



**South Asian University
Faculty of Legal Studies**

PhD

2018–2023

Monsoon Semester (First Semester)

Course Information

Part I

Course Title	Advanced International Legal Issues
Course Code	
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 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

Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford 2016) Introduction/Andrea Bianchi, *International Law Theories: An Enquiry into Different Ways of Thinking* (Oxford 2016) Introduction/Siegfried Weissner (ed), *General Theory of International Law* (Brill 2017) Introductory Essay.

C G Weeramantry, *Universalising International Law* (Martinus Nijhoff 2004) Chapter 7 (Widening the Conceptual Framework).

A A Cançado Trindade, 'International Law for Humankind: Towards to a New *Jus Gentium*' (2005) 317 Hague *Recueil* Part I, Chapter I.VII (The Universalist Conception of International Law).

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

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.

Supplementary Readings

R St J Macdonald and D M Johnston, 'International Legal Theory: New Frontiers of the Discipline', in R St J Macdonald and D M Johnston (eds), *The Structure and Process of International Law* (Martinus Nijhoff 1983) 1.

Hans J Morgenthau, 'Positivism, Functionalism, and International Law' (1940) 34 American Journal of International Law 260.

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

David Kennedy, 'A New Stream of International Law Scholarship' (1988) 7 Wisconsin International Law Journal 28.

Hillary Charlesworth et al., 'Feminist Approaches to International Law' (1991) 85 American Journal of International Law 613.

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.

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

Paul Schiff Berman, 'A Pluralist Approach to International Law' (2007) 32 Yale Journal of International Law 301.

Mose Hirsch, *Invitation to the Sociology of International Law* (Oxford 2016) Introduction (The Sociological Dimension of International Law).

Anne-Marie Slaughter Burley, 'International Law and International Relations Theory: A Dual Agenda' (1993) 87 American Journal of International Law 205.

- Jeffrey L Dunoff and Joel P Trachtman, 'Economic Analysis of International Law' (1999) 24 *Yale Journal of International Law* 1.
- Georg Schwarzenberger, *The Inductive Approach to International Law* (Stevens 1965) Chapter 2 (Province of the Doctrine of International Law).
- Eyal Benvenisti and Georg W Downs, 'National Courts, Domestic Democracy, and the Evolution of International Law' (2009) 20 *European Journal of International Law* 59.
- Gregory Schaffer and Tom Ginsburg, 'Empirical Turn in International Legal Scholarship' (2012) 106 *AJIL* 1.
- W E Butler, 'Comparative Approaches to International Law' 190 *Hague Recueil* (1985) I, 9.
- Anthea Roberts, *Is International Law International?* (Oxford 2017) Chapter 4.III (Inconsistent Approaches).
- Anthony Carty, 'Doctrine versus State Practice' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (OUP 2013) 972.
- Benedict Kingsbury, 'Whose international law? Sovereignty and Non-State Groups' (1994) 88 *ASIL Proceedings* 1.
- Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford 2005) Introduction.
- Paul Schiff Berman, 'From International Law to Law and Globalization' (2005) 43 *Columbia Journal of Transnational Law* 485.

Further Readings

- Philip Allott, 'Language, Method and the Nature of International Law' (1971) 45 *British Yearbook of International Law* 79.
- Georg Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?' (2008) 10 *Journal of the History of International Law* 181.
- Antony Anghie, 'Towards a Postcolonial International law' in Prabhakar Singh and Benoît Mayer (eds), *Critical International Law* (Oxford 2014) 123.
- Luis Eslava and Sundhya Pahuja, 'Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law' (2012) 45 *Journal of Law and Politics in Africa, Asia and Latin America – Verfassung und Recht in Übersee (VRÜ)* 195.
- Upendra Baxi, "What may the "Third World" expect from International Law?" in Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens (eds), *International Law and the Third World: Reshaping Justice* (Routledge 2008) 9.
- Georges Abi-Saab, 'The Third World Intellectuals in Praxis: Confrontation, participation, or operation behind enemy lines' (2016) 37 *Third World Quarterly* 1957.
- Adil Hasan Khan, 'Symposium on Theorising TWAIL Activism: Inheriting a Tragic Ethos: Learning from Radhabinod Pal' (2016) 110 *AJIL unbound* 25.
- L Marasinghe, 'Third World Jurisprudence for the Twenty-First Century' in Antony Anghie and Garry Stugress (eds), *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry* (Brill 1998) 49.
- M Sornarajah, 'The Asian Perspective to International Law in the Age of Globalization' (2001) 5 *Singapore Journal of International and Comparative Law* 284.

