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## International Organisations

### January 16<sup>th</sup>, 2014, 4-6 p.m.

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**Duration: 120** minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 6 pages and 3 questions.

#### Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	30% of the total
Question 2	30% of the total
Question 3	40% of the total
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Total	100 %

*For the proper allocation of your time, please note the different weight of the questions.*

**We wish you a lot of success!**

### **Question 1 (30%)**

Please specify the main features of supranational organisations and explain the main differences as compared to the features of traditional, “classical” international organisations. Try to give concrete examples.

### **Question 2 (30%)**

The President of the Executive Directors of the International Bank for Reconstruction and Development (IBRD), one of the organisations belonging to the World Bank Group, is very much concerned about the adverse impact of AIDS on the economic development of many African and Asian states. He therefore proposes to the Executive Directors of the IBRD to establish a World Aids Council composed of representatives of some of the most AIDS-affected countries as well as of highly developed countries, of representatives of other international organisations such as the World Health Organisation (WHO) and African Union, and of some internationally renowned experts. The tasks of this advisory body would be to draft an action plan to combat AIDS as a disease undermining the economic development in many countries, and to oversee all the activities of the IBRD as well as of other organisations with regard to combating AIDS.

There was a considerable controversy among the Executive Directors as to the feasibility and the legality of the proposal. Inter alia, the following objections were raised:

- AIDS is an internal matter of the affected states. The adoption of the proposal would infringe the *domaine réservé* of these countries. Therefore, the proposal is illegal because it violates a basic principle of international law which also binds international organisations.
- The Council would be composed of representatives of only some member states as well as of individuals not nominated by member states. This violates the principle of sovereign equality of states.
- The Executive Directors as non-plenary organ have not the power to create such an organ. It would be up to the Board of Governors and only up to this body, where all the member states are represented with their own representatives, to establish the Council.
- To combat AIDS is outside the legitimate scope of the IBRD because it is not covered by the organisation’s purpose. This would be a task for the World Health Organisation (WHO) and most probably only for this organisation.

Please discuss these objections and make a legal analysis as to their legal justification. Art. 1 of the Agreement establishing the IBRD reads as follows:

#### **ARTICLE I**

##### **Purposes**

The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

### **Question 3 (40%)**

Please find below excerpts from a SC Res on the situation in Libya after the overthrow of the Gaddafi regime as a consequence of the air raids executed by NATO fighter jets.

Please analyse the following:

1. The SC acted under Chapter VII of the UN Charter. Do all the paragraphs have the same legal force, or do you see differences? Please give reasons for your answers.
2. Taking into consideration the several stages of a conflict management and of the types of peace-keeping operations, what kind of operation is the one in Libya according to the resolution? What are the usual tasks of such operations?
3. What is the impact of human rights, rule of law and democracy according to the practice of the UN SC in situations such as the one in Libya? Are they binding standards or rather a desirable goal?

### **Resolution 2040 (2012)**

**Adopted by the Security Council at its 6733rd meeting, on  
12 March 2012**

*The Security Council,*

*Recalling* its resolutions .....,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

*Reaffirming* its resolutions .....,

*Looking forward* to a future for Libya based on national reconciliation, justice, respect for human rights and the rule of law,

*Emphasizing* the importance of promoting the equal and full participation of all sectors of Libyan society, including women, youth and minority communities in the political process in the post-conflict phase,

*Recalling* its decision to refer the situation in Libya to the Prosecutor of the International Criminal Court, and the importance of cooperation for ensuring that those responsible for violations of human rights and international humanitarian law, including attacks targeting civilians, are held accountable,

...

*Expressing* concern at the illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, from Libya, in the region and its potential impact on regional and international peace and security,

....

*Stressing* the need for the United Nations to work actively with the Libyan authorities to identify and support delivery of the priorities and strategies for postconflict peacebuilding,

*Reaffirming* that the United Nations should lead the coordination of the efforts of the international community in supporting the Libyan-led transition and rebuilding process aimed at establishing a democratic, independent and united Libya, and *appreciating* the assistance of the United Nations Support Mission in Libya in convening recent workshops with the Libyan government to identify national needs and priorities,

*Noting* the centrality of credible elections to a peaceful transition in Libya, *encouraging* the taking of all necessary steps in this regard, and *welcoming* the adoption of a Libyan national electoral law on 28 January 2012 and the establishment of an Electoral Commission on 12 February 2012,

..

