

## Week One: Introduction to International Law

- ❖ For the purposes of international law, **State** denotes a country which exhibits certain specific features:
  - An independent government;
  - A definite territory;
  - A permanent population; and
  - A capacity to enter into legal relations with other States
- ❖ **International law** can now be defined as a body of rules and principles which regulates relations:
  - Among States and public international organisations inter se;
  - Between States and individuals in the field of international human rights; and
  - Between the international society and individuals who have committed international crimes

## Development and Scope of International Law

### *Key Dates in European (And World) History:*

- ❖ Europe has done more than any other continent in shaping international law as we know it today:

<b>476</b>	Emperor Romulus Augustus abdicates in favour of the Germanic warlord Flavius Odoacer
<b>1075</b>	The <i>Dictatus papae</i> (papal dictation) arrogates to the Pope new powers, including the right to depose emperors
<b>1517</b>	Martin Luther publishes his <i>Ninety-Five Theses</i> : start of the Protestant reformation and the decline of Catholicism in northern Europe
<b>1625</b>	Hugo Grotius publishes <i>De Jure Belli ac Pacis</i> ('On the Law of War and Peace')
<b>1648</b>	Peace of Westphalia ends the Thirty Years War and shapes the modern sovereign state
<b>1789</b>	A century of growing nationalism culminates in the French Revolution
<b>1815</b>	The Congress of Vienna produces the 'Concert of Europe'
<b>1854</b>	The start of the Crimean War marks the decline of the Concert into rivalry between European powers
<b>1914</b>	This rivalry eventually leads to the Great War
<b>1919</b>	Establishment of the League of Nations (1919 Peace Treaty)

- 1928     Signing of the *General Treaty for the Renunciation of War as an Instrument of National Policy* ('Kellogg-Briand Treaty' or 'Pact of Paris')
- 1945     Establishment of the United Nations

## Structure of the International System

### Legal Norms

- ❖ The most striking feature of the international legal system is its *decentralised* and *consensual* character
  - In contrast to domestic legal systems, it is not possible to point to institutions endowed with readily identifiable legislative and executive functions
- ❖ In a limited sense, there is no international government and no system of international legislation. There are, however, two notable exceptions:
  - (1) Certain resolutions adopted by the UN Security Council will impose legally binding obligations on all States
  - (2) The European Union possesses most of the characteristics of a federal legal system, so that the Union's legislative organs may adopt laws which are effective in the members States in such a way that they may be directly relied upon by litigants in national courts and tribunals
- ❖ International law is primarily a system of *customary law*, increasingly supplemented by rules and principles that are agreed upon in treaties
  - These two sources of law are *positive international law*, in the sense that the norms that they generated have been chosen or agreed upon by States in their dealings with each other

### United Nations:

- ❖ The United Nations is the one international organisation which is almost universal in its membership (with 192 States) and whose purposes extend to regulating most matters of international concern
  - The UN consists of six principal organs:
    - **The General Assembly**
      - The only principal organ on which all UN members are represented
      - Has the broadest function of any UN organ
      - Has the ability to 'consider', 'discuss' and 'make recommendations' in relation to any matter within the Charter's scope
      - Its resolutions are not legally binding, save for certain of the organs of the UN for certain purposes
    - **The Security Council**

- Consists of 15 members – five of which are permanent (China, France, Russia, UK and US); and ten of which are elected for two years terms by the General Assembly
  - The Security Council's primary responsibility is for the maintenance of international peace and security
  - Although the range of the Security Council's competence is narrower than that of the General Assembly, the Security Council's powers are *not limited* to consideration, discussion and recommendation
    - In certain circumstances, the Security Council may adopt resolutions that **legally bind** all States to which the resolutions are addressed
  - The composition of the Security Council, and especially the current system of permanent membership, is widely criticised as being outdated because it reflects the international order as it existed in 1945
    - There are a number of proposals to reform the Security Council, most of which involve expanding the number of permanent members to include, amongst others, Germany, India and South Africa
- ***The Economic and Social Council***
- Consists of 54 members which are elected for three-years terms by the General Assembly
  - Ecosoc is empowered to 'make or initiate studies and reports', 'make recommendations', 'prepare draft conventions' and call international conferences
    - It may do these things with respect to international economic, social, cultural, educational, health and 'related matters', including human rights
    - The work of Ecosoc has led to the adoption of the ICCPR and ICESCR
- ***The Trusteeship Council***
- Although initially established to supervise the administration by some members States of certain non-independent territories, in 1994 the Trusteeship Council suspended its own operations and amended its rules of procedure so that it is no longer required to meet at least once annually
    - Any future meetings of the Trusteeship Council can be held on the decision of its President, or at the request of a majority of members of the General Assembly or Security Council
- ***The International Court of Justice***
- The ICJ is the principal *judicial organ* of the UN