
International Organisations
January 7th, 2015, 5-7 p.m.

Duration: 120 minutes

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains 7 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	20% of the total
Question 2	30% of the total
Question 3	50% of the total

Total	100 %
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For the proper allocation of your time, please note the different weight of the questions.

We wish you a lot of success!

Question 1 (20%)

- a) (10%) What are the main features of supranational organisations? Please explain this based on the example of the European Union.
- b) (10%) What role play parliaments of international organisations? Give two concrete examples.

Question 2 (30%)

In 2011 Dominique Strauss-Kahn, then the Managing Director of the International Monetary Fund (IMF) and promising Socialist candidate for the French Presidency, got arrested by the US Police at JFK Airport, New York, when he sat already in an airplane scheduled for Paris, based on accusations of having raped a chambermaid of a hotel in New York where he had stayed overnight as part of a private journey.

His attorneys protested against their client's detention and claimed that the US authorities are barred from ordering compulsory measures against their client due to his leading position in an international organisation of which the USA is a member. They based their claim on the Articles of Agreement of the IMF, adopted in 1944, as well as on what they called "the steady global practice and customary law as to the rights and immunities of officers of international organisations". They claim that to hold otherwise would give the host state of an international organisation, but also to other states, the power to exercise undue pressure on international organisations by instigating unjustified proceedings against their highest officials.

Please discuss the legality of Strauss-Kahn's detention, this also based on the following articles of the IMF Agreement:

Article IX: Status, Immunities, and Privileges

Section 1. Purposes of Article

To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities, and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2. Status of the Fund

The Fund shall possess full juridical personality, and in particular, the capacity:

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property; and
- (iii) to institute legal proceedings.

Section 3. Immunity from judicial process

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4. Immunity from other action

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Fund shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, Section 3(j), advisors of any of the foregoing persons, officers, and employees of the Fund:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;
- (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements, and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials, and employees of comparable rank of other members.

Article XII Organisation and Management

Section 4. Managing Director and staff

- (a) The Executive Board shall select a Managing Director who shall not be a Governor or an Executive Director. The Managing Director shall be chairman of the Executive Board, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Board so decides.
- (b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.
- (c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of these functions.
- (d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Question 3 (50%)

Please find below excerpts from a SC Res adopted in 2013 on the situation in Mali, an almost failed state characterized by a very weak central government fighting against rebel groups, some of them belonging to the Al-Qaida-network, and by an intervention of French troops based on an invitation of the Mali Government.

Please analyze the following:

1. (20%) The entire SC Res was adopted 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. (10%) 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 Mali according to the resolution? What are the usual tasks of such operations?
3. (20%) As to the use of force: What is the relationship between the SC conflict management and the use of force according to the resolution? Please answer this question by specifying
 - how the resolution's provisions bind the parties to the conflict as to the use of force;
 - whether and, if allowed to do so, under what circumstances MINUSMA may use military force in fulfilling its mandate;
 - whether and, if allowed to do so, under what circumstances France may use military force;
 - whether France may use force based just on a further request of the Mali Government without involvement of and / or authorization by the UN.

Resolution 2100 (2013)

**Adopted by the Security Council at its 6952nd meeting, on
25 April 2013**

The Security Council,

Recalling its resolutions....

Reaffirming its strong commitment to the sovereignty, unity and territorial integrity of Mali,

Reaffirming the basic principles of peacekeeping, including consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate, and *recognizing* that the mandate of each peacekeeping mission is specific to the need and situation of the country concerned,

Condemning strongly the offensive launched on 10 January 2013 by terrorist, extremist and armed groups towards the south of Mali and *stressing* that terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States, and regional and international organizations to impede, impair, and isolate the terrorist threat, and *reaffirming* that terrorism could not and should not be associated with any religion, nationality or civilization,

Welcoming the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of terrorist, extremist and armed groups towards the south of Mali and *commending* the efforts to restore the territorial integrity of Mali by the Malian Defence and Security Forces, with the support of French forces and the troops of the African-led International Support Mission in Mali (AFISMA),

Stressing the need to work expeditiously toward the restoration of democratic governance and constitutional order, including through the holding of free, fair, transparent and inclusive presidential and legislative elections and *emphasizing* the importance for the transitional authorities of Mali to move swiftly in a process of inclusive dialogue and active engagement with Malian political groups, including those who have previously advocated independence, are prepared to cease hostilities, have cut off all ties with terrorist organizations and who recognize, without conditions, the unity and territorial integrity of the Malian State,

.....

