

Introduction to Public International Law

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International Law & the Law of the Sea

- The Law of the Sea is a branch of international law
- International law principles affect how the law of the sea is
 - made
 - put into practice
 - enforced
- International law principles can help explain some of the limitations of the law of the sea

Introduction to International Law

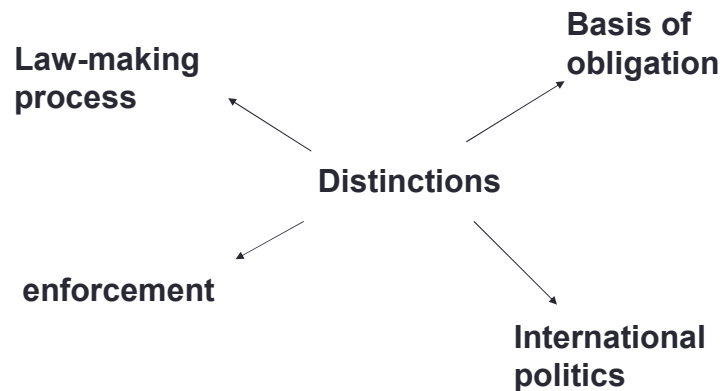
Outline of Class

- What is international law?
- Who makes international law?
- How is international law made?
- How do you get the authority to make rules that apply to a particular space?
- Where does the UN fit in?
- How do you enforce international law?
- How do you resolve disputes?

Public International Law is ...

- The rules governing the legal relationship between states.
- A body of law consisting of principles and rules which are recognised by States as legally binding and regulating events and issues which are of international concern.

Distinguishing international law from national law...



Who Makes International Law?

- International law is made BY States FOR States.
- International law applies to the relations between **nation States**
- International law is based upon the **sovereign equality** of States

What is a State?

- States are the main actors in the international legal system
- A state, in international law, requires the following:
 - A permanent population
 - A defined territory
 - Government
 - Capacity to enter into relations with other states*(1933 Montevideo Convention on the Rights and Duties of States)*

How is International Law Made?

There are two main ways in which international law is made:

- 1) Through the repeating of state practice in such a way that a **customary rule** of international law develops
- 2) Through the deliberate process of negotiating a **treaty** between nation States.

How Consent to International Rules Works

- Customary rules:
 - Customary law can be opted out of through 'persistent objection'
- Treaties:
 - States are only parties to treaties to which they have given their consent
- Dispute Resolution:
 - The International Court of Justice only has jurisdiction if parties consent

What power do states have to make rules?

- I.e. when and where is a State able to make and apply its own laws?
- This is a question of Jurisdiction: the ability of a State to make and enforce laws

Where does the UN fit in?

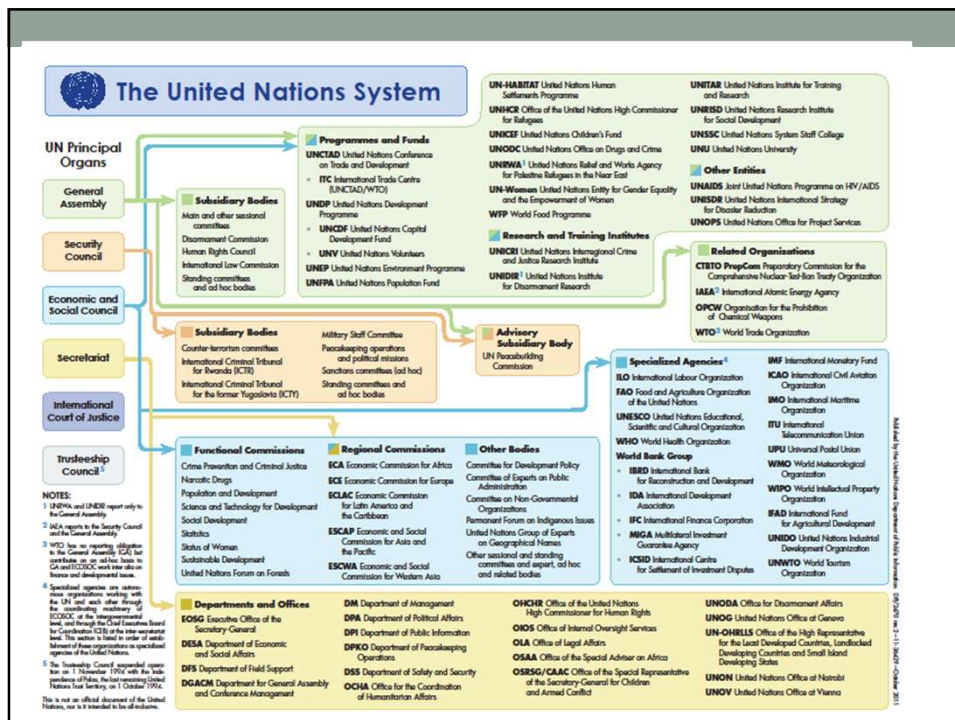
- The United Nations is at the centre of international law and governance
- In 1945, approaching the end of WWII, 50 States gathered at a conference in San Francisco to draw up the **United Nations Charter**
- The UN came into being on 24 October 1945 and the first meeting of the General Assembly was held on 10 January 1946 in London.
- Since 2011 there have been 193 members, making it an almost universal organisation.

