



LAW 888

International Dispute Settlement

S2 Day 2014

Dept of Law

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Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

General Information

Unit convenor and teaching staff

Unit Convenor

Natalie Klein

natalie.klein@mq.edu.au

Contact via natalie.klein@mq.edu.au

W3A 526

Wednesdays of teaching weeks, 2pm-3pm

Co-convenor

Chris Mitchell

christopher.mitchell@mq.edu.au

Contact via christopher.mitchell@mq.edu.au

TBA

TBA

Chris Mitchell

christopher.mitchell@mq.edu.au

Credit points

4

Prerequisites

Admission to MIntEnvLaw or PGDiplIntEnvLaw or PGCertIntEnvLaw or LLM in International Environmental Law or MIntTrdeComLaw or PGDiplIntTrdeComLaw or PGCertIntTrdeComLaw or MIntRelMIntTrdeComLaw or 42cp in LAW units at 400 or 500 level or (admission to JD and 32cp in LAW units at 800)

Corequisites

LAW891

Co-badged status

This unit is co-taught with LAW588

Unit description

The intense interaction between different actors in the international system inevitably leads to opposing views on issues, as well as to conflict. This unit will consider traditional non-adversarial dispute settlement in the international system. It will then focus on how various international courts and tribunals resolve disputes in different areas of international law (such as trade, investment, human rights, and international criminal law). Students will be placed in the position of a lawyer deciding on international litigation options. An ongoing question will be the effectiveness of these procedures, and the parties' compliance with the decisions of the different bodies.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT: Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.

CRITICAL ANALYSIS: Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.

PROBLEM SOLVING: Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on indepth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.

EXPANDING GLOBAL PERSPECTIVES: Discuss knowledgeably, explain, and critique different viewpoints in oral and written form from an international perspective.

MAINTAINING ETHICAL STANDARDS: Present original and independent work for assessment that conforms with the letter and spirit of the Academic Honesty Policy and the Student Code of Conduct.

Assessment Tasks

| Name | Weighting | Due |
|-------------------------------|-----------|---------------------------|
| <u>Class Participation</u> | 10% | Ongoing |
| <u>Short Answer Questions</u> | 40% | 5pm, Monday, September 29 |
| <u>Research Assignment</u> | 50% | 5pm, Monday, November 17 |

Class Participation

Due: **Ongoing**

Weighting: **10%**

(a) Substantive requirements in relation to class participation

Students will be assessed on the basis of their knowledge, understanding and ability critically to evaluate the issues raised in each topic, as demonstrated through participation in class discussions and responses to assigned questions in the seminars. Students should generally be prepared to talk about the assigned readings, provide their own assessment of those readings, and contribute to the discussion of questions and problems set in relation to these readings. Students are also encouraged to participate in discussions that extend beyond these set questions and readings through their own evaluation of the issues raised.

(b) Formal requirements in relation to class participation

Students are required to attend tutorials for each of the 12 weeks that the unit runs during the semester OR both days of the oncampus session in their entirety. Students are also required to attend the full day of teaching of Friday, September 19 (or on another date as agreed). Internal students will be permitted a maximum of

two unexplained absences from attendance at seminars. Students with more than two unexplained absences will get a zero mark for class participation, and, irrespective of marks gained in other assessment items, will be awarded a 'Fail' grade. If a student is unable to attend any seminar, he or she should, within a reasonable time, provide a written explanation of the reason(s) for the absence together with any appropriate corroborating evidence, e.g. medical certificate. If you send this explanation via email, you should not expect that it is received unless a reply email confirming receipt is sent to you. If:

(a) the reason(s) for the absence are, in the opinion of the Convener, not justifiable reasons for not attending the relevant seminar(s); or

(b) no written explanation is provided to the Convener within a reasonable time, the absence will be deemed to be an unauthorised absence for the purpose of the attendance requirement set out above.

On successful completion you will be able to:

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.
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- **EXPANDING GLOBAL PERSPECTIVES:** Discuss knowledgeably, explain, and critique different viewpoints in oral and written form from an international perspective.

Short Answer Questions

Due: **5pm, Monday, September 29**

Weighting: **40%**

You will be asked to respond in writing to FIVE questions, which will be posted on iLearn. Each written response will be limited to a maximum of 600 words and will be worth 8% of your final mark for the course (5 x 8% = 40%). The word limit does not include your footnotes, which should only contain your references and not substantive commentary. A bibliography is not required. The questions will be a mix of problem questions, reflective questions and essay style questions. Substantive criteria for the Assignment will be provided on iLearn.

On successful completion you will be able to:

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and

independent research.

- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.
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Research Assignment

Due: **5pm, Monday, November 17**

Weighting: **50%**

This written assignment is designed to enhance students' ability to examine a legal problem and provide thoughtful information, clear explanation and sophisticated critical analysis. The question will involve assessing a hypothetical scenario and undertaking research on the relevant legal issues and providing a substantiated evaluation and your recommendations as to the course of action to follow. The response is to be limited to 4,000 words maximum, not including footnotes (which should only contain your references and not substantive commentary). A bibliography is not required. Substantive criteria for the Assignment will be provided on iLearn.

On successful completion you will be able to:

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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Delivery and Resources

Technology Used

While iLecture recordings will be made, internal students are expected to attend the lecture as well as tutorial.

An iLearn page will be available for this unit. Topical items will be posted for discussion and engagement with the unit content.

