

CONTEMPORARY INTERNATIONAL LAW ISSUES:

UNITED NATIONS LAW

DEPARTMENT OF INTERNATIONAL LAW

CHARLES UNIVERSITY FACULTY OF LAW

PRAGUE, CZECH REPUBLIC

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COURSE DESCRIPTION: From its creation in 1945, the United Nations has become a universal organization with a legal personality of its own, and with a degree of independence from its members. The United Nations plays an important role in all aspects of international relations and its contributions to international legal development have been significant. The world would have been worse off without the UN than it is today. Although the United Nations is not a perfect organization, its impact on international law cannot be underestimated or ignored.

This seminar surveys the legal personality of international organizations in general and the United Nations more particularly. It examines the status of international organizations in a system of sovereign states, and the role international institutions play the making, implementing, and enforcing international law. The seminar will look specifically at the various United Nations agencies and the unique contributions they make to global legal development in areas such as the peaceful settlement of disputes, conflict resolution, the maintenance of international peace and security, human rights and international humanitarian law, distribution of humanitarian assistance, refugee resettlement, protecting civilians in armed conflicts. and victims of gender-based violence. Above all, this seminar will examine the relationship between United National law and other international obligations of states.

Although the United Nations is not an international legislative body, its resolutions and declarations do contribute to the progressive development of international law. The General Assembly can adopt binding and non-binding resolutions which eventually become law; the International Court of Justice, through its adjudicative power and rendering of Advisory Opinions, codifies customary international law, clarifies treaty interpretation, and creates new international law.

The course will focus specifically on the following areas of United Nations Law:

- Human Rights Law
- The Global Environment Law
- International Criminal Law
- International Humanitarian Law
- Refugee Law
- Business and Human Rights Law
- International Law of Armed Conflicts
- International Terrorism Law

LEARNING OUTCOMES:

Upon completion of this course, students will be expected to identify and understand:

- The legal of international organizations in a system of sovereign states.
- The role and function of international organizations.
- The legal personality of the United Nations
- The United Nations mandate
- Key Articles of the United Nations Charter: Articles 1(3), 2(1), 2(3), 2(4), 2(5), 2(6), 2(7), 24, 25, 33, Chapter VII (Articles 39-51), 55, 103, & Chapter VIII
- Various United Nations agencies and their functions.
- Differences between the League of Nations and the United Nations.
- The specific role and function of each of the five organs of the United Nations: The Security Council, the General Assembly; The International Court of Justice; the Secretariat, and the Economic and Social Council (ECOSOC).

COURSE REQUIREMENTS:

The requirement for the seminar is one written exam (5 pages), participation, and attendance.

CLASS ATTENDANCE:

Class attendance is mandatory and will affect student's grades. Students are allowed two unexcused absences, thereafter students will receive an F grade for the course.

GRADING POLICY AND EVALUATION:

Students will be evaluated based on their performance on the one written assignment/exam, demonstrated knowledge of the readings, and attendance and participation.

Grades will be calculated on the following basis:

Participation in class discussions with demonstrated understanding of the readings and relevant issues:
25%

Written Assignment/Exam 75%

1-----90-100%

2-----80-89%

3-----70-79%

4 -----69%

REQUIRED TEXTBOOKS:

Max Hilaire, The United Nations Security Council and Transnational Armed Conflict. Berlin: Logos Verlag Pub. (2015)

Thomas G. Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations*. NY: Oxford University Press, (2018).

REQUIRED READINGS:

Required readings will be assigned for each section of the course. Students are responsible for all readings before attending class. All reading material will be placed on the university e-learning site.

CLASS SCHEDULE:

CLASS I: INTERNATIONAL ORGANIZATIONS & THE INTERNATIONAL LEGAL ORDER

- Why do states form international organizations?
- How does anarchy constrain the ability of states to form international organizations?
- International organizations as lawmakers.
- Legal status of international organizations.

Required Readings:

Hedley Bull, *The Anarchical Society*, NY: Columbia Univ. Press, (1979); Chapters 1 & 2.

Jose Alvarez, *The Impact of International Organizations on International Law*, Boston: Brill, (2017), Chapters 2 & 3.

Suggested Readings:

Robert Jervis, "Security Regimes," *Int'l Organ.*, Vol. 36, (Spring 1982), p. 362-68.

Arthur A. Stein, "Coordination and Collaboration: Regimes in an Anarchic World," *Int'l Organ.*, Vol. 36, (Spring 1982), p. 299-324.