Determining that the situation in Mali constitutes a threat to international peace and security,

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

....

4. *Demands* that all rebel armed groups in Mali put aside their arms and cease hostilities immediately and *urges* all such parties in Mali who have cut off all ties with terrorist organizations such as AQIM, MUJAO, Ansar Eddine and associated terrorist groups and who recognize, without conditions, the unity and territorial integrity of the Malian State, and the transitional authorities of Mali to engage expeditiously in an inclusive negotiation process, facilitated by the Secretary-General, in particular through his Special Representative for Mali when appointed as referred to in paragraph 11 below, in close collaboration with the AU, ECOWAS and the EU Special Representative for the Sahel;

5. *Calls upon* the international community, through the Support and Follow-Up Group on the Situation in Mali, to meet regularly in Mali and, as may be required, outside Mali, to assist the transitional authorities of Mali to implement the transitional road map and monitor the progress made in this regard and to continue contributing to the promotion of lasting peace, stability, and reconciliation in Mali...

...

7. *Decides* to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), *requests* the Secretary-General to subsume the United Nations Office in Mali (UNOM) into MINUSMA, with MINUSMA assuming responsibility for the discharge of UNOM's mandated tasks, as of the date of adoption of this resolution,

.....

11. *Requests* the Secretary-General to appoint expeditiously a Special Representative for Mali and Head of Mission of MINUSMA,...

12. *Decides* that MINUSMA will comprise up to 11,200 military personnel, including reserve battalions capable of deploying rapidly within the country as and when required, and 1,440 police personnel, *calls upon* Member States to provide troops and police with adequate capabilities and equipment;

.....

16. *Decides that the mandate of MINUSMA shall be the following:*

(a) *Stabilization of key population centres and support for the reestablishment of State authority throughout the country*

.....

(ii) To support the transitional authorities of Mali to extend and re-establish State administration throughout the country;

(iii) To support national and international efforts towards rebuilding the Malian security sector, especially the police and gendarmerie through technical assistance, capacity-building, co-location and mentoring programmes, as well as the rule of law and justice sectors, within its capacities and in close coordination with other bilateral partners, donors and international organizations engaged in these fields, including the EU;

....

(b) *Support for the implementation of the transitional road map, including the national political dialogue and the electoral process*

(i) To assist the transitional authorities of Mali to implement swiftly the transitional road map towards the full restoration of constitutional order, democratic governance and national unity in Mali;

.....

(iv) To support the organization and conduct of inclusive, free, fair and transparent presidential and legislative elections, including through the provision of appropriate logistical and technical assistance and effective security arrangements;

(c) *Protection of civilians and United Nations personnel*

(i) To protect, without prejudice to the responsibility of the transitional authorities of Mali, civilians under imminent threat of physical violence, within its capacities and areas of deployment;

...

(d) *Promotion and protection of human rights*

....

(e) *Support for humanitarian assistance*

In support of the transitional authorities of Mali, to contribute to the creation of a secure environment for the safe, civilian-led delivery of humanitarian assistance, in accordance with humanitarian principles, and the voluntary return of internally displaced persons and refugees in close coordination with humanitarian actors;

(f) *Support for cultural preservation*

.....

(g) *Support for national and international justice*

To support, as feasible and appropriate, the efforts of the transitional authorities of Mali, without prejudice to their responsibilities, to bring to justice those responsible for war crimes and crimes against humanity in Mali, taking into account the referral

by the transitional authorities of Mali of the situation in their country since January 2012 to the International Criminal Court;

17. *Authorizes* MINUSMA to use all necessary means, within the limits of its capacities and areas of deployment, to carry out its mandate as set out in paragraphs 16 (a) (i) and (ii), 16 (c) (i) and (iii), 16 (e), 16 (f) and 16 (g) and *requests* MINUSMA's civilian and military components to coordinate their work with the aim of supporting the tasks outlined in paragraph 16 above;

18. *Authorizes* French troops, within the limits of their capacities and areas of deployment, to use all necessary means, from the commencement of the activities of MINUSMA until the end of MINUSMA's mandate as authorized in this resolution, to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General, *further requests* France to report to the Council on the implementation of this mandate in Mali and to coordinate its reporting with the reporting by the Secretary-General referred to in paragraph 34 below and *decides* to review this mandate within six months after its commencement;

19. *Urges* all parties in Mali to cooperate fully with the deployment and activities of MINUSMA, in particular by ensuring their safety, security and freedom of movement with unhindered and immediate access throughout the territory of Mali to enable MINUSMA to carry out fully its mandate;

....

