

The Law of International Organizations

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The Law of International Organizations

Problems and Materials

Second Edition

Michael P. Scharf

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For my Parents,

Joan and Harry Scharf

Contents

About the Author	xix
Preface	xxi
Acknowledgments and Permissions	xxv

Part I Historic and Legal Background

Chapter I Introduction to the Law of International Organization	3
Introduction	3
Problems	3
Materials	4
1. Leland Goodrich, Edvard Hambro, and Anne Patricia Simons, Charter of the United Nations: Commentary and Documents (3rd ed., Columbia University Press, 1969), 1–4, 10–16	5
2. Basic Facts About the United Nations	12
3. U.S. Department of State: Background Notes: United Nations (1955)	18
4. Restatement (Third) of the Foreign Relations Law	20
A. Introductory Note	20
B. §102. Sources of International Law	23
C. §111. International Law and Agreements as Law of the United States	29
D. §114. Interpretation of Federal Statute in Light of International Law or Agreement	37
E. §115. Inconsistency Between International Law or Agreement and Domestic Law	38
5. U.N. Charter, see Annex I	41
6. Bibliography of Additional Sources	41

Part II Membership and Legal Status

Chapter II Membership—Credential Challenges	45
Introduction	45
Problems	45
Materials	46
1. U.N. CHARTER, Articles 3, 4, and 5	47
2. Rules of Procedure of the General Assembly	47
3. Credentials Committee—Structure and Functions	48

4. Restatement (Third) of the Foreign Relations Law	48
A. §201. State Defined	48
B. §202 Recognition or Acceptance of States	52
C. §222. Membership in International Organizations	57
5. Senate Committee on Foreign Relations Report:	59
Appendices	75
6. Current Member States of the United Nations	81
7. United Nations Security Council:	86
8. Bibliography of Additional Sources	86
Chapter III Succession Problems	89
Introduction	89
Problems	89
Materials	91
1. U.N. Charter, Articles 3, 4, 5, and 93	91
2. Michael P. Scharf, Musical Chairs: The Dissolution of States and Membership in the United Nations, 28	92
3. United Nations Resolution 1326 (2000).	126
4. Matthew Crave, The Bosnia Case Revisited and the ‘New’ Yugoslavia,	126
5. Session of Vancouver—2001 State Succession in Matters of Property and Debts	138
6. Bibliography of Additional Sources	145
Chapter IV Privileges and Immunities	149
Introduction	149
Problems	149
Materials	151
1. The U.N. Headquarters Agreement Sections 1, 8, 11, 12, 15 (4), 21,	152
2. The U.N. Headquarters Agreement Act of 1947	154
3. The Convention on the Privileges and Immunities of the United Nations, especially Section 11 (g), 16, 22, and the U.S. reservation reprinted at footnote 2	157
4. Vienna Convention on Diplomatic Relations, Articles 22 and 25,	157
5. The International Organizations Immunities Act of 1945, Sections 1, 7, and 8(b)—22 U.S.C. §288 (2000) International organizations entitled to enjoy the privileges, exemptions, and immunities conferred by 22 USCS §288 et seq.	157
7. Jim Anderson, Politics Wins in PLO Office Closure,	165
8. World Court Rules Against U.S. in PLO Mission Closure,	166
9. U.S. Court Rules PLO Mission Cannot be Closed, Inter Press Service,	166
10. United States of America v. The Palestine Liberation Organization, et al.,	167
11. Juliana Pilon, For Yasser Arafat, the U.S. Must Be Off Limits,	182
12. Don Oberdorfer, U.S. Denies Entry Visa to Arafat,	183
13. What the Host Must Not Do,	186
14. Josh Friedman, U.N. Going to Geneva for Arafat,	186

