The Role of the United Nations in International Law  Kelly-Kate Pease provides an overview of how the United Nations functions as an intergovernmental organization that creates and implements international law.

The U.N. Security Council: The Most Powerful Organ in History  Kristen Boon explores how the U.N. Security Council has become what some describe as “the most powerful organ in history,” creating international policy and mandating international action.

International Criminal Court Bringing World Promised Justice?  T. Markus Funk traces the development of the International Criminal Court and discusses current challenges facing the court, charged with hearing some of the world’s worst cases.

Perspectives: What challenges will the United Nations face over the next 20 years?  Several experts describe challenges facing the United Nations, including preventing humanitarian crises, harnessing nuclear technology, trusting the international community, and working with outside practitioners to achieve rule of law goals.

Students in Action: Civic Voices Profile Activists for Change Around the World  David Stieber highlights the Civic Voices: An International Democracy Memory Bank Project, which he has used with his own students.

Learning Gateways: The United States and the International Criminal Court  In this lesson, students compare the U.S. Constitution and Bill of Rights to excerpts from the Rome Statute, and then debate whether or not the United States should ratify the treaty.

Director’s Note

Earlier this year, the results of the 2010 National Assessment of Educational Progress (NAEP) Civics test revealed that 33 percent of American eighth-graders and 43 percent of American twelfth-graders, reported learning about “international organizations,” including the United Nations. While this suggests that students do have some knowledge about these institutions, it also indicates a need for resources to deepen their understanding. This issue of Insights, produced in cooperation with the United Nations, will explore how the United Nations advances the rule of law around the world.

Our issue opens with an introduction from Stephen Mathias, Assistant Secretary General for Legal Affairs at the United Nations. The first feature article comes from Kelly-Kate Pease, who explores the post-World War II origins and current structure of the United Nations. Next, Kristen Boon discusses the role of the U.N. Security Council in creating international policy. Lawyer T. Markus Funk follows with an examination of the International Criminal Court, including the challenges facing the court charged with hearing some of the world’s worst cases. Learning Gateways rounds out this discussion with a lesson plan that encourages students to debate the United States’ future participation in the International Criminal Court. Our Perspectives segment features several experts who answer the question “What challenges will the United Nations face over the next 20 years?” Throughout the issue, are First Person: The Work of the United Nations first-person interviews, with those who work tirelessly to meet those challenges head-on and who help the United Nations accomplish its many goals around the world. Add to this a rich roundup of topics online at www.insightsmagazine.org, which offers teachers additional resources and supports, including articles, lessons, and primary sources.

We hope that this issue adds a lasting resource to your collection. Let us hear from you. We would like to have your feedback, along with ideas about how you might incorporate Insights into your classroom. And let us know if there are topics that you would like to see us tackle in these pages.

As always, enjoy the issue, and best wishes as you gear up for the next school year.

Mabel McKinney-Browning

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Introduction

It is a pleasure to introduce this issue of Insights on Law & Society and to thank the American Bar Association Division for Public Education for its role in promoting education about international law and the United Nations. My office, the United Nations Office of Legal Affairs, shares the ABA's goal of promoting a fair and just society through education about the law.

Many of the challenges faced by the global community when I first started learning about the United Nations as a high schooler have only grown since, but the United Nations remains a primary way in which the world's countries strive to solve those problems together. The world still needs the United Nations to coordinate the ongoing struggle against the scourges of war, poverty, and hunger as well as newer challenges such as terrorism, HIV/AIDS, and climate change. Thus learning about how the United Nations works—and America's role within it—is perhaps more important than ever in a full civic education for our country's young people.

Luckily, the vast majority of American high school students may never be directly exposed to the humanitarian work of the United Nations—few will require the organization's assistance as refugees or victims of war, even if they may have heard of these higher-profile activities. Perhaps some of your students may have learned about the United Nations' role in safeguarding the world's most vulnerable children when they went trick-or-treating for UNICEF. But without understanding these and other positive roles the Organization plays in the world, often with the leadership of the United States, some of your students may think that the United Nations has no relation to their lives, or even view it with some suspicion. They may not know, for example, every year the United Nations:

- Provides food to 108 million people in 74 countries
- Vaccinates 40 percent of the world’s children, saving two million lives per year
- Assists over 34 million refugees and others fleeing war, famine, or persecution
- Fights climate change and leads a campaign to plant one billion trees a year
- Keeps the peace with 116,000 peace-keeping operations on four continents
- Mobilizes $7 billion in humanitarian aid to help people affected by emergencies such as natural disasters
- Monitors, promotes, protects, and develops human rights worldwide
- Promotes universal primary education, reaching 88 percent enrollment coverage in developing countries

With the information in this issue of Insights, your students may move closer to understanding that the United Nations often serves those loftiest goals that our country shares with all other civilized nations: peace, democracy, human rights, and help for those in need, and that U.N. activities over the last 65 years have had significant effects even on the life of today's average American teenager. In this deeply interconnected and interdependent world, I hope that this information will help them (and perhaps you as well!) to grow into ever more educated, and therefore involved, citizens of our increasingly global society.

Please enjoy this issue,

Stephen Mathias,
Assistant Secretary-General for Legal Affairs
The Seal of the United Nations was presented at the 1945 U.N. Conference on International Organization, in San Francisco, California. It features a map of the world, with the North Pole in the center, surrounded by olive branches. It was designed by Oliver Lundquist and Donal McLaughlin. Both men had served in the U.S. Office of Strategic Services during World War II. Lundquist went on to design the modern Q-Tip box, while Donal McLaughlin designed the courtroom at the Nuremberg trials as well as the interior of Tiffany and Company’s flagship store in New York.

United Nations Headquarters complex opened in 1952 in New York. It was built by a team of 11 international architects, supervised by Wallace Harrison, of the United States. While the Secretariat Building is most predominantly featured in depictions, the complex also includes the domed General Assembly building, the Dag Hammarskjöld Library, as well as the Conference and Visitors Center. Flags of all 192 U.N. member states are located inside a perimeter fence. Land surrounding the complex is considered international territory but still subject to local, state, and federal laws. The land was donated by John D. Rockefeller Jr.

Palais des Nations, Geneva, Switzerland is the second-largest complex of buildings in Europe outside the Palace of Versailles in France. The Palais was completed in 1939 as the headquarters for the League of Nations, and now houses U.N. offices. Under the cornerstone of the main building is a time capsule containing a list of all of the League member states, a copy of the Covenant of the League, and coins from all of the representative countries at the League’s Tenth Assembly.

Vienna International Centre houses the U.N. Office at Vienna, Austria. The complex was built by Austrian architect Johann Staber between 1973 and 1979. The Centre is home to many agencies, including the International Atomic Energy Commission, U.N. High Commissioner for Refugees, and the U.N. Office for Outer Space Affairs.

United Nations Gigiri Complex houses the U.N. Office at Nairobi, Kenya. It opened in 2011, though the United Nations has maintained an office in Kenya since the 1970s. It is a completely energy- and carbon-neutral building, the first of its kind in Africa.

U.N. Peacekeeping Missions are “developed by the organization as a way to help countries torn by conflict create the conditions for lasting peace.” Peacekeepers monitor postconflict areas and assist in implementing the agreements they may have signed. Assistance includes confidence-building measures, power-sharing arrangements, electoral support, strengthening the rule of law, and economic and social development. The first peacekeeping mission was launched in 1948, to the newly created State of Israel. Peacekeeping forces are made up of military, police, and civilian officers from U.N. member states. Currently, the United Nations supports 15 peacekeeping missions around the world.
The Role of the United Nations in International Law

The work of the United Nations reaches every corner of the globe.

by Kelly-Kate Pease

Although best known for peacekeeping, peacebuilding, conflict prevention, and humanitarian assistance, there are many other ways the United Nations and its system affect international laws. This article reviews the origins of international law and explains how the United Nations promotes the development of international law by helping states reach international agreements and follow through on their legal obligations.

One of the principal functions of the United Nations is to promote the progressive development of international law. Other roles—e.g., maintaining international peace and security, promoting social and economic development, and protecting human rights—are more widely known (and often criticized); however, its role in international law often receives less attention because of the complicated and interactive relationship between international organizations and international policies.