29. *Urges* Sahel and Maghreb States to enhance interregional cooperation and coordination in order to develop inclusive and effective strategies to combat in a comprehensive and integrated manner the activities of terrorist groups, namely AQIM, MUJAO, and Ansar Eddine, and prevent the expansion of those groups as well as to limit the proliferation of all arms and transnational organized crime and, in this regard, *takes note of* the outcome of the Conference organized by CTED and CTITF in Rabat on the Cooperation on Border Control in the Sahel and the Maghreb;

...

33. *Requests* the Secretary-General and the transitional authorities of Mali to conclude, within 30 days of the adoption this resolution, a status-of-forces agreement with regards to MINUSMA, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel and *decides* that pending the conclusion of such an agreement, the model status-of-forces agreement dated 9 October 1990 (A/45/594), shall apply provisionally;

....

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

SAMPLE ANSWER

Prof. Dr. Urs Saxer

Fall Semester 2014

International Organizations

Exam of January 7th, 2015

Question 1 (20% = 6 Points):

a) (10% = 3 Points)

1 Point:

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. In the European Union, these powers are enumerated in the basic treaties establishing the EU (TEU and TFEU)

1/2 Extra Point:

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

The main features include (maximum 2 points to be achieved with mentioning 4 features, plus ½ extra point for 2 und 1 extra point for 4 additional features):

- The institution/ organization is a subject of IL → is regulated in the TEU
- Partial integration of policies and law-making in certain policy areas; idea of functional integration → regulated in the TEU
- 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 → Law-making by the Council together with the Parliament based on the initiative of the Commission
- 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. → weighted votes and qualified majorities in the Council and majority vote in the parliament
- 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 → Commission
- Institutional architecture securing policy-/law-making and the rule of law, independent courts with mandatory powers → ECJ

b) (10% 3Points)

½ to 1 extra Point:

Parliaments of International Organizations are rare. They do not belong to the typical structural features of International organizations. Usually, the body representing the member states in IO is the plenary organ, i.e. usually the General Assembly, composed of representatives of the members' governments. Parliaments are an attempt to overcome this dominance of the member states' executive branch and to introduce some elements of democratic legitimacy into the governance system of an IO.

½ Point: Parliament of the European Union

½ Point:

- Directly elected by the voters in the member states → direct democratic legitimacy (exception; usually, parliaments of IO are composed of representatives of the national parliaments)

½ Point

- Participates, together with the European Council, in the process of law-making of the EU

½ Extra Point

- Confirms the European Commission and may dismiss the Commission

½ Point: Parliamentary Assembly of the Council of Europe

½ Point

- Is composed of members of the national parliaments

½ Point

- May foremost make recommendations to the Committee of Ministers of the Council of Europe, participating in the process of drafting conventions

Question 2 (30% = 9 Points):

2 Points:

This case refers to the question of immunity of the main representatives of an international organization. Immunity is usually accorded to the IO as well as to the IO's representatives.

It includes also the immunity from the jurisdiction of a member state. This means that, as a principle, a state may not commence proceedings or enforce whatever administrative or other official measures against an IO or its representatives without the consent of the IO.

Immunity has its legal basis usually in the IO's constituent instrument and/or in separate agreements on the privileges and immunities and, in relation to the host state, in a headquarter agreement. Obligated parties are the members of the IO as part of their membership duties, sometimes also third states (not relevant here).

In the present case, the question is whether Dominique Strauss-Kahn (DSK), the highest officer of the IMF, could make an immunity claim or not. The accusations against DSK refer to an alleged private conduct of DSK during a private stay in New York. Thus, the immunity claim should bar the US authorities from implementing law enforcement measures against him in a context which was private in nature and had nothing to do with his official position in the IMF.

Document of reference of a legal analysis is the IMF Agreement which contains also rules on the privileges and immunities of the Fund and its officers. The USA are member of the IMF and therefore bound by the pertinent rules of the IMF agreement. There is no reference made to a separate agreement in the privileges and immunities or to a headquarter agreement. It depends therefore foremost on the proper construction of the IMF Agreement whether the immunity objection is available to DSK or not.