15. Pay Up or Get Out,	187
16. Ronald Sullivan, Judge, No Diplomat, Orders Zaire to Pay U.N. Office Rent,	188
17. Deborah Pines, Eviction of Mission Prohibited Based on International Law,	189
18. 767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire to the U.N.	190
19. Bibliography of Additional Sources	198
Part III	
International Dispute Resolution	
Chapter V Negotiation, Mediation, and Arbitration	203
Introduction	203
Problems	203
Materials	205
1. Restatement (Third) of the Foreign Relations Law	206
A. §902. Interstate Claims and Remedies	206
B. §904. Interstate Arbitration	211
2. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	214
3. Materials for Simulation A	
A. A. Simulated Arbitration Background Facts, Including Annex 2 from Dayton Accord and Articles 4 and 49 from the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.	218
B. Michael P. Scharf, History of the Yugoslav Crisis	221
C. Dunja Tadic, Brcko—Still No Closer to a Solution,	226
D. Norman Cigar and Paul Williams, Reward Serbs with Town of Brcko? Don't Do It,	227
4. Materials for Simulation B	
A. Simulated Arbitration Background Facts	228
B. Fr. Robert J. Araujo, S.J., Implementation of the ICJ Advisory Opinion—Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Fences [Do Not] Make Good Neighbors?	229
5. Bibliography of Additional Sources	250
Chapter VI The Role of Law in Peace Negotiations	253
Introduction	253
Problems	253
Materials	254
1. Velasquez Rodriguez Case	254
2. The American Convention on Human Rights, Articles 1, 4, 5, and 7	263
3. ECOSOC Resolution 2005/30: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law	265

4. Frederic L. Kirgis, Jr., International Organizations in Their Legal Setting	411
5. Michael P. Scharf, History of the Yugoslav Crisis	412
6. U.N. Charter, Articles 39–41	416
7. Five Nations Join Security Council,	417
8. Model Security Council Actions	417
A. S.C. Res. 667: Condemnation (Iraq)	417
B. S.C. Res. 757: Economic Sanctions (Serbia)	419
C. S.C. Res. 816: No-Fly Zone (Bosnia)	423
D. S.C. Res. 824: Safe Areas (Bosnia)	425
E. S.C. Res. 780: Investigative Commission (Bosnia)	427
F. S.C. Res. 678: Use of Force (Iraq)	428
Chapter X The Security Council—Part Two: Reform	429
Introduction	429
Problems	429
Materials	429
1. Timothy Penny and Mark Mullenbach, UN’s Chosen Few—A Tricky Feat	430
2. Richard Butler, United Nations: The Security Council Isn’t Performing	431
3. Amb. Gerhard Benze, Creating a New UN Security Council,	434
4. U.N. Reforms Could Limit Security Council’s Power of Veto	436
5. Imron Cotan, UN Council Needs Urgent Reform,	437
6. Tsutomu Wada, Japan Fails in Effort to Secure Permanent Seat of Power at UN	439
7. GA Seeks Vote from Two Thirds of Member States for Decisions on Security Council Reform	441
8. U.N. Charter, Articles 108 and 109, from Annex I	442
9. Bibliography of Additional Sources	442
Chapter XI U.N. Sanctions—Part One: The Sanctions Debate	445
Introduction	445
Problems	445
Materials	446
1. U.N. Charter, Articles 39–42, from Annex I	447
2. Joy K. Fausey, Does the United Nations’ Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?	447
3. Targeted Sanctions: A Policy Alternative? By Gary C. Hufbauer and Barbara Oegg	466
4. SECURITY COUNCIL SANCTIONS COMMITTEES: AN OVERVIEW	470
5. Making Targeted Sanctions Effective	471
6. Security Council Sanctions Resolutions Concerning the Former Yugoslavia	484
A. S.C. Res. 713: Arms Embargo	484
B. S.C. Res. 727: Extending Arms Embargo	485
C. S.C. Res. 757: Economic Sanctions	486
D. S.C. Res. 760: Humanitarian Exception	491

