

1. Department: NA
2. Faculty: Legal Studies
3. Course Code: LW035
4. Course Title: Advanced International Legal Issues
5. Number of Credits: 04
6. Course objectives

The objectives of the course are to fulfil one of the requirements of the research programme and to prepare the student for fulfilling its other requirements. Successful completion of the course should enable the student to be aware of the advanced conceptions and perspectives of approaching international legal issues, understand the nature and scope of state jurisdiction and the role and sphere of operation of state immunity, appreciate the contending and contesting claims underlying the issues of extradition and death penalty, understand the core aspects of application and interpretation of treaties, such as forms of reservation and the scope of the grounds of their suspension and termination, comprehend the complexities of issues involved in the legality of and justifications for the recent threats and uses of force in international relations, particularly its role in a necessary response to terrorism, debate the legal issues relating to international terrorism, including human rights considerations, and study and offer solution to the international law issues of particular concern to the South Asian countries.

7. Minimum prerequisites for taking this course, if any: LLM
8. Course Structure with units if applicable:

1. Introduction to advanced international legal issues: Theoretical, philosophical and normative conceptions: advanced approaches and alternative perspectives; appraisal.
2. State jurisdiction, including immunity from jurisdiction specially of foreign state officials: sovereignty and equality of states; sovereignty and the application of the rules; sovereignty and jurisdiction; membership of international organizations; civil jurisdiction; bases of jurisdiction; criminal jurisdiction; nature of immunity; immunity from jurisdiction: meaning, basis, scope, exceptions; appraisal.
3. Extradition and death penalty: conventional and customary law; doctrines of double criminality, speciality and non-inquiry; human rights issues and humanitarian considerations; state practice: EU practice, US practice and the practice of the South Asian countries; appraisal.
4. Application and interpretation of treaties: Vienna Convention: conclusion; reservations: interpretative declaration, conditional interpretive declaration, reservations and declarations, including to key treaties concerning women and children, by the South Asian countries; entry into force; provisional application; suspension and termination: material breach and supervening impossibility, fundamental change of circumstances; meaning, nature and scope of "interpretation" in interpretation of treaties, general rule of interpretation and the supplementary means of interpretation, practice of treaty

interpretation across representative treaty regimes; work of the International Law Commission; appraisal.

5. Legality of and justifications for the recent threats and uses of force: prohibition; UN Security Council authorizations and/or approvals; self-defence: necessity, “armed attack”, proportionality, imminence, anticipatory, non-state actors; “humanitarian intervention”, cyberattack, environmental harm; role of consent and invitation; recent cases: Iraq, Kosovo, Afghanistan, Gaza, Crimea, Syria: considerations, standards and operation of legality and legitimacy; appraisal.

6. Legal issues relating to international terrorism: definition problem; overview of the international conventions and protocols relating to the prevention and suppression of terrorism; duty of states and non-state actors, cyber terrorism; counter-terrorism: relevance of international humanitarian law, international human rights law, international refugee law; *jus cogens*; appraisal.

7. Water-sharing and water resource management issues involving the South Asian Countries: customary law, treaty law, role of equity, no harm, data sharing; appraisal.

8. Boundaries and the fishermen issue involving South Asian countries: historical developments, international arrangements, bilateral treaties; principle of *uti possidetis juris*; role of equity; appraisal.

9. Reading suggestions: Text books/Web-resources/other

#### 9.1 Textbooks

Andrea Bianchi, *International Law Theories: An Enquiry into Different Ways of Thinking* (Oxford 2016).

Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford 2016).

Ben Saul (2006) *Defining Terrorism in International Law* (London: Oxford University Press).

C G Weeramantry, *Universalising International Law* (Martinus Nijhoff 2004).

Christian J Tams et al (eds), *Research Handbook on the Law of Treaties* (Edward Elgar 2014).

Duncan B Hollis, *The Oxford Guide to Treaties* (OUP 2012).

G Nolte (ed), *Treaties and Subsequent Practice* (OUP 2013).

Hazel Fox, *The Law of State Immunity* (Oxford University Press 2002).

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

M Fitzmaurice, O Elias and P Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties* (Brill 2010).

Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford 2017).

