

## International Organisations

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Sample solutions

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### **Question 1: (15 points)**

- a) *What is an international organisation?*
- b) *What is an NGO?*
- c) *Are NGOs international organisations?*

### **Solution:**

**a)** Main characteristics of international organisations: 5 points max. → Each bullet one point

- An international treaty or another international legal instrument document (e.g. resolution of an IO) as the legal basis reflecting the will to establish a permanent institution for a common purpose
- States or IOs as members
- Must, according to the founding legal instrument, have an autonomous will distinct from the will of its members, have autonomous decision-making procedures and be vested with legal personality
- Organs capable to form a will of the IO and vested with the power to represent it internationally
- Sometimes: Power to adopt norms addressed to the members

Other requisites sometimes mentioned:

- Based on sovereign equality
- Limited transfer of powers from members to the IO

**b)** Definition of an NGO: 5 points max. → Each bullet one point

- General, public, but no sovereign purpose
- Established on private initiative
- Independent, voluntary association
- Institutional structure
- Headquarters
- Transnational activities
- Governed by the law of a state and not by IL

**c)** No, NGOs are not international organisations → 2p

NGOs, in contrast to IOs: → 1 point per bullet (max. 3)

- Are not endowed with governmental tasks
- Are not created by treaty

- Are not established under international law but national law
- Are created on private initiative

**Question 2: (25 points)**

*Please explain the significance of law-making activities by organs of the EU and refer in this context to the legal acts of the Union (“regulation”, “directive”, “decision”, “recommendation”, and “opinion”)*

General: → Each bullet 2 point

- The EU is a supranational organisation. This implies a transfer of powers from the member states to the Union. In the competences transferred there is, except of concurring powers according to the TEU, no more law-making on the national level, but on the supranational level. Therefore, law-making is very important because otherwise there would be a legal void in the competences transferred.
- Article 291 TFEU: Member States shall adopt all measures of national law necessary to implement legally binding Union acts (1p if source is not mentioned)
- Van Gend & Loos: EU law directly applicable in Member States and usually self-executing in MS (1p if case name not mentioned)
- Costa vs. Enel: EU law cannot be overridden by domestic law (1p if case name not mentioned)
- Simmenthal II: Community law’s effectiveness has to be guaranteed and any provision of national law which may conflict with it must be set aside (1p if case name not mentioned)

Organs:

- 2p: Parliament: Legislative and budgetary powers, together with the Council
- 2p: Council: Together with the Parliament legislative and budgetary powers
- 1p: Commission: Can propose the adoption of legislative acts to the Parliament and the Council

Legal acts: → 10 points (2 per act)

- Regulations: A "regulation" is a binding legislative act. It must be applied in its entirety across the EU and is directly applicable to individuals (→ supranationality)
- Directives: A "directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how. It is usually not directly applicable to individuals.

- Decisions: A "decision" is not a legislative, but an individual act binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable.
  - Recommendation: A "recommendation" is not binding. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation.
  - Opinion: An "opinion" is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional or economic and social viewpoint.
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**Question 3: (30 points)**

*The UN Security Council (UNSC) has passed a resolution under Chapter VII of the UN Charter calling for an arms embargo against Syria. In the same week, the UN General Assembly (UNGA) has passed a resolution urging all Member States to refrain from delivering weapons to Syria. The UNGA resolution passed with a 4/5 majority. South Africa has a prior agreement with Syria regarding the delivery of a large number of tanks, military planes and heavy guns. You are the Legal Advisor of the South African government and are tasked to answer the following questions:*

*a) Does the UN Security Council Resolution oblige South Africa to terminate or at least suspend its prior agreement with Syria? Why (not)? Please do not address issues of contract law.*

- Max. 10 points
- 2p: Conflicting obligations between the UN Charter and other obligations are regulated by Art. 103 UN Charter: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.
- 1p: Art 103 UN Charter: is the UNSC resolution covered? Is the UNSC resolution an "obligation" pursuant to Art. 103 UN Charter?
  - o 2p: Yes, because resolution is passed under Chapter VII
  - o 2p: Binding character of UNSC resolutions (Art. 25, 48 and 49 UN Charter)
- 2p: Conclusion: The UNSC resolution obliges South Africa to at least suspend its prior agreement with Syria until the UNSC has lifted the ban of delivering weapons to Syria.
- +1p for examining language ("calling for")

*b) Does the UN General Assembly Resolution oblige South Africa to terminate or at least suspend its prior agreement with Syria? Why (not)? Please do not address issues of contract law.*

