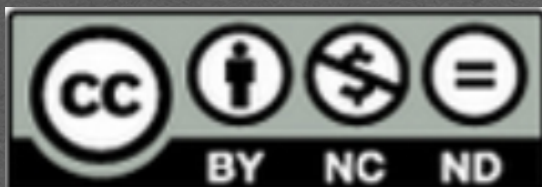


PUBLIC INTERNATIONAL LAW

Academic Course: 2020-2021

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Unit 1. International Community and International Law

1.1. The International Community and International Law. Historical evolution and current configuration.

- INTERNATIONAL COMMUNITY ORIGIN

A. The historical origin of the International Community is set on the 15th and 16th centuries-> The Peace of Westphalia (**1648**), means the end of the Thirty Years War and the consolidation of the States.

- With the Independence of the United States in 1776, the state system ceased to be exclusively European, forming the "state system of Christian civilization".
- Later, with the Congress of Vienna in 1815, the Holy Alliance (Russia, Austria and Prussia) was constituted in Paris. The United States avoids the influence of the European alliance with the Monroe Doctrine in 1823.
- Throughout the 19th century, the international system expanded with the admission of new states, and as a result, the international society of states acquired a global dimension that transformed international law.
- Between 1914 and 1918 the First World War took place and it was of great importance for the whole world. In 1917 the Bolshevik revolution triumphed in Russia, establishing the Soviet Union as a world superpower.
- 1919 -> Creation of the League of Nations (LON), the first international organization that contributed to the development of relations between States after its disappearance.

- League of Nations Key dates:
 - 1933 - Japan withdrawal
 - 1936 - Italy withdrawal
 - 1939 - Expulsion from the USSR for the invasion of Finland
- The League of Nations was unable to avoid the development of the Second World War.

B. The international community after the Second World War.

- At the end of the Second World War, the winning country created the United Nations Organization on June 26, 1945.
- Besides the political and economic conflicts of the developed countries and those in the process of development, there was a confrontation between the two world superpowers: the United States and the Soviet Union.
- The relationship between the western and eastern blocks were established in these periods:
 1. Cold War (1945-1970)
 2. Peaceful coexistence (1970-1975)
 3. The Thaw period (1975-1989)

During the peaceful coexistence...

The main legal instrument which regulated the relationship between the two blocks was the Declaration of the Principles of International Law concerning Friendly Relations and Cooperation between States according to the United Nations Charter.

= Resolution 2625 of the General Assembly of Oct. 24, 1970.

- During the period of peaceful coexistence an international law of hegemonic profiles was formed, in order to advance international cooperation.
- The tension between the Eastern-Western block and their respective contributions within the international law framework contributed to the configuration of the dominant international law during this period.

- Regarding to the confrontation between developing and developed countries, a double manifestation stood out:
 - Politics -> political neutralism-> development objective -> The third world countries established the non-alien countries movement.
 - Economic -> vindication of the New International Economical Order. The third world strived to impose a new democratic and egalitarian right based on participation.

C. The International Community in the era of globalization.

- Fall of the Berlin Wall (November 9, 1989) —> It was a change in the international context after the end of the bipolar era.
- Disappearance of the Soviet Union (Minsk and Alma Ata Agreements).
- Iraqi invasion of 1990 -> For the first time in the history of the UN, there was the unanimity of the great powers and the Security Council emerged.
- The bipolar confrontation disappeared when new conflicts appear (Antiga Iugoslàvia, the terrorist attack in the United States, Al Qaeda and the countries of the Axis of Evil...)

- Currently, the International Community lives a n unstopppable globalization times, i.e. tech and communications development...
- This new Community has to deal big challenges: the fight against organized crimes, the terrorism, the migration controls, the climate change and damages to the environment...
- Sustainable development goals —> 17 SDG

The relations between the States comprising the international community remain largely horizontal. No vertical structure has as yet crystalized, as is instead the rule within the domestic systems of States.

Other subjects

- The International Organizations: They are State Associations constituted by Agreements between their creators with the aim of achieving common objectives.

Any example?

Other subjects

- Religious organizations, Non Governmental Organizations and another trans-national organizations...
- Multinational corporations**

B. DOMINANCE, RECIPROCITY AND COOPERATION PRINCIPLES

1. Dominance: solves the collective goods problem by establishing a power hierarchy in which those at the top control those below. the principle of dominance underlies the great power system, in which a handful of countries dictate the rules for all the others. Sometimes a so-called hegemon or superpower stands at the top of the great powers as the dominant nation. The UN Security Council, in which the world's five strongest military powers hold a veto, reflects the dominance principle.