Fernando R. Tesón, 'The Kantian Theory of International Law' (1992) 92 *Columbia Law Review* 53.

Astrid Kjeldgaard-Pedersen, *Nordic Approaches to International Law* (Brill 2017) Introduction.

Eric a Posner, 'International Law: A Welfarist Approach' (2006) 73 *University of Chicago Law Review* 487.

Jutta Brunnée and Stephen Toope, 'International Law and Constructivism: Elements of an Interactional Theory of International Law' (2000) 39 *Columbia Journal of Transnational Law* 19.

Ooana A Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) 72 *University of Chicago Law Review* 469.

Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford 2008) Chapters 2 and 3 (Compliance Theory and New Classical Enforcement Theory).

Jared Wessel, 'International Law as Language: Towards a "Neo" New Haven School' (2010) 23 *International Journal for the Semiotics of Law* 123.

B S Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge University Press 2017) Chapter 1 (Introduction).

Edward Dumbauld, 'The Place of Philosophy in International Law' (1935) 83 *University of Pennsylvania Law Review* 590.

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.

Vienna Convention on Diplomatic Relations, 1961.

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.

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

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

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.

S Sucharitkul, 'Jurisdictional Immunities in Contemporary International Law from Asian Perspectives' (2005) 4 *Chinese Journal of International Law* 1.

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.
- R A Kolodkin, Immunity of State Officials from Foreign Criminal Jurisdiction, Preliminary Report of the ILC Special Rapporteur, 2008, A/CN.4/601.
- Rahmatullah (*No 2*) v *Ministry of Defence*; *Mohammed v Ministry of Defence* [2017] UKSC 1.
- The Enrica Lexie 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.
- J. McIntyre Machinery Ltd. v Nicastro*, Judgment of the U.S. Supreme Court, 564 U.S. (2011).
- Jones v Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia)*, House of Lords, Appellate Committee, 2006 UKHL.
- Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment of 14 February 2002 [2002] ICJ Rep 3.
- 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.
- Hazel Fox, 'Functions of state officials and the restrictive rule of state immunity' 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) 127.
- F A Mann, "The Doctrine of International Jurisdiction Revisited After Twenty Years" (1984) 184 *Hague Recueil* 9.
- Chanaka Wickremasinghe, 'Immunities enjoyed by official of states and international organizations' in Malcolm D Evans (ed), *International Law* (Oxford 2006) 395.
- M S Rajan, *United Nations and Domestic Jurisdiction* (Asia Publishing House 1961).
- K Narayan Rao, 'Jurisdictional Immunities of Foreign States in India: Some Aspects' (1983) 13 *IJIL* 589.

Further Readings

- Convention on Offences and Certain other Acts Committed on Board Aircraft, 1962.
- Protocol on Immunities and Privileges, Southern African Development Community, 1992.
- 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).
- Joined Cases 'wood pulp' 89/85, Judgment of the European Court of Justice, 27 September 1988, http://eur-lex.europa.eu/resource.html?uri=cellar:5ed612ae-790c-4091-bf05-0a6d7cbd9142.0002.06/DOC_1&format=PDF.

Attorney-General of the Government of Israel v. Eichmann (1961) 36 ILR 5 District Court of Jerusalem.

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), PCIJ Series A, No. 10.

S. S. Wimbledon (1923) PCIJ Series A, No. 1.

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

E D Dickinson, 'Introductory Comment to the Harvard Research Draft Convention on Jurisdiction with Respect to Crime 1935' (1935) 29 AJIL Supplement 443.

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

Sompong Sucharitkul, 'Immunities of Foreign States before National Authorities' (1976) 149 Hague *Recueil* 87.

