

University College Maastricht

Course SSC2024

International Law

Academic year 2017-2018

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Part 1: General information

1. Course coordinator and tutor

Dr. Ingrid Westendorp, course coordinator and tutor
 International and European Law Department, Faculty of Law
 UM, Bouillonstraat 3, office: B 3.110
 e-mail: i.westendorp@maastrichtuniversity.nl

2. Planning

Week 44

Session 1: The changing nature and enforceability of international law

- Introduction to the course

Pre-discussion:

- Task 1: The existence, nature and expansion of international law
- **Lecture** on the characteristics of international law, as well as its sources.

Session 2: Sources of international law including the law of treaties

Post-discussion:

- Task 1: The existence, nature and expansion of international law

Pre-discussion:

- Task 2: Security Council Resolutions
- Task 3: Treaty vs. custom
- Task 4: Reservations

Week 45

Session 3: States, territory, recognition, and State succession

Post-discussion:

- Task 2: Security Council Resolutions
- Task 3: Treaty vs. custom
- Task 4: Reservations

Pre-discussion:

- Task 5: What is a State?
- Task 6: Island in the Sun
- Task 7: Kosovo

- **Lecture** on the subjects of international law, the role of recognition and territory.

Session 4: International Organizations, individuals and international criminal law

Post-discussion:

- Task 5: What is a State?
- Task 6: Island in the Sun
- Task 7: Kosovo

Pre-discussion:

- Task 8: The WHO
- Task 9: The Arms dealer

Week 46

Session 5: State responsibility

Post-discussion:

- Task 8: The WHO
- Task 9: The Arms dealer

Pre-discussion:

- Task 10: Fire in Salou
- **Lecture** on State responsibility

Session 6: International environmental law

Post-discussion:

- Task 10: Fire in Salou

Pre-discussion:

- Task 11: The last voyage of M. Endeavor
- Task 12: The Luango River case

Week 47**Session 7: Human rights**

Post-discussion:

- Task 11: The last voyage of M. Endeavor

Pre-discussion:

- Task 13: Guantánamo Bay

- **Lecture** on the promotion and protection of human rights in the framework of the United Nations

Session 8: Jurisdiction, sovereignty, and immunities

Post-discussion:

- Task 13: Guantánamo Bay

Pre-discussion:

- Task 14: Jurisdiction
- Task 15: George W. Bush
- Task 16: The Embassy

Friday, **24th November** at noon (12:00 hrs) **deadline** for handing in the legal paper on the Luango River case

Week 48

Session 9: 27th November Moot court about the Luango River case
Attendance is mandatory!

- **Lecture** on sovereignty, jurisdiction and immunities

Session 10: The law of the sea

Post-discussion:

- Task 14: Jurisdiction
- Task 15: George W. Bush
- Task 16: The Embassy

Pre-discussion:

- Task 17: The Brazilian fishing boat
- Task 18: Arba vs. Ena

Week 49**Session 11: Peaceful settlement of disputes and the use of force**

Post-discussion:

- Task 17: The Brazilian fishing boat
- Task 18: Arba vs. Ena

Pre-discussion:

- Task 19: Dispute settlement
- Task 20: *Ius ad bellum*

NO lecture this week

Session 12:

Post-discussion:

- Task 19: Dispute settlement
- Task 20: *Ius ad bellum*
- Question time
- The take-home exam will be published at 18:00 hrs

Week 50

Tuesday, 12th December at 18:00 hrs **deadline** for handing in the take-home exam

3. Objectives of the course

Like all fields of law, international law seeks to secure existing rights and interests and tries to offer solutions for problems and needs that present themselves in a constantly changing (world) society. It is one of the objectives of this course to discover the dynamics of international law and to understand the complicated relationship with international politics.

Besides theoretical knowledge, it is also the intention of this course to teach participants legal skills, particularly reading case law, solving cases, writing a memorandum of pleadings and pleading in a court simulation.

4. Content and structure of the course

In particular since World War II international law has been subject to considerable change, both in scope and in content. The number of States has grown and a large number of international organizations and institutions emerged as subjects of international law. Transnational corporations increasingly constitute an important economic power factor in international relations. The need for international cooperation became progressively evident in order to maintain international peace and security, to promote economic and social development, to safeguard the environment and to uphold human dignity.

The present course is a combination of traditional international law subjects, like sources and subjects of international law, the law of treaties, territory, jurisdiction and immunities, recognition, the law of the sea, and state responsibility, as well as issues that have become of interest in the last few decades, such as human rights, individual criminal responsibility, international tribunals and the International Criminal Court, and international environmental law.

One of the sessions will be in the form of a moot court session on an international environmental law case for which students will prepare by writing a (short) legal paper. This paper and the subsequent presentation in the form of a moot court will serve as the mid-term exam.

The pre-discussion of the tasks is going to take place in the session under which they are mentioned *e.g.* task 1 will be pre-discussed during session 1. In the next session, there will be a post-discussion. The study materials only have to be studied after the pre-discussion has taken place. Note that sometimes **more than one new task** will be discussed.

The first topic of this course focuses on the nature of international law. It will become clear that there is an important difference between national and international law. In nation States there is a certain hierarchy. The powers of the legislature and executive make and implement laws for the citizens, while there is a judiciary to which one can turn in cases of conflict or law breaking. On the international law plane, however, there are only horizontal relations between in principle equal States. A true legislature, executive and judiciary are lacking. The next subject is sources of international law. If an international legislature does not exist there must be another way in which legal rules are formed. How do we know which rules exist and in which situations they are applicable? Contrary to national law, there is still a prominent role for customary law on the international level.