CLASS 2: THE INTERNATIONAL LEGAL ORDER OF THE LEAGUE OF NATIONS

Required Reading:

Jose Alvarez, "Legal Perspectives" in Weiss & Daws (eds). *The Oxford Handbook on the United Nations* (Chapter 3). (2018)

Richard Falk, "The Interplay of Westphalia and Charter Conception of International Legal Order," in Falk, Kratochwil & Mendlovitz (eds), *International Law: A Contemporary Perspective*, Boulder: Westview Press, (1985); Chapter 7.

CLASS 3: THE UNITED NATIONS LEGAL ORDER

- (1) The Creation of the United Nations (Conf.: Quebec, Yalta, Teheran, Potsdam, Dumbarton Oaks, San Francisco)
- (2) The Inter-war Period
- (3) The Role of the US, UK, and USSR
- (4) The Purpose of the United Nations
- (5) Key Articles of the Charter
- (6) Main Organs of the United Nations

Required Readings:

Oscar Schachter, "United Nations Law," 88 AJIL, (1994), p. 1-23.

Nagendra Singh, "The United Nations and the Development of International Law," in Roberts & Kingsbury (eds), United Nations Divided World; Chapter 8.

Suggested Readings:

Leo Gross, "The United Nations and the Rule of Law," Int'l Organ., Vol. 19, (1965), p. 537-561.

Adam Roberts & Benedict Kingsbury (eds), United Nations, Divided World, NY Oxford Univ. Press, (1988); Chapter 1.

Important Cases:

- *Reparation for Injuries Suffered in the Service of the United Nations (ICJ Advisory Opinion, 1949) (ICJ Report 174)*
- *Certain Expenses of the United Nations (ICJ Advisory Opinion, 1962)*

CLASS 4: THE UNITED NATIONS & THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

Required Readings:

Edward McWhinney, United Nations Lawmaking, NY: Holmes & Meier, (1984); Chapter 5.

Stefan Talmon, "The Security Council as World Legislature," AJIL, Vol. 99, (2005), p. 175-193

Suggested Readings:

Robert E. Riggs, "The United Nations and the Politics of Law," in Lawrence S. Finkelstein (ed), Politics in the United Nations System, Chapel Hill, NC: Duke Univ. Press, (1988); Chapter 2.

Paul Szasz, "The Security Council Starts to Legislate," *AJIL*, Vol. 96, (2002), 901-905.

CLASS 5: UNITED NATIONS LAW & THE MAINTENANCE OF INTERNATIONAL PEACE & SECURITY BY THE SECURITY COUNCIL

Required Readings:

Steven R. Ratner, "The Security Council and International Law," in Malone (ed), *The UN Security Council*; Chapter 37.

Vaughan Lowe, Adam Roberts, et al (eds), *The United Nations Security Council and War*, NY: Oxford University Press (2010), Chapter 5.

Suggested Readings:

Thomas M. Franck, *Nation Against Nation*, NY: Oxford Univ. Press, (1985), Chapters 2, 3 & 4.

Marrack Goulding, "The Evolution of United Nations Peacekeeping," *International Affairs*, Vol. 69, no. 3, (1993), p. 451-464.

Case Studies: Suez Canal, Korean Peninsula, Iraq, Somalia, Haiti, Former Yugoslavia, Libya, DRC

CLASS 6: THE GENERAL ASSEMBLY & GLOBAL LAWMAKING

Required Readings:

M.J. Peterson, *General Assembly*, in Weiss & The Oxford Handbook on the United Nations. NY: Oxford University Press (119-39).

Marko Divac Oberg, "The Legal Effects of UN Security Council and General Assembly Resolutions in the Jurisprudence of the ICJ," Vol 16, No. 5, *European Journal of International Law*, (2006), p. 889-906.

Suggested Readings:

Christopher C. Joyner, "United Nations General Assembly Resolutions and International Law: Rethinking the Contemporary Dynamics of Norm-Creation," Vol. 11, No. 3, *Case Western International Law Journal*, (2006), p. 445-478.

Michael Ramsden, *International Justice in the United Nations General Assembly*, Northampton, MA: Edward Elgar Publishers (2021), Chapters 2-4.

