COURSE MANUAL

INTERNATIONAL COURTS AND TRIBUNALS

Prof. Pierpaolo Petrelli

Fall 2025
(AY2025-26)

This document is prepared by the course instructor and contains basic information relevant to the execution of the course. It is the official record for all intends and purposes as far the elective course, *International Law: Courts and Tribunals*, is concerned.

This course manual can be used as a general guide to the subject. However, the instructor can modify, extend or supplement the course (without tampering its basic framework and objectives) for the effective and efficient delivery of the course. The instructor will provide students with reasons for such changes.

Part I

Course Title: **International Law: Courts and Tribunals**
Course Code: L-EL-0594
Course Duration: **One Semester (15 Weeks)**
No. of Credit Units: 4 **Credits**
Level: **UG**
Medium of Instruction: **English**
Pre-requisites: Public International Law
Equivalent Courses: Nil
Cross-Listed Course: No

Part II

1. Course Description

A distinctive feature of modern international society is the increase in the number of international judicial bodies, dispute settlement and implementation control bodies; and in the range and importance of the issues, they are called upon to address. These factors reflect a new stage in the delivery of international justice. The former Prosecutor of the Yugoslav Tribunal, Richard Goldstone, resolved that: '*it seems to me that if you don't have international tribunals, you might as well not have international law*'.

This course has been designed to encourage law students to discuss and address, in critical and analytical fashion, the legal and policy aspects of the functioning of International Courts and Tribunals (ICTs).

Some of the major tribunals that the course will examine include the International Court of Justice (*ICJ*); International Criminal Court (*ICC*); World Trade Organization Dispute Settlement Body (*DSB*); International Tribunal on the Law of the Sea (*ITLOS*); Permanent Court of Arbitration (*PCA*); *ICSID* and regional human rights courts.

The principal aim of the course is to promote familiarity with the role of international courts and tribunals in the international legal order and provide specialized knowledge on the composition, procedures and formation of these international organizations and bodies.

Particular attention will also be paid to the analysis of relevant judicial and arbitral decisions to explore the role of these courts and tribunals. We will examine how politics, advocacy and interests, on the one hand, undermine international tribunals and their ruling, and on the other, examine how international tribunals effectively dispense 'justice' for states which are able to use the various mechanisms of international tribunals to their advantage. On this basis, students will develop realistic expectations of their capacity to address contemporary problems and an awareness of their limitations.

2. Course Aims

Students should obtain profound knowledge about international dispute resolution and different dispute resolution avenues. The unit provides a strong theoretical framework for international dispute resolution and teaches practical strategies for their resolution, in

particular, provides students with foundational knowledge about different international institutions and forums for dispute resolution as well as various procedures applied by them.

The aim of the course is to provide students with the necessary knowledge, skills and tools for effective participation and party representation in international disputes. Students will be able to analyze international case law, critically assess the perspectives of the case and frame their opinions within legal terms.

3. Teaching Methodology

The lectures are practice-oriented and are focused on the existing international jurisprudence. Active participation of students is encouraged. PowerPoint presentation is used.

4. Intended Learning Outcomes

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
Students will gain in-depth legal knowledge on international dispute resolution and will be able to situate and evaluate disputes in the legal, economic and political context.	20%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature)	Participation in class activities; Oral Presentation; Mid Term examination; Final examination.
Students will be able to identify, compare and analyse different avenues and institutions for the resolution of international disputes.	15%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy	

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
		and case-law, reading of academic literature)	
Students will gain systematic and practical understanding of the international procedure for dispute resolution, will be able to explicate the advantages and disadvantages of various international institutions and applicable rules.	20%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature)	
Students will be able to analyse international case law and practice and to interpret the trends in the doctrine and practice of the international dispute resolution.	15%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature)	
Students will be able to apply their knowledge to practical situations, analyse hypothetical cases, to consult and give recommendations for problems related to international dispute resolution.	15%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature) An	

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
		interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature)	
Students will communicate orally and in writing contributing to the specialist discussion, providing their own insights and reasoning their opinions.	15%	An interactive method of teaching during lectures and seminars (oral presentation, cooperative learning methods, including discussion forums, the analysis of problematic issues, case studies), individual studies (analysis of the relevant legal framework, policy and case-law, reading of academic literature)	

5. Grading of Student Achievement

To pass this course, students must obtain a minimum of 40% in the cumulative aspects of coursework, e.g. internal assessments and final examination. **End of semester examination will carry 50 marks or 30 marks, as the case may be, out of which students have to obtain a minimum of 30% to fulfil the requirement of passing the course.**

Grade Sheet

Percentage of Marks	Grade	Grade Value	Grade Description
80 and above	O	8	**Outstanding** – Exceptional knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and extraordinary critical and analytical ability
75 – 79	A+	7.5	**Excellent** - Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability
70 – 74	A	7	**Very Good** - Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyse existing materials and originality in thinking and presentation
65 – 69	A-	6	**Good** - Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills
60 – 64	B+	5	**Fair** – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills
55 – 59	B	4	**Acceptable**- Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
50 – 54	B-	3	**Marginal**- Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills

NEW COURSE LETTER GRADES AND THEIR INTERPRETATION			
Letter Grade	**Percentage of Marks**	**Grade Points**	**Interpretation**
P1	45 - 49	2	**Pass 1:** Pass with Basic understanding of the subject matter.
P2	40 - 44	1	**Pass 2:** Pass with Rudimentary understanding of the subject matter.

NEW COURSE LETTER GRADES AND THEIR INTERPRETATION			
Letter Grade	**Percentage of Marks**	**Grade Points**	**Interpretation**
F	Below 40	0	**Fail:** Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.
I	Incomplete		Extenuating circumstances preventing the student from completing coursework assessment, or taking the examination; or where the Assessment Panel at its discretion assigns this grade. If an **"I"** grade is assigned, the Assessment Panel will suggest a schedule for the completion of work, or a supplementary examination.

6. Criteria for Student Assessments

Internal assessment of the participants will be based on the following criteria. In case any of the participants miss the IA tests, alternative internal assessments will be conducted in accordance with the instructor.

