

Maite
Alemany
Jordán PhD

Senior Lecturer in
International
Humanitarian Law

- *THEME 2:
INTERNATIONAL HUMAN
RIGHTS LAW: FROM
CLASSICAL
INTERNATIONAL LAW TO
CURRENT
INTERNATIONAL LAW*

- *2.1 Historical
background to the
international protection
of human rights*
- *2.2 Human rights in
the United Nations
Charter*

A. The origins of international society: the Peace of Westphalia in 1648

- Medieval period. Papacy and empire (Roman Charlemagne/Byzantium/Caliphate).
 - **Absolutism ‘the power of kings over territory’.**
 - Treaty of the Peace of Westphalia 1648. Nation-state. Fully sovereign.
 - European system of states. Starting point of modern international society, subject for the first time to a scheme of legal rules that constitute a differentiated and autonomous order: international law.
 - Eurocentric order oriented to expand to all the ends of the planet. Spanish/Portuguese/English/French/Dutch colonisation...
-
- **‘The State is me’** is a political cliché attributed to Louis XIV of France, The Sun King, which is interpreted as identifying the king with the state, in the context of absolute monarchy. **Treaty of Utrecht - King cedes Gibraltar to UK to end War of Succession 1715.**

• I. International human rights law: from classical international law to current international law: the work of the United Nations and other conventions

From the conquest to the prohibition of the use of force

Conquest-----
prohibition of the
use of force.

Colonisation.....
to self-
determination of
peoples.

A little bit of United Nations history



Background and creation of the UN

From the League of Nations to the UN

World War I ended on 11 November 1918. Armistice. The war stops!

On 18 January 1919, the **Paris Peace Conference** began, bringing together the four victorious countries of the war:

- **United States**
- **France**
- **Great Britain**
- **Italy**

- The signing of the **Treaty of Versailles** took place on **28 June 1919** in the **Hall of Mirrors in the Palace of Versailles, PARIS PEACE**. European balance/weaken Germany/isolate revolutionary Russia.

- The clauses of the **VERSAILLES TREATY**, drawn up in German, English, and French, came into force on 10 January 1920 and **were presented to Germany, which was required to accept them under threat of resuming the war. (The losers/REVANCHA were not listened to and suffered harsh economic consequences).**

The League of Nations 1919

Created in 1919 after the **First World War** and was the first organisation of its kind in history with an international vocation, the predecessor of the UN, which created **the International Permanent Court of Justice**, contributed to the peaceful solution of the crisis between Greece and Bulgaria in 1925, the Chaco conflict between Bolivia and Paraguay, and others. Institutionalised cooperation in economic, financial, and social fields.

SOCIETY OF NATIONS: BODIES

Two affiliated secondary bodies created:

- **The Permanent Court of Justice**, responsible for hearing and resolving any dispute of an international nature submitted to it by the parties and issuing advisory opinions.
- Contentious jurisdiction between states.
- Advisory competence. Non-binding opinions.
- **The International Labour Office:**
- Tripartite structure - governments/management/employees.

LEAGUE OF NATIONS: FAILURE

- **A. Foundational weaknesses**

US self-exclusion because of the US Senate's failure to ratify the 1919 peace treaties.

The exclusion for a long period of time of GERMANY (until 1926) and RUSSIA (until 1934).

Immediate exclusion of the rest of the defeated states.

The organisation was essentially a European entity and for a long time a type of winners' club, dominated by France and Britain.

- **B. Weaknesses inherent in the text of the pact itself**

- The requirement of **unanimity** for the adoption of substantive decisions by the organs of the society = this reduced the practical scope of the deliberations.
- **The lack of its own military force to enforce the organisation's decisions, thus rendering it ineffective.**
- The pact did not clearly state how collective security was to be administered: it only indicated that the organisation could take sanctions against an aggressor. **But only economic sanctions were mandatory. Military sanctions were optional.**
- Recourse to arbitration was not mandatory in all situations.

THE LEAGUE OF NATIONS: FAILURES

c. In the field of **peaceful dispute resolution** (existing or not)

- 1920 - 1921: Russian-Polish War = LN DID NOTHING about Polish aggression against Russia, nor did it prevent Poland's seizure of about 80,000 sq. km. in the Treaty of Riga.
- 1922: Lithuanian-Polish dispute over the possession of Vilnius = VILNA UNDER POLISH CONTROL AND LITHUANIA WANTED VILNA TO BE ITS HISTORICAL CAPITAL AGAIN = LN FAILED TO DISSUADE POLAND FROM GIVING UP VILNIA AND LITHUANIA FORCIBLY ANNEXED IT.
- 1923 - Italian annexation of the port of FIUME = LN DID NOTHING.
- 1925 - Italian bombardment and occupation of the island of Corfu, under Greek sovereignty = LN did NOTHING.
- 1931 - Japanese invasion of Manchuria (China).
- 1936 - Italian invasion of Abyssinia (Ethiopia).
- 1937 - Sino-Japanese War.
- 1938 - German invasion of Sudetenland (Czech Republic).
- 1939 - German invasion of the rest of Czechoslovakia.
- 1939 - German invasion of Memel territory.
- 1939 - Italian invasion of Albania.