Chapter XII U.N. Sanctions—Part Two: The U.N. Sanctions Committee	493
Introduction	493
Problems	493
Materials	494
1. Summary of Sanctions Committee Cases (1992–1993)	494
2. Michael Scharf and Joshua Dorosin, Interpreting U.N. Sanctions: The Rulings and Role of the Yugoslavia Sanctions Committee, 19 Brooklyn	496
3. Note by the President of the Security Council	533
4. Bibliography of Additional Sources	534
Chapter XIII U.N. Peace Operations—Part One: Principles	539
Introduction	539
Problems	539
Materials	540
1. Introduction to U.N. Peace Keeping Operations	540
2. Diagram of United Nations Peace Operations	544
3. U.N. Charter, Articles 24(1), 37, 38, 40, 42, 44, 47, 48, 52.	544
4. Hilaire McCoubrey and Nigel White THE BLUE HELMETS: LEGAL REGULATION OF UNITED NATIONS MILITARY OPERATIONS (1996)	546
Constitutional Issues in Peacekeeping	555
The Legal Principles Governing Peacekeeping Operations	574
5. Typology Chart on U.N. Peacekeeping Operations.	587
6. Jean-Marie Guéhenno, Third World Conflicts: A Plan to Strengthen UN Peacekeeping	588
7. Bibliography of Additional Sources	589
Chapter XIV U.N. Peace Operations—Part Two: Reform	591
Introduction	591
Problems	592
Materials	592
1. Quynh-Nhu Vuong, Between Empire and Community: The United States and Multilateralism 2001–2003: A Mid-Term Assessment: Minimum Public Order: U.S. Peacekeeping and Nation-Building: The Evolution of Self-Interested Multilateralism	593
2. U.S. Army, FM 100–23, Chapter 1, Fundamentals of Peace Operations	606
3. Report of the Panel on United Nations Peace Operations Executive Summary	620
4. Report of the Panel on United Nations Peace Operations A/55/305—S/2000/809	627
5. Current Peacekeeping Operations	632
6. Bibliography of Additional Sources	635
Chapter XV Humanitarian Intervention: From Kosovo to Iraq	639
Introduction	639
Problems	639

Materials	640
1. U.N. Charter, Articles 2 (4) and 51	640
2. 2005 World Summit Outcome G.A. Res. 60/1	641
3. Dr. Klinton W. Alexander, Nato's Intervention in Kosovo: The Legal Case for Violating Yugoslavia's National Sovereignty in the Absence of Security Council Approval	642
4. Editorial Comments: NATO's Kosovo Intervention NATO's Kosovo Intervention: Anticipatory Humanitarian Intervention in Kosovo	653
NATO's Kosovo Intervention: Lessons of Kosovo	660
5. Paul Williams and Michael Scharf, NATO Intervention on Trial: The Legal Case That Was Never Made	664
6. James P. Terry, Rethinking Humanitarian Intervention after Kosovo: Legal Reality and Political Pragmatism	667
7. Michael P. Scharf, Is Invasion of Iraq Lawful under International Law?	670
8. Richard A. Falk, Future Implication of the Iraq Conflict: What Future for the UN Charter System of War Prevention?	674
9. Davis Brown, Iraq and the 800-Pound Gorilla Revisited: Good and Bad Faith, and Humanitarian Intervention	679
10. Alex J. Bellamy, Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq,	680
11. Uniting for Peace Resolution	683
12. Bibliography of Additional Sources	687

Part V

Protection of Human Rights and Enforcement of International Criminal Law

Chapter XVI The International Human Rights Framework—Part One: The Covenant on Civil and Political Rights and the Human Rights Committee	691
Introduction	691
Problems	691
Materials	692
1. Makau Mutua, The Big Idea: Are Human Rights Universal? Or Is the West Imposing Its Philosophy on the Rest of the World?	693
2. John Shattuck, The Big Idea: Are Human Rights Universal? Or Is the West Imposing Its Philosophy on the Rest of the World?	694
3. Newman and Weisbrodt	696
4. International Covenant on Civil and Political Rights	708
5. Human Rights Committee—General Comment No. 28 (2000): The equality of rights between men and women	708
6. United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rig	709