The starting point is therefore the interpretation of the constituent instrument of an organization, i.e., in the present case, of the IMF Agreement's rules on the privileges and immunities of the Fund and its officers.

Up to 2 Points for the following considerations:

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. These rules take into account that these constituent instruments establish

institutions which 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. These doctrines which are, however, not relevant in the present case, include the so-called “effet utile”-doctrine (doctrine of the ECJ), the doctrine of implied powers, and the doctrine of inherent powers.

Up to 2 Points:

Art. IX of the IMF regulating the status, immunities, and privileges of the IMF states in Section 1 that the Fund shall be accorded, to fulfill the functions with which it is entrusted, the status, immunities, and privileges as set forth in this Article in the territories of each member. The USA are a member. Therefore, these provisions apply.

As to the immunity from judicial process or other action, the Sections 2 and 3 refer to the “Fund, its property and its assets, wherever located and by whomsoever held” (Section 2), but not to the officers and the employees of the IMF. It is Section 8 regulating immunities of this category of persons. Therefore, an analogous application of Secs 2 and 3 to the IMF officers is excluded.

1 Point:

According to the pertinent Sec. 8, “[a]ll Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, Section 3(j), advisors of any of the foregoing persons, officers, and employees of the Fund: (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.”

Does this provision also apply to DSK as managing director of the IMF? This position is not explicitly mentioned in Sec. 8. However, this Section refers to the officers and employees of the Fund at large. In addition, the Managing director is the chief of the operating staff of the IMF (Sec. 4b) and therefore the main operating officer of the IMF and therefore should operate as independently of the member states as possible. In view of the purpose of the privileges and immunities as set forth in Sec. 1, the managing director is a fortiori entitled to the privileges and immunities according to the IMF Agreement.

1 Point:

However, Sec. 8 (1) accords to the employees and officers of the IMF immunity only “from legal process with respect to acts performed by them in their official capacity”. DSK’s conduct did clearly not refer to an act in an official capacity but was a private act. Therefore, based on a textual interpretation, DSK may not invoke immunity. Systematically as well as textually, an extensive interpretation of Sec. 8 (1) covering also private acts is excluded because of the clear difference of the immunity rules applicable to the IMF as an organization and its employees.

1 extra Point:

Another question is whether the IMF has established, in the course of the time, a practice derogating from the rule in Sec. 8 (1) and according immunity also to private conduct. Indeed, customary law may modify explicit rules of agreements establishing International Organizations. We do not know in the present case whether such a practice exists.

1 Point:

It is true that in many organizations there is a practice as to the rights and immunities of officers of international organisations” which includes private conduct in the immunity protection. However, such a general claim does not suffice to overcome the hurdle set by the wording of the IMF Agreement. One would have to prove a specific customary law basis within the IMF.

Question 3 (50% = 15 Points):

1.) (=6 Points)

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

1 extra Point for an overview:

- 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

½ Point:

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 says nothing 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.

½ Point:

Starting points of an analysis are the wording and the legal basis mentioned in a resolution to find out what legal force / effect a paragraph has.

1 extra Point:

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 party. They express the intentions of the SC and serve therefore foremost as auxiliary means for the interpretation of resolutions in view of the SC's intentions.

Circumscriptions such as “Welcomes”, “Looks forward”, “reiterates”, “encourages”, “expresses concern”, “calls upon” stand for non-binding statements of the SC.

- Therefore, paragraph 5 is basically non-binding. As an alternative, one could qualify it as a binding decision based on Articles 24 and 25 of the Charter (1/2 Point).
- Certainly non-binding is paragraph 12 insofar as member states are called up to provide military and police personnel, because there is no such duty of the member states under the UN Charter (1/2 Point).

“Demands” and “urges” usually refer to binding decisions.

- This is very clear, e.g. in paragraph 4: To cease hostilities is a basic duty in conflicts and is therefore binding based on Chapter VII (1/2 Point).
- Para 19 refers to the duties of the parties to cooperate with MINUSMA. Because this is part of the peace-keeping efforts of the UN SC, any infringement of this duty could create an additional threat to peace; therefore, this Paragraph is binding based on Chapter VII (1/2 Point).
- This is less clear as to paragraph 29 because of the very general nature of the duty mentioned in this paragraph It is more a duty based on Arts 24 and 25 (1/2 Point).

