



**South Asian University
Faculty of Legal Studies**

LLM

2023

Monsoon Semester (First Semester)

Course Information

Part I

Course Title	International Law
Course Code	LW003
Course Instructor	Prof. 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

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
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

Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge 1997) 1–2, 3–6, 15–17 OR M N Shaw, *International Law* (Cambridge 2003) Chapter 1 OR I A Shearer, *Starke's International Law* (Oxford 2007) Chapter 1.

R P Anand (ed), *Asian States and the Development of a Universal International Law* (Vikas Publications 1972).

Supplementary Readings

A Anghie, 'The Evolution of International Law' (2006) 27 *Third World Quarterly* 739.

Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford 2016) Chapters 14 (Naturalism) and 20 (Positivism)/Siegfried Weissner (ed), *General Theory of International Law* (Brill 2017) Chapter 3 (Traditional Theories about International Law: Naturalism and positivism).

H Lauterpacht, 'The Grotian Tradition in International Law' (1946) 23 *British Yearbook of International Law* 1.

Onuma Yasuaki, 'International Law in and with International Politics: The Functions of International Law in International Society' (2003) 14 *EJIL* 105.

M Mutua, 'What is Twail?', *American Society of International Law, Proceedings of the 94th Annual Meeting 2000*, 31–39.

Further Readings

C H Alexandrowicz, 'Kautilyan Principles and the Law of Nations' (1965–66) 41 *British Yearbook of International Law* 301.

Said Mahmoudi, 'Islamic Approach to International Law' in Rüdiger Wolfrum (ed) *Max Planck Encyclopaedia of Public International Law* (Oxford 2012) 1.

Matthew J Moore, 'Buddhism and International Law' in Daniel J Kapust and Helen M Kinsela (eds), *Comparative Political Theory in Time and Place* (Springer 2017) 51.

C G Weeramantry, 'International law and Developing World: A Millennial Analysis' (2000) 41 *Harvard International Law Journal* 277.

Hisashi Owada, 'Asia and International Law: The Inaugural Address of the First President of the Asian Society of International Law' (2011) 1 *Asian Journal of International Law* 1.

James Crawford, 'International law as a discipline and profession' (2012) 106 *Proceedings of the American Society of International Law* 471.

Anthea Roberts, *Is International Law International?* (OUP, 2017) Chapter 1.

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.
 Vienna Convention on the Law of Treaties, 1969, Articles 2, 7, 34, 38, 46, 53, 64.
 Statute of the International Law Commission, 1947, Articles 16–24.
 James Crawford, *Brownlie's Public International Law* (Oxford 2019) Chapter 2.

Supplementary Readings

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1970, United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970.
 ILC Identification of Customary International Law: Text of the Draft Conclusions Provisionally Adopted by the Drafting Committee, UN Doc. A/CN.4/L.872 (2016).
Military and Para Military Activities in and Against Nicaragua (Nicaragua v United States of America), Merits, Judgment [1986] ICJ Rep 14.
Frontier Dispute (Burkina Faso/Mali), Judgment [1986] ICJ Rep 554.
Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) [1962] ICJ Rep 6.
Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) (Advisory Opinion) [1962] ICJ Rep 151.
Fisheries Case (United Kingdom v Norway) [1951] ICJ Rep 116.
Corfu Channel (Merits), Judgment [1949] ICJ Rep 4.
 M Akehurst, 'The Hierarchy of the Sources of International Law' (1975) *British Yearbook of International Law* (1975) 273.
 George Rodrigo Bandeira Galindo and Cesar Yip, 'Customary International Law and the Third World: Do Not Step on the Grass' (2017) 16 *Chinese Journal of International Law* 251.

Further Readings

UN General Assembly Resolution 377 (V) A (3 November 1950).
 UN Security Council Resolutions 1373, 1540 and 2178.