Assessment	Weightage	Remarks
Participation in class activities	10%	Evaluation of attendance, preparation for and participation in classroom discussion, participation in the online discussion, and participation in class exercises.
Research Paper	35%	***Reasearch paper:*** at least 3,000 and no more than 5,000 words, to be individually prepared based on a topic relating to the role of an international tribunal(s) in the development of international law due by the end of **Week 8.**
Presentation Research Paper	35%	**A 20-minute class presentation on paper topic.** The grade will be based on the following factors: preparation, organization, grasp of topic, effective use of time, and responsiveness to questions.
End Semester Examination	30% marks	The final exam consists of a written text with open questions and an essay question analyzing a hypothetical fact, provided by the professor, applying the law to the fact

Part IV

Course/Class Policies

Academic Integrity and Plagiarism

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

Disability Support and Accommodation Requirements

JGU endeavours to make all its courses accessible to students. In accordance with the Rights of Persons with Disabilities Act (2016), the JGU Disability Support Committee (DSC) has identified conditions that could hinder a student's overall well-being. These include physical and mobility related difficulties, visual and hearing impairment, mental health conditions and intellectual/learning difficulties e.g., dyslexia, dyscalculia. Students with any known disability needing academic and other support are required to register with the Disability Support Committee (DSC) by following the procedure specified at **https://jgu.edu.in/disability-support-committee/**

Students who need support may register any time during the semester up until a month before the end-semester examination begins. Those students who wish to continue receiving support from the previous semester, must re-register within the first month of a semester. Last minute registrations and support might not be possible as sufficient time is required to make the arrangements for support.

The DSC maintains strict confidentiality about the identity of the student and the nature of their disability and the same is requested from faculty members and staff as well. The DSC takes a strong stance against in-class and out-of-class references made about a student's disability without their consent and disrespectful comments referring to a student's disability.

All general queries are to be addressed to **disabilitysupportcommittee@jgu.edu.in**

Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.

Cell Phones, Laptops and Similar Gadgets

Personal technology: If you need a laptop, tablet, or any other device for taking notes or otherwise participating in class, that's fine. However, please do not use a personal device for any purpose unrelated to our class. All devices should be silenced. Cell phones should be put away, except in the rare instance that I ask you to use them for an activity. I recommend that you power them down. If there is a serious need to leave your cell phone on, such as a family emergency, please put it on vibrate and let me know. If you leave the classroom to take a call, I'll understand why. I routinely reduce professionalism grades for cell phone use unrelated to class.

Part V

Keywords Syllabus

International Law, International Courts and Tribunals, Pacific Settlement of Disputes.

Course Design and Overview (Weekly Plan)

Week 1: Background: Dispute Settlement Mechanisms and Countermeasures

A) The spectrum of dispute settlement mechanisms

The session introduces the spectrum of dispute settlement mechanisms. It then focuses on the default setting of resolving inter-state disputes in the absence of courts or tribunals - examining the United Nations Charter, the Vienna Convention of the Law of Treaties and the Draft Articles of State Responsibility. *What does the situation in international law look like when there are no ICTs? What is the background/default position?*

Objectives:

- *Describe different dispute settlement mechanisms and understand their differences;*
- *analyze and assess the law of state responsibility and countermeasures.*

Mandatory readings:

Sources

- Convention for the Pacific Settlement of International Disputes (Hague I), signed 18th October 1907, parts I-III;
- Arts 2, 33-38 UNC;
- Arts 60-62, 70, 72, 73 Vienna Convention on the Law of Treaties (VCLT);
- Draft Articles on State Responsibility.

B) Countermeasures and arbitration

The session turns to arbitration as a first step towards adjudication, in contrast to conciliation or mediation. It approaches the basic features and problems of arbitration in view of a concrete example: the *Aviation Dispute* between the United States and France. How do dispute settlement mechanisms, the law of treaties, and the law of countermeasures interact?

Objectives:

- know the main features of arbitration;

- understand the interplay between the law of treaties, the law of countermeasures, and mechanisms of arbitration;
- start evaluating the main contributions, challenges, and drawbacks of international adjudication.

Mandatory readings:

- CH Brower II, *The Functions and Limits of Arbitration and Judicial Settlement. Under Private and Public International Law*, 18 Duke Journal of International and Comparative Law 259-309 (2008)

Cases:

- Excerpt from *Air Services Agreement Case* (5p), prepared by B Kingsbury at http://www.iilj.org/courses/documents/AirServicesCase.pdf

Additional references (optional):

- L Fisler Damrosch, Retaliation or Arbitration – Or Both? The 1978 United States-France Aviation Dispute, 74 American Journal of International Law 785-807 (1980), available electronically in databases such as HeinOnline
- A Peters, International Dispute Settlement: A Network of Cooperational Duties, 14 European Journal of International Law 1-34 (2003).

Week 2: Contexts: Political and Sociological

A) Why do(n't) States Create International Courts and Tribunals?

What are the reasons leading governments to create international courts and tribunals? What are the factors that have dissuaded them from doing so? Two complementary perspectives help to understand those reasons. The first is historical. It shows still salient controversies and offers context. The second takes a more pronounced political science perspective. Read critically.

Objectives:

- identify the main reasons governments have for and against creating international courts and tribunals;
- evaluate the conditions under which they are more or less likely to create. independent institutions.

Mandatory readings:

- K.J. Alter, *Agents or Trustees? International Courts in their Political Context*, 14 European Journal of International Relations 33-63 (2008).
- H. Kelsen, *Law and Peace in International Relations (1997 [1942])*, 145-172.

- A.M. Slaughter and L.R. Helfer, *Why States Create International Tribunals: A Response to Professors Posner and Yoo*, 93 California Law Review 899-956 (2005).