D W Bowett, 'Jurisdiction: Changing Patterns of Authority over Activities and Resources' (1982) 53 BYIL 1.

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

Ernest K Bankas, *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts* (Springer 2005).

S McVeigh (ed), *Jurisprudence of Jurisdiction* (Routledge 2007) Chapter 1 (Questions of jurisdiction).

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

Cedric Ryngaert, *Jurisdiction in International Law* (Oxford 2015) Chapter 6 (A New Theory of Jurisdiction).

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

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

UN Model Law on Extradition, 2004, Section 12.

International Covenant on Civil and Political Rights, 1966, Article 6.

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

Extradition Agreement between the Republic of India and the Kingdom of Bhutan, 1997.

India-U.S. Extradition Treaty, 1997.

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

John Dugard & Christine Van Den Wyngaert, *Reconciling Extradition with Human Rights* (1998) 92 AJIL 187.

Supplementary Readings

- Optional Protocol to the International Covenant on Civil and Political Rights, 1966.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- Hague Convention against Unlawful Seizure of Aircraft, 1970.
- Montreal Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.
- Rome Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
- Convention against Terrorist Bombing, 1997.
- Convention against Financing of Terrorism 1999.
- The Constitution of Bhutan, 7–18.
- The Constitution of Nepal, Article 16.
- International Law Commission, The Obligation to Extradite or Prosecute, Final Report of the International Law Commission, 2014.
- Judge v Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).
- Abu Salem Abdul Qayyum Ansari v Central Bureau of Investigation & Anr.*, Judgment of the Supreme Court of India, dated 05 August 2013.
- Soering v United Kingdom*, 11 European Human Rights Reports 439 (1989).
- Factor v Lubenheimer*, 290 US 276 (1933).
- Ved P Nanda, *Bases For Refusing International Extradition Requests: Capital Punishment And Torture* (2000) 23 Fordham International Law Journal 23.

Further Readings

- United Nations Convention Against Corruption, 2005, Article 44.
- Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States, 1995.
- American Convention on Human Rights, 1969.
- Arab Charter on Human Rights, 1994.
- Extradition Treaty between the U.S. And Mexico, 1979, Article 8.
- Protocol number 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Protocol number 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Mohammed Fakhar Al Zaman Lodhi v The Governor of Brixton Prison and Anr.*, Decision of the Royal Courts of Justice, 09 October 2002.
- Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No. 3)*, [2000] 1 AC 147.
- Minister of Justice v. Burns and Rafay*, 22 March 2001, 2001 SCC 7.

Santosh Kumar Satishbhushan Bariyar v State of Maharashtra, and Judgment of the Supreme Court of India, dated 13 May 2009.

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

Bachan Singh v State of Punjab AIR 1980 SC 898.

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

Law Commission of India, *The Death Penalty*, Report No. 262 (2015).

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

M Cherif Bassiouni, *International Extradition and World Public Order* (1974).

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

Alan Clarke, 'Terrorism, Extradition, and the Death Penalty', 29 William Mitchell Law Review (2003) 783.

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

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

Richard B Lillich, 'Harmonizing Human Rights Law Nationally and Internationally: The Death Row Phenomenon as a Case Study' (1996) 40 St. Louis University Law Journal 699.

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

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

Vienna Convention on the Law of Treaties, 1969.

Convention on the Elimination of All Forms of Discrimination against Women, 1979, Articles 2, 7, 16, 29, Declarations and Reservations by the South Asian Countries, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en.

Convention on the Rights of the Child, 1989, Articles 14, 32, Declarations and Reservations by the South Asian Countries, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec.

Asian Agricultural Products Ltd. v Republic of Sri Lanka, ICSID Case No. ARB/87/3, Final Award, dated 21 June 1990.

United States – Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Panel, WT/DS58/AB/R.

Duncan B Hollis, *The Oxford Guide to Treaties* (OUP 2012) Parts III (Treaty Application) and IV (Treaty Interpretation).

Supplementary Readings

ILC Report 2017 (Provisional Application of Treaties) 180.

