

UNIVERSITY OF OXFORD • FACULTY OF LAW

INTERNATIONAL DISPUTE SETTLEMENT 2003-2004

1: INTRODUCTION

There is no wholly satisfactory textbook. The most useful available general texts are:
 John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law*, (OUP, 1999)
 J.G. Merrills, *International Dispute Settlement*, (3rd edition, Grotius, Cambridge, 1998)
 United Nations, *Handbook on the Peaceful Settlement of Disputes between States*, (New York, 1992)

Please obtain your own copy of *Blackstone's International Law Documents* (Ed. M Evans. 6th ed., 2003). You will also find A. Redfern & M. Hunter, *Law and Practice of International Commercial Arbitration*, (3rd ed. 1999) helpful later in the course, but need not buy this text. A paperback version (£40) is promised soon.

Suggested further background reading. (** = essential; * = particularly helpful)

- * J. Dahlitz (ed), *Peaceful Resolution of Major International Disputes* (UN, 1999)
- * David Davies Memorial Institute, *International Disputes: The Legal Aspects*, (London, 1972)
- * M.M.T.A. Brus, *Third Party Dispute Settlement in an Interdependent World*, (Dordrecht, 1995)
- * UN Secretary General, *Agenda for Peace* (1992), 31 *ILM* 956 (1992)

Topics:

Part 1

1. Introduction
2. The General Framework of Dispute Settlement
3. Alternative Dispute Resolution
4. The Hague Peace System and International Arbitration
5. Mixed Disputes: ICSID, the Iran-US Claims Tribunal and the UNCC
6. International Commercial Arbitration
7. Disputes concerning Human Rights / Political Issues
8. Economic Disputes
9. The International Court of Justice

Part 2

10. The Arbitral Process [This part of the course considers the principles applicable to the resolution of procedural issues that arise at the various stages of the judicial settlement of disputes, from the agreement to submit the dispute to a tribunal through to the challenge, recognition and enforcement of any final award.]

You will find the following websites useful:-

<http://www.sosig.ac.uk/roads/subject-listing/World-cat/intreaties.html>
<http://www.pict-pcti.org/>

TEN THESES CONCERNING CONFLICT.

1. Conflict not always dysfunctional: "a theory of peace must be part of a more general theory of conflict" (Boulding)
2. Conflict tends to give rise to norms regulating the behaviour of the parties: norms regulating substance, procedure, and institutions.
3. Conflict always presupposes a relationship.
4. Conflict serves to maintain the system.
5. Conflict tends to lead to the formation of coalitions and associations.
6. Conflict tends to integrate States and reinforce their identity and autonomy.
7. Conflict gives rise to multiple audiences.
8. Conflict does not aim merely at resolving specific cases which lead to its outbreak.
9. Conflict serves as a means for ascertaining the relative strengths of the parties and interests.
10. Parties rarely have the same interest in the manner in which dispute resolution is approached.

Conflict is a vehicle of change and re-ordering. As conflict is not wholly undesirable, the emphasis should be on regulating, rather than suppressing it.

GRADUATING CONFLICT

References to moral or legal systems, signalled by changes in vocabulary, alter relative strengths of parties and their relationship with third parties.

"The legal rules tend to give every clash of interests which results from changed circumstances an ideological character: a struggle between the just and the unjust." (Röling)

FORMS OF DISPUTE SETTLEMENT PROCEDURE

Two myths concerning dispute settlement procedures:

- a) arbitral and judicial decisions remove the settlement from the hands of the parties;
- b) only arbitral and judicial decisions are based on law.

Differences do exist between different procedures in

- a) the nature and degree of third party involvement; and
- b) the extent to which community interests can be brought to bear in the dispute.

But note the importance of a satisfactory concept of what *Law* is: cf., M.A. Eisenberg, "Private Ordering through Negotiation: Dispute Settlement and Rule-Making", 89 *Harvard L. Rev.* 637 (1976); F.V. Kratochwil, *Rules, Norms and Decisions: on the Conditions of Practical and Legal Reasoning in International and Domestic Affairs*, (Cambridge, 1989)