

International Organizations Outline

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- International Lawyers share an appealing evangelistic, even messianic agenda. We are on a mission to improve the human condition. For many, perhaps most of us, this mission requires preferring the international "over the national, integration, over sovereignty". Multilateralism is our shared secular religion. Despite all of our disappointments with its functioning, we still worship at the shrine of global institutions like the UN.

Alvarez

- The UN collective security system, designed in the wake of the Holocaust, has prevented neither intrastate disputes nor repeated mass atrocities. In the economic realm, free trade/free market forces (including WTO/NAFTA/int. financial institutions) have reinforced ethnic self-identification while failing to ameliorate either the gap between the rich and poor nations or the gap between the rich and poor within nations.
- Selectivity of international trials

International Organizations

- Address: Peace & Security, Trade, Finance, Labour, Health, Human Rights, Forced Migration, Environment
- May be organized according to geography (AU, OAS), may include non-state actors (ILO)
- IOs administer territory, use armed forces, provide aid and technical support

International Organizations

Brownlie

- 1. Permanent Association of States, with lawful objects, equipped with organs
- 2. A distinction between organization and its members in legal powers and purposes
- 3. Existence of legal powers to be exercised at the international level

Alvarez

- IOs are collections of sovereign states that have banded together as states to create, under a constitutive international agreement governed by international law usually know as a "charter" or a "constitution", an apparatus, more or less permanent, charged with the pursuit of certain defined common ends.

Alvarez

- IOs are not proto-states
- They facilitate the making of treaties, focus debate and make recommendations to govts, serve as venues for settling disputes on closely circumscribed topics
- Limited and Delegated powers- cannot conclude treaties on whatever topic

Evans- IO Functions

- Providing a forum for identifying and deliberating upon matters of common interests
- Acting as a vehicle for taking action on international or transnational problems
- Providing a forum for developing rules on matters of common interest
- Providing mechanisms for promoting, monitoring and supervising State compliance with agreed rules and policies as well as for gathering information regarding the conditions in and practices of States
- Providing a forum for the resolution of international disputes

IOs are assigned specific rights, duties and powers

- Examine Charter or Treaty:
 - 1. Purpose of IO
 - 2. How states may join and participate
 - 3. Structure of the IO- Organs & Powers
 - 4. Establishment of a Secretariat
 - 5. Dispute Resolution
 - 6. Privileges & Immunities

Group Work: Read UNHCR Statute and compare to ILO Charter

- 1) What is the primary function of each institution according to the charter? How does it function in practice? Is it primarily lawmaking or operational in the field? Does it have problems with enforcement? Use the criteria identified by Evans.

International Organizations

- Created via a charter/treaty governed by the law of treaties
- Use teleological approach looking at the *purpose* and *goals* of the institution, also look at *practice*
- **IOs have implied powers that are necessary for the most efficient performance of its functions (not just explicit powers within charter)**

ICJ Advisory Opinion on the the Legality of the Use of Nuclear Weapons

- The object of IO charters is to create new subjects of law endowed with certain autonomy to realize common goals.
- Limited competence
- "IOs do not, unlike States, possess a general competence, but are governed by the 'principle of speciality', that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interest whose promotion those States entrust to them."

Alvarez IOs are *not* fully supranational. Check Following:

- 1) Power to take binding decisions on states (UNSC but only on particular issues)
- 2) Take action without state consent
- 3) Make binding rules on inhabitants of states without need for intervening act by ntl govt
- 4) Capable of enforcing decisions without cooperation of govt
- 5) Financial Autonomy from States
- 6) Prohibition of unilateral right of states to withdraw

Rome Statute ICC Art 41

- The Organization shall enjoy the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes

UN Charter Article 57

- The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
- Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

UN Charter Article 63

- The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
- It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.
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UN Charter Article 43

- All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
- Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
- The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

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IOs Rights

- Can enter into international agreements with Non Member States
- Right to immunity from jurisdiction of the State courts for acts and activities performed by organization
- Right to protection of IO agents in their official capacity as civil servants
- Right to bring intl claim for reparation

IO limitations

- Lack plenary rights of sovereigns, such as exclusive rights and duties over a people or a territory
- Role & Influence of NGOs is not always transparent "transnational advocacy networks"
- IOs seen as Euro-centric- legacy of colonialism- Hegemonic (UNS C P-5) Gender Bias- Underrepresentation of minorities and peoples of developing countries

Group Work: Discuss current situation in Syria-

Compare UN Charter to Charter of the Arab League:
What is the potential role of the Security Council, General Assembly, and the League of Arab States?

Read the Saudi Draft GA Resolution on Syria and Chemical Weapons- Discuss its components.

UN Security Council

- UN Charter, Art. 24 (1) In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

UN Charter on General Assembly

- Article 11 (1). The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both. (2).The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion. (3).The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. Article 14: Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

General Assembly Resolution 377 A (V) (3 November 1950) “Uniting for Peace”

- Where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall seize itself of the matter.
- Ten emergency special sessions have been convened: on the 1956 war between Israel and Egypt and the British-French attack on the Suez Canal zone to the Israeli occupation of Palestinian territory (adjourned on 2006 after having started in 1997).

Charter of the Arab League

- Article II
- The League has as its purpose the strengthening of the relations between the member-states, the coordination of their policies in order to achieve cooperation between them and safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.

