



LAW 888

International Dispute Settlement

S2 Day 2015

Dept of Law

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Disclaimer

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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

Thursdays of teaching weeks, 9am-10am, or by appointment

Co-convenor

Chris Mitchell

christopher.mitchell@mq.edu.au

Contact via christopher.mitchell@mq.edu.au

Consultation by appointment

Credit points

4

Prerequisites

Admission to MIntEnvLaw or PGDipIntEnvLaw or PGCertIntEnvLaw or LLM or MIntTrdeComLaw or PGDipIntTrdeComLaw or PGCertIntTrdeComLaw or MIntRelMIntTrdeComLaw or 42cp in LAW units at 400 or 500 level or (admission to JD and 32cp in LAW or LAWS 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, Tuesday, September 29
<u>Research Assignment</u>	50%	5pm, Monday, November 16

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 tutorials or oncampus session. Students will be expected to lead discussion on set tutorial questions. Students should generally be prepared to talk about the assigned readings, provide their own assessment of those readings and lecture content, and contribute to the discussion of questions and problems set in relation to assigned readings and lectures. Students are also encouraged to participate in discussions that extend beyond these set questions and readings through their own evaluation of the issues raised. Further details on the assignment of tutorial questions to students and the class participation rubric will be posted on iLearn.

(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 held on September 25-26 in their entirety. Internal and external students are also required to attend the full day of teaching on Sunday, September 27, which is intended to cover the material from the first half of the semester in more depth and breadth. 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 tutorial, 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 a Co-Convener, not justifiable reasons for not attending the relevant tutorial(s); or

(b) no written explanation is provided to a Co-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.
- 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.

Short Answer Questions

Due: **5pm, Tuesday, 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.

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- 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 in-depth 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.

Research Assignment

Due: **5pm, Monday, November 16**

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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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.

Delivery and Resources

Technology Used

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

An iLearn page will be available for this unit and include information vital for the successful completion of this unit. Internet access is therefore required to undertake this unit. Topical items will be posted on iLearn 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. The unit is being co-convened by Natalie Klein and Chris Mitchell.

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 Sunday, 27 September for internal and external postgraduate students only. This day will be taught by Natalie Klein.

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)

- C.Romano et al, *The Oxford Handbook of International Adjudication* (Oxford University Press, Oxford, 2014)
- J Collier and V Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press, Oxford, 1999) [A new edition is underway but not likely to be available for teaching this unit]
- Ruth Mackenzie, Cesare Romano, Yuval Shany, Phillippe 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.

Unit Schedule

The proposed schedule is set out below, but may be subject to change. The relevant teacher for each week is indicated by the initials as follows: NK - Natalie Klein; CM - Chris Mitchell; JR - John Reid.

Week	Date	Lecture	Tutorial
1	30 July	NK: Introduction/History/Proliferation	No tutorial
2	7 August	CM: Non-Adversarial Processes	NK: Introduction/History/Proliferation
3	13 August	CM: Individuals in International Dispute Settlement	CM: Non-Adversarial Processes
4	20 August	CM: Judges, Advocates and Participants	CM: Individuals in International Dispute Settlement
5	27 August	NK: Jurisdiction and Admissibility	CM: Judges, Advocates and Participants
6	3 September	NK: Intervention and Third Parties	NK: Jurisdiction and Admissibility
7	10 September	NK: Provisional Measures	NK: Intervention and Third Parties

Mid semester break: 14-27 September
On campus session: 25-26-27 September

8	1 October	JR: Contentious Proceedings	NK: Provisional Measures
9	8 October	CM: Interaction with National Courts	NK: Contentious Proceedings
10	15 October	CM: Advisory Opinions and Other Judicial Functions	CM: Interaction with National Courts
11	22 October	CM: Remedies and Reparations	CM: Advisory Opinions and Other Judicial Functions
12	29 October	CM: Enforcement and Compliance	CM: Remedies and Reparations
13	5 November	No lecture	CM: Enforcement and Compliance

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/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit ask.mq.edu.au.

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 - 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

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.

- **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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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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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

Changes from Previous Offering

In last year's iteration of this unit, the tutorials were held on the same day as the lecture but following student feedback we have now staggered the offering of lectures and tutorials so the tutorial on a topic is a week after the lecture on that topic.

We have also changed the assessment of class participation to encourage greater engagement with all learning materials.