ILC Guide to Practice on Reservations to Treaties, 2013.

Doha Declaration on TRIPS Agreement and Public Health, 2001.

Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, ICJ 2017.

Pepper v Hart [1993] 1 All ER 43.

South West Africa Cases [1962] ICJ Rep 319.

US v Kirby, 74 US 482 (1868).

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

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).

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.

Katherine del Mar, 'Integrity versus Flexibility in the Application of Treaties' in Christian J Tams et al (eds), *Research Handbook on the Law of Treaties* (Edward Elgar 2014)

Michale Waibel, 'Uniformity versus Specialisation (2): A Uniform Regime of Treaty Interpretation?' in Christian J Tams et al (eds), *Research Handbook on the Law of Treaties* (Edward Elgar 2014)

Laurence R Helfer, 'Exiting Treaties' 91 Virginia Law Review (2005) 1579.

K Narayan Rao, 'Reservations to Multilateral Conventions' (1960) 1 Indian Journal of International Law 92.

Further Readings

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.

United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, Report of the WTO Appellate Body, WT/DS285/AB/R (7 April 2005).

- Anglo-Iranian Oil Co., Preliminary Objections* [1952] ICJ Rep 93.
- Legality of the threat or Use of Nuclear Weapons*, Advisory Opinion [1996] ICJ Rep 226.
- European Communities – Customs Classification of Certain Computer Equipment*, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R (5 June 1998).
- Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* [1951] ICJ Rep 14.
- Maritime Delimitation and Territorial Questions between Qatar and Bahrain* [1994] ICJ Rep 112.
- Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria* [2002] ICJ Rep 1.
- Oil Platforms (Islamic Republic of Iran v United States of America)* [1996] ICJ Rep 803.
- Fisheries Jurisdiction (Federal Republic of Germany v Iceland)* [1973] ICJ Rep 175.
- Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7.
- Certain Expenses of the United Nations, Advisory Opinion* [1962] ICJ Rep 151.
- 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.
- Sotirios-Ionnis Lekkas and Antonios Tzanakopoulos, 'Pacta sunt servanda versus Flexibility in the suspension and Termination of Treaties' in Christian J Tams et al (eds), *Research Handbook on the Law of Treaties* (Edward Elgar 2014).
- Heribert Franz Koeck, 'The "Changed Circumstances" Clause after the United Nations Conference on the Law of Treaties (1968-69)' 4 *Georgia Journal of International Law* (1974) 93.
- G Nolte (ed), *Treaties and Subsequent Practice* (OUP 2013).
- O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012).
- M Fitzmaurice, O Elias and P Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties* (Brill 2010).
- M S McDougal, H D Lasswell and J Miller, *The Interpretation of International Agreements and World Public Order: Principles of Content and Procedure* (New Haven 1994).
- A Aust, *Modern Treaty Law and Practice* (Cambridge 2007).
- 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.

United Nations Security Council Resolution 1373.

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

James Crawford and Rowan Nicholson, 'The Continued Relevance of Established Rules and Institutions Relating to the Use of Force' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford 2017) Chapter 4.

Supplementary Readings

General Treaty for the Renunciation of War, 1928.

United Nations Security Council Resolution 1368.

United Nations Security Council Resolution 1377.

United Nations Security Council Resolution 1441.

United Nations Security Council Resolution 1740.

United Nations Security Council Resolution 1776.

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

UK Attorney General's Speech at International Institute for Strategic Studies, 'The modern law of self-defence', 11 January 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583171/170111_Imminence_Speech_.pdf.

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

Ian Brownlie, 'International Law and the Use of Force by States Revisited' (2002) 1 Chinese Journal of International Law 1.

W Michael Reisman and Andrea Armstrong, 'The Past and Future of the Claim of Preemptive Self-Defence' (2006) 100 AJIL 525.

Daniel Bethlehem, 'Principles Relevant to the Scope of a State's Right of Self-defence Against an Imminent or Actual Armed Attack by Non-State Actors' 106 AJIL (2012) 769.

Lindsay Moir, 'Action against Host States of Terrorist Groups', in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford 2017) Chapter 32.