International Law

International law, of course, predates the United Nations. The Dutch jurist, Hugo Grotius (1583–1645) is widely considered the “father of international law” because he was one of the first to identify agreed-upon principles and norms that guided the behavior of rulers. Even in war, according to Grotius, certain behavior was unacceptable. The impetus for much of Grotius’s writing was the Thirty Years War—a series of horrific religious conflicts that resulted in the violent deaths of tens of thousands. The contemporary international system was formally (legally) established in 1648 with the Treaty of Westphalia. Actually a number of separate peace agreements, the Treaty of Westphalia ended the Thirty Years War by recognizing the territorially based “state” and the principle of sovereignty. This means that the governments of “states” have the final say within their territorial jurisdictions (and in the context of these wars, states could determine their own religion). Sovereignty also means that states can enter into agreements with other states, which is why states are considered to be the main “subjects” of international law. Those agreements may be formal, as represented in “treaties” and “conventions,” or informal, as represented by “custom.” Treaties and custom form the foundation of international law.

The United Nations

Sovereign states also can agree to create international organizations, known as intergovernmental organizations (IGOs), to further their shared interests or to confront common international problems. One such IGO is the United Nations.

“States are very important to the development of international law … they are the principal creators and enforcers of international law.”

Kelly-Kate Pease, Ph.D., is professor of international relations in the Department of History, Politics and International Relations at Webster University. Her teaching and research interests are broad, focusing on International Relations, International Organizations, International Law, and Human Rights. She has authored and co-authored books on international organizations and the United Nations as well as articles and chapters on human rights, humanitarian intervention, humanitarian assistance, and most recently, international criminal law.
The United Nations was formally created in 1945 to “save succeeding generations from the scourge of war,” to “reaffirm faith in fundamental human rights,” and “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” The principal architect of the United Nations was the United States, with the support of the other victors of World War II. It is organized around six organs.

1. **The Security Council**: The Security Council is a 15-member body with five permanent members (the United States, the United Kingdom, France, Soviet Union, and China) and ten nonpermanent, elected members. The Security Council is responsible for maintaining international peace and security and the permanent members have veto power over Security Council actions and decisions.

2. **The General Assembly**: The General Assembly is attended by all member states and is the main policymaking body of the United Nations.

3. **The Economic and Social Council (ECOSOC)**: The ECOSOC is a 54-member body responsible for promoting economic and social cooperation among states by initiating studies, making recommendations regarding the promotion and protection of human rights, and preparing draft conventions relating to these issues.

4. **The International Court of Justice (ICJ)**: Also known as the World Court, the ICJ was intended to be the judicial organ of the United Nations; however, in practice it has a limited role in adjudicating legal disputes. It can influence world politics indirectly by issuing advisory legal opinions requested by U.N. agencies.

5. **The Trusteeship Council**: Largely obsolete today, the Trusteeship Council was responsible for overseeing the decolonization process that followed World War II. With that task complete upon the independence of Palau, the Trusteeship Council suspended operations in 1994.

6. **The Secretariat**: The Secretariat is the professional bureaucracy of the United Nations and is headed by the secretary-general (currently Ban Ki-moon). It provides expertise and implements policies.

When states agree to create IGOs, they form a nexus between international organizations and international law. IGOs have special legal status because they possess “international legal personality.” This means that IGOs can act under international law in a manner quite similar to states. They possess some autonomy from states and can enter into agreements with other IGOs and with states. IGOs enjoy immunity from the jurisdiction of national courts. The legal personality of IGOs usually results from a “constitutive treaty” and in some cases it is conferred by national and international courts. The legal personality of the United Nations was recognized by the ICJ in 1949 in an advisory opinion for the famous *Reparation for Injuries Suffered in the Service of the United Nations* case (which involved whether the United Nations had the legal personality to sue for harm done to U.N. employees).

Originally, the United Nations had 51 member states and has since increased to 192 states. The United Nations cannot recognize nation-states (that is something only other states can do); yet membership to the world body is open to all states that agree to accept the obligations contained in the U.N. Charter. The membership procedures are fairly straightforward: A state submits an application to the secretary-general and then the application is forwarded to the Security Council for consideration. Nine of the fifteen states must approve the application and as long as none of the permanent members disapprove (by way of their veto powers) the application is then sent to the General Assembly for a vote. A state must receive a two-thirds majority of votes in order to be admitted. While U.N. membership “is open to all peace-loving states,”
admission to the United Nations gets tricky when some states recognize a territorial entity as a state and others do not. For example, Kosovo has been recognized as a state by 74 U.N. members, but not by Russia or China, both of which, as members of the Security Council, can veto Kosovo’s admission into the world body. Hence, it is not a formal member of the United Nations, in spite of its declared independence from Serbia in 2008.

States are very important to the development of international law as they are the principal creators and enforcers of international law. However, this Westphalian system of international law (where states determine what the law is) is slowly giving way to a “cosmopolitan” legal order where non-state actors such as the United Nations and international courts have a prominent role in shaping the law as well.

The United Nations in the Treaty-Making Process

Three U.N. bodies are centrally involved in international law: The General Assembly, the International Law Commission, and the U.N. Commission on International Trade Law. The Sixth Committee is the main forum for considering legal questions within the General Assembly. It does not create law, but it does legal research and issues reports on legal questions such as “the Responsibility of the States for Internationally Wrongful Acts” and “the Criminal Accountability of United Nations Officials.” These findings and reports serve as the foundation for crafting formal legal rules at a later date.

The International Law Commission is primarily responsible for the progressive development of international law by preparing drafts or conventions on items not already regulated by treaties and in areas that are not developed in the practice of states (i.e., through customary international law). Perhaps its most famous recent work was drafting the Rome Statute of the International Criminal Court for the consideration of states. In 2002, the Rome Statute established the International Criminal Court as a permanent tribunal to prosecute individuals for genocide, war crimes, crimes of aggression, and other crimes against humanity. As of 2011, 114 states are parties to the Statute and submit to the jurisdiction of the International Criminal Court (ICC). The current work of the International Law Commission centers on the legal responsibilities of international organizations, the expulsion of aliens, and the legal obligation of states to extradite and prosecute criminals under international law.

The U.N. Commission on International Trade Law is charged with modernizing and harmonizing international trade law. To accomplish this task, the commission uses different kinds of “law texts” to help states standardize their trade transactions. These texts can take the form of a convention (an agreement among states establishing binding obligations); model law (a set of example legislative provisions that states may...
In addition to these bodies, the United Nations promotes the development of international law by hosting conferences that are designed to produce framework conventions. Framework conventions are international agreements that seek to establish basic aims and principles but do not impose binding legal obligations on states. U.N. legal experts do the preparatory work and consult with delegations on drafts that eventually form the basis for more legally binding treaties. Framework conferences have led to formal treaties governing the seas and oceans, climate change, ozone depletion, and desertification. Once a treaty is concluded and ratified, the United Nations becomes the depository and tracks its status and signatories.

International Courts and Tribunals

International law can also be developed when cases are tried before international courts, many of which are functionally part of the U.N. family. The ICJ was originally designed to be the judicial arm; however, an “optional clause” within the ICJ statute allows states to decide whether they want to grant the ICJ jurisdiction over legal disputes. As such, it hears only one or two cases a year. Although the ICJ remains largely at the margins of world affairs, the United Nations, and more specifically, the Security Council, has had an important role in the development of international criminal law by creating international courts and tribunals. In 1994, the Security Council authorized the creation of two ad hoc courts, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), to prosecute those responsible for gross violations of human rights, genocide, and war crimes in those conflicts. Both courts have set important precedents and obtained important convictions such as indicting those in leadership positions for genocide and crimes against humanity, and obtaining convictions for rape as a war crime. This year, the ICTY will hear the case against alleged Serbian war criminal Ratko Mladic.

The permanent International Criminal Court, the ICC, formally started its work in 2002. It was created in part because the international community wanted to confront the culture of impunity associated with war crimes, genocide, and crimes against humanity, and the ad hoc courts were insufficient for doing so. Although the ICC has yet to obtain a conviction, it has opened investigations and issued indictments for crimes committed in Sudan, Kenya, Uganda, and the Democratic Republic of Congo.

Responding to the criticism that the international community was imposing its own sense of justice and law on developing states, the Security Council has also created hybrid courts that blend the domestic laws and traditions of a state with international law and legal standards to confront atrocities. Examples of hybrid courts are still emerging.
The U.N. Security Council: The Most Powerful Organ in History

by Kristen Boon

The U.N. Security Council is one of the most talked about entities of the organization, with many of its activities in the media every day. Here, Kristen Boon discusses how this political body was established under the U.N. Charter, how it influences the international rule of law, and what challenges it faces in the future.

