

UNIVERSITY OF OXFORD · FACULTY OF LAW

INTERNATIONAL DISPUTE SETTLEMENT 2003-2004

2: THE GENERAL LEGAL FRAMEWORK

Reading: see previous handout.

**UN Charter, arts. 1, 2(3), 2(4), 33: peaceful settlement by means of own choosing.

Cf., Kellogg-Briand Pact, 1928, 94 *LNTS* 57, art. II

UN Charter: art. 33 -role of Security Council

Lockerbie case, (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*, [1992] ICJ Rep. 1, 114; 31 *ILM* 662 (1992)): see further, on lectures on the International Court of Justice.

**UNGA res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 9 *ILM* 1292 (1970)

**UNGA res. 37/10 (1982), Manila Declaration on the Peaceful Settlement of International Disputes, 21 *ILM* 449 (1982)

**UN Secretary General, *Agenda for Peace*, UN Doc A/47/277, 17 June 1992; 31 *ILM* 956 (1992)

You will find the UN Homepages helpful:- <http://www.un.org/english/> >
<http://www.un.org/aboutun/mainbodies.htm> >

C. Peck, *The United Nations as a Dispute Settlement System* (1996).

NEGOTIATION

Reading:

*Merrills, *International Dispute Settlement*, (Cambridge, 1998), chapter 1

*J. Dahlitz (ed), *Peaceful Resolution of Major International Disputes* (UN, 1999), esp. pp. 113-143.

*Charles Manga Fombad, "Consultation and Negotiation in the Pacific Settlement of International Disputes", 1 *African J. Int'l & Comp. Law* 707-724 (1989)

Fred C. Iklé, *How Nations Negotiate*, (1964)

Arthur Lall, *Modern International Negotiation*, (1966)

Phoebe Okowa, 'Procedural Obligations in International Environmental Agreements', 67 *BYIL* 274 (1996)

P.J.I.M. de Waart, *The Element of Negotiation in the Pacific Settlement of Disputes*, (1973)

CUSTOMARY LAW DUTY:

North Sea Continental Shelf cases, [1969] ICJ Rep. 1, at 47

Mavromattis Palestine Concession, PCIJ Ser. A., no. 2.

Aegean Sea, [1978] ICJ Rep. 12.

Nicaragua, [1984] ICJ Rep. 440.

Hostages, [1980] ICJ Rep. 3.

Railway Traffic between Lithuania and Poland, PCIJ Ser. A/B, No. 42, p. 116 (1932)

****Fisheries Jurisdiction** cases, [1974] ICJ Rep. 3, at 32

**** Legality of the Threat or Use of Nuclear Weapons**, [1996] ICJ Rep., 35 ILM 809 at 830.
Ybk ILC 1984 vol. II, Pt. 1, p. 108 (art.4)

TREATY DUTY:

Agreements on consultation concerning antitrust enforcement:-

****US-EEC**, 1991: [1991] 4 *Common Market Law Reports* 823. and <

<<http://www.usdoj.gov/atr/public/international/docs/ec.txt>>. On this and related agreements see John J. Parisi, 'Enforcement Cooperation Among Antitrust Authorities' (1999), at <http://www.ftc.gov/speeches/other/ibc99059911update.htm#N_13>

Law of the Sea Convention, 1982, art. 238. And note the *MOX* case (Ireland v UK), 41 ILM 405 (2002), and http://www.itlos.org/start2_en.html and [http://pca-cpa.org/RPC/#Ireland v. United Kingdom](http://pca-cpa.org/RPC/#Ireland_v._United_Kingdom) ("MOX Plant Case"); and the *Land Reclamation* case, http://www.itlos.org/start2_en.html.

****Environmental law**. Cf., ILC draft articles on prevention of transboundary harm from hazardous activities (2001), <http://www.un.org/law/ilc/texts/prevention/preventionfra.htm>

Bilateral treaties of Friendship, Commerce & Navigation; Bilateral Investment Treaties:-
 E.g., US-Japan FCN, 206 *UNTS* 143, art. XVIII (1953).

Investment Treaties: UK-USSR BIT, 1990, art. 9, 24 ILM 366 (1990); US-Jordan BIT, 1997, arts. VIII, X, 36 ILM 1498 (1997). Cf., OECD Council Decisions concerning multinational enterprises, 15 ILM 977 (1976), 18 ILM 1171 (1979).

INSTITUTIONALISED CONSULTATION AND NEGOTIATION:

United Nations and regional organizations (see later lectures)

Mixed Commissions:- E.g., Canada-US International Joint Commission

See M. Cohen, 146 *Recueil des Cours* 219 (1975)

M. Cohen, 68 *Proc. ASIL* 236-239 (1974)

(and see C. J. Redgwell, "New Developments in Techniques of Dispute Resolution: The Canadian-American Free Trade Agreement", in W. E. Butler (ed), *Perestroika and International Law*, (Dordrecht, 1990), 259-274.)

Mexico-US Joint Commission

See D. H. Jordan, 68 *Proc. ASIL* 226-229 (1974)

L. C. Wilson, 29 *ICLQ* 38 (1980)

GATT/WTO: see E.-H. Petersmann, *The GATT/WTO Dispute Settlement System* (1997).

CONSEQUENCES OF A FAILURE TO FULFIL A DUTY TO NEGOTIATE

****Lac Lanoux Arbitration** (France v. Spain, 1957), 24 *ILR* 101, at 127-128

South West Africa cases, [1962] ICJ Rep. 319, (37 *ILR* 3), at 344-347 (25-28), 561-563 (174-176).