Niels Blokker, 'Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by the 'Coalitions of the Able and Willing'' (2000) 11 EJIL 541.

Ashley S Deeks, 'Consent to the Use of Force and International Law Supremacy' (2013) 54 Harvard International Law Journal 1.

Dapo Akande and Thomas Liefländer, 'Clarifying Necessity, Imminence and Proportionality in the Law of Self-defence' (2013) 107 AJIL 563.

Georges Abi-Saab, 'Some Prefatory Thoughts on 'Humanitarian Intervention'', in Marcelo Kohen, Robert Kolb and Djacobá 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.

V S Mani, 'ISAF in Afghanistan: A Study in 'Nursing' after a 'Humanitarian' Surgery' (2005) IJIL 17.

Anthea Roberts, 'Legality versus Legitimacy: Can Uses of Force be Illegal but Justified?' in E Macdonald Alston, *Human Rights, Intervention, and the Use of Force* (OUP 2008) 179.

Francis Grimal, *Threats of Force: International Law and Strategy* (Routledge 2013) Introduction.

Further readings

United Nations General Assembly Resolution 2625.

United Nations General Assembly Resolution 3314.

United Nations Security Council Resolution 2249.

United Nations Security Council Resolution 688.

United Nations Security Council Resolution 660.

Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda) [2005] ICJ Rep 168.

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

The M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v Guinea), Judgment of the International Tribunal for the Law of the Sea, 1 July 1999.

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

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

The Caroline Case (1840) 29 BFSP 1137.

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

J L Brierly, 'International Law and Resort to Armed Force' (1932) 4 Cambridge Law Journal 308.

M K Nawaz, 'Limits of Self-Defence: Legitimacy of Use of Force against Economic Strangulation?' (1976) 16 IJIL 252.

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

M Rafiqul Islam, 'Use of Force in Self-Determination Claims' (1985) 25 Indian Journal of International Law 424.

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Kimberley N Trapp, 'Unauthorized Military Interventions for the Public Good: A Response to Harold Koh' 111 AJIL Unbound (2017) 292.

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Christof Heynes, Dapo Akande, Lawrence Hill-Cowthorne and Thompson Chengeta, 'The International Law Framework Regulating the Use of Armed Drones' (2016) 65 ILCQ 791.

Karine Bannelier-Christakis, 'Military Interventions against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent' 29 *Leiden Journal of International Law* (2016) 743.

Natalia Ochoa-Ruiz and Esther Salamanca-Aguado, 'Exploring the Limits of International Law Relating to the Use of Force in Self-defence' 16 *EJIL* (2005) 499.

[Yaroslav Radziwill](#), *Cyber-Attacks and the Exploitable Imperfections of International Law* (Brill 2015) Chapter 2 (Theoretical Framework).

Monica Hakimi and Jacon Katz Cogan, 'The Two Codes on the Use of Force' (2016) 27 *EJIL* 257.

Michael Wood, 'International Law and the Use of Force: What Happens in Practice' (2013) 53 *IJIL* 345.

C Gray, *International Law and the Use of Force* (Oxford 2008).

C Kress, "Major Post-Westphalian Shifts and Some Important Neo-Westphalian Hesitations in the State Practice on the International Law on the Use of Force" (2014) 1 *Journal on the Use of Force and International Law* 1.

Gina Heathcote, *Feminist Perspectives on the Law on the Use of Force*, in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford 2017), Chapter 5.

Jutta Brunnée and Stephen J Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge 2010) Chapter 6 (The use of force: normative ebb and flow).

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

[International Convention for the Suppression of Terrorist Bombings](#), 1997.

SAARC Regional Convention on Suppression of Terrorism, 1987.

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

Security Council Resolution 1373 (2001).

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

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

[International Convention for the Suppression of the Financing of Terrorism](#), 1999.

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

Security Council Resolution 2166 (2014)

India-Sri Lanka Agreement of 29 June 1987.

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Nadarajah v Gonzalez, 2006 U.S. App. LEXIS 615, 2006 WL 686385 (Ninth Circuit).

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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.