Powers of the Security Council

The U.N. Security Council is the supreme political organ and law-maker in the collective security arena. Its mandate is defined by the U.N. Charter, and the Security Council has the primary responsibility for the maintenance of international peace and security. All member states are required to attempt to settle disputes by peaceful means, but the U.N. Charter permits the Security Council to intervene with unique powers in situations that may cause a threat to peace and security, a breach of the peace, or an act of aggression.

The Security Council’s powers are concentrated in two categories: the peaceful settlement of disputes and the adoption of enforcement powers. As a practical matter, it can investigate any situation that could create international friction. It can, and often does, make recommendations for the handling of the situation. It sends missions to crisis areas and crafts proposals to contain threats. It also establishes fact-finding missions and sends observers to monitor elections. Sometimes it even creates peacekeeping missions to monitor truces or to patrol borders. With regard to enforcement measures, the Council has a long-standing practice of adopting sanctions against countries that are engaged in activities that pose a threat to the international system. Multilateral sanctions can cut off a country from international financial and logistical support. Occasionally, the Council also authorizes the use of force by its member states against a given country or group. The Security Council is often at the front lines in terms of how international policies are formed.

The Security Council's role in maintaining international peace and security is significant as a matter of law for three reasons. First, the Security Council has considerably wide discretion as to what issues fall within its jurisdiction. When the United Nations was created, the drafters of the charter envisioned the Council would focus on violations of state sovereignty, similar to the types of aggressive actions that led to World Wars I and II. However, the Council was frozen during much of the Cold War due to ideological differences among member states, and it rarely acted. In the 1990s, following the fall of many communist governments, the

“...is often at the front lines in terms of how international policies are formed.”

Kristen Boon is an associate professor of law at Seton Hall University Law School. She has written numerous articles and chapters on topics in international law.
Council began to function as planned, and the Security Council’s condemnation of Iraq’s invasion of Kuwait in 1990 is an example of a fulfillment of its traditional role: reacting to clear violations of a state’s borders. In other situations, the Council’s determinations have been more expansive. It has, for example, found wholly internal matters to constitute threats to international peace and security, such as the removal of President Jean-Bertrand Aristide in Haiti in 1991. An issue that lurks on the horizon for the Security Council is whether chronic, structural issues such as poverty are connected to peace and security. Similarly, could climate change or financial crises create a threat to international peace and security, triggering Security Council action?

A second reason the Security Council plays an important legal role is that once it has made a determination that a situation falls within its jurisdiction, it can enforce that decision in two ways: through nonforcible measures (Article 41) and with force (Article 42). Like its Article 39 powers, this enforcement jurisdiction is completely discretionary, and often includes a progressive “hardening” of measures as the Council deems necessary. For many years, the mainstays of the Council’s toolkit were nonforcible, comprehensive economic sanctions. For example, the Security Council saddled Iraq with comprehensive economic sanctions in the 1990s that virtually cut Iraq off from the world economy because they involved a ban on all trade, an oil embargo, a freezing of Iraqi government financial assets abroad, an arms embargo, and a suspension of international flights. The humanitarian impact of these sanctions was extreme, and it was widely agreed that the sanctions had little impact on the government, but very much a detrimental effect on the civilian population. Today, the Council generally prefers “smart” or “targeted” sanctions that selectively limit individuals and non-state actors’ access to markets, funds, weapons, and supplies.

The Council has also interpreted its Article 41 powers to include the creation of international courts and tribunals like the ad hoc criminal tribunals used to prosecute crimes following the war in the former Yugoslavia and the genocide in Rwanda. More recently, the Council has passed binding resolutions, such as Resolution 1373 and 1540, that require member states to combat terrorism, and report regularly to Council committees, without reference to a specific situation, group, or country.

The final reason the Council’s powers are significant as a matter of international law is that the Security Council can, under Article 42 of the U.N. Charter, authorize the use of force to restore international peace and security. This power represents one of the exceptions to the United Nations’ general prohibition on the use of force. The Security Council’s recent decision to authorize “all necessary measures” to protect civilian populations in Libya under Resolution 1973 was thus taken under its Article 42 powers. This resolution permitted member states and the North Atlantic Treaty Organization (NATO) to carry out air strikes against Gadhafi and his government.

When the Security Council authorizes the use of force, it creates a legal basis and mandate for U.N. member states to intervene. This system, however, was

### Security Council Powers in the U.N. Charter

**Article 39**
The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

**Article 40**
In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

**Article 41**
The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

**Article 42**
Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.
born of necessity not design. When the organ was first created, the drafters envisioned the Security Council operating through a “U.N. Army” which was to be composed of national military units on call for the Security Council. Ultimately, these arrangements never materialized due to a lack of political will. When the Security Council responds with force today it relies on practical substitutes, namely, the authorization of willing and able member states or regional organizations. These extensive and flexible collective security arrangements have led the Security Council to engage extensively with third parties, including states, and regional organizations.

**Membership and Reform**

The Council is composed of five permanent members that reflected the power dynamics after World War II (China, France, the Russian Federation, the United Kingdom, and the United States) and ten nonpermanent members that are elected for two-year terms by the General Assembly, loosely chosen to represent other regions of the world. Each Council member has one vote, but decisions on substantive matters require nine votes, including the concurring votes of all five permanent members. This is the rule of great power unanimity, or the “veto” power. It affords great power to the permanent members because they can block any Security Council resolution if they choose to exercise it.

Today, Security Council reform is a major topic of discussion. Significant changes in global affairs, including decolonization, increasing North-South divisions, and the rise of powerful regional hegemons mean that the current makeup of the Security Council is not representative of international power dynamics in the 21st century. Indeed, it does not follow that the major powers after World War II can continue to be the only powers with permanent seats on the Security Council: an unrepresentative Security Council, and particularly one that interprets its jurisdiction expansively, risks being seen as illegitimate. The main contenders for new seats on

**First Person:** The Work of the United Nations

**Loraine Sievers, Chief, Security Council Secretariat Branch, United Nations**

**What is your role at the United Nations?**

As chief of the Security Council Secretariat Branch, I supervise a team of eighteen international staff members who assist in arranging a broad range of Security Council activities, including formal meetings, informal consultations of the whole, and fact-finding missions by the Council members to conflict zones. Our Branch also facilitates the flow of information to the Council for its deliberations; assists in advance planning; and perhaps most importantly, provides guidance to the members, and particularly to the Council’s rotating presidency, on the Council’s working methods, procedures and past practice.

**How does your knowledge of the law influence your work?**

My role in providing guidance to Security Council members concerning the Council’s working methods, procedures, and past practice frequently requires that I propose a range of options that are solidly founded on a knowledgeable reading of the U.N. Charter, the Council’s provisional rules of procedure, and decisions taken by the Council concerning specific procedures and practices. My training and experience in interpreting legal documents has been essential in this connection. In parallel, the Council members count on our Branch to substantiate our recommendations by citing relevant and persuasive instances of past practice. Experience in researching case law has enabled me to identify appropriate precedents and present this information credibly, which is important especially when interacting with the Council members’ legal experts.

**What do you think teachers should understand about the United Nations as they talk with their students?**

I think it is important for teachers to move their students away from looking at the Security Council in terms of its “successes” and “failures.” In my view, it is more useful and more accurate to study the Security Council as a process that is both influenced by developments in international law and is influencing those developments. The structure of the Council, the need to build consensus in order to adopt decisions, and members’ wish to maintain national credibility while serving on the highly visible Council can lead member countries to consider more broadly and more consciously the legal foundations and political justifications for taking proposed actions than those same countries tend to do nationally. Finally, although initiatives to reform the Council must be taken seriously and given due support, it is important to emphasize that the Council’s legitimacy rests upon its faithfulness to the U.N. Charter.
a bigger Council include Brazil, India, Egypt, Japan, and Germany, although others are keen to be considered. The major obstacle to including new states is that permanent members are unwilling to give up their veto, or agree to arrangements where their veto would be diluted. Because of the complexity of amending the U.N. Charter, and the existence of the veto power that permanent members could use to block any proposal for reform, no idea has yet garnered sufficient support.

**Work of the Security Council**
The Security Council meets in a special chamber at the U.N. headquarters. The Council itself has only a skeleton staff of employees. The real work of the Council is carried out by member states, particularly the permanent members, who assign lawyers and diplomats to negotiate, debate, and implement the Council’s decisions. The Council operates according to a monthly work agenda (available on its website) where public notice is given of upcoming reports and discussions. Although some Council meetings are in open session, Security Council decisions are usually taken beforehand, behind closed doors and in informal negotiations. As such, the Council’s practices are not particularly transparent, which has fueled the debate for reform mentioned above. Given the Council’s politico-legal role, its members can be convened at short notice to address emergent issues. By way of illustration, as the uprising in Libya unfolded in the spring of 2011, the Security Council held a number of extraordinary sessions late into the night and weekend, in order to debate, and ultimately pass resolutions 1970 and 1973.

