# Columbia Law School

**The Law on International Organizations**

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The law on international organizations (IOs) that emerged after the Second World War was grounded in unshakeable trust in IOs and an assumption that making them subject to legal discipline was unnecessary and, in fact, detrimental to their success. Imbued with this optimistic assumption, international law insulated IOs from internal and external scrutiny and gave their officials free rein to lead their institutions as they saw fit. In the years since, while we have become increasingly dependent on IOs even in our daily lives, we have also seen the inherent shortcomings in the naïve view that IOs are our impartial, effective agents. In addition to growing public mistrust in global governance in general, the poor performance of several IOs has led to efforts to rethink the law on IOs. Since the mid-1990s, scholars have been trying to explore ways to secure or restore trust in global bodies, mainly by borrowing and adapting from domestic public law precepts that emphasize multi-stakeholder participation and accountability (transparency, participation, justification, review, and liability). Today, while the “accountability culture” now seems to extend to IOs, its legal tools are still being shaped and are often contested and resisted. This course will describe and analyze the promise and limits of securing IO accountability in general as well as in specific spheres such as health and climate governance, global sports law, access to digital platforms and the regulation of online speech, and other fields. We will assess the ability (or inability) of international law, domestic public law, and private law to ensure that IOs pursue goals that meet contemporary and future global challenges.

# Background Readings

# Syllabus

**Class 1:** **The Functions of International Organizations: A Realist Perspective**

What are international organizations (IOs)? What are they for? In this introductory class we will explore theories describing the functions of IOs. We will also discuss how law and legal institutions, such as judicial review, help such organizations function properly.

**Class 2: The Functions of International Organizations: The Post-War Legal Embrace**

The interwar period saw enthusiasm for IOs in general and the League of Nations in particular. IOs were seen as heralding and securing a bright, post-Hobbesian alternative to anarchy and war. In particular, IOs received a warm and enthusiastic reception from many international legal scholars. The interwar period saw new legal theories that unreservedly posited that IOs have individual personality and inspired the evolving law on IOs, which celebrated them as “harbingers of happiness.” This optimistic vision persisted after 1945, particularly with respect to the United Nations, which was celebrated as “the great and most hopeful public event in history.”

**Class 3: The History of Global Governance Bodies, with Special Emphasis on The League of Nations and the United Nations**

Founded after World War I, the League of Nations was the first multitasked intergovernmental organization. Originally designed to deal mainly with keeping the postwar peace, it was assigned several additional tasks and incrementally took on many others. The full assembly of the League met only once a year, and the lengthy intervals between meetings meant the League’s civil servants were free to expand their authority without much accountability. Although it had a limited number of members, the secretariat was far more powerful and diverse than any previous or subsequent IO, clearly demonstrating the idea of “mission creep.”

**Class 4: A Typology of IOs, from Formal to Informal and Private**

This class will introduce the various forms of IOs and other global governance bodies, from formal intergovernmental organizations to more informal networks of governmental bodies and private, standard-setting bodies. We will observe the various ways in which these bodies interact in order to map the field of global governance and identify, from a democratic perspective, each type of IO’s potential and limits.

**Class 5:** **The Political Economy of Global Institutions: The Problem of the “Have Nots”**

This class will analyze the economic and political motivations of the handful of powerful actors that set up IOs. We will also explore the legal and political tools these actors use to maintain their control of the IOs they have established. In particular, we will discuss the phenomenon of IO fragmentation and its consequences. Finally, we will examine the role international law and legal institutions might play in “defragmenting” the international legal space and promoting sustainable, egalitarian, accountable outcomes.

**Class 6: The Political Economy of Global Institutions: Agency Problems and Their Resolution**

Officials in IOs often enjoy broad discretion and therefore pose a challenge to national governments demanding accountability. If that challenge is not responded to properly, the inherent agency costs created by delegating policymaking to these officials can benefit powerful states or special interests at the expense of the rest. In this class we will explore this challenge and examine the legal tools developed to meet it, namely, norms concerning representation, accountability, and review. We will also assess whether or not national or international bodies have the incentives and means to effectively monitor decision-making by international organizations.

