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Fall 2021

The Law of International Organisations

5 January 2022

Exam with Sample Solution

Duration: 120 minutes

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

Notes on marking

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

Question 1	15 points	15% of total points %
Question 2	20 points	20% of total points %
Question 3	35 points	35% of total points %
Question 3	30 points	30% of total points %
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Total	10 points	100 %

We wish you a lot of success!



Question 1 (15 points / 15 %)

a) What is the importance of the Vienna Congress of 1815 for the development of international organisations?

- *Before, regular contact between the European powers based on diplomacy, bilateral and multilateral, however no permanent institutions.*
- *With Vienna Congress 1815, beginning of institutionalization of international relations (with main issue peace and security) and especially coordination of national policies in common technical issues.*

b) What is the main characteristic of the first IOs in the 19th century? Name at least one of it?

- *Technical commissions and organizations with administrative and judicial functions*
- *Cooperation of national administrations*
- *Establishment of international administrations*
- *Based on an international treaty between states*
- *Powers limited to a certain area of administration*
- *Power to make recommendations but binding states only based on their consent*
- *Rhine Shipping Commission (1815), Danube Commission (1856), Intl. Telegraphic Union (1865), Universal Postal Union (1874), Intl. Copyright Union (1886)*

c) Which organisation can be considered predecessor of the UN and which was its main purpose?

- *League of Nations*
- *Securing peace, by:*
- *the experiment of establishing a system of collective security and*
- *settling international disputes through negotiation and arbitration*



Question 2 (20 points / 20 %)

a) What are the main characteristics of (modern times) IOs in general and the specific ones of supranational organisations?

- *An international treaty or another international legal instrument as legal basis*
- *States or international organisations as members*
- *Permanent institution for a common purpose*
- *Vested with legal personality*
- *Autonomous decision-making procedures*
- *Organs capable to form a will of the IO and vested with the power to represent it*
- *Usually based on sovereign equality*
- *Sometimes: power to adopt norms addressed to the members, binding or non-binding (e.g. "soft law")*

Supranational organisations:

- *Close legal and political integration of the members*
- *Somewhat between a federation and a confederation of states*
- *Transfer of powers from members to the IO*
- *Power to adopt binding laws, having supremacy over national law*
- *Usually directly effective and applicable law in the member states*
- *From the member states independent supreme organs*
- *Independent courts with mandatory powers*

b) Describe the main typical difference between IOs with a general and a special purpose?

- *General, more political IOs concerned above all with broad purposes such as human rights or peace and security etc.*
- *More administrative resp. less political IOs charged with more technical aims in, e.g. economy, infrastructure, social fields, culture etc.*

c) What is a NGO?

- *General, public but no sovereign purpose*
- *Established on private initiative*
- *Governed by the law of its state of domicile and not by International Law*
- *Voluntary association*
- *Usually, institutional structure with headquarters, organs etc.*
- *It is not a IO*



Question 3 (35 points / 35 %)

a) What are the main purposes of the UN?

- *Maintain international peace and security*
- *Develop friendly relations among nations*
- *Achieve/promote international co-operation in solving problems of an economic, social, cultural or humanitarian character*

b) What kind of UN Security Council Resolutions exist? What is their legal basis?

- *Procedural resolutions and those pertaining to UN-internal matters are legally binding*
- *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 UNCh*

c) How is it possible that a majority of the members of the UN Security Council cannot prevail over the minority?

- *Explication of the veto right referring to Art. 27(3) UNCh*
- *evidences to the world politics*

d) How the clauses of UN Security Council (SC) resolutions 660/661/678 (excerpts) have to be interpreted in light of the conflict and crisis management of the SC?

Resolution 660 (1990)
of 2 August 1990
The Security Council,

Alarmed by the invasion of Kuwait on 2 August 1990 by the military forces of Iraq,

...

1. Condemns the Iraqi invasion of Kuwait;
2. Demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;
3. Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;
4. Decides to meet again as necessary to consider further steps to ensure compliance with the present resolution.

...



Resolution 661 (1990)
of 6 August 1990
The Security Council,

Reaffirming its resolution 660 (1990) of 2 August 1990,
Deeply concerned that that resolution has not been implemented and that the invasion by Iraq of Kuwait continues, with further loss of human life and material destruction,
Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait,

...

