

# **International Dispute Resolution**

*Carolina Academic Press  
Law Casebook Series  
Advisory Board*

Gary J. Simson, Chairman  
*Dean, Case Western Reserve University School of Law*

Raj K. Bhala  
*University of Kansas School of Law*

John C. Coffee, Jr.  
*Columbia University Law School*

Randall Coyne  
*University of Oklahoma College of Law*

John S. Dzienkowski  
*University of Texas School of Law*

Paul Finkelman  
*University of Tulsa College of Law*

Robert M. Jarvis  
*Shepard Broad Law Center  
Nova Southeastern University*

Vincent R. Johnson  
*St. Mary's University School of Law*

Michael A. Olivas  
*University of Houston Law Center*

Kenneth Port  
*William Mitchell College of Law*

Michael P. Scharf  
*Case Western Reserve University School of Law*

Peter M. Shane  
*Michael E. Moritz College of Law  
The Ohio State University*

Emily L. Sherwin  
*Cornell Law School*

John F. Sutton, Jr.  
*Emeritus, University of Texas School of Law*

David B. Wexler  
*John E. Rogers College of Law  
University of Arizona*

# International Dispute Resolution

---

## Cases and Materials

**Mary Ellen O'Connell**

ROBERT AND MARION SHORT CHAIR IN LAW  
NOTRE DAME LAW SCHOOL

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2006  
Mary Ellen O'Connell  
All Rights Reserved

ISBN 1-59460-052-X  
LCCN 2006924480

Carolina Academic Press  
700 Kent Street  
Durham, NC 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*This book is dedicated to*  
Sir Elihu Lauterpacht, C.B.E., Q.C.,  
*an extraordinary teacher and practitioner of*  
*international dispute resolution.*



# Contents

---

---

Table of Cases	xiii
Acknowledgments	xvii
<b>Chapter One · The Study of International Dispute Resolution</b>	<b>3</b>
Introduction	3
What Is International Dispute Resolution?	4
Related Fields of Inquiry	5
The History of International Dispute Settlement	7
Howard N. Meyer, <i>The World Court in Action</i>	8
Richard B. Bilder, <i>An Overview of International Dispute Settlement</i>	13
Notes and Questions on the Study of International Dispute Resolution	20
<b>I. NON-BINDING METHODS</b>	
<b>Chapter Two · Negotiation and Consultation</b>	<b>25</b>
Introduction	25
Charles Manga Fombad, <i>Consultation and Negotiation in the Pacific Settlement of International Disputes</i>	25
World Trade Organization, Understanding on Rules and Procedures Governing the Settlement of Dispute	31
United Nations Convention on the Law of the Sea	31
Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947	
Advisory Opinion 1988 ICJ Rep. 12 (April 26)	31
Introductory Note to the Fisheries Jurisdiction Case	42
Fisheries Jurisdiction Case, (U.K. v. Iceland)	42
Notes and Questions on Negotiation and Consultation	44
The Grand Lake Problem	46
<b>Chapter Three · Good Offices and Mediation</b>	<b>49</b>
Introduction	49
Thomas Princen, <i>International Mediation—The View from the Vatican: Lessons from Mediating the Beagle Channel Dispute</i>	50
World Trade Organization, Understanding on Rules and Procedures Governing the Settlement of Dispute	52

B.G. Ramcharan, <i>The Good Offices of the United Nations Secretary-General in the Field of Human Rights</i>	52
Report of the Secretary-General on His Mission of Good Offices in Cyprus	55
Lea Brilmayer, <i>America: The World's Mediator?</i>	57
Notes and Questions on Good Offices and Mediation	64
The Refugee Camp Problem	67
<b>Chapter Four · Inquiry and Conciliation</b>	69
Introduction	69
WTO Understanding on Rules and Procedures Governing the Settlement of Disputes	72
United Nations Convention on the Law of the Sea	72
ICSID Convention on the Settlement of Investment Disputes Between States and Nationals of Other States	72
Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949	72
<i>The Red Crusader</i> , Commission of Enquiry (Den-UK) Mar. 23, 1962	73
International Centre for Settlement of Investment Disputes, <i>About ICSID</i>	80
Lester Nurick and Stephen J. Schnably, <i>The First ICSID Conciliation: Tesoro Petroleum Corporation v. Trinidad and Tobago</i>	81
Notes and Questions on Inquiry and Conciliation	90
The Refugee Camp Problem Revisited	93
<b>II. BINDING METHODS</b>	
<b>A. ARBITRATION</b>	
<b>Chapter Five · Arbitration</b>	97
Introduction	97
International Law Commission: Annex, Model draft on arbitral procedure	99
United Nations Convention on the Law of the Sea: Part XV, Dispute Settlement	101
Southern Bluefin Tuna Case ( <i>Australia and New Zealand v. Japan</i> ) Award on Jurisdiction and Admissibility, August 4, 2000	102
Case Concerning the Air Services Agreement of 27 March 1946 ( <i>United States v. France</i> ), Arbitral Tribunal established by the <i>Compromis</i> of 11 July 1978	118
Notes and Questions on Arbitration	130
<b>Chapter Six · Interim Orders in Arbitration</b>	133
Introduction	133
William Wang, <i>International Arbitration: The Need for Uniform Interim Measures of Relief</i>	133
<i>RCA Globcom Communications, Inc., et al., Claimants, v. The Islamic Republic of Iran, et al., Respondents</i>	136
<i>RCA Global Communications, Inc., et al., Claimants v. The Islamic Republic of Iran, Respondents</i>	138
Barbara Kwiatkowska, <i>The Ireland v. United Kingdom (Mox Plant) Case: Applying the Doctrine of Treaty Parallelism</i>	139