**Class 7: The Law on IOs: Legal Personality and Rights**

This class will cover the general rules of international law that establish IOs as independent subjects of international law and define their rights and obligations. We will also discuss the legal nature of IOs’ constituent instruments and the rules for interpreting them.

**Class 8: The Law on IOs: Evolving Duties and Responsibilities**

Perhaps disillusionment with the record of certain IOs has led to the recent recognition that IOs have certain duties and responsibilities, such as the duty to exercise due diligence to prevent, reduce, and control harm affecting member states and anyone affected by their acts and omissions, and the obligation to give “due account” to others, including to other IOs. In this class we will assess this emerging trend and its ramifications.

**Class 9: The Law on IOs: Immunities**

This class will cover domestic and international judicial decisions concerning the scope of immunities granted IOs under international law and domestic statutes. As a basis for this discussion, the class will examine the 2019 U.S. Supreme Court’s consideration of *Jam v. International Finance Corporation*.

**Class 10: States Parties’ Responsibility for IOs**

This class will address the extent to which states that are parties to IOs may be responsible for the organization's acts or omissions. We will explore how the law on this issue has evolved and why.

**Class 11: “Constitutional Law” Aspects: Independence, Interpretation, and Exercise of Powers**

This class will cover the legal principles concerning the maintenance of the “rule of law” within an IO: the rules on interpreting an IO’s constituent documents, which empower and limit its internal bodies; the rules that promote (or suppress) the independence of the bureaucracy and review bodies; the rules governing the admission of new members; etc. Special attention will be paid to the United Nations Security Council.

# Class 12: The Law on Decision-Making in International Organizations

This class will cover the legal requirements of the IO decision-making process, including the requirements of representation, hearing, due process, accountability, and justification. We will discuss the sources and functions of such requirements and assess their limitations with respect to achieving accountable, egalitarian decision-making.

**Class 13: The Law of the International Civil Service**

This class will cover the law that defines the relationships between international organizations and their officials and other employees. We will explore the sources and functions of this law and the functions of the internal tribunals that are set up to develop and implement it.

**Class 14: The Scope of IO Review of a State’s Exercise of Discretion**

Like domestic administrative and constitutional courts (even though they are often not explicitly authorized to do so), IOs, and international tribunals in particular, review the legality of national decisions. How much deference should IOs grant to national decisions? In this class we will examine the legitimate scope of IO (and particularly international tribunal) review of national decisions, assessing the rationales for such review and exploring the relevant factors that should inform answers to this question.

**Class 15: Promoting Accountability in IOs: Internal and “Peer” Review Mechanisms**

This class will cover IOs’ internal oversight and review bodies, how they have developed, and what their limitations are. Our main case study concerns judicial and extra-judicial review of the UN Security Council. The class will also include an overview and assessment of the potential for effective “peer review” (the review of one organization by another). We will examine the relatively rare cases of such review and explore the factors shaping the willingness to provide it.

**Class 16: External Review Mechanisms: The Role of National Courts**

This class will include an overview and assessment of the emergence of national-court review of IO decisions, including review of UN Security Council resolutions.

**Class 17: Retreating from Multilateralism?**

In recent years the world’s two major powers, the US and China, have turned their backs on multilateral international organizations and instead pursued minilateral or bilateral arrangements with third parties. What explains this attitude? What does the move away from multilateral institutions portend for international law and the future of multilateral institutions?

**Class 18: Global Civil Society and the Rise of “Infra-National Multilateralism”**

When governments of powerful states desert multilateral institutions, can the void be filled by subnational public actors, such as municipalities and other local governments, domestic regulators, or courts, or even private actors such as commercial corporations or civil society activists? How might international law facilitate cooperation among these actors and promote what may be termed “infra-national multilateralism”? In this session we will explore the promise and limits of bottom-up multilateralism in various areas of global regulation.

