



## *Syllabus*

# **LAW OF THE UNITED NATIONS - 62502**

*Last update 08-03-2018*

HU Credits: 2

Responsible Department: law

Academic year: 0

Semester: 2nd Semester

Teaching Languages: English

Campus: Mt. Scopus

Course/Module Coordinator: Dr. Daphna Shrager

Coordinator Email: [daphnashraga@gmail.com](mailto:daphnashraga@gmail.com)

Coordinator Office Hours: Tuesday after class

Teaching Staff:

Dr. Daphna Shrager

Course/Module description:

The course will examine the institutional and legal framework of the United

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*Nations, its founding instrument and the nature, powers and competences of the Organization. It will analyze a host of selected legal issues, including, membership in the Organization, the legality of the use of force, humanitarian intervention and responsibility to protect, international criminal tribunals, peacekeeping operations and responsibility of international organizations. In so doing, the course will explore the practice of the Organization, of States and of judicial institutions where the purposes and principles of the UN Charter were implemented, interpreted, deviated from or further developed.*

*Course/Module aims:*

*To introduce the students to the law governing the United Nations and its activities in an ever-growing number and diversity of fields, the internal dynamics and political powers that shape its decisions, and its role in world affairs and in the development of international law.*

*Learning outcomes - On successful completion of this module, students should be able to:*

- ☐ *Recognize the legal framework of the UN system, its founding instrument and core principles.*
- ☐ *Evaluate the contribution of the United Nations to the development of international law, and international criminal justice system, in particular.*
- ☐ *Examine the interplay between law and politics in the decision-making process of the United Nations.*
- ☐ *Analyze critically the UN powers (and its limitations) to influence world events (the cases of humanitarian intervention and responsibility to protect).*
- ☐ *Formulate national policies informed by the core UN legal principles.*
- ☐ *Reflect on UN reforms in the age of globalization.*

*Attendance requirements(%):*

*80%*

*Teaching arrangement and method of instruction: Lectures*

*Course/Module Content:*

- 1. The institutionalization of the international society in historical perspective;*
- 2. The nature and characteristics of the United Nations and its entitlement to privileges and immunities;*
- 3. The institutional structure of the United Nations and the powers and competences of its Principal Organs;*
- 4. Membership in the United Nations;*
- 5. Peace and security; the prohibition on the use of force and its exceptions;*

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6. Humanitarian Intervention;
  7. Responsibility to Protect;
  8. International Criminal Tribunals;
  9. UN Peacekeeping Operations;
  10. Responsibility of International Organizations.

Required Reading:

*Syllabus*

*Session One □ The development of an organized international society*

*Reading material*

- \* Leo Gross, *□The Peace of Westphalia, 1648-1948□*, *American Journal of International Law (AJIL)*, Vol. 42, 1948, p. 20, pp. 26-29, 39;
- \* Richard Falk and Cyril Black (eds.), *The Future of the International Legal Order, Vol. I, Trends and Patterns*, Princeton University Press, 1969, pp. 43-49;
- \* Article 117 (CXVII) of the Treaty of Westphalia;
- \* Jan Klabbers, *An Introduction to International Institutional Law*, 2nd. ed. Cambridge University Press, 2009, pp. 14-20, 25-31;
- \* Charles A. Kupchan and Clifford A. Kupchan, *□Concerts, Collective Security, and the Future of Europe□*, *International Security*, Vol. 16, 1991, p. 114, pp. 118-124;
- \* Articles 10 and 12 of the Covenant of the League of Nations;
- \* Article 2(1) and (7) of the Charter of the United Nations.

*Session Two □ The nature and characteristics of an international organization*

*Reading Material*

- \* Malcolm N. Shaw, *International Law*, 6th ed., Cambridge University Press, 2008, pp. 1295-1309, 1318-1329;
- \* *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, ICJ Reports, 1949, p. 174;
- \* Article 105 of the Charter of the United Nations;
- \* *Convention on the Privileges and Immunities of the United Nations*, 1946, Arts. I, II, IV, V, VI.
- \* *The UN-US Agreement Regarding the Headquarters of the United Nations*, 1947, Sections 11, 12 and 13;
- \* *Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion of 15 December 1989, ICJ Reports, 1989, p. 177, paras. 7-11, 24, 33, 45-50 and 57;
- \* *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, ICJ Reports 1999, paras. 38-66;
- \* *Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement*, 1947, Advisory Opinion of 26 April 1988, ICJ Reports, 1988, p. 12.
- \* General Assembly Resolution 43/48 of 30 November 1988 (Report of the Committee on Relations with the Host Country), General Assembly Resolution 43/49

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of 2 December 1988 (Report of the Committee on Relations with the Host Country).