- Asylum Case (Columbia/Peru)* [1950] ICJ Rep 266.
- Right of Passage over Indian Territory, Judgment, ICJ Reports* [1960] ICJ Rep 6.
- North Sea Continental Shelf Cases, ICJ Reports* [1969] ICJ Rep 3.
- Continental Shelf (Libya v. Malta)* [1985] ICJ Rep 13.
- India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, Report of the Appellate Body of the WTO, WT/DS50/AB/R.
- ILC Guide to Practice on Reservations to Treaties, 2013.
- S V Viswanatha, *International Law in Ancient India* (Longmans 1925) General Features: Sources, 1–19.
- S. Talmon, ‘Determining Customary International Law: The ICJ’s Methodology between Induction, Deduction and Assertion,’ (2015) 26 *EJIL* 417
- Michael Akehurst, ‘Equity and General Principles of Law’ (1976) 25 *International and Comparative Law Quarterly* 801.
- H Lauterpacht, *Private Law Sources and Analogies of International Law* (Longmans 1927).
- M Wood, ‘Teachings of the Most Highly Qualified Publicists (Art. 38(1) ICJ Statute)’ *Max Planck Encyclopedia of Public International Law* (online).
- A Pellet, ‘Decisions of the ICJ as Sources of International Law?’, in *Decisions of the ICJ as Sources of International Law?* (2018), 7.
- Jean d’Aspremont, Samantha Besson, and Sévrine Knuchel (eds), *The Oxford Handbook of the Sources of International Law* (Oxford 2018) Chapter 16.
- Ravindra Pratap, ‘Nuclear Arms Control Treaties and Non-Parties’ (1999) 39 *Indian Journal of International Law* 626.

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.
- Sunil Babu Pant and others v Nepal Government and others*, Nepalese Supreme Court, Judgment of 21 December 2007 [2008] 2 NJA L.J. 261, 138 I.L.R. 500.
- Prof. Nurul Islam and Ors. v Government of the People’s Republic of Bangladesh and Ors.*, Bangladesh Supreme Court, Judgment of 7 February 2000, 52 D.L.R. (2000) 413.
- Vishakha and Ors. v State of Rajasthan and Ors.*, AIR 1997 SC 3011.
- James Crawford, *Brownlie’s Public International Law* (Oxford 2012) Chapter 3.

Supplementary Readings

- R v. Jones and Others*, Judgment of the House of Lords, 29 March 2006 [2006] UKHL 16.
Nallaratnam Singarasa v Attorney-General, Decision of the Supreme Court of Sri Lanka, 15 September 2006.
Union of India v. Azadi Bachao Andolan, AIR 2004 SC 1107.
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.
 The Constitution of the Democratic Socialist Republic of Sri Lanka, Article 27, 157.
 Pierre-Hugues Verdier & Mila Versteeg, 'International Law in National Legal Systems: An Empirical Investigation' (2015) 109 AJIL 514.
 Hugh Thirlway, 'Concepts, Principles, Rules and Analogies: International and Municipal Legal Reasoning' (2002) 294 Hague *Recueil* 265.
 V Fikfak, 'International Law before English and Asian Courts: Finding the Judicial Role in Separation of Powers', 3 *Asian Journal of International Law* (2013) 271.
 Jamshed A Hamid, 'International Law and Pakistan's Domestic Legal Order' (1994) *Asian Yearbook of International Law* 127.
 S K Agarwala, 'Indian Judicial Reasoning and Transnational Law' (1984) 22 *Archiv des Völkerrechts* 1.
 P C Rao, 'Issues Relating to Treaties and the Constitution of Nepal' (1968) 8 *IJIL* 549.

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.
 A Cassese, 'Modern Constitutions and International Law' (1985) 192 Hague *Recueil* 331.
 R Bahdi, 'Truth and Method in Domestic Application of International Law' (2002) 15 *Canadian Journal of Law and Jurisprudence* 255.
 H Schermers, 'The Role of Domestic Courts in Effectuating International Law' (1990) 3 *Leiden Journal of International Law* 77.
 D Sloss (ed), *The Role of Domestic Courts in Treaty Enforcement: A Comparative Study* (Cambridge 2009).

