Chapter 10: Managing Conflict: International Law and International and Transnational Organization

I. Introduction
   A. The “law of nations”
   B. International organizations
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   D. The United Nations
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II. The “law of nations”
   A. Sources and evolution of international law
      1. Article 38 of the Statute of the ICJ
         a. International conventions
         b. International custom
         c. General principles of law recognized by civilized nations
         d. Judicial decisions and legal teachings
      2. Sovereignty and international law
         a. Sovereignty is a cornerstone of international law
         b. The emergence of the state system and international law are inseparable
            (1) Previously natural law was the only limit on sovereigns
            (2) Legal positivism is the belief that international law requires the consent of actors
      3. Hugo Grotius (1583–1645)
         a. The “father of international law”
         b. On the Law of War and Peace
         c. Key beliefs
            (1) The customs of nations had the force of law
            (2) Interstate agreements are binding
            (3) Once a body of law had been codified, states would be less likely to go to war because of
misunderstanding

(4) International law would curb the sort of abuses that occurred in the Thirty Years’ War

(5) Envisioned an international society of states bound by shared norms

B. Just war tradition

1. Origins

   a. Ancient Greece and Rome
   b. St. Augustine (354–386)
   c. St. Thomas Aquinas (1227–1274)
   d. Grotius and the just war tradition

      (1) Jus ad bellum

         (a) The decision to go to war could be justified only if

            I. the war was a response to aggression or an insult to God
            II. it was declared by the proper authorities
            III. it had a moral intent

      (2) Jus in bello

         (a) The conduct of war also had to be just
         (b) Two general principles were to be upheld

            I. Discrimination
            II. Proportionality

      (3) The just war tradition today

         (a) Grotius demanded that violators of these principles be held accountable for their actions.
         (b) In practice, few national leaders pay attention to the just war tradition
         (c) Civilians have increasingly become the victims of warfare

III. International Organizations

A. Theoretical perspectives

1. Realists

   a. IGOS can be no more than instruments of major states
   b. IGOS can survive only so long as those states wish them to
2. Liberals  
   a. IGOs can become greater than the sum of their parts  
   b. IGOs can behave independently of states  
3. Constructivists  
   a. People are contemplating new forms of transnational collaboration that go beyond the narrow confines of state sovereignty  
   b. IGOs could evolve from being the tools of states to more independent institutions if norms evolve in that direction  

B. Three types of IGOs  
1. IGOs that do only what their leading member states ask of them (realist model)  
2. Organizations that can collaborate with states to achieve collective goals that would be difficult for states to coordinate on their own (liberal model)  
3. IGOs that have acquired genuine autonomy and can pursue their own policies (constructivist model)  

C. Early liberal thinkers  
1. Believed organizations could reduce interstate conflict  
2. Extolled the power of nationality  
3. Thought that people would pursue their national interest if they knew what it was  
4. Assumed the perfectibility of people and states  
5. Believed in the possibility that IGOs could overcome anarchy  
6. Key thinkers  
   a. Immanuel Kant  
      (1) Believed republics were a source of peace  
      (2) Interstate relations were analogous to those among individuals in an imaginary state of nature  
      (3) States could escape anarchy by improving internally and by creating international law  
      (4) Regarded IGOs as one of three related and reinforcing elements, along with democracy and economic interdependence, in establishing peace  
   b. Jean Jacques Rousseau  
      (1) Also saw the conditions of states as analogous to that
of individuals in the state of nature

(2) Also argued for the need to escape into civil society

(3) Proposed something closer to a world state to enforce the peace

c. Bruce Russett and John R. Oneal identify six ways in which IGOs help maintain peace

(1) Coercing aggressive states

(2) Mediating among those in conflict

(3) Providing information to reduce uncertainty and avoid misunderstanding

(4) Solving problems in ways that help states see their interests in new ways

(5) Promoting shared norms

(6) “Building a shared sense of values and identity among peoples”

d. Early IGOs

(1) The Greek Olympic Games (776 BC)

(2) The Concert of Europe (1815)

(3) The Hague Conferences (1899 and 1907)