The Mox Plant Case ( <i>Ireland v. United Kingdom</i> ) International Tribunal for the Law of the Sea Case No. 10 (Request for Interim Measures) Dec. 3, 2001	143
Notes and Questions on Interim Orders in Arbitration	151
Action Brought on 30 October 2003 by the Commission of the European Communities against Ireland (Case C-459/03)	151
<b>Chapter Seven · Issues Arising in the Course of Arbitration</b>	153
Andreas Lowenfeld, <i>The Conduct of an International Arbitration</i>	153
Case Concerning the Arbitral Award Made by the King of Spain on 23 December 1906 ( <i>Honduras v. Nicaragua</i> )	154
Note on the Case Concerning the Arbitral Award of 31 July 1989	164
Case Concerning the Arbitral Award of 31 July 1989 ( <i>Guinea-Bissau v.</i> <i>Senegal</i> )	165
Notes and Questions on Issues Arising During Arbitration	178
<b>Chapter Eight · Compliance and Enforcement</b>	181
Rainbow Warrior ( <i>New Zealand v. France</i> )	181
The Islamic Republic of Iran v. The United States of America	196
Iran Aircraft Industries and Iran Helicopter Support and Renewal Company, Petitioners-Appellants, v. Avco Corporation, Respondent-Appellee.	202
The Islamic Republic of Iran, Claimant, v. The United States of America, Respondent.	208
Notes and Questions to Compliance and Enforcement in Arbitration	215
The Weapons Manufacturer Problem	215
<b>II.B. JUDICIAL SETTLEMENT</b>	
<b>Chapter Nine · International Courts</b>	219
Introduction	219
Statute of the International Court of Justice	221
World Trade Organization, Understanding on Rules and Procedures Governing the Settlement of Dispute	221
United Nations Convention on the Law of the Sea, Annex VI. Statute of the International Tribunal for the Law of the Sea	222
Rome Statute on the International Criminal Court	222
Sir Robert Y. Jennings, <i>The Proliferation of Adjudicatory Bodies: Dangers and</i> <i>Possible Answers</i>	222
José E. Alvarez, <i>The New Dispute Settlers: (Half) Truths and Consequences</i>	228
Notes and Questions for the Introduction to International Courts	231
<b>Chapter Ten · Jurisdiction and Admissibility</b>	233
Case Concerning United States Diplomatic and Consular Staff in Tehran ( <i>United States of America v. Iran</i> )	234
Case Concerning Military and Paramilitary Activities In and Against Nicaragua ( <i>Nicaragua v. United States of America</i> )	246
Notes and Questions on Jurisdiction and Admissibility	266

