intensifying on such a scale in all countries that the terms 'developing' and 'developed' or the even more challenging term 'Third World' may cease to have any useful analytic meaning.

These classes explore these issues from a Third World Approaches to International Law (TWAIL) perspective-one which attempts to study international law from the perspective of the peoples of the Third World. Thus we will focus on how non-European societies featured in the making of international law, and in particular on the relationship between imperialism and international law, decolonization, the efforts of developing countries to participate in and even reshape international law and international relation. We will approach these broad themes from historical, methodological and doctrinal perspectives by studying cases, classic texts, and contemporary scholarly debates regarding post-colonialism, third world approaches to

* This is a preliminary syllabus. Changes may be made before the beginning of the course.

international law and the emergence of the BRICS. The historical approach examines the processes of colonization, decolonization and globalization through close readings of a number of texts, ranging from the sixteenth century to the present, that deal with relations between European and non-European societies. The theoretical approach explores the question of how the relationship between colonialism and international law has been traditionally understood, and the strengths and weaknesses of these understandings. The doctrinal approach examines the particular legal principles and doctrines that have been used to account for relations between European and non-European states. We will also examine important contemporary issues such as globalization, human rights and international economic law. Throughout the course we will focus on various broad themes. How does a study of the relationship between imperialism and international law illuminate contemporary international relations? How has the non-European world responded to the challenges of colonialism? What are the analytical tools that must be developed for the purposes of understanding contemporary international relations? Does the concept of the 'Third World' have any meaning now? How do issues of race and exploitation shape the character of international law? Has international law now finally become truly universal as various 'Third World' countries have used it effectively to protect and further their interests?

Class One: April 25th (8:00 to 11:50)

Introduction:

- Peter Malanczuk, Akehurst's International Law (Chapter One)
- Congyan Cai, 'New Great Powers and International Law in the 21st Century', *European Journal of International Law*, vol. 24(3), 755
- Dianne Otto, Subalternity and International Law: the Problems of Global Community and the Incommensurability of Difference', *Social and Legal Studies*, vol.5(3) 337-364
- Antony Anghie, 'The Evolution of International Law: colonial and postcolonial realities' *Third World Quarterly* vol, 27 No.5 pp. 739-753 (2006)

For our first class, please read the two attached works, Malanczuk's 'History and Theory' chapter and Cai's 'New Great Powers and International Law in the 21st Century'. Consider the broad issue of how non-Western states have featured in the history and theory of international law, as presented by Malanczuk. What role have they played in the making of international law, whether in relation to the jurisprudence of the subject, or particular doctrines of international law? Compare Malanczuk's account with Cai's. Are they dealing with the same issues? In what way might the emergence of New Great Powers change international law? What is the relationship between law and power? What about the not so great powers, or small powers? How does Otto's work suggest a different approach to thinking about international law?

Class Two: April 26th (8:00 to 11:50)

The Beginnings of International Law

- Francisco de Vitoria, *De Indis Et De Ure Bellic Relectiones* ('On the Indians Lately Discovered') extracts.
- Grotius, *The Free Sea*(Chapters 1-6)
- Georg Cavallar, 'Vitoria, Grotius, Puffendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans' *Journal of the History of International Law* 10 (2008) 181-209
- Antony Anghie, 'Francisco Vitoria and the Colonial Origins of International Law' *Social and Legal Studies* 5(3) 1996 321-336
- Martine van Ittersum, 'The long goodbye: Hugo Grotius' justification of Dutch expansion overseas, 1615-1645' *History of European Ideas* 36 (2010) 386-411

Notes and Issues:

Vitoria's text is regarded as one of the foundational texts of international law. The text consists of a series of lectures. I have taken extracts from Vitoria's text but have also included the 'summaries' of the other sections so that we might get a sense of his overall argument. The basic issue he is trying to resolve is the question of Spanish title over the Indies. Note his list of 'illegitimate titles' and compare that with his account of how legitimate title is acquired. What are Vitoria's views on trade? On sovereignty? On war? On government? What is the relationship between religion and law in his system? When is war legitimate? What are the rules that should be observed in war? How might we connect Vitoria's work with the themes we studied in the first class?

Vitoria's work is now the focus of considerable debate-and I have included extracts from the works of Cavallar and Anghie who have markedly contrasting ideas on Vitoria. What is your own position? Grotius is regarded as the 'father of international law'. He is most acclaimed for his great work, *The Rights of War and Peace*, but it is only relatively recently that scholars from the West have focused on another dimension of Grotius, his work as advocate for the Dutch East India Company. Grotius's arguments about trade and sovereignty were heavily influenced by Vitoria.

Class Three: April 27th (8:00 to 11:50)

Commerce and Informal Empire:

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

-C.H. Alexandrowicz, 'Capitulations', Chapter VI from *An Introduction to the History of the Law of Nations in the East Indies*, (1967).

