

An International Law Primer

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Peace Studies 110: Problems in War & Peace

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I. Basic categories of International Law

A. Law of Peace

B. Law of War

1. Applies to both individuals as well as nations.
2. Examples of treaties:
 - a. 1868 St. Petersburg declaration renouncing the use, in time of war, explosive projectiles under 400 grams weight.
 - b. 1899 Hague declaration 2 concerning asphyxiating gases.
 - c. 1899 Hague declaration 3 concerning expanding bullets.
 - d. 1907 Hague Convention IV respecting the laws and customs of war on land.
 - e. 1907 Hague Convention V respecting the rights and duties of neutral powers and persons in case of war on land.
 - f. 1907 Hague Convention VI relating to the status of enemy merchant ships at the outbreak of hostilities.
 - g. 1907 Hague Convention VII relating to the conversion of merchant ships into war ships.
 - h. 1907 Hague Convention VIII relative to the laying of automatic submarine contact mines.

II. The "grandfather" of modern international law:

Hugo Grotius 1583-1645

(born in Delft, The Netherlands)

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- A. According to Grotius, war was a "necessary evil" and needed to be regulated.
- B. Wrote *Mare Liberum* (The Freedom of the Seas) in 1609.
- C. He wrote a number of other works which are not as well known:
 - 1. *De Jure Praedae* (Commentary on the Law of Prize and Booty) in 1604.
 - 2. *De Jure Belli ac Pacis* (On the Law of War and Peace) 1625.

III. Various terms commonly used to describe international law:

- A. Law of Nations - only governments
- B. International Law - governments and organizations primarily (although people may participate on a limited basis)
- C. Transnational law - individuals may also participate
 - 1. What is the status of micro-states, such as:
 - a. Vatican
 - b. Knights of Malta

IV. Sources of International Law (Article 38 of the International Court of Justice Statute)

- A. Treaties
- B. Custom
 - 1. What is "instant custom"?
- C. General principals of law recognized by civilized nations
- D. Writings of publicists (as a subsidiary means)
- E. What is *jus cogens* and how does it get made?
- F. What is law?
 - 1. Positivist viewpoint: it begins at the end of the policeman's nightstick.
 - 2. Does having a weak enforcement mechanism mean there is no law?
 - 3. Does God decide what is right and wrong? (Divine law)
 - 4. Is there a Natural law?
 - 5. Does might make right?
 - 6. Why do we have law?

V. What did they try to do after World War II to prevent a re-occurrence? They tried to get rid of all of the root causes of the dispute.

They established:

- A. United Nations to resolve disputes, possibly with the force of arms.
- B. International Court to resolve smaller disputes.
- C. World Bank and International Monetary Fund to promote economic stability (look what hyper-inflation did to the Weimar Republic).
- D. GATT to promote international trade by lowering tariffs (rampant protectionism and high tariffs killed national economies).

VI. United Nations

- A. United Nations charter.
 - 1. Article 2(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.
 - 2. 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.
 - 3. Article 39: The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

4. Article 40: In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.
5. Article 41: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.
6. Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.
 - a. Since the United Nations was founded, the Military Assistance Committee has never completed its initial organization.

B. Principal organs:

1. General Assembly - makes recommendations (UN Charter Chapter 4).
2. Security Council - can take action (UN Charter Chapter 5).
3. Economic & Social Council - may study and report (UN Charter Chapter 10).
4. Trusteeship council - largely out of business (UN Charter Chapter 13).
5. International Court of Justice (UN Charter Chapter 14).

VII. International Court of Justice <http://www.icj-cij.org/>

- A. Only states can file contentious cases and both must agree to the court's jurisdiction.
 1. Article 34(1): Only states may be parties in cases before the Court.
 2. Article 36(1): The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
- B. Only organizations can request advisory opinions
 1. Article 65(1): The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
- C. There is no rule of *stare decisis*

VIII. Multilateral decision making bodies

- A. Permanent Court of Arbitration
<http://www.pca-cpa.org/>
- B. European Court of Human Rights
<http://www.echr.coe.int/>
(part of the Council of Europe)
- C. Inter-American Court of Human Rights
http://www.corteidh.or.cr/index_ing.html

- D. World Trade Organization
<http://www.wto.org/>
- E. NAFTA arbitration (US, Canada & Mexico)
- F. International Center for the Settlement of
Investment Disputes
<http://www.worldbank.org/icsid>

IX. International Law weekend - October 14-16, 2004 at
the Association of the Bar of the City of New York.
<http://ambranch.org/>