Marcelo Kohen, Robert Kolb and Djacob Liva Tehindrazanarivelo (eds), *Perspectives of International Law in the 21st century/Perspectives du droit international au 21e siècle Liber Amicorum Professor Christian Dominicé in Honour of his 80th Birthday* (Brill 2011).

O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012).

Ramesh Thakur and Oddny Wiggen (eds), *South Asia in the World: Problem Solving Perspectives on Security, Sustainable Development and Good Governance* (UNU Press 2004).

Richard Gardiner, *Treaty Interpretation* (OUP 2010).

S O Wolf et al (eds), *The Merits of Regional Cooperation: The Case of South Asia* (Springer 2014).

Siegfried Weissner (ed), *General Theory of International Law* (Brill 2017).

Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law* (Cambridge 2015).

Yaroslav Radziwill, *Cyber-Attacks and the Exploitable Imperfections of International Law* (Brill 2015).

## 9.2 Web resources/other

<http://library.sau.ac.in/>

A A Cançado Trindade, 'International Law for Humankind: Towards to a New *Jus Gentium*' (2005) 316 Hague *Recueil* Part I, Chapter I.VII (The Universalist Conception of International Law).

*Abu Salem Abdul Qayyum Ansari v Central Bureau of Investigation & Anr.*, Judgment of the Supreme Court of India, dated 05 August 2013.

Agreed Minutes Regarding the Implementation of the Award of the Tribunal in the Indo-Pakistan Western Boundary Case (1970) 10 *Indian Journal of International Law* 242.

Agreement between India and Sri Lanka on the Boundary in Historic Waters between the Two Countries and Related Matters, 1974.

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.

Agreement between the Government of the People's Republic of China and the Government of the Kingdom of Bhutan on the Maintenance of Peace and Tranquility Along the Sino-Bhutanese Border Areas, 1998.

Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh Concerning the Demarcation of the Land Boundary Between India and Bangladesh and Related Matters, 1974.

Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979, Article 12.

Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, 1951.

Agreement on the Establishment of a Working Mechanism for Consultation and Coordination on India-China Border Affairs, 2012.

Agreement on Trade and Intercourse between the Tibet Region of China and India, 1954 (for the *Panchsheel* Principles).

Alan Greene, 'Defining Terrorism: One Size Fits All' (2017) 66 *ICLQ* 411.

Alexander Orakhelashvili, 'State jurisdiction in international Law: Complexities of a basic concept' in Alexander Orakhelashvili (ed), *Research Handbook on State Jurisdiction and Immunities in International Law* (Edward Elgar 2015) 1.

- American Convention on Human Rights, 1969.
- Anne Peters, Christian Marxsen (eds), "Self-Defence Against Non-State Actors: Impulses from the Max Planck Trialogues on the Law of Peace and War", MPIL Research Paper No. 2017-07.
- Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) 34 *European Journal of International Law* 7.
- Arab Charter on Human Rights, 1994.
- Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* [2005] ICJ Rep 168.
- Asian Agricultural Products Ltd. v Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, dated 21 June 1990.
- Asit K Biswas, 'Cooperation or Conflict in Transboundary Water Management: Case Study of South Asia' (2011) 56 *Hydrological Sciences Journal* 641.
- Attorney-General of the Government of Israel v. Eichmann* (1961) 36 ILR 5 District Court of Jerusalem.
- B S Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge University Press 2017) Chapter 1 (Introduction).
- Baglihar Hydroelectric Dam, Expert Determination, Executive Summary, 12 February 2007 (Lausanne, 2007).
- Belhaj v Straw; Rahmatullah (No. 1) v Ministry of Defence* [2017] UKSC 3.
- Bouzari v. Islamic Republic of Iran*, 2004, CanLII 871 (Court of Appeal for Ontario).
- Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, International Court of Justice, <http://www.icj-cij.org/docket/files/135/15877.pdf>.
- Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14.
- Chicago Convention on International Civil Aviation, 1944.
- Chicago International Air Services Transit Agreement, 1944.
- Convention against Financing of Terrorism 1999.
- Convention against Terrorist Bombing, 1997.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- Convention between Great Britain and China relating to Sikkim and Tibet, 1890.
- Convention between Great Britain and Thibet (Treaty of Lahsa), 1904.
- Convention between the United Kingdom and China Respecting Tibet, 1906.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
- Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.
- Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States, 1995.
- Convention on Offences and Certain other Acts Committed on Board Aircraft, 1962.
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963.

- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, 1977.
- D A Colson and R W Smith, eds., *International Maritime Boundaries* (Martinus Nijhoff, 2011) vol vi.
- Dapo Akande and Thomas Liefänder, 'Clarifying Necessity, Imminence and Proportionality in the Law of Self-defence' (2013) 107 AJIL 563.
- David Kennedy, 'A New Stream of International Law Scholarship' (1988) 7 Wisconsin International Law Journal 28.
- Doha Declaration on TRIPS Agreement and Public Health, 2001.
- E B Pashukanis, 'The General Theory of Law and Marxism' in P Beirne and R Sharlet (eds), *Pashukanis: Selected Writings on Marxism and Law* (Academic Press 1980) 37.
- Edward Dumbauld, 'The Place of Philosophy in International Law' (1935) 83 University of Pennsylvania Law Review 590.
- European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, Report of the Panel, WT/DS141/R, adopted 12 Mar. 2001, as modified by the AB Report (WT/DS141/AB/R).
- Extradition Agreement between the Republic of India and the Kingdom of Bhutan, 1997.
- Extradition Treaty between the U.S. And Mexico, 1979, Article 8.
- F A Mann, 'The Doctrine of Jurisdiction in International Law' (1964) 111 Hague *Recueil* 1.
- F A Mann, "The Doctrine of International Jurisdiction Revisited After Twenty Years" (1984) 184 Hague *Recueil* 9.
- Factor v Lubenheimer*, 290 US 276 (1933).
- Gandak River Treaty between India and Nepal (amended 1964), 1959.
- Georges Abi-Saab, 'The Third World Intellectuals in Praxis: Confrontation, participation, or operation behind enemy lines' (2016) 37 Third World Quarterly 1957.
- Hague Convention against Unlawful Seizure of Aircraft, 1970.
- Hamdi v Rumsfeld*, 542 U.S. 507 (2004).
- Hans J Morgenthau, 'Positivism, Functionalism, and International Law' (1940) 34 American Journal of International Law 260.
- Hillary Charlesworth et al., 'Feminist Approaches to International Law' (1991) 85 American Journal of International Law 613.
- Ian Brownlie, 'International Law and the Use of Force by States Revisited' (2002) 1 Chinese Journal of International Law 1.
- Ijaz Hussain, 'The Durand Agreement in the Light of Certain Recent International Conventions' (1985) 18 Law and Politics in Africa, Asia and Latin America 255.
- ILC Guide to Practice on Reservations to Treaties, 2013.
- ILC Report 2017 (Provisional Application of Treaties) 180.
- ILC, Report of the International Law Commission on the work of its 68th session (2 May–10 June and 4 July–12 August 2016) UN Doc. A/71/10.
- India-Bhutan Friendship Treaty, 2007.
- Indian Independence (International Arrangements) Order, 14 August 1947.
- India-Nepal Agreement (revised in 1996) on the Kosi River Project, 1954.
- India-Sri Lanka Agreement of 29 June 1987.