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

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

N Rostow, 'Before and After: The Changed U.N. Response to Terrorism Since September 11th' (2002) 35 Cornell International Law Journal 475.

Elizabeth Chadwick, 'Terrorism and Self-Determination', in B Saul (ed), *Research Handbook on International Law and Terrorism* (Edward Elgar 2015) Chapter 18.

Rishi Gulati, 'The 26/11 Mumbai Terrorist Attacks: Assessing Pakistan's Responsibility in International Law' (2011) 51 IJIL 321.

Upendra D Acharya, 'War on Terror or Terror Wars' (2009) 37 Denver Journal of International Law and Policy 653.

J N Saxena, 'Relationship between International Terrorism, State Terror and Human Rights in the World Order' (1987) 27 IJIL 194.

Robert G Wirsing, 'Introduction: Religion, Radicalism, and Security in South Asia' in Satu P Limaye et al (eds), *Religious Radicalism and Security in South Asia* (Asia-Pacific Centre for Security Studies) 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.

Further Readings

Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, 1977.

International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 2005.

[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 Offences and Certain Other Acts Committed on Board Aircraft, 1963.

Security Council Resolution 1368 (2001)

Security Council Resolution 1267 (2001)

The Anti-Terrorism Act, 1997.

Averill v United Kingdom [2000] ECHR 212.

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

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S D Murphy, "Terrorism and the Concept of 'Armed Attack' in Article 51 of the UN Charter" (2002) 43 *Harvard International Law Journal* 41.

Yogesh K Tyagi, 'Political Terrorism: National and International Dimensions' (1987) 27 *IJIL* 160.

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

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.

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[Yaroslav Radziwill](#), [Cyber-Attacks and the Exploitable Imperfections of International Law](#) (Brill 2015) Chapter 7 (Cyber Terrorism).

Antony Anghie, *Imperialism, Sovereignty and the making of International Law* (Cambridge 2004) Chapter 6 (On making war on the terrorist: imperialism as self-defence).

M Byers, 'Terrorism, the Use of Force and International Law after 11 September' (2002) 51 *International and Comparative Law Quarterly* 401.

Helen Duffy, 'Harmony or conflict? The interplay between human rights and humanitarian law in the fight against terrorism' in Larissa van den Herik and Nico Schrijver (eds.), *Counter-Terrorism Strategies in a Fragmented International Legal Order* (Cambridge 2013) 482.

Javid Rehman, 'Islam, Terrorism and International Law' in B Saul (ed), *Research Handbook on International Law and Terrorism* (Edward Elgar 2015) Chapter 11.

Andrea Bianchi, 'Terrorism and Armed Conflicts: Insights from a Law and Literature Perspective' (2011) 24 *Leiden Journal of International Law* 1.

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.

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.

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

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

Supplementary Readings

UN Watercourses Convention, 1997.

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>.

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Surya P Subedi, 'Hydro-Diplomacy in South Asia: The Conclusion of the Mahakali and Ganges River Treaties' (1999) 93 AJIL 953.

J S Bains, 'Diversion of International Rivers' (1960) 1 Indian Journal of International Law 38.

Further Readings

India-Nepal Agreement (revised in 1996) on the Kosi River Project, 1954.

Gandak River Treaty between India and Nepal (amended 1964), 1959.

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

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

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

Gabčíkovo-Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7.

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

The Law of the Non-navigational Uses of International Watercourses, First Report on the law of non-navigational uses of international watercourses by Mr Stephen M Schwebel,

Special Rapporteur, A/CN.4/320 and Corr.1, *Yearbook of the International Law Commission* 1979, vol. II (1).

The Law of the Non-navigational Uses of International Watercourses, Second Report on the law of non-navigational uses of international watercourses by Mr Stephen M Schwebel, Special Rapporteur, A/CN.4/332 and Corr.1 and Addl. 1, *Yearbook of the International Law Commission* 1980, vol. II (1).

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).

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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.

Malgosia Fitzmaurice, 'Water Management in the 21st Century' in Antony Anghie and Garry Stugress (eds), *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry* (Brill 1998) 425.

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.