### Session Three – The Charter of the United Nations

#### Reading material

- \* Shaw, *International Law*, pp. 1204-1216, 1268-1273;
- \* Bruno Simma, "From Bilateralism to Community Interest in International Law", in *Collected Courses of the Academy of International Law*, Vol. 250, 1994, p. 217, at pp. 256-284;
- \* Articles 2(6), 10, 11, 12, 24, 25, 27 and 103 of the Charter of the United Nations;
- \* *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276(1970)*, Advisory Opinion of 21 June 1971, ICJ Reports, 1971, paras. 21-22, 87-89 and 109-116);
- \* *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. USA)*, Request for the Indication of Provisional Measures, Order of 14 April 1992, ICJ Reports, 1992, p. 114;
- \* General Assembly Resolution 377(V) of 3 November 1950 ("Uniting for Peace") (Part A 1).
- \* *The Yalta Formula on Voting in the Security Council*, 8 June 1945, p. 455, Annex I, at p. 458, part II.

### Session Four – Membership in the United Nations

#### Reading Material

- \* Klabbers, *An Introduction to International Institutional Law*, pp. 93-114;
- \* Article 4(1) and (2) of the Charter of the United Nations;
- \* *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion of 28 May 1948, ICJ Reports, 1948, p. 57;
- \* *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion of 3 March 1950, ICJ Reports, 1950, p. 4;
- \* Security Council Resolution 817 (1993) of 7 April 1993, and General assembly Resolution 47/225 of 8 April 1993 (Macedonia/FYROM);
- \* General Assembly Resolution 47/1 of 19 September 1992 and Security Council Resolution 777(1992) (FRY);
- \* General Assembly Resolution 2758(XXVI) of 25 October 1971 (China/Taiwan);
- \* General Assembly Resolution 3237 (XXIX) of 22 November 1974 (Observer status to the PLO); General Assembly Resolution 52/250 of 7 July 1998 (Participation of Palestine in the work of the United Nations); Application of Palestine for admission to membership in the United Nations (A/66/371-S/2011/592 of 23 September 2011); Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations (S/2011/705 of 11 November 2011); General Assembly Resolution 67/19 of 29 November 2012 (para. 2).

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## Session Five □ Peace and Security

### Reading material

- \* Shaw, *International Law*, pp. 1118-1128, 1131-1147, and 1235-1241, 1251-1257;
- \* Articles 2(4), 39, 42, 43, and 51 of the Charter of the United Nations;
- \* General Assembly Resolution 3314(XXIX) of 14 December 1974 (Definition of Aggression);
- \* D. J. Harris, *Cases and Materials on International Law*, Sixth ed., London, Sweet & Maxwell, 2004, pp. 985-990, 993-1011.
- \* Security Council Resolutions on Iraq: 660 (1990) of 2 August 1990; 678 (1990) of 29 November 1990; 687 (1991) of 3 April 1991, and 1441(2002) of 8 November 2003.

## Sessions Six and Seven □ Humanitarian Intervention and the Passage to Responsibility to Protect (R2P)

### Reading Material

#### A. Humanitarian Intervention

- \* Security Council Resolution 688 (1991) (Iraq)
- \* Bruno Simma, □NATO, the UN and the Use of Force: Legal Aspects□, *European Journal of International Law*, Vol. 10, 1999, pp. 1-14, 22 ; Antonio Cassese, □Ex-iniuria jus oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Counter-measures in the World Community?□, *ibid.*, p. 23.

