



Master Programme in European and International Law

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Public International Law (VAK 06-009)

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History and Terminology

Terminology

- *ius gentium* = body of law between Roman citizens and non Romans
- *ius inter gentes* = international law (public international law)

History and Terminology

Questions

- Why do I have to know and understand history?
- How did we become what we are?
- What happened?

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Why do I have to understand ... ?

- Everything is historically contingent!
- All major concepts of international law are related to historical moments

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Sovereignty

- Who is sovereign?
- Who exercises sovereignty?
- What is the source of sovereignty?
- Is sovereignty indivisible?
- Do we need sovereignty?

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International System

- Do the relations between sovereigns form some kind of community, society, etc.?
- Where does law come from?
- Are international relations guided by law?

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Development of the International System

- Westphalian Model (From the Peace of Westphalia to the First World War)
- New Settings (From the First to the Second World War)
- UN Model (From the UN Charter to the end of the Block System)
- New World Order (From the end of the Block System to the Present Day)

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Westphalian Model

- Composition of the international community
- Allocation of power
- Legal output
- Main features of the law
- Efforts to restrain great powers' Dominance

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Composition of the international community

- Europe was the “*theatre of world history*” and there the “*world spirit*” found its home
- International community = Europe, USA (since 1783), Latin-America (since 1811-1821)
- Christianity, capitalism and absolutism (followed by parliamentary democracy)

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Allocation of power

- Dominance of the international community by France, Great Britain, Spain, Portugal, the USA, Russia, Austria, Prussia and the Netherlands
- Balance of power
- “Concert of Europe”

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Concert of Europe

- Declaration of Principles
 - “Holy Alliance” (Austria, Russia and Prussia)
 - Preserving religion, peace and justice
- Military Alliance
 - Treaty of Paris: Austria, Prussia, Russia, Great Britain (1815), France (1818)
 - System of collective security
- Settlement of political questions
 - Discussing “great interests in common”
 - Multilateral diplomacy

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Legal Output

- 17th and 18th centuries: “legal backbone” of the international community
- “Birth” of the term “international law” instead of “law of nations”
- Establishment of major principles

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Major principles

- in public international law -

- Rules on territorial sovereignty (right of exclusive control over territory),
- on the acquisition of sovereignty over territories belonging to no one, and
- on the free use of the high seas.

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Main features of the law

- International rules and principles were the product of western civilizations (Christian ideology)
- International norms and principles were mainly framed by the great powers or middle-sized States (serving their own interests)
- Exception (e.g. freedom of the high seas)

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Efforts to restrain great powers' dominance

- *Calvo* clause (limiting foreign legal and political interventions) legally ineffective
- *Drago* doctrine (limiting the right of States to resort to force in order to recover payments due by foreign States to nationals of the former) opposed by leading European jurists

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New Settings

- The First World War
- The Soviet Union's presence splits the international community
- The League of Nations
- Legal output

The First World War

- “Passing of the European Age” (merely *one* of the geographical areas of power)
- The war “united” the whole world (crucial to the world community at large)

The Soviet Union's presence splits the international community I

- Consequent rise of a “new State”, the Union of Soviet Socialist Republics (1917)
- “the tower of Babel of world-wide unity is left in ruins” (*Korowin*, 1928)
- New ideology and political philosophy

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The Soviet Union's presence splits the international community II

The USSR advocated the following principles:

- Self-determination
- Substantive equality of States
- Socialist internationalism
- Partial rejection of international law

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The League of Nations

- International institution to prevent the recurrence of world-wide armed conflicts
- Procedures for dispute settlement
- Failed because it relied on the voluntary co-operation of States when it imposed a ban of war
- Unable to introduce a radical change of the old international community

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Legal output

- Increase of international arbitration
- Permanent Court of International Justice (1921)
- Limiting inequalities among States
- Greater concern for the demands of individuals

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UN Model

- The Second World War
- Composition of the international community
- The attempt at institutionalising the pre-eminence of great powers
- The international legal system in transition
- Expansion of the Third World

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The Second World War

- 26 June 1945 Charter of the United Nations signed
- 6 August 1945 atomic bomb was dropped on Hiroshima
- 8 August 1945 Agreement on the International Military Tribunal

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Charter of the United Nations signed

- First radical attempt at creating an international institution designed to introduce law and order into the international community
- www.un.org/aboutun/charter/index.html

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Atomic bomb was dropped on Hiroshima

- New era: the use of atomic and nuclear energy for warlike purposes
- States were capable of destroying the entire planet
- How to place restraints on the use of means of destruction is still discussed

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Agreement on the International Military Tribunal

- Nuremberg Trial (1945)
- Tokyo Trial (1946)
- State officials personally responsible for any wrongdoing (state responsibility and personal liability)

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Composition of the international community

- Increase of socialist “democracies”
- Downfall of the colonial empires (political independence)
- Western countries no longer dominated
- Appearance of Intergovernmental Organizations

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The attempt at institutionalising the pre-eminence of great powers

- System of collective security
- “Directorate” (USA, USSR, the UK, France and China) = Security Council
- Possible veto by one of the “Big Five”
- Disagreement between the Western Powers and the Soviet Union lead to the Cold War

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The international legal system in transition

- Massive participation of newly independent countries in the world community
- Basically the principles of international law were accepted in the beginning
- Denouncing the injustice behind many traditional norms

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The expansion of the Third World

- After 1960 the majority of the international community consisted of Third World countries
- Western minority still holds economic and military power
- China opened up to the international community
- five principles for the regulation of international relations

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Five principles for the regulation of the international relations

by China, India and Burma (1954)

- Mutual respect for each other's territorial integrity and sovereignty
- Non aggression
- Non-interference in each other's internal affairs
- Equality and mutual benefit
- Peaceful coexistence

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Legal change

- UN potentialities were enhanced
- Developing and socialist States kept insisting on self-determination and racial equality:
 - 1965: UN Convention on Racial Discrimination
 - 1966: UN Covenants on Human Rights
- “Group of 77”
 - 1964: New International Economic Order

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New World Order

- End of the block system of the international community
- Independency of former Soviet Republics
- Reunification of East and West Germany
- “Reactivation” of the United Nations

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Questions

- What does that mean to you?
- How does or should public international law react?



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Further reading:

A. Cassese, International Law, 2001, pp. 19-45

Further information:

<https://elearning.uni-bremen.de>