*Commending* the Libyan authorities for engaging with the International Monetary Fund and World Bank on conducting an assessment of Libya's public financial management framework, and *reiterating* its request that the Committee established pursuant to resolution 1970 (2011) be informed of the results of that assessment,

...

*Mindful* of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Welcomes* the recent positive developments in Libya which will improve the prospects for a democratic, peaceful and prosperous future for its people;
2. *Looks forward* to free, fair and credible elections in June 2012 to establish a Constituent Assembly, and *reiterates* the need for the transitional period to be underpinned by a commitment to democracy, good governance, rule of law, national reconciliation and respect for human rights and fundamental freedoms of all people in Libya;
3. *Calls upon* the Libyan authorities to promote and protect human rights, including those of women and people belonging to vulnerable groups, to comply with their obligations under international law, including international humanitarian law and human rights law, and *calls for* those responsible for serious violations of such law, including sexual violence, to be held accountable in accordance with international standards, and *urges* all Member States to cooperate closely with the Libyan authorities in their efforts to end impunity for such violations;
4. *Expresses* grave concern at continuing reports of reprisals, arbitrary detentions without access to due process, wrongful imprisonment, mistreatment, torture and extrajudicial executions in Libya and *calls upon* the Libyan authorities to take all steps necessary to prevent violations of human rights, *underscores* the Libyan authorities' primary responsibility for the protection of Libya's population, as well as foreign nationals, including African migrants, and *calls for* the immediate release of all foreign nationals illegally detained in Libya;
5. *Encourages* Libya and neighbouring states to engage in order to establish regional cooperation aimed at stabilization of the situation in Libya and to prevent former Libyan

regime elements from using the territories of such States to plan, fund or carry out violent or other illicit acts to destabilize Libya and the states in the region, and notes that such cooperation would benefit stability in the Sahel region;

#### **United Nations Mandate**

6. *Decides* to extend the mandate of the United Nations Support Mission in Libya (UNSMIL) for a further period of 12 months, subject to review within 6 months, under the leadership of a Special Representative of the Secretary-General, and *decides further* that the modified mandate of UNSMIL, in full accordance with the principles of national ownership, shall be to assist the Libyan authorities to define national needs and priorities throughout Libya, and to match these with offers of strategic and technical advice where appropriate, and support Libyan efforts to:

(a) manage the process of democratic transition, including through technical advice and assistance to the Libyan electoral process and the process of preparing and establishing a new Libyan constitution, as set out in the National Transitional Council's Constitutional Roadmap, and assistance that improves institutional capacity, transparency and accountability, promotes the empowerment and political participation of women and minorities and supports the further development of Libyan civil society;

(b) promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable groups, such as children, minorities and migrants, including through assisting the Libyan authorities to reform and build transparent and accountable justice and correctional systems, supporting the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation, support to ensure the proper treatment of detainees and the demobilization of any children remaining associated with revolutionary brigades;

(c) restore public security, including through the provision of appropriate strategic and technical advice and assistance to the Libyan government to develop capable institutions and implement a coherent national approach to the integration of ex-combatants into Libyan national security forces or their demobilization and reintegration into civilian life, including education and employment opportunities, and to develop police and security institutions that are capable, accountable, respectful of human rights and accessible and responsive to women and vulnerable groups;

(d) counter illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, clear explosive remnants of war, conduct demining programmes, secure and manage Libya's borders, and implement international conventions on chemical, biological and nuclear weapons and materials, in coordination with the relevant United Nations agencies, the Organization for the Prohibition of Chemical Weapons, and international and regional partners;

(e) coordinate international assistance and build government capacity across all relevant sectors set out in relation to paragraphs 6 (a) to (d), including by supporting the coordination mechanism within the Libyan government announced on 31 January 2012, advice to the Libyan government to help identify priority needs for international support, engaging international partners in the process wherever appropriate, facilitation of international assistance to the Libyan government, and establishing a clear division of labour and regular and frequent communication between all those providing assistance to Libya;

7. *Encourages* UNSMIL to continue to support efforts to promote national reconciliation, inclusive political dialogue and political processes aimed at promoting free, fair and credible elections, transitional justice and respect for human rights throughout Libya;

#### **Arms Embargo**

8. *Decides* to terminate the authorization granted in paragraph 13 of resolution 1973 (2011) to Member States to use all measures commensurate to the specific circumstances to carry out

inspection pursuant to that paragraph, *decides* further to terminate paragraph 14 of that resolution, and *underscores* the importance of the full implementation of the arms embargo imposed in paragraphs 9 and 10 of resolution 1970 (2011), as modified by resolution 2009 (2011);

