

# LAW AND PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS

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**Course informations :**

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| Degree level                   | DU LLM International Law and Master 2 Droit international general of University of Paris |
| Semester                       | 2 <sup>nd</sup>  |
| Course duration                | 15h  |
| ECTS delivered upon completion | 5  |

**Instructor information:**

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| Name        | Mme Clarenc Bicudo   |
| Status      | Maître de conférences en droit public (Professor Assistant)                                |
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**Course description :**

In an international legal order with no rule imposing compulsory recourse to a judge, the establishment of mechanisms for the settlement of disputes is of particular importance, in order to ensure respect for obligations and enforcement of rights. In this vein, the last thirty years have been marked by an increase in the number of cases submitted to international jurisdictions or to arbitration. In this context, the objective of the course is to give students an in-depth knowledge of the various mechanisms available in the international system for the settlement of disputes, of the respective jurisdiction of the various courts and tribunals, and of the procedural rules applicable to cases brought before them. It is the purpose of the course to present a *tour d'horizon* of the function and content of procedure in international litigation, distinguished from problems of substantive law.

The course will include study of different mechanisms of dispute settlement: focus will be put upon the universal system (procedures before the International Court of Justice, sometimes called the « World Court » because it has a general jurisdiction), but attention will also be granted to more specific systems of dispute settlement related to limited questions (the International Centre for Settlement of Investment Disputes, an international arbitration established by the World Bank Group for legal dispute resolution and conciliation between international investors and States ; the Dispute Settlement Body established by the World Trade Organization in order to resolve trade disputes between its members ; and also international criminal procedures before the International Criminal Court).

### Course learning outcomes:

Upon completion of this course, students will demonstrate their ability to:

- Identify an international dispute and select the appropriate settlement (diplomatic and/ or jurisdictional)
- Knowledge and comparison of the main international jurisdictions' basic mechanisms (ICJ, ICC, ICSID, WTO,...)
- Systematic understanding of principles of the main elements of international litigation procedure
- Application: analyze case-law and resolve cases

### Student evaluation plan:

The evaluation will be based upon oral participation and on a final exam as described hereafter in the course schedule.

### Course schedule :

| Date   | Session | Topic  | Description  | Assignment  |
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| Monday, January 18 <sup>th</sup> , 2pm / 5pm         | 1       | General Introduction   | Theoretical aspects of dispute settlement in the international order; historical presentation of IDS; importance of procedure in international litigation. | Read and analyze a text; discuss actual aspects of international litigation on the basis of a press point.  |
| Tuesday, January 19 <sup>th</sup> , 2pm / 5pm        | 2       | Arise of an International Dispute and the Obligation of Peaceful Settlement. | Position of the problem and legal framework of IDS.  | Analyze treaty provisions and case law on the subject of the lecture.   |
| Wednesday, January 20 <sup>th</sup> , 2pm / 5pm      | 3       | Diplomatic Methods of Settlement.  | Bilateral negotiation, good offices, mediation, conciliation   | Analyze and compare the different diplomatic settlements of dispute; Analyze of the WTO's Dispute Settlement Body   |
| Thursday, January 21 <sup>st</sup> , 2:30pm / 5:30pm | 4       | Adjudicative Methods Settlement.   | The International Jurisdiction.  | Distinguish arbitral and judicial organization through practical exercises. Distinguish international from national procedures through practical exercises. |
| Friday, January 22 <sup>nd</sup> , 2pm / 5pm         | 5       |  | The Juridical Power.   | Analyze treaty provisions and case law on the subject of the lecture. Analyze a video of public hearings before the ICJ.                                    |
| Friday, January 29 <sup>th</sup> , 12am / 1pm        | -       | Final exam   | The final exam is intended to measure students' knowledge and their ability to use   | The exam consists of 40 multiple-answer questions. Students have 60   |

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|  |  |  | it to reflect on concrete situations. The ability to read and understand a legal text is also assessed. | minutes to answer them (i.e. 1 min 30 s/question). This gives them time to read the statements carefully. All documents are allowed but not communication. |
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### Textbooks and other reading materials:

- Bercovitch, J. and R. Jackson, *Conflict Resolution in the Twenty-first Century : Principles, Methods, and Approaches*, Ann Arbor, University of Michigan Press, 2009.
- Mackenzie, R. (et al.), *The Manual on International Courts and Tribunals* (2nd ed.), Oxford, Oxford University Press, 2010. [e-book]
- Menkel-Meadow, C. (ed.), *Complex Dispute Resolution*, Farnham, Ashgate, 2012.
- Merrills, J.G., *International Dispute Settlement*, New York, NY, Cambridge University Press, 2011.
- Nanteuil A., *International Investment Law*, Principles of International Law Series, Edward Elgar Publishing, 2020.
- Romano, C.P.R., K.J. Alter and Y. Shany (eds.), *The Oxford Handbook of International Adjudication*, Oxford, Oxford University Press, 2014. [e-book]
- Schabas, W.A., and S. Murphy (eds.), *Research Handbook on International Courts and Tribunals*, Cheltenham, Edward Elgar Publishing, 2017.

### Supplement resources:

- Alter, K.J., *The New Terrain of International Law: Courts, Politics, Rights*, Princeton, Princeton University Press, 2014.
- Alter, K.J. (et al.) (eds.), *International Court Authority*, Oxford, Oxford University Press, 2018. [e-book]
- Andenas, M., and E. Bjorge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law*, Cambridge, Cambridge University Press, 2015. [e-book]
- Beardsley, K., *The Mediation Dilemma*, Ithaca, Cornell University Press, 2011.
- Benvenisti, E., and G.W. Downs, *Between Fragmentation and Democracy: The Role of National and International Courts*, Cambridge, Cambridge University Press, 2017.
- Bogdandy, A. von, and I. Venzke, *In Whose Name? A Public Law Theory of International Adjudication*, Oxford, Oxford University Press, 2014.
- Boisson de Chazournes, L., M.G. Kohen and J.E. Viñuales, *Diplomatic and Judicial Means of Dispute Settlement*, Leiden, Nijhoff, 2013.
- Boschiero, N. (et al.) (eds.), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves*, The Hague, Asser Press, 2013.
- Brilmayer, L. (et al.), *International Claims Commissions: Righting Wrongs after Conflict*, Cheltenham, Edward Elgar Publishing, 2017.
- Buggenhoudt, C., *Common Interests in International Litigation: A Case Study on Natural Resource Exploitation Disputes*, Cambridge, Intersentia, 2017.
- Carrubba, C.J., and M. J. Gabel, *International Courts and the Performance of International Agreements : A General Theory with Evidence from the European Union*, New York, NY, Cambridge University Press, 2015.

- De Baere, G., and J. Wouters (eds.), *The Contribution of International and Supranational Courts to the Rule of Law*, Cheltenham, UK, Edward Elgar Publishing, 2015.
- Follesdal, A., and G. Ulfstein (eds.), *The Judicialization of International Law : A Mixed Blessing?*, Oxford, Oxford University Press, 2018. [e-book]
- Gallus, N., *Temporal Jurisdiction of International Tribunals*, Oxford, Oxford University Press, 2017.
- Giorgetti, C. (ed.), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals*, Leiden, Nijhoff, 2012.
- Giorgetti, C. (ed.), *Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals*, Leiden, Brill Nijhoff, 2015.
- Grossman, N. (et al.) (eds.), *Legitimacy and International Courts*, Cambridge, Cambridge University Press, 2018. [e-book]
- Howse, R. (et al.) (eds.), *The Legitimacy of International Trade Courts and Tribunals*, Cambridge, Cambridge University Press, 2018. [e-book]
- Johns, L., *Strengthening International Courts: The Hidden Costs of Legalization*, Ann Arbor, University of Michigan Press, 2015.
- Klein, N. (ed.), *Litigating International Law Disputes: Weighing the Options*, Cambridge New York, Cambridge University Press, 2014.
- Kotuby Jr., C.T., and L.A. Sobota, *General Principles of Law and International Due Process: Principles and Norms Applicable in Transnational Disputes*, New York, NY, Oxford University Press, 2017.
- Rasilla, I. de la, and J.E. Viñuales (eds.), *Experiments in International Adjudication: Historical Accounts*, Cambridge, Cambridge University Press, 2019.
- Salles, L.E., *Forum Shopping in International Adjudication*, Cambridge, Cambridge University Press, 2014.
- Shany, Y., *Questions of Jurisdiction and Admissibility before International Courts*, Cambridge, Cambridge University Press, 2016.
- Squatrito, T. (et al.) (eds.), *The Performance of International Courts and Tribunals*, Cambridge, Cambridge University Press, 2018. [e-book]
- Tanaka, Y., *The Peaceful Settlement of International Disputes*, Cambridge, Cambridge University Press, 2018. [e-book]
- Vecchio, A. del, *International Courts and Tribunals between Globalisation and Localism*, 's-Gravenhage, Eleven International Publishing, 2013.
- Wehberg, H., *The Problem of an International Court of Justice* (transl. by C.G. Fenwick), Oxford, Clarendon, 1918 (2nd printing, Clark, NJ, The Lawbook Exchange, 2010).
- Wiik, A., *Amicus Curiae Before International Courts and Tribunals*, Baden-Baden, Nomos, 2018.
- Wind, M. (ed.), *International Courts and Domestic Politics*, Cambridge, Cambridge University Press, 2018. [e-book]
- Wolfrum, R. and I. Gätzschmann (eds.), *International Dispute Settlement: Room for Innovations?*, Heidelberg, Springer, 2012.