CLASS 7: THE UNITED NATIONS & THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

- Universal Declaration on Human Rights (1948)

- The United Nations Conventions on the Rights of Persons with Disabilities (2006)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- The International Covenant on Civil and Political Rights (ICCPR) (1966)
- The International Covenant on Economic, Social and Cultural Rights ICESCR) (1966)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment CAT) (1984)
- The Convention on the Rights of the Child (1989)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- The Convention on the Elimination of All Forms of Racial Discrimination ICERD) (1965)
- The United Nations Convention on the Rights of Indigenous Peoples (2007)
- The United Nations Conventions on the Rights of Migrant Workers and Members of Their Families (1990)
- The United Nations Convention for the Protection of All Persons from Enforced Disappearance (2007)

Required Reading:

Frederic Mengret & Philip Alston (eds), *United Nations and Human Rights: A Critical Appraisal*, NY: Oxford University Press (2020), Part I.

Suggested Readings:

Thomas G. Weiss & Sam Daws, Part VI: Human Rights.

Joanna Weschler, "Human Rights," in David Malone (ed), *The UN Security Council*, Boulder, CO: Lynne Rienner Pub., (2004); Chapter 4.

CLASS 8: THE INTERNATIONAL COURT OF JUSTICE AND INTERNATIONAL LAW

Required Readings:

Vera Gowlland-Debbas, "The Relationship Between the International Court of Justice and the Security Council in Light of the Lockerbie Case," *AJIL*, Vol. 88, (1994), p. 643-677.

Jose Alvarez, "Judging the Security Council," *90 AJIL*, (Jan. 1996), p. 1-39

Suggested Readings:

Thomas Franck, "The 'Powers of Appreciation': Who is the Ultimate Guardian of UN Legality?," *AJIL*, Vol. 86, (1992), p. 519-523.

Roberto Ago, "Binding Advisory Opinions of the International Court of Justice," AJIL, Vol. 85, (1991), p. 439-451.

Robert Y. Jennings, "The International Court of Justice After Fifty Years," AJIL, Vol. 89, (1995), p. 493-505.

W. Michael Reisman, "The Constitutional Crisis in the United Nations," Vol. 87, (1993), p. 83-100.

Important Cases:

- *Genocide Convention (South Africa v. Israel, 2024)*
- *Genocide Convention (Ukraine v. Russian Federation, 2022)*
- *Accordance with International Law of the Unilateral Declaration of Independence in Respect to Kosovo (ICJ Advisory Opinion, 2010)*
- *The Legality of the Threat or Use of Nuclear Weapons (ICJ Advisory Opinion, 1995)*
- *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Advisory Opinion, 2004)*
- *Armed Activities on the Territory of the Congo (DRC v. Uganda) (2005)*
- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) (2011)*
- *Certain Expenses of the United Nations (ICJ Advisory Opinion, 1962)*
- *Reparation for Injury Suffered in the Services of the United Nations (ICJ Advisory Opinion 1949)*
- *The Iranian Hostage Crisis Case (US v. Iran) (1979)*
- *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. US) (1986)*
- *Oil Platform Case (Iran v. US) (2003)*
- *The Legality of the Use of Force (Serbia & Montenegro v. France) (2004)*
- *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. UK), (Libya v. US). (1998)*
- *Western Sahara-Advisory Opinion (1975)*
- *The Genocide Convention (Bosnia v. Serbia) (2007)*
- *Case Concerning East Timor (Portugal v. Australia) (1995)*
- *The LeGrand Case (Germany v. United States) (2001)*
- *Avena and Other Mexican Nationals (Mexico v. USA) (2004)*
- *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo- Advisory Opinion (2010)*
- *Legal Consequences of a Wall in the Occupied Palestinian Territory- Advisory Opinion (2004)*
- *Arrest Warrant Case of 11 April 2000 (DRC v. Belgium) (2002)*
- *Question Relating to the Obligation to Prosecute or to Extradite (Belgium v. Senegal) (2012)*

CLASS 9: THE UNITED NATIONS & THE DEVELOPMENT OF INTERNATIONAL CRIMINAL LAW

- The International Criminal Tribunal for the Former Yugoslavia (ICTY)

- The International Criminal Tribunal for Rwanda (ICTR)
- The International Criminal Court (ICC)
- Other Hybrid Courts (Sierra Leone, Cambodia, Kosovo, East Timor, Lebanon)

Required Readings:

Richard J. Goldstone, "International Criminal Justice and the Ad Hoc Tribunals," in Weiss & Daws (eds), *The Oxford Handbook on the United Nations*, p. 567-582.

