International Law

Academic year 2019-2020

The Law and Practice of International Organizations

DI022 - Autumn - 6 ECTS

Thursday 14h15 - 16h00

Course Description

The theory and practice of international organizations is a dynamic and important dimension of world politics and international law. This course provides an introduction to the field, focusing on the interaction between international law and politics in international organizations. It begins by briefly exploring theoretical perspectives on the role and nature of international institutions and providing examples of global and highly institutionalized organizations. The second part of the course addresses cross-cutting institutional issues, including law-making, judicial review, and the role of the executive head of international organizations. Particular attention will be given to issues of responsibility, legitimacy and accountability that are shaping most of the contemporary discourse on international organizations. The course will also look beyond “traditional” intergovernmental organizations and discuss new forms of international institutions and governance. The format of the course is primarily lectures and structured discussion.

Syllabus

Course summary and purpose

This course is designed to give students of international law, international relations and related disciplines an appreciation of the relevance of international organizations in contemporary international law and politics and to provide an understanding of the main foundations of their legal nature, structure, governance, powers and competences, and limits thereto. The course will mostly focus on universal organizations. References and case studies from regional and sub-regional organizations will be made as appropriate. The course will not address the European Union in detail, which would deserve a separate course.
The course is designed and meant to be an interactive experience, combining teaching with joint analysis of relevant cases and materials. Its success will depend on all students being well prepared for, and ready to participate in, each session.

The course will not be exclusively about theoretical and conceptual issues, but will focus on “real life” legal, institutional, policy and operational issues that international organizations face. It will be open to students in disciplines other than international law, in particular political science, international affairs and development studies. The approach of the course, however, will be largely legal and some knowledge of public international law is required.

This course complements Professor Krisch’s course on “Global Governance and Regulation: Actors and Processes” (IA095); Professor Dietz’s course on “Applying Organisation Theories to Practice” (IA091); Professor Andonova’s course on “Global Partnerships” (RI-SP058); Professor Galvin’s course on “Anthropology in/of Institutions” (ANSO088) and Professor Hofmann’s course on “International Governance” (RI-SP053).

Course materials and requirements

The readings for each class are listed below. Some readings may be subject to change and additional materials may be indicated or distributed directly in class. It is important that students read the materials assigned for each class in order to enable discussion and participation.

The main materials for the course will be available on Moodle. Please do also explore the literature beyond the required readings; it is only through engaging with scholarship and primary sources on your own initiative that you will develop your own take on international institutions and the law governing them.

Class attendance is expected. If a student will be absent, he/she should contact Professor Burci and Alfredo Crosato to indicate the reason. Extended unjustified absences will lead to a grade reduction or even withdrawal from the course.

All important information (including this syllabus) will be posted regularly on the course’s Moodle page. Log in information will be provided later by email when you register to the course. For any questions or problems, please get in touch with Alfredo Crosato.

Evaluation

Grading will consist of a 10% component for class participation and 90% component for a final take-home exam.

Final exam

The final exam will consist of a legal and policy analysis and presentation of a hypothetical situation covering one or more of the topics examined in the course. The exam will be a take-home open book exam. Papers must be maximum 5000 words excluding footnotes and bibliography, double-spaced, 12-point font, with numbered pages and word count at the end. Footnotes can follow any common style such as OSCOLA, Chicago or Bluebook as long as they are clear and consistent. Final exams
must include a bibliography of the primary and secondary sources used. Students will receive the
topic of the exam at the last class and will have about 10 days to return it.

Since the IHEID has a policy of bilingualism, papers can be written in either English or French.

Please note that papers will be assessed and graded not only on the basis of their contents but also
of their linguistic quality. This does not intend to penalize students whose mother tongue is neither
English nor French, but to ensure that what you are writing is understandable, clear and correctly
phrased. Please make sure to proofread your paper before submission, or to seek other forms of
support such as review by a native speaker or even proofreading software.

Plagiarism

Students are reminded of the IHEID’s policy on citation of sources and plagiarism, contained in the
document “Internal guidelines governing citation of sources and plagiarism”, available on the Student
Web Portal, that they have received upon registration. All final exams will be submitted to Professor
Burci and Alfredo Crosato through the Turnitin software available in the library. If your paper shows
more than 20% of text copied from published or Internet sources, it will be submitted to the Direction
of Studies in order to decide on a possible failure of the course.

Time and Location

All classes will be held on Thursdays from 14:15 to 16:00 in room S5.
A few classes may have to be rescheduled if they conflict with imperative professional commitments
of Professor Burci. The dates and locations of make-up classes will be agreed with students.

