



COURSE MANUAL

International Law in Indian Courts

Shantanu Kanade

(Assistant Professor, JGLS)

**Spring 2025
(AY 2024-25)**

This document is prepared by the course instructor and contains basic information relevant to the delivery of the course. It is the official record for all intents and purposes as far this elective course 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.

Part I

Course Title: **International Law in Indian Courts**

Course Code: L-EL-0703

Course Duration: **One Semester (15 Weeks)**

No. of Credit Units: **4 Credits**

Level: **PG and UG**

Medium of Instruction: **English**

Pre-requisites: None

Cross-Listed Course: No

Part II

1. Course Description

Domestic courts and tribunals have, in recent years, been taking frequent recourse to international law as a means to settle disputes before them. This may be attributed to a few broad reasons. Firstly, it could be that judges in domestic courts are increasingly exposed to or getting well-versed in international law and its principles. Secondly, modern day international law places a growing emphasis on protecting the rights of private parties in areas as diverse as human rights, investments, environment and cross-border commercial transactions. Thirdly, there is a foreign law element in an increasing number of cases heard by domestic courts. As a consequence, domestic courts are playing a progressively important role in the application and enforcement of both public and private international law. Domestic courts in India are no exception to this phenomenon.

In light of the background discussed above, this course aims to discuss the application of international law by Indian courts. The course will focus primarily on how courts have engaged with public international law. The course will begin with an introduction to the intersection between public international law and domestic law, and address the role played by domestic courts of a country in dealing with such interaction. The course would then proceed to a discussion on the Indian Constitution's position on international law. In doing so, it will explore the obligations of the judiciary in terms of implementation of India's obligations under international law. The course would then proceed to discuss cases in which Indian courts, primarily the Supreme Court of India, have taken recourse to international law whilst adjudicating on a variety of issues, ranging from human rights to environment protection to recognition and enforcement of foreign arbitral awards. This would involve analysing key judgements that have engaged with India's obligations under treaties as well as customary international law. The course would conclude with broad reflections on the practice of Indian courts with respect to application of international law, including critiques of the methodology used by the courts in their engagement with this field of law.

2. Teaching Methodology

The primary methodology to deliver the course will be through weekly lectures. The instructor will follow the Socratic method of teaching and thus expect the students to actively participate in the class discussions. Students should have done the readings before coming to class so as to be prepared to contribute to class discussions. The course will involve a deep discussion on judgements, and students would be expected to learn about the facts of these cases beforehand.

3. Intended Learning Outcomes

Students who successfully complete this course would have:

- a. developed a firm understanding of the differences between monist and dualist legal systems, and how those differences affect the way in which domestic courts handle claims rooted in international law;
- b. developed a fundamental appreciation of the position of the Indian Constitution on public international law, and how this position has informed the approach of the Indian judiciary towards implementation of India's obligations under international law;
- c. acquired advanced knowledge of the interpretation, application and enforcement of public international law rules by Indian courts;
- d. acquired the analytical skills to independently research and examine existing and emerging legal issues relating to the engagement of Indian courts with public international law; and
- e. reached a level of understanding of the subject that would enable them to clearly articulate their learnings in the course to relevant specialist and non-specialist audience.

5. Grading of Student Achievement

To pass this course, students must secure a minimum of 40% of the total marks in the cumulative aspects of coursework, which includes internal assessments and the end-term examination. For the **end-term examination will shall carry a total of 30 marks, students shall have to secure a minimum of 30% (i.e. 10 Marks) to pass.**

In case of any inconsistency between the said policy and the policy framed by the Examinations Office of JGU (as amended from time to time), the latter shall prevail over the former to the extent such inconsistency cannot be reconciled. Students are accordingly expected to keep themselves abreast of the all policies and decisions released by the Examinations Office from time to time.

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

6. Assessments

The nature, structure and criteria for internal assessments shall be announced by the instructor in class during within the first 5 lectures of the Course. As for the end-term examination, the same will be conducted in accordance with the policy set by the JGU Examinations Office.

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. It is thus imperative that all ideas must be supported by suitable citations/references. Ideas, phrases, thoughts, theses, quotes and the like borrowed from any source such as articles, books, book chapters, journals, magazines, case laws, statutes, photographs, films and paintings, whether such source was accessed in print or soft copy/online, must be credited to the said 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, even such sources 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. In short: WHEN IN DOUBT, CITE!!

JGU has a policy with respect to plagiarism. The onus to familiarise oneself with this policy (as in effect as of the date of a given submission) lies solely with each student. All forms of plagiarism will be taken seriously by the instructor and the JGLS administration, and prescribed sanctions will be imposed on those who are found guilty of committing plagiarism.