David Scheffer, "Criminal Justice," in Cogan, Hurd & Johnstone (eds), *The Oxford Handbook of International Organizations*, (2016), p. 282-302

Suggested Readings:

Philippe Kirsch, John T. Holmes & Mora Johnson, "International Tribunals & Courts," in Malone, (ed), *The UN Security Council*; Chapter 19.

Philippe Kirsch, John T. Holmes & Mora Johnson, "International Tribunals & Courts," in Malone, (ed), *The UN Security Council*; Chapter 19.

Theodor Meron, "Reflections on the Prosecution of War Crimes by International Tribunals," *AJIL*, Vol. 100, (2006), p. 551-579.

Wayne Sandholtz, "Creating Authority by the Council: The International Criminal Tribunals," in Cronin & Hurd (ed). *The UN Security Council and the Politics of International Authority*, (2008); Chapter 7.

Important Cases from the International Criminal Tribunal for the Former Yugoslavia (ICTY)

- *Prosecutor v. Erdemovic*
- *Prosecutor v. Kristic*
- *Prosecutor v. Tadic*
- *Prosecutor v. Milosvic*
- *Prosecutor v. Karadicz*
- *Prosecutor v. Furundzija*
- *Prosecutor v. Blaskic*
- *Prosecutor v. Kunarac*

Important Cases from the International Criminal Tribunal for Rwanda

- *Prosecutor v. Akeyasu*
- *Prosecutor v. Bagilishema*
- *Prosecutor v. Kayemishema & Ruzindana*
- *Prosecutor v. Nahimana*
- *Prosecutor v. Semanza*

CLASS 10: THE UNITED NATIONS SECRETARY-GENERAL & THE DEVELOPMENT OF INTERNATIONAL LAW

Required Readings:

Javier Perez de Cuellar, "The Role of the UN Secretary-General," in Roberts & Kingsbury (eds). *United Nations Divided World*; Chapter 4.

Suggested Readings:

Simon Chesterman, *Secretary or General? The UN Secretary-General in World Affairs*. NY: Cambridge Univ. Press. (2007)

Thomas M. Franck, *Nation Against Nation*, NY: Oxford Univ. Press, (1985); Chapters 7 & 8.

CLASS 11: CONFLICT BETWEEN UNITED NATIONS LAW & OTHER INTERNATIONAL LEGAL OBLIGATIONS

Required Readings:

Jan Klabbers, *Treaty Conflict and the European Union*, NY: Cambridge University Press (2009), Chapter 7.

Maurizio Arcari, "UN Security Resolutions before the European Court of Human Rights: Exploring Alternative Approaches for the Solution of Normative Problems," in Pia Acconci, et al (eds), *International Law and the Protection of Humanity*, Boston: Brill, (2016), Chapter 2.

Cases:

- *Mothers of Srebrenica Against the Netherlands and the UN*
- *Kadi v. Council of Europe*
- *Othman (Abu Qatada) v. United Kingdom*
- *Al Jedda v. United Kingdom*
- *Al Skeini v. United Kingdom*
- *Behrami & Saramanti v. France, Germany & Norway*
- *Avena & Other Mexican Nationals (Mexico v. United States)*

Interpretation and Application of 1971 Montreal Convention (Libya v. UK, & Libya v. US)

Important Resolutions of the Security Council:

- SC Res. 82 (1950) Korea
- SC Res. 221 (1966) Rhodesia
- SC Res. 418 (1977) South Africa
- SC Res. 678 (1990); 687 (1991); 688 (1991); 1441 (2003); 1483 (2003) Iraq

- SC 713 (1991) Yugoslavia
- SC Res. 731(1992); 748 (1992) Libya
- SC Res. 788 (1992) Liberia
- SC Res. 733 (1992); 794 (1992) Somalia
- SC Res. 808 & 827 (1993), ICTY
- SC Res. 841 (1993); 940 (1994) Haiti
- SC Res. 955 (1994); ICTR
- SC Res. 1244 (1998), Kosovo
- SC Res. 1272 (1998) Taliban Sanction
- SC 1308 (2005) HIV/AIDS
- SC Res. 1593 (2005), Sudan
- SC. Res. 1706 (2006) & 1769 (2007) Darfur
- SC Res. 1970 & 1973 (2011), Libya
- SC. Res. 2593 (2021), Afghanistan
- SC Res. 2615 (2021), Afghanistan
- SC Res. 2722 (2024), Maintenance of International Peace and Security
- SC Res. 2730 (2024), Protection of Civilians in Armed Conflict
- SC Res, 2735 (2024), Israel-Gaza Conflict

