Part I

Course Title: International Dispute Settlement
Course Code: LW035
Course Instructor: Dr Ravindra Pratap
Course Duration: One semester
Course Units: 4
Medium of Instruction: English
Prerequisites: Nil
Precursors: Nil
Equivalent Courses: N/A

Part II

Course Description

International disputes in some form have always been discernible in international relations. But it is only recently that international dispute settlement has emerged as a field of study. This is mainly because most of the international dispute settlement decisions have come in the recent decades (indeed only naturally for the vast expansion of international courts and tribunals in the post-cold war era). Some of these decisions have critically involved South Asian countries and significantly determined the nature and extent of their rights and obligations concerning a variety of dispute settlement issues, including constitution, composition and jurisdiction of, representation before and provisional measures by international courts and tribunals. These consequences only add to those that arise from the existence or aggravation of other South Asian differences, situations and/or disputes concerning a wide array of subjects, such as water sharing and human rights, and call for a response consistently with the obligation of states to settle their disputes by peaceful means and without endangering international peace and security and justice. To the extent that international dispute settlement critically bears on international peace and security, it becomes important for the student to understand its processes, working and potential. This course therefore endeavours to study international dispute settlement with special reference to South Asian countries.

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 dispute settlement.

**Course Objectives**

The objectives of the course are to enable the student to understand the principles, procedures, and institutions of international dispute settlement and apply to the solution of a dispute the principles of law that regulate the process of its settlement.

**Course Outcomes**

Successful completion of the course should enable the student to appreciate the events that give rise to an international dispute, distinguish international disputes from other disputes, locate the sources of the obligation to settle international disputes peacefully, know the factors influencing the choice of an international dispute settlement process, demonstrate a required knowledge of that process, apply that knowledge to the solution of the dispute, discern the decisive reasoning, comprehend the making of judgments/awards, understand the complexities of compliance and enforcement of judgments/awards, and propose necessary improvements on the procedure(s).

**Course outline**

1. Introduction
2. Negotiation and consultations
3. Good offices and mediation
4. Enquiry and conciliation
5. Arbitration
[Mid-Term Examinations]
6. Judicial settlement
7. UN Security Council and regional arrangements
8. Appraisal

**Course syllabus**

**Week 1**

*Introduction: Context of and considerations in the emergence and settlement of international disputes; perspectives.*

**Required Readings**

UN Charter, Preamble, Articles 1, 2 and 33.

**Supplementary Readings**
Manila Declaration on the Peaceful Settlement of International Disputes, 1982.

The Indus Waters Treaty, 1960, Article IX.

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.

Treaty Between the Government of the People’s Republic of Bangladesh and the Government of the Republic of India on Sharing of the Ganga/Ganges Waters at Farakka, 1996, Article VII.

Obligations Concerning Negotiations Relating to the Cessation of Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v India), Jurisdiction of the Court and the Admissibility of the Application, ICJ Judgment of 5 October 2016.


Further Readings


Week 2

Negotiation and Consultations: Scope and content; particular considerations in specific regimes—relation to the principle of good faith; assessment.

Required Readings
UN Charter, Article 33.
India – Anti-dumping Measures on Batteries from Bangladesh, Notification of Mutually Satisfactory Solution, WT/DS306/3 (23 February 2006).

Supplementary Readings

Agreement on South Asian Free Trade Area, 2004, Article 20 (1).
Treaty of Commerce Between the Republic of India and the Royal Kingdom of Afghanistan, 1950, Article 17.

Further Readings

Convention on the Pacific Settlement of Disputes, 1899, Title II.
Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland) (Merits) [1974] ICJ Rep 175.
Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile), Preliminary Objection, ICJ Judgment of 24 September 2015.

Week 3
Good Offices and Mediation: Scope and content, particular considerations in specific regimes—non-state actors; UN Mission in Nepal, evaluation.

Required Readings

UN Charter, Article 33.  

Supplementary Readings

UNGA Res. 68/303, Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, 13 August 2014.  
UNGA Res. 2790 (XXVI), United Nations assistance to East Pakistan refugees through the United Nations focal point and the United Nations humanitarian assistance to East Pakistan, 6 December 1971.  