Originally, the only subjects of international law were States, whose number was rather limited. In the last few decades, more and more actors appeared on the international scene. Besides States, international organizations, Civil Society Organizations (CSOs), transnational corporations, indigenous peoples, and even individuals have become to a greater or lesser degree subjects of international law.

However, States still remain the most important subjects and basically they can only be bound if they agree to be bound. States rule over their own territory, and although cooperation and some foreign intervention have become necessary and usage, state sovereignty is still one of the most basic concepts of international law. With sovereignty comes jurisdiction, but sometimes States waive their right to exercise jurisdiction and grant immunities. Both state immunities and diplomatic immunities are going to be studied.

Many problems of our time demand international cooperation. A case in point is pollution of air and water. Pollution crosses borders and States must work together in order to find solutions. The importance of international environmental law can hardly be underestimated.

Another cross boundary topic is human rights. States are not only responsible for their own citizens, but it is more and more felt that States should intervene when the human rights of people in other countries are at stake. If the rights of States or citizens have been violated, responsibility has to be taken up. The extent to which States are responsible for their own actions, as well as those of third parties like citizens or companies is the subject of State responsibility.

One of the oldest branches of international law is the law of the sea. Maritime boundaries, navigation, fisheries rights and exploitation of the soil and sub-soil of seas and oceans are of great interest for coastal States and many disputes have to be solved with regard to these topics.

If two States have a dispute they have a whole range of peaceful means at their disposal to solve it. Should it be impossible to come to a solution between them, they may also seek a judicial settlement in Courts or Tribunals. Sometimes disputes are not solved by peaceful means but by force. Since the adoption of the United Nations Charter the use of force has been legally limited to just a few instances. When exactly force may be legally used is the last subject we look into in this course.

5. Study materials

The handbook that is going to be used is: Anders Henriksen, *International Law*, Oxford University Press, Oxford, 2017.

Moreover, many basic texts, case law, and other documents are compiled in *Elementary International Law (Elementair Internationaal Recht)* published by the T.M.C. Asser Institute (2017 edition).¹ This compilation should also be in your possession.

Finally, some texts are to be found on the internet.

6. List of readings per session

The changing nature and enforceability of international law

Task 1: The existence, nature and expansion of international law

- Henriksen, Chapter 1
- Malcolm Shaw, *International Law*, CUP, 6th ed., Chapter 1 pp. 22-27 (until the start of The Nineteenth Century) and Chapter 2 (available on internet)

Sources of international law including the law of treaties

Task 2: Security Council Resolutions

Task 3: Treaty vs. custom

Task 4: Reservations

- Henriksen, Chapter 2
- Henriksen, Chapter 3 (note that the chapter merely gives an explanation of the Vienna Convention on the Law of Treaties, and that the treaty as a primary source is more important than the chapter in the book)
- Vienna Convention on the Law of Treaties, 1969 (Asser)
- International Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (Asser)
- *Lotus case*, Permanent Court of International Justice, 1927 (Asser)
- *Asylum case (Colombia vs. Peru)*, ICJ, 1950 (Henriksen)
- *The Anglo-Norwegian Fisheries case*, ICJ, 1951 (Henriksen)
- *The North Sea Continental Shelf cases*, ICJ, 1969 (Asser)
- *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, ICJ, Advisory Opinion, 1970 (Asser)
- *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. USA)*, ICJ, 1986 (Asser)
- *Case concerning questions of interpretation and application of the 1971 Montreal Convention arising from the aerial incident at Lockerbie (Lockerbie case)*, ICJ, 1992 (Asser)

¹

This compilation is further referred to as Asser.

States, territory, recognition, and State succession

Task 5: What is a State?

Task 6: Island in the Sun

Task 7: Kosovo

For task 5 course participants are expected to gather some basic materials in the library or from the Internet on the historical and current legal status of Somalia, Vatican City, and Donetsk People's Republic respectively.

- Henriksen, Chapter 4, sections 4.1 and 4.2
- Malcolm Shaw, *International Law*, 6th ed. Chapter 17 (available on internet)
- *Island of Palmas case*, Permanent Court of Arbitration, 1928 (Asser)

International Organizations, individuals, and international criminal law

Task 8: The WHO

Task 9: The Arms dealer

- Henriksen, Chapter 4, sections 4.3 - 4.6
- Henriksen, Chapter 15
- *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ, Advisory Opinion, 1949 (Asser)
- ILO Convention C169 Concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (Asser)
- United Nations Declaration on the Rights of Indigenous Peoples, 2007 (Asser)
- World Bank Operational Manual 4.10 on Indigenous Peoples, Revised April 2013 (web site World Bank)
- Rome Statute of the International Criminal Court, 1998 (Asser)

State responsibility

Task 10: Fire in Salou

- Henriksen, Chapter 7
- General Assembly Resolution 56/83, Responsibility of States for Internationally Wrongful Acts, 28 January 2002 (Asser)

International environmental law

Task 11: The last voyage of M. Endeavor

Task 12: The Luango River case

- Henriksen, Chapter 10
- The Rio Declaration on Environment and Development, 1992 (Asser)
- *The Trail Smelter arbitration*, 1938 (Henriksen)
- *The Corfu Channel case (Great Britain vs. Albania)*, ICJ, 1949 (Henriksen)