1. Determines that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;
 2. Decides, as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;
- ...
4. Decides that all States shall not make available to the Government of Iraq, or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources
- ...

5. Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;
- ...

Resolution 678 (1990)
of 29 November 1990
The Security Council,

Recalling and reaffirming its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990

...

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,
Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance and preservation of international peace and security,
Determined to secure full compliance with its decisions,

...

1. Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;
2. Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the above-mentioned resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore International peace and security in the area;



3. Requests all States to provide appropriate support for the actions undertaken in pursuance of paragraph 2 above;

...

5. Decides to remain seized of the matter.

Adopted at the 2963rd meeting by
12 votes to 2 (Cuba and Yemen),
with 1 abstention (China).

Following articles refer to the UN-Charta!

Resolution 660

- Cy.1: Art. 39, Art. 2.4; finding of an act of aggression, the Iraqi invasion of Kuwait; enables the SC's competence to decide measures according to Art. 41 and 42; act of breach of peace only if aggressor is unknown and no act of aggression is determined
- Cy.1: Art. 51, Kuwait legitimated to armed self-defence; exception of the prohibition of the use of force (Art. 2.4)
- Cy.2: "Demands" refers to a binding decision; Art. 40; (binding) call to withdrawal the troops in order to prevent an aggravation of the situation
- Cy.3: "Calls upon" stands for a non-binding statement of the SC; Art. 39, "negotiate a cease-fire" is a typical tool for SC's conflict management and the pacific settlement of disputes; non-binding because Kuwait should not be forced to negotiations with Iraq
- Cy.4: Binding procedural measure

Resolution 661

- Cy.2: Referring to the following measures, legal binding decisions obligating all States
- Cy.4: Art. 41, legal binding decision about economic sanctions against Iraq; typical conflict management tool, primarily non-military coercive measures
- Cy.5: Legal binding call to all states to respect strictly measures according Art. 40 and 41

Resolution 678

- Cy.2: Art. 42, decision to allow military measures as ultima ratio ("to use all necessary means")
- Leader of these military troops is the UN; the troops are placed at its disposal by member states
- Cy.3: Art. 48.1, "unwritten rule" that no State is obliged to participate the fighting UN-troops, but obligation to respect



Question 4 (30 points/30 %)

a) What is the role of the WTO and its organs as to the implementation and execution of the WTO-Agreements?

- *WTO is, together with the institutions of Bretton Woods, a crucial organisation for the world economy*
- *Basis agreement is the agreement establishing the WTO, all other agreements are annexes to it*
- *WTO-agreements are the legal basis, the constitution of international trade*
- *General purpose of WTO-organs: to support the application and policing of the WTO-agreements*
- *Ministerial Conference: the topmost decision-making body of the WTO, which usually meets every two years. It brings together all members of the WTO, all of which are countries or customs unions. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.*
- *General Council: composed of representatives of all the MS (usually ambassadors or equivalent) and has the authority to act on behalf of the ministerial conference, e.g. decision-making; it meets, under different rules, as the Dispute Settlement Body (DSB) and as the Trade Policy Review Body.*
- *Secretariat and Director-General: Its main duties are to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyse developments in world trade, to provide information to the public and the media and to organize the ministerial conferences; no decision-making powers.*

b) What are the basic ideas and principles underpinning the WTO and its agreements?

- *Increase in wealth for everybody (contested idea!)*
- *Non-discrimination*
- *Free trade in goods and services*
- *Free flow of capital, payments*
- *Protection of investments*
- *Free movement of labour force/persons*



c) State A imposes penalty duties on imports of steel with origin in several states. A justifies this with “national security interests”: because the domestic (defence-)industry’s demand for local produced steel decreased to only 3%, the dependency of these imports must be reduced by a growth of the domestic demand. Both states are members of the WTO.

ca) Before which organ of the WTO can the complaint of the concerned countries against this penalty duties be brought?

- ca)
 - DSB

cb) How do you assess the chance of success of this complaint(s) with regard to the principles of WTO/GATT? (For this question, there is no suggestion for a point system for it, given that it is mainly about the quality of argument in the answer which is not either right or wrong.)

- cb)
 - *(Free argumentation)*