The Political Foundations of International Law

Fall 2018
Monday and Thursday 11:30-12:50 pm

Course Description

This is an introductory course that examines the political foundations of international law. The contested nature of the relationships between international law, international politics, and international political economy is central to this examination. This contestation reflects profound disagreements over how these relationships should be analyzed and theorized. An adequate understanding thus requires a critical examination of the analytical and theoretical foundations of international law and how they relate to the field of international relations. The course begins with analysis of the origins of international law, which is richly entwined with the history of western international society. Different approaches to the study of international law and international politics that derive from distinctive analytical and theoretical traditions are reviewed. Developments that are breaking the frames of traditional understandings of law and politics are examined, as too are critical approaches that reject international laws’ foundations as colonial, oppressive, and exploitative in advancing private regimes of appropriation and dispossession. The ability of international legal institutions to regulate the use of force and to advance human rights, self-determination, and resistance are also considered.

Course Objectives

The main objectives of this course include equipping students with the basic tools that are required in order to understand how the international legal system operates, who comprises this system, how it seeks
to regulate a broad range of activities, including the use of force, criminality, human rights and the global political economy, and its general efficacy as a legal order.

Through lectures, discussion groups, assignments, examinations, and group projects students will be exposed to significant international legal challenges in the world today. In order to achieve the course objectives students must do the following:

1. **Attend classes regularly.** Attendance is important. Regular attendance gives you an opportunity to ask questions and engage with the course materials. I plan my lectures with a view to encouraging question and debate. Also, I often give out hints about exam questions!!.

2. **Do the required readings:** The required readings form an essential part of the course materials. It is insufficient to just attend classes and rely on the Power Point Presentation. Required readings are precisely that- **Required!** Examinations and group projects are unlikely to receive passing grades if they do not reflect an understanding of the required readings.

3. **Participate actively in the Group Project.** Participation in the Group project will add tremendously to your learning experience.

4. **Participate Actively in Class Room Discussions.** The more you articulate the more you learn! Don’t be shy to contribute. This is a valuable part of your education.

**Course Assignments**

1. **Midterm Exam:** In-Class October 15 (30%)
2. **Group Project Presentations** (25%)
3. **Term Paper** (30%) Due in class and on Coursespaces November 5.
4. **In class participation** (15%)

1. **Midterm Examination (30%)** will be held in class on October 15.

2. **Term Paper: (30%)**
   Student will select a Group Project on Coursespaces and write a Term Paper of 3,000 words in length analyzing an issue relating to the subject-matter of the Group Project. Term papers will be individually graded on the quality of the paper. Papers should include a minimum of 6 (six) academic sources and provide a word count. Further information will be provided in class.

   Papers are due in class and electronically on **November 5 and must contain a word count.**

   Late papers will not be accepted without a medical note stating the reason for late submission. There will be a reduction of 3% per day and papers will not be accepted after class on December 3 without an Academic Concession

3. **Group Project Presentations: (25%)**
   Students will participate in a collaborative learning project and contribute slides to create a Power Point Presentation on the assigned topic for presentation to the class Nov 19- Dec 3.
Each student will be graded individually on their Power Point slides and oral presentation. Further details will be supplied in class.

Key Dates

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>October 8</td>
<td>Thanksgiving Day no class</td>
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<tr>
<td>October 15</td>
<td>Mid-Term Exam</td>
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<tr>
<td>November 5</td>
<td>Papers due in class and on Coursespaces</td>
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<tr>
<td>November 5, 8, 15</td>
<td>Group Project Preparation Sessions</td>
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<tr>
<td>November 12-14</td>
<td>Reading Break no classes</td>
</tr>
<tr>
<td>November 19</td>
<td>Group Power Point Presentations Due on Coursespaces</td>
</tr>
<tr>
<td>November 19, 22, 26, 29</td>
<td>Group Project Presentations</td>
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<tr>
<td>December 3</td>
<td>Group Project Presentations</td>
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Required Readings

Required Text:


Additional required readings are posted on Coursespaces.

Reading Schedule

1. **Opening Class** (September 6)

   Administration Session.

2. **An Introduction to International Law** (September 10-13)

   Themes:
   - What is international law?
   - Is international law really “law”?
   - Why do some scholars doubt that international law is “really “law”?
   - Consider the nature and function of international law.
   - What is the relationship between international law and international relations?
   - Compare and contrast the views of international law articulated by Higgins and by Goldsmith/Krasner.