- Max. 10 points
- 1p: This is a situation of conflicting obligations that is regulated by Art. 103 UN Charter
- 1p: Art 103 UN Charter: is the UNGA resolution covered? Is the UNGA resolution an “obligation” pursuant to Art. 103 UN Charter?
  - o 2p: Art. 10 and 11 UN Charter, which concern the decision-making of the UNGA, refer to “recommendations”, not “obligations”.
  - o 2p: UNGA resolutions do not have an external binding effect, i.e. do not bind Member States
  - o 2p: However, as the UNGA resolution was adopted by a 4/5 majority, it may be argued that this contributes to the formation of a customary rule of international law. Whether the practice of banning weapon exports to warring countries constitutes a sufficiently uniform and constant practice to form a customary rule would need to be discussed. Further, even if such a customary rule would exist, it would be doubtful whether it would be covered by Art. 103 UN Charter.
- 2p: Conclusion: if the UNGA resolution does not lead to the formation of customary law, it does not oblige South Africa to suspend or terminate its prior agreement with Syria.
- +1 Point for UNGA’s competence to adopt measures at the same time as SC

*c) Assume that the above-mentioned UNSC resolution obliged South Africa to suspend or at least terminate its prior agreement with Syria. Further assume that the UNGA has not passed any resolution. What enforcement measures of the UN are available against South Africa if this country continues the deliveries of military material to Syria?*

- Max. 10 points
- 1p: Chapter VII resolutions are based on a determination of a threat to the peace, breach of the peace or act of aggression pursuant to Art. 39. Once this Article is applied, the following enforcement actions may be taken:
  - o 2p: Art. 40 UN Charter: The UNSC can issue binding provisional measures
  - o 2p: Art. 41 UN Charter: The UNSC can call upon Member States to apply non-coercive measures such as partial interruption of economic relations or severance of diplomatic relations.

- 2p: Art. 42 UN Charter: if non-coercive measures are considered or prove to be inadequate, the UNSC may call on Member States to take military action. However, such a measure might violate the principle of proportionality.
  - 1p Articles 24 and 25 UN Charter are the bases for the UNSC's decisions binding character
  - Up to 2 points for specific suggestions as to concrete measures that can be adopted
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**Question 4: (30 points)**

*Since the failed military coup attempt in Turkey in 2016, the human rights situation in the Council of Europe Member State has worsened. During a meeting of the Parliamentary Assembly of the Council of Europe, some delegations argue that “empty words” will not be enough to convince Turkey to comply with its human rights obligations under the European Convention on Human Rights. Therefore, they drafted a resolution urging all Council of Europe Member States to impose a trade embargo against Turkey. Trade of any kind with Turkey will be prohibited. As a Legal Advisor to Thorbjørn Jagland, Secretary-General of the Council of Europe, you are tasked to write a memo containing your assessment of the (il)legality of the planned trade embargo. In particular, you are asked to focus on whether a trade embargo is in line with the aims of the Council of Europe (see Art. 1 below) by using the accepted methods of interpretation in international law.*

Article 1 Statute Council of Europe:

- a. *The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.*
- b. *This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms. [...].*
- c. *Matters relating to national defence do not fall within the scope of the Council of Europe.*

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: 12 points (2 per bullet)

- IOs serve explicit purposes and get powers to achieve these purposes.

- Powers of an IO depend on the regulations in an IO's constituent instruments. Starting point: the interpretation of the constituent instrument
- IOs are organisms, and their constituent living instruments → more dynamic interpretation
- Limits of an IO's power: ICJ *Reparation Case* (1949)
  - Majority opinion: those implicit powers that are essential for the performance of duties
  - 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 (but max. 18 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 Statute CoE 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 the reference to "common action in economic matters" may include a trade embargo.
  - o Context
    - e.g. a contextual interpretation could look at the whole article (and beyond), emphasising that it is questionable whether a trade embargo would lead to "greater unity between its members", even though that may be the conclusion of an interpretation purely looking at the "objective meaning" of certain (isolated) words.
  - o Object and purpose / teleological interpretation
    - E.g. looking at the object and purpose of the CoE, namely facilitating economic and social progress as well as furthering the realization of human rights and fundamental freedoms may go in both directions: on the one hand, it could be argued that a trade embargo will only worsen the social and economic situation in Turkey and thus be contrary to the object and purpose of the CoE. On the other hand, it could also be argued that a minimum of respect for human rights has to be guaranteed by States and clear sanctions have to follow if human rights are not respected. The structure of the argument counts, not the final result.
  - o Good faith
    - E.g. an interpretation referring to 'good faith' may lead to the conclusion that the Members of the CoE 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 CoE have been determined, an argument has to be made whether a trade embargo gives the fullest effect to these goals. Either sanctions are the only effective measure or, to the contrary, such sanctions would be counter-productive and give rise to further social and economic problems and thus a worsened human rights situation.
  - Implied power: implied powers to enable an IO to fulfill its functions effectively.
    - E.g. This interpretation is closer to the explicit text: for instance, does "common action in economic matters" imply that the CoE has the competence to adopt a trade embargo? 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 CoE as an organization as a whole is *inherently*, meaning by its very nature, competent to adopt a resolution deciding on a trade embargo.