Purposes of United Nations: Art 1

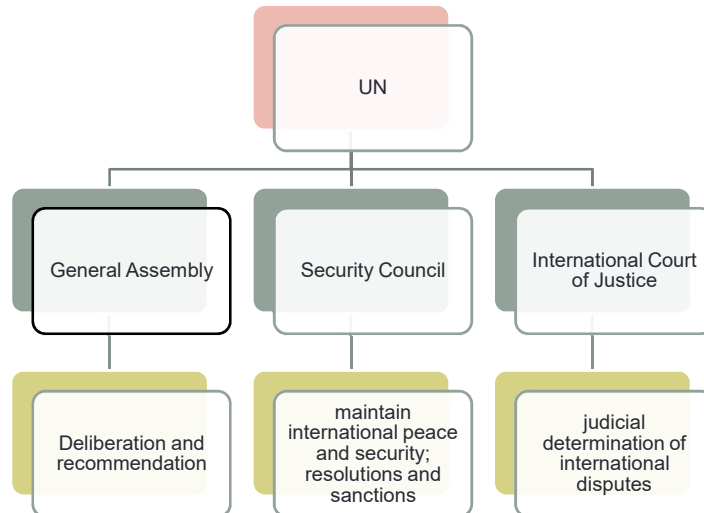
1. To maintain peace and security, including
 - Take effective collective security measures
 - To bring about by peaceful settlement of international disputes
2. To develop friendly relations among nations – based upon equal rights and self determination for all peoples
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and promote respect for human rights and fundamental freedoms
4. To be a centre for harmonizing actions on these issues

Principles of United Nations: Art 2

1. The sovereign equality of all members
2. Duty of members to support UN measures in good faith
3. Duty of members to settle their international disputes by peaceful means
4. Members must refrain from the threat or use of force against any state
5. Members must provide assistance to the UN
6. Members shall encourage non-members to act in accordance with these principles in order to maintain international peace and security
7. The UN is not authorised to intervene in what are essentially domestic matters for any state.



Structure of the UN



United Nations General Assembly

- The main policy making and deliberative organ of the UN
- Power to make recommendations to members on matters within its competence
- Each member has one vote
- On “important decisions” (eg peace and security, new members, budgets) need two thirds majority
- No power to make binding decisions regarding disputes between members
- No power to take enforcement action
- Approves the budget and fixes budgetary contributions based on countries’ GNP

United Nations Charter Security Council

- Has primary responsibility for maintaining international peace and security
- [Five permanent and 10 non permanent members](#) (elected every two years)
- All members are bound by its decisions/resolutions
- The decisions of this body are an important source of International Law

United Nations Charter Security Council – decision making

- Will determine if a situation poses a threat to international peace and security and if so call upon parties to resolve the dispute.
- May authorise sanctions and the collective use of force
- On procedural matters require nine votes
- On all other matters need nine votes including the affirmative vote of P5
- The 'veto' power

United Nations International Court of Justice

- The principal judicial organ of the UN
- The Statute of the ICJ (with all of its rules) is annexed to the UN Charter
- All members of the UN are automatically parties to the ICJ Statute
- The ICJ consists of 15 Judges elected to 9 year terms of office.
- Nominations are put before the UNGA and SC simultaneously and require an absolute majority in both to be successful
- Once elected, judges do not represent their own government. They must exercise their powers impartially

United Nations International Court of Justice

- How does a case come before the ICJ?
- ICJ has no compulsory jurisdiction
- States submit a dispute to the ICJ in one of three ways:
 - pursuant to treaty that includes a provision giving the ICJ jurisdiction
 - pursuant to “the optional clause” – a provision in the Statute of the ICJ that allows each state to pre-emptively agree that other states can take it to the ICJ if they are in dispute
 - by special agreement

Enforcement of International Law

- “It is probably the case that almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”
 - Louis Henkin, ‘How Nations Behave’ (1979)

Enforcement Of International Law

- Self-Help
 - Diplomatic
 - Political
 - Economic
 - Resort to Force
- Judicial/Arbitral
 - United Nations
 - Regional Organisations

Resolution of International Disputes

Recall Article 2 of the UN Charter

The Organization and its Members, in pursuit of the Purposes stated in [Article 1](#), shall act in accordance with the following Principles...

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

How should Disputes be Resolved?

UN Charter Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means **of their own choice**.

Recap

- The Law of the Sea is part of international law
- International law applies between states
- State sovereignty means that each state is in control of what goes on within its territory
- States can make rules (laws) that apply within its territory, and to its nationals
- International law is mainly found in treaties and custom and depends upon the consent of states
- The United Nations is at the centre of the international legal system but does not make international law
- International disputes should be resolved peacefully

Questions?