
International Law

Critical Thinking Frameworks in International Law

Gleider Hernández, *International Law* (2nd edition, Oxford University Press, 2022)

Reading theoretical and doctrinal writing

Too often, international law students are exposed to difficult conceptual or theoretical scholarship in international law, but without a proper understanding of its context. Understanding how to 'read' international legal scholarship is a key skill in studying the discipline. A challenge for the student of international law is how to grapple with, or make sense of, academic writing, much of which has not been written for a student audience but for other professional international lawyers. Some such publications seek to describe or map out existing legal materials so that they are useful to a practitioner audience. Others still try to articulate an original scholarly argument based on existing law, one that can often prove polemical. What's more, sometimes a student is faced with theoretical and critical writing that seeks to expose the politics and ideologies behind the law.

Many of these papers may be aimed at non-student audiences, and yet they are frequently assigned as relevant reading materials due to the fact that they may be of great contemporary relevance, or they are considered classic, 'must-read' material.

As such, whether you are preparing for an exam, an essay or dissertation, or any other scholarly engagement with international law, the following tips may be useful for you in studying these materials to make the most of them: to refine your methodological rigour, your conceptual understanding, or how international law operates in practice. These tips could be particularly useful in respect of highly incisive academic work, for example relating to critical theories such as feminist or

post-colonial approaches to international law. Though these are necessarily broad-brush tips, the following tips will hopefully help in navigating these materials.

A step-by-step guide to reading theoretical and doctrinal writing

Step 1. Restate the central argument and methodology in your own words. A well-written piece will usually, in its introduction and conclusion, explain what it sets out to do and how it sets out to achieve these purposes. Why has this piece been written? Others are meant to represent an intervention in an ongoing debate (perhaps political or ideological). Some still aim to map out existing legal, political or social problems without necessarily offering a solution. Put these thoughts into your own words and see if you understand the main argument being made.

Step 2. What kind of intervention is this? Who are its intended readership? Some pieces are written to capture contemporary developments and disseminate them to professional audiences. Others aim squarely at students or non-specialists, seeking to explain a complex area of international law in an accessible manner. Many academic pieces aim primarily to fellow academic audiences, perhaps responding to a debate or advancing a novel, or inter-disciplinary, or comparative approach to unsettle orthodox narratives.

If you can identify the audience for a given academic work, you are in a better position to offer your own reflections and responses to such an intervention.

Step 3. Reflect on possible responses. Once you have read an academic piece, reflect for a moment on your own reaction. Please do not reduce this reflection merely to 'I agree for X reason' or 'I disagree for X reason'. There are a number of possible responses to virtually all categories of work. For example, you could challenge the conclusions or findings in the piece if you identify problems with the methodology: who, or what, has been left out? You could also try to identify the

underlying assumptions that ground the article, perhaps not being fully elucidated: for example, a commitment to a certain view of human rights, or moral philosophy.

You could highlight unresolved gaps and ambiguities in the argument, reflecting on whether these are deliberate or accidental. Finally, you could imagine what other scholars might say in response to this piece, and reflect on whether that is a cogent or otherwise convincing position.

Finally, one perspective you can often bring to legal argument is simply to think through the outcome of the argument, if it were to be followed through. Who benefits if this argument is successful? Whose interests are being set aside? These are a more critical strategy of argument that brings in the politics to international law, but in many cases these are indissociable from the law itself.

Step 4. Imagine you are marking this paper. Finally, one useful strategy in reading doctrinal or theoretical pieces is to imagine that you are an international law academic reading the piece for the first time. Some relevant criteria include:

- Was the methodology chosen appropriate for the central argument?
- How could the central argument have been sharpened or clarified?
- What possible objections could be pre-empted with additional sections or revisions to the existing argument?
 - Are there unexamined assumptions that underline the paper such as political preferences, moral or ethical foundations, or even a disciplinary bias?
 - Are there problems in its methodology (for example, does it ignore practice from broad swathes of the world, or relevant materials from judicial institutions or other sources?)

Some final thoughts

By way of conclusion, academic writing is sometimes the most challenging part of studying international law for the first time. However, if one gets past the first

sense of intimidation, it can be one of the most stimulating and rewarding aspects of studying international law, because one can appreciate—and hopefully engage—with how broader debates are played out in academic scholarship.