Additional references (optional):

- M Koskenniemi, *The Ideology of International Adjudication and the 1907 Hague Conference*, in: Y Daudet (ed.), Topicality of the 1907 Hague Conference, the Second Peace Conference (2008), 127-152;
- EA Posner and JC Yoo, *Judicial Independence in International Tribunals*, 93 California Law Review 1-74 (2005). available at http://scholarship.law.berkeley.edu, read pp. 1-29 & 72-74.
- RP Anand, *International Courts and Contemporary Conflicts* (1974).
- ML Busch and KJ Pelc, *The Politics of Judicial Economy at the World Trade Organization*, 64 International Organization 257–79 (2010).
- D.D. Caron, *War and International Adjudication: Reflections on the 1899 Peace Conference,* 94 American Journal of International Law 4–30 (2000).
- C. Carrubba, *Courts and Compliance in International Regulatory Regimes,* 67 Journal of Politics 669-689 (2005).
- J. Crawford, *Continuity and Discontinuity in International Dispute Settlement: An Inaugural Lecture*, 1 Journal of International Dispute Settlement 3–24 (2009).
- AT Guzman, International Tribunals: A Rational Choice Analysis, 157 University of Pennsylvania Law Review 171 (2008).
- A. Pellet, *Peaceful Settlement of International Disputes*. In: R Wolfrum (ed.), Max Planck Encyclopedia of Public International Law (2010).
- Mark A. Pollack, *Political Science and International Courts*, in Cesare Romano, Karen Alter and Yuval Shany (eds) Oxford Handbook of International Adjudication (2014).
- C.P.R. Romano, *A Taxonomy of International Rule of Law Institutions*, 2 Journal of International Dispute Settlement 241–277 (2011).
- C.P.R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 NYU Journal of International Law & Politics 709-751 (1999).
- B. Simma, *Universality of International Law from the Perspective of a Practitioner*, 20 European Journal of International Law 265-297 (2009).
- W Sandholtz and A Stone Sweet, *Law, Politics, and International Governance*. In: C. Reus-Smit (ed.), The Politics of International Law (2004), 238-271.
- T. Treves, *Judicial Lawmaking in an Era of "Proliferation" of International Courts and Tribunals: Development or Fragmentation of International Law?* In: R Wolfrum/V Röben (eds), Developments of International Law in Treaty Making (2005), 587-620.

B) Functions of International Courts and Tribunals

Traditionally, international legal doctrine would only see one function of ICTs, that of dispute settlement. The multiplication of international judicial institutions and the

swelling stream of international judicial decisions questions that view. What are the functions of international courts and tribunals?

Objectives:

- define and identify judicial functions;
- apply a multi-functional analysis to judicial institutions;
- evaluate what are the implications of judicial functions beyond the settlement of disputes.

Mandatory readings:

- A v Bogdandy and I Venzke, *On the Functions of International Courts: An Appraisal in Light of Their Burgeoning Public Authority*, 26(1) Leiden Journal of International Law (2013), available at http://ssrn.com/abstract=2084079.
- M Shapiro, Courts: *A Comparative and Political Analysis* (1986), esp. 1-37.

Additional references (optional):

• Georges Abi-Saab, *The International Judicial Function* http://untreaty.un.org/cod/avl/ls/Abi-Saab_CT.html [Audio Visual Library of International Law].
• DD Caron, *International Courts and Tribunals: Their Roles amidst a World of Courts*, 26 ICSID Review: foreign investment law journal 1–13 (2011).
• RM Madsen, *Sociological Approaches to International Courts*, in K Alter, CRR Romano and Y Shany (eds), The Oxford Handbook of International Adjudication (2014).
• A Nollkaemper, *International Adjudication of Global Public Goods: The Intersection of Substance and Procedure,* 23 European Journal of International Law 769–791 (2012).
• WM Reisman, *The Diversity of Contemporary International Dispute Resolution: Functions and Policies*, 4 Journal of International Dispute Settlement 47–63 (2012).
• D Shelton, *Form, Function, and the Powers of International Courts*, 9 Chicago Journal of International Law 537–571 (2009).

Week 3: Foundations of International Dispute Settlement – Inter-State Arbitration – Permanent Court of Arbitration

Building on the class in the course '*Public International Law*', we will first revisit some of the foundations, including the duty to settle disputes peacefully as well as non-judicial means of dispute settlement: negotiation, commissions of inquiry, mediation, and conciliation. Our main focus will then lie on inter-State arbitration and its main procedural principles. We will also explore the organization and functioning of the Permanent Court of Arbitration.

Objectives:

- Define and identify non-judicial means of dispute settlement;
- analyze functions and main procedural principles of inter-state arbitration.

- identify the rules and functions of the PCA;
- understand its transformation.

Mandatory readings:

- N Ando, '*Permanent Court of Arbitration (PCA)*' in Max Planck Encyclopedia of Public International Law (online edition)
- CH Brower, '*Arbitration*' in Max Planck Encyclopedia of Public International Law (online edition)
- A Pellet, '*Peaceful Settlement of International Disputes*' in Max Planck Encyclopedia of Public International Law (online edition)

Sources:

- Convention for the Pacific Settlement of International Disputes (signed 18 October 1907)
- UN Charter, Arts 2, 10-38
- Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625(XXV) (24 October 1970)
- Manila Declaration on the Peaceful Settlement of International Disputes, General Assembly Resolution 37/10 (15 November 1982)
- International Law Commission, Model Rules on Arbitral Procedure (1958)

Cases:

- *Southern Bluefin Tuna Case* (*Australia and New Zealand v Japan*) Award on Jurisdiction and Admissibility (4 August 2000) paras. 21-36, 44-72
- Chagos Marine Protected Area Arbitration (*Mauritius v United Kingdom*) Reasoned Decision on Challenge (30 November 2011)
- *Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway (between Kingdom of Belgium and Kingdom of the Netherlands)*, Award of 24 May 2005, available at <http://www.pca-cpa.org/showfile.asp?fil_id=377>, in particular paras 1- 25, 28-96 & 207-444.
- The Government of Sudan / The Sudan People's Liberation Movement/Army (*Abyei Arbitration*), see material at <www.pca-cpa.org>.

