South Asian University  
Faculty of Legal Studies

PhD  
2019–2024  
Monsoon Semester (First Semester)  
Course Information

Part I

<table>
<thead>
<tr>
<th>Course Title</th>
<th>Advanced International Legal Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Course Code</td>
<td>Priority</td>
</tr>
<tr>
<td>Course Instructor</td>
<td>Dr Ravindra Pratap</td>
</tr>
<tr>
<td>Course Duration</td>
<td>One semester</td>
</tr>
<tr>
<td>Course Units</td>
<td>4</td>
</tr>
<tr>
<td>Medium of Instruction</td>
<td>English</td>
</tr>
<tr>
<td>Prerequisites</td>
<td>Nil</td>
</tr>
<tr>
<td>Precursors</td>
<td>Nil</td>
</tr>
<tr>
<td>Equivalent Courses</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Part II

Course Description

International law has well within its scope of study issues which may properly form part of its advanced course, a course which requires some background knowledge of the discipline and which it is the purpose of our compulsory graduate course on international law to impart to the graduate student. For instance, while theoretical, philosophical and normative perspectives of and approaches to international law do occupy a common field of introductory enquiry at both the graduate and research levels, it is only in their advanced and non-classical/traditional manifestations and characterizations that they form part of the research curriculum. Likewise, while the graduate student is duly introduced to treaties as part of the sources/processes of the formation of international law, aspects and issues arising out of and connected with their application and interpretation have been left for the advanced course. And this holds equally true for major international law issues of concern to the South Asian countries, namely use of force, terrorism, water-sharing, and boundaries. The course will thus introduce advanced international legal issues stemming also from state jurisdiction, immunity, extradition and death penalty as part of some of the more discernible debates in contemporary international law, such as in the area of use of force.
that brings to the fore the difficulties involved in balancing the necessity of response to international terrorism and of the observance of the rules of armed conflict and the protection of human rights, including in resolving complex issues engaging state responsibility.

**Course Aim**

The aim of the course is to advance the reflective, interpretive, critical and problem-solving capacities of the research student.

**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.

**Course Outcomes**

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.

**Course outline**

1. Introduction to advanced international legal issues  
2. State jurisdiction, including immunity from jurisdiction especially of foreign state officials  
3. Extradition and death penalty  
4. Application and interpretation of treaties  
   [Mid-Term Examinations]  
5. Legality of and justifications for the recent threats and uses of force  
6. Legal issues relating to international terrorism  
7. Water-sharing and water resource management issues involving the South Asian Countries  
8. Boundaries and the fishermen issue involving the South Asian countries
Course syllabus

Week 1

1. **Introduction to advanced international legal issues**: Theoretical, philosophical and normative conceptions: advanced approaches and alternative perspectives; appraisal.

Required Readings


Supplementary Readings


Further Readings


Weeks 2 and 3

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.

Required Readings

Chicago Convention on International Civil Aviation, 1944.
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.
Belhaj v Straw; Rahmatullah (No. 1) v Ministry of Defence [2017] UKSC 3.
Republic of Italy and Ors. v Republic of India and Ors., Judgment of the Supreme Court of India, dated 18 January 2013.
Jurisdictional Immunities (Germany v Italy: Greece Intervening) [2012] ICJ Rep 99.

Supplementary Readings

Chicago International Air Services Transit Agreement, 1944.
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979, Article 12.
International Law Commission, Immunity of State Officials from Foreign Criminal Jurisdiction, Report of ILC, 2015, A/70/10, Chapter X.
Rahmatullah (No 2) v Ministry of Defence; Mohammed v Ministry of Defence [2017] UKSC 1.
The EnricaLexie Incident (Italy v India), PCA, 2016.
Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No. 3), [2000] 1 AC 147.
Jones v Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia), House of Lords, Appellate Committee, 2006 UKHL.

Further Readings

UN General Assembly Resolution 59/38 of 16 December 2002.
The Enrica Lexie Incident (Italy v India), ITLOS 2015.
Bouzari v. Islamic Republic of Iran, 2004, CanLII 871 (Court of Appeal for Ontario).


Case concerning the Application of the Convention of 1902 governing the Guardianship of Infants (Netherlands v. Sweden), ICJ Reports (1958), 55.

Free Zone Cases (1930) PCIJ Series A, No. 24.
The Case of the S.S. Lotus (1927), PCII Series A, No. 10.
S. S. Wimbledon (1923) PCII Series A, No. 1.
The Schooner Exchange v McFadden 7 Cranch 116 (1812) U.S. Supreme Court.


F A Mann, ‘The Doctrine of Jurisdiction in International Law’ (1964) 111 Hague Recueil 1.

Alex Mills, ‘Rethinking Jurisdiction in International Law’ (2014) 84 BYIL 187.

Weeks 3 and 4

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.

**Required Readings**

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

**Supplementary Readings**
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
Convention against Financing of Terrorism 1999.
The Constitution of Bhutan, 7–18.
The Constitution of Nepal, Article 16.
Abu Salem Abdul Qayyum Ansari v Central Bureau of Investigation & Anr., Judgment of the Supreme Court of India, dated 05 August 2013.
Factor v Lubenheimer, 290 US 276 (1933).

Further Readings

United Nations Convention Against Corruption, 2005, Article 44.
Extradition Treaty between the U.S. And Mexico, 1979, Article 8.
Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No. 3), [2000] 1 AC 147.
Santosh Kumar Satishbhushan Bariyar v State of Maharashtra, and Judgment of the Supreme Court of India, dated 13 May 2009.