Ravindra Pratap, *Narmada Bachao Aandolan v Union of India*, *Oxford Reports on International Law in Domestic Courts* (2006), <http://ildc.oxfordlawreports.com>.

D Shelton, *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (Oxford 2011).

Hans Kelsen, *Principles of International Law* (Rinehart 1952) Chapter V (International and national Law).

E M Borchard, 'Relation between International Law and Municipal Law' (1940) 27 *Virginia Law Review* 137.

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.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1970, United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970.

Robert Kolb, 'Principles as Sources of International Law (with Special Reference to Good Faith)' (2006) 53 *Netherlands International Law Review* 1.

A A Cançado Trindade, *International Law for Humankind: Towards to a New Jus Gentium* (Brill 2010) Chapter III (Foundations of International Law: The Role and Importance of Its Basic Principles) 85.

Supplementary Readings

International Covenant on Civil and Political Rights, 1966, Article 1.

Vienna Convention on the Law of Treaties, 1969, Articles 18, 26, 27.

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

UNGA Resolution A/RES/36/103: Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, 1981.

UNGA Resolution 1514: Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960.

UNGA Resolution A/RES/3314: Definition of Aggression, 1974.

The Text of Proclamation of Independence of Bangladesh, 10 April 1971 in 11 *IJIL* (1971) 547.

Accordance with International Law of the Unilateral Independence in respect of Kosovo, ICJ Advisory Opinion [2010] ICJ Rep 403, para. 79.

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

Nuclear Tests [1974] ICJ Rep 253, para. 46.

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.

R S Saini, 'Is the Right to Self-Determination Relevant to Jammu and Kashmir?' (1998) 38 *IJIL* 157.

Surya P Subedi, 'The Right of Self-determination and the Tibetan People' in Dino Kritsiosis (ed), *Self-determination: Cases of Crisis*, Hull University Law School, Studies in Law Series, 1994, 1.

Roshani M Gunewardene, 'Indo-Sri Lanka Accord: Invitation or Intervention?' (1991) 3 *Sri Lanka Journal of International Law* 173.

V S Mani, *Basic Principles of Modern International Law* (Lancer 1993).

Further readings

Convention for the Pacific Settlement of International Disputes, 1907.

UNSC Resolution 1483 (2002).

UNSC Resolution 678 (1990).

UNSC Resolution 487 (1981).

Law of Transboundary Aquifers, UN GA Res. 63/124, dated 15 January 2009, Article 7.

United States — Import Prohibition of Certain Shrimp and Shrimp Products: Recourse to Article 21.5 of the DSU by Malaysia, WTO Doc. WT/DS58/AB/RW, AB-2001-4 (22 October 2001) para. 134.

Legality of the Threat or Use of Nuclear Weapons [1996] ICJ Rep 226.

East Timor (Portugal v Australia) [1995] ICJ Rep 90.

Western Sahara, Advisory Opinion [1975] ICJ Rep 6.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [2004] ICJ Rep 136.

Legality of Use of Force (Yugoslavia v United States of America (Provisional Measures)), Order of 2 June 1999 [1999] ICJ Rep 916.

Reference re Secession of Qubec [1998] 2 SCR 217.

G Schwarzenberger, "The fundamental principles of international law" (1955) 113 *Hague Recueil* 195.

Ian Brownlie, 'The Peaceful Settlement of International Disputes' (2009) 8 *Chinese Journal of International Law* 267.

R Emerson, 'Self-Determination' (1971) 65 *AJIL* 459.

R P Anand, 'Sovereign Equality of States in the United Nations' (1967) 7 *Indian Journal of International Law* 185.

Gillian White, 'The Principle of Good Faith' in Vaughan Lowe and Colin Warbrick (eds), *The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst* (Routledge 1994) 230.

