

# **International Law**

Malcolm N. Shaw

Text Book

For

International Law Students

Selected & Collected

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**Politics World Publications**

Main entry: Shaw, Malcolm N., 1947; Selected & Collected By: Mahmoodi, Amir, 1976 (1356); Abdolmaleki, Mahdi, 1978 (1358)

Title and Author's Name: International Law; Text Book For International Law Students / Author: Malcolm N. Shaw; Selected & Collected By: Amir Mahmoodi & Mahdi Abdolmaleki (Ghale Jafar Beygi)

Publication details: Karaj, The World of Politics Publications; Tehran: Good Governance, Development and Peace Foundation, 2024.

Specifications: 184 pages: diagram; 24 x 17 cm.

ISBN: 978-622-4959-02-7

Notes: Language: English

Issue: International law

LCC: KZ3275

DDC: 341

NBN: 9828563

Bibliographic Record Information: FIPA



**Politics World Publications** (in collaboration with Good Governance, Development and Peace Foundation)

Name of the book: International Law; Text Book For International Law Students

Author: Malcolm N. Shaw

Selected & Collected By: Amir Mahmoodi & Mahdi Abdolmaleki

Cover design: Politics World Publications

Layout: Politics World Publications

Date of printing: First edition: 2024

Publisher: The World of Politics Publications (in collaboration with Good Governance, Development and Peace Foundation)

Printing circulation: 1000

ISBN: 978-622-4959-02-7

Distribution office address: Unit 11, 1<sup>st</sup> underfloor, 198.1, Sarleshkar Mokhberi Blvd. (35-meter Golestan st.), , Gole Laleh st., Shahin, Tehran, Postal Code: 1475865809, Phone: (+98) 021-65119732  
The World of Politics Publications Office Address: Unit 7, No. 17, Mehregan Shrghi St., Abuali Sina St., Molana Blvd., Jahanshar, Karaj. Postal Code: 3143667191, Phone: (+98) 026-36506782

Online bookstore: <https://pwpub.ir>

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# Table of Content

<b>Part 1</b> .....	<b>5</b>
<b>The nature and development of international law</b> .....	<b>5</b>
The role of force.....	6
The international system.....	7
Historical development.....	8
<b>Part 2</b> .....	<b>12</b>
<b>International law today</b> .....	<b>12</b>
The expanding legal scope of international concern.....	12
Modern theories and interpretations.....	13
<b>Part 3</b> .....	<b>19</b>
<b>Sources</b> .....	<b>19</b>
Custom.....	21
Treaties.....	36
General principles of law.....	40
Judicial decisions.....	47
Other possible sources of international law.....	50
<b>Part 4</b> .....	<b>58</b>
<b>The subjects of international law</b> .....	<b>58</b>
Legal personality – introduction.....	58
States.....	59
International organisations.....	62
<b>Part 5</b> .....	<b>63</b>
<b>The international protection of human rights</b> .....	<b>63</b>
The nature of human rights.....	63
<b>Part 6</b> .....	<b>65</b>
<b>Recognition</b> .....	<b>65</b>
De facto and de jure recognition.....	66
<b>Part 7</b> .....	<b>68</b>
<b>Territory</b> .....	<b>68</b>
The concept of territory in international law.....	68
The law of outer space.....	69
<b>Part 8</b> .....	<b>73</b>
<b>The law of the sea</b> .....	<b>73</b>
The territorial sea.....	75

The contiguous zone .....	76
The exclusive economic zone.....	77
The continental shelf.....	78
The high seas .....	78
<b>Part 9.....</b>	<b>81</b>
<b>The law of treaties.....</b>	<b>81</b>
The making of treaties.....	84
Reservations to treaties.....	88
Entry into force of treaties.....	96
The application of treaties.....	96
The amendment and modification of treaties.....	99
Treaty interpretation.....	101
Invalidity, termination and suspension of the operation of treaties.....	104
Dispute settlement .....	115
Treaties between states and international organisations.....	115
<b>part 10.....</b>	<b>118</b>
<b>The settlement of disputes by peaceful means.....</b>	<b>118</b>
Diplomatic methods of dispute settlement.....	121
Binding methods of dispute settlement .....	126
<b>Part 11.....</b>	<b>132</b>
<b>The International Court of Justice<sup>1</sup> .....</b>	<b>132</b>
The organisation of the Court.....	132
The jurisdiction of the Court .....	135
<b>Part 12.....</b>	<b>157</b>
<b>The United Nations.....</b>	<b>157</b>
The UN system.....	157
<b>latin phrases &amp; terms.....</b>	<b>165</b>
<b>UN Specialized Agencies.....</b>	<b>181</b>

## **Part 1**

### **The nature and development of international law**

In the long march of mankind from the cave to the computer a central role has always been played by the idea of law – the idea that order is necessary and chaos inimical to a just and stable existence. Every society, whether it be large or small, powerful or weak, has created for itself a framework of principles within which to develop. What can be done, what cannot be done, permissible acts, forbidden acts, have all been spelt out within the consciousness of that community. Progress, with its inexplicable leaps and bounds, has always been based upon the group as men and women combine to pursue commonly accepted goals, whether these be hunting animals, growing food or simply making money.