    - Note: When reading these decisions you should first ask yourselves— as with other judicial or arbitral decisions you read: *What is the deciding body? Who brought the case against whom and why? What is the factual context? What is the procedural posture? What is the basis of jurisdiction?*

Additional references (optional):

- DD Caron, '*War and International Adjudication: Reflections on the 1899 Peace Conference*' (2000) 94 American Journal of International Law 4

- M Koskenniemi, '*The Ideology of International Adjudication and the 1907 Hague Conference*' in Y Daudet (ed), Topicality of the 1907 Hague Conference, the Second Peace Conference (Nijhoff 2008) 127-152
- A Peters, '*International Dispute Settlement: A Network of Cooperational Duties*' (2003) 14 European Journal of International Law 1
- L Malintoppi, '*Methods of Dispute Resolution in Inter-State Litigation: When States Go to Arbitration Rather Than Adjudication*' (2006) 5 The Law & Practice of International Courts and Tribunals 133
- B Simma, '*Universality of International Law from the Perspective of a Practitioner*' (2009) 20 European Journal of International Law 265
- M Böckenförde, *The Abyei Award: Fitting a Diplomatic Square Peg Into a Legal Round Hole*, 23 Leiden Journal of International Law 555-569 (2010).
- WJ Miles and D Mallett, *The Abyei Arbitration and the Use of Arbitration to Resolve Inter-State and Intra-State Conflicts*, 1 Journal of International Dispute Settlement 313-340 (2010).
- T van den Hout, *Resolution of International Disputes: The Role of the Permanent Court of Arbitration – Reflections on the Centenary of the Convention for the Pacific Settlement of International Disputes*, 21 Leiden Journal of International Law 643- 661 (2008);
- C Warbrick, *The Irhon Rhine (Ijzeren Rijn) Arbitration* (2007).

Week 4: International Court of Justice (I)

This session covers the first half of most important procedural and policy issues as they relate to jurisdiction, admissibility, and provisional measures. Especially: *What are bases for jurisdiction? How is jurisdiction different from admissibility? Under what conditions and with which reach can the ICJ issue provisional measures?* Discussion and analysis will use the famous Nicaragua judgment on admissibility as a case study.

Objectives:

- Contrast the ICJ with the PCA;
- explain and assess the procedural law on jurisdiction, admissibility, and provisional measures;
- develop an analytical framework to discuss judicial policy.

Mandatory readings:

- S Rosenne, '*International Court of Justice (ICJ)*' in Max Planck Encyclopedia of Public International Law (online edition)
- P Kooijmans, *The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy*, (2007) 56 International and Comparative Law Quarterly 741-54.

Sources:

- ICJ-Statute, (pay particular attention to Arts 36, 41 and 61) [attached to UN Charter, Session I];
- Arts 92-96 UNC

Cases:

- *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States Of America)*, Jurisdiction of the Court and Admissibility of the Application, (1984) ICJ Reports 392, Excerpt (13p);
- *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Request for the Indication of Provisional Measures, Order of 18 July 2011.
- *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for Permission to Intervene, Judgment of 4 May 2011.
- *LaGrand (Germany v. United States of America)*, Merits, (2001) ICJ Reports 466, paras 98-109 (5p).
- *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Provisional Measures, 8 March 2011 <www.icj-cij.org>.

Additional references (optional):

- K Oellers-Frahm, *Expanding the Competence to Issue Provisional Measures—Strengthening the International Judicial Function*, 12 German Law Journal 1279 (2011).
- K Oellers-Frahm, *Judgments of International Courts and Tribunals, Revision of*. In: R Wolfrum (ed.) Max Planck Encyclopedia of Public International Law, Ms 1-2, 10-20.
- S Rosenne, *The Law and Practice of the International Court 1920-2005* (Nijhoff 2006).
- H Thirlway, *The International Court of Justice*. In: M. Evans (ed.), International Law (Oxford University Press 2010), 586-614.
- H Thirlway, *The International Court of Justice 1989-2009: At the heart of the Dispute Settlement System?*, (2010) 57 Netherlands International Law Review 347-95.
- Andreas Zimmermann, Christian Tomuschat, and Karin Oellers-Frahm (eds), *The Statute of the International Court of Justice. A Commentary* (Oxford University Press 2006

Week 5: International Court of Justice (2)

The session will first follow up on issues of jurisdiction and admissibility by focussing on one specific decision: *Case Concerning Application of the International Convention on the Elimination of All Form of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment of 1 April 2011. What explains the outcome of this judgment in terms of law and politics? Could the court have decided otherwise? Should

the court have decided otherwise? If you were to write a hypothetical appeal of the judgment, what would you argue?

We will then continue the discussion of most important procedural issues, focussing on the intervention of third parties, the making of judgments, and the effects as well as enforcement of judgments. Under what conditions are third parties allowed to intervene? How do judges arrive at majority judgments? Are judgments final and how are they enforced?

Objectives:

- Identify decisive junctures in judicial reasoning;
- contrast complementary legal and political perspectives on judicial reasoning;
- develop skills attendant upon writing a case note;
- explain and assess the procedural law on intervention and enforcement;
- understand the making of judgments.

Mandatory readings:

- S Rosenne, '*International Court of Justice (ICJ)*' in Max Planck Encyclopedia of Public International Law (online edition)

Sources:

- UN Charter, Arts 92-96
- Statute of the International Court of Justice (adopted 26 June 1945) Arts. 1-38
- International Court of Justice, Rules of Court (adopted 14 April 1978, entered into force 1 July 1978, 25 June 2020) Arts. 1-72
- Netherlands, *'Declaration Recognizing the Jurisdiction of the Court as Compulsory'* (21 February 2017)
- United Kingdom, *'Declaration Recognizing the Jurisdiction of the Court as Compulsory'* (22 February 2017)

Cases:

- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Preliminary Objections)
    - Judgment (1 April 2011) (excerpts)
    - Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge *ad hoc* Gaja (excerpts)
- *Relocation of the United States Embassy to Jerusalem (Palestine v United States of America)* Application Instituting Proceedings (28 September 2018)

Additional references (optional):

- P Kooijmans, '*The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy*' (2007) 56 International and Comparative Law Quarterly 741
- H Thirlway, *The International Court of Justice 1989-2009: At the Heart of the Dispute Settlement System?* (2010) 57 Netherlands International Law Review 347-95.

Week 6: Tutorial I - Cooperation and Disruption in Dispute Settlement

The tutorial's focus will be on how to ensure the successful conduct of inter-State arbitration proceedings, what duties the parties to such proceedings have vis-à-vis each other and in relation to an arbitral tribunal, and how disruptions of the proceedings by the parties can be addressed. The tutorial will also address the enforcement of inter-State arbitration awards.