Human rights

Task 13: Guantánamo Bay

- Henriksen, Chapter 9
- Universal Declaration of Human Rights and the UN Human Rights Conventions (Asser)

Jurisdiction and immunities

Task 14: Jurisdiction

Task 15: George W. Bush

Task 16: The Embassy

- Henriksen, Chapter 5
- Henriksen, Chapter 6
- The Vienna Convention on Diplomatic Relations, 1961 (Asser)
- *Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo vs. Belgium)*, ICJ, 2002 (Asser)

The law of the sea

Task 19: The Brazilian fishing boat

Task 20: Arba vs. Ena

- Henriksen, Chapter 8
- UN Convention on the Law of the Sea, 1982 (Asser)

Peaceful settlement of disputes and the use of force

Task 21: Dispute settlement

Task 22: *Ius ad Bellum*

- Henriksen, Chapter 12
- Henriksen, Chapter 13
- Charter of the United Nations, 1945 (Asser)
- Statute of the International Court of Justice, 1971 (Asser)

7. Examination and resit

The total amount of points you can score for this course is 10.

Course participants are expected to write a short legal paper (maximum 2000 words) on an environmental dispute (task 12) and they also have to present their case in a moot court session (session 9). For this mid-term exam the maximum score is 4 points (40% of the final grade). Attendance of the moot court session is mandatory since it is part of the examination!

Furthermore, there will be a take-home exam consisting of a case with several essay questions for which the maximum score is 6 points (60% of the final grade).

Depending on the number of candidates, the resit will either be an oral examination or a take-home exam consisting of several essay questions.

Only students who have complied with attendance requirements **and** who have written the legal paper/attended the moot court session as mentioned above are eligible for the resit!

8. Guidelines legal paper

In week three of the course participants will start to write an **individual** legal paper in the context of the Luango River case mentioned in task 12. This paper must be sent to the safe assignment box no later than **Friday, 24th November 2017 at noon (12:00 hrs)**. This is the mid-term examination. Please note that the mailbox will automatically close and it will not be possible anymore to submit your paper after the deadline.

Legal papers do not differ very much from other papers. Some aspects should be taken into account, however. Lawyers put a lot of emphasis on the verifiability of the text, which means that all statements that are made in the text must be backed-up by references which must be put in **footnotes**. Do not use the APA reference method. The information in the footnotes should be very detailed and precise. In addition to footnotes, a bibliography should be put at the end of the paper.

The guidelines for the structure of the paper that must be followed are similar to those that lawyers use when they submit a paper for international publication. The most important rule entail that a legal research question or a legal statement is included in the introduction. The legal question or statement makes it clear what the purpose or goal of the paper is, for example the question: Does the Dutch law on names violate the Women's Convention? And an example of a statement: Female circumcision should be regarded as a form of torture.

The main part of the text should be divided into sections and sub-sections that are numbered **and** entitled. An example has been put below. Always divide the text in several sections (in a logical sequence from general to particular and if applicable, from international to national) and never write just one big piece of text.

In the conclusion a summary of the arguments that have been used is given and the legal question is answered/arguments that prove the validity of the statement are given. Never put new information into the conclusion.

As far as the content of this particular paper is concerned, it should be kept in mind that you defend the position of one of the parties in a conflict so you look at the law in a subjective way. Naturally, you will focus on those arguments that can be used to your party's advantage and leave out others that are not favourable to your party's position. Because of this, your paper is more like a memorandum of pleadings than a legal paper objectively discussing legal theory.

Guidelines for the legal paper:

Structure

- introduction:
 - legal research question or legal problem statement
 - short description of the contents of the sections of the paper
- mid section:
 - relevant information; arguments that back up your statement/ lead to the answer of your research question
 - logical sequence of sections
 - legal perspective of the subject matter
- conclusion:
 - summary of the main issues
 - answer to the legal question/ arguments to prove that your statement is correct
 - in any case **n o n e w i n f o r m a t i o n**
- footnotes: make your statements verifiable. Use enough footnotes to cover the text. For further details see below.
- bibliography: only include books/articles that have been used in the text and that have actually been used and are also mentioned in the footnotes.

Technical aspects

- maximum of 2.000 words (title page, footnotes and bibliography are not included). You are not allowed to exceed the maximum amount of words
- title page with name, id-number and title
- numbered pages
- **numbered and entitled sections** as usual in international legal publications;

By way of example:

1. Introduction
 2. Sources of the law of the sea
 - 2.1. United Nations Convention on the Law of the Sea 1982
 - 2.2. Customary law
 3. Legal impact of different sources
 4. Conclusion
- line spacing: 1,5
 - letter font: 12 for text, 10 for footnotes
 - adequate margin left and right
 - footnotes, not endnotes or references in the text itself

As regards the sequence of the contents of your footnotes use the following format:

quoting from book written by one author:

name author, *title book*, publisher, place of publication, year of publication, page number(s)

quoting from book written by more than one author use the following sequence:

name author, 'title chapter', name(s) editor(s), *title book*, publisher, place of publication, year of publication, page number(s)

quoting from article in journal use the following sequence:

name author, 'title article', *name journal*, volume number or other relevant characteristic, year of publication, page numbers(s)

quoting from UN document use the following sequence:

UN document number, title of document, [if appropriate: name Special Rapporteur or UN organ], date of document, section number(s) (since all UN documents are translated into the five UN languages, it is no use referring to pages, since identical information may be found on different pages according to the language used)

quoting from internet sites: <the complete url>, subject matter of site, date of consultation (since web sites change constantly).