2. Reciprocity: reciprocity forms the basis of most of the international norms and institutions in the international system. The international Community has long been characterized by a horizontal structure and the lack of strong political, ideological and economic links between its members.

“Synallamatic” rules imply reciprocal obligations.

3. Cooperation: International relations show, indeed, some instances in which States feel called to cooperate for the satisfaction of collective interests, on the basis of appreciations based on the idea of common good or at least common interest.

Examples: abolition of slavery, migration rules, environmental rules...

C. COEXISTENCE OF THE OLD AND NEW PATTERNS

1. Traditional model *Grotian*: International Community is based on a statist vision of international relations. Features: cooperation and regulated intercourse among sovereign States each pursuing their own interests.
2. Modern model *Kantian*: It is based on a universalist or cosmopolitan outlook, which sees at work in international politics a potential community of humanity and lays stress on the element of trans-national solidarity.

- III. INTERNATIONAL LEGAL ORDER

- A. CONCEPT AND LEGAL FEATURES

Public international law is a collection of rules which are grouped into a system, forming the international legal order of the International Community.

- The international law is formed by rules that the States themselves consider and apply as rights and obligations.
- Although the protagonists of international life are States as legal entities or corporations structures, they can also be enforced to individuals, who do not act on their own account but as State officials, as the tools of the structures to which they belong.

Specificities and characteristics?

- The lack of a central authority and decentralization of legal functions. The relations between States are horizontal. There's no vertical structure between them nor a global policymaker who enact rules for all States.
- The legislative process is carried out through conventions, customary rules resulting from accepted practice or general principles = Consequence of this situation —> Organizational rules are at a very embryonic stage.

= All three functions (law making, settling disputes and law enforcement) are decentralized.

- There is no common system of sanctions but it doesn't imply the absence of responsibility (institutional sanctions, repression of humanitarian crimes... etc.)
- In the international legal system the exception becomes the rule.
- Collective responsibility

B. INTERNATIONAL LEGAL FEATURES

1. The overriding role of effectiveness.- The rights are adjusted to the facts. A situation is effective if it is solidly implanted in real life.

- Triple function: constitutive, modifying and adjudicatory.
 - Constitutive.- recognition and definitive consolidation of a practical situation. Example: when a new State emerges from secession*
 - Modifying.- consolidation of the transformations of the existing Law.
 - Adjudicatory.- dispute resolution between legal titles of different States

Limits to the role of effectiveness:

- Non-legitimization of radically anti-legal situations
- States may recognize or not a situation as legitimate.
Example: Nottebhom case.

2. Consensus as a technique of reaching agreement

- Public International Law is mainly consensual. Consensus denotes a negotiating and decision-making technique consisting of a collective effort to agree upon a text by reconciling different views and smoothing out difficulties.
- Consensus does not mean unanimity.

C. EXISTENCE OF PEREMPTORY NORMS: *IUS COGENS*.

The evolution of international law took into special consideration the general interests of the international community and thus established peremptory norms of general international law (*ius cogens*).

1. Establishment and content of peremptory norms

Article 53 of Vienna Convention on the Law of Treaties of 1969:

“A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”

- Art. 64 Vienna Convention on the Law of Treaties, 1969

*If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm **becomes void and terminates.***

- Features:
 - Imperativeness
 - Generality
 - Hierarchy
 - Possibility of transformation

2. Limitations of *Ius Cogens* as envisaged in the Vienna Convention

The provisions of the Vienna Convention on peremptory norms suffer from a major limitation: they may only be invoked by a State that is both party to the Vienna Convention and party to the bilateral or multilateral treaty intended to be declared contrary to a *ius cogens* norm.

- UN Codification process—> practice of the States and caselaw of the international tribunals -> elaboration of a list of norms of *ius cogens* in the contemporary international Law.

- Recognized examples:
- The prohibition of the use of force in violation of the principles of the United Nations Charter (particularly aggression)
- The principle of equality of States and the principle of self determination of people (in the terms recognized by international law)
- The norms related to the protection of the fundamental rights of the person (prohibition of slavery, torture...)
- Rules concerning international crimes (genocide, war crimes...)
- Standards that protect fundamental interests related to environmental protection.