#### B. Responsibility to Protect

- \* Stahn, □Responsibility to Protect, Political Rhetoric or emerging Legal Norm□, *AJIL*, Vol. 101, 2007, pp. 99-116;
- \* Report of the High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (A/59/565, 2 December 2004), Part Three: pp. 56-58, paras. 199-209 (Responsibility to Protect);
- \* General Assembly Resolution 60/1 of 16 September 2005 (World Summit Outcome), paragraphs 138-139;
- \* Security Council Resolutions 1970 (2011) of 26 February 2011, and 1973 (2011) of 17 March 2011 (the case of Libya).

## Session Eight □ International Criminal Tribunals

### Reading Material

- \* Secretary-General's Report on the Establishment of the International Criminal Tribunal for the former Yugoslavia (S/25704 of 3 May 1993 (Annex));
- \* Security Council Resolution 827 (1993) of 25 May 1993;
- \* Prosecutor v. Dusko Tadic a/k/a □Dule□, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Decision of 2 October 1995 (Case No. IT-94-1), paras. 27-40;
- \* Daphna Shrager, □The Second Generation UN-Based Tribunals: A Diversity of Mixed Jurisdiction□, in Cesare P.R. Romano et al. (eds.), *Internationalized Criminal Courts - Sierra Leone, East Timor, Kosovo and Cambodia*, p. 15;
- \* Security Council Resolution 1757 (2007) of 30 May 2007 (Annex) (Lebanon);
- \* Statute of the International Criminal Court, 1998 (Preamble, Arts. 8, 13 and 16);

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- \* *Security Council Resolution 1593 (2005) of 31 March 2005 (Sudan);*
  - \* *Security Council Resolution 1970 (2011) of 26 February 2011 (Libya).*

#### *Session Nine- Peacekeeping operations*

##### *Reading Material*

- \* *Shaw, International Law, pp. 1224-1235;*
- \* *Antonio Cassese, International Law, 2nd. ed. Oxford, 2005, 343-346;*
- \* *Supplement to an Agenda for Peace, Position Paper of the Secretary-General (A/50/60 S/1995/1 of 3 January 1995), paragraphs. 1-22, 33-38;*
- \* *Frederic L. Kirgis Jr., International Organization in Their Legal Setting, 2nd. ed. pp. 731-738;*
- \* *Security Council Resolution 836(1993) of 4 June 1993 (last preambular paragraph and operative paragraphs 5, 6, 9 and 10) (UNPROFOR in Bosnia and Herzegovina);*
- \* *Security Council Resolution 1856 (2008) of 22 December 2008 (last preambular paragraph and operative paragraphs 1-3 (in particular, 1(a)-(e) (protection of civilians in the DRC));*
- \* *Security Council Resolution 1244 (1999) of 12 June 1999, paragraphs 10-11 (UNMIK/Kosovo);*
- \* *Standard Status of Forces Agreement between the Government of [the Host country] and the United Nations (paragraphs: 3, 4, 5, 6, 12, 15, 26-31, 48-49, 50-52);*
- \* *Convention on the Safety of the United Nations and Associated Personnel, 1994, General Assembly 49/59 of 4 December 1994, Annex (Articles 1, 2, 7, 8, 9, 20(a));*
- \* *Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law, ST/SGB/1999 of 6 August 1999, Sections 1-4.*

#### *Session Ten - Responsibility of International Organizations*

##### *Reading Material*

- \* *Report of the Secretary-General on Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations, A/51/389, paras. 1-19;*
- \* *Draft Articles on the Responsibility of International Organizations with Commentaries, adopted by the International Law Commission at its Sixty-Third Session in 2011 (A/66/10) (selected Articles).*
- \* *Behrami and Saramati, Applications 71412/01 and 78166/01, European Court of Human Rights, Grand Chamber, Decision on Admissibility (selected sections).*

#### *Additional Reading Material:*

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*Course/Module evaluation:*

*End of year written/oral examination 100 %*

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*Presentation 0 %*  
*Participation in Tutorials 0 %*  
*Project work 0 %*  
*Assignments 0 %*  
*Reports 0 %*  
*Research project 0 %*  
*Quizzes 0 %*  
*Other 0 %*

*Additional information:*

*Course evaluation:*

*End of the year take-home exam - 100%*