Law is that element which binds the members of the community together in their adherence to recognised values and standards. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts, and coercive, as it punishes those who infringe its regulations. Law consists of a series of rules regulating behaviour, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions.

And so it is with what is termed international law, with the important difference that the principal subjects of international law are nation-states, not individual citizens. There are many contrasts between the law within a country (municipal law) and the law that operates outside and between states, international organisations and, in certain cases, individuals.

International law itself is divided into conflict of laws (or private international law as it is sometimes called) and public international law (usually just termed international law). The former deals with those cases, *within* particular legal systems, in which foreign elements obtrude, raising questions as to the application of foreign law or the role of foreign courts.

For example, if two Englishmen make a contract in France to sell goods situated in Paris, an English court would apply French law as regards the validity of that contract. By contrast, public international law is not simply an adjunct of a legal

order, but a separate system altogether, and it is this field that will be considered in this book.

Public international law covers relations between states in all their myriad forms, from war to satellites, and regulates the operations of the many international institutions. It may be universal or general, in which case the stipulated rules bind all the states (or practically all depending upon the nature of the rule), or regional, whereby a group of states linked geographically or ideologically may recognise special rules applying only to them, for example, the practice of diplomatic asylum that has developed to its greatest extent in Latin America. The rules of international law must be distinguished from what is called international comity, or practices such as saluting the flags of foreign warships at sea, which are implemented solely through courtesy and are not regarded as legally binding. Similarly, the mistake of confusing international law with international morality must be avoided. While they may meet at certain points, the former discipline is a legal one both as regards its content and its form, while the concept of international morality is a branch of ethics. This does not mean, however, that international law can be divorced from its values.

In this chapter and the next, the characteristics of the international legal system and the historical and theoretical background necessary to a proper appreciation of the part to be played by the law in international law will be examined.

### **The role of force**

There is no unified system of sanctions in international law in the sense that there is in municipal law, but there are circumstances in which the use of force is regarded as justified and legal. Within the United Nations system, sanctions may be imposed by the Security Council upon the determination of a threat to the peace, breach of the peace or act of aggression. Such sanctions may be economic, for example those proclaimed in 1966 against Rhodesia, or military as in the Korean war in 1950, or indeed both, as in 1990 against Iraq.

Coercive action within the framework of the UN is rare because it requires co-ordination amongst the five permanent members of the Security Council and this obviously needs an issue not regarded by any of the great powers as a threat to their vital interests.

Korea was an exception and joint action could only be undertaken because of the fortuitous absence of the USSR from the Council as a protest at the seating of the Nationalist Chinese representatives.

Apart from such institutional sanctions, one may note the bundle of rights to

## **UN Specialized Agencies**

### **1. FAO**

Food and Agriculture Organization of the United Nations the leading agency for agriculture, forestry, fisheries and rural development.

Relationship Agreement with UN (1946)

### **2. ICAO**

International Civil Aviation Organization safeguards the orderly development of civil aviation.

Relationship Agreement with UN (1947)

### **3. IFAD**

International Fund for Agricultural Development supports increased food production in poor communities by providing funding and resources to poor farmers and landless peoples in developing countries.

Relationship Agreement with UN (1977)

### **4. ILO**

International Labour Organization is a labour organization with the goal of improving conditions for workers around the world.

Relationship Agreement with UN (1946)

### **5. IMF**

International Monetary Fund promotes multilateral monetary co-operation and stability.

Relationship Agreement with UN (1947)

### **6. IMO**

International Maritime Organization a forum for international cooperation on rules and practices for safety at sea.

Relationship Agreement with the UN 1959)

### **7. ITU**

International Telecommunication Union promotes and coordinates the establishment and operations of global telecommunication networks and services.

Relationship Agreement with UN (1949)

### **8. UNESCO**

United Nations Educational Scientific and Cultural Organization contributes to peace by promoting collaboration among nations through culture, science, education and media.

Relationship Agreements with UN (1946)

### **9. UNIDO**

United Nations Industrial Development Organization is a coordinating body for industrial activities and international industrial cooperation.

Relationship Agreement with UN (1985)

### **10. UNWTO**

World Tourism Organization serves as a global forum for the development of responsible and sustainable tourism around the world.

Relationship Agreement with UN: A/RES/58/232 of 23 December 2003

### **11. UPU**

Universal Postal Union secures and improve postal services throughout the world.

Relationship Agreement with UN (1948)

### **12. WHO**

World Health Organization is the United Nations specialized agency for health.



Relationship Agreement with UN (1948)

### **13. WIPO**

World Intellectual Property Organization promote respect for intellectual property worldwide.

Relationship Agreement with UN (1974)

### **14. WMO**

World Meteorological Organization promotes efficient exchange of meteorological observations worldwide..

Relationship Agreement with UN (1951)

### **15. World Bank Group**

World Bank Group (WBG) provides loans, technical assistance and policy advice to developing countries for the purpose of reducing poverty and promoting sustainable economic development.

- a. International Bank for Reconstruction and Development (IBRD)
- b. International Finance Corporation (IFC, 1956)
- c. International Development Association (IDA, 1960)