#### **Asset Freeze**

9. *Directs* the Committee, in consultation with the Libyan authorities, to review continuously the remaining measures imposed by resolutions 1970 (2011) and 1973 (2011), as modified by resolution 2009 (2011), with respect to the Libyan Investment Authority (LIA) and the Libyan Africa Investment Portfolio (LAIP), and *decides* that the Committee shall, in consultation with the Libyan authorities, lift the designation of these entities as soon as practical to ensure the assets are made available to and for the benefit of the people of Libya;

#### **Panel of Experts**

10. *Decides* to extend and modify the mandate of the Panel of Experts, established by paragraph 24 of resolution 1973 (2011), and *decides further* to adjust the mandate to create for a period of one year, in consultation with the Committee and taking into account the current areas of activity, a group of up to 5 experts (“the Panel”) under the direction of the Committee to carry out the following tasks:

(a) assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011);

(b) gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011), 1973 (2011) and 2009 (2011), in particular incidents of non-compliance;

(c) make recommendations on actions that the Council, the Committee, the Libyan authorities or other States may consider to improve implementation of the relevant measures;

(d) provide to the Council an interim report on its work no later than 90 days after the Panel’s appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

11. *Urges* all States, relevant United Nations bodies, including UNSMIL, and other interested parties, to cooperate fully with the Committee and the Panel, in particular by supplying any information at their disposal on the implementation of the measures decided in resolutions 1970 (2011) and 1973 (2011), and modified in resolution 2009 (2011), in particular incidents of non-compliance;

12.....;

#### **Reporting and Review**

13....

14. *Requests* the Secretary-General to report to the Security Council on the implementation of this resolution, including all elements of UNSMIL’s mandate, every 60 days;

15. *Also requests* the Secretary-General to report to the Security Council following the elections of a Constituent Assembly on steps taken by UNSMIL to engage with the new Libyan government in order to ensure that it continues effectively to support Libya’s specific needs, with a view to reviewing and adjusting the mandate as necessary;

16. *Decides* to remain actively seized of the matter.

\* \* \*

## **Resolution 2040 (2012)**

**Adopted by the Security Council at its 6733rd meeting, on 12 March 2012**

*The Security Council,*

*Recalling* its resolutions 1970 (2011) of 26 February 2011, 1973 (2011) of 17 March 2011, 2009 (2011) of 16 September 2011, 2016 (2011) of 27 October 2011, 2017 (2011) of 31 October 2011 and 2022 (2011) of 2 December 2011,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

*Reaffirming* its resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, 1612 (2005), 1882 (2009), and 1998 (2011) on children in armed conflict, and 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), and 1960 (2010) on women, peace and security,

*Looking forward* to a future for Libya based on national reconciliation, justice, respect for human rights and the rule of law,

*Emphasizing* the importance of promoting the equal and full participation of all sectors of Libyan society, including women, youth and minority communities in the political process in the post-conflict phase,

*Recalling* its decision to refer the situation in Libya to the Prosecutor of the International Criminal Court, and the importance of cooperation for ensuring that those responsible for violations of human rights and international humanitarian law, including attacks targeting civilians, are held accountable,

*Expressing* deep concern about reports of sexual violence during the conflict in Libya against women, men and children including in prison facilities and detention centres, and the recruitment and use of children in situations of armed conflict in contravention of applicable international law,

*Reiterating* that the voluntary, safe and sustainable return of refugees and internally displaced persons will be an important factor for the consolidation of peace in Libya,

*Expressing* concern at the illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, from Libya, in the region and its potential impact on regional and international peace and security,

*Stressing* that national ownership and national responsibility are key to establishing sustainable peace and that it is the primary responsibility of national authorities to identify their priorities and strategies for post-conflict peacebuilding,

*Stressing* the need for the United Nations to work actively with the Libyan authorities to identify and support delivery of the priorities and strategies for postconflict peacebuilding,

*Reaffirming* that the United Nations should lead the coordination of the efforts of the international community in supporting the Libyan-led transition and rebuilding process aimed at establishing a democratic, independent and united Libya, and *appreciating* the assistance of the United Nations Support Mission in Libya in convening recent workshops with the Libyan government to identify national needs and priorities,