Disability Support and Accommodation Requirements

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student's overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality on the matters under its purview. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will coordinate all disability-related adaptations such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

Safe Space Pledge

To make sure that all students collectively benefit from the course, 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.

Cell Phones, Laptops and Other Similar Gadgets

Students are free to bring cell phones, laptops and other similar gadgets to the class and use them for academic purposes such as referring to cases being discussed in the class or to focus on readings. **Use of these gadgets for non-academic purposes, especially in a manner that leads to any form and degree of disruption in the classroom, is strictly prohibited.**

Part IV

Keywords Syllabus

Public International Law, Private International Law, Sources of International Law, Customary International Law, Monism, Dualism, Incorporation, Specific Adoption, Consistent Interpretation, Domestic Courts

General Readings

Besides the readings listed below for each module, students should have access to and may be required to refer to the following reading sources from time to time:

1. M. Shaw, *International Law* (Ninth Edition, CUP 2021)
2. EJIL:Talk!, accessible at <https://www.ejiltalk.org/>
3. Opinio Juris, accessible at <http://opiniojuris.org/>

Course Outline

Module	Topic and Description	Readings ¹
1 (Week 1)	Introduction to International Law <ul style="list-style-type: none"> • What is Public International Law? • How is Public International Law different to Private International Law? • How is International Law different to National/Domestic Law? 	<ol style="list-style-type: none"> 1. 'Chapter 1: The Nature and Development of International Law', in M. Shaw, <i>International Law</i> (Ninth Edition, CUP 2021) 2. A. Pellet and D. Müller, 'Article 38', in A. Zimmerman and C. Tams (eds.), <i>The Statute of the International Court of Justice: A Commentary</i> (OUP 2019) 819 3. C. Greenwood, 'Sources of International Law' UN Audiovisual Library, accessible at https://legal.un.org/avl/ls/Greenwood_IL.htm# 4. Robert Beckman and Dagmar Butte, 'Introduction to International Law', International Law Students Association, accessible at: https://www.ilsa.org/Jessup/Jessup%20Competitor%20Resources/intlawintro.pdf
2 (Weeks 2-3)	Relationship between International Law and Domestic Law <ul style="list-style-type: none"> • How do international law and domestic law interact? • What are the prominent theories concerning the relationship between international Law and domestic law? • How does the monist approach differ from the dualist approach to the relationship between international law and domestic law? 	<ol style="list-style-type: none"> 1. 'Chapter 4: International Law and Municipal Law', in M. Shaw, <i>International Law</i> (Ninth Edition, CUP 2021) 2. C. Greenwood, 'The Relationship between International Law and Municipal Law', UN Audiovisual Library, accessible at https://legal.un.org/avl/ls/Greenwood_IL.htm# 3. G. Ferreira and A. Ferreira-Snyman, 'The Incorporation of Public International Law Into Municipal Law and Regional Law Against the Background of the Dichotomy Between Monism and Dualism' (2014) 17(4) <i>PELJ</i> 1471, accessible at https://www.saflii.org/za/journals/PER/2014/43.pdf

¹The instructor may, before or during the course, recommend additional readings (or other forms of study material) if he deems necessary. In doing so, the instructor shall ensure that this will be done with sufficient advance notice and in a manner that does not substantially alter the structure and content of the course.

Module	Topic and Description	Readings ¹
		<p>4. D. Feldman, 'Monism, Dualism and Constitutional Legitimacy' (1999) 20 <i>Australian Year Book of International Law</i> 105, accessible at https://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/AUYrBkIntLaw/1999/7.html</p> <p>5. M. Kirby, 'The Growing Rapprochement Between International Law and Domestic Law'. Essays to Honour His Excellency Judge C. J. Weeramantry, Vision of the 21st Century, accessible at: https://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_weeram.htm</p> <p>6. Julian Ku, 'How Dualism May Save the United Kingdom from Brexit', <i>Opinio Juris</i>, accessible at https://opiniojuris.org/2016/11/03/how-dualism-may-save-the-united-kingdom-from-brexit/</p> <p>7. Odile Ammann, 'Dualism is Overrated – As is Monism: A Response to Julian Ku', <i>Opinio Juris</i>, accessible at https://opiniojuris.org/2016/11/15/dualism-is-overrated-as-is-monism-a-response-to-julian-ku/</p>
<p>3 (Weeks 4-6)</p>	<p>The Role of Domestic Courts in the Application of International Law</p> <ul style="list-style-type: none"> • When are domestic courts called upon to apply international law? • Which subject areas of international law are commonly invoked before domestic courts? • How have domestic courts in different jurisdictions approached international law? 	<p>1. R.A. Falk, 'The Role of Domestic Courts in the International Legal Order' (1964) 39(3) <i>Indiana Law Journal</i> 429, accessible at https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=3435&context=ilj</p> <p>2. D. Sloss and M. V. Alstine, 'International Law in Domestic Courts', in <i>Research Handbook on Politics of International Law</i> (2017), accessible at: https://digitalcommons.law.scu.edu/facpubs/965</p> <p>3. A. Tzanakopoulos, 'Preliminary Report-Principles on the Engagement of Domestic Courts with International Law', International Law Association, accessible at https://www.ila-hq.org/en_GB/documents/preliminary-report</p>