- bibliography: use quoting sequence as mentioned above for footnotes. When handbooks have been used there is no need to mention the exact pages you have processed since you have already done that in the relevant footnotes. When quoting an article from a journal, mention all the pages of the article, from beginning to end. This is also true for a chapter used from a book. Only include books/articles that have actually been used in the text and that have also been mentioned in the footnotes.

Presentation of memorandum of pleadings

During the moot court session, the teams representing the parties will hold a presentation of maximum 10 minutes. Make certain that you have finished your individual paper before you start on the memorandum of pleadings of your team! As a team you may decide who will present the case. That can be done by one or more persons. Do not literally read the text of the paper, but concentrate on the highlights. After the first round of presentations, teams will get the chance to discuss each other's arguments. Everyone can and should participate in this second round.

9. Attendance requirements

Participants who are unable to attend a tutorial are requested to mail the tutor. Students are required to attend at least 10 of the 12 tutorial group meetings. However, attendance of the moot court session (session 9) is **mandatory** because it is part of the examination. Students who fail to show up for the moot court session without a valid reason that has been communicated both to the tutor and the UCM Examination Committee automatically will have failed the course. Students who have not met the attendance requirement, but who have missed no more than 3 tutorials, will have to complete an additional assignment before they can receive credits for the course.

Part 2: Topics and tasks

Session 1 The changing nature and enforceability of international law

Task 1 The existence, nature and expansion of international law

International law tends to be considered a tricky if not shady branch of law. Its characteristics vary from mainstream domestic law, and therefore lawyers very often do not feel at ease with international law. So before dealing with the substantive rules, it is necessary to consider the particular nature of international law. These excerpts may provide a basis for discussion:

a. The existence of international law

International law is not, never has been and cannot be simply and exclusively a positivist system of law. The reason is nothing more or less than the fact that States, generally agreed to be the principal subjects of the system, exist in a state of nature - the fundamental thesis of the "law of nature" variant of the natural law school. The state of nature signifies more than the absence of the marks of a world State, legislature, executive and judiciary. It means that there is no legal system which defines comprehensively the rights and duties of States towards one another.

(Excerpt from: A. Carty, *The decay of international law?*, Manchester, 1986)

b. The nature of international law

It is also important to realize that the practice of international law is intrinsically bound up with diplomacy, politics and the conduct of foreign relations. It is a fallacy to regard international law as the only facilitator or controller of state conduct. It cannot be this and, more significantly, it is not designed to do it. International law does not operate in a sterile environment and international legal rules may be just one of the factors which a state or government will consider before deciding whether to embark on a particular course of action. In fact, in most cases, legal considerations will prevail, but it is perfectly possible that a state may decide to forfeit legality in favour of self-interest, expediency or 'humanity', as with the Iraqi invasion of Kuwait in 1990 and the US-led invasion of Iraq some thirteen years later. There is nothing surprising in this and it is a feature of the behavior of every legal person in every legal system. If it were not so, there would be, for example, no theft and no murder. Indeed, in international

society, where politics are so much a part of law, it may be that contextual and flexible rules, so evident in international law, are a strength rather than a weakness.

(Excerpt from: M. Dixon, Textbook on International Law, London, 2013)

c. The horizontal and vertical expansion of the community of nations

The horizontal expansion of the community of nations has far-reaching consequences. The Western Nations occupy a minority position in the present community. That means that the prosperous, technologically highly developed, industrial and commercial nations are now in the minority. The majority is composed of poor, technologically underdeveloped countries with an alarmingly low standard of living.

A vertical expansion of international law can also be discerned. The classical, traditional law of nations was a law obtaining among the sovereign states. Modern international law must, of necessity accept supra-national communities in which individuals sometimes participate directly. The international organization is juxtaposed by the supra-national organization. Usually we find admixtures of the two characteristics of the transition period.

(Excerpts from: B.V.A. Röling, International Law in an Expanded World, 1960)

Session 2 Sources of international law including the law of treaties

Task 2 Security Council Resolutions

In 2005 the UN Security Council adopted a Resolution in which it was decided that States were not allowed to recognise the Republic of Allos as a State. The reason for this decision was that in 1998 the State Traka had conquered the territory of this Republic from the State Estos and the entity's independence was proclaimed one year later although it is clear that Allos is completely dependent on Traka.

In 2016 the Kingdom of Muda wants to conclude a bilateral commercial treaty with Traka. In one of the articles of the treaty it is stipulated, however, that Muda is obliged to recognise Allos as a State. Muda wonders whether it can disregard the SC Resolution. In Article 38(1) of the Statute of the International Court of Justice resolutions are not mentioned as a source of international law; surely the treaty between Traka and Muda is more important?

Task 3 Treaty vs. custom

For years now the tension between the States Arkan and Bino has been growing. Arkan is very unhappy with the fact that Bino has a leftist regime and that the country does not wish to co-operate with Arkan in respect of several issues. When a group of rebels starts a guerilla war against the Binoan Government, Arkan hopes that this group will succeed in overthrowing the Government. That is why Arkan secretly starts to furnish the rebels with weapons and money, and, in addition, sends a small group of its elite-troops to the Binoan outback where they train the Binoan rebels. The Binoan Government is aware of what is happening and tries to fight the rebels with all its might. The Government understands, however, that it is fighting a losing battle if the rebels are supported by the much more powerful Arkan.

