



SOUTH ASIAN UNIVERSITY

**Faculty of Legal Studies**

**LLM**

**Winter Semester (Fourth Semester) 2025**

**Course Information**

**Part I**

<b>Course Title</b>	International Dispute Settlement
<b>Course Code</b>	LW035
<b>Course Instructor</b>	Prof. Ravindra Pratap
<b>Course Duration</b>	One semester
<b>Course Credit</b>	4
<b>Medium of Instruction</b>	English
<b>Prerequisites</b>	Nil
<b>Precursors</b>	Nil
<b>Equivalent Courses</b>	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 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).

### **Part III**

#### **Course Structure**

##### **Week 1**

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

##### Required Reading

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

##### Supplementary Reading

Tomy Koh, 'International Law and the Peaceful Resolution of Disputes: Asian Perspectives, Contributions, and Challenges' (2011) 1 *Asian JIL* 57.

##### Further Readings

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

Emma Condon et al, *Resource Disputes in South Asia: Water Scarcity and the Potential for Interstate Conflict* (University of Wisconsin Press 2009) 1–3.

Eric de Brabandere, 'International Dispute Settlement—From Practice to Legal Discipline' (2018) 3 *Leiden Journal of International Law* 459.

##### **Week 2**

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

##### Required Reading

UN Charter, Article 33.

##### Supplementary Reading

J G Merrills, *International Dispute Settlement* (Cambridge 2011) Chapters 1 and 2.

### Further Readings

UNGA Res. 53/101 Principles and Guidelines for International Negotiations, 20 January 1999.

*Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile)*, Preliminary Objection, ICJ Judgment of 24 September 2015.

Charles Manga Fombad, 'Consultation and Negotiation in the Pacific Settlement of International Disputes' (1989) 1 AFJICL 707.

### **Week 3**

**Good Offices and Mediation: Scope and content, particular considerations in specific regimes—non-state actors; evaluation.**

#### Required Reading

UN Charter, Article 33.

#### Supplementary Reading

Jacob Bercovitch, 'Mediation and Conflict Resolution' in Jacob Bercovitch, Victor Kremenyuk and I William Zartman (eds), *The SAGE Handbook of Conflict Resolution* (SAGE 2009) 340.

### Further Readings

UNGA Res. 68/303, Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, 13 August 2014.

Article 5 of the Dispute Settlement Understanding, Communication from the Director-General, WT/DSB/25 (17 July 2001).

Manfred Lachs, 'International Law, Mediation, and Negotiation' in Arthur S Lall, *Multilateral Negotiation and Mediation: Instruments and Methods* (Pergamon 1985) 183.

### **Week 4**

**Enquiry and Conciliation: Forms of basis; international fact-finding, terms of reference, evidence; preparatory to settlement, quasi-judicial settlement.**

#### Required Reading

UN Charter, Article 33.

#### Supplementary Reading

J G Merrills, *International Dispute Settlement* (Cambridge 2011) Chapter 3.

### Further Readings

United Nations Model Rules for the Conciliation of Disputes between States, 1995.

*Timor Sea Conciliation (Timor-Leste v Australia)*, Report and Recommendations, 09 May 2018.

M L Marasinghe, 'The Use of Conciliation for Dispute Settlement' (1980) 29 ICLQ

(1980) 389.

## Week 5

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

### Required Reading

UN Charter, Article 33.

### Supplementary Reading

Nigel Blackaby et al, *Redfern and Hunter on International Arbitration* (Oxford 2015) Chapter 5.

### Further Readings

Arbitration Rules, Permanent Court of Arbitration, 2012, Articles 6, 23.

*The Court of Arbitration Constituted in Accordance with the Indus Waters Treaty, 1960, Award on the Competence of the Court*, 6 July 2023.

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

## Week 6

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

### Required Reading

Cameron A Miles, *Provisional Measures before International Court and Tribunals* (Cambridge 2017) Chapter V.

### Supplementary Reading

L Collins, 'Provisional and Protective Measures in International Litigation' (1992) 234 *Hague Recueil* 9.

### Further Readings

UNCITRAL Arbitration Rules, 2010, Article 26.

*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.

Ravindra Pratap, 'Provisional Measures and the *Enrica Lexie* Case' (2018) 16 *Law and Practice of International Courts and Tribunals* 413.