States are often not particularly willing to enter into broad commitments to adjudicate future disputes. While many multilateral conventions nowadays provide for some sort of third-party dispute settlement, the mechanisms would typically allow for carve-outs and opt-outs, of which States would also readily make use. If a dispute were eventually to arise and a mechanism of the kind be set in motion, it can occur that States resist the process of adjudication. Furthermore, even where States at one point submit an actual dispute to third-party adjudication, they may later change their minds; be it for domestic political reasons, be it due to factors relating to the dispute settlement process itself (such as because of procedural misconduct of arbitrators or that of one of the parties). Conversely, despite their potential willingness to have a dispute resolved through third-party adjudication, States may happen to be dissatisfied with the final outcome of adjudication; be it for reasons of substance (the judgment or award is not in the party's favor), be it for improprieties that remained unremedied and raise doubts about the fairness of the procedure as a whole.

Against the background of a hypothetical case, the tutorial provides an opportunity to discuss certain situations in which a party may be tempted to resist the adjudicatory procedure and its outcome. The purpose of the discussion is to stimulate reflection on competing principles in relation to the settlement of international disputes: on the one hand, the principles of effectiveness and finality of adjudication (and the underlying ideas that the dispute settlement process must not be capable of being frustrated by one of the parties, and that it must ultimately contribute to the resolution of the dispute); and on the other hand, the principles of procedural propriety and fairness (which are essential to the legitimacy of third-party dispute settlement).

Objectives:

- Stimulate reflection on competing principles in relation to the settlement of international disputes: on the one hand, the principles of effectiveness and finality of adjudication (and the underlying ideas that the dispute settlement process must not be capable of being frustrated by one of the parties, and that it must ultimately contribute to the resolution of the dispute); and on the other hand, the principles

of procedural propriety and fairness (which are essential to the legitimacy of third-party dispute settlement).

Seminar Work:

- Sign up for presentation slots in Weeks 9-10.

Mandatory readings:

- R Echandi, '*Non-Compliance with Awards: The Remedies of Customary International Law*' (2012) 106 Proceedings of the Annual Meeting (American Society of International Law) 118-122

Sources:

- Permanent Court of Arbitration Rules (2012) https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf

Cases:

- *Arbitration Between the Republic of Croatia and the Republic of Slovenia*, Partial Award (30 June 2016) paras 28-86 (facts), 141-230 (parties' arguments and Tribunal's reasoning)
- *South China Sea (Philippines v China),* Award of the Annex VII arbitral tribunal on Jurisdiction and Admissibility (29 October 2015) paras 113-122
- *Maritime Delimitation in the Indian Ocean (Somalia v Kenya),* Judgment (12 October 2021) paras 19-20 and 29-30

Additional references (optional):

- *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua),* Judgment (18 November 1960) [1960] ICJ Rep 192, 204-218
- *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)* Judgment (12 November 1991) [1991] ICJ Rep 53, paras. 22-65
- CJEU, *Slovenia v Croatia*, Case C-457/18, Judgment of the Court (Grand Chamber) (31 January 2020)

Week 7 - The International Tribunal for the Law of the Sea

While the International Tribunal for the Law of the Sea is similar to the ICJ in many respects, dispute settlement on the basis of the United Nations Convention of the Law of the Sea (UNCLOS) also shows a number of particular features. For instance, UNCLOS knows an array of different dispute mechanisms. This session strengthens the knowledge of core procedural principles. It then focuses on provisional measures in law of the sea disputes to highlight the interplay between adjudication and negotiation. It does so with

the *Land Reclamation Case* at hand. How do judicial mechanisms interact with negotiation and other processes in this case?

In a more detailed analysis of one case (*Land Reclamation*) the interplay between dispute settlement mechanisms and diplomatic processes will be further analyzed. What is the relationship between adjudication and negotiation? We then use simmering disputes in the South China Sea to play through different scenarios of adjudication on the basis of UNCLOS.

Objectives:

- Explain the variety and interplay of dispute settlement mechanisms under UNCLOS;
- analyze the practice of *ITLOS*;
- appraise the strengths and weaknesses of adjudication in light of the specific case;
- develop a more nuanced understanding of the interplay between different mechanisms and see adjudication in its broader context.

Mandatory readings:

Sources:

- UNCLOS, Arts 279-299
- ITLOS-Statute, Arts 20-34

Cases:

- The *M/V "SAIGA"* (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999 [up to para. 102];
- Land Reclamation by Singapore in and around the Straits of Johor (*Malaysia v. Singapore*), Provisional Measures, Order of 8 October 2003, (17p).

Additional references (optional):

- AE Boyle, '*Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*' (1997) 46 International and Comparative Quarterly 37
- R Beckmann et al., *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (2013).
- A Boyle*, The Environmental Jurisprudence of the International Tribunal for the Law of the Sea*, 22 International Journal of Marine and Costal Law 369-381 (2007).
- N Hong, *UNCLOS and Ocean Dispute Settlement: Lawand Politics in the South China Sea* (Routledge, 2012).

Week 8: Tutorial II - International Courts as Law-Makers

The tutorial focus on the topic of judicial law-making. Judges – international, just as domestic ones – rarely acknowledge that they are making law. The fiction still prevails in some circles that (international) judges merely 'speak' the law. But is that really the case? The tutorial shall focus on questions such as:

- Do international courts make law?
- Should they make law?
- What considerations should guide international judges in eventual judicial law-making?
- But also: what means do states have in controlling international courts' (excessive) law-making practices?

Seminar Work:

- Research Papers are due at the end of the class

Mandatory readings:

- T Ginsburg, '*Bounded Discretion in International Judicial Lawmaking*' (2005) 45 Virginia Journal of International Law 631
- A von Bogdandy and I Venzke, *In Whose Name? A Public-Law Theory of International Adjudication* (Oxford University Press 2014) ch 3, especially pp. 101-135

- T Ginsburg, '*Bounded Discretion in International Judicial Lawmaking*' (2005) 45 Virginia Journal of International Law 631
- A von Bogdandy and I Venzke, *In Whose Name? A Public-Law Theory of International Adjudication* (Oxford University Press 2014) ch 3, especially pp. 101-135

Cases:

- *Maritime Delimitation in the Indian Ocean (Somalia v Kenya),* Judgment (12 October 2021), including the Separate and Dissenting Opinions, all available https://icj-cij.org/en/case/161

Additional references (optional):

- Fuad Zarbiyev, '*Judicial Activism in International Law - A Conceptual Framework for Analysis*' (2012) 3 Journal of International Dispute Settlement 247

Week 9: Presentation of Research Papers

Week 10: Presentation of Research Papers

- ***Note*:** Except during the week in which they present their own paper, students will be assigned each class to read one of that class papers. They will then be expected to question and comment upon the assigned paper. This will count toward their class participation grade.