General readings on international organizations

There are a number of useful general books on the topics we will touch upon in the course, though
none that covers them all. The main reading for the course will be Jan Klabbers, *An Introduction to
International Organizations Law* (3rd ed., CUP 2015) (available in hard copy through the library). Other
general accounts of international institutions from a legal and international relations perspective that
are particularly useful and recommended include:

  CUP 2005)
  *Documents and Commentary* (2nd ed., OUP 2016)
- Jacob Katz Cogan, Ian Hurd, Ian Johnstone, *The Oxford Handbook of International
  Organizations* (OUP 2016)
  ed., Brill 2018)

While students are encouraged to study the case law referred to below from its primary source
directly, it is also possible to consult C. Ryngaert, I.F. Dekker, R.A. Wessel and J. Wouters (eds.),
*Judicial Decisions on the Law of International Organizations* (OUP 2016), which contains a summary
and commentary of most of the case law that will be covered in the course. When cases are assigned
throughout the course, the corresponding Moodle page will contain the relevant chapter from that book.

**Course outline**

**Session 1** 19 September

**Introduction to the course and to international organizations**

This class will review the approach and methodology of the course and will discuss some preliminary and background issues to set the context of the course. We will start discussing, in particular, the very concept of ‘international organization’, its constitutive elements as well as current taxonomies of international organizations.

**Compulsory readings:**


**Suggested reading:**

Statement by Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, before the International Law Commission, 9 May 2018

**Session 2** 26 September

**Personality, autonomy and applicable law**

This session will address certain foundational issues of the law of international organizations which tend to raise questions and controversies in both theory and practice. In particular, we will discuss the international legal personality of international organizations, the autonomy of international organizations and their relation to member states, and the law applicable to international organizations as separate subjects of international law.

**Primary sources:**


Compulsory readings:


Suggested readings:


Session 3

October

Perspectives from international relations and international law

The phenomenon of international organizations has generated much critical analysis from both an international relations and international law perspective. Depending on the theoretical posture, the role and nature of international organizations can be perceived in considerably different ways. We will discuss the most important approaches and conceptual issues surrounding international organizations as well as the very question of whether and how we can talk about the law of international organizations as a discrete body of international law.

Compulsory readings:


Session 4

October

Governance
The institutional design of international organizations, in particular their governing bodies and other organs as well as their mutual relations, reflects a vision of international governance, political compromises as much as the particular concerns of different issue areas. In this class, we will look at some of the main structural features of the intergovernmental side of IO’s governance and the relations between organs, with a particular focus on the UN system.

Primary sources:


Compulsory readings:


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**Session 5** 17 October

Membership and participation

The relationship between international organizations and their member states is at the basis of functionalist theories of IOs. However, states can act in international organizations in different ways at the same time and those interactions can generate legal and practical complexities. International organizations have been opening up more and more to other stakeholders in the name of inclusiveness and legitimacy, in particular NGOs and the private sector. Also these trends generate much debate and controversy and question models of international governance. In this class, we will discuss the various modalities of membership and other forms of interactions between IOs and states as well as some important questions on how IOs have opened up to participation of non-state actors.

Primary sources:

*Admission of a State to the United Nations (Charter, Art. 4)*, Advisory Opinion, ICJ, 28 May 1948.

Accession of Palestine to the UN (UN Doc. A/67/738, pp. 1-3; UNGA res. 67/19).

WHO Framework of Engagement with Non-State Actors, 28 May 2016.
Compulsory readings:


Suggested readings:


Session 6
October

The executive head and the secretariat

Executive heads and secretariats represent the institutional continuity of international organizations and distinguish them from other forms of international cooperation. The role, powers and methods of selection of executive heads are highly symbolic of the overall vision and role of international organizations. The rhetorical question whether the UN Secretary-General is a “secretary” or a “general” is indicative of this point. In this class, we will discuss the powers and political role of executive heads, their relations with member states, and what it means to be an international civil servant.

Primary sources:

UN Charter, Articles 97-101.

Compulsory readings:


Ian Johnstone, ‘The Secretary-General as Norm Entrepreneur’ in Simon Chesterman (ed.), Secretary or General? The UN Secretary-General in World Politics (CUP 2007), pp. 123-138.

Suggested readings:

Dag Hammarskjöld, ‘The International Civil Servant in Law and in Fact’, Lecture delivered to Congregation at Oxford University, 30 May 1961.

Session 7

October

The internal law of international organizations

International organizations are to a certain extent legally self-referential entities, endowed with administrative and regulatory autonomy to insulate their internal management from the applicability of national law. This is particularly visible in the management of their staff, the administration of justice for employment disputes, their contractual practices and their financing. Beyond self-administration, those issues also underlie important questions concerning the autonomy, mandate and vision of IOs. In this class, we will discuss some of the main questions arising from the nature of internal rules of IOs, the management of the international civil service and the models for financing IOs.

Primary sources:

Selected judgments of international administrative tribunals will be added later.

Compulsory readings:


Suggested reading:

The competences of international organizations and their limits

The sources, scope and extent of the competences of international organizations and their organs have been discussed in practice and theory for a long time; functionalism has been the most popular theoretical model in this connection, in particular for practitioners within IOs. More recently, with the increase in power of organizations such as the UN, EU and NATO, the focus of scholarly and policy attention has shifted to the theoretical bases for controlling and limiting the powers of IOs. In this class, we will discuss some of the main theoretical and practical approaches to both powers and the limits thereto. The jurisprudence arising from the enforcement powers of the Security Council will be addressed as a case study.