- India-U.S. Extradition Treaty, 1997.
- International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 2005.
- International Convention for the Suppression of Terrorist Bombings, 1997.
- International Convention for the Suppression of the Financing of Terrorism, 1999.
- International Law Commission, Immunity of State Officials from Foreign Criminal Jurisdiction, Report of ILC, 2015, A/70/10, Chapter X.
- Island of Palmas (Netherlands v United States)* [1928] 2 RIAA 898.
- J S Bains, 'Diversion of International Rivers' (1960) 1 Indian Journal of International Law 38.
- J S Reeves, 'Extradition Treaties and the Death Penalty' (1924) 18 AJIL 298.
- J. McIntyre Machinery Ltd. v Nicastro*, Judgment of the U.S. Supreme Court, 564 U.S. (2011).
- John Dugard & Christine Van Den Wyngaert, *Reconciling Extradition with Human Rights* (1998) 92 AJIL 187.
- Judge v Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
- Jurisdictional Immunities (Germany v Italy: Greece Intervening)* [2012] ICJ Rep 99.
- K Krishna Rao, 'The Sino-Indian Boundary Question and International Law' (1962) 11 ICLQ 375.
- L D M Nelson, 'The Commission on the Limits of the Continental Shelf with Special Reference to Developing Countries' in Sharif Bhuiyan, Philippe Sands and Nico Schrijver (eds), *International Law and Developing Countries: Essays in Honour of Kamal Hossain* (Brill 2014) Chapter 12.
- L Marasinghe, 'Third World Jurisprudence for the Twenty-First Century' in Antony Anghie and Garry Stugress (eds), *Legal Visions of the 21<sup>st</sup> Century: Essays in Honour of Judge Christopher Weeramantry* (Brill 1998) 49.
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] ICJ Rep 136.
- M N Shaw, 'Peoples, Territorialism and Boundaries' (1997) 8 EJIL 478.
- M Sornarajah, 'The Asian Perspective to International Law in the Age of Globalization' (2001) 5 Singapore Journal of International and Comparative Law 284.
- Mahakali Treaty between India and Nepal, 1996.
- Martti Koskenniemi, 'Theory: Implications for the Practitioner' in Philip Allott and Anthony Carty (eds), *Theory and International Law: An Introduction* (British Institute of International and Comparative Law 1991) 1.
- Minister of Justice v. Burns and Rafay*, 22 March 2001, 2001 SCC 7.
- Mohamed S Helal, 'The Unknown Unknowns of Humanitarian War' (2017) 111 AJIL Unbound 297.
- Mohammed Fakhar Al Zaman Lodhi v The Governor of Brixton Prison and Anr.*, Decision of the Royal Courts of Justice, 09 October 2002.
- Montreal Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.

Myres S McDougal, 'International Law, Power and Policy: A Contemporary Conception', 82 *Hague Recueil* (1953) I, 131.

N. Manoharan and Madhumati Deshpande, 'Fishing in the Troubled Waters: Fishermen Issue in India–Sri Lanka Relations' (2018) 74 *India Quarterly* 73.

Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAAIL): Theory, Methodology, or Both?' 10 *International Community Law Review* (2008) 371.

Onuma Yasuaki, 'A Transcivilizational Perspective on International Law' (2009) 342 *Hague Recueil* 81, Chapter I.III.

Optional Protocol to the International Covenant on Civil and Political Rights, 1966.

*Pepper v Hart* [1993] 1 All ER 43.

Prescott and C Schofield, *The Maritime Political Boundaries of the World* (Martinus Nijhoff, 2005).

*Prosecutor v Brima et al.*, SCSL-04-16-T, Trial Chamber, Judgement, 20 June 2007, paras. 662, 666.

Protocol number 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Protocol on Immunities and Privileges, Southern African Development Community, 1992. UN General Assembly Resolution 59/38 of 16 December 2002.

*Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, ICJ Judgment, dated 20 July 2012.

R A Kolodkin, Immunity of State Officials from Foreign Criminal Jurisdiction, Preliminary Report of the ILC Special Rapporteur, 2008, A/CN.4/601.

R Perera, 'Suppression of Terrorism: Regional Approaches to Meet the Challenges', 16 *Sri Lanka Journal of International Law* (2004), 19-26.

*R v Secretary of State for the Home Department* [2002] EWHC Admin 644.

*Rahmatullah (No 2) v Ministry of Defence; Mohammed v Ministry of Defence* [2017] UKSC 1.

Ravindra Pratap, 'Building Peace over Water in South Asia: The Watercourses Convention and SAARC' (2018) 4 *Athens Journal of Law* 7.

Ravindra Pratap, 'India-Bangladesh Maritime Boundary Award' (2015) *LAWASIA Journal* 1.

Ravindra Pratap, *Daya Singh Lahoria v Union of India and others*, *Oxford Reports on International Law in Domestic Courts* (2006), <http://ildc.oxfordlawreports.com>.

*Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No. 3)*, [2000] 1 AC 147.

Report of the Ad Hoc Committee Established by the United Nations General Assembly Resolution 51/210 of 17 December 1996 on the Draft Comprehensive Convention on International Terrorism, 2013.

*Republic of Italy and Ors. v Republic of India and Ors.*, Judgment of the Supreme Court of India, dated 18 January 2013.