Week 11 - World Trade Organization: Global Governance through Judiciary and its Limits or the Rise and Fall of the Appellate Body

Adjudication in the WTO distinguishes itself from other inter-State mechanisms of dispute settlement not least due to its compulsory jurisdiction. The judicial process in the WTO is structured according to the Dispute Settlement Understanding (DSU). Its adjudicating bodies are among the most prolific in the international legal order. This session focuses on applicable law, appellate review, and enforcement. It analyses how WTO adjudication, and in particular the WTO's Appellate Body, have for almost three decades actively built and expanded the regime of world trade law, and increased the Appellate Body's own authority, and how it then fell into crisis and decay. What accounts for the success and failure of WTO adjudication?

Questions of this session will include:

- What are the main policy concerns that underlie the dispute settlement process? How are they given effect and are they actually met in practice?
- What is the relationship between the WTO and regional trade agreements including their dispute settlement provisions?
- Whose rights are protected? What would it mean to give individuals direct access to international adjudication in trade matters? Is that advisable?

Objectives:

- Know the main features of procedural law in the WTO and contrast them with other institutions;
- identify the main demands of a system with compulsory jurisdiction;
- evaluate main strengths and weaknesses.

Mandatory reading

- R Howse, '*The World Trade Organization 20 Years On: Global Governance by Judiciary*' (2016) 27 E uropean Journal of International Law 9
- G Vidigal, '*Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis*' (2019) 20 The Journal of World Investment & Trade 862
- JHH Weiler, '*The Rule of Lawyers and the Ethos of Diplomats. Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*' (2001) 35 Journal of World Trade 191
- Robert Howse, *Adjudicative Legitimacy and Treaty Interpretation in International Trade Law*, In J. H. H. Weiler (ed.) The EU, the WTO and the NAFTA: Towards a Common Law of International Trade? (2000), 35-69.

- Robert Hudec, *The Judicialization of GATT Dispute Settlement*, In: M. H. Hart/D. B. Steger (ed.) In Whose Interest?: Due Process and Transparency in International Trade (1992), 11.

Sources:

- Agreement Establishing the World Trade Organization (signed 15 April 1994, entered into force 1 January 1995)
- General Agreement on Tariffs and Trade (signed 15 April 1994, entered into force 1 January 1995) Arts 1, 3 and 20
- Dispute Settlement Understanding (DSU), Arts 1(1), 2, 3, 6-8, 11, 16, 17, 21, 22(1), 25 Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, JOB/DSB/Add.12 (30 April 2020)

Cases:

- *Japan - Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, Report of the Appellate Body (4 October 1996) (excerpts)
- *US - Shrimp*, WT/DS58/AB/R, Report of the Appellate Body (12 October 1998) paras 1-8, 79-110, 146-188

Additional references (optional):

- J Pauwelyn, '*WTO Dispute Settlement Post 2019: What to Expect?*' (2019) 22 Journal of International Economic Law 297
- PT Stoll, '*World Trade Organization, Dispute Settlement*' in Max Planck Encyclopedia of Public International L aw (online edition)
- A von Bogdandy, '*Law and Politics in the WTO - Strategies to Cope with a Deficient Relationship*' (2001) 5 Max Planck Yearbook of United Nations Law 609
- Meredith Kolsky Lewis '*Plurilateral Trade Negotiations: Supplanting or Supplementing the Multilateral Trading System?*', 17 (17) ASIL Insights, 12 July 2013 http://www.asil.org/insights130712.cfm
- EU Petersmann, '*The Judicial Task of Administering Justice in Trade and Investment Law and Adjudication*' 4 Journal of International Dispute Settlement 5– 28 (2012).
- P van den Bossche, *The Law and Policy of the World Trade Organization* (2008), 168-181, 198-200 & 298-316.
- L Bartels, *Applicable Law in WTO Dispute Settlement Proceedings*, 35 Journal of World Trade 499-519 (2001).
- I van Damme, Jurisdiction, *Applicable Law, and Interpretation*, In DL Bethlehem, D RcRae, R Neufeld and I Van Damme (eds), Oxford Handbook of International Trade Law (2009), 298-342.
- JH Jackson, *Sovereignty, the WTO and Changing Fundamentals of International Law*, (2006).
- PJ Kuijper, *WTO Institutional Aspects*, In DL Bethlehem, D RcRae, R Neufeld and I Van Damme (eds), Oxford Handbook of International Trade Law (2009), 79-127.

- I Venzke, *Making General Exceptions: The Spell of Precedents in Developing Art. XX GATT into Standards for Domestic Regulatory Policy*, 12 German Law Journal 1111 (2011).

Week 12: Investor-State Arbitration: System-Building in Networks of Adjudication

Investor-State arbitration is one of the most vivid fields of international adjudication today. It is actively engaged in regime-building and law-making, but does so on the basis of a rather peculiar, network-based structure of one-off arbitral tribunals. This session will explore the elements of fragmentation and regime-building in the field of international investment arbitration and the competing conceptions about the field's present practices and future. In addition, we will discuss an investment treaty arbitration that shows both the interaction between investor-State arbitration and other international legal regimes, but also the control domestic courts can exercise over parts of investor-State arbitration.

Objectives:

- Identify the main and unique features of investor-state arbitration in comparison with other institutions;
- assess the advantages and disadvantages of the investment arbitration *'system'*.

