



Prof. Dr. iur Urs Saxer

fall semester / 2019

---

## International Organisations

**16 January 2020**

---

**Duration:** 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 6 pages and 4 main questions.

### Notes on marking

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

Question 1	10 points	10 %
Question 2	25 points	25 %
Question 3	30 points	30 %
Question 4	35 points	35 %
	<hr/>	<hr/>
Total	100 points	100 %

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



### Question 1 (10 points)

*What are the characteristics of a supranational organisation?*

Solution (max. 10 points)

- 2p: Member states transfer some of their powers to the supranational organization
- 2p: Power to adopt laws binding for and in the member states
- 1p: Laws of supranational organizations have supremacy over national law
- 1p: Much of the law adopted by the organs of the supranational organization may be directly effective, i.e. directly applicable in the member states
- 1p: The supreme organs are independent from the member states and do not follow instructions
- 1p: Often, decisions are taken by majority vote
- 1p: Often, they have independent courts with mandatory powers
- 1p: Funds independent from the member states
- 1p: Individuals may invoke the law of the supranational organization against the member states and against the organs of the organizations.
- 1p: for an example: EU; or an organizations with supranational features: UNSC, WTO, AU, Mercosur, UNASUR, CARICOM

### Question 2 (25 points)

*After the killing of ISIS-leader Abu Bakr al-Baghdadi in October 2019, some remaining ISIS-fighters managed to execute a terrorist attack in Berlin on 2 January 2020 which was comparable to the one in New York on 11 September 2001.*

*During a NATO meeting on 3 January 2020, Germany argued that Article 5 of the North Atlantic Treaty applies. Article 5 states: "The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area." Germany thus called on all other NATO member States to support German troops in their operation in Syria to neutralize the threat from ISIS.*

*Can NATO invoke collective self-defence under Article 5 of its constituent instrument?*

Solution: (max. 25 points)

- 1p: The question of self-defense is linked to Article 51 of the UN Charter and thus has to be analyzed in its light.
- 1p: Is the terrorist attack in Berlin on 2 January by ISIS an 'armed attack' which could trigger Art. 51 UN Charter and thus Art. 5 of the North Atlantic Treaty?



- 4p: The first time Article 5 was invoked was after the terrorist attacks on 11 September 2001. We know that the terrorist attack in Berlin was comparable to those on 9/11. Therefore, there is a precedent which seems to indicate that the case at hand represents a legitimate use of self-defense. However, most scholars consider that Art. 5 North Atlantic Treaty was illegally invoked after 9/11 for the reasons listed in the rest of this answer sheet.
- 2p: Usually under international law, a higher threshold of force is necessary to consider it an armed attack. Not every use of force under Art. 2(4) UN Charter is considered an 'armed attack' under Art. 51 UN Charter.
- 2p: Is the terrorist act 'occurring', i.e. is it still ongoing? Clearly, the terrorist attack is not ongoing.
- Is an immediate use of force necessary to counter the attack?
  - 2p: Because the terrorist act is not ongoing, the immediate use of force is not necessary to counter the attack.
  - 2p: It could, however, be discussed whether the use of force is necessary to prevent any future terrorist attack from occurring. The majority view is, however, that the armed attack has to 'occur', i.e. it has to be still ongoing and can thus not refer to future attacks.
  - 2p: The purpose of the right to self-defense is to push the attacker back before the UN Security Council can take any necessary action. Any action has to be proportionate. This is not the case here.
- Have Germany and other members reported their use of force to the UN Security Council?
  - 2p: This does not become evident from the text but it is a legal requirement to immediately report any act of self-defense to the UN Security Council according to Art. 51 UN Charter.
- Can an 'armed attack' (if it were considered to be one) even emanate from non-State actors such as ISIS?
  - 1p: Art. 51 does not explicitly state whether an armed attack can only come from a State or can also come from non-State actors.
  - 1p: Given that any non-State actors necessarily are located on the territory of a State, the question arises to what extent that State has to be connected to the non-State actors.
    - 1p: Some scholars argue that the State from where the attacks are carried out has to be 'unwilling or unable' to prevent terrorist attacks from occurring from its territory.
    - 1p: Other scholars argue that the State from where the attacks are carried out has to 'harbour' terrorists in order to invoke self-defense against non-State actors.
- 4p: Conclusion: There is one precedent indicating that collective self-defense can be invoked (after 9/11). It is, however, a weak precedent because both in 2001 and in 2020 it is debatable whether it amounted to an 'armed attack' and is clearly not 'occurring' and thus did not have to be pushed back. Since the core idea of the right to self-defense is that an ongoing armed attack gets pushed back before the international community can react, there is clearly no such urgency and thus NATO cannot invoke Art. 5.