The Binoan Government is of the opinion that Arkan is violating several rules of international law. Since Bino wants to avoid a military conflict with Arkan, the Government proposes that the two States put their conflict before the International Court of Justice (ICJ) in The Hague. Much to the amazement of the Binoan Government, Arkan immediately agrees. The Binoan Government is unaware of the fact, however, that Arkan is of the opinion that there is not much the ICJ can do in this case. Although Arkan has ratified the UN Charter, it has made a reservation precluding the ICJ's jurisdiction as regards multilateral treaties. Therefore the Court cannot apply article 2 of the UN Charter in this case. Furthermore, Arkan thinks that the ICJ will be unable to use customary law since the codification of a rule of law in a treaty will render all other sources null and void.

Task 4 Reservations

The Republic of Mísar, a member of the United Nations, considers becoming a Party to the Convention on the Elimination of All Forms of Discrimination Against Women (the Women's Convention). The Government is very much in favour of this treaty but did not participate in the drawing up and adoption of the text. Since Mísar is an Islamic State, there is considerable opposition from the side of the religious leaders. They point out that some of the

provisions of this Convention are not in conformity with the Islamic laws. The Government's advisers on foreign affairs are requested to find a solution to this problem. After some deliberations they come up with the suggestion that Mísar will become a Party under the following reservations:

- General reservation on Article 2: The Republic of Mísar is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Shariah (the legal interpretation of the Quran);
- In respect of Article 9: Reservation to the text of Article 9, paragraph 2, concerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.

The Mísarian Minister of Foreign Affairs has serious doubts that these reservations will be acceptable, but the legal advisers assure him that there will be no problem.

Session 3 States, territory, recognition, and State succession

Task 5 What is a State?

States are considered as the most important subjects of international law. For the greater part they determine the international rules and they directly derive their rights and obligations from the international legal order. However, in practice it may be difficult to determine when an entity can be considered as a State.

Course participants will be divided into three groups. Each group studies one of the following entities: Somalia, Vatican City, or Donetsk People's Republic. You are supposed to gather some basic materials in the library or from the Internet on the historical and current legal status of Somalia, Vatican City and Donetsk People's Republic respectively. During the next tutorial meeting you will explain to your fellow students whether or not the entity you have studied can be regarded as a State.

a) Somalia

Since the outbreak of the Somali Civil War in 1991 there has been no central Government control over most of the country's territory, despite several attempts to establish a unified central government. The northwestern part of the country has been relatively stable under the self-declared, but unrecognized, sovereign state of Somaliland. The self-governing region of Puntland covers the northeast of the country. The Islamist Al-Shabaab controls a large part of the south of the country. Without a central Government, Somalia's inhabitants subsequently reverted to local forms of conflict resolution, either civil, Islamic, or customary law. The internationally recognized Transitional Federal Government controls only parts of the capital and some territory in the centre of the nation, but has reestablished national institutions such as the Military of Somalia. During the two decades of war and lack of government, Somalia has maintained an informal economy, based mainly on livestock, remittance/money transfer companies, and telecommunications. In view of the unstable situation, many States have closed their embassies or consulates in Somalia.

b) Vatican City

The territory of Vatican City is an enclave within Rome. Vatican City is represented by the Holy See and harbours the main seat of the Roman Catholic Church of which Pope Francis is the current head. The Holy See has possessions on Italian soil. However, these possessions, mostly churches and office buildings, do not belong to Vatican territory.

Vatican City maintains relationships with almost all States in the world and it is a party to several treaties such as the UN Convention on the Rights of the Child.

c) Donetsk People's Republic

With around a million inhabitants Donetsk was one of Ukraine's most important cities. On 7th April 2014, a rebellion broke out because President Victor Janoekovitsj – who had many supporters among the local population – was forced to leave Ukraine. During the rebellion local government buildings were seized by the rebels. On 12th May 2014, the Donetsk People's Republic was proclaimed. Since then, pro-Russian separatist militant groups rule Donetsk. They drive around in army vehicles, live in university buildings and patrol the streets. The Donetsk People's Republic has been recognised by the Republic of South Ossetia.

Task 6 Island in the Sun

In the 16th century Yunani, a seafaring European nation, is one of the first to set sail to the Pacific to 'discover' the up till then unknown world. The captain of one of Yunani's ships discovers a tiny uninhabited island which he calls Island in the Sun. The ship's cartographer is requested to draw the newly discovered land on a map and the island is claimed as Yunani territory.

Almost a century later, Christian de Witt, a sea hero from another European country, Belanda, is roaming the Pacific. He too finds the little Island in the Sun and it is still uninhabited. De Witt goes on land, hoists the Belandese flag and declares that the island - which he calls New Haven - belongs to Belanda. When it is time for De Witt to sail back to Belanda, he decides to leave three crew members behind with the task of controlling the territory. In the course of the next two centuries, an ever increasing Belandese community settles on New Haven.

In the 19th century a war between Yunani and Negari ends in a defeat for Yunani. In the framework of the Peace Treaty, Yunani is forced to cede all its islands in the Pacific to Negari. When a Negari official decides to visit Island in the Sun, he finds out that a Yunani community is living there. Yunani claims to have been on the island since time immemorial and that New Haven belongs to its territory.