Mandatory readings:

- E de Wet, '*Reactions to the Backlash: Trying to Revive the SADC Tribunal through Litigation*' (E JIL :Talk !, 5 August 2016) www.ejiltalk.org
- C Schreuer, '*Investment Disputes*' in Max Planck Encyclopedia of Public International L aw (online edition)
- SW Schill, *'System-Building in Investment Treaty Arbitration and Lawmaking'* (2011) 12 German Law Journal 1083
- TW Wälde, '*The Specific Nature of Investment Arbitration*' in TW Wälde and P Kahn (eds), *New Aspects of International Investment Law* (Brill 2007) 43–119

Sources:

- Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (signed 18 March 1965, entered into force 14 October 1966) (Washington or ICSID Convention) Arts 25, 41-55
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force on 7 June 1959) (New York Convention)
- UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006)

Cases:

- *Saipem SpA v The People's Republic of Bangladesh,* ICSID Case No ARB/05/7, Award (30 June 2009) (excerpts)
- *Muszyniank a spółka z ograniczoną odpowiedzialnością (formerly Spółdzielnia Pracy "Muszynianka") v The Slovak Republic,* PCA Case No 2017-08
    - Award (7 October 2020) paras 158-167
    - Partial Dissenting Opinion of Professor Robert G. Volterra (7 October 2020) (excerpts)
- *Swissbourgh Diamond Mines (Pty) Ltd and others v Kingdom of Lesotho,* PCA Case No 2013-29
    - Partial Award on Jurisdiction and Merits (18 April 2016) (not public – see IAReporter story) https://www.iareporter.com/articles/investigation-lesotho-is-held-liable-for-investment-treaty-breach-arising-out-of-its-role-in-hobbling-a-regional-tribunal-that-had-been-hearing-expropriation- case/
    - Judgment of the Singapore Court of Appeals (27 November 2018) (excerpts)
- *Salini v. Morocco*, Decision on Jurisdiction, 16 July 2001, (ICSID Case No. ARB/00/4);
- *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011 [skim quickly through section II.A].
- *Asian Agricultural Products L td (A A PL) v Republic of Sri Lanka*, ICSID Case No ARB/87/3, Final Award (27 June 1990) and Dissenting Opinion of Samuel K.B. Asante (15 June 1990)
- *Emilio Agustín Maffezini and The Kingdom of Spain*, ICSID Case No ARB/97/7, Decision of the Tribunal on the objections of jurisdiction, 25 January 2000.
- *Plama Consortium Limited and Republic of Bulgaria*, ICSID Case No ARB/03/04, Decision on Jurisdiction, 8 February 2005.

Additional references (optional):

- E de Wet, '*The Rise and Fall of the Tribunal of the Southernn African Development Community: Implications for Dispute Settlement in Southern Africa*' (2013) 28 ICSID Review 45
- E de Wet, '*The Controversial Role of Litigation in the Struggle to Revive Individual Access to the Tribunal of the Southern African Development Community*' (2021) 18 International Organizations Law Review 72
- KJ Alter, JT Gathii and LR Helfer, '*Backlash against International Courts in West, East, and Southern Africa: Causes and Consequences*' (2016) 27 European Journal of International Law 293
- A Roberts, '*Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System*' (2013) 107 American Journal of International Law 45
- A Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 American Journal of International Law 179–225 (2010)
- A van Aaken, *Smart Flexibility Clauses in International Investment Treaties and Sustainable Development: A Functional View* (2013), http://ssrn.com/abstract=2236772.

- SW Schill & M Jacob, *Trends in International Investment Agreements, 2010-2011: The Increasing Complexity of International Investment Law*, Yearbook on International Investment Law & Policy 141–179 (2012)
- SW Schill, *The Multilateralization of International Investment Law* (Cambridge 2009).
- C Schreuer, '*International Centre for Settlement of Investment Disputes (ICSID)*' in Max Planck Encyclopedia of Public International L aw (online edition)
- F Orrego Vicuna, *Reports of [Maffezini"s] demise have been greatly exaggerated*, 3 Journal of International Dispute Settlement 299–327 (2012).
- Y Radi, *The Application of the Most-Favoured-Nation Clause to the Dispute Settlement Provisions of Bilateral Investment Treaties: Domesticating the "Trojan Horse*, 18 European Journal of International Law 757–774 (2007).

Week 13 – International Criminal Law

The law and politics of adjudication in international criminal law is driven by distinct set of concerns and interests. This field is, after all, primarily concerned with the relationship between states and individuals when it comes to matters deemed to be of concern to 'humankind as a whole'. What are the factors that influence procedural law and judicial politics?

Questions in this session will include: How do distinct features influence dominant interpretative methods? What is the basis of legitimacy?

Objectives:

- Identify the main and unique features of adjudication in international criminal law (above all of the International Criminal Court);
- analyze and contrast interpretative techniques in this field of adjudication.

Mandatory readings:

- F Mégret, Beyond "*Fairness": Understanding the Determinants of International Criminal Procedure*, 14 UCLA Journal of International Law and Foreign Affairs 37 (2009).

Cases:

- ICTY, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Trial Chamber, Judgment of 14 January 2000, para 510-542 (pp 199-216).

Additional references (optional):

- M Ajevski, *Preconditions for "Stare decisis" - what International Law can learn from Comparative Constitutional Law*, in R Wolfrum & I Gätzschmann (eds), International dispute settlement: room for innovations? (2013) 293-309.

- A Cassese, *The Rationale for International Criminal Justice*, in A Cassese (ed.), The Oxford Companion to International Criminal Justice (2009) 127.
- C Greenwood, *The Development of International Humanitarian Law by the International Criminal Tribunal for the Former Yugoslavia*, 2 Max Planck Yearbook of United Nations Law 97–140 (1998).
- M Glasius, *Do International Criminal Courts Require Democratic Legitimacy?* 23 European Journal of International Law 43–66 (2012).
- D Joyce, *The Historical Function of International Criminal Trials: Re-thinking International Criminal Law*, 73 Nordic Journal of International Law 461–484 (2004).
- F Jessberger & J Geneuss, *The Many Faces of the International Criminal Court*, 10 Journal of International Criminal Justice 1081–1094 (2012).
- M Kuhli & K Günther, *Judicial Lawmaking, Discourse Theory*, and the ICTY on Belligerent Reprisals, 12 German Law Journal 1261–1278 (2011).
- W Schomburg & JC Nemitz, *International Criminal Courts and Tribunals, Procedure*, in R Wolfrum (ed.), MPEPIL (2009).
- C Schwöbel, *The Comfort of International Criminal Law*, 24 Law and Critique 169–191 (2013).
- M Swart, *Is There a Text in This Court? The Purposive Method of Interpretation and the ad hoc Tribunals*, 70 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 767 (2010).

Watch:

- Judge Theodor Meron, President of the International Tribunal for the former Yugoslavia, appeared on BBC's HARDtalk, http://www.youtube.com/watch?v=2BwOBsMuPy8 (25min).