*Noting* the centrality of credible elections to a peaceful transition in Libya, *encouraging* the taking of all necessary steps in this regard, and *welcoming* the adoption of a Libyan national electoral law on 28 January 2012 and the establishment of an Electoral Commission on 12 February 2012,

*Supporting* Libya's intention to strengthen regional security and *taking note* of their proposal to host a regional security conference,

*Commending* the Libyan authorities for engaging with the International Monetary Fund and World Bank on conducting an assessment of Libya's public financial management

framework, and *reiterating* its request that the Committee established pursuant to resolution 1970 (2011) be informed of the results of that assessment,

*Taking note* of the Report of the Secretary-General on the United Nations Support Mission in Libya (S/2012/129), including the recommendation for the modification and 12 month extension of the UNSMIL mandate, and *recalling* the letter of 6 March 2012 from Mr. Abdurraheem Al-Kib, Prime Minister of Libya, to the Secretary-General (S/2012/139),

*Taking note* of the final report of the Panel of Experts submitted pursuant to paragraph 24 (d) of resolution 1973 (2011) and the findings and recommendations contained therein,

*Taking note* of its briefing by the High Commissioner for Human Rights on 25 January 2012 and the report of the International Commission of Inquiry on Libya to the Human Rights Council of 2 March 2012 (A/HRC/19/68),

*Mindful* of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Welcomes* the recent positive developments in Libya which will improve the prospects for a democratic, peaceful and prosperous future for its people;

2. *Looks forward* to free, fair and credible elections in June 2012 to establish a Constituent Assembly, and *reiterates* the need for the transitional period to be underpinned by a commitment to democracy, good governance, rule of law, national reconciliation and respect for human rights and fundamental freedoms of all people in Libya;

3. *Calls upon* the Libyan authorities to promote and protect human rights, including those of women and people belonging to vulnerable groups, to comply with their obligations under international law, including international humanitarian law and human rights law, and *calls for* those responsible for serious violations of such law, including sexual violence, to be held accountable in accordance with international standards, and *urges* all Member States to cooperate closely with the Libyan authorities in their efforts to end impunity for such violations;

4. *Expresses* grave concern at continuing reports of reprisals, arbitrary detentions without access to due process, wrongful imprisonment, mistreatment, torture and extrajudicial executions in Libya and *calls upon* the Libyan authorities to take all steps necessary to prevent violations of human rights, *underscores* the Libyan authorities' primary responsibility for the protection of Libya's population, as well as foreign nationals, including African migrants, and *calls for* the immediate release of all foreign nationals illegally detained in Libya;

5. *Encourages* Libya and neighbouring states to engage in order to establish regional cooperation aimed at stabilization of the situation in Libya and to prevent former Libyan regime elements from using the territories of such States to plan, fund or carry out violent or other illicit acts to destabilize Libya and the states in the region, and notes that such cooperation would benefit stability in the Sahel region;

#### **United Nations Mandate**

6. *Decides* to extend the mandate of the United Nations Support Mission in Libya (UNSMIL) for a further period of 12 months, subject to review within 6 months, under the leadership of a Special Representative of the Secretary-General, and *decides further* that the modified mandate of UNSMIL, in full accordance with the principles of national ownership, shall be to assist the Libyan authorities to define national needs and priorities throughout Libya, and to match these with offers of strategic and technical advice where appropriate, and support Libyan efforts to:

(a) manage the process of democratic transition, including through technical advice and assistance to the Libyan electoral process and the process of preparing and establishing a new Libyan constitution, as set out in the National Transitional Council's Constitutional Roadmap, and assistance that improves institutional capacity, transparency and accountability, promotes

the empowerment and political participation of women and minorities and supports the further development of Libyan civil society;

(b) promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable groups, such as children, minorities and migrants, including through assisting the Libyan authorities to reform and build transparent and accountable justice and correctional systems, supporting the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation, support to ensure the proper treatment of detainees and the demobilization of any children remaining associated with revolutionary brigades;

(c) restore public security, including through the provision of appropriate strategic and technical advice and assistance to the Libyan government to develop capable institutions and implement a coherent national approach to the integration of ex-combatants into Libyan national security forces or their demobilization and reintegration into civilian life, including education and employment opportunities, and to develop police and security institutions that are capable, accountable, respectful of human rights and accessible and responsive to women and vulnerable groups;

(d) counter illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, clear explosive remnants of war, conduct demining programmes, secure and manage Libya's borders, and implement international conventions on chemical, biological and nuclear weapons and materials, in coordination with the relevant United Nations agencies, the Organization for the Prohibition of Chemical Weapons, and international and regional partners;