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

Terlinden v Ames, 184 US 270 (1902) 2.

Flynn v Schultz, 748 F2d 1186 (7th Cir. 1984) 22


J S Reeves, ‘Extradition Treaties and the Death Penalty’ (1924) 18 AJIL 298.


I A Shearer, Extradition in International Law (Oceana 1971).

Michael A Newton, ‘Terrorist crimes and the aut dedere aut judicare obligation’ in Larissa van den Herik and Nico Schrijver (eds.), Counter-Terrorism Strategies in a Fragmented International Legal Order (Cambridge 2013) 68.


Weeks 5 and 6

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.

Required Readings


**Supplementary Readings**

ILC Report 2017 (Provisional Application of Treaties) 180.
ILC Guide to Practice on Reservations to Treaties, 2013.
*Pepper v Hart* [1993] 1 All ER 43.
*US v Kirby*, 74 US 482 (1868).
*The MV Saiga No. 2 (Saint Vincent and Grenadines v Guinea)* ITLOS, Judgment, 1 July 1999.
*The Island of Timor (Netherlands v Portugal)*, PCA (1914).
*Ram Jethmalani and Ors. v Union of India and Ors.*, Order of the Indian Supreme Court, 4 July 2011.


**Further Readings**

*Maritime Delimitation and Territorial Questions between Qatar and Bahrain* [1994] ICJ Rep 112.
Fisheries Jurisdiction (Federal Republic of Germany v Iceland) [1973] ICJ Rep 175.
Free Zones of Upper Savoy and the District of Gex (1932), PCIJ Series A/B, No. 46.
Polish Postal Service in Danzig (1925), PCIJ, Series B No. 11, 39.
Kenya’s Reservation to its Optional Clause Declaration under Article 36(2) of ICJ Statute.
G Nolte (ed), Treaties and Subsequent Practice (OUP 2013).
Richard Gardiner, Treaty Interpretation (OUP 2010).

Weeks 7 and 8

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”, cyber attack, environmental harm; role of consent and invitation; recent cases: Iraq, Kosovo, Afghanistan, Gaza, Crimea, Syria: considerations, standards and operation of legality and legitimacy; appraisal.

Required Readings

UN Charter, Article 2(4) and Chapters VII and VIII.
United Nations General Assembly Resolution 2131.


Supplementary Readings

General Treaty for the Renunciation of War, 1928.


Georges Abi-Saab, ‘Some Prefatory Thoughts on ‘Humanitarian Intervention’, in in Marcelo Kohen, Robert Kolb and Djacoba 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) 365.


Further readings

United Nations General Assembly Resolution 2625.
United Nations General Assembly Resolution 3314.


Case Concerning Oil Platforms (Islamic Republic of Iran v United States of America) [2003] ICJ Rep 161.


The Caroline Case (1840) 29 BFSP 1137.

UN, A more secure world: our shared responsibility (2004).
Statement by Dr PS Rao, Member of the Indian Delegation, to the 37th Session of the General Assembly in the Sixth Committee on Enhancing the Effectiveness of the Principle of non-Use of Force in International Relations (Published in 13 IJIL (1983) 140).

Weeks 9 and 10

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.

Required Readings

General Assembly Resolution 51/210 on Measures to Eliminate International Terrorism, 17 December 1996.

Supplementary Readings
General Assembly Resolution 67/99 on Measures to Eliminate International Terrorism, 14 December 2012.

Further Readings

Security Council Resolution 1267 (2001)
United States v Reid, 214 F.supp.2d 84 (2004).


Suyra P Subedi, ‘The war on terror and UN attempts to adopt a comprehensive convention on international terrorism’ in Paul Eden and Therese O’Donnell (eds), September 11, 2001: A Turning Point in International and Domestic Law (Transnational 2005) 207.


Weeks 11 and 12

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.

Required Readings

The Indus Waters Treaty, 1960.


Mahakali Treaty between India and Nepal, 1996.

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


Supplementary Readings

UN Watercourses Convention, 1997.


Baglihar Hydroelectric Dam, Expert Determination, Executive Summary, 12 February 2007 (Lausanne, 2007).


Further Readings


UNGA Res. 2625 of 24 October 1970, Friendly Relations Declaration.

UNGA Res. 3281 (XXIX) of 12 December 1974.


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


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

Weeks 13 and 14

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.

**Required Readings**

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

**Supplementary Readings**

Convention between Great Britain and China relating to Sikkim and Tibet, 1890.
Treaty of Kabul, 1921.
India-Sikkim Treaty, 1950.
Agreement between India and Sri Lanka on the Boundary in Historic Waters between the Two Countries and Related Matters, 1974.
The Constitution (Thirty-Sixth Amendment) Act, 1975.
*Burkina Faso v Niger* [2013] ICJ Rep 44.
Island of Palmas (Netherlands v United States) [1928] 2 RIAA 898.

Further Readings

Convention between Great Britain and Thibet (Treaty of Lahsa), 1904.
Convention between the United Kingdom and China Respecting Tibet, 1906.
The Durand Line Agreement (1893).
The India-Pakistan Question, SCOR, 762 Meeting, 23 January 1957.
Correspondence between the Government of India and China on the Boundary Question (1964) 4 Indian Journal of International Law 349.
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.

**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.