The Security Council’s work has three major focuses: (1) country situations, where the Council monitors and acts on specific incidents for an open-ended period of time; (2) thematic debates, which usually result in the adoption of nonbinding, policy resolutions, and (3) subcommittees created to implement sanctions, counter-terrorism activities, and other work of the Council.

A situation gets on the Council’s agenda when a member proposes that the Council take action. This is a procedural decision, which will often result in the adoption of a resolution, setting out the basis of the Council’s jurisdiction. Current situations on the Council’s agenda include: (1) piracy off the coast of Somalia; (2) the situation in Libya, and (3) the situation in Afghanistan.

Thematic debates are usually instigated by the president of the Security Council, which rotates among all members of the Security Council on a monthly basis. This relatively new tradition permits all U.N. member states to make a statement to the Council indicating their view on a matter. Two recent and notable debates include the protection of civilians in armed conflict and rule of law activities. The result of these debates is typically a presidential statement and a nonbinding resolution that sets out principles for future action.

Finally, the Council can set up standing subcommittees, led by member states, to monitor certain ongoing activities. For example, the Council has created sanctions committees, counter-terrorism committees, and standing committees that address rules of procedure, admission of new members, and meetings away from Headquarters.

**If the Council Fails to Act: The Debate Over Humanitarian Intervention**
Because the Security Council is a political body, it is not required to intervene in international matters as a matter of law, even if it is apparent those matters fall within its jurisdiction. Indeed, as a result of the veto, the Council has, on a number of notable occasions, chosen not to intervene in situations that could fairly be characterized as a threat to international peace and security due to opposition by one or more permanent members. The Council’s inaction has been particularly controversial where...
Since the earliest days of modern man, war and its accompanying atrocities have in many ways fundamentally characterized the human experience. The last 70 years have certainly not witnessed any abatement of this regrettable reality. Consider that even since World War II there have been come 250 conflicts around the world, leaving between 70-170 million casualties. Indeed, comparing combatant to noncombatant deaths, some four times the number of civilians fell to the scourges of genocide, crimes against humanity, and war crimes (collectively known as “atrocity crimes”) at the bloody hands of military leaders and warlords than the sum total of soldiers killed in all international conflicts during the same time span. And, unlike the other killers of humankind, such as natural disasters and diseases, the suffering caused by war is in the main self-inflicted. So what impact has the creation of the International Criminal Court, located in the leafy outskirts of The Hague, Netherlands, had on this dynamic?

The World’s History of Condemning Atrocity Crimes

Throughout recent history, the indiscriminate killing of innocent civilians has been roundly denounced. In 1873, Swiss lawyer, cofounder of the International Committee of the Red Cross, and Nobel Prize nominee Louis Gabriel Gustave Moynier called for the creation of a permanent international court to deal with such human rights violations, arguing that “[t]he prospect for those concerned of being arraigned before the tribunal of public conscience if they do not keep to their commitments and of being ostracized by civilized nations, constitutes a powerful enough deterrent for us to believe ourselves correct in thinking [the creation of a permanent court] better than any other.” Though well-intentioned, Moynier’s deterrence-based approach clearly had not accounted for the appearance on the international stage of barbaric despots such as Hitler, Stalin, Pol Pot, and, more recently, Gadhafi—individuals who, for good reason, lose more hours of sleep worrying about assassination than they do at the prospect of being expelled from the “club of civilized nations.”

It was not until after World War II, with the work of the U.S.-led Nuremberg and Tokyo Tribunals, that the international community got serious about putting some
muscle behind the soothing diplomatic—and largely consequence-free—words of international denunciation. The 1940s–80s were, indeed, long on anti-atrocity crime conventions, declarations, and commissions, but, in the end, failed to produce a permanent international criminal court.

**Good Will Becomes Concrete Action—and the International Criminal Court Is Born**

In the end, it took the open and notorious outrages in places such as Rwanda and the Balkans, and the various purpose-built (“ad hoc”) international tribunals that followed them, to spur the international community into meaningful action. In the late 1990s, the world’s nations finally joined together to set up the world’s first permanent judicial body with the explicit purpose of bringing to justice the world’s most notorious mass-criminals.

After the International Law Commission in 1994 presented to the United Nations General Assembly a draft statute establishing the International Criminal Court (“ICC”), the General Assembly’s Ad Hoc Committee on the Establishment of the ICC met twice, and the General Assembly organized the U.N. Preparatory Committee on the Establishment of the ICC. The Preparatory Committee in January 1998 finally gathered in Zutphen, Holland, to consolidate the various articles into a final omnibus draft.

The United Nations, seeing promise in these developments, convened the landmark “Rome Conference,” held from June 15 to July 17, 1998. Representatives of some 160 countries, as well as innumerable nongovernment organizations (“NGOs”), traveled to Italy to see their vision of the ICC take form.

After countless hours of negotiation, compromise, and old-fashioned “horse

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**International Court at Nuremberg**

During World War II, the world witnessed the most destructive war it had ever seen. Millions of European Jews, civilians, prisoners of war, political opponents, disabled individuals, homosexuals, and others died in death camps run by the Nazi regime. Before the end of the war, in 1943, Allied leaders issued the Moscow Declaration. In it, U.S. President Franklin D. Roosevelt, United Kingdom Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin vowed that German officers and members of the Nazi Party who had participated in atrocities, massacres, and mass executions would be “pursue[d] … to the uttermost ends of the earth” and brought to justice by joint decision of the Allied governments.

After the surrender of Germany in 1945, Allied leaders met to determine the fate of Nazi leaders. Some, including Churchill and U.S. Treasury Secretary Henry Morgenthau, advocated summary execution (execution without trial) of captured leaders. Others urged public trials. The Allies ultimately agreed upon trial, and issued a charter establishing an International Military Tribunal for the trial and punishment of major Nazi German war criminals. The charter for the tribunal established three categories of crimes:

- **Crimes against peace**, which included waging or conspiring to wage a war of aggression or a war in violation of international treaties.

- **War crimes**, which included violations of “the laws or customs of war.” Examples included murdering civilians, slave labor, murder or ill-treatment of prisoners of war, and acts of destruction not justified by military necessity.

- **Crimes against humanity**, which included murder, extermination, deportation, and enslavement of civilian populations, and persecutions on political, religious, or racial grounds. The charter expressly stated that these crimes would be tried and punished regardless of whether they had violated the domestic law of the country where they were perpetrated.

In his opening statement before the International Military Tribunal in Nuremberg, Germany, U.S. Supreme Court Justice Robert Jackson of the United States (serving as the U.S. Chief Counsel for the tribunal) acknowledged that he was opening “the first trial in history for crimes against the peace of the world.” The accused were “the first war leaders of a defeated nation to be prosecuted in the name of the law.” But they were also, Justice Jackson noted, the first to be given a chance “to plead for their lives in the name of the law.”

Twenty-two accused German war criminals were tried before the International Military Tribunal in Nuremberg. Nineteen were convicted and three were acquitted. Of the convicted criminals, twelve were sentenced to death—including Herman Goring, Alfred Jodl, and Ernest Kaltenbrunner, three to life imprisonment, and four to prison terms of ten to twenty years.
trading,” the negotiating countries, amid great applause and jubilation, voted in favor of the founding Rome Statute of the ICC. In the end, 120 nations approved the Rome Statute. The United States and six other countries voted against it, and 21 states simply abstained. Although the United States voted against the final draft of the Rome Statute, it, as it often does, played a key role in drafting and negotiating the principle provisions.

On December 31, 2000, President Bill Clinton signed the Statute, but did not submit it to the U.S. Senate for ratification. On May 6, 2002, President George W. Bush formally rescinded the United States’ signature.

The United States Is Not a “State Party” to the ICC—but Is This a Problem?

One of the primary reasons that President George W. Bush effectively undid President Clinton’s signing of the Rome Statute was the specter of U.S. soldiers or political and military leaders standing trial at the ICC. Given the hostility many members of the international community have expressed toward the United States, and the furor among certain human rights organizations and socialist heads of state such as Venezuela’s Hugo Chavez generated by President Obama’s escalated use of Predator drone strikes in Pakistan and the killing of Osama bin Laden (both of which have been labeled crimes against international law by certain international law figures), President Bush’s concerns were not unreasonable.