(e) coordinate international assistance and build government capacity across all relevant sectors set out in relation to paragraphs 6 (a) to (d), including by supporting the coordination mechanism within the Libyan government announced on 31 January 2012, advice to the Libyan government to help identify priority needs for international support, engaging international partners in the process wherever appropriate, facilitation of international assistance to the Libyan government, and establishing a clear division of labour and regular and frequent communication between all those providing assistance to Libya;

7. *Encourages* UNSMIL to continue to support efforts to promote national reconciliation, inclusive political dialogue and political processes aimed at promoting free, fair and credible elections, transitional justice and respect for human rights throughout Libya;

#### **Arms Embargo**

8. *Decides* to terminate the authorization granted in paragraph 13 of resolution 1973 (2011) to Member States to use all measures commensurate to the specific circumstances to carry out inspection pursuant to that paragraph, *decides* further to terminate paragraph 14 of that resolution, and *underscores* the importance of the full implementation of the arms embargo imposed in paragraphs 9 and 10 of resolution 1970 (2011), as modified by resolution 2009 (2011);

#### **Asset Freeze**

9. *Directs* the Committee, in consultation with the Libyan authorities, to review continuously the remaining measures imposed by resolutions 1970 (2011) and 1973 (2011), as modified by resolution 2009 (2011), with respect to the Libyan Investment Authority (LIA) and the Libyan Africa Investment Portfolio (LAIP), and *decides* that the Committee shall, in consultation with the Libyan authorities, lift the designation of these entities as soon as practical to ensure the assets are made available to and for the benefit of the people of Libya;

#### **Panel of Experts**

10. *Decides* to extend and modify the mandate of the Panel of Experts, established by paragraph 24 of resolution 1973 (2011), and *decides further* to adjust the mandate to create for a period of one year, in consultation with the Committee and taking into account the

current areas of activity, a group of up to 5 experts (“the Panel”) under the direction of the Committee to carry out the following tasks:

- (a) assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011);
- (b) gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011), 1973 (2011) and 2009 (2011), in particular incidents of non-compliance;
- (c) make recommendations on actions that the Council, the Committee, the Libyan authorities or other States may consider to improve implementation of the relevant measures;
- (d) provide to the Council an interim report on its work no later than 90 days after the Panel’s appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

11. *Urges* all States, relevant United Nations bodies, including UNSMIL, and other interested parties, to cooperate fully with the Committee and the Panel, in particular by supplying any information at their disposal on the implementation of the measures decided in resolutions 1970 (2011) and 1973 (2011), and modified in resolution 2009 (2011), in particular incidents of non-compliance;

12. *Encourages* the Panel, while mindful of UNSMIL’s responsibility for assisting the Libyan authorities to counter illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, and to secure and manage Libya’s borders, to continue its investigations regarding sanctions non-compliance, including illicit transfers of arms and related materiel to and from Libya and the assets of individuals subject to the asset freeze established in resolutions 1970 (2011) and 1973 (2011), and modified in resolution 2009 (2011), and *encourages* UNSMIL and the Libyan authorities to support Panel investigatory work inside Libya, including by sharing information, facilitating transit and granting access to weapons storage facilities, as appropriate;

#### **Reporting and Review**

13. *Expresses* its intent to review the mandate of the Committee in the event that the measures imposed in resolutions 1970 (2011) and 1973 (2011), and modified in resolution 2009 (2011) and in this resolution, should be lifted by a future decision of the Security Council;

14. *Requests* the Secretary-General to report to the Security Council on the implementation of this resolution, including all elements of UNSMIL’s mandate, every 60 days;

15. *Also requests* the Secretary-General to report to the Security Council following the elections of a Constituent Assembly on steps taken by UNSMIL to engage with the new Libyan government in order to ensure that it continues effectively to support Libya’s specific needs, with a view to reviewing and adjusting the mandate as necessary;

16. *Decides* to remain actively seized of the matter.

# SAMPLE ANSWER

Prof. Dr. Urs Saxer

Fall Semester 2013

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## International Organizations

**Exam of January 16<sup>th</sup>, 2014**

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### Question 1 (30%):

There is no generally agreed definition of the term ‘supranational organization’.

The basic principle and at the same time the main difference to traditional organizations is a permanent transfer of powers (political, law-making etc.) / sovereignty rights in certain policy areas by states to a common institution whose organs exercise and administrate these powers. The main features of supranational organizations stem from and are consequences of this transfer.

