South Asian University
Faculty of Legal Studies

LLM
2018–2020
Monsoon Semester (First Semester)
Course Information

Part I

<table>
<thead>
<tr>
<th>Course Title</th>
<th>International Law</th>
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<tr>
<td>Course Code</td>
<td>LW003</td>
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<tr>
<td>Course Instructor</td>
<td>Dr Ravindra Pratap</td>
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<tr>
<td>Course Duration</td>
<td>One semester</td>
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<td>Course Units</td>
<td>4</td>
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<tr>
<td>Medium of Instruction</td>
<td>English</td>
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<tr>
<td>Prerequisites</td>
<td>Nil</td>
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<td>Precursors</td>
<td>Nil</td>
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<tr>
<td>Equivalent Courses</td>
<td>N/A</td>
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Part II

Course Description

The course will introduce public international law and focus on its essentials with an emphasis on the problem-solving approach and with special reference to the South Asian countries. It will begin with an introduction to the classical/traditional approaches to international law and understand its nature and functions. We will then look into the processes and institutions of international law formation, including proof, methods and the incidence of the burdens of proof of custom, and other sources and decisional considerations, the treatment of domestic law by international courts and tribunals and the processes, forms and consequences of the reception of international law into municipal law considering the practices of representative countries, including the South Asian Countries, the key principles of international law, including equal rights and self-determination of peoples, non-use of force and non-intervention, and the basics of state responsibility before introducing key historical and contemporary international law issues in South Asia, such as boundaries and water-sharing and the evolving forms and manifestations of the use of force and terrorism.
Course Aim

The aim of the course is to help the student develop a learning approach that combines critical thought and applied knowledge to the study of international law.

Course Objectives

The objectives of the course are to equip the graduate student with the necessary knowledge and skills of international law to study more specialized courses of international law and develop capacity to apply international law in concrete cases.

Course Outcomes

Successful completion of the course should enable the student to understand the nature and functions of international law with an introduction to classical/traditional conceptions and key contribution of Asian states in the development of international law, appreciate the processes of and institutions involved in the formation of international law and the issues of their hierarchy, relative normativity and systematicity, explain the interaction of international law and municipal law of the South Asian countries and the spheres of their discernibly more relevant interface, understand the importance of the basic principles of international law, acquire the essential knowledge of the law of state responsibility, demonstrate the relevance of international law to the contemporary developments at the international, regional and national levels, and make an informed choice of the theoretical knowledge and apply the critical thinking for finding solutions to international law problems, particularly major international law issues in South Asia.

Course outline

1. The nature and functions of international law
2. Sources of international law
3. Relation of international law to municipal law
   [Mid-Term Examinations]
4. Principles of international law
5. State responsibility
6. Introduction to select international law issues in South Asia

Course syllabus

Week 1
1. **The nature and functions of International law**: classical/traditional approaches; naturalism, positivism and Grotian conception; validity, normativity and enforcement: spheres of validity, varieties of normativity and relativities of enforcement; role and contribution of the Asian states; appraisal.

**Required Readings**


**Supplementary Readings**


**Further Readings**


G Williams, ‘International Law and the Controversy Concerning the Word “Law”’ (1945) 22 British Yearbook of International Law 146.


Weeks 2–4

2. Sources of international law: Article 38 of the Statute of the International Court of Justice: treaties, forms, consent, parties, entry into force; custom, essentials, evidence, persistent objector; general principles of law, equity infra legem; judicial decisions, consistency and expediency; juristic work; other decisional considerations: economic interests, considerations of humanity, UN General Assembly resolutions; unilateral acts; authoritative legal acts of international organizations; ex aequo et bono; work of the International Law Commission; hierarchy, order and/or systematicity; appraisal.

Required Readings

Charter of the United Nations, Articles 1, 24, 39, 41, 42, 103.

Statute of the International Court of Justice, 1945, Articles 38, 59.


Supplementary Readings


Frontier Dispute (Burkina Faso/Mali), Judgment [1986] ICJ Rep 554.


ILC Work on the Identification of Customary International Law.

S V Viswanatha, International Law in Ancient India (Longmans 1925) General Features: Sources, 1–19.

Further Readings

UN General Assembly Resolution 377 (V) A (3 November 1950).
Asylum Case (Columbia/Peru) [1950] ICJ Rep 266.
ILC Guide to Practice on Reservations to Treaties, 2013.
H Lauterpacht, Private Law Sources and Analogies of International Law (Longmans 1927).
V D Degan, Sources of International Law (Martinus Nijhoff 1997).

Weeks 5–7

3. Relation of international law and municipal law: theoretical and conceptual perspectives; municipal law in international law, “domestication” of international obligations and interpretation of municipal law; international law in municipal law, customary law, treaties, reception and treatment of other forms and manifestations of international law: state practice: UK practice, U.S. practice and the practice of the South Asian countries; appraisal.

Required Readings

Draft Declaration on Rights and Duties of States, 1949.
Vishakha and Ors. v State of Rajasthan and Ors., AIR 1997 SC 3011.