7. Human Rights Committee, General Comment 29, States of Emergency (article 4)	712
8. COMMISSION ON HUMAN RIGHTS, Sub-Commission on the Promotion and Protection of Human Rights	718
9. Bibliography of Additional Sources	721
Chapter XVII The International Human Rights Framework— Part Two: U.N. Procedures	723
Introduction	723
Problems	723
Materials	724
1. Newman and Weisbrodt, International Human Rights	725
2. ECOSOC Resolution 2000/3: Procedure for Dealing with Communications Concerning Human Rights	739
3. American Bar Association Section of International Law Report of the Task Force on Reform of the U.N. Commission on Human Rights (2005).1	742
4. ASIL Insight: The New United Nations Human Rights Council	758
5. Lori Through the Looking Glass: A New Perspective On the Berenson Case	760
6. Tim Curry and Nerina Cevra and Erin Palmer, Human Rights Brief: Updates from the Regional Human Rights Systems	770
7. WHAT IS THE IACHR?	772
8. Bibliography of Additional Sources	775
Chapter XVIII The WTO, Human Rights Sanctions, and Treatment of Detainees in the War on Terror	777
Introduction	777
Problems	777
Materials	781
1. Understanding the World Trade Organization	781
2. 2006 Niagara Moot Court Bench Memo by Michael P. Scharf	788
3. General Agreements on Tariffs and Trade (GATT)	802
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	803
5. International Covenant on Civil and Political Rights, Articles 2, 3, 4, 7, 9	807
6. ILC Draft Articles on State Responsibility for Internationally Wrongful Acts	808
7. The White House Torture Memo	809
8. Bibliography of Additional Sources	826
Chapter XIX International Criminal Police Organization: Interpol	829
Introduction	829
Problems	829
Materials	830
1. Colin McLaughlin, An Introduction to Interpol (2005)	831
2. Alia Szopa, Hoarding History: A Survey of Antiquity Looting and Black Market Trade	834

3. Interpol, Stolen Works of Art: Object ID	838
4. Christopher Andreae, Art Museums Balance Access Against Security	840
5. Kenneth Hamma, Symposium: V. The New Millennium Finding Cultural Property Online	843
6. Brian Braiker, Art Cops, Newsweek, Jan. 21, 2005.	847
7. CNN.com, Interpol Hunts Stolen Iraqi Art	849
8. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	850
9. Convention on Stolen or Illegally Exported Cultural Objects	856
10. Co-operation agreement between the United Nations and the International Criminal Police Organization-Interpol	862
11. Co-operation agreement between the United Nations Educational, Scientific and Cultural Organization and the International Criminal Police Organization-Interpol	865
12. Memorandum of understanding with the International Council of Museums on countering the theft and trafficking in cultural property	867
13. Interpol, Interpol Member Countries (182)	869
Bibliography of Additional Sources	870
Chapter XX U.N. Conference to Define Terrorism	873
Introduction	873
Problems	873
Materials	873
1. Paust, Bassiouni, Williams, Scharf, Gurule, and Zagaris	874
2. Nicholas Rostow, Before and After: The Changed UN Response to Terrorism Since September 11th	886
3. Susan Tiefenbrun, A Semiotic Approach to a Legal Definition of Terrorism	892
4. Jennifer Trahan, Terrorism Conventions: Existing Gaps and Different Approaches	900
5. Michael P. Scharf, Defining Terrorism as the Peacetime Equivalent of War Crimes: Problems and Prospects	906
6. William J. Haynes, Enemy Combatants, Council on Foreign Relations	914
7. Combatant Status Review Tribunals: Factsheet	915
8. Kathleen T. Rhem, DoD to Review Status of All Guantanamo Detainees, American Forces Press Service	917
9. Bibliography of Additional Sources	918
Chapter XXI International War Crimes Tribunals	921
Introduction	921
Problems	921
Materials	922
1. The Nuremberg Tribunal	922
2. Michael Scharf, Balkan Justice	929
3. Press Conference from ICTY Prosecutor	953
4. The ICTR Must Achieve Justice for Rwandans	953
5. Michael P. Scharf, The Special Court for Sierra Leone	956

6. Rena L. Scott, Moving From Impunity to Accountability in Post-War Liberia: Possibilities, Cautions, and Challenges	959
7. Hans Nichols and Lydia Polgreen, Liberia Ex-Leader Faces War-Crimes Court	962
8. Various Essays from Grotian Moment: The Saddam Hussein Trial Blog	963
9. Bibliography of Additional Sources	984
Chapter XXII Toward a Permanent International Criminal Court	987
Introduction	987
Problems	987
Materials	988
1. Lawrence Weschler, Exceptional Cases in Rome: The United States and the Struggle for an ICC	988
2. The Debate over the Permanent International Criminal Court	1009
3. New York Times. January 1, 2001. Section: A. “Clinton’s Words: ‘The Right Action’ ”	1023
4. New York Times, May 5, 2005, Section: 1. “U.S. is set to Renounce its Role in Pact for World Tribunal”	1024
5. New York Times. April 29, 2005. Section: A. “Sudan Poses First Big Trial For World Criminal Court”	1026
6. Letter by Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court	1027
7. States which are Party to the ICC	1031
Rome Statute of the International Criminal Court [Abridged].	1032
9. Bibliography of Additional Sources	1036