<b>Chapter Eleven · Provisional Measures</b>	269
Mary Ellen O’Connell, <i>The Failure to Observe Provisional Measures of Protection in the Case of Bosnia v. Yugoslavia</i>	269
Case Concerning United States Diplomatic and Consular Staff in Tehran ( <i>United States of America v. Iran</i> )	276
LaGrand ( <i>Germany v. United States of America</i> )	282
Notes and Questions on Provisional Measures	294
<b>Chapter Twelve · Intervention and Indispensable Parties</b>	297
A. Intervention	297
Statute of the International Court of Justice Articles 62 and 63	297
J.M. Ruda, <i>Intervention before the International Court of Justice</i>	297
Case Concerning Military and Paramilitary Activities In and Against Nicaragua ( <i>Nicaragua v. United States of America</i> )	307
B. Indispensable Parties	314
Case Concerning East Timor ( <i>Portugal v. Australia</i> )	314
Notes and Questions on Intervention and Indispensable Parties	323
<b>Chapter Thirteen · Compliance and Enforcement</b>	325
Statute of the International Court of Justice, Articles 59, 60 and 61	325
Application for Revision of the Judgment of 11 September 1992 ( <i>El Salvador v. Honduras, Nicaragua Intervening</i> )	325
Mary Ellen O’Connell, <i>The Prospects for Enforcing Monetary Judgments of the International Court of Justice: A Study of Nicaragua’s Judgment Against the United States</i>	339
Notes and Questions on Compliance and Enforcement in Judicial Settlement	353
The Cilantro Island Problem	356
<b>Chapter Fourteen · National Courts</b>	359
A. Jurisdiction	359
The Case of the S.S. “Lotus” ( <i>France v. Turkey</i> )	360
B. Immunity from Jurisdiction	370
1. Sovereign Immunity	370
The Federal Republic of Germany et al., v. United States et al.	372
M. Flatow v. The Islamic Republic of Iran	373
2. International Organization Immunity	378
Jan Klabbbers, <i>Privileges and Immunities</i>	378
Note on the “Oil for Food” Dispute	380
United Nations v. Parton	381
United Nations v. Parton	386
Notes and Questions on National Courts	388
<b>Chapter Fifteen · Issues Arising in the Course of National Court Dispute Resolution</b>	391
A. Proper Law	391
United States v. The Palestine Liberation Organization	392
Jose Ernest Medellín, Petitioner, v. Doug Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division	399

B. Other Issues	407
1. Political Question	408
Case Concerning Certain Property ( <i>Liechtenstein v. Germany</i> )	409
2. Act of State	420
3. <i>Forum Non Conveniens</i>	421
4. Standing	422
Mary Ellen O’Connell, <i>Adjudicating Enforcement</i>	422
Note on International Organizations before National Courts	423
August Reinisch, <i>Avoidance Techniques</i>	423
Notes and Questions on Issues Arising in National Court	
Dispute Resolution	424
The Problem of the <i>Blue Betty</i>	425
<b>Appendix</b>	427
1. United Nations Charter	427
2. Statute of the International Court of Justice, June 26, 1945	449
3. 1978 Rules of the International Court of Justice, Subsection 4, Intervention	462
4. Vienna Convention on the Law of Treaties	463
5. World Trade Organization Understanding on Rules and Procedures Governing the Settlement of Disputes	487
6. United Nations Convention on the Law of the Sea, Part XV	507
7. ICSID Convention	531
8. Rome Statute of the International Criminal Court	533
9. ILC Model Draft on Arbitral Procedure	545
Index	555



# Table of Cases

---

---

- Air Services Agreement of 27 March 1946 (U.S. v. Fr.), 18 R.I.A.A. 417 (1978), 118
- Anglo-Iranian Oil Co. (U.K. v. Iran) 1951 I.C.J. 89 (July 5), 295
- Anglo-Iranian Oil Co. (U.K. v. Iran), 1952 I.C.J. 93 (July 22), 325, 346
- Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), 20 I.L.R. 316 (Sup. Ct. 1953) (Aden), 351
- Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, 1988 I.C.J. 12 (April 26), 4 28, 31, 333, 394, 413
- Application for Revision of the Judgment of 11 September 1992 (El Sal./Hond: Nicar. intervening), 2003 I.C.J. (Dec. 18), 325
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Yugo. (Serb. & Mont.)), 1993 I.C.J. 3 (April 8), 270
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Yugo. (Serb. & Mont.)) 1993 I.C.J. 325 (Sept. 13), 270, 290
- Arbitral Award Made by the King of Spain on 23 December 1906 (Hond. v. Nicar.), 1960 I.C.J. 192 (Nov. 18) 154, 169, 249, 252–53
- Arbitral Award of 31 July 1989 (Guinea-Bissau v. Sen.), 1991 I.C.J. 53 (Nov. 12), 164–65, 165
- Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428 (1989), 371
- Avena (Mex. v. U.S.) 2004 I.C.J. 12 (Mar. 31), 295, 399–404, 407, 425
- Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain), 1970 I.C.J. 3 (Feb. 5), 251, 346, 360
- Breard v. Greene, 523 U.S. 371 (1998), 294, 372, 399, 401, 404–05, 407
- Broadbent v. Organization of American States, 628 F.2d 27 (D.C. Cir. 1980), 380
- Certain Property (Liecht. v. F.R.G.), 2001 I.C.J. 565 (June 28), 294, 408, 409
- Chorzow Factory (Ger. v. Pol.), 1927 P.C.I.J. (ser. A) No. 12 (Nov. 21), 27, 185, 194, 265, 345
- Continental Shelf between Libya and Malta (Libya v. Malta), 1985 I.C.J. 13 (June 3), 299
- Continental Shelf between Tunisia and Libya (Tuns. v. Libya), 1982 I.C.J. 18 (Feb. 24), 299
- Corfu Channel (U.K. v. Albania) 1949 ICJ Rep. 4 (Apr. 9), 174, 262–63, 340, 350, 352, 354
- East Timor (Port. v. Austl.), 1995 I.C.J. 90 (June 30), 314, 413
- Electricity Company of Sofia and Bulgaria (Belg. v. Bulg.), 1938 P.C.I.J. (ser. A/B) No. 77, at 39 (Apr. 4), 30, 290, 415–17
- Federal Republic of Germany v. United States, 526 U.S. 111 (1999), 294, 372
- Fisheries Jurisdiction, (U.K. v. Ice.), 1974 I.C.J. 3 (July 25), 42, 340

- Gabcíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7 (Sept. 25), 354–56
- Garden Contamination Cases, 80 I.L.R. 367 (Provincial Court of Bonn 1987) (F.R.G.), 389, 422
- The Greek Case, Report of the Commission Vol. II (Eur. Comm'n H.R., Nov. 5, 1969), 66
- Haya de la Torre, (Colom. v. Peru), 1951 I.C.J. 71 (June 13), 305, 313
- Interhandel (Switz. v. U.S.), 1959 I.C.J. 6 (Mar. 21), 46, 256, 346
- Iran Aircraft Industries and Iran Helicopter Support and Renewal Company v. Avco Corp., 980 F.2d 141 (2d Cir. 1992), 202, 208
- Iran-United States Claims Tribunal v. AS, 94 I.L.R. 320 (Hoge Raad der Nederlanden 1985), 380
- Ireland v. U.K., 25 Eur. Ct. H.R. (ser. A) (1978), 66
- The Islamic Republic of Iran v. The United States of America, Case No. A21, Iran-United States Claims Tribunal, May 4, 1987, 196, 205
- The Islamic Republic of Iran v. The United States of America, Case No. A27, Iran-United States Claims Tribunal, June 5, 1998, 208, 374
- Lac Lanoux (Spain v. Fr.), 24 I.L.R. 101 (Arb. Trib. 1957), 28
- LaGrand (F.R.G. v. U.S.), 2001 I.C.J. 466 (June 27), 133, 269, 282, 403
- Land, Island and Maritime Frontier Dispute (El.Sal./Hond.: Nicar. Intervening), 1992 I.C.J. 351 (Sept. 11), 299, 301, 304, 319, 326, 337
- Legality of Use of Force (Yugo. v. Belg.), 1999 I.C.J. 124 (June 2), 295
- M. Flatow v. The Islamic Republic of Iran, 74 F. Supp. 2d 18 (S.D.N.Y. 1999), 373, 389
- Mavromatis Palestine Concessions (Greece v. U.K.), 1924 P.C.I.J. (ser. A) No. 2, at 11 (Aug. 13), 26–27, 29, 36, 40, 45, 317, 412
- Medellín v. Dretke, 544 U.S. 660 (2005), 399, 425
- Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) 1986 I.C.J. 392 (Nov. 26), 232, 246
- Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) 1984 I.C.J. 14 (Oct. 4), 306, 307
- Ministry of Defense of the Islamic Republic of Iran v. Gould, 887 F.2d 1357 (9th Cir. 1989), cert. denied, 110 S.Ct. 1319 (1990), 345
- Monetary Gold Removed from Rome in 1943 (Italy v. Fr., U.K., U.S.), 1954 I.C.J. 19 (June 15), 260, 318–30, 322, 350
- The Mox Plant Case (Ir. v. U.K.), International Tribunal for the Law of the Sea, Case No. 10 (Request for interim measures), Dec. 3, 2001, 139–43, 143, 151
- North Sea Continental Shelf (F.R.G./Den.; F.R.G./Neth.), 1969 I.C.J. 3 (Feb. 20), 19, 30, 43–44, 255
- Nuclear Tests Case (Australia v. France) (N.Z. v. France), 1974 I.C.J. 253 (Dec. 20), 28
- Optant's Case, FRANCIS DEAK, THE HUNGARIAN-RUMANIAN LAND DISPUTE (1928), 341
- Perfecture of Voitia v. Federal Republic of Germany, Case No. 11/2000, Aegios Pagos (Hellenic Supreme Court), May 4, 2000, 371
- Phosphates in Morocco, (Italy v. Fr.) 1938 P.C.I.J. (ser. A/B) No. 74, at 10 (June 14), 29–30, 414–17
- Prosecutor v. Tadic, Judgment, No. IT-94-1-A, Appeals Chamber Judgment (July 15, 1999), 231–32
- Rainbow Warrior (N.Z. v. Fr.) 20 R.I.A.A. 217 (1990), 99, 181, 215
- RCA Globcom Communications, Inc. v. The Islamic Republic of Iran, Case No. 160, Award No. ITM29-160-1, Oct. 31, 1983, 136, 151
- The Red Crusader, 35 I.L.R. 485 (Commission of Enquiry Den.-U.K. 1962), 70, 73
- Republic of Austria v. Maria V. Altmann, 541 U.S. 677 (2004), 371, 388