Delivery

The classes in this unit are being taught by Natalie Klein, Chris Mitchell and John Reid. The Unit Schedule indicates which teacher will be taking each topic. The teacher for each week will be responsible for the lectures and tutorials.

External students must attend an oncampus session on 20-21 September as per attendance requirements for the class participation assessment task. Students must sign up at the Centre for Open Education for each day of the oncampus session.

For internal students, this unit will be taught with a two-hour lecture and one hour tutorial. Depending on student numbers, the lecture may be conducted in seminar format. The location and time of classes available for internal students are provided in the University's Timetable.

An additional day of teaching has been scheduled for the entirety of Friday, 19 September for postgraduate students only. This day will be taught by Natalie Klein in her office, W3A 526, depending on student numbers. The date can potentially be shifted with the agreement of all students and the teacher. We will be working through and discussing a complex hypothetical problem that day and comparing it to examples of actual international disputes.

All students will be expected to participate in online discussions via iLearn.

Required Text

There is no prescribed text for this unit, but readings will be placed on eReserve and the reading list will be posted on iLearn.

Recommended Texts

The following texts are highly recommended:

- J.G Merrills, *International Dispute Settlement* (Cambridge University Press, Cambridge, 5th ed, 2011)
- J Collier and V Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press, Oxford, 1999)
- Ruth Mackenzie, Cesare Romano, Yuval Shany, Phillipe Sands, *The Manual on International Courts and Tribunals* (Oxford University Press, Oxford, 2nd ed, 2010).

These texts have all been placed on Reserve at the Library.

Recommended Journals and Primary Materials:

Searching for international law articles is most easily facilitated through Lexis-Nexis (International Law Reviews, Combined library), and also through Hein Online. Both databases are available through the Library website. The following journals may be particularly useful:

1. American Journal of International Law
2. Australian Yearbook of International Law
3. British Yearbook of International Law
4. European Journal of International Law
5. Yale Journal of International Law
6. Harvard Journal of International Law
7. Michigan Journal of International Law
8. Virginia Journal of International Law
9. NYU Journal of International Law and Politics
10. International & Comparative Law Quarterly
11. Melbourne University International Law Journal

This list is by no means exclusive. You may also wish to search on the Ebscohost database for

political articles and news reports. Research from scholarly books and journals should be preferred over random searches of the internet.

The American Society of International Law has set up an Electronic Information System for International Law, www.eisil.org, which provides access to a range of primary documents and further websites on different international law topics. For information on international courts and tribunals, the Project on International Courts and Tribunals, which is run out of NYU Law School, may be of use, and can be found at: www.pict_pcti.org

The different international courts and tribunals tend to have their own websites, which include basic information about their functions and often links to judgments and other decisions. The *International Legal Materials* (ILM) also compiles international cases, as well as international treaties and other decisions. It can be searched in the Hein Online database.

Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy http://mq.edu.au/policy/docs/grievance_management/policy.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Disruption to Studies

When a student suffers a disruption to study which is 'serious and unavoidable' they may apply for special consideration. In order to do so the student must meet the criteria under the Macquarie University "Disruption to Studies" policy and be approved by the Unit Convenor. Applications are made online at ask.mq.edu.au. Outcomes for recognized serious and

unavoidable disruptions to studies are as set out in the University's Schedule to the policy - http://www.mq.edu.au/policy/docs/disruption_studies/schedule_outcomes.html

When a disruption to study is not serious or unavoidable, no further special consideration is available, unless preparation for a written assessment task is affected in which case a short extension of no more than one week may be granted at the discretion of the co-convenor, Chris Mitchell.

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

Learning outcomes

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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Assessment tasks

- Class Participation
- Short Answer Questions
- Research Assignment

PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

Learning outcomes

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.

Assessment tasks

- Class Participation
- Short Answer Questions
- Research Assignment

PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

Learning outcomes

- **UNDERSTANDING AND INTERPRETING LAW AND POLICY RELATED TO INTERNATIONAL DISPUTE SETTLEMENT:** Understand in depth the role of the key actors and institutions involved in international dispute settlement and the legal principles governing that activity, doing so on the basis of engagement with the unit content and independent research.
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Assessment tasks

- Class Participation
- Short Answer Questions
- Research Assignment

PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

Learning outcomes

- **CRITICAL ANALYSIS:** Undertake high-level analysis in discussing, explaining, describing, identifying, formulating and presenting arguments based on independent research and reading of relevant literature. Evaluate and critique from interdisciplinary perspectives the operation of international courts and tribunals and the actions of stakeholders in engaging (or not) with those institutions.
- **PROBLEM SOLVING:** Untangle factual problems to elucidate, apply and assess in a sophisticated manner the relevant legal principles in international dispute settlement. Present informed views in oral and written form based on indepth and broad knowledge acquired through independent and thorough research in and engagement with the unit content.
- **EXPANDING GLOBAL PERSPECTIVES:** Discuss knowledgeably, explain, and critique different viewpoints in oral and written form from an international perspective.

Assessment tasks

- Class Participation
- Short Answer Questions
- Research Assignment

PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

Learning outcome

- **MAINTAINING ETHICAL STANDARDS:** Present original and independent work for assessment that conforms with the letter and spirit of the Academic Honesty Policy and the Student Code of Conduct.

Assessment tasks

- Short Answer Questions
- Research Assignment

Changes since First Published

| Date | Description |
|------------|---|
| 16/07/2014 | An update to the application of the Disruption to Studies policy. |