Under the ICC’s rules, an unelected, and unaccountable, chief prosecutor has the power to refer cases of his or her choosing to the Court for prosecution. To understand why this may be problematic, remember that the ICC’s explicit jurisdictional mandate is to handle only those cases that the countries in which the alleged crimes took place are (1) unable...
or (2) unwilling to investigate and prosecute. The U.S. justice system is clearly “able” to investigate and prosecute alleged violations of international law. It is the “unwilling” part of the analysis, however, that causes ICC skeptics most concern. After all, if the U.S. Department of Justice does not, say, prosecute its military leaders for Predator drone strikes, or similar claimed “violations” of international law, is there any guarantee that a current or future ICC prosecutor will not claim that this lack of action demonstrates that the United States, if an ICC State Party, is “unwilling” to investigate and prosecute those in its country that may have committed atrocity crimes? The short answer is no, there is not such a guarantee.

Those in favor of the United States joining the ICC will say that the chances of this happening, given the country’s global power, are virtually nil. Those opposing U.S. membership in the ICC, such as former U.S. Ambassador to the United Nations John R. Bolton, are far less sanguine about the possibility of such a politically motivated outcome:

I think the International Criminal Court could be a threat to American security interests, because the prosecutor of the court has enormous discretion in going after war crimes. And the way the Statute of Rome is written, responsibility for war crimes can be taken all the way up the chain of command. This is the sort of investigation that some people who live in Fairyland might like to undertake but which bears no relationship at all to conditions in the real world.

If a prosecutor in The Hague decides that the U[nited] S[ates] has not followed through effectively on an investigation—is unwilling or unable to carry it through—then that person, that prosecutor, in an unreviewable fashion gets to second-guess the United States? That is unacceptable. That is an assertion of authority over and above the U.S. Constitution.

**What’s the Difference? ICC vs. ICJ**

The International Criminal Court should not be confused with the International Court of Justice (ICJ), also called the World Court. The ICJ is the primary judicial organ of the United Nations, established under Article 93 of the U.N. Charter. It began work in 1946, replacing the Permanent Court of International Justice, which had been part of the League of Nations. Unlike the ICC, which hears cases involving individuals, the ICJ hears cases involving disputes between national governments—member states of the United Nations. Such cases include boundary, maritime, trade, and natural resource disputes as well as treaty enforcement issues. The ICJ also provides advisory opinions to the United Nations and other international agencies. Fifteen judges are elected to nine-year terms by the U.N. General Assembly and the U.N. Security Council. Elections take place every three years, with one-third of the judges retiring (and possibly standing for reelection) each time, in order to ensure continuity within the court. The ICJ is based in the Peace Palace, in The Hague, Netherlands.

The International Criminal Court in The Hague, Netherlands. Photo courtesy of the author.
One of the biggest challenges facing the United Nations is the successful intervention in crises to prevent atrocities such as genocide, war crimes, ethnic cleansing, and other crimes against humanity. With the possible exception of the principles in the 1948 Genocide Convention following World War II’s Holocaust, no idea has moved faster or farther in this international arena than the Responsibility to Protect (R2P) campaign.

The International Coalition for the Responsibility to Protect was formulated by the International Commission on Intervention and State Sovereignty in 2001 and approved by the World Summit in 2005. This coalition emerged from the turbulent 1990s. Inaction and action by the international community of states led to its appearance—in 1994 too little too late to halt carnage in Rwanda, and in 1999 too much humanitarian bombing too soon in Kosovo. R2P redefines sovereignty as contingent rather than absolute. It locates responsibility for human rights in the first instance with the state. But if a state is unwilling or unable to honor this responsibility to its inhabitants, or itself becomes the perpetrator of mass atrocities, then the responsibility to protect these exposed civilians shifts to the international community of states, ideally acting through the U.N. Security Council.

The Security Council has already passed resolutions regarding humanitarian crises in the Sudan and Burma and developed a three-tiered plan for addressing future crises. Implementation of the plan will be a significant challenge as well as reconciling peace-loving ideals of the United Nations with at times less than peaceful interventions. Speaking in Brazil shortly after the imposition of the no-fly zone in Libya, President Barack Obama recognized no contradiction between his decision and his Nobel Prize—one can be in favor of peace but still authorize force to halt the “butchering” of civilians. Can the United Nations ensure compliance with an interpretation of sovereignty that prevents states from committing mass murder and other conscience-shocking crimes?

Surely it is not quixotic to say “never again”—to Holocausts, Cambodias, Rwandas, Darfurs, and Congos—and to mean it.

Thomas G. Weiss is presidential professor of political science at The CUNY Graduate Center and director of the Ralph Bunche Institute for International Studies. His latest single-authored books are What’s Wrong with the United Nations and How to Fix It (Polity, 2009) and Thinking about Global Governance: People and Ideas Matter (Routledge, 2011).

Maintaining the Nuclear Order

The existing nuclear order faces unprecedented changes. Iran and Syria are in breach of their safeguards commitments and may yet develop nuclear weapons. Non-nuclear weapon states are demanding more immediate and permanent steps from the United States, Russia, and other nuclear weapon holders to disarm. And despite the Fukushima nuclear accident in Japan, many states are considering nuclear power, including in politically volatile regions such as the Middle East.
At the center of the nuclear order is the International Atomic Energy Agency (IAEA), the United Nations agency charged with verifying that nuclear programs remain peaceful and with facilitating the development of nuclear energy. In navigating this changing landscape, the IAEA faces three principal challenges.

First, there is increasing divergence of political will and legal authority on compliance. In the cases of Iran and Syria, the IAEA has the necessary authority to request and carry out all-encompassing inspections without notice, but IAEA member states do not have the political will to support the IAEA’s writ.

Second, the IAEA faces increasing demands on its time and expertise in carrying out safeguards and facilitating nuclear energy, but without accompanying budgetary growth. If the IAEA is to be effective in carrying out both responsibilities, it needs adequate financial support from member states.

Finally, there is a looming shortage of technical staff with the expertise to take on complex nuclear safeguards issues. Although the nuclear renaissance has spawned renewed interest in nuclear physics and engineering, including in the United States, there are currently too few students in the pipeline globally to meet the IAEAs future staff requirements.

In the next decade, the IAEA will face increasing shortages of political, financial, and technical support. Without increases in all three, the current nuclear order may soon be characterized by disorder, with potential negative consequences across the globe.

Toby Dalton is deputy director of the Nuclear Policy Program at the Carnegie Endowment for International Peace.

**CHALLENGE 3**

**Fostering Trust for International Peace**

Marcella David

In my view, the biggest challenge facing the United Nations over the next 20 years will be to foster trust with and within the Security Council against unilateralist forces that interfere with prospects for collaboration on matters of international peace.

The creation of the United Nations after World War II was accompanied by great optimism and idealism. Its stated goals are “saving succeeding generations from the scourge of war” and fostering international cooperation leading to enhanced living conditions and human rights for all. Unfortunately, these noble goals were almost immediately sidelined. The U.N. Security Council was appropriated by its permanent members, China, France, Great Britain, the United States, and Soviet Union, as a tool to advance Cold War agendas. By exercising the permanent members’ veto powers in support of Cold War aims, the Soviet Bloc and the Western Allies each assured that the Security Council would offer no response to threats to international peace and security that interfered with their side’s political and security aims.

Robbed of effectiveness and essentially paralyzed for 45 years, it was not until the 1990 invasion of Kuwait by Iraq that the Security Council began to meaningfully fulfill its role as the guardian of international peace and security. Under its leadership, the international community put aside old geopolitical alliances, universally condemned the invasion as aggression and demanded Iraq’s withdrawal. When withdrawal did not occur, the international community, acting through a broad coalition, took action. The action taken was limited and appropriate.

The Security Council mandate was then proactively expanded to respond to the humanitarian crisis that developed when refugees fled northern Iraq and as citizens all over Iraq were targeted by their government. However, almost immediately, the coalition began to fracture as this mandate was liberally and creatively interpreted by the United States and Britain, in part to advance their individual international political agendas.