Primary sources:


*Prosecutor v. Tadic*, Decision on the defense motion for interlocutory appeal on jurisdiction, ICTY, 2 October 1995 (see Session 4).


*Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ, 8 July 1996.


Compulsory readings:


Suggested readings:


Session 9 14 November

Law-making

International law-making in different forms is one of the main reasons why international organizations have been created. Normative functions and processes have developed in unanticipated ways, raising questions of effectiveness, consent and legitimacy. A specific turn in this discussion has been the use by the Security Council of its enforcement powers under Chapter VII of the Charter to legislate in general terms. In this class, we will discuss some of the main theoretical and practical aspects of law-making by international organizations, focusing also on technical and soft standards.

Primary sources:

ILC’s draft conclusions on the identification of customary international law, with commentaries (2018) (in particular draft conclusions 4, 5, 6, 10 and 12)


WHO Global Code of Practice on the International Recruitment of Health Personnel, May 2010 (just browse it to get a gist of its content and approach).

Compulsory readings:


Suggested readings:


ILC Special Rapporteur’s first report on general principles of law.

Session 11 21 November

Treaties and international organizations

Treaties play a prominent role in the everyday work of international organizations in different ways. This class will address how international organizations, in particular the United Nations, have revolutionized treaty-making as well as treaty implementation and monitoring. It will also analyse the questions raised by the conclusions of treaties by international organizations themselves, and the particular legal issues generated by constitutive instruments of international organizations as a special category of treaties.

Primary sources:


Compulsory readings:


Suggested readings:

Responsibility and accountability

The issue of responsibility of international organizations touches the core of their legal nature: when are they responsible and when are their member states? What are the primary obligations binding them and what are the consequences of their breach? Recent policy developments have also focused political and theoretical debates on how organizations can be made accountable for their actions beyond the more legalistic tools of responsibility. In this class, we will discuss some of the main issues and open questions arising from two distinct but partly overlapping concepts. We will use the 2011 ILC articles on responsibility of international organizations and discuss some recent cases concerning the UN.

Primary sources:

ILC Draft articles on the responsibility of international organizations, 2011.

Banković and others v. Belgium and others, Decision on Admissibility, ECtHR, 12 December 2001.


Al-Jedda v. United Kingdom, Judgment, ECtHR, 7 July 2011.

Nuhanović v. Netherlands, Judgment, Supreme Court of the Netherlands, 6 September 2013.


Compulsory readings:


Suggested readings:


Commentaries submitted by international organizations to the International Law Commission in 2011 on the work related to the responsibility of international organizations (UN Doc. A/CN.4/637 and Add.1).

Session 12 5 December

Immunities and judicial challenges

Privileges and immunities (P&Is) have developed as a powerful tool to safeguard the international nature and functions of international organizations and protect them from encroachment by member states. The functional basis for P&Is, however, and its comparisons with state immunities have been challenged both from a theoretical perspective and in the light of a few highly controversial cases arising out of UN's peace-keeping activities as well as of employment litigation. In this class, we will discuss some of the main legal and policy questions involved as well as a few case studies that well illustrate very different outcomes to the question of balancing protection of IO's functions with the protection of third parties.

Prof. Burci will divide the class in teams and assign case studies for presentation and discussion.

Primary sources:

Case of Waite and Kennedy v. Germany, Judgment, ECtHR, 18 February 1999.

Haiti cholera litigation in US courts:

1. Letter from the UN Legal Counsel to counsel for the victims of the Haiti cholera outbreak
3. ‘Memorandum of Law in Further Opposition to the Government's Statement of Interest’ (28 August 2014) (Add the judgment)

Srebrenica litigation in Dutch Courts and the European Court of Human Rights:

1. Stichting Mothers of Srebrenica v. the Netherlands and the United Nations, Court of Appeal, 30 March 2010, LJN: BL8979
2. Stichting Mothers of Srebrenica and others v. the Netherlands, Judgment, ECtHR, 11 June 2013, pp. 29-45.


Compulsory readings:


Suggested readings:


Session 13  
12 December

New institutional models: public-private partnerships and networks

Changes in the needs and structure of the international community have led to the emergence of new experimental forms of governance, structures and allocation of functions and authority. The phenomenon of “public-private partnerships” and other examples of informal or network governance have taken much prominence alongside critiques of the relevance of more “traditional” IOs as models of public legitimacy and governance. In this class, we will review some examples of public-private partnerships as well as theoretical and practical approaches to how to ensure the legitimacy and accountability of those new structures and their responsiveness to public goals and values.

Compulsory readings:


Suggested readings:


Meet a practitioner and Wrap-up class

Prof. Burci will invite the legal counsel or other senior official from a Geneva-based IO to discuss with the class the functions and role of that organization and some of the most interesting and challenging issues arising out of its functioning. Readings will be assigned later in consultation with the invited speaker. This class will also give the opportunity for a final wrap-up of the main issues discussed throughout the course.