Introduction

This course deals with global International Organizations (IOs), institutions created by treaty and generally having states as members that aspire to be global in scope and membership. It examines the legal impact of, among others, the UN’s Security Council and General Assembly, the International Labor Organization (ILO), the International Civil Aviation Organization (ICAO), the World Health Organization (WHO), the World Bank and the IMF, and the WTO. It will also address the interaction of the advisory jurisdiction of the International Court of Justice (ICJ) with the UN and introduce the law-making impact of some other international courts or tribunals.

The premise of the course is that IOs (including international courts) are, in practice, effectively law-makers insofar as a number of actions that they take have a legal impact on states and other non-state actors. While the course examines, in passing, the substantive legal regimes in which these institutions are embedded, such as the international trade regime, UN institutional law (including the privileges and immunities of the UN), and international aviation law, the focus is on the impact institutionalization has on these legal regimes. (Accordingly, this course does not overlap substantively with other NYU courses such as courses on international law, the European Union, global governance, the International Law Commission, international finance, or international trade.) Throughout we will be examining how international organizations make and attempt to “enforce” law and how these organizational processes have affected (and change) the sources of international law as defined by legal positivism, namely treaties, custom, and general principles.

In the absence of an international police force, a world legislature, or a world court with truly universal jurisdiction, international organizations necessarily have been innovative in devising ways to create, enforce, and interpret law. This course provides a different perspective on what law-making is and even what “law” is.

This course addresses select forms of institutionalized treaty making and regulation, as well as enforcement and dispute settlement. After some initial classes introducing the basic themes for the course, Parts 2-5 of the course examine distinct IOs in their legal settings.

Requirements

There will be a proctored four hour, open book exam for this course which will count for 80 percent of a student’s final grade. That exam will be scheduled during exam period. The format of that exam will be similar to those given in this course in the past and students are welcome to look at old exams (which will be available on the courseweb) for guidance. Twenty percent of the final grade for this course will be given for class participation and for a required 1000 word paper assignment on a topic that the professor will announce during the course. That 1000 word essay will be due on the last day of regularly scheduled classes. Both the essay and
the final exam will be graded anonymously. Regular attendance throughout this course is important. **Students who expect to have significant extracurricular responsibilities during the term that will make it difficult to attend some classes ought not to select this course.**

This course complements but does not overlap with basic survey courses offered at NYU on international law, international trade, or human rights. The course complements but does not overlap with the international organizations clinic (whose students are strongly encouraged to take this course). Enrollment is open to all second and third year JD candidates as well as all LLM candidates. Course meetings are on Wednesdays from 2:10-3:25 p.m. and on Fridays from noon-1:15 p.m. in Vanderbilt 206.

**Required Texts**

The one book required for purchase is the paperback edition (or e-book version) of Alvarez, *The Impact of International Organizations on International Law* (Brill 2017) (“Alvarez, Impact” below). Additional readings will be available through the courseweb or will be available for student download on the web as indicated; these supplemental readings are likely to include excerpts from Prof. Alvarez’s prior book, *International Organizations as Law-Makers* (Oxford 2006), but that book is not required for purchase.

Students with little or no background in international law should read, early on in the course, an introductory text on the basic sources of international law (treaties, custom, and general principles) as contained in, for example, a basic treatise on the subject (such as any edition of the West nutshell on *Public International Law*). *The international law course is not, however, a prerequisite.* LLM Students who have had a basic course on international organizations elsewhere may want to examine the assigned Alvarez book to see whether the material covered in that text overlaps significantly with their prior exposure to the subject.

**Other Items on Course Reserve**

The following books will be put on course reserve for the use of students interested in particular topics or organizations. Other items may be added from time to time as announced in class.


H.G. Schermers and N.M. Blokker, *International Institutional Law* (various editions)

*The Charter of the United Nations: A Commentary* (Bruno Simma, ed.)(various editions)
The United Nations and International Law (Christopher Joyner, ed. 1995)
Restatement of the Law, Foreign Relations of the United States (Third)
Louis Henkin, Foreign Affairs and the U.S. Constitution (2d ed. 1996)
Rosalyn Higgins, The Development of International Law Through the Political Organs of the United Nations (1963)

Useful Links

The following are links to the various IO websites that we are likely to be discussing this semester:


World Trade Organizations (WTO): http://www.wto.org

World Bank: http://www.worldbank.org

International Labor Organization (ILO): http://www.ilo.org

World Health Organization (WHO): http://www.who.int

International Monetary Fund (IMF): http://www.imf.org

International Civil Aviation Organization (ICAO): http://www/icao.int

International Atomic Energy Agency (IAEA): http://www.iaea.org

International Criminal Court (ICC): http://www.icc-cpi.int/Menus/ICC?lan=en-GB

Logistics

Students are strongly encouraged to come visit the professor (Vanderbilt 325) for questions or merely to get acquainted. Weekly office hours will be posted on the door of Vanderbilt 325 each week after classes begin and students ought to sign up in advance to avoid a wait. Office hours will vary to accommodate students with different schedules. If the hours posted prove unworkable for you, contact the professor via email (jose.alvarez@nyu.edu) to make alternative arrangements. Prof. Alvarez’s assistant is Rachel Jones (rachel.jones@nyu.edu).
Syllabus for first three classes

I. Introduction

Class 1: The Haiti Cholera Case Study

Since its early days, the UN has authorized a number of “peacekeeping” forces (see introduction to peacekeeping from the Chesterman, Johnstone, and Malone UN casebook). Also from its earliest days, the organization has claimed immunity from suit. (See short excerpts from that casebook on privileges and immunities). In the usual case, the Security Council authorizes peacekeeping missions in response to, for example, threats to international peace and security or to assist countries in the wake of natural disasters such as earthquakes.

In 2004, the Security Council authorized one of a series of such forces that have been operating in Haiti for many years, namely the UN Mission for Stabilization in Haiti (MINUSTAH). In October 2010, shortly after the arrival of the latest contingent of MINUSTAH arrived, consisting of personnel from Nepal to assist Haiti in the wake of its recent earthquake, cholera suddenly appeared in Haiti—a country that had never, in over 300 years, seen recorded cases of that disease. Almost immediately, serious evidence showed that the epidemic—which eventually killed thousands and continues to this day as a threat—had been introduced by the presence (and negligent waste disposal) of Nepalese peacekeepers. The short articles below by Kurzban and fellow attorneys for the Haiti cholera victims, Rashkow (a former UN lawyer), and Prof. Alvarez introduce the basic facts of the epidemic as well as the UN’s initial responses to the claims.

After a considerable period of silence, the UN’s lawyers initially said that the cholera claims were “not receivable” because they were not the kind of “private law” claims anticipated by the treaty between the UN and Haiti concerning MINUSTAH (see UN-Haiti Status of Forces Agreement). This response eventually triggered lawsuits by cholera victims or their families in U.S. courts. These suits were eventually dismissed on the grounds that the UN enjoys immunity from suit. The UN continued to resist any responsibility for the incident thereafter and only explained what it had initially meant by claiming that the claims were “not receivable” after criticisms by UN Special Rapporteurs and by requests for clarification from, among others, members of the U.S. Congress. (See the report on the statement by then Secretary-General Ban Ki-Moon of Feb. 2015 for a summary of the UN’s response.) After further critical reports and statements from, among others, Philip Alston (as Special Rapporteur on extreme poverty and human rights) (see his statement to the Gen. Assembly of Oct. 25, 2016), Ban Ki-Moon, on his last month in office, produced a kind of apology for the incident and announced further steps to address the problem. See remarks of Dec. 1, 2016. (Those interested in seeing the full report announcing the UN’s “new approach” should see Report by the Secretary-General, A New Approach to Cholera in Haiti, at A/71/620, Nov. 25, 2016.) Lawyers for the Haiti cholera victims pointed out that the statement fell short of accepting the UN’s legal responsibility for the cholera outbreak and did not specifically promise the that UN would provide compensation to its victims or their families. To this day, no such compensation has been forthcoming although the UN is attempting to seek voluntary contributions to re-build the infrastructure to provide for clean water in Haiti.