Supplementary Readings

Nallaratnam Singarasa v Attorney-General, Decision of the Supreme Court of Sri Lanka, 15 September 2006.
The Paquete Habana, 175 U.S. 677 (1900).
The Constitution of Afghanistan, Article seven, ninety.
The Constitution of the People’s Republic of Bangladesh, Articles 25, 145A.
The Constitution of the Kingdom of Bhutan, Articles 24, 25.
The Constitution of India, Articles 51, 73, 246, 253, Seventh Schedule, List 1, Entry 14.
The Constitution of the Republic of Maldives, Articles 68 and 93.
The Constitution of Nepal, Article 51.
The Constitution of the Islamic Republic of Pakistan, Article 97, Fourth Schedule.

Further Readings

*Murrey v The Charming Betsey*, 6 U.S. 64 (1804).
*Exchange of Greek and Turkish Populations* (1925) PCIJ Series B, No. 10.
*Sei Fujii v State of California* (1952) 38 C2d 718.
*Atala Riffo and Daughters v Chile*, Judgment of the Inter-American Court of Human Rights, dated 24 February 2012.
Quincy Wright, ‘Conflicts of International Law with National Law and Ordinances’ (1917) 11 American Journal of International Law 1.


**Weeks 8–10**

4. **Principles of international law**: introductory: equal rights and self-determination of peoples; sovereign equality of states; non-use of force; peaceful settlement of disputes; non-intervention; good faith; co-operation; appraisal.
Required Readings

Charter of the United Nations, 1945, Articles 1, 2, 103.

Supplementary Readings

Manila Declaration on the Peaceful Settlement of International Disputes, 1982.
The Text of Proclamation of Independence of Bangladesh, 10 April 1971 in 11 IJIL (1971) 547.

Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para 228.


Ved P Nanda, ‘Self-determination in international law: The tragic tale of two cities—Islamabad (West Pakistan) and Dacca (East Pakistan)’ (1972) 66 American Journal of International Law 321.


Further readings

Convention for the Pacific Settlement of International Disputes, 1907.
UNSC Resolution 1483 (2002).
East Timor (Portugal v Australia) [1995] ICJ Rep 90.
North Sea Continental Shelf Cases, ICJ Reports 1969, 47, para. 85.
Corfu Channel (Merits) [1949] ICJ Rep 4.
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [2004] ICJ Rep 136.
Yearbook of the International Law Commission (1980), vol. II (2) 159.


P H Winfield, ‘The History of Intervention in International Law’, (1922) 3 British Yearbook of International Law 130.


Opinion of Advocate-General Wathelet in Case C-266/16: Western Sahara Campaign UK, The Queen v Commissioners for Her Majesty’s Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs, ECJ, 10 January 2018.


J F O’Connor, Good Faith in International Law (Darmouth 1991).


Weeks 11 and 12

5. **State responsibility**: terminological; nature and scope: wrongful act, attribution, and breach; defences: valid consent, self-defence, permissible and proportional countermeasures, *force majeure*, distress, necessity; exceptions to defences: *jus cogens*, compliance with the continuing obligation; compensation, reparation, restitution, satisfaction; appraisal.

**Required Readings**


Supplementary Readings

WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994, Articles 3 (7) and 22 (6).
LaGrand (Germany v. United States of America), Provisional Measures [1999] ICJ Rep 9, para. 28.
A A Cançado Trindade, International Law for Humankind: Towards to a New Jus Gentium (Brill 2010) Chapter XIX Basic Considerations of Humanity in Relation to State Responsibility.

Further Readings

United States Diplomatic and Consular Staff in Tehran, Judgment, ICJ Reports 1980, para. 56.
Case Concerning the Factory at Chorzow (Merits) [1928] PCIJ, Series A, No. 17, 47.
Customs Régime between Germany and Austria, Advisory Opinion [1931], PCIJ, Series A/B, No. 41, 46 and 49.

Weeks 13 and 14

6. Introduction to select international law issues in South Asia: boundaries, the fishermen issue; water-sharing, water resource management; use of force; terrorism; appraisal.

Required Readings

UN Charter, Articles 1 and 2.
Agreement between Sri Lanka and India on the Boundary in the Gulf of Mannar and the Bay of Bengal between the two Countries and Related Matters, 1976, Article 5.

**Supplementary Readings**

UN Security Council Resolution 1373.
The Indus Waters Treaty, 1960.
Mahakali Treaty between India and Nepal, 1996.
Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism, 2002, Article 15.
Bay of Bengal (Bangladesh v India) Arbitration, Permanent Court of Arbitration, Award of 7 July 2014.

**Further Readings**

The Indus Waters Kishenganga Arbitration (Pakistan v India), Final Award of the Permanent Court of Arbitration, dated 20 December 2013.


Bashir Ahmed, ‘Pakistan and Some Issues of International Law’ (1979) 32 Pakistan Horizon 64.


Imtiaz Ahmad (ed), *South Asian Rivers* (Springer 2018).


**Teaching Method**

The course will be offered using a combination of lectures and class discussions. The students are expected to prepare and debate the course materials in the class.

**Assessment Method**

There will be two written examinations totalling 80 marks and a case study/written assignment of 20 marks.