Task 7 Kosovo

On 17 February 2008, the Serbian province of Kosovo decided to take matters in its own hands. For years the population had felt discriminated against by the Serb majority. Kosovo was a prosperous region and it had good commercial relations with a number of States in the world. The independence was proclaimed and the new State was immediately recognised by Turkey, France, Germany, Great Britain and the United States. At the moment, more than 110 States from all over the world have recognized Kosovo. The democratically elected Government decides to accede to the main international human rights treaties and announces that it wants to become the 194th Member State of the United Nations. It is still not clear to what extent the new State is bound to international customary law.

Session 4 **International Organizations, individuals, and international criminal law**

Task 8 The WHO

Grace Holland, an Australian citizen, is a civil servant of the WHO in Geneva. In March 2015, it is decided to send her on a mission to Avaria, an African State, member of the WHO; her task will be to advise the Avarian Government on the development of an AIDS/HIV programme. The political situation in Avaria is rather hectic. An important ethnic group (more than 50% of the population) which calls itself the indigenous people of Avaria, is engaged in bitter guerilla-warfare with the Government of Avaria; this ethnic group has even set up a provisional government which controls already the southern half of Avaria. In June 2017 Ms Holland is apprehended by the guerilla-movement during one of her field trips. Three days later her mutilated body is found. No investigation is undertaken; consequently no prosecution of possible offenders takes place and neither the WHO nor Ms Holland's relatives are in any way compensated for their loss. Is there anything that the WHO can do?

Task 9 The Arms dealer

Kees de Vries is a Dutch business man who predominantly deals in weapons. Kees can often be found on the African continent as the many civil disputes create an attractive market for selling his arms. In the north of Nigeria, the extremist terrorist movement Al Din Islam, conducts a reign of terror among the population by

abducting, maiming and killing thousands non-Muslims. That is why the UN Security Council proclaims a weapons embargo making it punishable to sell weapons to Al Din Islam.

Kees is not deterred by the measure, however, and he continues to deliver his automatic weapons, ammunition and poison gas to the terrorist movement which causes the death of many more victims.

In June 2017, Kees is arrested in the Netherlands for his role in the conflict in Nigeria and he is handed over to the International Criminal Court in The Hague. Kees is furious. Why would his dealings in Africa concern an international court and were the Dutch police even authorized to arrest him?

Assignment: the United Nations

Look for information on the main bodies of the United Nations. Write down which tasks and competences they have and mention in which treaty and in which specific articles this has been laid down. Also mention which source(s) you have used to find this information. Bring this information with you to the next meeting.

Session 5 State responsibility

Task 10 Fire in Salou

Tom and two of his friends are staying in sunny Salou for their holidays. They enjoy the sea and the beach during daytime and after dark they frequent the numerous discos and bars. One evening, when they are preparing to go out, Tom smells smoke. He looks down from the balcony and sees to his horror that huge flames are escaping from several windows of the floor below. He warns his friends and runs down the stairs to the reception desk to raise the alarm. The whole building is evacuated and after a few hours the fire brigade succeeds in extinguishing the fire. Fortunately, nobody was hurt, but the damage to the hotel is at least 10 million Euros.

When one of the receptionists identifies Tom as the one who raised the alarm, the *Guardia Civil* arrests him on suspicion of arson. Although he is still under age he is put in a cell with 19 adult suspects and he is kept *incommunicado* for three days. Then he is brought before an examining judge while journalists are allowed to take pictures and make films on which he can be clearly recognized. These pictures and films are also shown in newspapers and on television in the Netherlands. Altogether he spends two months in a Spanish cell before it becomes clear that he had nothing to do with the fire but that it was caused by a shortcut. Back in the Netherlands he finds out that his family is being ostracized in the village they have lived in all their lives. They see no other option but to move away. Moreover, Tom has missed the first course at University and he still suffers from so much stress that it becomes doubtful whether he will be able to pass his exams. He feels that someone must be held responsible for ruining his life and he asks your advice. Maybe he is even entitled to some form of reparation?

Session 6 International environmental law

Task 11 The last voyage of M. Endeavor

The M. Endeavor, a rusty old ship flying the Panamanian flag enters the port of Rotterdam. There is some doubt whether the ship is seaworthy, but because it carries a toxic load that cannot be processed in the Netherlands, it is decided that the ship has to leave port.

On its way to Côte d'Ivoire, the M. Endeavor is caught in a violent storm and sinks. Part of the toxic waste washes up on the Liberian coast and at least ten people are killed because they ate poisoned fish.

Task 12 The Luango River case

The Republic of Ndebele (Ndebele), one of the least developed States in central Africa, and the Kingdom of Shauna, (Shauna) are both dependent for their water supply on the Luango River which is fed by streams originating in Ndebele. Recently, the Government of Ndebele has announced its new five-year development plan which called for the creation of a major bauxite ore mining and processing industry. As part of the needed industrial infrastructure, plans were announced for the construction of a major hydro-electric dam on the Luango River, several miles from the border with Shauna. The dam would provide both electric power for the planned industrial development and irrigation for the creation of a new agricultural area in Ndebele.

The north of Ndebele is inhabited by the Ido, an indigenous group that forms a cultural and ethnical minority in the country. The Ido live off agriculture and have no wish to industrialize. In their ancestral lands, the Ido carry on their traditional agricultural subsistence economy. They regard these areas as their spiritual homeland. For the agriculture in these areas, the Ido have always used the traditional ditch, or inundation method of irrigation utilizing the spring runoff of the Luango River.

The south of Shauna, which borders on Ndebele, is also inhabited by an Ido minority who has the same cultural background and traditions as the Ido living in Ndebele.