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

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

-Martti Koskenniemi, 'Empire and International Law: The Real Spanish Contribution' *Toronto Law Journal* vol. 61(2011)

-Ileana Porras, 'Appropriating Nature: Commerce Property and the Commodification of Nature in the Law of Nations', *Leiden Journal of International Law* vol.27 No.3 Sept.2014 pp. 641-660

Notes and Issues:

The article by Robinson and Gallagher is a classic for its elaboration of the concept of 'informal empire'. What are the characteristics of informal empire? How does it differ from 'formal' empire? How is informal empire maintained? How can trade give rise to imperialism? Do you find the argument persuasive? Alexandrowicz's work is also a classic; here he outlines the character of capitulations. What are the basic features of capitulations and issues covered by them? Do you think the capitulation system was fair, or favoured one side over the other? What was the role of chartered companies in European expansion? What were some of the basic ideas used to justify the activities of these companies? Is the history McLean outlines relevant to current activities of corporations? The works of Kingsbury and Straumann, Koskenniemi and Porras provide important accounts of the broader intellectual frameworks in which these developments occurred. What is the 'real' Spanish contribution to international law and how can we connect that contribution to events that we note in the later work? What connections if any exist between ideas of 'commercial sociability' and Empire? What is the relationship that develops between these ideas of commerce and the environment?

Class Four: April 28th (8:00 to 11:50)

The Nineteenth Century and the Standard of Civilization

-John Westlake 'On the Title to Sovereignty'

-Chi-Hua Tang, 'China-Europe' 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
- The Treaty of Nanking: <http://www.international.ucla.edu/asia/article/18421> (the treaty is available on many sites)
- The Treaty of Annexation-Japan and Korea
- Jorge Esquirol, 'Latin America' in *The Oxford Handbook of the History of International Law*, pp. 553-578

Notes and Issues:

Westlake was one of the major international lawyers of the nineteenth century. Consider the different ways in which 'title to territory' can be acquired. What is Westlake's idea of 'civilization'? What is the relationship between civilization and sovereignty? Note his account of the Berlin Conference-what is his vision of the legal personality of African peoples? Obregon provides an overview of how ideas about the civilized and uncivilized have shaped international law. Chi-Hua Tang gives an account of how one country, China responded to the challenges presented by European international law. The treaties offer insight into the principles and techniques used to justify colonialism.

Class Five: April 29th (8:00 to 11:50)

Decolonization and Self-Determination-then and now

- Article 22 of the Mandate System of the League of Nations (see at the end of the Hall Readings)
- U.O.Umozurike, *Self-Determination in International Law* (1972) (Extracts)
- UN General Assembly Res. 1514 (1960)
- Mahatma Gandhi, *Hind Swaraj* (1909)
- The Bandung Communique
- Judge Trindade, Separate Opinion in Frontier Dispute (Burkina Faso v. Niger) Judgment, I.C.J.Reports 2013 (please focus on paras. 83-105 of the separate opinion)
- Kalana Senaratne, 'Internal Self-Determination' in *Asian Journal of International Law* vol.3(2) July 2013 pp. 305-339
- The Declaration on the Rights of Indigenous Peoples, UN General Assembly Res. 61/295 (2007)

Notes and Issues:

These readings deal with different aspects of the campaign waged by non-European states to become sovereign.. What does the Umozurike reading suggest about the legal problems connected with the concept of self-determination? The political problems? What were the concerns of developing countries and how did they address them? Reading Gandhi-what is his idea of 'the nation'? How does the Bandung Communique address the issue of self-determination and its relationship to sovereignty? What is the relationship between 'people' and 'territory' and 'sovereignty'? What are the current controversies surrounding self-determination as suggested by the writings of Judge Trindade, Senaratne and the Declaration on the Rights of Indigenous Peoples?

Class Six: May 2nd (8:00 to 11:50)

The New States and the New International Economic Order

- Declaration on a New International Economic Order
- Charter of Economic Rights and Duties of States
- Mohammed Bedjaoui, *Towards a New International Economic Order*(1979) (extracts)
- R.P.Anand, 'Attitudes of the Asian-African States Toward Certain Problems in International Law' *International and Comparative Law Quarterly* vol. 15 (1966)
- Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse', *Wisconsin International Law Journal*, vol. 16 No.2
- James Gathii, 'Africa and the History of International Law', Albany Law School, Legal Studies Research Paper Series, No. 48 of 2011-2012
- Margot Salmon, 'From NIEO to Now and the Unfinishable Story of Economic Justice', *International Comparative Law Quarterly*, pp. 31-54 (2013)

Notes and Issues:

R.P.Anand's article is a classic statement of the aspirations of the newly independent Asian and African states. What are those aspirations, on what ideas about society, law and power were they based? What is his vision of international law? Mohammed Bedjaoui's work is a classic manifesto of the New International Economic Order. James Gathii outlines a history of Africa's engagement with international law focusing on the work of eminent jurists such as T.O. Elias. How does the 'contributionist' approach and the 'critical' approach differ? Read the Declaration on a New International Economic Order and the Charter of Economic Rights and Duties of States carefully. What are the goals of the Third World? Do they seem reasonable? Why, did they largely fail?