Part VI

Financial Issues and Institutions

Chapter XXIII Financial Issues	1041
Introduction	1041
Problems	1041
Materials	1042
1. U.N. Charter, Articles 17 and 19 from Annex I	1042
2. Allan Gerson, The Kirkpatrick Mission, 44–53 (1990)	1043
3. Jose Alvarez, Financial Responsibility, The United Nations and International Law	1049
4. Michael Scharf and Tamara Shaw, International Institutions, 33 The International Lawyer 567–570 (1999)	1059
5. Elizabeth Neuffer, US-UN Relations Seen Worsening Overdue US Payments and New Talk of Freeze Draw Ire of Diplomats	1061
6. Barbara Crossette, Rudeness Awakens America	1062
7. Budget of the United Nations	1064
8. US vs. Total Debt to the UN: 2005, Global Policy Forum	1065
9. United Nations Association of the United States of America, United States Financial Contributions to the United Nations: Fiscal Year 2006 Request, Apr. 2005	1067

10. Brett D. Schaefer, The United Nations Reform Act of 2005: A Powerful Lever to Advance U.N. Reform	1069
11. Memorandum to the Members of the U.S. Congress Regarding H.R. 2745, League of Women Voters	1072
12. H.R. 2745: Henry J. Hyde United Nations Reform Act of 2005, 109 U.S. Congress (2005)	1074
13. Bibliography of Additional Sources	1089
Chapter XXIV The International Monetary Fund: A Mandate to Fight Money Laundering and the Financing of Terrorism By Richard Gordon	1093
Introduction	1093
Problem	1094
Materials	1095
1. Overview of the IMF and its Organization and Activities	1096
2. Treasury Secretary Lawrence H. Summers Statement to the Development Committee of the World Bank and the International Monetary Fund	1098
3. Articles of Agreement of the International Monetary Fund	1102
4. Financial Sector Assessment Program (FSAP)	1104
5. INTERNATIONAL MONETARY FUND Financial System Abuse, Financial Crime and Money Laundering Background Paper	1105
6. INTERNATIONAL MONETARY FUND AND WORLD BANK Enhancing Contributions to Combating Money Laundering: Policy Paper	1112
7. Current Developments in Monetary & Financial Law, International Monetary Fund (1999)	1120
8. INTERNATIONAL MONETARY FUND Intensified Fund Involvement in Anti-Money Laundering Work and Combating the Financing of Terrorism	1128
9. IMF Board Discusses the Fund's Intensified Involvement in Anti-Money Laundering and Combating the Financing of Terrorism	1143
10. INTERNATIONAL MONETARY FUND AND THE WORLD BANK Twelve-Month Pilot Program of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments Joint Report on the Review of the Pilot Program	1145
11. IMF Executive Board Reviews and Enhances Efforts for Anti-Money Laundering and Combating the Financing of Terrorism Public Information Notice (PIN) No. 04/33	1149
Bibliography of Additional Sources	1153
Annexes	
Annex I U.N. Charter	1155
Annex II The U.N. Headquarters Agreement	1179
Annex III Convention on the Privileges and Immunities of the United Nations, February 13, 1946	1189
Annex IV Vienna Convention on Diplomatic Relations and Optional Protocols Done at Vienna, on 18 April 1961	1195

Annex V	Statute of the International Court of Justice	1209
Annex VI	International Covenant on Civil and Political Rights	1223
Annex VII	Rome Statute of the International Criminal Court*	1245
Annex VIII	Researching International Organizations on the Internet	1309
	U.N. Sites	1309
	International Courts and Tribunals	1310
	Other International Organizations	1310
	International Organizations Collections	1311
	General International Law Sites	1311
	Multilateral Treaties	1312
	U.S. Treaties & Agreements	1312
	Some Topical Sources	1312
	Foreign Law	1313
	Periodicals	1314
	Resources for Teachers	1315
	Search Engines	1315
Index		1317

