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| Course title | <i>From custom to certainty - an effective international law for the 21st century</i> |
| Duration | 5 days (30 hours) |
| Dates | August 21 –August 25, 2017 |
| Instructor | Prof. Ciarán Burke, Friedrich-Schiller-Universität Jena |
| Course objectives | |
| The objective of this course is to bring to the fore core conceptual issues related to the study and practice of international law in the 21 st century, to cast a critical eye upon the discipline, and to encourage participants to challenge received wisdom in relation to the scholarship of international law. | |
| Course Description | |
| <p>This course traces the origins of international law, explaining its evolution from a regime based upon custom and <i>courtoisie internationale</i> to one based predominantly on treaties, and assesses modern international law from a critical perspective, asking (i) whether it is fit for purpose in the 21st century; and (ii) whether there are solutions that may make it more effective.</p> <p>During this assessment, a critical eye will be cast over the notion of codification, as, due to the lack of effective enforcement and judicialisation. In this regard, it will be noted (iii) that indeterminacy remains a significant problem in the international legal sphere; (iv) that codification, where it is effective, may represent stagnation, given time; and (v) that most codification has led to the emergence of self-contained regimes, which cause their own problems.</p> <p>After discussing these initial issues, the focus will turn to individual self-contained regimes, such as international trade law and EU law, investigating (vi) how and why state consent has been forthcoming in firstly setting regulatory standards in certain areas - even when they relate to domestic markets - and (vii) why the monopoly on state action has been relaxed in certain judicial fora, which now allow individuals and firms to participate, either directly or by proxy.</p> <p>The fragmented picture of international law that will be presented will also assess the science of law itself, dealing with (viii) the epistemological issues that beset international law; and (ix) the inadequacy of political science as an alternative lens through which to view the law.</p> <p>Finally, (x) participants will be asked to envisage how international law is likely to develop in the future and how the power of what we can learn from past successes and failures can be harnessed.</p> | |
| Course Outline | |
| <ol style="list-style-type: none"> 1. The State as an actor in the international arena; international law and international relations: what is international 'law'? 2. The United Nations Charter regime and 'modern' international law – a critical assessment of the <i>status quo</i> 3. Treaty Law – state obligations and the Vienna Convention on the Law of Treaties: <i>droit international à la française?</i> | |

4. Customary International Law – its development, creation, and suitability for an evolving world order
5. Self-contained regimes: the devil is in the detail
6. Rules about rules – the (quasi-)judicialisation of the International Legal Sphere – a false dawn?
7. The general principles of law recognized by civilized nations’ – The third principal category of international law
8. Beyond consensualism – shared values and domestic law analogies or international politics?
9. The Use of Force By States – a case study in fragmentation
10. Multi-source legal reasoning

Educational Outcomes

Those who attend the course will be able to critically engage with international legal discussions. They should be capable of understanding the modern debates in the discipline, and should be able to use their knowledge of international law to contextualise debates around the world on global political issues.

Assignment

To demonstrate achievement of learning outcomes, students will be required to answer the following essay question:
“For international law to fulfil its potential in the 21st century, it must be capable of evolution, or it will cease to be of relevance for ordering international society. Discuss this statement.”
 Please check the section “General note” below for more information about the essay.

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| Basic Bibliography | <p>Bassiouni, MC, ‘A Functional Approach to “General Principles of International Law”’ (1990) 11 Michigan Journal of International Law 768.</p> <p>Bianchi, A, ‘Human Rights and the Magic of Jus Cogens’ (2008) 19 European Journal of International Law 504.</p> <p>Bruha, T, ‘Use of Force, Prohibition of’ in R Wolfrum (ed), United Nations: Law, Policies and Practice, vol 2 (1995) 1387.</p> <p>Burke, C. ‘An Equitable Framework for Humanitarian Intervention’, Hart (2013)</p> <p>Crook, JR, ‘The International Court of Justice and Human Rights’ (2003) 1Northwestern University Journal of International Human Rights 2.</p> <p>Francioni, F, ‘Of War, Humanity and Justice: International Law after Kosovo’ in JA Frowein and R Wolfrum (eds), Max Planck Yearbook of UN Law, vol 4 (2000) 107.</p> <p>Hannum, H, ‘The Status of the Universal Declaration of Human Rights in National and International Law’ (1995) Georgia Journal of International and Comparative Law 287.</p> |
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| | <p>Higgins, R, 'International Law and the Avoidance, Containment and Resolution of Disputes' (1991) 230 Recueil des Cours de l'Académie de Droit International 9.</p> <p>Kammerhofer, J, 'Gaps, the Nuclear Weapons Advisory Opinion and the Structure of International Legal Argument between Theory and Practice' (2009) 80 British Yearbook of International Law 337.</p> <p>Koskenniemi, M, 'The Lady Doth Protest Too Much: Kosovo, and the Turn to Ethics in International Law' (2002) 65 MLR 159.</p> <p>Orkhelashvili, A, 'Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights' (2003) 14 European Journal of International Law 537.</p> <p>Petman, J, 'The Problem of Evil and International Law' in J Petman and J Klabbers, Nordic Cosmopolitanism: Essays in International Law for Martti Koskenniemi (Leiden, Martinus Nijhoff, 2003) 111-40.</p> <p>Schwarzenberger, G, 'The Fundamental Principles of International Law' (1955) 87 Recueil de la Haye 303.</p> <p>Spiermann, O, International Legal Argument in the Permanent Court of International Justice, The Rise of the International Judiciary (Cambridge Studies in International and Comparative Law, Cambridge, Cambridge University Press, 2005).</p> |
| Course Prerequisites | No background knowledge of international law is required. While the course will critically assess the discipline, it should be possible for dedicated beginners to keep pace. |
| Evaluation | <p>Full attendance and active participation during classes represent compulsory course requirements.</p> <p>The essay will be assessed on a pass/fail or distinction basis.</p> |
| Language | English |
| Location | EPLO Headquarters, Athens |
| General note | <p>N.B. Due to the fact that class attendance is mandatory, participants will have limited time to work on their assignment during the week. Therefore, we strongly advise students to start to prepare their essays before the start of the program. Monday 28th August is a class-free day and student should use the time available to finalize and submit their works.</p> <p>Essay should be word-processed and should be maximum 2000 words long. The texts should be presented in: Times New Roman 11pt font, 1.5 spaced, text justified. All academic work should be referenced and cited.</p> |

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| | <p>The paper must be submitted online to academy@eplo.eu by Monday, 28th August, 17:00.</p> |
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For any additional assistance with the preparation of the essay, students may contact the Academy Secretariat at academy@eplo.eu.