

MODULE ONE – INTRODUCTION TO INTERNATIONAL LAW

International Law Affects Our Lives in Many Ways:

- travel to other countries (air or sea)
- pollution and climate change
- discrimination on grounds of race, sex, age, disability, religion, under Australian law
- buying goods from other countries (including online)
- animal/natural heritage protection, fishing resources
- cultural/society/community expectations: policing, elections, fair trial, equality, etc

Topical:

- North Korea firing ICBM → US threats of force, role of UN Security Council
- BREXIT → international currencies and trade, freedom of movement in Europe
- Commonwealth citizenship amendments:
 - effect of *Australian Citizenship Amendment (Allegiance to Australia) Act 2015*
- 17 July 2014 shooting down of Flight MH-17
 - ‘the state over whose territory this occurred bears responsibility for this awful tragedy’ – Russian President Vladimir Putin
- regional:
 - China claiming jurisdiction in South China Sea
 - *Whaling in the Antarctic (Australia v Japan; New Zealand intervening)* (2014) ICJ Reports 226
 - ICJ considered whether Japanese ‘research whaling’ programme in Southern Ocean was reasonable ‘for purposes of scientific research’ held: it was not
 - Japan ordered to stop whaling programme in Southern Ocean
 - 2015 – Japan announced intention to resume whaling in 2016 with revised programme (eg: smaller quota)

International Law

- rules regulating treaties and relations between rulers date back many centuries: Persia, China, Mesopotamia, India, Roman and Greek empires
- trade law and merchant/maritime law
- influenced by natural law thinking, ecclesiastical (church) law
- development of international law mirrored decline in power of Church and rise of nation State → humanistic and secular ideas
- conduct of war, armed conflict
- 1625 – Grotius wrote about law of war and security, property, high seas. Also separated international law from natural law and law of god: international law gained ‘obligatory force from the will of all Nations’
- 1648 – treaties of Westphalia: early diplomatic machinery for conflict resolution

- post-WWI – Versailles peace conference: established League of Nations to prevent recurrence of conflict
- 1921 – PCIJ, Permanent Court of International Justice – judgments, advisory opinion
- 1928 – Kellogg-Briand Treaty: renounced war as solution to international disputes (but no definition of ‘war’ so application unclear)
- post-WWII – replaced failed League of Nations with UN, PCIJ and ICJ
- 1945 – UN Charter
 - prohibits threat or use of force
 - authorises economic sanctions, also armed force to restore peace + security
- IL – war and peace → increased economic and political cooperation among states, now includes individuals (human rights/humanitarian law)
- IL – international peace and security, trade, aerospace, communications, transport, nuclear energy, natural resources, health, human rights law, law of the sea, environmental law

Is International Law ‘Really’ Law?

- must define ‘law’ – much philosophical disagreement over what is law and whether international law complies with the definition
- HLA Hart – no central law-making institutions (parliament, court of compulsory jurisdiction) and no means of identifying applicable rules of international law, therefore absence of developed legal system
- defined by reference to member States – normative standards in their relations
- defined by reference to ICJ decisions – law as applied in particular cases
- international law theories – natural law and positivism:
 - natural law – legal systems underpinned by inherent obvious or ‘natural’ principles, often religious
 - positivism: legal systems founded on sovereign’s power and ability to command and enforce – actual power of the States
 - in practice, international law has features of both
- newer influences: critical legal theories, feminist legal theories:
 - critical legal theories – criticise assumptions about international law, universality is impossible because politics and other value systems intervene and influence legal decisions, etc
 - feminist legal theories: international law based on gendered assumptions and world views, etc
- so is international law really law? In practice it works better than credited
- states pay attention to international law often (not always) – they comply with their own best interests
- even violations justified within international law framework – necessity, self-defence, breaches by other State(s)

UN Charter, Articles 2(1) and (7)

- Article 2 – the organisation and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles:
 1. the organisation is based on the principle of the sovereign equality of all its members
 7. nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII

What is International Law Today?

- more States
- more non-State actors: Multinational Corporation, Non-Government Organisation
- more treaties, litigation
- new International Criminal Court
- increased and improved technology, digital revolution
- forays into outer space (States and private entities)
- global warming, waste dumping, desertification
- globalisation
- terrorism
- new legal concepts and questions → International Criminal Court

International Dispute Resolution

- states obliged to resolve disputes peacefully (Art 2(3) UN Charter: “all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”)
- most disputes resolved peacefully and diplomatically – best interests of States
- many ways to do this – Article 33(1)
 - ‘the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice’
- judicial settlement – principal body to resolve international disputes between states
- ICJ’s authority and powers:
 - Chapter XIV UN Charter
 - ICJ Statute
- authority and jurisdiction based on consent of UN Member States:
 - Article 94(1) UN Charter
 - Article 59 ICJ Statute

- disputes may be referred for ICJ to determine – Article 36(1) ICJ Statute
 - by States
 - under treaties referring disputes to ICJ
- states may also accept ICJ jurisdiction to determine disputes – Article 36(2) ICJ
 - note: Australia's 2002 declaration limiting ICJ jurisdiction
- ICJ has 2 jurisdictions:
 1. Contentious:
 - Articles 36-38 ICJ Statute
 - determines disputes between parties which have accepted its jurisdiction
 - only States may be parties to disputes, not individuals, organisations, NGOs, UN organs, state government bodies or corporations – Article 34(1) ICJ
 2. Advisory:
 - Article 96 UN Charter; also Chapter IV of ICJ Statute
 - issues advisory opinions on legal questions on request by Security Council or General Assembly, or other UN or authorised agencies