Rhett B Larson, 'Inter-State Water Law in the United States of America: What Lessons for International Water Law?' (2017) 2 *Brill Research Perspectives in International Water Law* 1.

Jacob D. Petersen-Perlman, 'International Water Conflict and Cooperation: Challenges and Opportunities' (2017) 42 *Water International* 105.

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

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

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).

Vienna Convention on the Law of Treaties, 1969.

India-Bhutan Friendship Treaty, 2007.

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

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.

Indian Independence (International Arrangements) Order, 14 August 1947.

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

India-Sikkim Treaty, 1950.

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.

The Constitution (Thirty-Sixth Amendment) Act, 1975.

Burkina Faso v Niger [2013] ICJ Rep 44.

Cameroon v Nigeria: Equatorial Guinea Intervening [2002] ICJ Rep 303.

Libya v Chad [1994] ICJ Rep 6.

Burkina Faso v Mali [1986] ICJ Rep 554.

North Sea Continental Shelf Cases [1969] ICJ Rep 3.

Island of Palmas (Netherlands v United States) [1928] 2 RIAA 898.

K Krishna Rao, 'The Sino-Indian Boundary Question and International Law' (1962) 11 ICLQ 375.

P C Rao, 'Indo-Pakistan Agreement on the Rann of Kutch: Form and Consent' (1965) 5 IJIL 176.

Harnam Singh, 'Kachchativu Question' (1968) 8 IJIL 4.

V P Gupta, 'Sikkim-Bhutan Border with Tibet' (1970) 10 Indian Journal of International Law 163.

Rahmatullah Khan, 'The Kashmir Problem: Its Handling in the United Nations' (1969) 11 Journal of the Indian Law Institute 273.

K Narayan Rao, 'Essence of Shimla Agreement' (1972) 12 IJIL 397.

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.

Further Readings

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

- Convention between Great Britain and Thibet (Treaty of Lahsa), 1904.
- Convention between the United Kingdom and China Respecting Tibet, 1906.
- 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.
- 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.
- R P Anand, *South Asia in Search of a Regional Identity* (Banyan Publications 1991) Chapter III (Recent Developments in the Law of the Sea and Maritime Issues in South Asia).
- United Nations, *Handbook on the Delimitation of Maritime Boundaries* (United Nations, 2000).
- S P Jagota, "Maritime Boundary" (1981) 257 *Hague Recueil* 81.
- Prescott and C Schofield, *The Maritime Political Boundaries of the World* (Martinus Nijhoff, 2005).
- D A Colson and R W Smith, eds., *International Maritime Boundaries* (Martinus Nijhoff, 2011) vol vi.
- Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law* (Cambridge 2015).
- Hungdah Chiu, 'Communist China's Attitude Toward International Law' (1966) 60 *American Journal of International Law* 245.
- D W Wadegaonkar, 'Changing Concept of the Delimitation of Maritime Frontiers and the Delimitation of the Maritime Boundaries' in S K Agarwala, T S Rama Rao and J N Saxena (eds), *New Horizons of International Law and Developing Countries* (Tripathi 1983).
- Surya P Sharma, 'Boundary Dispute and Territorial Dispute: A Comparison' (1970) 10 *Indian Journal of International Law* 158.
- C J Chacko, 'The Rann of Kutch and International Law' (1965) 5 *IJIL* 147.
- M. Pomerance, *Self-Determination in Law and Practice* (Martinus Nijhoff 1982) Chapter 9.
- S M M Qureshi, 'Pashtunistan: The Frontier Dispute Between Afghanistan and Pakistan' (1966) 39 *Pacific Affairs* 99.
- Manjula R Shyam, 'Extended Maritime Jurisdiction and Its Impact on South Asia' (1981) 10 *Ocean Development and International Law* (1981) 93.
- 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.
- M N Shaw, 'Peoples, Territorialism and Boundaries' (1997) 8 *EJIL* 478.
- T S Rama Rao, 'India's International Disputes' (1984) 22 *Archiv des Völkerrechts* 22.
- Ravindra Pratap, 'India-Bangladesh Maritime Boundary Award' (2015) *LAWASIA Journal* 1.

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.