“Decides” and requests” is usually also a wording indicating a binding decision based on Chapter VII.

- The establishment of the MINUSMA (paragraph 7), its strength (paragraph 12) and its mandate (para 16) could be qualified as a binding internal and/or procedural decision (establishment of an auxiliary organ of the SC) 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., all the member states (1/2 Point).
- Para 18 as far as the reporting obligation of France is concerned is a binding decision, based on Chapter VII and/or Arts 24 and 25 (1/2 Point).

- Para 11 is a binding internal decision and not based on Chapter VII (1/2 Point).
- Para 18 at the end is also a binding internal decision and not based on Chapter VII (1/2 Point).

“Authorizes” denotes a binding decision. In the context of paragraphs 17 and 18 it becomes clear that “authorizes” means a binding decision based on Chapter VII, because these paragraphs contain authorizations to use force (1/2 Point).

2.) (= 3 Points)

The type of the peace-keeping operation is reflected in the mandate of the PKO, i.e. in paragraph 16 of the SC Res.

Up to 1 extra Point

The following types of peace-keeping activities exist:

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

1 Point:

The present operation takes place as part of efforts to combat terrorism in Mali, to stop internal armed fighting between rival groups and rebels and the army, and to stabilize the Government as well as the political system. As stated in the non-operative part of the Res, the goal is “the restoration of democratic governance and constitutional order, including through the holding of free, fair, transparent and inclusive presidential and legislative elections. These are goals of a peace-building operation.

½ extra Point:

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 effect 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:

For each feature ¼ Point up to 1 Point:

- 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 (paragraph 16 SC Res) (each feature ¼ Point up to 1 Point):

- Stabilization of the authority of state institutions and state administrations and to restore public security (a)
- Manage the process of democratic transition (b)
- Protection of civilians (c)
- Promotion of human rights (d)
- Humanitarian Assistance (e)
- Support for cultural preservation (f)
- Support for national and international justice (g)

3.) (= 6 Points)

1 Point:

The resolution is very clear as to the legitimacy of the use of force. Already at the beginning, in the restatements the SC condemns the offensive launched on 10 January 2013 by terrorist, extremist and armed groups towards the south of Mali and welcomes the military actions of France. In paragraph 4 of the Resolution's operative part, the rebel armed groups are asked, based on Chapter VII, to stop hostilities immediately. This is de jure and de facto a prohibition to use force based on a binding decision of the SC.

1 Point:

On the other hand, MINUSA as well as the French troops are authorized, in the Paragraphs 17 and 18, to use all necessary means to carry out the mandate (MINUSA) and to intervene in support of MINUSA but only if asked by the Secretary General (France).

2 Points:

The formula “all necessary means” includes, according to a steady practice of the Council, military force. For MINUSA, there is an authorization to use force only as to the implementations of paragraphs 16 (a) (i) and (ii), 16 (c) (i) and (iii), 16 (e), 16 (f) and 16 (g) of the Mandate. As to the authorization of France, the prerequisites are that the elements of MINUSMA are under imminent and serious threat and that there is a request of the Secretary-General. The authorization to use force is thus clearly limited. It becomes very clear from the provisions of the resolution that the SC wants to have control, through the Secretary-General who also is responsible for MINUSA, over the use of military force.

2 Points:

The question arises whether MINUSMA and/or France may use force on another basis. As to MINUSMA which is an auxiliary organ of the SC, no such basis is conceivable. However, the Government of Mali may ask France to intervene independent of MINUSMA. It is basically a sovereign right of a government to ask a foreign government for military assistance also in an internal conflict as long as this does not infringe the self-determination rights of some groups or of the people, of the population at large. In the restatements, reference is made to a French military intervention at the request of the Mali transitional authorities to stop an offensive of rebel forces.

Principally, such a request may, according to the concrete circumstances, still be valid. Nothing in the resolutions supports the proposition of a general prohibition to use force by the Mali transitional authorities and France.

1 extra Point: However, this may not refer to the tasks covered by the mandate of MINUSMA because this is regulated in the Resolution, including the use of force by MINUSMA and France. Outside the mandate of MINUSMA, a French intervention in support of the Mali transitional authorities is conceivable and also legal.

* * *