Further Readings

Practice Direction on Mediation, United Nations Dispute Tribunal, 2012.  
Article 5 of the Dispute Settlement Understanding, Communication from the Director-General, WT/DSB/25 (17 July 2001).  
Week 4

Enquiry and Conciliation: Forms of basis; international fact-finding, terms of reference, evidence; preparatory to settlement, Fact-Finding Mission on Maynmar; quasi-judicial settlement.

Required Readings


Supplementary Readings


Further Readings

<http://www.worldcourts.com/ici/eng/decisions/1905.02.26_doggerbank.htm> (accessed 26 November 2016); (1908) 2 AJIL 931.

Week 5

Arbitration: Forms of basis, constitutional considerations, jurisdiction and admissibility, applicable law, inherent power, assessment.

Required Readings

UN Charter, Article 33.
Arbitration Rules, Permanent Court of Arbitration, 2012, Articles 6, 23.
The Indus Waters Kishenganga Arbitration (Pakistan v India), Final Award of the Permanent Court of Arbitration, dated 20 December 2013.

Supplementary Readings

The Indus Waters Treaty, 1960, Article IX.
The Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and The Republic of India (Bangladesh v India), Award of the Arbitral Tribunal, Permanent Court of Arbitration, dated 07 July 2014.
**White Industries Australia Ltd. v Republic of India**, UNCITRAL Final Award, 30 November 2011.


**Further Readings**


Optional Rules for Arbitrating Disputes between two parties of which only one is a State, Permanent Court of Arbitration, 1993.


**The Indo-Pakistan Boundary (Rann of Kutch) between India and Pakistan (India, Pakistan) XVII Reports of the International Arbitral Awards, 19 February 1968** 1.


**Week 6**

**Arbitration: Provisional measures: prima facie jurisdiction; preservation of rights, interpretation of rights, particular considerations, assessment.**

**Required Readings**


**In the Matter of an Arbitration concerning “the Enrica Lexie Incident” (Italy v India)**, Permanent Court of Arbitration, Provisional Measures Order, 29 April 2016.

**Supplementary Readings**

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 1965, Article 47.
*Tethyan Copper v Pakistan Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan*, ICSID Case no. ARB/12/1, Decision on Claimant’s Request for Provisional Measures dated 13 December 2012.
Cameron A Miles, *Provisional Measures before International Court and Tribunals* (Cambridge University Press 2017) Chapter V.

**Further Readings**


**Week 7**

*Arbitration: Compliance and enforcement: Award, remedies, forum, means of enforcement, role of domestic courts, evaluation.*

**Required Readings**

Arbitration Rules, Permanent Court of Arbitration, 2012, Article 34.
WTO Understanding on the Rules and Procedures Governing the Settlement of Disputes, 1994, Articles 21.1(c) and 22.6.
*Kandla Export Corporation and Another v. M/S OCI Corporation and Another*, Judgment of the Supreme Court of India, dated 07 February 2018.

**Supplementary Readings**

ICC Arbitration Rules, 2012, Articles 34 and 41.
European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, Arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Award of the Arbitrator John Lockhart, WT/DS246/14 (20 September 2004).

Shri Lal Mahal Ltd. v. Progetto Grano Spa, 3 Civil Appeal No. 5085 of 2013 arising from SLP (C) No. 13721 of 2012, Judgment of the Supreme Court of India, dated 03 July 2013.


Further Readings

UNCITRAL Arbitration Rules, 2010, Article 34.

White Industries Australia Ltd. v Republic of India, UNCITRAL Final Award, 30 November 2011.

United States – Continued Dumping and Subsidy Offset Act of 2000, Recourse to Arbitration by the United States under Article 22.6 of the DSU, WT/DS217/ARB/BRA (31 August 2004).

Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair, Award of 30 April 1990, XX RIAA (2006) 215.


Weeks 8 and 9

Judicial Settlement: Jurisdiction and admissibility, bases; consent, significance and operation, cognate and contending considerations; evidence; remedies; evaluation.

Required Readings

Statute of the International Court of Justice, Articles 34, 36 and 60.
Obligations Concerning Negotiations Relating to the Cessation of Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v India), Jurisdiction of the Court and the Admissibility of the Application, ICJ Judgment of 5 October 2016.

