

1 lecture

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Foundations and structure of international law

- International law
 - o International law of the sea
 - o International human rights law
 - o International environmental law
 - o International economic law
 - o Laws of armed conflict
 - o Laws are interdependent - laws of armed conflict can be dependent on human rights law and international criminal law
- No legislative or executive branch in the international legal system
- No mandatory and well-established procedure for the settlement of legal disputes

- Early modern international law
 - o Europe in the late middle ages had universal political and religious forces (Roman Empire, Catholic Church)
 - o Colonialism and ruling over natives (1500's).
 - o 17th and 18th century forms an international legal system

- Peace of Westphalia
 - o Concluded the 30 year war
 - o Recognizing sovereignty
 - o 1648 was the birth of the international state system. Peace of Westphalia ended the Thirty Years War with a peace treaty, where European countries sought to establish order and structure - with the state as the sovereign authority
 - o 19th century, era of positivism - acts of states could be judged according to transcendent ideals of fairness or divine will. Consensual theory - unless a state has consented to be bound by a rule, no international legal obligation exists. Fragmented legal system
- The interwar Period
 - o Establishment of the Permanent Court of International Justice - forerunner to the International Court of Justice
- The Period of the Second World War
 - o Establishment of the UN - maintenance of international peace and security
 - o UN General Assembly where all states have an equal opportunity to raise their voices and promote their interests
 - o The International Monetary Fund (IMF) (1944) - exchange stability
 - o The World Bank - loans to developing countries
 - o General Agreement on Tariffs and Trade (GATT) formed to liberalize world trade by reducing tariffs (Now World Trade Organization WTO)
 - o WHO World Health Organization (1948) monitor public health risks and coordinate responses to health emergencies
 - o NATO - mutual defence in the event of an attack by an external actor (1949)
 - o EU - created to avoid large-scale conflict (1951)
- The Present
 - o Most international institutions are based on Western ideas and values
 - o Western thinking is under pressure from e.g. China and the BRICS-countries (Brazil, Russia, India, China and South Africa)

- Treaty making
 - Treaties are made by states only
 - Some states do not have resources to send a delegation of lawyers - now there are trust funds, where poorer countries can have their expenses covered
 - If a treaty is ratified by a diverse amount of nations globally it is perceived as more legitimate compared to if it's only signed by e.g. European countries
 - NGO's are not a part of making treaties. They work their power through local representatives

- Customary international law - not necessarily written down, but binding on all states
- Slavery, torture etc. There are treaties that prohibit this, but not all countries have ratified the treaty. Therefore it becomes a customary international law - you are still not allowed to do it
- In order for an international law to become customary most countries have to agree that it is legally binding.
- But customary IL can be argued against, e.g. when the US says that Saudi Arabia is not allowed to torture, but US tortures its own citizens

Look into:

- CEDAW (works for women's rights)

- The security council - China, Russia, US, France, England (the winners of the second world war) (they all have veto)
 - o France didn't win the Second World War - it was in the US' interest to have them as an ally. They were nervous about Germany so geopolitically it was a strategic decision
 - o Chinese development in Africa, they are taking lots of land, but also eradicating poverty in China
 - o Responsibility to protect - The UN security council cannot remove another country's government
 - o Libya - they could not remove the government because of R2P

Lecture

- ICJ statutes - (vedtægter) - ICJ is basically an international organisation, and it exists based on a treaty. ICJ is its governing papers (art. 38)
- The difference between a nation state and a statute is that a nation has a great degree of power because they have enforcement power, But enforcement in IL is much more consent based and power based
- Positivism - positive law vs. Natural law
 - o Natural law
 - Moral law
 - Right or wrong
 - Justice
 - People don't always agree on what's justice - which is why we need more systematic laws
 - o Positive law
 - Written codified code law
 - Common law countries - it is the law the judges decide and also the written down law
 - The president (only in common law, US, UK, Australia, Canada), interpretations
 - o Always look at a law:
 - Where are we taking this from? Where is the source for this law? Where do we find it?
 - o The Vienna Conventions on the law of Treaties
 - Positivist instrument - how do we interpret treaties?
 - We still have problems interpreting treaties
 - It's basically a dictionary of treaties
 - 1969 but comes into effect in the 80's
 - o States have to consent, states have to get involved - but only states who have consented can be

- Decided in favor of Nicaragua
- The Contras acted against human rights, and the US encouraged it, but cannot be held responsible for it
- The Court found in its verdict that the United States was
 - o In breach of its obligations under customary international law not to use force against another State - UN charter. Use of force is not allowed because it would be a problem to sovereign equality - not all state have equal power, so the use of force would not be allowed.
 - o Not to intervene in its affairs
 - o Not to violate its sovereignty
 - o Not to interrupt peaceful maritime commerce
 - o Breach of its obligations of the Treaty of Friendship, Commerce and Navigation
- The US refused to participate in the proceedings
- Nicaragua did not get any compensation because the US blocked the enforcement of the judgement by the United Nations Security Council

- ICJ: can take up cases by two states or more if the states have consented to the Court. Different forms of participations from different nations. Some consent to all, some consent case by case
 - o The US: consents to all but can withdraw its consent with a 6 month warning
 - o Every treaty is consensual, so you can always leave it. That's why this reservation is legitimate

The IRAC method with the Nicaraguan case

- Issue: