The Law of International Organizations
The Law of
International Organizations

Problems and Materials

Second Edition

Michael P. Scharf

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For my Parents,

Joan and Harry Scharf
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About the Author

Michael Scharf is Professor of Law and Director of the Frederick K. Cox International Law Center at Case Western Reserve University School of Law. From October 2004–March 2005, Professor Scharf served as a member of the elite international team of experts which provided training to the judges and prosecutors of the Iraqi Special Tribunal. In February 2005, Professor Scharf and the Public International Law and Policy Group, a Non-Governmental Organization he co-founded, were nominated for the Nobel Peace Prize by six governments and the Prosecutor of an International Criminal Tribunal for the work they have done to help in the prosecution of major war criminals, such as Slobodan Milosevic, Charles Taylor, and Saddam Hussein.

During the first Bush and Clinton Administrations, Professor Scharf served in the Office of the Legal Adviser of the U.S. Department of State, where he held the positions of Counsel to the Counter-Terrorism Bureau, Attorney-Adviser for Law Enforcement and Intelligence, Attorney-Adviser for United Nations Affairs, and delegate to the United Nations General Assembly and to the United Nations Human Rights Commission. In 1993, he was awarded the State Department's Meritorious Honor Award “in recognition of superb performance and exemplary leadership” in relation to his role in the establishment of the International Criminal Tribunal for the former Yugoslavia.

A graduate of Duke University School of Law, and judicial clerk to Judge Gerald Bard Tjoflat on the Eleventh Circuit Federal Court of Appeals, Professor Scharf is the author of over fifty scholarly articles and seven books, including *Balkan Justice*, which was nominated for the Pulitzer Prize in 1998, *The International Criminal Tribunal for Rwanda*, which was awarded the American Society of International Law's Certificate of Merit for the Outstanding book in International Law in 1999, *Peace with Justice*, which won the International Association of Penal Law Book of the Year Award for 2003, and casebooks on *The Law of International Organizations* and *International Criminal Law*.

Professor Scharf has testified as an expert before the U.S. Senate Foreign Relations Committee; his Op Eds have been published by the *Washington Post*, *Los Angeles Times*, *Boston Globe*, *Christian Science Monitor*, and *International Herald Tribune*; and he has appeared on ABC World News Tonight with Peter Jennings, Nightline with Ted Koppel, The O’Reilly Factor, The NewsHour with Jim Lehrer, The Charlie Rose Show, the BBC’s The World, CNN, and National Public Radio.

Winner of the 2005 Case Alumni Association Teacher of the Year Award, Professor Scharf teaches International Law, International Criminal Law, Human Rights Law, the Law of International Organizations, and a War Crimes Research Lab. In 2002, Professor Scharf established the War Crimes Research Office at Case Western Reserve University School of Law, which provides research assistance to the Prosecutors of the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the International Criminal Court, and the Iraqi Special Tribunal on issues pending before those in-
international tribunals. Copies of over ninety of these research memos are available on the Frederick K. Cox International Law Center War Crimes Research Portal, at: www.law.case.edu/war-crimes-research-portal.
Preface

Since the creation of the United Nations system sixty years ago, much of international law and diplomacy has been developed, shaped, implemented, and enforced through U.N. bodies and related international organizations. But during the decades of the cold war, many of the organizations in the U.N. system too often suffered from paralysis due to East-West and North-South tensions. With the disintegration of the Soviet Bloc in the early 1990s emerged a considerably revitalized United Nations. Bolstered by a new (if only fleeting) era of cooperation, the international organizations associated with the United Nations began to boldly respond to challenges and threats to peace, to human rights, to the environment, and to the world’s increasingly interdependent economy.

From 1991–1993, I had the good fortune to serve as Attorney-Adviser for U.N. Affairs (and Counsel to the International Organizations Bureau) at the U.S. Department of State, and to participate in and witness first hand what history may consider the modern resurrection of the United Nations and its associated organizations. When I left the State Department to become an international law professor, I was surprised to discover that there existed very few teaching texts devoted to the study of international organizations, especially in light of the increasingly prominent role international organizations have begun to play in the formation of international law and resolution of global problems. The rather dated texts that did exist failed to cover what I considered to be some of the most important current issues relating to international organizations. And the issues that were covered were dealt with in a fairly dry fashion that did not appear to be calculated to stimulate student enthusiasm for what should be among the most exciting of subjects.

Consequently, when I was invited to teach “The Law of International Organizations” as a Visiting Professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University in the spring of 2000 (a position long held by the eminent Leo Gross), I decided to assemble my own teaching materials focusing on the most important current issues relating to international organizations based on my experiences at the State Department, as well as my subsequent work as Chairman of the American Bar Association’s International Institutions Committee and Chairman of the American Society of International Law’s International Organizations Interest Group. Rather than gear the materials to the Socratic method or lecture approach, it occurred to me that an effective way to teach this area of law was to approximate the way I learned it at the State Department—by employing simulations, role-play exercises and debates.