About the Author

Michael Scharf is Professor of Law and Director of the Frederick K. Cox International Law Center at Case Western Reserve University School of Law. From October 2004–March 2005, Professor Scharf served as a member of the elite international team of experts which provided training to the judges and prosecutors of the Iraqi Special Tribunal. In February 2005, Professor Scharf and the Public International Law and Policy Group, a Non-Governmental Organization he co-founded, were nominated for the Nobel Peace Prize by six governments and the Prosecutor of an International Criminal Tribunal for the work they have done to help in the prosecution of major war criminals, such as Slobodan Milosevic, Charles Taylor, and Saddam Hussein.

During the first Bush and Clinton Administrations, Professor Scharf served in the Office of the Legal Adviser of the U.S. Department of State, where he held the positions of Counsel to the Counter-Terrorism Bureau, Attorney-Adviser for Law Enforcement and Intelligence, Attorney-Adviser for United Nations Affairs, and delegate to the United Nations General Assembly and to the United Nations Human Rights Commission. In 1993, he was awarded the State Department’s Meritorious Honor Award “in recognition of superb performance and exemplary leadership” in relation to his role in the establishment of the International Criminal Tribunal for the former Yugoslavia.

A graduate of Duke University School of Law, and judicial clerk to Judge Gerald Bard Tjoflat on the Eleventh Circuit Federal Court of Appeals, Professor Scharf is the author of over fifty scholarly articles and seven books, including *Balkan Justice*, which was nominated for the Pulitzer Prize in 1998, *The International Criminal Tribunal for Rwanda*, which was awarded the American Society of International Law’s Certificate of Merit for the Outstanding book in International Law in 1999, *Peace with Justice*, which won the International Association of Penal Law Book of the Year Award for 2003, and casebooks on *The Law of International Organizations* and *International Criminal Law*.

Professor Scharf has testified as an expert before the U.S. Senate Foreign Relations Committee; his Op Eds have been published by the *Washington Post*, *Los Angeles Times*, *Boston Globe*, *Christian Science Monitor*, and *International Herald Tribune*; and he has appeared on ABC World News Tonight with Peter Jennings, Nightline with Ted Koppel, The O’Reilly Factor, The NewsHour with Jim Lehrer, The Charlie Rose Show, the BBC’s The World, CNN, and National Public Radio.

Winner of the 2005 Case Alumni Association Teacher of the Year Award, Professor Scharf teaches International Law, International Criminal Law, Human Rights Law, the Law of International Organizations, and a War Crimes Research Lab. In 2002, Professor Scharf established the War Crimes Research Office at Case Western Reserve University School of Law, which provides research assistance to the Prosecutors of the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the International Criminal Court, and the Iraqi Special Tribunal on issues pending before those in-

ternational tribunals. Copies of over ninety of these research memos are available on the Frederick K. Cox International Law Center War Crimes Research Portal, at: www.law.case.edu/war-crimes-research-portal.

Preface

Since the creation of the United Nations system sixty years ago, much of international law and diplomacy has been developed, shaped, implemented, and enforced through U.N. bodies and related international organizations. But during the decades of the cold war, many of the organizations in the U.N. system too often suffered from paralysis due to East-West and North-South tensions. With the disintegration of the Soviet Bloc in the early 1990s emerged a considerably revitalized United Nations. Bolstered by a new (if only fleeting) era of cooperation, the international organizations associated with the United Nations began to boldly respond to challenges and threats to peace, to human rights, to the environment, and to the world's increasingly interdependent economy.

From 1991–1993, I had the good fortune to serve as Attorney-Adviser for U.N. Affairs (and Counsel to the International Organizations Bureau) at the U.S. Department of State, and to participate in and witness first hand what history may consider the modern resurrection of the United Nations and its associated organizations. When I left the State Department to become an international law professor, I was surprised to discover that there existed very few teaching texts devoted to the study of international organizations, especially in light of the increasingly prominent role international organizations have begun to play in the formation of international law and resolution of global problems. The rather dated texts that did exist failed to cover what I considered to be some of the most important current issues relating to international organizations. And the issues that were covered were dealt with in a fairly dry fashion that did not appear to be calculated to stimulate student enthusiasm for what should be among the most exciting of subjects.