## Week 7

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

Required Reading

Arbitration Rules, Permanent Court of Arbitration, 2012, Article 34.

Supplementary Reading

Nigel Blackaby et al, *Redfern and Hunter on International Arbitration* (Oxford 2015) Chapter 11.

Further Readings

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

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

Herbert Kronke et al, *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (Kluwer 2010).

**Weeks 8 and 9**

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

Required Reading

Statute of the International Court of Justice, Articles 34, 36 and 60.

Supplementary Reading

Ruth Mackenzie et al (eds), *The Manual on International Courts and Tribunals* (Oxford 2012) Introduction.

Further Readings

*Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, ITLOS, 28 January 2021.

*Aerial Incident of 10 August 1999 (Pakistan v India)*, Jurisdiction of the Court, Judgment [2000] ICJ Rep 12.

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 Reading

Statute of the International Court of Justice, Article 63.

### Supplementary Reading

Yuji Iwasawa, 'Third Parties Before International Tribunals: The ICJ and the WTO' in Nisuke Ando and Edward McWhinney (eds), *Liber Amicorum Judge Shigeru Oda* (Kluwer 2002) vol 2, 871.

### Further Readings

WTO Understanding on the Rules and Procedures Governing the Settlement of Disputes, 1994, Article 10.

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

Rüdiger Wolfrum, 'Intervention in the Proceedings Before the International Court of Justice and the International Tribunal for the Law of the Sea' in P Chandrasekhara Rao & Rahmatullah Khan (eds), *The International Tribunal for the Law of the Sea: Law and Practice* (Kluwer 2001) 161.

### **Week 11**

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

### Required Reading

Statute of the International Court of Justice, Article 41.

### Supplementary Reading

Chester Brown, *A Common Law of International Adjudication* (OUP 2007) Chapter 4.

### Further readings

*Jadhav Case (India v. Pakistan)*, Order, International Court of Justice, 18 May 2017.

*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.

Shabtai Rosenne, 'Provisional Measures and Prima Facie Jurisdiction Revisited' in Nisuke Ando and Edward McWhinney (eds), *Liber Amicorum Judge Shigeru Oda* (Kluwer 2002) Vol 1, 515.

### **Week 12**

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

### Required Reading

UN Charter, Article 94.

### Supplementary Reading

Joseph Sinde Warioba, 'Monitoring Compliance with and Enforcement of Binding Decisions of International Courts' (2001) 5 Max Planck Yearbook of the United Nations 41.

### Further Readings

*Avena and other Mexican Nationals (Mexico v United States of America)*, ICJ Judgment of 31 March 2004.

*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).

Lori Fisler Damrosch, 'Enforcing International Law Through Non-Forcible Measures' (1997) 269 *Hague Recueil* 9.

## **Week 13**

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

### Required Reading

UN Charter, Articles 12, 32, 34–37, 52.

### Supplementary Reading

Nigel D White, 'The Security Council and Impartiality in the Peaceful Settlement of Disputes' in Buchan et al (eds), *The Changing Character of International Dispute Settlement: Challenges and Prospects* (Cambridge 2024) 317.

### Further Readings

UNSC Res. 2041, 22 March 2012: "The situation in Afghanistan".

Convention on Conciliation and Arbitration within OSCE, 1992.

Shirley V Scott, 'Litigation Versus Dispute Resolution through Political Process' in Natalie Klein (ed), *Litigating International Law Disputes: Weighing the Options* (Cambridge 2014) 24.

## **Week 14**

### **Appraisal**

### Required Reading

James Crawford, 'Continuity and Discontinuity in International Dispute Settlement' (2010) 1 *Journal of International Dispute Settlement* 3.

### Supplementary Reading

Georges Abi-Saab, 'Ensuring the Best Bench: Ways of Selecting Judges' in Connie Peck and Roy Lee (eds), *Increasing the Effectiveness of the International Court of Justice*:

Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court (Martinus 1997) 166.

### Further Readings

UN Basic Principles on the Independence of the Judiciary (1985).

*Prosecutor v Bemba*, Judgment Pursuant to Article 74 of the Statute, ICC, Appeals Chamber (8 June 2018).

Anne Peters, 'International Dispute Settlement: A Network of Cooperational Duties' (2003) 14 EJIL 1.

### **Part IV**

#### **Course Teaching**

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.

### **Part V**

#### **Course Evaluation**

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