

University of Macau  
Faculty of Law

International Business Law  
Master and Postgraduate Program 2008/2009

Course: Dispute Resolution  
Course Code: MMIB/PLIB 014

Prof. Muruga Perumal and Prof. Gui Conde e Silva

## **Course Outline**

### **Course Outline of Part I: Prof. Muruga Perumal**

#### **Introduction:**

The first part of the course will deal with a range of means and methods of dispute resolution. This part does not address Arbitration, which will be taken up for discussion during the second part of this course. The first part is divided into five sessions, each of which will address a thematic topic. A brief outline of each session is presented below along with the list of possible issues to be covered in each of those topics. Each session provides a list of prescribed reading, which are essential materials for the topic. J.G. Merrills, *International dispute settlement*, Cambridge, UK ; New York : Cambridge University Press, 2005 will serve as the general reference for the topics of part I. Additional reference materials may be issued or requested in any of the topics covered in this part.

#### **Sessions 1-5**

#### **Session 1: Issues and Challenges Facing Resolution of Disputes**

The first session will distinguish the nature and characteristics of different types of legal disputes and their related resolution methods and processes both at domestic and international levels. The first session aims to provide a general introduction to the issues and challenges facing dispute resolution in general and international business dispute resolution in particular.

Nature and Characteristics of Different Types of Legal Disputes (Domestic V International, Economic V Non-Economic, etc) and the Evolution Methods of Resolution  
Theories of Dispute Resolution  
Effectiveness and Limitations of Various Types Dispute Resolutions Methods  
Scope and objective of domestic and international dispute resolution methods  
The Role of International Law and International Institutions

## **Prescribed Reading**

Robert Keohane , Andrew Moravcsik and Anne-Marie Slaughter, “Legalized Dispute Resolution: Interstate and Transnational” *International Organization* Vol.54, (2000), p.457

## **Session 2: Direct Method of Dispute Resolution: The Negotiations**

The second session will address the specific means of Negotiations to settle disputes which will include related theories, techniques, and their role and recognition in international legal instruments and institutions.

Introduction to Negotiation Theories  
The process and types of Negotiations  
The Role of Negotiations and Consultations in International Dispute Resolution  
Diplomacy and International Law  
Legal Recognition of Negotiated Outcome  
Challenges and Limitations

## **Prescribed Reading**

Manfred Lachs (1985), ‘International Law, Mediation, and Negotiation’, *Multilateral Negotiation and Mediation: Instruments and Methods*, pp. 183-95.

## **Session 3: Dispute Resolution Facilitated by Third Parties: Good Offices, Conciliation, Mediation etc.**

The third session will address the group of related methods including good offices, conciliation and mediation. The relevance of these methods for settlement of business disputes in particular will be explored. Related international rules and recognition of these methods will be examined.

The role of third party intervention and facilitation of a negotiated settlement  
Methods of Mediation, functions of mediators and limitations  
Challenges in International Mediation  
Distinction between mediation and conciliation  
Development of International Legal Principles on Commercial Conciliation  
Conciliation Commissions and their contributions in international dispute resolution  
Good offices and Inquiry Commissions

## **Prescribed Reading**

S.C. Conway, “The UNCITRAL Model Law on International Conciliation “ *Tijdschrift voor Mediation* Vol.4, (2004) p.96

#### **Session 4: Judicial settlement of International Disputes, Scope and Limitations of Specialized International Tribunals and Institutions.**

The fourth session will explore the challenges in judicial settlement of international disputes and the role of international dispute settlement institutions. This session will specifically explore two specific types of international disputes namely international investment and trade disputes. The critical international issues in settling these disputes and the effectiveness of the related institutional mechanism will be discussed.

The recognition and limitation of locus standi of Individuals in International Judicial bodies

The role of national courts in settling International disputes and related issues and challenges in Private International Law

Specialized International Tribunals and Institutions

Settlement of Specific types of Disputes I: International Investment Disputes and Related mechanism

Settlement of Specific types of Disputes II: Legal Issues Arising in Settlement of International Trade Disputes

#### **Prescribed Reading**

Robert Y. Jennings, 'The Proliferation of Adjudicatory Bodies: Dangers and Possible Answers', *American Society of International Law Bulletin*, No.9, (1995) pp. 2-7.

#### **Session 5: Emerging Issues and New Forms of Dispute Resolutions**

The fifth part will deal with emerging issues and trends in settling disputes will be taken up for discussion. This part will also examine the role of online dispute resolution methods, challenges in settling international disputes arising from online transactions etc.

Conventional vs Unconventional forms of dispute resolution

Methods emphasizing prevention and early resolution of disputes

Online Resolution of International Disputes

Resolution of Disputes related to Online Transactions

Regional Approaches to Dispute Resolution

Emerging Recommendations and Reforms related to International Dispute Resolution

#### **Prescribed Reading**

Joseph W Goodman, "The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites" *Duke Law & Technology Review* (2003) 04

## Part II

**Dr Gui Conde e Silva, Assistant Professor**

### Bibliography

#### Required Reading:

Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003)

#### Facultative reading:

Alan Redfern & Martin Hunter, Nigel Blackaby and Constantine Partasides, *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell 4<sup>th</sup> edition) 2004

#### Journals:

*Arbitration International* (Kluwer)

*Arbitration and Dispute Resolution Law Journal* (LLP London)

*Arbitration* – Chartered Institute of Arbitrators, (UK)

*American Review of International Arbitration*, Parker School (USA)

*Arbitration Journal (Dispute Resolution Journal)* – American Arbitration Association (USA)

*International Arbitration Law Review* (Sweet & Maxwell, London)

## Course Outline - Part II

### Topic 1 – Overview and arbitration agreements

This topic introduces the notion of international arbitration, its advantages and disadvantages and the distinction between ad hoc and institutional arbitrations. Next, we discuss the content of arbitration agreements, their function, validity and governing law. The section concludes with an overview of the arbitration process and the role of the courts therein.

Reading: Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003), Chapters 1-8, 15

### Topic 2 – The arbitration tribunal

In this topic we look into the constitution of the arbitration tribunal, and the rights and duties of the arbitrators, including the duty of impartiality and independence. The topic deals also with the challenge and liability of arbitrators and the admissibility of truncated tribunals.

Reading: Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003), Chapters 10-13

### Topic 3 - Jurisdiction of arbitration tribunals

We deal here with the jurisdiction of arbitration tribunals, including the principles of *kompetenz-kompetenz*, separability, and the notion of arbitrability. We then discuss the admissibility of multi-party arbitrations, from a comparative perspective.

Reading: Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003), Chapters 9, 14, 16

### Topic 4 – Arbitration Procedure

In this topic we analyse the manner in which arbitration proceedings are commenced, the determination of the procedural rules in the arbitration, and other issues concerning the arbitral procedure.

Reading: Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003), Chapters 20-23

### Topic 5 – The award: Content, Form, Challenge and Enforcement

This topic focuses on the award of the arbitrators, and the standards applicable to the challenge, recognition and enforcement of arbitration awards.

Reading: Julian D M Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International (2003), Chapters 17-18, 24-26

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