On the basis of an objective study, carried out by the UN Special Rapporteur on Indigenous Peoples, it is established that the construction of the dam by Ndebele would have as an effect that the flow of the Luango River would no longer be sufficient to support the subsistence agriculture of the Ido. Furthermore, bauxite mining will have an adverse effect on the environment; pollution of air, soil and water is to be expected. Nevertheless, the Government of Ndebele is firmly determined to carry out the construction of the dam and operational activities to that effect have already started. The World Bank has given a loan to Ndebele for this purpose and the construction work for the dam has been commissioned to the Netherlands Company Bello Nedam.

Negotiations between Ndebele and Shauna have been unsuccessful, while protests by the Ido are growing. That is why all parties agree to convene in Maastricht and put their grievances before the Maastricht Panel of Arbitration in the hope of finding a peaceful solution.

Both States are Members of the UN and they have ratified the six main Human Rights treaties and the African Charter on Human and Peoples' Rights. Only Shauna has ratified ILO Convention C 169.

Course participants will be divided into five parties (Ndebele, Shauna, the Ido, the World Bank and the UN Special Rapporteur on Indigenous Peoples).

First, each student will write an individual submission (max. 2000 words) that will be graded and which is part of the examination. In this paper you will write a defence in favour of the party you are representing. Further (technical) specifics can be found under section 9: Guidelines for legal paper.

The deadline for submission is **Friday, 24th November 2017 at noon (12:00 hrs)**.

Subsequently, students representing the same party will convene and draft a collective memorandum of pleadings. They will elect one or more students from their midst to act as legal counsel. During tutorial group session 9, a formal moot court session will be organized. In a first round, the five memoranda of pleadings will be introduced by the counsels for the five parties. In a second round, there is opportunity for discussing the other parties' arguments.

Session 7 Human Rights

Task 13 Guantánamo Bay

In 2007, the then 23-year old Egyptian Nur El Din Hassanin was apprehended in the USA on suspicion of planning a terrorist attack and he was transported to the USA military basis on Guantánamo Bay. Although he was never formally charged, he was detained there for four years.

When he was released he alleged to have been the victim of all kinds of illegal actions. He claimed that he was chained to a wall for days on end, that he had been deprived of food for longer periods, and that certain drugs were administered with the purpose of eliciting a confession from him. He thinks that his human rights have been violated. It is not clear, however, whether Nur is as innocent as he claims to be. In addition, terrorist attacks were never foreseen when international law rules were drafted so perhaps the treatment of (alleged) terrorists falls outside the scope of the 'normal' protection of prisoners?

The United States deny having treated Nur in violation with international law. According to a spokesman he stayed on a subtropical island, was well fed and received everything he wished for. Moreover, Guantánamo Bay is not even American territory.

Session 8 Sovereignty, jurisdiction and immunities

Task 14 Jurisdiction

The Serb Goran Hidanovic who lives in Kanne, Belgium since 2013, wants to take revenge for the NATO bombings during the Kosovo War in 1999. He finds out that there is a NATO headquarters some 40 kilometers to the north, in the Dutch town of Brunssum. Goran decides to blow up the NATO headquarters and to this end he buys C-4 explosives in Brussels and he meticulously plans an attack. On 5 November 2016 he crosses the border into the Netherlands and he drives to Brunssum where he manages to blow up the gatekeeper building. The building is destroyed, two German soldiers are killed and Goran is injured in the act. After Goran has been arrested by the Dutch police, there is a lot of confusion which State can claim jurisdiction over the case.

Task 15 George W. Bush

In August 2016, ex-president George W. Bush goes on holidays to Egypt in order to visit the pyramids of Cheops and the temples of Luxor. An Egyptian organization called Justice For All demands that Bush is arrested and prosecuted for numerous gross violations of the Geneva Conventions. The organization holds Bush responsible for war crimes and crimes against humanity committed in Iraq and Afghanistan, for the torture of prisoners in Guantánamo Bay and for denying them a fair trial.

Task 16 The Embassy

The situation in the African country Rafique is getting more worrisome by the minute. The democratically elected Government has been overthrown by a military coup and the new powers cause terror and death all over the State. It is therefore understandable that many citizens flee the country. A large group of Rafiqan citizens has sought asylum in the Netherlands and every Wednesday they hold a peaceful demonstration in front of the Rafiqan embassy in The Hague.

One Wednesday the situation gets out of hand. People start shouting and throwing stones at the Embassy's windows. The diplomats inside the building get scared and one of them panics and starts shooting at the protesters with his old semi-automatic .22 Luger from one of the Embassy's windows. However, he hits one of the Dutch policemen who have come to the diplomats' rescue. This policeman dies a few hours later because of his bullet wound.

The Dutch authorities wonder what action they can take since Rafique is not a party to the Vienna Convention on Diplomatic Relations.

Session 9 Moot court session about the Luango River case

Session 10 The law of the sea

Task 17 The Brazilian fishing boat

Some 50 nautical miles off the coast of Argentina, a collision takes place between a British freighter and a Brazilian fishing boat. The damage to the fishing boat is so severe that the boat sinks and three of its crewmen are drowned. Investigation of the incident proves that the accident was due to drunkenness of the British helmsman.