In the fall of 2000, my good friend and publisher, Keith Sipe, suggested that I publish my Fletcher course materials as a casebook employing this unique active learning
approach. The First Edition of “The Law of International Organizations” quickly established itself as a popular casebook, but with the speed in which this unique area of law evolves, the market was soon clamoring for a Second, updated, Edition. In addition to updating the existing materials, this Second Edition adds new chapters addressing organizations not covered in the First Edition, such as the WTO, the IMF, and Interpol. It also focuses on important new issues, such as the legality of the 2003 US Invasion of Iraq and protection of human rights in the context of the war on terrorism.

Like its predecessor, this book is not designed to be a comprehensive textbook on international organizations, but rather a user-friendly casebook that exposes students to the most significant current legal issues relating to international organizations in a stimulating format. In addition to simulations in the form of an introductory problem, the chapters contain excerpts from international treaties, negotiating history, decisions by international organizations, international and domestic judicial opinions, diplomatic correspondence, contemporary news accounts, first-hand narratives, and scholarly articles, as well as a comprehensive Bibliography of Additional Sources. Rather than require students to purchase an additional Documents Supplement, the full texts of the key international instruments are reproduced in the Annexes of the book. In contrast to the traditional passive reading model of most casebooks in which discussion questions are found at the end of each chapter’s readings, the format of this book mirrors the way a legal research assignment would be given in the real world. Here, the questions and problems are presented at the beginning of each chapter, prompting the student to actively read the material with an eye to finding the answer. The book is organized into twenty-four Chapters (corresponding with teaching units) for ease of use in a course that meets twice-a-week. In a once-a-week course, the professor can select the thirteen or fourteen units he or she finds of most interest.

International organizations both make international law and are governed by it. Yet, a distinguished commentator once remarked that the decision-making of international organizations such as the United Nations “is less a question of law than one of political judgment,” and that “legal principles and Charter interpretation take a back seat to political and administrative convenience.” (L.C. Green, 1967). Throughout, the materials in this book highlight the tension between politics and law in the U.N. System. Given the political context in which international organizations often operate, the reader will find that substantive rules and precedents play a perhaps surprisingly important role in influencing the actions of international organizations. At the same time, it is essential to keep in mind that the decision-making of organizations in the domestic system, including the U.S. Supreme Court, are just as frequently swayed by politics.

Another theme that emerges throughout the book is the important role that process plays in the decision making of international organizations. The international bodies examined in the book include those that make decisions by simple majority vote, by weighted voting, and by unanimous consent. In examining these materials, the reader may consider: why did the framers select the particular voting system for each organization; how strictly do the bodies follow their procedural (as opposed to substantive) rules; and how do the voting rules influence the outcome of the body's decision making.

It is true that very few students will go on to directly participate in any international organization. It is also true that few students will go on to practice Constitutional Law before the Supreme Court, or even the lower courts. Yet “Con Law” is a required
law school course and is taught extensively at the undergraduate level in light of the importance the decisions of the Supreme Court play in our daily lives. Given the growing significance of the decisions of international organizations to our well-being and survival, and the prominent (if not always decisive) role that law plays in arriving at those decisions, the “Law of International Organizations” may be among the most meaningful courses in the modern curriculum. It is thus my ardent hope that the publication of the Second Edition of this casebook will help foster the growth of courses at the law school and university level devoted to this important subject.

Several people deserve special recognition for the assistance they have furnished me in preparing the Second Edition of “The Law of International Organizations.” Foremost among those is my Research Assistant, Meredith Bowen, who worked tirelessly to edit and format the new materials. In addition, I would also like to express my gratitude to my colleague, Professor Richard Gordon, who recently joined Case School of Law after a distinguished career in the IMF, for contributing an excellent new Chapter about that Institution. I would also like to thank my former student, Colin McLaughlin, who is currently working for the International Criminal Court in The Hague, for contributing the new Chapter about Interpol and the issue of stolen Iraqi artifacts. Finally, I would like to thank the following students of my Spring 2006 International Organizations course at Case who helped me update the reading materials and simulations: Mark Bardwell, Jesse Cantrell, Sonya Chow, Rishi Desai, Gretchen Gosnell, David Greenspan, Maurice Hudson, Suzanne Mattler, Mike Mortenson, Nolan Moser, Sang Park, Aporajita Saha, Megan Saucier, Alena Shautsova, Reid Swayne, Cara Tenenbaum, and James Zink.

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