Consequently, when I was invited to teach “The Law of International Organizations” as a Visiting Professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University in the spring of 2000 (a position long held by the eminent Leo Gross), I decided to assemble my own teaching materials focusing on the most important current issues relating to international organizations based on my experiences at the State Department, as well as my subsequent work as Chairman of the American Bar Association's International Institutions Committee and Chairman of the American Society of International Law's International Organizations Interest Group. Rather than gear the materials to the Socratic method or lecture approach, it occurred to me that an effective way to teach this area of law was to approximate the way I learned it at the State Department—by employing simulations, role-play exercises and debates.

In the fall of 2000, my good friend and publisher, Keith Sipe, suggested that I publish my Fletcher course materials as a casebook employing this unique active learning

approach. The First Edition of “The Law of International Organizations” quickly established itself as a popular casebook, but with the speed in which this unique area of law evolves, the market was soon clamoring for a Second, updated, Edition. In addition to updating the existing materials, this Second Edition adds new chapters addressing organizations not covered in the First Edition, such as the WTO, the IMF, and Interpol. It also focuses on important new issues, such as the legality of the 2003 US Invasion of Iraq and protection of human rights in the context of the war on terrorism.

Like its predecessor, this book is not designed to be a comprehensive textbook on international organizations, but rather a user-friendly casebook that exposes students to the most significant current legal issues relating to international organizations in a stimulating format. In addition to simulations in the form of an introductory problem, the chapters contain excerpts from international treaties, negotiating history, decisions by international organizations, international and domestic judicial opinions, diplomatic correspondence, contemporary news accounts, first-hand narratives, and scholarly articles, as well as a comprehensive Bibliography of Additional Sources. Rather than require students to purchase an additional Documents Supplement, the full texts of the key international instruments are reproduced in the Annexes of the book. In contrast to the traditional passive reading model of most casebooks in which discussion questions are found at the end of each chapter’s readings, the format of this book mirrors the way a legal research assignment would be given in the real world. Here, the questions and problems are presented at the beginning of each chapter, prompting the student to actively read the material with an eye to finding the answer. The book is organized into twenty-four Chapters (corresponding with teaching units) for ease of use in a course that meets twice-a-week. In a once-a-week course, the professor can select the thirteen or fourteen units he or she finds of most interest.

International organizations both make international law and are governed by it. Yet, a distinguished commentator once remarked that the decision-making of international organizations such as the United Nations “is less a question of law than one of political judgment,” and that “legal principles and Charter interpretation take a back seat to political and administrative convenience.” (L.C. Green, 1967). Throughout, the materials in this book highlight the tension between politics and law in the U.N. System. Given the political context in which international organizations often operate, the reader will find that substantive rules and precedents play a perhaps surprisingly important role in influencing the actions of international organizations. At the same time, it is essential to keep in mind that the decision-making of organizations in the domestic system, including the U.S. Supreme Court, are just as frequently swayed by politics.

Another theme that emerges throughout the book is the important role that process plays in the decision making of international organizations. The international bodies examined in the book include those that make decisions by simple majority vote, by weighted voting, and by unanimous consent. In examining these materials, the reader may consider: why did the framers select the particular voting system for each organization; how strictly do the bodies follow their procedural (as opposed to substantive) rules; and how do the voting rules influence the outcome of the body’s decision making.

It is true that very few students will go on to directly participate in any international organization. It is also true that few students will go on to practice Constitutional Law before the Supreme Court, or even the lower courts. Yet “Con Law” is a required

law school course and is taught extensively at the undergraduate level in light of the importance the decisions of the Supreme Court play in our daily lives. Given the growing significance of the decisions of international organizations to our well-being and survival, and the prominent (if not always decisive) role that law plays in arriving at those decisions, the “Law of International Organizations” may be among the most meaningful courses in the modern curriculum. It is thus my ardent hope that the publication of the Second Edition of this casebook will help foster the growth of courses at the law school and university level devoted to this important subject.

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