   **Required Reading:**

   Akehurst, Chapter 1.


3. Situating International Law in History (September 17-20)

Themes:
- What are the origins of international law?
- Why do some believe that international law has colonial and imperial roots?
- What are the major watersheds in the development of international law?
- How does international law relate to domestic law?
- What are the most significant developments in the contemporary period?
- What is Lex mercatoria?
- Why is it challenging to locate authority in the global system today?

Required Reading:

Akehurst, Chapter 2.
S. C. Neff, “A Short History of International Law.”

4. Analytical Foundations of International Law (IL): Breaking Frames (September 24-27)

Themes:
- What do we mean by the “analytical foundations” of IL?
- What is a “state”?
- What are the sources of IL?
- Who are the subjects of IL?
- How are the subjects and sources of IL related?
- What is the status of the “individual” under international law?
- What is the status of a transnational corporation under IL?
- How have forces of globalization influenced international law?
- Why describe international law as “postmodern” and “late capitalist”?
- What do we mean by legal formalism, the domestic analogy and the autonomy of law?
- Why do non-state actors provide challenges to the international legal and political system?
- What developments are breaking the analytical framework of international law?
- To what extent is there significant resistance to international law and why?

Required Reading:

Akehurst, chapters 3 and 4.


### 3. Theoretical Approaches to International Law (October 1-4)

**Themes:**
- Natural Law
- Legal Positivism/Political Realism
- New Haven Approach
- Critical Legal Studies
- Marxism
- Feminism
- Third World/Post-Colonial/Critical Race Perspectives
- How and why do we differentiate theories of international law and international relations?
- What are conventional approaches to international law and how do they differ from unconventional approaches?
- How do different theoretical approaches (conventional and unconventional) differ in their account of the analytical foundations of IL?

**Required Reading:**

Malanczuk, Chapters 3 and 5.


### 4. Theoretical Approaches cont’d (October 11) (No Class Monday October 8).

### 5. Midterm Exam in class October 15

### 6. International Legal Institutions (October 18-22)

**Themes:** United Nations and the Use of Force
- UN Charter Chapters VI and VII; articles 2 (4); 2 (7) and 51.
- How has the United Nations system changed the laws governing the use of force in international affairs?
- Was the invasion of Iraq legal according to Franck? Was the Syrian intervention legal?
- What challenges to the international legal system are posed by piracy?
- Describe the work of the International Court of Justice (ICJ).
- How does the International Criminal Court (ICC) differ from the ICJ?

**Required Readings:**

Akehurst, Chapters 6, 19, 22.


7. **International Law, the Regulation of Criminality, and the Protection of Human Rights** (October 25)

**Themes:**
- How does the ICC differ from the *ad hoc* war crimes tribunals set up in Nuremberg, Tokyo, Yugoslavia, and Rwanda?
- What is the difference between *ius in bello* and *ius ad bellum*?
- Describe the significance of the *Rome Treaty*.
- What is “genocide”? What are “war crimes”? What are “crimes against humanity” and “acts of aggression”?
- What penalties may be imposed by the ICC?
- Why is the ICC so controversial? Is it “breaking frames”?
- Why does Franceshet have doubts about the ICC? Do you agree?

**Required Readings:**

Akehurst, Chapter 20.


8. **War Crimes, Crimes Against Humanity and Genocide** (October 29, November 1)

**Movie: “Milosevic on Trial”**

The International Criminal Tribunal for the Former Yugoslavia (ICTFY)

**Themes:**
• With what offences was Milosevic charged?
• Why did the Deputy Prosecutor, Geoffrey Nice, say that the outcome of the trial was probably for the best? Do you agree?

Movie to be viewed October 29 with class discussion on November 1.

9. Compulsory Group Project Preparation Sessions (November 5, 8 and 15)

Papers due in class and electronically on November 5. Attendance at the Preparatory Session is compulsory and will be taken. 10% of the final course grade will automatically be deducted for every absence from the Preparation Session that has not been pre-cleared by the instructor and accompanied by proper documentation.

3. Group Project Power Point Presentations (November 19, 22, 26, 29, December 1)

Attendance is compulsory and will be taken at all the Group Project Presentations. 10% of the final course grade will automatically be deducted in the event of every absence from the Group Power Point Presentations that has not been pre-cleared by the instructor and accompanied by proper documentation.