Although the class will revisit the Haiti cholera case later in the course, this class uses the case to bring out recurring themes in the course.
Readings (all available as a pdf packet under the readings for class 1 in the course website):

Background:
Excerpts from Chesterman, Johnstone, and Malone, on Peacekeeping and Privileges and Immunities (courseweb) (also available at an e-book, pp. 317-321; 555-563)
Symposium: “Remedies for Harm Caused by UN Peacekeepers,” AJIL Unbound (2014)
Bruce Rashkow, “Remedies for Harm Caused by UN Peacekeepers,” available at https://www.cambridge.org/core/journals/american-journal-of-international-law/article/remedies-for-harm-caused-by-un-peacekeepers/477151BF66711E676995368BF4EAB83A
Secretary-General’s remarks to the General Assembly on a New Approach to Address Cholera in Haiti, 1 Dec. 2016 (on courseweb and also at https://www.un.org/sg/en/content/sg/statement/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address )

Questions for class discussion:
1. What is the legal authority for UN peacekeeping? What explains the contents of a typical Status of Forces agreement between a state and the UN to authorize the presence of peacekeepers on its territory such as the UN-Haiti Status of Forces Agreement?
2. How is the “accountability” of UN peacekeepers assured? Are UN peacekeepers, in your view, “legally responsible”? Are they subject to human rights obligations? Why or why not?
3. If you had been working as a lawyer for the UN at the time that the first claims by Haiti cholera victims were being brought to the notice of the UN, what would have been your advice to your client? Do you agree with the UN’s response that these claims were “not receivable”?
4. What are the reasons that the UN is accorded absolute immunity from legal suit? If you were a lawyer for the Haiti cholera victims that sued in U.S. courts, what exactly would you have argued under the General Convention on Privileges and Immunities or the UN-Haiti Status of Forces Agreement to convince a U.S. court to accept jurisdiction and deny the UN’s immunity? Were U.S. courts right to uphold the UN’s immunity and refuse to
consider the Haiti cholera suits? If U.S. courts had accepted these claims and awarded damages, who would pay? The Haiti case is only one of a number of instances in which the UN (and its peacekeepers) have been accused of serious forms of negligence and even of criminal behavior, such as rape. Is it time to revisit the General Convention on Privileges and Immunities and/or what is contained in UN Status of Forces Agreements?

5. Do you agree with Alston that the UN’s failure to accept responsibility for the spread of cholera in Haiti or pay damages to its victims violates international law? Do you agree with his suggestions that the timidity of the UN’s lawyers were partly to blame? Do you think that Alston is suggesting the UN lawyers have been acting unethically or unprofessionally? If so, do you agree with him?

6. If you were advising the new Secretary-General, what would you tell him is the best way to handle cases like the Haiti cholera case?

Class 2: What are IOs? Why study them?


Do these articles suggest differences in how lawyers vs. political scientists see international organizations? Why do states establish international organizations? Why do they establish so many of them and not just a single one? Do you think states are ever surprised by what these organizations do once they begin to operate? Do you think it is accurate to describe organizations like those of the UN system as the “agents” of their state “principals”? Would it be accurate to describe the UN Secretary-General as the “agent” of any particular UN member? Would it be accurate to describe an ICJ judge as an “agent” of states?

Class 3: IOs and Legal Positivism

Alvarez, Impact, Chapter 1, pp. 1–57
Security Council Res. 1373, Sept. 28, 2001 (available on courseweb or at UN website (above)(go to Security Council-resolutions-years 2001)
Security Council Res. 2249, Nov. 20, 2015 (available on courseweb or at UN website))

Questions for class discussion:
In what ways do IOs threaten or undermine the positivist sources of international law according to Alvarez? Do the Security Council Resolutions above support or undermine Alvarez’s thesis?

_Tentative_ Syllabus for the rest of the Course

Class 4: An introduction to the UN Charter

Class 5: The “democratic deficit” of IOs

Part 2: Introducing the UN as a “law-maker”
Class 6: The external effects of “internal” law

Class 7–8: The various roles of the UN Security Council

Class 9: The various roles of the UN General Assembly

Part 3: International “Administrative” Law


Class 11: The World Bank

Class 12: The IMF

Class 13: The International Civil Aviation Organization

Class 14: The UN and Climate Change

Class 15: Frameworks of “Governance” (Global Administrative Law, Constitutionalization, Informal Law)

Part 4: The International “Judiciary”

Class 16: Seeing Courts as Institutions: Revisiting the ICJ

Class 17: International Criminal Courts

Class 18: The WTO’s Dispute Settlement System

Class 19: The different roles of international adjudicators

Part 5: Contemporary Challenges

Class 20–21: Special Guest: David Malone, UN Under-Secretary General (expected topics to be addressed: contemporary challenges facing the UN Security Council (from mediation to peacekeeping) and international financial institutions)

Class 22–27: Accountability and Legal Responsibility

Class 28: Putting it together