

PUBLIC INTERNATIONAL LAW

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UNIT 7. The role of the United Nations

I. BACKGROUND AND CREATION OF THE UNITED NATIONS: THE CHARTER OF THE UNITED NATIONS

—> I World War --> Treaty of Versailles —> League of Nations (LON).

—> During the II World War - emerges a deeply need to create a new Universal International Organization with general aims which would structure the new international community at the end of the war.

—> Charter of the United Nations - The Charter is the founding treaty of the UN. In this sense:

- The Charter created the UN
- The Charter established the principle of normative hierarchy into international law (art. 103 UN Charter)

- Brief documentary about the founding of the United Nations and the San Francisco Conference in 1945

II. PURPOSES AND PRINCIPLES OF THE ORGANIZATION

A) Purposes of the UN: (art. 1 UN Charter)

- To maintain international peace and security;
- To take effective collective measures for the prevention and removal of threats to the peace
- To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples;
- To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character;
- To be a centre for harmonizing the actions of nations in the attainment of these common ends.

B) The principles of the UN (art. 2 UN Charter)

- Principle of the sovereign equality of all its Members;
- Principle of good faith in the obligations assumed by the Member States according to the UN Charter;
- Principle of priority to solve disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;
- Principle of refraining from resorting to aid or the use of force against the territorial integrity or political independence of any State;
- Principle of international cooperation.

- Those principles have been developed under 2625 UN Resolution.

III. UN MEMBERSHIP

A) The acquisition of the condition of Member.

- There are two ways to acquire the membership of the UN: by original means of foundation or by new admissions procedure.

- States are required to fulfil a double condition (art. 3 UN Charter):

Participation in the United Nations Conference on International Organization at San Francisco, or

Signature of the Declaration by United Nations of 1 January 1942,

+

signature of the present UN Charter and **ratify** it in accordance with Article 110.

- New members conditions:

--> peace-loving states which accept the obligations contained in the present Charter

--> are able and willing to carry out these obligations.

WARNING: Both original Member States and new Member States are equal in rights and obligations.

B) Suspension from the exercise of the rights and privileges of membership (art. 5 UN Charter)

Member States would be suspended of their rights and privileges if the General Assembly decides so, by a recommendation of the Security Council.

Requirements:

- A Security Council Resolution adopting sanction measures against to a Member States;
- A Security Council Resolution recommending to the General Assembly the suspension of rights or privileges from a Member State;
- A General Assembly Resolution deciding the suspension of a Member State.

Scope of the suspension

- The Member States are suspended only on their privileges and rights intrinsic to their own condition.
- Member States are not suspended in their obligations.

“A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council”. (art. 5 UN Charter)

C) Loss of membership status

Art. 6 UN Charter = A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

Requirements:

--> A Security Council resolution recommending to the General Assembly the loss of the membership status.

--> A General Assembly resolution deciding the loss of the membership status.

WARNING: Voluntary withdrawal from the UN = not provided in the Charter.

IV. THE ORGANS OF THE UNITED NATIONS

1. General Assembly (GA)
2. Security Council (SC)
3. Economic and Social Council (ECOSOC)
4. Trusteeship Council (TC)
5. International Court of Justice
6. Secretariat

“1. There are established as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.” (art. 7 UN Charter)

1. General Assembly (GA)

- The General Assembly shall consist of **all the Members of the United Nations.** (art. 9.1 UN Charter)
- Each Member shall have not **more than five representatives** (art. 9.2 UN Charter)

A) Functions and powers

General Functions:

- Discussion of any question or matter within the scope of the UN Charter or related to the powers and functions of any organs provided for the UN Charter;
- GA may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.
- Limits: art. 12 UN Charter

“ 1. While the Security Council is exercising its functions in respect of any dispute or situation, the General Assembly shall not make any recommendation with regard to that dispute or situation UNLESS the Security Council so requests”

Specific functions of General Assembly:

- To consider the general principles of cooperation in the maintenance of international peace and security (art. 11.1 UN Charter)
- To discuss any questions relating to the maintenance of international peace and security brought before it and to make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both (art. 11.2 UN Charter)
- To call the attention of the Security Council to situations which are likely to endanger international peace and security (art. 11.3 UN Charter)
- Another specific functions: art. 13 UN Charter (promoting international cooperation), art. 14 UN Charter (recommendation of measures for the peaceful adjustment of any situation regardless of origin), etc..