Alvarez- IO Lawmaking

- 1) Venue for conclusion of or amendments to treaties among members
- 2) Enact internal rules
- 3) Political organs take legally binding actions
- 4) Institutional dispute settlement

IO Lawmaking

- Statements and Voting on Legal Issues by Govt reps in IO organs and committees provide evidence of CIL
- Resolutions by UN General Assembly may be declaratory of international law (soft law) but the formulation of principles may develop CIL- UN Declaration of Human Rights
- Committees of Legal Experts: International Law Commission
- Court Decisions- ICJ, ICTY, IACTHR
- Political Organs UN GA and SC

Chayes & Chayes

- IOs seek compliance and shape intl. Law:
- Reporting
- Data collection
- Verification & Monitoring
- Capacity Building
- Dispute Settlement
- Adaptation and modification of Treaties
- Policy Review and Assessment
- Interaction with NGOs

International Organizations

- Vienna Convention on the Law of
Treaties between States and
International Organizations or
Between International Organizations
21 March 1986

ICJ Reparation for Injuries case

- In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an organization, the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim?

ICJ Reparation for Injuries Advisory Opinion

- "The rights and duties of an entity such as the Organization must depend on its purpose and functions as specified or implied in its constituent documents and developed in practice. . . . Under international law, the Organization must be deemed to have those powers which, though not expressly provided by the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."

ICJ Reparation for Injuries Suffered in the Service of the United Nations

- Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a super-State, whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties and that it has capacity to maintain its rights by bringing international claims.

ICJ Reparation

- In order for the UN to achieve its ends, the attribution of international personality is indispensable.
- IO must show the intention of the founder to create an autonomous body and enjoy such autonomy in practice.

ICJ Reparation Advisory Opinion Dissent by Judge Hackworth

- "Powers not expressed cannot freely be implied. Implied powers flow from a grant of expressed powers, and are limited to those that are 'necessary' to the exercise of powers expressly granted."

IO Capacity to Espouse Intl Claims

- 1) Legal personality
- 2) Interpretation of the charter in light of the purpose and functions of the IO
- But consider locus standi: Some IOs have access to ICJ via advisory jurisdiction, but locus standi in contentious cases granted only to states (UN Charter Art. 34)

IOs Lack of Enforcement Powers

- IOs have a right to bring international claims to obtain reparation for damage. Yet, they lack enforcement power. They may suspend a state from participation or voting, or pursue expulsion from the organization. (Consider OAS vis-a-vis Cuba)
- (IMF may issue financial measures)

Immunity of IOs

- Convention on the Privileges and Immunities of the UN 1946 (Immunity from legal process, taxes, criminal and civil liability)
- UN Charter, Article 105:
- "The Organization shall enjoy in the territory of each of its members such privileges and immunities that are necessary for the fulfillment of its purposes. . . Representatives of Members of the UN and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization

IOs and Immunity

- IOs need legal security for assets, HQ and personnel
- IOs need freedom to act
- Both the IO and IO officials are immune from legal process in state courts in respect of all acts performed by the IO or its agent in official capacity

IO Responsibility

- IO is responsible for consequences of a wrongful act attributable to the organization (committed by its organs/officials/agents and connected to official work of organization)

IO Responsibility

- Is IO or Member State responsible?
- Member State does not create agency relationship with IO only by ratification and participation.
- Difficult to gain state recognition of liability and access State assets for reparation

Agency- UN- States

- **Article 81**
- **The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.**
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IO Responsibility

- UN Peacekeeping Agreements- bilateral agreements between Member States and UN determine financial responsibility. Unclear whether UN bears exclusive or primary responsibility for wrongs committed by peacekeepers.
- ECHR no jurisdiction to assess violations by UN peacekeepers Behrami Case
- In some cases IO accepts responsibility, in others responsibility is divided among member states.
- Examine whether act was intra vires or ultra vires

UN Charter Art. 2 (6)

- The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

UN Charter Article 2 (7)

- Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

IOs develop International Law

- 1) Statements and Voting on Legal Issues by govt reps. in IO organs and committees
- 2) Resolutions by General Assembly may be declaratory of international law (soft law) but the formulation of principles may develop CIL (UN Declaration of Human Rights)
- 3) Committees of Legal Experts: International Law Commission of the General Assembly issue Legal Opinions
- 4) Political Organs- General Assembly & Security Council make recommendations and decisions, but look at state practice. Omission to act or issue decision may be due to political (not legal) issues.

IOs Control of Acts

- UN Security Council or General Assembly may request Advisory Opinion by ICJ, but ICJ does not possess powers of judicial review or appeal in respect of decisions taken by UN organs. (Namibia case)

IOs Control of Acts

- ICJ Expenses Case
- Operations in pursuit of stated UN purpose and members bound by the resolutions of GA authorizing the expenditure (UN Charter Art. 17 (3))
- *Criticism that GA gives non binding resolutions that result in binding financial obligations- Super State

IO control

- States may withdraw, acquiesce, or withhold financial contribution (US de facto Veto) Look at hegemonic influences- FAO v. IMF Susan Strange
- Internal political or judicial control (division of competences among bodies or resort to advisory opinion)
- External political control (reg. org must seek permission from UNSC before enforcing)
- Direct judicial control by ntl cts to pierce immunity
- External right of appeal to intl court or arbitration
- Administrative tribunals
- NGO reports on IO performance

UN may control Regional Organizations

- **Article 53**
- The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.