*continued on page 26*
Imagine middle or high school students in the United States sharing stories of activism for free and fair elections with their peers in Poland or the Republic of Georgia. How about a similar conversation about freedom of expression? This happens already through a project called Civic Voices. Civic Voices: An International Democracy Memory Bank Project engages teachers and students from around the world in developing a rich bank of oral histories from democratic activists. Stories from historic world events such as the South African Anti-Apartheid Movement, the Burmese Democratic Movement, Tibetan protests in China, and Georgia’s Rose Revolution expose students to real-life actors who have made a difference in the world. Students learn how to conduct oral histories and preserve the legacy of their country’s democratic struggles, harnessing the lessons of the past to inspire the citizens of the future.

Students and teachers who participate in the Civic Voices project are interviewing activists in South Africa, the Philippines, Poland, Northern Ireland, Mongolia, the Republic of Georgia, and Colombia. The program is coordinated by the American Federation of Teachers Educational Foundation, headquartered in Washington D.C., in cooperation with teachers’ unions in each of these seven partner countries. It is funded by the U.S. Department of Education under the Education for Democracy Act. Students contact the activists themselves and set up times for them to be interviewed. The students are also responsible for transcribing the interviews and uploading them to the Civic Voices website, www.civicvoices.org. This kind of student-focused learning gives students an immense feeling of ownership over their work and encourages them to think of themselves not as passive consumers of history but as genuine historians. It also empowers students to see the role that they can play in their communities as engaged citizens.

In my 10th-grade U.S. History classroom on the South Side of Chicago, students were studying the 1960s and focusing on protests of all types during the time period, including those against the Vietnam War. As participants in the Civic Voices project, I had my students contact members of Vietnam Veterans Against the War and Veterans for Peace to find people who fought in the war to come to our class. These Vietnam veterans started speaking out against the war when they returned home. The speakers continue to be activists today, making them good models of engaged civic actors.

My students embarked on the process of finding out as much information about each of the speakers as possible. They created questions for the veterans meant to capture their personal stories of both war and political activism. After the interviews, students found that they thought about the period from an entirely different perspective than what had been offered in books and popular media. “The different things I heard about interested me a lot,” says Dionntae, one of my students. “Because when I heard about the war, I imagined a lot of A-Team look-alikes, wielding guns around and shooting everyone in sight. But it really changed my understanding because of the different struggles they had to go through and overcome, and it was very heartfelt. Seeing these war veterans was very interesting because books and articles couldn’t inform me the way they did.”

Interview methodology is a powerful tool for exploring history through a new lens in many different communities. Often, the alternate viewpoints force students to interact with history and civics on a completely different level. Another student, Myara, says about her experience, “The importance of our

David Stieber has been a history teacher at TEAM Englewood Community Academy, a Chicago Public School, for the past four years. He also coaches youth slam poetry and his students compete in the world’s largest youth poetry slam in Chicago every February. He is strongly committed to social justice and making his students realize they can and will be successful in their lives.
Vietnam interviews gave me a look at how it really is on the inside of the army. The Vietnam veterans showed courage, compassion, but also strong grievances about the wars. The soldiers grieved at the many people they killed in efforts to protect our country. The veterans also spoke on how it changed their lives.”

The Civic Voices project gives students an additional opportunity to compare activism and civic engagement in the United States with similar efforts around the world. Students could compare stories from the Vietnam War with those from the Tibetan protests in China, the Peace People of Northern Ireland, or the struggle for the rule of law in Colombia, or many other historical episodes of activism.

The activists that students choose to interview reflect what forms of civic engagement are important to them. The Vietnam veterans were the most appropriate for my curriculum for the initial project. In the future, I plan to allow my students to be more involved in choosing the type of activists they want to locate and interview. No matter who students interview, they will come away empowered.

“The interviews of the Vietnam veterans activists was a privileged opportunity for me and my fellow classmates” says Aliesha. “The importance of the interview was to show us how the war affected them back then and how it affects them today. I learned the effects of Agent Orange, and how it caused one of them to be paralyzed.”

Civic Voices not only teaches students the meaning of civic engagement by using stories and profiles from citizens who have promoted democratic change in the United States and around the world but also promotes active learning and critical thinking. The high school students I teach come from an economically disadvantaged background (99.9 percent free and reduced lunch). I say this to emphasize that students from any background can and should benefit from innovative education projects that promote creative inquiry and critical thinking. I am attempting to do this with my students with the Civic Voices project.

Another important component to the Civic Voices project is a teacher exchange in which American teachers travel to partner countries and teachers from each country travel to the United States. This kind of international dialogue is invaluable for increasing educational outcomes through sharing best practices among teachers on the front lines of providing quality education. I was fortunate enough to travel to South Africa with the project, where I was inspired by the work of my colleagues on the other side of the world and gained experiences that have been invaluable in my work in the classroom.

For my students, interviewing Vietnam War veterans and activists made my curriculum come alive. Their contributions to the Civic Voices archive will help to preserve a legacy. And one of the best unintended benefits of the entire process has been the interviewees emailing me to ask when they can come in to talk to the students again. One year after their initial visit, they all came back to my school. The process not only empowers youth, it empowers the activists to want to and continue to share their stories.

Additional Resources

Looking for more ways to connect real-life stories of civic engagement and activism with your students?

Civic Voices
www.civicvoices.org
Find interviews with everyday activists from all over the world, along with essays from students on topics such as free expression, voting, and independent thinking.

Birmingham Civil Rights Institute
www.bcri.org
Video and transcribed oral histories from participants in the American Civil Rights Movement are available for viewing or download.

Human Library
http://humanlibrary.org
Locate and borrow “live books,” or people from around the world with an array of experiences and perspectives, to chat, or learn how to organize a “human library” in your own community.

Regional Oral History Office (ROHO), University of California
http://bancroft.berkeley.edu/ROHO/
Download testimonies from historic and contemporary suffrage, immigration, disability rights, AIDS, and free speech activists.

StoryCorps
http://storycorps.org
Read or listen to stories from everyday people or contribute your own oral history to the nationwide project.

United Nations Intellectual History Project
www.unhistory.org
Wonder why U.N. resolutions address the topics that they do, or how the international community has grown to believe one idea or another? Many of these oral histories come from real-life witnesses to the development of international law.
Learning Gateways

The United States and the International Criminal Court

In 2002, the International Criminal Court (ICC) began work as the first permanent international court in history created to investigate and prosecute individuals for atrocity crimes. The Court was formally established at a 1998 conference in Rome, Italy, now known as the Rome Conference. The Rome Statute is the resulting treaty from that meeting and outlines the structural and procedural details of the Court. The United States made many contributions to and signed the Rome Statute but ultimately voted not to ratify the treaty. This lesson compares the U.S. Constitution and Bill of Rights to the Rome Statute, then asks students to consider the relationship between the documents, and ultimately, whether or not the United States should ratify the treaty.

This lesson will ask students to:

- Compare and contrast the U.S. Constitution and Bill of Rights to the Rome Statute;
- Identify U.S. contributions to the Rome Statute;
- Consider arguments for and against U.S. ratification of the Rome Statute; and
- Present a logical and researched argument.

Materials

- U.S. Constitution and Bill of Rights
- Rome Statute, excerpted (Preamble and Articles 1, 5, 55, 59, 66–67, and 86, printed on pages 24 and 25)
- Method of showing the entire class online video clips: Video Clip 1: “The Establishment of the ICC” (length 5:12) and Video Clip 2: “The Court and the United States” (length 4:42) from the documentary “The Reckoning: The Battle for the International Criminal Court”

Downloadable copies of the U.S. Constitution, Bill of Rights, excerpts from the Rome Statute, and links to the video clips referenced in this lesson are available in the Learning Gateways section on the Insights website at www.insightsmagazine.org.

Additional Notes

- Estimated time: 1–2 hours (flexible)
- Target audience: Grades 9–12

Procedure

1. Make sure that students understand the purpose and significance of the International Criminal Court. Students may read “International Criminal Court Bringing World Promised Justice?” in this issue of Insights for background information or participate in lessons noted in the Additional Resources on the next page.

2. Show students Video Clip 1: “The Establishment of the ICC” (length 5:12) from “The Reckoning: The Battle for the International Criminal Court,” provided online by PBS’s POV series. Note that the film clip includes some disturbing images that show death and destruction associated with war. Please be sure to preview the film prior to classroom screening.

3. Briefly discuss the clip:

- How is the International Criminal Court different from the Nuremberg Trial after World War II, or other tribunals like it?
- Do you think there is a need for an international court? Why or why not?

4. Distribute copies of the U.S. Constitution and Bill of Rights and the Rome Statute excerpts to students.

5. In small groups, or as a class, have students examine the documents. Ask students to compare the U.S. Constitution and Bill of Rights to the Rome Statute, using the following discussion questions:

- How is the Rome Statute similar to and different from the U.S.
Constitution and Bill of Rights?
Similarities and differences include but are not limited to: preamble, number of articles, purpose of documents, scope of documents, amendment process, and signatories.