## Journal articles:

2019

- Caserta, S., and M. Madsen, "Sociology of International Adjudication" (June 4, 2019), iCourts Working Paper Series No. 160, 2019.
- Seibert-Fohr, A., "The Independence of Judges and their Freedom of Expression: An Ambivalent Relationship" (April 19, 2019).

2018

- Alter, K.J. (et al.), "International Court Authority (Introduction)", in *ibid.* (eds.), *International Court Authority*, Oxford, Oxford University Press, 2018; iCourts Working Paper Series, No. 112; Northwestern Public Law Research Paper No. 17-33, 2018.
- Blair, C., and E. Vidak Gojković, "WikiLeaks and Beyond: Discerning an International Standard for the Admissibility of Illegally Obtained Evidence", *ICSID Review - Foreign Investment Law Journal*, 33 (2018), No. 1, pp. 235-259.
- Boisson de Chazournes, L. (et al.), "One Size does not Fit All: Uses of Experts before International Courts and Tribunals: An Insight into the Practice", *Journal of International Dispute Settlement*, 9 (2018), No. 3, pp. 477-505.
- Brosseau, J., "The Distinction Between Arbitration and Judicial Settlement in International Law: Three Characteristics and Why They Matter Reforms", *King's Student Law Review*, 9 (2019), No. 2, Forthcoming.
- Cook, K., "Judging 'Best Available Science': Emerging Issues and the Role of Experts", *Journal of International Dispute Settlement*, 9 (2018), No. 3, pp. 388-400.
- De Brabandere, E., "To The Hague!", International Dispute Settlement from Practice to Legal Discipline, Inaugural lecture, Leiden University, February 2018.
- Dothan, S., "The Motivations of Individual Judges and how They Act as a Group", *German Law Journal*, 19 (2018), Forthcoming; iCourts Working Paper Series, No. 132.
- Dothan, S., "International Courts Improve Public Deliberation", *Michigan Journal of International Law*, 39 (2018), No. 2, pp. 217-240.
- Dunoff, J.L., and M.A. Pollack, "International Judicial Performances and the Performance of International Courts", in T. Squatrito (et al.) (eds.), *The Performance of International Courts and Tribunals*, Cambridge, Cambridge University Press, 2018. [e-article]
- Liao, S., "Fact-Finding in Non-Appearance Before International Courts and Tribunals", January 2018.
- Madsen, M., "Who Rules the World? The Educational Capital of the International Judiciary", Forthcoming in *University of California Journal of International, Transnational, and Comparative Law*; iCourts Working Paper Series No. 127, 2018.
- Odermatt, J., "Patterns of Avoidance: Political Questions Before International Courts", *International Journal of Law in Context*, 14(2), Forthcoming; iCourts Working Paper Series No. 120 (March 2018).
- Paine, J., "International Adjudication as a Global Public Good?" (October 8, 2018), Forthcoming in *European Journal of International Law*.
- Pauwelyn, J., and R.J. Hamilton, "Exit from International Tribunals", *Journal of International Dispute Settlement*, 9 (2018), No. 4, pp. 679-690.
- Ridi, N., "'Mirages of an Intellectual Dreamland'? Ratio, Obiter, and the Textualization of International Precedent" (September 4, 2018), Forthcoming in *Journal of International Dispute Settlement*.
- Shaffer, G.C., "A Tragedy in the Making?: The Decline of Law and the Return of Power in International Trade Relations", *Yale Journal of International Law Online*, 2018; UC Irvine School of Law Research Paper No. 2018-64.
- Schultz, T., and N. Ridi, "Comity and International Courts and Tribunals", LawArXiv (April 29, 2018). [e-article]