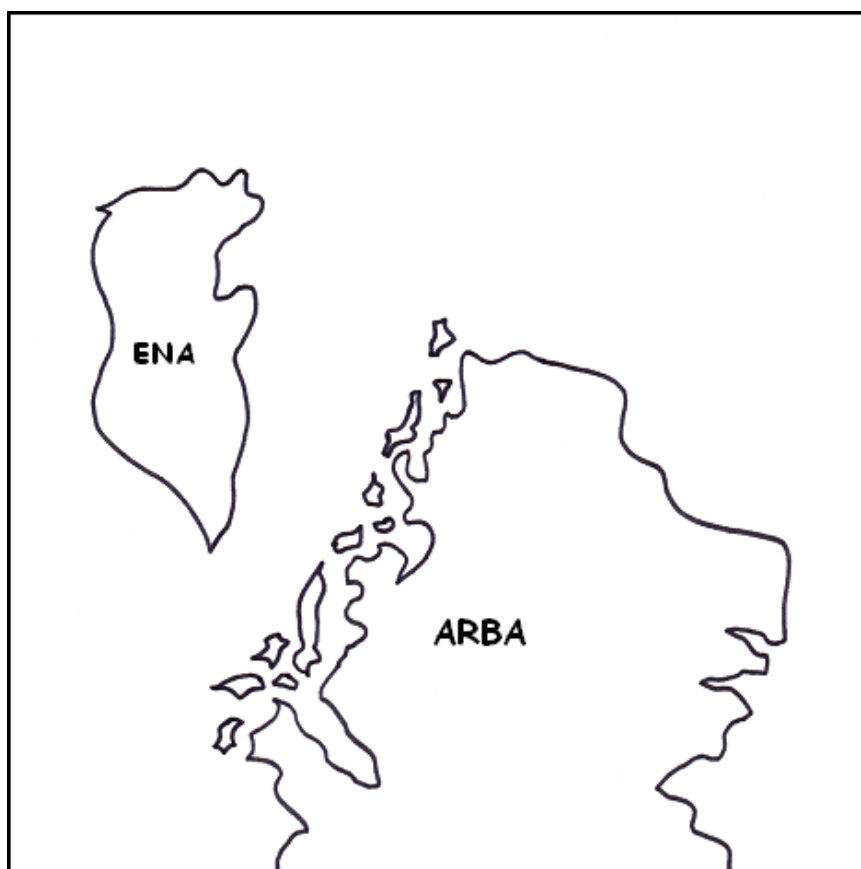
The Argentinean authorities are furious because the Brazilians were fishing in what they consider to be 'their waters'. Moreover, it turns out that two scientists, who were on board of the vessel, were exploring the sea bottom and the subsoil thereof. According to the Brazilian Government its subjects have done nothing wrong since Argentina has not claimed the exclusive use of its Continental Shelf, nor has the country claimed an Exclusive Economic Zone.

Brazil is more worried about the question which State has jurisdiction to prosecute the British helmsman.

Task 18 Arba vs. Ena

After years of controversy, the States of Arba and Ena finally turn to the International Court of Justice with the request to render a decision on the maritime delimitation between the two States that is in accordance with international law. Ena is an island, whereas Arba consists of a large peninsula and a multitude of small islands (see the map below). The distance between the coasts is nowhere more than 24 nautical miles. Neither State is a party to the Geneva Convention on the Law of the Sea of 1958. Ena has ratified the UN Convention on the Law of the Sea of 1982, but Arba has only signed this treaty. The Court is requested to draw a maritime boundary between the respective maritime areas of seabed, subsoil and superjacent waters.

Determine how an equitable solution may be found. Find out which methods are acceptable under international law and what the legal consequences will be.



Session 11 Peaceful settlement of disputes and the use of force

Task 19 Dispute settlement

A) The river the Potamos is the natural boundary between the States Xenos and Allos. Due to a freak of nature, the river suddenly changes course which results in a disagreement over the question whether a particular strip of land belongs to Xenos or to Allos. Since neither of the States wishes to force the issue, a diplomatic solution seems to be the best way out.

B) The solution to the conflict between Xenos and Allos does not prove to be as easy as was expected. That is why the States agree to put the case before an independent third party who can take a binding decision.

C) While the case against Allos is not yet solved, Xenos comes into conflict with Tritos over possible violation of its airspace. Xenos wants a quick and definitive solution and decides to put the case immediately before the International Court of Justice in The Hague. It is not quite clear, however, if this is as easy as it seems to be.

Task 20 *Ius ad Bellum*

Oakland and Sealand have a long-standing territorial dispute. Since time immemorial both States have argued about the sovereignty over Sunset Island, some 200 miles north off the coast of Oakland and about 310 miles northeast of Sealand. History tells us that power over the island changed from time to time, and for a long time neither of the States succeeded in establishing sufficient authority.

However, since the Second World War, Sunset Island has been part of Oakland, although not with the approval of all the inhabitants of Sunset Island; some of them are convinced that belonging to Sealand would definitely bring more prosperity to the island. Recently there have been rumours about infiltration by agents from Sealand. Not only did Sealand send military instructors to train the opposition forces, shipments of arms from Sealand have also been discovered on the shores of Sunset Island.

While Oakland is considering how to react to the Sealand support for the opposition forces on Sunset Island, which is clearly illegal interference with domestic affairs, an impressive flotilla of the Sealand navy appears on the horizon. Asked for an explanation, Sealand states that this is a regular biannual naval manoeuvre. As the Sealand fleet comes nearer and nearer, the naval commander of Sunset Island panics and decides to fire at the Sealand navy. After all, one cannot be supposed to wait for the first devastating attack.