Week 14: Human Rights Adjudication – Closing Discussion: Re-Designing Investor-State Dispute Settlement

In this session, we will first look at international human rights adjudication, using the European Court of Human Rights as an example. Apart from dealing with the conditions for access to the Court, we will focus on the implementation of its judgments in two particular cases, one pilot proceeding—a procedural innovation the Court developed to manage the flood of cases--and one regular individual complaint procedure. Subsequently, we engaged a closing discussion that draws together the procedural law and practice of the different institutions in comparison in order to highlight similarities, differences, and possible reasons for divergence and address the tensions that international courts and tribunals face between dispute settlement and regime building and the legitimacy concerns raised by the latter. We will apply some of these insights in the context of the ongoing process of reforming investor-State dispute settlement, which may result in the creation of a new international court.

Mandatory readings:

- SW Schill, '*Reforming Investor–State Dispute Settlement: A (Comparative and International) Constitutional Law Framework*' (2017) 20(3) Journal of International Economic Law 649
- SW Schill and G Vidigal, '*Designing Investment Dispute Settlement à la Carte: Insights from Comparative Institutional Design Analysis*' (2019) 18(3) The Law and Practice of International Courts and Tribunals 314
- Y Shany, '*Assessing the Effectiveness of International Courts: A Goal-Based Approach*' (2012) 106 American Journal of International Law 225

Sources:

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (opened for signature 4 November 1950, entered into force on 3 September 195.

Cases:

- *Rumpf v Germany*, Judgment (2 September 2011)
- *Görgülü case*, German Constitutional Court, BVerfGE 111, 307.

Additional references (optional):

- L Boisson de Chazournes, '*Plurality in the Fabric of International Courts and Tribunals: The Threads of a Managerial Approach*' (2017) 28 European Journal of International Law 13
- S Katzenstein, '*In the Shadow of Crisis : The Creation of International Courts in the Twentieth Century*' (2014) 55 Harvard International Law Journal 152
- B Kingsbury, *International Courts: Uneven Judicialization in Global Order*, in: J Crawford and M Koskenniemi (eds), Cambridge Companion to International Law (2012), http://ssrn.com/abstract=1753015.
- J Pauwelyn and M Elsig, *The politics of treaty interpretation: variations and explanations across international tribunals*, in JL Dunoff and MA Pollock (eds), Interdisciplinary Perspectives on International Law and International Relations: The State of the Art (2012) 445-473
- Y Shany, '*No Longer a Weak Department of Power? Reflections on the Emergence of a New International Judiciary*' (2009) 20 European Journal of International Law 73
- Y Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2003)
- Y Shany, *Regulating Jurisdictional Relations Between National and International Courts* (Oxford University Press 2007)
- A von Bogdandy and I Venzke, '*In Whose Name? International Courts' Public Authority and Its Democratic Justification*' (2012) 23 European Journal of International Law 7

Week 15: Comparison and Discussion

The closing session will focus on comparison and discussion. Possibly I will supply a tentative list of questions to structure our exchange.

Seminar Work:

- Discussion of Rough Drafts

Mandatory readings:

- BS Chimni, *International Institutions Today: An Imperial Global State in the Making*. 15 European Journal of International Law (2004) 1–37.
- A von Staden, *Democratic Legitimacy of Review Beyond the State: The Need for an Appropriate Standard of Review*, 10 International Journal of Constitutional Law 1023–1049 (2012).

Additional references (optional):

- R Howse & K Nicolaïdis, *Democracy without Sovereignty: The Global Vocation of Political Ethics*, in T Broude & Y Shany (eds), The Shifting Allocation of Authority in International Law: Considering Sovereignty, Supremacy and Subsidiarity. Essays in Honour of Professor Ruth Lapidoth (2008) 163–192.
- * B Kingsbury, *International Courts: Uneven Judicialization in Global Order*, in: J Crawford and M Koskenniemi (eds), Cambridge Companion to International Law (2012), http://ssrn.com/abstract=1753015.
- T Treves, *Recent Trends in the Settlement of International Disputes*, in 1 Cursos Euroméditerránneos Bancaja de Derecho Internacional 397 (1997).
- I Venzke, *Antinomies and Change in International Dispute Settlement: An Exercise in Comparative Procedural Law*, in R Wolfrum and I Gätzschmann (eds), International Dispute Settlement: Room for Improvements (2012) 235-69.
- F Zarbiyev, *Judicial Activism in International Law - A Conceptual Framework for*
- *Analysis*, 3 Journal of International Dispute Settlement 247–278 (2012).
- D Zaring, *Rulemaking and Adjudication in International Law*, 46 Columbia Journal of Transnational Law 563–611 (2008).

Part VI

General Introductions, Handbooks and Academic Resources

- L Boisson de Chazournes, C Romano and R Mackenzie (eds), *International Organizations and International Dispute Settlement: Trends and Prospects* (Brill Academic Publishers 2002)
- C Brown, *A Common Law of International Adjudication* (Oxford University Press 2009)
- J Collier and V Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press 2000)
- C Giorgetti, *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Brill 2012)
- JG Merrills, *International Dispute Settlement* (Cambridge University Press 2011)
- R Mackenzie, C Romano and Y Shany, *The Manual on International Courts and Tribunals*, 2nd ed. (Oxford University Press 2010)
- Y Shany, *Regulating Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2004)
- F Orrego Vicuña, International Dispute Settlement in an Evolving Global Society. Constitutionalization, Accessibility, Privatization (Cambridge University Press 2004)
- S Rosenne, The Law and Practice of the International Court 1920-2005 (Nijhoff 2006)
- A Zimmermann, C Tomuschat, and K Oellers-Frahm (eds), The Statute of the International Court of Justice. A Commentary (Oxford University Press 2006)
- Also consider the many pertinent keywords in the Max Planck Encyclopedia of International Law www.mpepil.com.

Blogs

- International Justice in the News - http://www.brandeis.edu/ethics/internationaljustice/internationaljusticeinthenews.html
- European Journal of International Law Blog - http://www.ejiltalk.org
  International Law and Economic Policy Blog - http://worldtradelaw.typepad.com/ielpblog
- Opinio Juris - http://opiniojuris.org
- iLawyer: A Blog on International Justice - ilawyerblog.com

Also see

• Audiovisual Library of International Law - http://www.un.org/law/avl/