These features include:

- The transfer of powers creates a genuine power base for and of the institution.
- The institution/ organization is a subject of IL
- Partial integration of policies and law-making in certain policy areas; idea of functional integration
- Creation of an own, independent legal system
- Power to adopt laws binding the organs of the organizations as well as the member states, having supremacy over the national law
- Much of the law promulgated by the organs of the supranational organization may be directly effective, is directly applicable in the member states, also to individuals; law-making with direct effect / directly applicable to individuals → no need to transform rules in domestic law
- Individuals may invoke the law of the supranational organization against the member states and against the organs of the organizations
- Decisions can be taken and laws may promulgated also by majority vote.
- Organs should not entirely depend on the cooperation of the MS; at least partly independent organs exercise these powers. → Some of the supreme organs are independent from the member states, do not follow instructions and are composed of independent individuals
- Institutional architecture securing policy-/law-making and the rule of law, independent courts with mandatory powers

Other features sometimes mentioned (additional points):

- Power to enforce decisions, even without the cooperation of the MS
- Some financial autonomy

- No possibility of unilateral withdrawal of a MS (controversial)

Main differences to traditional organizations:

Supranational organizations create close legal and political ties between the member states, leading to an increasing integration among them and giving them a legal nature between a federation and a confederation of states

- Whereas traditional IOs base on the respect for sovereign equality of members, sovereignty of the member states of a supranational organization is less important because the members have transferred some of their sovereign powers to the supranational organization.
- Whereas traditional IOs have a strong structural, political and financial member-dependency, supranational IOs have a more genuine power basis and some organs independent of the member states.
- Whereas traditional IOs foremost co-ordinate the activities / policies of their members in a specific area, supranational IOs define and implement their own policies and laws.
- Whereas member states of traditional IOs do not transfer some of their sovereign powers to the IO they do this as members of supranational IOs.
- Whereas in traditional organizations often consensus is required for binding decisions and enacting laws, in supranational organizations law- and decision-making usually is made based on majority votes.
- Whereas traditional organizations usually do not have the power of enacting laws binding MS and/or individuals, supranational organizations have this power.

### **Question 2 (30%):**

The issue here is whether the IBRD as an economic organization 1) has the power to combat AIDS as a disease with considerable adverse effects on the economy of a group of particularly affected member states, and 2) may establish an advisory body with the purpose to discuss and coordinate the activities against AIDS. These issues refer to the powers of an international organizations.

International organizations serve certain purposes; they get also the powers to achieve these purposes. Their concrete powers depend on the regulations in the constituent instruments, including the construction of these regulations by their organs. The starting point is therefore always the interpretation of the constituent instrument of an organization. In the present case, one has to interpret the Agreement establishing the IBRD. This Agreement is the legal basis of the IBRD and regulates inter alia the purpose of the organization and the powers of the IBRD's organs.

The proper construction of treaties establishing international organizations has to observe the following rules and doctrines:

The general rules of treaty interpretation according to Arts 31-33 VCLT apply also to the constituent instruments of international organizations. In addition, specific rules have been developed in the practice of international organizations and of courts which take into account

that these constituent instruments establish institutions is are usually living organism, and that the constitution of an institution is therefore very often evolutionary in nature.

The interpretation starts with a textual approach, based on the ordinary meaning of the words used in the treaty, combined with a teleological interpretation. Usually, a more goal-oriented approach with the teleological interpretation prevails over other modes of interpretation. Therefore, the interpretation is often more dynamic, compared at least to ordinary treaty interpretation.

As to the powers of an organization, some particular doctrines were developed. Also here interpretation starts with the text, so basically with the powers explicitly regulated in the founding treaty. However, the explicitly attributed powers often do not suffice to enable an international organization to perform properly. Therefore, the following doctrines are usually applied:

- The so-called “effet utile”-doctrine (doctrine of the ECJ) advocating a mode of interpretation to make an organization’s goals possible; according to this doctrine, international organization shall have those powers necessary to guarantee the treaty rules their ‘effet utile’; therefore an interpretation to guarantee their fullest effect is required.
- The doctrine of implied powers. This doctrine is applied in federal states, in particular by the US Supreme Court. It is a way to fill in powers lacking in an organizations statue to enable the organization to reach its purpose. The doctrine is derived from the particular nature of treaties establishing international organizations and advocates a constitution-like mode of interpretation. It says that not all the powers are explicitly mentioned in an IO’s constitution and that there are implied powers to enable an IO to fulfill its functions effectively; “Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of duties.” Powers may thus be implied if they can be hooked up to the purpose of the organization.
- The doctrine of inherent powers claims that there are powers inherent to an IO, emanating from the international legal personality. Thus, organizations, once established, possess inherent powers to perform all those acts which they need to perform to attain their aims, because they inhere to organizationhood.