Course Administration

PLAGIARISM AND ACADEMIC INTEGRITY

Academic integrity is intellectual honesty and responsibility for academic work that you submit individually or as a member of a group. It involves commitment to the values of honesty, trust and responsibility. It is expected that students will respect these ethical values in all activities related to learning, teaching, research and service. Therefore, plagiarism and other acts against academic integrity are serious academic offences.

The responsibility of the institution - Instructors and academic units have the responsibility to ensure that standards of academic honesty are met. By doing so, the institution recognizes students for their hard work and assures them that other students do not have an unfair advantage through cheating on essays, exams, and projects.

The responsibility of the student - Plagiarism sometimes occurs due to a misunderstanding regarding the rules of academic integrity, but it is the responsibility of the student to know them. If you are unsure about the standards for citations or for referencing your sources, ask your instructor. Depending on the severity of the case, penalties include a warning, a failing grade, a record on the student’s transcript, or a suspension. It is your responsibility to understand the University’s policy on academic integrity, which can be found on pages 32-34 of the undergraduate calendar. Please note that the Department and University rules on plagiarism are enforced. Students must retain an electronic copy of their assignments and submit them on request in order to receive a final grade for this course.
Note concerning N grades
Students who have completed all of the above assignments will be considered to have completed the course and will be assigned a final grade. Failure to complete one or more of these assignments will result in a grade of “N” regardless of the cumulative percentage on other elements of the course. An N is a failing grade, and it factors into a student’s GPA as 0. The maximum percentage that can accompany an N on a student’s transcript is 49.

UVic PERCENTAGE GRADING SCALE

<table>
<thead>
<tr>
<th>Passing Grades</th>
<th>Grade Value</th>
<th>Point Value</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>9</td>
<td>90 – 100</td>
<td>Exceptional, outstanding and excellent performance. Normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation and has an insightful grasp of the subject matter.</td>
<td></td>
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<tr>
<td>A</td>
<td>8</td>
<td>85 – 89</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A-</td>
<td>7</td>
<td>80 – 84</td>
<td></td>
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<tr>
<td>B+</td>
<td>6</td>
<td>77 – 79</td>
<td>Very good, good and solid performance. Normally achieved by the largest number of students. These grades indicate a good grasp of the subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.</td>
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<tr>
<td>B</td>
<td>5</td>
<td>73 – 76</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-</td>
<td>4</td>
<td>70 – 72</td>
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<tr>
<td>C+</td>
<td>3</td>
<td>65 – 69</td>
<td>Satisfactory, or minimally satisfactory. These grades indicate a satisfactory performance and knowledge of the subject matter.</td>
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<tr>
<td>C</td>
<td>2</td>
<td>60 – 64</td>
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<tr>
<td>D</td>
<td>1</td>
<td>50 – 59</td>
<td>Marginal Performance. A student receiving this grade demonstrated a superficial grasp of the subject matter.</td>
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<thead>
<tr>
<th>Failing Grades</th>
<th>Grade Value</th>
<th>Point Value</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F</td>
<td>0</td>
<td>0 – 49</td>
<td>Unsatisfactory performance. Wrote final examination and completed course requirements; no supplemental.</td>
<td></td>
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<tr>
<td>N</td>
<td>0</td>
<td>0 – 49</td>
<td>Did not write examination or complete course requirements by the end of term or session; no supplemental.</td>
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1. The percentage grading scale applies to all Faculties at the University of Victoria.
2. The percentage grades should be associated with a letter grading schema.
3. A percentage grade for an N grade should be assigned in the following manner: 
   **N GRADE:** If a student has not completed the exam, or has not completed the course requirements, but has submitted course requirements that total more than 49% of the total grade for a course, an instructor will assign a percentage grade of 49%.

Course Experience Surveys (CES)

I value your feedback on this course. Towards the end of term you will have the opportunity to complete a confidential course experience survey (CES) regarding your learning experience. The survey is vital to providing feedback to me regarding the course and my teaching, as well as to help the department improve the overall program for students in the future. When it is time for you to complete the survey, you will receive an email inviting you to do so. If you do not receive an email invitation, you can go directly to [http://ces.uvic.ca](http://ces.uvic.ca). You will need to use your UVic NetLink ID to access the survey, which can be done on your laptop, tablet or mobile device. I will remind you nearer the time, but please be thinking about this important activity, especially the following three questions, during the course.

1. What strengths did your **instructor** demonstrate that helped you learn in this course?
2. Please provide specific suggestions as to how the **instructor** could have helped you learn more effectively.
3. Please provide specific suggestions as to how this **course** could be improved.