GA voting system (art. 18 UN Charter)

*“1. Each member of the General Assembly **shall have one vote.***

*2. **Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.***

*3. **Decisions on other questions, including the determination of additional categories of questions **to be decided by a two-thirds majority**, shall be made by a majority of the members present and voting.***”

- **WARNING:** A Member of the United Nations **which is in arrears in the payment of its financial contributions** to the Organization **shall have no vote** in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years

- Procedure of Meetings of the GA
 - GA shall meet in regular **annual** sessions and in such special sessions as occasion may require.
 - Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the UN.
 - For each session, GA shall adopt its own rules of procedure and its President

2. Security Council (SC)

- The Security Council is a restrictive organ of the United Nations (art. 23 UN Charter)
- Composition: **FIFTEEN** Members of the United Nations, which **FIVE** are PERMANENT MEMBERS: China, France, Russia, the UK, and the US. The other **TEN** Members shall be elected by the GA.
- Non permanent members of the Security Council shall be elected for a non-renovable term of **TWO YEARS**. According to 1991 Resolution of the GA, the composition of the Security Council shall be:
 - **FIVE** States from Africa and Asia;
 - **ONE** from Eastern Europe;
 - **TWO** from Latin America;
 - and **TWO** from Western Europe and other States.

A) SC Functions and powers:

- The most important function of the Security Council is the maintenance of international peace and security.
- Other functions:
 - Shared with the GA
 - Admission, suspension and expulsion of a Member State;
 - Judges election of the ICJ
 - Convene the General Charter Review Conference, etc.
 - Exclusive of the SC:
 - Measures to guarantee the execution process of an ICJ Judgement
 - Creation of subsidiary organs

- **SC voting system** (art. 27 UN Charter)

“1. Each member of the Security Council shall have **one vote**.

2. Decisions of the Security Council on **procedural matters** shall be made by an **affirmative vote of nine members**.

3. Decisions of the Security Council on **all other matters** shall be made by an affirmative **vote of nine members including the concurring votes of the permanent members (...)**”

- Procedure of Security Council Meetings (art. 28 UN Charter)
 - SC shall be organized to be able to function continuously;
 - SC shall hold periodic meetings;
 - SC may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

**The Security Council shall adopt its own rules of procedure,
including the method of selecting its President.**

- **WARNING:** Any Member of the United Nations which is not a member of the Security Council may **participate**, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

3. Economic and Social Council (ECOSOC)

- The Economic and Social Council (ECOSOC) is a restrictive organ of the United Nations (art. 61 UN Charter)

- Composition: **FIFTY FOUR** Members of the UN elected by the GA. Eighteen members shall be elected by the GA (art. 145 GA Rule), but under the resolution 2847 (XXVI), the GA decided to elect the ECOSOC members as follows:

- **FOURTEEN** members from African States
- **ELEVEN** members from Asian States
- **TEN** members from Latin American States
- **THIRTEEN** members from Western Europe and other States
- **SIX** members from socialist States of Eastern Europe

- Period of election: **THREE years**

Main functions and powers :

- Consultive.- Report preparation regarding international affairs of economic, social, cultural, teaching and healthy issues; recommendations due to promotion of human rights and their effectiveness; draft of conventions for submission to GA (art. 62 UN Charter)
- Arrangement with specialized agencies (arts. 63 i 64 UN Charter)
- Adoption of resolutions and decisions procedure (art. 67 UN Charter)

Voting system

- Each member have **ONE** vote
- Decisions of ECOSOC shall be made by a majority of the members **present and voting**

Procedure

- The ECOSOC shall set up **COMMISSIONS** in economic and social fields and for the promotion of human rights.

4. The Trusteeship Council (TC)

- Its legal framework is established under art. 76 and 77 of the UN Charter.
- It was aimed to administrate and supervise the so called “trust territories”
- There were eleven trust territories under the administration of the UN Trusteeship Council.
 1. Western Samoa
 2. Tanganyika
 3. Rwanda-Urundi
 4. Cameroons under British administration
 5. Cameroons under French administration
 6. Togoland under British administration
 7. Togoland under French administration
 8. New Guinea
 9. Nauru
 10. Strategic Trust Territory/ Trust territory of the Pacific Islands
 11. Italian Somaliland

Territory	Administered by	Agreement Resolution	
1.	Western Samoa	New Zealand	A/RES/63 (I) of 13 Dec. 1946
2	Tanganyika	United Kingdom	A/RES/63 (I) of 13 Dec. 1946
3	Rwanda-Urundi	Belgium	A/RES/63 (I) of 13 Dec. 1946
4	Cameroons under British administration	United Kingdom	A/RES/63 (I) of 13 Dec. 1946
5	Cameroons under French administration	France	A/RES/63 (I) of 13 Dec. 1946
6	Togoland under British administration	United Kingdom	A/RES/63 (I) of 13 Dec. 1946
7	Togoland under French administration	France	A/RES/63 (I) of 13 Dec. 1946
8	New Guinea	Australia	A/RES/63 (I) of 13 Dec. 1946
9	Nauru	Australia, New Zealand and the United Kingdom	A/RES/140 (II) of 1 Nov. 1947
10	Trust territory of the Pacific Islands	United States	S/RES/21 (1947) of 2 April 1947
11	Italian Somaliland	Italy	A/RES/442 (V) of 2 Dec. 1950

5. International Court of Justice (ICJ)

- The ICJ is the principal judicial organ of the United Nations (art. 92 UN Charter), but it is not the only international court (art. 95). For instance, International Criminal Court, *Ad hoc* International Criminal Tribunals (Yugoslavia, Rwanda, Sierra Leone...), etc.
- It was established through the adoption of the UN Charter and Statute of the ICJ in 1945;
- It is based in The Hague, The Netherlands;
- It is the successor to the Permanent Court of International Justice created by the League of Nations.