As to the concrete questions and arguments:

1) It is true that the respect for the domaine reserve of states still is a general principle of the law of international organizations and indeed binds international organizations (see, e.g. Art. 2 UNC). However, the domaine reserve is, due to globalization, increasingly shrinking. As soon as an issues has become internationalized, based e.g. on international treaties and decisions of international bodies, the domaine reserve is no more affected.

AIDS is certainly not a purely internal matter of affected states but, due to tourism and migration, also a global problem. It has devastating effects in some World areas, in particular

in Africa. This is why the UN SC characterized in a resolution AIDS as a threat to international peace. Therefore, from that point of view, is the proposal certainly legal.

2) Sovereign equality of states belongs to the basic principles of the law of international organizations. Also the organizations are bound by this principle (cf. Art. 2 of the UN Charter). However, the principle does not require an absolute equal treatment of states. There are many instances of deviations from the principle, such as, e.g. with regard to the financial contributions to organizations, the weighting of votes in some organizations, or the distinction between plenary and non-plenary organs. Such differentiations do, according to the unanimous opinion in legal doctrine and international practice, not violate the principle.

The Council would be composed of representatives of some member states, some of them particularly affected by AIDS, by representatives of other organizations with a particular interest in the subject, and of experts. The Council will be limited to an mere advisory role. Its establishment does not violate the principle of sovereign equality because non-plenary organs are permissible under the principle, and the Council would only have an advisory role, thus may not make decisions with ramifications on the rights and/or duties of the member states.

3) Here the issues is whether an international organizations's executive organ representing only a part of the member states may create subsidiary organs without explicit basis in the organization's constituent treaty. This is certainly the case. First of all, an organization may regulate its own internal organization and may also enact laws for this purpose. The establishment of an internal advisory body constitutes a measure of internal organization and is therefore principally permissible. The question, however, is whether a non-plenary organ such as the Executive Directors may establish it. It may so. An advisory body is designed to help the organ in the process of decision-making by providing it with input, information and opinions. It therefore serves the purposes of the organ. The power to create such a body may be qualified either as an inherent power, because it is a power strongly connected with organizationhood as well as with the functions of organs of international organizations, or as an implied power because the Council may make pivotal contributions to the activities designed to combat AIDS. First of all, the Council encompasses the countries particularly affected by AIDS as well as some highly developed countries which have the know-how and the financial and other resources as to combating AIDS. In addition, because of the presence of representatives of other global and regional organizations, the Council may help to coordinate the efforts and allow exchanges of views, experiences and know-how. Finally, the experts may express their views as to the measures to be taken. All together, the Executive Directors may establish such a Council provided that the IBRD has the power to combat AIDS.

4) Whether the IBRD has the power to combat AIDS depends on the interpretation of the Agreement establishing the IBRD, in particular Art. 1 stating the purposes of the Bank. The main purpose is explained in (i): "the reconstruction and development of territories of members by facilitating the investment for productive purposes.." (iii) mentions "raising productivity, the standard of living ..". The IBRD was established shortly before the end of WW II. It is clear that this had an important impact on the wording of Art. 1. It becomes clear, however, that one of the main goals of the Bank is to assist less developed countries and to help these countries to develop their economy. This main goal has to be interpreted against

the background of nowadays' needs and problems. This is also the consequence of a teleological construction of treaties establishing international organizations.

AIDS is, as already mentioned, in some parts of the World a serious impediment to prosperity and general welfare and may undermine a country's economic force. In addition, it may have an adverse effect on foreign investments. Against this background, activities against AIDS are within the general purpose of the IBRD as long as the measures are linked to the IBRD's activities. To combat AIDS helps the economy of less developed countries.

The IBRD is not confined to the measures mentioned in Art. 1 (loans etc.) and regulated in more detail in subsequent provision of Agreement but may decide, based on effet util and the doctrine of implied powers on further measures as long as these serve to advance its main purpose. The establishment of an advisory Council certainly is within the limits set by the Agreement and therefore, in view of its purpose, legitimate. It is to be considered as an implied power of the IBRD because it is a very useful tool to further the economy of member states suffering from AIDS.

