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Fall 2022

The Law of International Organisations

11 January 2023

Exam with Sample Solution

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 2 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	38 points	32.75 %
Question 2	46 points	39.65 %
Question 3	32 points	27.60 %
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Total	116 points	100 %

We wish you a lot of success!

Question 1 (38 points / 32.75%)

a) What are the main characteristics of international organisations (*hereafter referred to as "IO"*) in general and the specific ones of supranational organisations? Please answer in keywords.

In general:

- *An international treaty or another international legal instrument as legal basis*
- *States or international organisations as members*
- *Powers or competences limited to a specific area*
- *Permanent institution for a common purpose*
- *Vested with legal personality*
- *Subject of International Law*
- *Autonomous decision-making procedures*
- *An assembly of state representatives as the main decision-making body*
- *Organs capable to form a will of the IO and*
- *Organs vested with the power to represent the IO*
- *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) The legal basis for an IO is (usually) a treaty. Which key points does it regulate for the design of the IO? Please answer in keywords.

- *The will to establish an IO*
- *Purpose and functions*
- *Membership, i.c. the conditions of admission and termination of membership*
- *Basic structure and organs*
- *Decision-making, included at most law-making*
- *The international legal personality and representation*
- *Relation to member states*



c) Is a non-governmental organization (“NGO”) an IO from the perspective of international law, and what are the main characteristics of an NGO? Please answer in keywords.

- *No, NGOs are not international organizations*
- *NGOs act for an objective in the public interest, but do not have a sovereign purpose*
- *Established on private initiative*
- *Governed by the law of its state of domicile/incorporation and not by International Law*
- *Voluntary association*
- *Usually, institutional structure with headquarters, organs etc.*

d) What are the “G20”, and what form of organization do they take?

- *The "G20" is a forum for the regular meeting of the nineteen largest industrialized and emerging countries, as well as the EU*
- *The G20 serves primarily as a forum for exchange on problems of the international economic and financial system, but also for coordination in other global policy areas such as climate policy, migration and terrorism.*
- *Legal qualification: no basis in international legal forms, they are an informal association*

Question 2 (46 points / 39.65%)

a) What are the six most important institutions in the structure of the UN?

- *Security Council, General Assembly, the Secretariat with the General-Secretary, the Economic and Social Council (ECOSOC), the International Court of Justice and the Trusteeship Council (no longer active)*

b) What is the main goal of the UN?

- *To maintain international peace and security*

c) Art. 2 (1) of the UN-Charter (UNCh) stipulates the sovereign equality of all its members; what right is an important exception to this fundamental principle? Is this exception justified?

- *Through the veto power of the five permanent member states of the Security Council*
- *Free argumentation, max. 4 points*

d) Explain the differences between the concept of collective defense and collective security.

Concept of collective defense (NATO):

- Defense alliances are designed to defend against attacks coming from outside.
- The prerequisite for the alliance case is in any case an attack on a contracting party. An attack against one member state is to be considered as an attack against all member states of the alliance.
- Collective self-defense (Art. 51 UN-Charter) as an option to respond to the attack. In the NATO each NATO member decides for itself what action should be taken to address an armed attack on a NATO ally. It does not require any member to respond with military force, although it permits such responses as collective self-defense. A NATO member may decide that instead of responding with force, it will send military equipment to NATO allies or impose sanctions on the aggressor.
- In the meantime, a terrorist attack is also "sufficient" [contested], so the "9/11" attack was the only case of alliance under Article 5 so far.
- A further extension of the term "attack" to include circumstances such as cyberattacks is currently discussed.
- Usually no mechanisms of dispute settlement.

Concept of collective security (UN):

- A system of collective security refers to international organizations or other intergovernmental arrangements (regional or global) that strive to maintain domestic peace and security, and punish violations of this peace obligation, in particular the use of force, by their members with sanctions.
- Prohibition of the use of force as normative cornerstone.
- Participating States shall cooperate collectively to ensure security for all through their joint action, including states outside the security arrangement in cases of application of international law *ius cogens*
- Central prerequisites for a system of collective security include (but are not limited to) limits on sovereignty (in particular as to national defense), an adequate institutional frame (i.e. an organization) and a dispute settlement mechanism
- Collective security arrangements are more ambitious than systems of security alliance or collective defense in that they seek to address a wide range of possible threats to security and provide for dispute settlement mechanisms.
- A maximum of four points for concrete examples such as measures according to Art. 40 and 41 UNCh
- Note: there is no single (legal) definition in international law of what the term "collective security" means

e) Explain the legal nature of this resolution adopted by the UN General Assembly on October 12, 2022, and of UN General Assembly resolutions in general.

A/RES/ES-11/4

**Territorial integrity of Ukraine: defending the principles of the
Charter of the United Nations**

The General Assembly [...]

5. *Demands* that the Russian Federation immediately and unconditionally reverse its decisions of 21 February and 29 September 2022 related to the status of certain areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine, as they are a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter of the United Nations, and immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders; [...]

- *Resolutions of the UN General Assembly are not legally binding, not even towards its member states, so they are only recommendations, Art. 10 – 14 UNCh)*

Two exceptions:

- *Internal rules (election, budget, staff regulations etc.) are legally binding*
- *Authentic interpretation, development of customary International Law through the practice of the UN General Assembly*
→ *This resolution is, despite its mandatory wording not legally, but only politically binding.*

f) What would be the difference, in terms of its legal effects, if this resolution had been adopted by the UN Security Council, and would that even be a realistic option?

- *The legal effects of a Security Council resolution depend on the legal basis of the resolution.*
- *Chapter VI resolutions are usually not legally binding. This Chapter refers to the pacific settlement of disputes which is not pertinent in this case.*
- *The application of Chapter VII depends on the determination by the Security Council of the existence of any threat to the peace, breach of the peace, or act of aggression. If such determination is made the Council has the option to adopt binding resolutions or recommendations (Art. 39 UN Charter).*
- *One can fairly assume that such a determination was made in the resolution.*
- *The wording of the paragraph of the resolution is clearly mandatory und therefore should have legal effects. It is a "measure[s] not involving the use of armed force" according to Art. 41 UNCh and request Russia to act in the sense of this resolution.*
- *Without the determination based on Art. 39, the resolution would be legally binding based on the Articles 24 and 25 of the UN Charter.*
- *No, such a resolution would currently (!) fail at least because of the veto of Russia.*



Question 3 (32 points / 27.60%)

a) What are the four most important "Global Economic Organizations"?

- *IMF, World Bank Group, GATT/WTO and WIPO and/or ICSID (International Center for the Settlement of Investment Disputes)*

b) The INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD) is an important organization of the World Bank Group. What is the IBRD's goal, its "mission," and its principal means of achieving it?

- *To reduce (extreme) poverty and to increase the incomes of the poorest 40 percent of people in every country by:*
- *assisting in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes,*
- *promoting private foreign investment by means of guarantees or participations in loans and other investments made by private investors,*
- *promoting the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments.*

c) The WTO is based on the principle of non-discrimination - what does it mean?

- *The principle of non-discrimination means that states undertake not to discriminate against one state in relation to others: if one foreign state is granted access to the internal market, access is also granted on equal terms to all other contracting parties.*
- *The principle of non-discrimination is supplemented by the principles of most-favored-nation treatment ("MFN-clause") and national treatment.*

d) What is the main purpose of the General Agreement on Tariffs and Trade (GATT 1947)?

- *to facilitate international trade by reducing trade barriers*

e) Following mounting reports and evidence that in developing country A. the textile industry systematically uses children as workers to justify demand from industrialized countries, the European Union (EU) has responded with a regulation banning the import of textiles for the EU's internal market that involved children in their production. The government of A. considers this import ban to be contrary to GATT, arguing that the EU cannot impose its own production standards on A. (the GATT 1947 does not prohibit child labor). Specifically, A. claims that there is a violation of Art. XI:1 GATT 1947, which prohibits non-fiscal import restrictions. The EU, in turn, invokes one of the "General Exceptions" enumerated in Art. XX GATT 1947 to justify its action. A. is also a member of the WTO and, like all EU member

states, has ratified the UN Convention on the Rights of the Child of 1989, which in Art. 32 prohibits the "economic exploitation" of children and requires member states to take appropriate domestic measures against it, such as legislative measures. To which "general exception" of the following quoted Art. XX GATT 1947 could the EU invoke, and with which arguments? (Note: The answer will be evaluated according to its conclusiveness.)

Art. XX GATT 1947: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
[...]
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour.

Possible answer(s), max. 12 points:

- *The EU regulation could most likely be based on the exception of "public morality" (lit. a). It could be argued that public morals and decency in the EU member states are also directed against goods produced by child labor. In this sense, the WTO Appellate Body ruled in 2014 that the EU's import bans (de facto discrimination against Canadian and Norwegian products) are justified by the exception of public morality because a corresponding conviction exists in the EU.*
- *With the assumption that the children concerned are forced to do this work, and live in internment camps similar facilities, the invocation of lit. e could also justify the EU's action.*