Ravindra Pratap, "Sovereign Economic Freedom and Interests of Other States", in Patel, ed., *India and International Law* (Brill 2005) 127.

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

Responsibility of States for Internationally Wrongful Acts, 2001, Text adopted by the International Law Commission in its Fifty-Third Session, 2001.

Ian Brownlie, 'The Responsibility of States for the Acts of International Organizations' in Maurizio Ragazzi (ed), *International Responsibility Today: Essays in Memory of Oscar Schachter* (Martinus Nijhoff 2005) 343.

Supplementary Readings

Vienna Convention on the Law of Treaties, 1969, Articles 53 and 64.

United Nations Convention on the Law of the Sea (UNCLOS), 1982, Article 18 (2).

WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994, Articles 3 (7) and 22 (6).

Prosecutor v Duško Tadić, International Tribunal for the Former Yugoslavia, Case IT-94-1-A (1999), 38 *ILM* (1999), 1541, para. 117.

LaGrand (Germany v. United States of America), *Provisional Measures* [1999] ICJ Rep 9, para. 28.

Case Concerning Military and Para Military Activities in and Against Nicaragua (Nicaragua v United States of America) [1986] ICJ Rep 14, para. 109.

Chittharanjan Felix Amerasinghe, 'The Essence of the Structure of International Responsibility' in Maurizio Ragazzi (ed), *International Responsibility Today: Essays in Memory of Oscar Schachter* (Martinus Nijhoff 2005) 3.

Vaughan Lowe, 'Precluding Wrongfulness or Responsibility' (1999) 10 *EJIL* 405.

Further Readings

Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, Seabed Disputes Chamber of the International

Tribunal for the Law of the Sea, Case No 17, 1 February 2011, (2011) 50 ILM 458, paras.110, 117–20.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment [2007] ICJ Rep 43, para. 430.

Legality of the Threat or Use of Nuclear Weapons [1996] ICJ Rep 226, para 330.

Corfu Channel, Merits, Judgment [1949] ICJ Rep 4, 23.

Vladyslav Lanovoy, 'The Use of Force by Non-State Actors and the Limits of Attribution of Conduct' 28 EJIL (2017) 587.

Moynihan Harriet, 'Aiding and Assisting: The Mental Element Under Article 16 of the International Law Commission's Articles on State Responsibility' (2017) ICLQ doi:10.1017/S0020589317000598.

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.

Convention on the Law of the Non-navigational Uses of Watercourses, 1997, Articles 5 and 7.

SAARC Regional Convention on Suppression of Terrorism, 1987.

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.

Kingsley de Silva, 'Terrorism and Political Agitation in Post-Colonial South Asia: Jammu-Kashmir and Sri Lanka', in Ramesh Thakur and Oddny Wiggen (eds), *South Asia in the World: Problem Solving Perspectives on Security, Sustainable Development and Good Governance* (UNU Press 2004) 84.

Supplementary Readings

UN Security Council Resolution 1373.

The Indus Waters Treaty, 1960.

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.

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.

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

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

Further Readings

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.

Bangladesh-Pakistan-India Agreement on the Repatriation of POWs and Civilian Internees, 13 *International Legal Materials* (1974) 501.

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

Rahmatullah Khan, 'The United Nations Handling of the Kashmir Problem' in R P Anand (ed), *Asian States and the Development of a Universal International Law* (Vikas Publications 1972) 108.

Surya P Subedi, 'Regulation of shared water resources in international law: The challenges of balancing competing demands' in Surya P Subedi (ed), *International Watercourses Law for the 21st Century* (Routledge 2006) Chapter 1.

Peter Lehr et al, 'Responding to Terrorism and Ideology of Hate', in S O Wolf et al (eds), *The Merits of Regional Cooperation: The Case of South Asia* (Springer 2014) 11.

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

— 'India-Bangladesh Maritime Boundary Award' (2015) *LAWASIA Journal* 1.

Teaching Method

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

Assessment Method

There will be written examinations and a case study/written assignment/term paper.