### **Question 3 (40%):**

1.) The general rules as to the legal nature of SC Res are the following:

Starting points of an analysis are the wording and the legal basis mentioned in a resolution

- Procedural resolutions and those pertaining to UN-internal matters are legally binding (e.g. establishment of a PKO)
- Resolutions based on Chapter VI are usually non-binding recommendations
- Resolutions based on Chapter VII are usually binding (see, however, recommendations based in Art. 39 UNCh)
- Provisional measures based on Art. 40 UNCh are binding
- Binding decisions directly based on Art. 24 and 25

In the practice of the SC resolutions adopted under Chapter VII often contain paragraphs with different legal effect. The application of Chapter VII simply means that there is, as determined by the Security Council, a threat to peace, a breach of peace or an act of aggression (cf. Art. 39 UNC). This does nothing say as to the legal force of a paragraph as part of a resolution adopted under Chapter VII. Art. 39 of the Charter provides also for recommendation, not only for decisions. This makes clear that the Charter allows, under Chapter VII, for different measures with different legal effects.

Basically, one has to rely on the wording of a resolutions to find out what legal force / effect a paragraph has. The analysis is confined to the operative paragraphs and does not include the restatements at the outset of the resolution because these restatements are not adopted under Chapter VII of the Charter, are clearly not binding and are usually not addressed to any parties, express the intentions of the SC and serve therefore foremost as an auxiliary means for the interpretation of resolutions in view of the SC's intentions.

Circumscriptions such as “Welcomes”, “Looks forward”, “reiterates”, “encourages”, “expresses concern” stand for non-binding statements of the SC. Therefore, para. 1 to 5 are basically non-binding. This is different as to para. 6. “Decides” makes clear that this part of the SC Res contains binding decisions based on Chapter VII. The UN Mandate of the UNSMIL could be qualified as an internal and/or procedural matter and would therefore be binding anyway, however, by adopting it under Chapter VII, the binding nature is extended also to third parties and the Mandate also becomes binding for, e.g., the member states. Therefore, also para. 8 terminating authorizations to member states in the context of an arms embargo is binding. The same is true with regard to paras 9 and 10.

2.) The following types of peace-keeping activities exist:

- Conflict prevention and mediation
- Peace-keeping
- Peacemaking
- Peace enforcement
- Peace-building

The present operation takes place after the violent overthrow of the Kaddafi regime. As stated in the non-operative part of the Res, the goal is to stabilize Libya and to secure a peaceful transition to a democratic government. These are goals of a peace-building operation. Peace-building may be defined as follows:

Peace-building aims to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development. It is a complex, long-term process of creating the necessary conditions for sustainable peace. Peace-building measures address core issues that affect the functioning of society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions.

The mandates of peace-building operations usually are:

- Lead states or territories through a transition to stable government, based on democratic principles, good governance and economic development
- Disarmament, demobilization and reintegration of ex-combatants;
- Mine action;
- Security sector reform and other rule of law-related activities;
- Protection and promotion of human rights;
- Electoral assistance;
- Support for the restoration and extension of State authority;
- Promotion of social and economic recovery and development.

In the present case, the mandate is (para. 6 SC Res):

- Manage the process of democratic transition (a)
- Promote the rule of law and protect human rights (b)
- Establishment of an independent judiciary (b)

- Restore public security, demobilization of combatants and integrate them into society (c)
- Counter illicit proliferation of arms (d)
- Generally to build government capacity (e)

3.) The SC stressed the impact of human rights, rule of law and democracy in solving conflicts, in particular internal conflicts. Their observance is a prerequisite to stabilize a country. These standards are important, however they do not all have a clear basis in international legal norms. Human rights are of course enshrined in many global and regional conventions, are to a degree part of customary international law and some have even the nature of *ius cogens*. It is by far less clear whether rule of law at large and/or democracy as a legal obligation of states have a basis in international law.

References in SC Res to these standards are made on an ad-hoc-basis and refer to a particular conflict. They are usually no references to particular norms of international law, with the exception, maybe, of references to the conventions on humanitarian law (Geneva Conventions and Additional Protocols). Their legal force, i.e. their binding nature depends on the specific resolutions and their wording. They might be binding, based on Chapter VII, or mere recommendation in the sense of a desirable goal. Thus, it basically depends on the concrete resolutions.

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