### Question 3 (30 points)

*In October 2019 Turkey established a buffer zone at its border in Northern Syria. President Erdoğan's goal was to create a passage for repatriating Syrian refugees. The international community's response was clear: Turkey's intervention in Syria was widely seen as a violation of international law, in particular of the United Nations Charter.*

*Assume that after Turkey's intervention, the UN Security Council tried to adopt a resolution under Chapter VII demanding a cease-fire. Due to Russia's veto, however, the resolution could not pass. Two days later, the UN General Assembly passed a resolution demanding that Turkey's troops leave Syria within a week.*

*a) Can the UN General Assembly even pronounce itself on a matter relating to international peace and security if the UN Security Council is dealing with the situation? (16 points)*

#### Solution:

- 2p: According to Art. 24 UN Charter, the UNSC has the primary responsibility for the maintenance of international peace and security
- According to Art. 12 (1) UN Charter, "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."
  - o 1p: for mentioning Art. 12 UN Charter
  - o 2p: The UNGA cannot make a recommendation as long as the UNSC 'is exercising... the function assigned to it' → discuss whether this is the case or not.
  - o 2p: If the UNGA can pronounce itself, it can only do so by means of a non-binding recommendation, it cannot "demand" (in a binding way) a cease-fire.
- 2p: A possible way out of the deadlock is the Uniting for Peace resolution
  - o 3p: Subsidiary power of the GA to recommend (not to decide) collective measures in case of a deadlock in the UN SC (veto)
  - o 1p: This has been done before in
    - 1p: The Suez crisis (1956)
    - 1p: And the Congo conflict (1960/61)
  - o 1p: Most international lawyers today, however, argue that the Uniting for Peace resolution has no legal effect anymore

*b) What are the legal effects of the UNGA resolution? Independently of your answer given to 3a, assume that the UNGA was competent to pronounce itself on a cease-fire by adopting a resolution. (14 points)*

#### Solution:



- 3p: Art. 10 and 11 UN Charter, which concern the decision-making of the UNGA, refer to “recommendations”, not “obligations”.
  - 3p: UNGA resolutions do not have an external binding effect, i.e. do not bind Member States, they only have an internal binding effect.
  - 3p: This UNGA resolution concerns an external matter and is thus non-binding
  - 2p: If the UNGA resolution was adopted by a large majority, it could contribute to the formation of a customary international rule. This, in turn, would have a binding external effect.
  - 3p: Conclusion: if the UNGA resolution does not lead to the formation of customary law, it does not oblige any State to take any measures.
- 

#### Question 4 (35 points)

*You are a legal advisor to the International Monetary Fund’s (IMF) new Managing Director, Dr. Kristalina Georgieva, and are tasked to advise her on the following matter: over the last couple of years, global trade has decreased and financial instability increased. Members of the IMF are concerned. Many attribute the recent instability of the markets to the behaviour of some of the IMF’s member States. In particular, Alphastan and Betastan, two rising players in the global economy, have started to engage in competitive exchange depreciation. Some member States thus argue that Alphastan and Betastan should be sanctioned for their actions which threaten the stability of the global economy.*