Are the documents related in their legal philosophies? How are crimes prosecuted? See Articles 55, 66–67. Note that the Rome Statute offers many of the same protections guaranteed by the U.S. Bill of Rights, as well as many of the same guarantees found in the American legal system, such as representation by a lawyer, prohibited double jeopardy, cross-examination of witnesses, and appeals procedures. Criminal prosecution includes presumed innocence until proven guilty and conviction upon guilt proved beyond a reasonable doubt.

What rights or protections are reserved for the accused in these documents? See Articles 55, 59, and 66–67.

What are member countries expected to do as parties to the Rome Statute? See Article 86.

Do you see any ways that the Rome Statute might challenge the U.S. Constitution or Bill of Rights? Why or why not?


7. Briefly discuss the clip:
- How were the arguments presented in the clip different from one another? Which do you think is the most persuasive? Why?
- Do you think the United States should ratify the Rome Statute?

- Should the United States ratify a treaty because other countries have already done so?
- Should the number of countries agreeing to a policy matter to the United States? Why?
- How does cooperating or not cooperating with the international community serve U.S. interests?

8. Explain to students that the United States has not ratified the Rome Statute and that the Obama administration has not yet developed a formal position on U.S. policy toward the ICC. Discuss as a class or conduct an extended activity.

Extended Activities
- Divide students into small groups, with some groups researching why the United States should join the ICC and the other groups researching why it should not. Stage a classroom debate between the two sides, complete with supporting evidence. Ask a local lawyer or judge to moderate the debate.
- Ask students to write newspaper editorials or blogs about why the United States should or should not ratify the Rome Statute. They should reference supporting evidence in their arguments.
- After conducting research on whether or not the United States should ratify the Rome Statute, students might contact their U.S. Senators or Representatives to share their opinions about what they think the United States should do.

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Additional Resources

Link to these resources and more at www.insightsmagazine.org:
International Criminal Court www.icc-cpi.int/
Watch live proceedings, learn about the structure or take a virtual tour of the court, and read about pending cases.

ICC: History and Uses Lesson Plan http://to.pbs.org/nNvBCy
Lesson from PBS’s NewsHour explores the history of, controversies surrounding, and challenges facing the International Criminal Court. Provides a basic introduction to students.

“The Reckoning: The Battle for the International Criminal Court” www.pbs.org/pov/reckoning/
Documentary film on the International Criminal Court, complete with teaching guide, lesson plans, and video clips. Teachers may request DVD copies for use in their classrooms from a free lending library.

The U.N. statute that established the International Criminal Court is available for complete download or search.

Toward an International Criminal Court http://on.cfr.org/oMNwdx
Download a free publication from the Council on Foreign Relations that explores the debate around U.S. participation in the Court from three different positions: reject and oppose the Court, endorse the Court, and improve the Court.
Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:

Article 1

An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 5

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression.

Article 55

1. In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;
(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
(c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
(b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
(c) To have legal assistance of the person’s choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
(d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 66
1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67
1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
(c) To be tried without undue delay;
(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
(h) To make an unsworn oral or written statement in his or her defence; and
(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 86
States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.
They imposed and maintained two “no-fly” zones for civilian protection and continued them for years after the end of the acute humanitarian crisis, infringing on Iraq’s sovereignty until the U.S.-led invasion of 2003. Some U.N. members became concerned about the ability of individual states to liberally interpret necessarily broad mandates for action.

It must be acknowledged that the post-1990 Security Council has acted vigorously to advance the principles and purposes of peace, security, and human dignity. It has responded to international and internal conflicts, including those in the former Yugoslavia, and in Rwanda and Sudan, as well as many humanitarian crises, such as floods and earthquakes in Haiti, Indonesia, Iran, and Japan.

However, the questionable interpretation of the 1990s Iraq mandates has haunted and hampered all of these efforts. States appear more reluctant to authorize action when they know that the ultimate interpretation and implementation is left to the individual states or their close allies. This problem has beset efforts to respond to the crisis in Libya, first frustrating efforts to pass a resolution, and then, once the resolution was passed, undermining the authority of the action taken as competing interpretations of the mandate were pursued by coalition members. In my view, this very serious problem represents the most important challenge facing the United Nations today.

Marcella David is associate dean of international and comparative law, professor of law and international studies at the University of Iowa College of Law.

**CHALLENGE 4.**

**Coordinating Rule of Law Efforts**

Mary Greer

Without justice and the rule of law, there can be no enduring peace. The United Nations was founded, over 60 years ago, upon that very premise. Promoting the rule of law at the national and international levels is central to the United Nations’s mission. The United Nations works to support and implement legal frameworks, including national constitutions and court systems, in order to create societies where individuals feel safe and secure and may settle disputes peacefully. The strengthening of national capacity to provide justice and security is critical to conflict prevention, post-conflict stabilization, and maintaining world peace and security. The United Nations remains the only global institution with international breadth and legitimacy. It is no doubt those very characteristics, however, which perpetuate its challenges—its mandate is broad and multifaceted, and while it’s internal expertise draws from a broad range of cultural, legal, and ethnic backgrounds, the United Nations is an ungangly bureaucracy financially supported by member countries with its own national priorities and agendas.

In the area of technical assistance in the rule of law field, the United Nations must remain a vital multinational player. Whether in a coordinating role, or as a primary implementer, its continuing overarching challenge will be to continue to effectively target its finite resources while institutionalizing lessons learned, constantly adapting its efforts to enhance its local and global impact. Currently, over 40 U.N. entities are engaged with rule of law operations and programming in over 110 countries in all regions of the world. The United Nations’s internal coordination challenges mirror those outside the organization in the international development community, but the founding of the U.N. Rule of Law Coordination and Resource Group (“RoLCRG”) assists in the overall coordination in addressing of issues. It is critical that these internal coordination efforts continue, especially in post conflict or transitional justice environments. And finally, the United Nations must heighten its commitment to developing local capacity within formal and informal justice systems and civil society actors, and coordinate those efforts externally with other organizations providing technical assistance, like the American Bar Association’s Rule of Law Initiative (ROLI).

The United Nations’s global strength, vision, and leadership in the upcoming decades is vital to the preservation of a just, secure, and peaceful world, governed by the rule of law.

Mary Greer is a senior criminal law advisor for the American Bar Association’s Rule of Law Initiative.

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**Constitution Day**

September 17, 2011

[www.abaconstitutionday.org](http://www.abaconstitutionday.org)
The Role of the United Nations … continued from page 9

courts include the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon. Besides the Security Council, the proliferation of international courts and international criminal law has been facilitated by various actors within the U.N. system, including the General Assembly, the Sixth Committee, the International Law Commission, and the Office of the Secretary General.

Conclusion

International law and international organizations, such as the United Nations, provide order and stability in a complicated world of sovereign states confronting serious global problems. States remain the principal creators and enforcers of international law; however, the United Nations plays a central role in helping states reach international agreements on how to have “governance” on global issues without a centralized world government. While not always pretty to watch, the making and implementation of international law is facilitated by the United Nations, and the United Nations is there to prod and remind states of their legal obligations and responsibilities.

Suggested Readings


FOR DISCUSSION

1. What is a “state?” How is it defined by the Treaty of Westphalia? Are “states” still important actors today?

2. Do you think Kosovo should be accepted for membership in the United Nations? Why or why not?

3. What is a “hybrid court?” Why did the United Nations create them? Do you think that they are more effective than other international tribunals?

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humanitarian crises have occurred. Thus, when the Security Council did not intervene after Serbian forces began to brutally attack Kosovar Albanians in the late 1990s due to opposition by two permanent members, an important question arose: could states act independently of the Council and intervene on humanitarian grounds without Security Council authorization? When the Security Council has failed to act, sometimes the General Assembly has assumed residual responsibility for peace and security. Other times regional military alliances such as NATO have decided to intervene. In the case of Kosovo, NATO’s 1999 intervention is largely credited with ending the atrocities against the Kosovars. Nonetheless, the legal consequences of the lack of a Security Council authorization continue to be debated.