Class Seven: May 3rd (8:00 to 11:50)

Globalization and International Economic Law:

This class will cover aspect of globalization-the legal regimes that have fostered it, how it has impacted the South and how it relates the previous histories and themes we have studied. Has globalization shifted the balance between the South and the North? Are we witnessing the 'End of the Third World'? How have BRICS countries adapted to globalization and indeed made use of the opportunities it offers? What is the relationship between globalization and violence? Does the success of China for instance suggest a vindication of a universal international law which works effectively for states that can properly manage their own political systems?

Notes and Issues:

- B.S.Chimni, International Institutions: An Imperial State in the Making, *European Journal of International Law* (2004) vol.15 No 1, 1-37
- David Schneiderman, 'The Global Regime of Investor Rights: Standard of Civilization,' *Transnational Legal Theory* (2014) 5(1) pp. 60-80
- M.S.Sornarajah, 'India, China and foreign investment' in *China, India and the International Economic Order*
- 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
- Gregory Shaffer et.al 'The Trials of Winning at the WTO: What Lies Behind Brazil's Success', 41 *Cornell International Law Journal* vol. 41, 383 (2008) (extracts especially pp. 477-485)
- Vieira 'The semi-periphery in Africa: the case of Brazil' (draft) [CHECK-DO WE HAVE PERMISSION TO USE]
- Robert Zoellick 'The End of the Third World': <http://www.reuters.com/article/us-worldbank-zoellick-idUSTRE63E02S20100415>
- John D. Haskell and Boris N. Mamlyuk, 'Capitalism, Communism...and Colonialism? Revisiting "Transitology" as the Ideology of Informal Empire', *Global Jurist* vol.9(2) Article 7
- Usha Natarajan and Kishan Koday, 'Locating Nature: Making and Unmaking International Law', *Leiden Journal of International Law* vol. 27 (3) September 2014 pp. 573-593

Class Eight: May 4th (8:00 to 11:50)

Power, Knowledge, Resistance

This class will cover some broad themes relating to 'theory from the South' and 'theory from below' and the ongoing issue of Eurocentrism and its possible reinvention as 'expertise' or 'ethics'-in other words, attempt explicitly to explore some of the methodologies, analytic frameworks and approaches which help us generate a fresh understanding of international law-its history and how it works; and also consider what needs to be done-how can we think a new international law? Or do we need to think a

new international law at all? Or is it what we need to do is to learn how to use international law effectively as China is perhaps succeeding in doing?

Overview

- Arnulf Becker, 'Eurocentrism in the History of International Law' in *Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters, eds. Oxford University Press, 2013
- Vasuki Nesiiah, 'The Specter of Violence that Haunts the UDHR: the Turn to Ethics and Expertise', *Maryland Journal of International Law* vol. 24(1)
- David Kennedy, *World of Struggle*, Chapter Seven
- Boaventura de Sousa Santos, 'Beyond Abyssal Thinking'
- Balakrishnan Rajagopal, *International Law from Below* (extracts)
- Obiora Chinedu Okafor, 'Poverty, Agency and Resistance in the Future of International Law: an African perspective', *Third World Quarterly*, vol. 27 No.5 pp. 7990814 (2006)

Class Nine: May 5th (8:00 to 11:50)

TWAIL and its Critics

How should we think of the future of TWAIL-if any? How do we now assess the term 'Third World' and its usefulness? Or do we find the 'Third World' everywhere in all sorts of unexpected locations?

- B.S.Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review*: 8: 3-27
- James Gathii, 'TWAIL: A Brief History of its Origins, Its Decentralized Network, and a Tentative Bibliography', 3 *Trade Law and Development* 26(2011)
- Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of , International Law' *Trade, Law and Development*, Spring 2011 vol. III No.1
- Michael Fakhri, 'Questioning TWAIL's Agenda', 14:1, *Oregon Review of International Law* 1 (2012)
- George Galindo, 'Splitting TWAIL' (manuscript)
- Amar Bhatia, 'The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World', *Oregon International Law Review* vol. 14, 131.

Class 10: May 6th (8:00 to 11:50) - Discussion of the process of paper writing

Class 11: Directed studies (date to be defined)

Class 12: Directed studies (date to be defined)

Class 13: Directed studies (date to be defined)

Class 14: Directed studies (date to be defined)

Class 15: Directed studies (date do be defined)

Evaluation

The class requires regular attendance and participation from April 25th to May 6th. 30% of the grade will be based on in class participation. 70% of the grade will be based on a paper written individually by the student, covering one or more topics of the course as well as the assigned texts. The length of the paper shall not exceed 15 pages (Font Times New Roman, Size 12, 1,5 spacing).