Romana Sadurska, 'Threats of Force' (1988) 82 *AJIL* 239.

Rome Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.

S P Jagota, "Maritime Boundary" (1981) 257 *Hague Recueil* 81.

SAARC Regional Convention on Suppression of Terrorism, 1987.

Security Council Resolution 1368 (2001)

Security Council Resolution 1373 (2001).

*Shankar Kisanrao Khade v State of Maharashtra*, Judgment of the Supreme Court of India, dated 25 April 2013.

Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber III, ICC-2/17, 20 November 2017.

SMA Salman and Kishore Uprety, *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective* (World Bank 2002) Chapter 1.

*Soering v United Kingdom*, 11 European Human Rights Reports 439 (1989).

Surya P Subedi, 'The Legal Regime Concerning the Utilization of the Water Resources of the River Ganges Basin', 46 German Yearbook of International Law (2004), pp.452-493.

*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

*The Caroline Case* (1840) 29 BFSP 1137.

*The Case of the S.S. Lotus* (1927), PCIJ Series A, No. 10.

*The Court of Arbitration Constituted in Accordance with the Indus Waters Treaty 1960 (Islamic Republic of Pakistan v Republic of India)*, Ward on the Competence of the Court, 6 July 2023.

*The Diversion of Water from the Meuse (The Netherlands v Belgium)* [1937] PCIJ Series A/B, No. 70.

The Durand Line Agreement (1893).

*The Enrica Lexie Incident (Italy v India)*, PCA, 2016.

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

The Indus Waters Treaty, 1960.

*The Island of Timor (Netherlands v Portugal)*, PCA (1914).

The Law of the Non-navigational Uses of International Watercourses, Third Report on the law of non-navigational uses of international watercourses by Mr Stephen M Schwebel, Special Rapporteur, A/CN.4/348 and Corr.1, *Yearbook of the International Law Commission* 1982, vol. II (1).

*The MV Saiga No. 2 (Saint Vincent and Grenadines v Guinea)* ITLOS, Judgment, 1 July 1999.

*The Schooner Exchange v McFaddon* 7 Cranch 116 (1812) U.S. Supreme Court.

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.

Treaty of Extradition between the Government of India and the Government of Nepal, 1953.

Treaty of Kabul, 1921.

Treaty of Perpetual Peace and Friendship between the Government of India and the Government of Bhutan, 1949.

Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967.

UN Model Law on Extradition, 2004, Section 12.

UN Special Tribunal for Lebanon (Appeals Chamber), *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/I, 16 February 2011.

UN Watercourses Convention, 1997.

UN, *A more secure world: our shared responsibility* (2004).

UNGA Res 71/187: Moratorium on the Use of the Death Penalty, 2 February 2017.

United Nations Convention on Jurisdictional Immunities of States and their Property, 2005.

United Nations Convention on the Law of the Sea, 1982.

United Nations General Assembly Resolution 2625.

*United States Diplomatic Staff in Tehran (United States of America v Islamic Republic of Iran)* [1980] ICJ Rep 3.

US Legal Adviser's Lecture on 'The Emerging Law of 21<sup>st</sup> Century War' (2017) 66 Emory Law Journal 487.

*US v Kirby*, 74 US 482 (1868).

*US v Saccoccia*, 18 F3rd 795, 800 n.6 (9th Cir. 1994) 8.

Ved P Nanda, *Bases For Refusing International Extradition Requests: Capital Punishment And Torture* (2000) 23 Fordham International Law Journal 23.

Vienna Convention on Diplomatic Relations, 1961.

Vienna Convention on the Law of Treaties, 1969.

William A Schabas, 'International Law and the Death Penalty' (1994) 22 American Journal of Criminal Law 250.

World Bank (2010). *Sustaining Water for All in a Changing Climate*, World Bank Group Implementation Progress Report. Washington D. C.: World Bank.

World Commission on Water for the Twenty-First Century, Commission Report (2000). *Water Secure World: Vision for Water, Life, and the Environment*, 30. Cairo: World Water Council.

*Yakub Abdul Razak Memon v The State of Maharashtra*, Judgment of the Supreme Court of India, 21 March 2013.

#### 10. Evaluation and Weightage of different components of evaluation"

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