International Law

Academic year 2019-2020

Fundamental Principles of International Law

DI120 - Spring - 6 ECTS

Tuesday 16h15 - 18h00 (S3)

Course Description

Starting with the notion of fundamental principles and their place in the international legal system, this seminar will cover the content, scope and practice of the fundamental principles: prohibition of the use of force, self-determination, [non-]intervention, territorial integrity, good faith, peaceful settlement of disputes, and their interaction. Uses and abuses of those principles (ie self-defence, secession) and current controversial concrete cases will be discussed.

Participation, Readings and Evaluation:

Students are expected to participate actively in the discussion. To participate actively, they are expected to do the readings assigned below. Primary sources are privileged and considered essential. Doctrinal readings are suggested for each session, but students are free to choose some of them or others. Free research is highly encouraged. Students are expected to make their own appraisal of the different questions at issue.

Two methods of evaluation are proposed: the presentation of a research paper or an exam at the end of the course. In both cases, participation in class will count for the final grade. The paper will have a maximum extension of 7'000 words, footnotes included. The exam will consist of a choice of one out of three different topics (counting for 80% of the grade) and a common short question (counting for 20% of the grade). Students can use the two working languages of the Institute, both for the discussions and for the paper or the exam. The evaluation will take into account not only the knowledge of primary sources but also, and most importantly, the capacity of legal reflection.

Syllabus

SESSION N° 1

TUESDAY 18 FEBRUARY
Introduction: Presentation of the course

A. The place of fundamental principles in the system of International law
1. International law as a legal system
2. Fundamental principles and fundamental values
3. Characteristics of fundamental principles
4. Content and distinction from related concepts
   a) General principles and fundamental principles
   b) Fundamental principles and *jus cogens*
   c) Fundamental principles and “fundamental rights of States”
5. Evolution of the existence and content of fundamental principles
6. Fundamental principles of all times and fundamental principles of contemporary international law

Readings


SESSION N° 2

B. Where to find (or not) the fundamental principles and follow their (possible) evolution
1. Customary Law
2. The Covenant of the League of Nations
3. The Montevideo Convention on the Rights and Duties of States
4. The Charter of the United Nations
5. The ILC Articles on the Rights and Duties of States
6. The Friendly Relations Declaration (Resolution 2625 (XXV) of the UN General Assembly)
8. The Charter for a New Europe of the CSCE of 1990

Documents

- *Charter of the United Nations* (1945), Preamble & Articles 1, 2, 33-38, 39, 51, 55, 73-78, 103.
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- ILC, *Draft Declaration on Rights and Duties of States* (1949).
- Conference on Security and Co-operation in Europe (CSCE), *Final Act of Helsinki* (1975), 'Declaration on Principles Guiding Relations between Participating States'.
- *Pact of the League of Arab States* (1945), Articles 2, 5-8.
- *Charter of the Organization of American States* (1948), Preamble, Articles 1-3, 10-29.

**Case Law**


**SESSION N° 3**

**Tuesday 3 March**

**C. Some alleged “principles” that are not so**

1. The “principle of sovereignty”
2. The right of States to conservation
3. The “fundamental right of States to survival”
4. The principle of effectiveness in international law

**Readings**


**Further Readings**


**SESSIONS N° 4, 5 AND 6**

**Tuesday 10, 17 and 24 March**

**D. The prohibition of the use of force between theory and practice**

1. Prohibition of the use of force: evolution and content
2. The exception of self-defence
   a) Conditions for its exercise
   b) Anticipatory, preventive and pre-emptive self-defence
3. From humanitarian intervention to the responsibility to protect
4. Use of force and international terrorism: theoretical problems and practice
5. Use of force and nuclear weapons: between threat and deterrence
6. Use of force and UN Security Council authorization
7. "Implicit" or "ex-post facto" Security Council authorization
8. Use of force to pursue "the objectives of the international community"

Documents

- UN General Assembly Resolution 377 (V) (1950)
- UN General Assembly Resolution 3314 (1974)
- UN Security Council Resolution 1244 (1999)
- UN Security Council Resolution 1368 (2001)
- UN Security Council Resolution 1373 (2001)
- UN Security Council Resolution 1377 (2001)
- UN Security Council Resolution 1866 (2009)

Case Law

- Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, ICJ Reports 2003, paras. 43-79.
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, paras. 86-87 and 138-139.

Readings


Further Readings


Sessions N° 7, 8 and 9

Tuesday 31 March, 7 and 21 April

E. The right of peoples to self-determination

1. From the principle of nationalities to the principle of self-determination
2. Peoples, minorities, indigenous peoples
3. Holders of the right
4. Content of the right: internal and external self-determination
5. Self-determination and decolonization
6. Self-determination and boundaries
7. Self-determination and secession

Documents

- UN General Assembly Resolution 1514 (XV) (1960)
- UN General Assembly Resolution 1541 (XV) (1960)
- UN General Assembly Resolution 2625 (XXV) (1970)
UN General Assembly Resolution 61/295 (2007)

Case Law and Other Decisions

- Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12, (pp. 29-37, paras. 48-74).
- Frontier Dispute (Burkina Faso/Mali), Judgment, ICJ Reports 1986, p. 554 (in particular pp. 564-567, paras. 19-26).
- Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 : (in particular par. 79-84 of the Advisory Opinion)
  - See also the Separate Opinion of Juge Koroma.

Readings


Further Readings

- See also the debate in the Leiden Journal of International Law, 2011, vol. 25, n°1.
- Written statements in the advisory proceedings relative to the Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion), [available on the Court’s website: www.icj-cij.org] :
  - Written Statement of Switzerland: pp. 15. par. 57 at p. 18 par. 68 and p. 27.
- Written Statement of Serbia, pp. 214-240 and 348-359.
- Written Statement of the United Kingdom of Great Britain and Northern Ireland, pp. 214-240.

SESSION N° 10  TUESDAY 28 APRIL

F. The principle of respect of territorial integrity
1. Content
2. Scope
3. The interrelation between respect of territorial integrity and the right to self-determination

G. The principle of equal sovereignty of States
1. Equality among unequals
2. Special and preferential treatment

Documents

➢ UN General Assembly Resolution 68/262 (2014)

Readings


SESSION N° 11  TUESDAY 5 MAY

H. The revolution of the protection of human rights
1. The emergence of the individual as a subject of international concern
2. The evolution of the protection of human rights at the international level

I. The principle of non-intervention
1. Its scope
2. From an alleged right of humanitarian intervention to the “responsibility to protect”

J. Good faith and its limits
1. A fundamental principle and/or a general principle of law?
2. Its importance in international law

Documents
See sessions 4, 5 and 6:

Readings


SESSION N° 12

K. The obligation to settle international disputes peacefully

1. Obligations of means and not of result
2. Means of settlement and freedom of choice
3. When is this obligation not respected?
4. Consequences

Documents

- UN General Assembly Resolution 3710 (1982)

Readings

SESSION N° 13  

**Tuesday 19 May**

Conclusions

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SESSION N° 14  

**Tuesday 26 May**

Exam