**Class 19:****Transnational Corporations as Global Regulators**

Through their acts and omissions and the general standards they adopt in response to demands and pressure, transnational corporations such as petroleum and apparel companies set standards in their areas of activity. But despite decades of efforts to determine such corporations’ liability for human rights abuses and environmental harm in various ways, it may be argued that only modest progress has been made. What explains this disappointing fact? To what extent is international law part of the problem, making it harder to assign liability? What are the alternatives to international law for holding transnational corporations accountable?

**Class 20:****Platform Governance 1: Digital Platforms as Global Lawmakers**

Social media, blogs, and private chat platforms are engaged in global governance: they make decisions on free expression, privacy, and the use of data that affect billions of people in multiple states worldwide. The European Union has been active in regulating platforms, and to a certain extent its standards have implications beyond Europe. This class will examine governance by and of platform companies, the factors shaping its development, and its implications for democracies, focusing on the challenge of controlling access to services and addressing online harms such as hate speech and disinformation.

**Class 21:** **Platform Governance 2: Facebook’s “Supreme Court” as a Check on Democracy**

Facebook’s decision to block President Trump was scrutinized by Facebook’s Oversight Board. The Board’s decision was based on Facebook’s Community Standards and on international human rights law. Politicians around the world expressed concern that platforms, which have become a key tool for them, might silence elected officials. Aside from any implications for internal democratic processes, this decision, as well as subsequent ones, raises several questions about the public-private regulation of the virtual marketplace of ideas in the 21st century. After all, international human rights law is heavily edited by state actors.

**Class 22: Global Governance Through Machines**

To make their decisions, IOs are relying more and more on machines powered by artificial intelligence to process big data. What are the consequences of using machines to churn raw data on IO accountability and inclusive, participatory decision-making processes? This class will consider various issues, including reliance on big data, which stereotypes individuals and risks impoverishing the two-way communication between the governed and the governors that was key to ensuring that governance by IOs was seen as legitimate. This class will also reflect on the growing dependency on data provided by digital platforms and issues of ownership and the right to access such data.

**Class 23: Global Health Governance**

The COVID-19 pandemic has laid bare the fact that public health in a global economy is bound up with multiple factors—economic, social, political, legal, cultural, and moral—that generate conflicting perceptions and preferences among, and within, nations. But the pandemic is also giving us clues as to the direction in which global health governance may best evolve to deliver effective responses to global crises. Understanding the root causes of traditional IOs’ failures to respond effectively to pandemics and the deep conflicts and interdependencies among rival parties is key to achieving a more accurate grasp of the functions and limits of global health governance and global governance more generally, and of the legal and institutional tools IOs should be equipped with. The class will analyze the global coordination and cooperation problems that arise in the context of global health governance and the promise and limits of domestic and international law with respect to resolving these problems. We will also explore the promise and challenges of the emerging private efforts to regulate global health issues.

**Class 24: Climate Governance from Below**

Incrementally, subnational entities such as cities, or states in federal systems, have been seeking ways to collaborate across national boundaries to cut emissions and otherwise fight a collective battle against climate change. This might seem strange at first: if the solution to this global collective-action problem eludes nations, action by municipalities seems downright Quixotic. It turns out, however, that even individual subnational actors can make a difference. This is particularly true when domestic courts lend their support by endorsing local standards or demanding even stricter ones. This class will assess the promise and limits of climate governance from below.

**Class 25: Global and Regional Institutions for the Protection of Human Rights**

This class will examine and evaluate the potential and limits of the different international bodies set up to protect human rights (international and regional courts, and human rights treaty bodies) and workers’ rights (e.g., the Fair Labor Association and CSR rating agencies) and the interaction between these bodies and national bodies.

**Class 26:** **Global Regulation of Sports**

Governance of the global sport industry has thus far remained in private hands. Practically all major sporting events including the Olympic Games have been regulated by private associations registered under domestic law (Swiss law being the most accommodating). Fearing adverse consequences, governments have refrained from attempting to discipline that industry despite continuing accusations of mismanagement, corruption, and infringements of athletes’ rights, providing a classic example of a failure to take collective action. This class will assess the relative success of national regulators’ efforts to limit the sports industry’s autonomy.