Supplementary Readings

Rome Statute of the International Criminal Court, Articles 2, 4, 5–21, 27, 87, 98, 119.
Rules of the International Court of Justice, Articles 38, 79.
Agreement on South Asian Free Trade Area, 2004, Article 20 (9).
Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, International Criminal Court, Pre-Trial Chamber I, 6 September 2018.

Further Readings

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 1965, Article 64.
UN SC Resolution 808, 22 February 1993 (ICTY).
UN SC Resolution 1757, 30 May 2007 (Special Tribunal for Lebanon).
Prosecutor v Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY, Appeals Chamber, 02 December 1995.
The MOX Plant Case (Ireland v United Kingdom), ITLOS Order of 03 December 2001.
F A Mann, ‘The Doctrine of Jurisdiction in International Law’ (1964) 111 Hague Recueil 1.


**Week 10**

**Judicial Settlement: Intervention and necessary/third parties: forms of interest and their interpretation, interplay of substance and procedure, considerations of justice; assessment.**

**Required Readings**

Statute of the International Court of Justice, Article 63.
*Jurisdictional immunities of the State (Germany v Italy), Application for Permission to Intervene, Order of 4 July 2011, ICJ Rep 494.*

**Supplementary Readings**

Rules of the International Court of Justice, Articles 81–86.
Statute of the International Tribunal for the Law of the Sea, Articles 31 and 32.

**Further Readings**

*Case Concerning East Timor (Portugal v Australia), ICJ Judgment, 30 June 1995.*
*European Communities – Conditions for the Granting of Tariff Preferences for Developing Countries, WT/DS246/R (1 December 2003).*
Week 11

Judicial Settlement: Provisional measures: *prima facie* jurisdiction, preservation of rights pending proceedings, interpretation of rights, considerations of justice, assessment.

**Required Readings**

Statute of the International Court of Justice, Article 41.

**Supplementary Readings**

Rules of the International Court of Justice, Articles 73–78.
Rome Statute of the International Criminal Court, Articles 58, 59 and 92.
In the Matter of an Arbitration concerning “the Enrica Lexie Incident” (*Italy v. India*), International Tribunal for the Law of the Sea, Provisional Measures Order, 25 August 2015.


**Further readings**

*Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore)*, ITLOS, Provisional Measures, Order of 8 October 2003.
Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects, International Criminal Court, Pre-Trial Chamber II, 15 April 2015.
Cameron A Miles, ‘Provisional Measures and the Margin of Appreciation before the International Court of Justice’ (2017) 8 Journal of International Dispute Settlement 1.
Georges A Cavalier, ‘A Call for Interim Relief at the WTO Level: Dispute Settlement and International Trade Diplomacy’ (1999) 22 World Competition 103.

Week 12
Judicial Settlement: Compliance and enforcement, judgment, remedies: forms; determination; assessment.

Required Readings

UN Charter, Article 94.

Supplementary Readings


Further Readings

*The Prosecutor v Omar Hassan Ahmad al Bashir, Decision on the non-compliance by the Republic of Djibouti with the request to arrest and surrender Omar Al Bashir to the Court and referring the matter to the United Nations Security Council and the Assembly of State Parties to the Rome Statute*, Pre-Trial Chamber II, International Criminal Court, ICC-02/05-01/09 (11 July 2016).
*European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*, Report of the Appellate Body, WT/DS141/AB/RW (8 April 2003).
Massimo Lando, ‘Compliance with Provisional Measures Indicated by the International Court of Justice’ (2017) 8 Journal of International Dispute Settlement 22.
Week 13

UN Security Council and Regional Arrangements; considerations and assessment of peace and security, relation with judicial procedure; evaluation.

Required Readings

UN Charter, Articles 12, 32, 34–37, 52.
UNSC Res. 2041, dated 22 March 2012: “The situation in Afghanistan”.

Supplementary Readings

UNSC Res. 1386, dated 20 December 2001 (UN and NATO on Afghanistan).

Further Readings

UNSC Res. 47/40, dated 21 April 1948 (Kashmir).

Week 14

Appraisal

Required Readings

James Crawford, ‘Continuity and Discontinuity in International Dispute Settlement’ (2010) 1 Journal of International Dispute Settlement 3.
**Supplementary Reading**


**Further Reading**


*Prosecutor v Bemba*, Judgment Pursuant to Article 74 of the Statute, ICC, Appeals Chamber (8 June 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.