Module	Topic and Description	Readings ¹
		<p>4. D.G. Palguna and A. Wardana, 'Pragmatic Monism: The Practice of the Indonesian Constitutional Court in Engaging with International Law' (2024) 14 Asian Journal of International Law 404, accessible at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/46DD3A3345D95FD602848F1E60E73DE6/S2044251323000723a.pdf/pragmatic-monism-the-practice-of-the-indonesian-constitutional-court-in-engaging-with-international-law.pdf</p> <p>5. D. A. Jeremy Telman, 'A Monist Supremacy Clause and a Dualistic Supreme Court: The Status of Treaty Law as U.S. Law' in Marko Novakovic (ed.) <i>Basic Concepts of Public International Law: Monism and Dualism</i> (2013) Valparaiso University Legal Studies Research Paper No. 13-6, accessible at http://ssrn.com/abstract=2265880</p> <p>6. 'Public International Law in the Supreme Court of the United Kingdom: A Selection of Cases' (Crown 2024), accessible at https://www.supremecourt.uk/uploads/public_international_law_in_the_supreme_court_of_the_united_kingdom_2nd_edition_296053d0bf.pdf</p>
<p>4 (Weeks 7-8)</p>	<p>International Law Under the Indian Constitution</p> <ul style="list-style-type: none"> • What is the position of international under India's Constitution? • Where does India stand on the monist versus dualist spectrum? • How have the Indian executive and legislature approached the relationship between international law and domestic law? 	<p>1. L. Rajamani, 'International law and the Constitutional Schema' in S. Choudhry, M. Khosla and P.B. Mehta, <i>Oxford Handbook of the Indian Constitution</i> (OUP 2016)</p> <p>2. A. Chandra, 'India and International Law: Formal Dualism, Functional Monism' (2017) 57 Indian Journal of International Law, available at https://library.unej.ac.id/repository/Indian_Journal_of_International_Law0A.pdf</p> <p>3. V. Sehrawat, 'Implementation of International Law in Indian Legal System,' (2021) 31(1) <i>Florida Journal of International Law</i>, accessible at: https://scholarship.law.ufl.edu/fjil/vol31/iss1/4/</p>

Module	Topic and Description	Readings ¹
5 (Weeks 9-13)	Application of International Law by Indian Courts <ul style="list-style-type: none"> What is the mandate of courts under the Constitution to engage with international law? How have Indian courts approached the relationship between international customary law and domestic law? How have Indian courts approached the relationship between international treaty law and domestic law? Does the approach of Indian courts vary based on the kind of norms invoked ? 	<ol style="list-style-type: none"> S. K. Agarwal, 'Implementation of International Law In India: Role Of Judiciary', Implementation of International Law in India: (14 June 2010), accessible at SSRN: https://ssrn.com/abstract=1864489 or http://dx.doi.org/10.2139/ssrn.1864489 V.G. Hegde, 'International Law in the Courts of India' (2013) 19 <i>Asian Yearbook of International Law</i> 63 P. Ranjan, 'The Supreme Court of India and International Law: A topsy-turvy Journey from Dualism to Monism' (2022) 43 <i>Liverpool Law Rev</i> 571 V. Gupta, 'Using International Law in Domestic Indian Courts' (2022) 54 <i>NYU Journal of International Law and Politics</i> 1077, accessible at https://www.nyujilp.org/wp-content/uploads/2022/10/Gupta.pdf M. Anderson, 'International Environmental Law in Indian Courts' (1998) 7 <i>Rev Eur Comp & Int'l Env'tl L</i> 21 P. Ranjan, 'Nestlé judgment jolts Swiss MFN provision', Hindustan Times, 26 December 2024, accessible at https://www.hindustantimes.com/opinion/nestl-judgment-jolts-swiss-mfn-provision-101735225622315.html P. Ranjan, 'How India has approached customary international law', Indian Express, 11 January 2022, accessible at https://indianexpress.com/article/opinion/columns/how-india-has-approached-customary-international-law-7716742/