- Rhodia Forest Case, 28 Am. J. Int'l L. 760 (1934), 341
- The S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), 360
- S.S. Wimbledon (Pol.), 1923 P.C.I.J. (ser. A) No. 1, at 13 (Aug. 17), 305, 313, 338
- Schooner Exchange v. McFaddon, 11 U.S. 116 (1812), 370
- Société Commercial de Belgique (Belg. v. Greece), 1939 P.C.I.J. (ser. A/B) No. 78 (June 15), 338
- Socobelge v. Greece, 18 I.L.R. 3 (Brussels Civ. Trib. 1951) (Belg.), 47 Am. J. Int'l L. 508 (1953), 338, 344–47, 353
- South West Africa Cases (Eth. v. S. Afr.) (Liber. v. S. Afr.), 1966 I.C.J. 6 (July 18), 36
- Southern Blue Fin Tuna Case (Austl. and N.Z. v. Japan), Arbitral Award, (U.N. Law of the Sea Tribunal 2000), 98, 102, 215
- Tacna-Arica Arbitration (Chile v. Peru), 2 R.I.A.A. 921 (1925), 45
- United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3 (May 24), 37, 232, 234
- United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1979 I.C.J. 7 (Dec. 15), 37, 41, 272, 262, 276
- United States v. The Palestine Liberation Organization, 695 F.Supp. 1456 (S.D.N.Y. 1988), 392





# Acknowledgments

---

---

I am extremely grateful to John Quigley and Barbara Stark, two colleagues and friends who used earlier drafts of these materials. I am grateful for the comments they made and for all they do in the cause of peace. Thanks are also owing for help preparing the manuscript to my research assistants, Phillip Campbell and Kathryn Fuehrmeyer, and my secretary, Amy Beaudreault.

I also gratefully acknowledge permission extended by the following authors, publishers, and organizations to reprint excerpts from the books, periodicals, and other documents indicated in parentheses and cited in the text: Jose E. Alvarez, *The New Dispute Settlers: (Half) Truths and Consequences*, 2003, Volume 38, *Texas International Law Journal*; Richard Bilder, *An Overview of the International Dispute Settlement*, 1986, *Journal of International Dispute Resolution*; Lea Brilmayer, *Daniel J. Meadow Lecture, America: The World's Mediator?*, 1999, Volume 51.2, *Alabama Law Review*; Sir Robert Jennings, *The Proliferation of Adjudicatory Bodies: Dangers and Possible Answers*, 1995, 9 *ASIL Bulletin*; Jan Klabbers, *An Introduction to International Institutional Law*, 2002, Cambridge University Press; Barbara Kwiatkowska, *The Ireland v. United Kingdom Case: Applying to the Doctrine of Treaty Parallelism*, 2003, Volume 18, *International Journal of Marine and Coastal Law*, Brill Academic Publishers; reprinted from *International Litigation and Arbitration*, 2nd Edition, 2002, pp. 339-343, Andreas Lowenfeld, with permission of the West Group; Lester Nurick & Stephen J. Schnably, *The First ICSID Conciliation: Tesoro Petroleum Corporation v. Trinidad and Tobago*, 1986, *ICSID Review-Foreign Investment Review*; Thomas Princen, *International Mediation - The View from the Vatican*, 1987, Volume 3, *Negotiation Journal*, Blackwell Publishing; B. G. Ramcharan, *The Good Offices of the United Nations Secretary-General in the Field of Human Rights*, 1982, *American Journal of International Law*; William Wang, *International Arbitration: The Need for Uniform Interim Measures of Relief*, 2003, Volume 28, *Brooklyn Journal of International Law*; *The Prospects for Enforcing Monetary Judgments of the International Court of Justice*, 1990, *The Virginia Journal of International Law*.