*Concretely, they suggest that both Alphastan and Betastan shall not receive any further funds from the IMF. Other member States disagree and argue that such sanctions are not within the competence of the IMF. They argue that because there is no explicit provision in the IMF agreements as to sanctions (a claim which is correct), the decision not to pay any further funds to Alphastan and Betastan would be ‘null and void’. Your task is to answer the question whether such sanctions are within the competences of the IMF. Dr. Georgieva tasks you to base your legal analysis only on Article I of the IMF Agreement (you do not need any other provision of the IMF agreement for your answer). When making your argument, make use of the established methods of interpretation in international law.*

#### Article I IMF Agreement: Purposes

*The purposes of the International Monetary Fund are:*

- To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.*
- To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.*



- iii. *To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.*

Solution:

General remarks:

- A good answer to this question makes meaningful use of the methods of interpretation in international law and shows awareness of the strong interrelation between the IOs' competences/powers and their purpose. The outcome reached is not what mainly counts but the argument made to get there.

Powers of the IO and their relation to legal interpretation:

- 3p: IOs serve explicit purposes
- 3p: Powers of an IO depend on the regulations in an IO's constituent instruments. Starting point: the interpretation of the constituent instrument.
- 3p: IOs are organisms, and their constituent treaty is sometimes called a 'living instrument' → more dynamic interpretation than in other areas of international law
- 3p: Limits of an IO's power: ICJ *Reparation Case* (1949)
  - 1p: Majority opinion: those implicit powers that are essential for the performance of duties
  - 1p: Dissenting Opinion by Judge Hackworth: "Powers not expressed cannot be freely implied. Implied powers flow from a grant of express powers, and are limited to those that are 'necessary' to the exercise of powers expressly granted."

Interpretation: 3 points per valid argument (max. 21 points)

- Valid arguments using the established methods of interpretation in international law will be awarded points. Such arguments have to meaningfully refer to Art. 1 IMF Agreement and make good use of interpretative tools. The methods of interpretation of the Vienna Convention on the Law of Treaties are:
  - o Ordinary meaning:
    - e.g. an interpretation using the interpretative method of ordinary meaning may lead to the conclusion that sanctions are not explicitly mentioned in Art. 1 IMF Agreement and can thus not be taken.
  - o Context
    - e.g. a contextual interpretation could look at the whole article (and beyond), emphasising, for instance, that it is questionable whether sanctions (no further funds) would lead to the "maintenance of high levels of employment".
  - o Object and purpose / teleological interpretation
    - E.g. looking at the object and purpose of the IMF, the argument could be made that sanctions will ensure states will in the future not engage in competitive exchange depreciation anymore. Therefore, the purpose of the IMF are served by imposing the sanctions.
  - o Good faith



- E.g. an interpretation referring to 'good faith' may lead to the conclusion that the Members of the IMF are under an obligation to carry out the duties that have been agreed upon in its Statute in good faith. However, what exactly has been agreed upon will depend on other methods of interpretation (see above).
- Further methods of interpretation are:
  - Effet utile: Interpretation regarding the organization's goals and effectiveness to make these goals possible (doctrine of the ECJ)
    - E.g. once the goals of the IMF have been determined, an argument has to be made whether the sanctions give the fullest effect to these goals. Either sanctions are the only effective measure or, to the contrary, such sanctions would be counter-productive and instead lead to those financial problems that the IMF is tasked to prevent.
  - Implied power: the implied powers of an IO enable it to fulfill its functions effectively.
    - This interpretation is closer to the explicit text: for instance, does "to *avoid competitive exchange depreciation*" imply that the IMF has the competence to even sanction member States in order to achieve this goal? Possibly quote ICJ *Reparations Case* (1949): what is essential for the performance of duties?
  - Inherent power:
    - E.g. Powers inherent to an IO, emanating from the international legal personality → This type of interpretation is not as closely aligned with the text of the Statute. Instead, the question is whether the IMF as an organization as a whole is *inherently*, meaning by its very nature, competent to adopt sanctions, i.e. to refuse any further funds.