WARNING:

“1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.” (Art. 93 UN Charter)

= Accomplishment of the decision of the ICJ

If there is a failure to perform the obligations under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may make recommendations or decide upon measures to be taken to give effect to the judgment (art. 94. 2 UN Charter)

- Main functions ICJ:

1. To settle, in accordance with international law, **legal disputes submitted by States**, and
2. To give **advisory opinions** on legal questions referred to it by authorized UN organs and specialized agencies.

* Advisory opinions are not binding, **EXCEPT:** Convention on the privileges and immunities of the UN and advisory opinions from the specialized agencies.

What differentiates the International Court of Justice from the International Criminal Court and the *ad hoc* international criminal tribunals?

The International Court of Justice has no jurisdiction to try individuals accused of war crimes or crimes against humanity. As it is not a criminal court, it does not have a prosecutor able to initiate proceedings.

This task is the preserve of national courts, the *ad hoc* criminal tribunals established by the United Nations (such as the International Residual Mechanism for Criminal Tribunals (IRMCT), mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia (ICTY) and from the International Criminal Tribunal for Rwanda (ICTR)) or in co-operation with it (such as the Special Court for Sierra Leone and the Special Tribunal for Lebanon), and also of the International Criminal Court, set up under the Rome Statute.

How does the International Court of Justice differ from other international courts?

The International Court of Justice differs from the Court of Justice of the European Union (based in Luxembourg), whose role is to interpret European Community legislation uniformly and rule on its validity, as well as from the European Court of Human Rights (in Strasbourg, France) and the Inter-American Court of Human Rights (in San José, Costa Rica), which deal with allegations of violations of the human rights conventions under which they were set up. As well as applications from States, those three courts can entertain applications from individuals, which is not possible for the International Court of Justice.

The jurisdiction of the International Court of Justice is general and thereby differs from that of specialist international tribunals, such as the International Tribunal for the Law of the Sea (ITLOS).

Lastly, the Court is not a supreme court to which national courts can turn; it does not act as a court of last resort for individuals. Nor is it an appeal court for any international tribunal. It can, however, rule on the validity of arbitral awards.

6. Secretariat

- Composition: Secretariat comprises a Secretary-General and such staff as the Organization require (art. 97 UN Charter)

Secretary-General shall:

- Act in all meetings of the GA, SC, ECOSOC and SC;
- Make an annual report to the GA on the work of the Org.

The Secretary-General **may bring to the attention of the Security Council** any matter which in his opinion may threaten the maintenance of international peace and security.

- Renewable mandate: **FIVE** years

What about the Staff?

- Staff shall be appointed by Secretary-General under regulations established by the GA (art. 101 Un Charter) = exclusively responsible before the UN (art. 100 UN Charter)

Main functions:

- Administrative/technical:

- Act as a “chief administrative officer” of the UN main organs with EXCEPTION of the ICJ (art. 98 UN Charter);
- Translation of all documents into all official languages of the UN;
- Depositary of all International Treaties...

- Political and diplomatic:

- Annual report (art. 98, in fine),
- Peace operations management
- Attention to the CS if the peace and security is going to be harmed, etc.

V. REFORM AND REVISION OF THE CHARTER OF THE UNITED NATIONS

A) Reform of the Charter

The reform procedure assumes that the three following requirements must be met:

- 1.- Consent of the Member States when the adoption of the proposed reform is voted at the General Assembly and, subsequently, ratified.
- 2.- Democratic: Majority of two thirds of the Member States.
- 3.- Veto power: The 5 permanent members of the SC must be among the ratifying states.

B) The General Review Conference

Regulation in art. 109 UN Charter.

“Preparative Committee” in 1955 → Special Committee of the Charter and Reinforcement of the role of the Organization in 1975.

There has been a political consensus to convene the General Review Conference.

C) The informal procedures for amending the Charter.

The text of the Charter may also be modified by informal procedures other than those provided for in the Charter.

ICJ 1971 Opinion on Namibia. This is an exceptional procedure.

Requirements:

1. "Constant and uniform" practice of a principal UN body
2. "Generally accepted" pels Estats Membres
3. "It constitutes the proof of a general practice of the UN"

VI. SPECIALIZED UNITED NATIONS AGENCIES

- The "specialized agencies" are authentic international organizations with their own legal personality, which act in an autonomous and independent manner from the UN.

The link established between the "specialized agencies" and the UN is not a resolution of hierarchical dependence on the latter. The Charter is based on the idea of functional decentralization, establishing coordination mechanisms with the "specialized agencies".