Important Resolutions of the General Assembly:

- GA Res: 217A (III) Universal Declaration of Human Rights
- GA Res. 377 (1950): Uniting for Peace Resolution
- GA Res. 1514 (1960): Granting of Independence to Colonial Countries and Peoples
- GA Res. 2625 (1970) Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States by the Charter of the United Nations
- GA Res. 3314 (1974): Resolution on the Definition of Aggression
- GA Res: 2131 (1965): Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty
- GA Res: 1803 (1962): Permanent Sovereignty over Natural Resources

OFFICIAL DOCUMENTS RELATED TO THE UNITED NATIONS

- Charter of the United Nations
- The Statute of the International Court of Justice
- The Rome Statute for the International Criminal Court
- Convention on Privileges and Immunities of the United Nations (1946)
- Vienna Convention on Law of Treaties (1969)
- Vienna Convention on Treaties Between States and International Organizations (1986)
- Vienna Convention of Diplomatic Relations (1961)
- Vienna Convention on Consular Relations (1963)
- United Nations Convention on the Law of the Sea (1982)
- United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)

- Draft Articles on State Responsibility (2001)
- The Universal Declaration on Human Rights (1948)
- The Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984)
- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social, and Cultural Rights (1966)
- Geneva Convention on the Status of Refugees (1951)
- The Statutes of the ICTY & ICTR (1993 & 1994)
- The Responsibility to Protect (R2P) (2005)

References:

- Congyan Cai, et al (eds), *The UN Security Council and the Maintenance of International Peace in a Changing World*, NY: Cambridge University Press (2024)
- Antonios Tzanakopoulos, *Disobeying the Security Council*, NY: Oxford University Press (2011)
- August Reinisch, *Challenging Acts of International Organizations Before National Courts*, NY: Oxford University Press (2010)
- Lowe, Roberts, Welsh, and Zaum. *The United Nations Security Council and War*, NY: Oxford Univ. Press, (2008)
- Max Hilaire, *The Evolution and Transformation of International Legal Law: From the Peace of Westphalia to the Post-United Nations Charter* (Berlin: Logos Verlag Pub. (2021)
- Max Hilaire. *United Nations Law and the Security Council*, UK: Ashgate Pub. (2005)
- Max Hilaire. *The United Nations Security Council and Transnational Armed Conflicts*. Berlin: Logos Verlag Pub. (2015)
- Jan Klabbers & Ása Wallendahl (eds), *Research Handbook on the Law of International Organizations*, Northampton, MA: Ewards Elgar Pub. (2011)
- Michael Matheson, *Council Unbound*, Wash. DC: USIP, (2007)
- Schachter & Joyner, *United Nations Law*, NY: Cambridge Univ. Press, (1995)
- Thomas, M. Franck, *Fairness in International Law and Institution*, NY: Oxford Univ. Press, (1995)
- Bailey & Daws, *The Procedure of the UN Security Council*, NY: Oxford Univ. Press, (1998)
- Bruno Simma, et al, *The Charter of the United Nations*, NY: Oxford Univ. Press, (1998)
- Simon Chesterman, T. Franck, D. Malone, *Law and Practice of the United Nations*, NY: Oxford Univ. Press, (2008)
- Bruce Cronin & Ian Hurd (eds), *The UN Security Council and the Politics of International Authority*, NY: Routledge, (2008)

- Karns & Mingst. International Organizations: The Politics & Process of Global Governance, Boulder, CO: Lynne Rienner Pub. (2004)
- David Malone. The UN Security Council, Boulder, CO: Lynne Rienner Pub., (2004)
- Jose Alvarez, The Impact of International Organizations on International Law, Boston: Brill Pub. (2017)
- Jose Alvarez, International Organizations as Law Makers, NY: Oxford Univ. Press, (2007)
- Volker Rittberger & Bernhard Zangl, International Organization, NY: Palgrave Macmillan Pub., (2006)
- Simon Chesterman. Secretary or General? The UN Secretary-General in World Politics, NY: Cambridge Univ. Press, (2007)

Important Websites:

www.un.org

www.icj-cij.org

www.icty.org

www.icttr.org

www.icc.org