B. The international community after the Second World War

Before the end of World War II, the Allied powers signed several declarations aimed at continuing the fight against the Axis powers (Germany/Italy and Japan) and preserving peace.

The San Francisco Conference was the culmination of global advocacy in support of an international organisation working for peace.

It was concluded with the signing of the Charter of the United Nations on 26 June 1945. The Statute of the International Court of Justice (an integral part of the Charter) entered into force on 24 October 1945.

Purposes and principles of the United Nations

Article 1 of the Charter

- Maintaining international peace and security.
- Promote friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.
- International cooperation in the solution of international problems of an economic, social, cultural, or humanitarian nature.
- Focal point for harmonising the efforts of nations to achieve these common ends.

General Assembly

General Assembly: the plenary, representative, policy-making, and deliberative body of the UN, and the only body with universal representation, i.e., all members are represented, and each member has one vote.

It meets once a year in ordinary sessions, but extraordinary sessions may be held if circumstances require.

UN bodies - Security Council

Security Council

Main body of restricted membership. Its main role is to maintain international peace and security (Art. 24).

Functioning: the Charter indicates that its functioning must be continuous (Art. 28), for which each member must have a representative at all times at the UN Headquarters.

Security Council



The Security Council is composed of 15 members:

- **Five permanent members:** China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland, United States of America.
- **10 non-permanent members (indicating the year in which their term of office ends):**
 - Germany (2020)
 - Belgium (2020)
 - Ivory Coast (2019)
 - Equatorial Guinea (2019)
 - Indonesia (2020)
 - Kuwait (2019)
 - Peru (2019)
 - Poland (2019)
 - Dominican Republic (2020)
 - South Africa (2020)

Grupo	África			Asia-Pacífico		América Latina y el Caribe		Europa Occidental y otros		Europa Oriental
2018	 Costa de Marfil	 Guinea Ecuatorial		 Kuwait		 Perú				 Polonia
2019										
2020			 Sudáfrica		 Indonesia		 República Dominicana	 Bélgica	 Alemania	

ECOSOC: ECONOMIC AND SOCIAL COUNCIL

ECOSOC

- Advisory body to the SC and the GA; it must provide all information requested.
- Reports on international economic, social, cultural, educational and health issues.
- Makes recommendations on these matters and promotes respect for human rights and fundamental freedoms.

ECOSOC.

- It may convene international conferences on matters within its competence.
- Responsible for concluding agreements with the specialised agencies and for coordinating their activities with those of the UN.
- Receives reports from NGOs in consultative status.

Commission on Human Rights

predecessor of the Human Rights Council was an ECOSOC
Commission in 1947



The General Assembly creates the **Human Rights Council** Resolution **60/251**





HUMAN RIGHTS COUNCIL
Universal Periodic Review:
<https://www.ohchr.org/es/hr-bodies/upr/basic-facts>

UNIVERSAL PERIODIC REVIEW

- **The Universal Periodic Review (UPR) is a special process that involves a periodic review of the human rights records of all 193 member states of the United Nations.**
- **It provides an opportunity for all states to declare what steps they have taken to improve the human rights situation in their countries and to overcome challenges to the enjoyment of human rights.** The UPR also offers the possibility to share best human rights practices from around the world. There is currently no other similar mechanism.
- **How was the UPR created?**
- The UPR was created when the Human Rights Council was established on 15 March 2006 by UN General Assembly resolution [60/251](#). This resolution mandated the council to 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states'. On 18 June 2007, one year after its first meeting, members of the new council agreed on an institution-building package ([A/HRC/RES/5/1](#)) which provided a roadmap to guide the future work of the Council. One of the key elements of this package was the new Universal Periodic Review. This mechanism was further refined during the review process through Resolution 16/21 and Decision 17/119.

UN bodies

Secretariat

The Secretary General is the chief administrative officer of the organisation, appointed by the GA on the recommendation of the SC (Art. 97).

Permanent operation.

Composition: Secretary-General and staff as required by the UN.

The Secretary General has an extraordinary and wide-ranging field of action and technical-administrative competencies, such as:

UN bodies

Secretariat

In addition, it exercises powers of a political-diplomatic nature.

- Mediates in international disputes;
- Administers peacekeeping operations;
- Prepares studies on human rights and sustainable development.
- Can draw the attention of the SC to matters that may endanger the maintenance of international peace and security (Art. 99).

The Secretary



International Court of Justice

https://www.icj-cij.org/files/multimedia-galleries/icj/v_icj_es.mp4