To some, NATO’s intervention was legitimate, although illegal. Indeed, many have argued that states may have a moral obligation to intervene, despite the law. To others, like the permanent members of the Security Council that opposed the intervention in the first place, no intervention is legitimate for humanitarian reasons. Indeed, to recognize intervention on such grounds would be to throw away the remaining vestiges of state sovereignty and permit states to advance political agendas through intervention. A third position, however, is important to highlight: an increasing number of states and citizens are endorsing the view that a responsibility to intervene may arise where a state is committing atrocities against its citizens. This doctrine is now called the “responsibility to protect.” The rationale is that state sovereignty is held by the people and can be enforced by the international community when a government violates it by attacking its own population.

Future of the Security Council: Are There Any Limits?
The Security Council can exercise almost unlimited discretion in taking coercive action against the states and entities that it determines threaten peace and security. Moreover, the U.N. Charter imposes few express limits on the jurisdiction of the Security Council. As a result, the Security Council has been called “the most powerful organ in history.” This institutional primacy is compounded by the fact that under the U.N. Charter, all members agree to accept and carry out the decisions of the Security Council. Indeed, the Council alone has the power to make decisions that member states are obligated to carry out, and its resolutions rank highest in the legal hierarchy, taking precedence over other instruments, including treaties and domestic laws.

Is the Security Council bound by law? The Council is virtually immune from judicial review. Even the International Court of Justice has no direct jurisdiction over the Security Council. Despite the lack of clear limits on the Security Council’s power, there is a growing consensus that the Security Council must be bounded by checks of law and legitimacy. First, the Council is bound by what are called “jus cogens” norms. That is to say, the Council could never take action that is considered reprehensible to the international community by, for example, ordering a genocide or engaging in apartheid. Second, the Council routinely incorporates “humanitarian” exceptions into its sanctions regimes. Third, although there are no “due process” rights against the Security Council, there are increasing demands for accountability. A number of recent cases against Security Council resolutions that affect human rights show that there is a growing demand to reign in the Security Council through indirect legal action.

Selected Reading

U.N. Security Council Website:
http://www.un.org/Docs/sc/

Security Council Report (an NGO that analyzes the Security Council’s ongoing work):
http://www.securitycouncilreport.org


FOR DISCUSSION

1. Do you think that the Security Council, with its current structure, is representative of international power dynamics in the 21st century? If not, what reforms would you suggest?

2. If the Security Council decides not to intervene in an international matter, should member states be authorized to act independently, particularly in humanitarian crises? How would this advance, or undermine, international law?

3. The U.N. Security Council has been called “the most powerful organ in history.” Why? Do you agree? If so, what are the implications of such power?
“purpose-built” international tribunals that preceded the ICC.

Consider, for example, that the International Tribunal for the Former Yugoslavia (the “ICTY”) had jurisdiction over four separate conflicts with hundreds of thousands of innocent civilian victims. As of 2010, the ICTY employed more than 1,100 judges, prosecutors, investigators, and other staff. Since it became functional some 17 years ago, moreover, the ICTY has spent well over $1.5 billion in pursuit of Balkan war criminals. Nevertheless, the ICTY to date has only achieved final sentences for some 61 individuals (60 men, one woman), which translates into roughly $25 million per final sentence. Although these convicted atrocity crime perpetrators with completed cases were involved in some of the most unimaginable barbarity and mass slaughter, only ten of them received sentences of more than 20 years, and a third of them received sentences of 10 years or less. These statistics feed skeptics who wonder whether the ICTY has, in fact, lived up to its self-proclaimed motto of “[b]ringing war criminals to justice, bringing justice to victims.”

But back to the ICC. Has it done better than the ICTY and other similarly efficiency-plagued ad hoc tribunals? The best answer, perhaps, is “not yet.” Despite being officially “open” for almost a decade, an annual budget of well over $150 million, a total staff of more than 700, and its operation in a world thick with worthy targets (the ICC has reportedly received formal complaints about alleged atrocity crimes occurring in more than 140 countries), the ICC, to date, has not achieved a single conviction, or imposed a single sentence.

It, indeed, was not until 2009 that the ICC even convened its first trial. And that case, involving charges of conscripting child soldiers brought against former Democratic Republic of Congo rebel leader, Thomas Lubanga Dyilo, has, unfortunately, been marred by a series of embarrassing prosecutorial missteps. The Dyilo case now lingers on with an uncertain future or outcome.

So why this performance deficit? For one, the ICC’s judges and prosecutors often have limited, or no, practical experience. Many of the ICC’s judges, for example, never were judges prior to using the ICC’s diplomatic process to garner positions on one of the world’s most high-profile judicial stages (not to mention a $240,000 tax-free salary). In one particularly notable case, for instance, the ICC put on the bench a judge who never even practiced law or even attended law school prior to donning the black judicial robe of an ICC jurist.

For Further Reading


FOR DISCUSSION

1. Do you think there is a need for an international criminal court? What message about the rule of law does having an international court send to countries around the world?

2. Has the ICC lived up to its promise? If yes, how so? If not, what would be needed to accomplish this?

3. Why do you think the United States is reluctant to ratify the Rome Statute? Do you think U.S. concerns are justified?

That the ICC accords itself more than 60 business days of court-ordered holidays, while at the same time pointing out that it is entrusted with the solemn duty of bringing to justice the world’s most heinous criminals, simply reinforces the critics’ charge that the Court today is not run in a manner consistent with the seriousness of its mandate.

But There Is Reason to Hope

Despite some of the systemic and practical problems we have traced, the answer is not to simply throw one’s hands in the air and abandon the entire endeavor. Instead, what is needed is clearheaded, practical thinking and a renewed focus on turning optimistic words into concrete actions. Once the Court and its proponents take an honest look at some of the ICC’s shortfalls, and consider the best way forward, the world will have renewed reasons to expect that the ICC will live up to its noble mission to deliver justice to those conditioned to abuse and most deserving of meaningful redress.
Funding for this issue has been provided by the American Bar Association Fund for Justice and Education; we are grateful for its support.

Insights on Law & Society is published three times each year by the American Bar Association Division for Public Education. Chair, Standing Committee for Public Education, Eduardo Roberto Rodriguez; Director, Division for Public Education, Mabel C. McKinney-Browning; Managing Editor, Tiffany Willey Middleton; Webmaster, Eric Halvorsen.

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A one-year subscription to Insights on Law & Society costs $34 and includes three issues of the print and online magazine. For subscription information, contact ABA Division for Public Education, 321 N. Clark Street, Chicago, IL 60654-7598; 312.988.5735; www.abanet.org/publiced; fax 312.988.5494, ATTN: Circulation Manager; e-mail publiceducation@americanbar.org

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Origins of the United Nations

1795
Immanuel Kant publishes Perpetual Peace: A Philosophical Sketch, which outlines a league of nations that would control conflict among states.

1864
Twenty-four nations sign first treaty of what would become known as the Geneva Conventions. Clara Barton was instrumental in getting the United States to sign the document.

1865
International Telegraph Union is established to monitor global telegraph use. It is now the International Telecommunications Union, which regulates global radio and satellite bandwidth.

1874
Universal Postal Union is established to address global postal issues.

1889
William Randal Cremer and Frederic Passy start the Inter-Parliamentary Union to encourage governments to solve international disputes by arbitration. Members included representatives from 24 countries by 1914.

1899
International Peace Conference convenes at The Hague to elaborate instruments for settling crises peacefully, preventing wars, and codifying rules of warfare.

1918
South African Prime Minister Jan Christiaan Smuts publishes The League of Nations: A Practical Suggestion.

1919
Treaty of Versailles at end of World War I establishes League of Nations “to promote international cooperation and to achieve peace and security.” U.S. Congress does not ratify the covenant to join the League.

1941
Franklin Roosevelt and Winston Churchill propose a set of principles for international collaboration to maintain global security. The document, signed during a meeting on the HMS Prince of Wales, “somewhere at sea,” is known as the Atlantic Charter.

1942
Twenty-six governments, including the United States, sign Declaration of Nations and pledge to continue the World War II effort. The document contains first recorded use of the term “United Nations,” coined by Franklin Roosevelt.

1943
Meetings in Moscow and Tehran among the United States, United Kingdom, Soviet Union, and China affirm calls for an international organization to maintain peace and security.

1944
The United States, United Kingdom, Soviet Union, and China agree on the purpose, structure, and functioning of the United Nations at a conference held in Washington, D.C.

1945
Fifty countries sign United Nations charter in San Francisco, CA, and the organization is established after a ratification by a majority of signatories.

1946
U.N. General Assembly passes first resolution on peaceful uses of atomic energy during first meeting in London.

1948

1949
Cornerstone is laid at current site of the U.N. Headquarters in New York.
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