IV. The United Nations

A. Early expectations

1. Created with a view that a new international institution was needed to help states cooperate to prevent war

2. The framers sought to update the League Covenant

   a. The UN emphasizes global economic and social issues

   b. Reflects a belief that one cause of conflict is poverty

   c. The UN’s founding was kept separate from the peace settlement that ended the war

3. Cold War deadlock spurred the UN to develop new peacekeeping techniques

4. The end of the Cold War again altered the political landscape

B. UN Organs

1. The General Assembly

   a. Responsibilities

      (1) Approves the UN budget
(2) Receives regular reports from other UN organs

(3) Can discuss any issue relating to maintaining peace and security, except matters before the Security Council

b. All countries have a single vote
c. General Assembly Resolutions are not binding
d. Public debate often takes place after quiet diplomacy has failed

2. The Security Council

a. Primary responsibility for maintaining international peace and security
b. Has the authority to investigate situations which might lead to conflict
c. Key powers are found in Chapters 6 and 7 of the UN Charter
   (1) Inquiry and mediation
   (2) Sanctions
   (3) Actions as “necessary to maintain or restore international peace and security”
d. Structure
   (1) Fifteen members
      (a) Five Permanent (the “P-5”)
      (b) Ten rotating
   (2) Voting requires a majority, including all permanent members

3. The Secretariat

a. The UN executive organ
b. Operations in New York, Vienna, Geneva, and Nairobi
c. Directed by a Secretary-General
   (1) Appointed by the General Assembly on the recommendation of the Security Council
   (2) The world’s leading civil servant
   (3) Nine Secretaries-General between 1946–2017
   (4) António Guterres of Portugal became Secretary General in 2017

4. The International Court of Justice
a. Made up of 15 justices, reflecting geographic and political diversity
b. Successor to the League’s Permanent Court of Justice
c. Can decide cases brought to it or provide advisory opinions when asked
d. Few states have accepted the ICJ’s compulsory jurisdiction
e. The ICJ is valuable when parties want to resolve their differences
f. It is rarely useful in highly politicized cases

5. The Economic and Social Council and the Specialized Agencies

a. ECOSOC is tasked with reporting on global “economic, social, cultural, educational, health and related matters”
b. It accounts for the highest proportion of the UN budget and employees
c. It consults with nongovernmental organizations
d. ECOSOC oversees the specialized agencies of the UN
   (1) Examples
      (a) World Bank
      (b) International Monetary Fund
      (c) Food and Agricultural Organization
      (d) International Telecommunications Union
   (2) Agencies intended to meet peoples’ needs for economic and social welfare
   (3) Based on functionalism
      (a) The idea that states were economically and socially interdependent
      (b) If they overcame economic and social problems, war would be less likely
      (c) Global efforts to address one demand would promote new demands
      (d) Functionalists believed
         I. States would more readily surrender non-political technical and economic responsibilities than sovereign responsibilities like military security
         II. Functionalism would produce a complex
network of international agencies to perform states’ welfare functions, thereby reducing the prospect of war

(4) In practice, functional institutions have done little to limit state sovereignty

C. The UN and the maintenance of peace

1. Maintaining peace during the Cold War
   a. Collective security was a victim of Cold War tensions
   b. The UN role in maintaining peace evolved
   c. In the 1950s, authority shifted from the Council to the Assembly
   d. Following China’s intervention in Korea, the General Assembly adopted the Uniting for Peace Resolution, allowing it to act when the Security Council was deadlocked
   e. Peacekeeping
      (1) Evolved to allow the UN to act in cases where the superpowers were not directly involved
      (2) “Chapter Six-and-a-Half”
      (3) Early peacekeeping missions
         (a) UN Emergency Force (UNEF)
         (b) UN Operation in the Congo (ONUC)
         (c) UN Force in Cyprus (UNFICYP)
      (4) Key features of successful peacekeeping during the Cold War
         (a) Adversaries must be states, not parties to a civil war
         (b) The physical line separating adversaries must be clear
         (c) Both sides must consent to a UN presence
         (d) UN forces must be impartial
         (e) The use of force should be minimal
         (f) A mission should have a narrow mandate to prevent confrontations while foes seek solutions

2. Maintaining peace after the Cold War
   a. A new era in peace enforcement
b. The UN invoked peace enforcement for the first time since the Korean war in 1990, following Iraq’s invasion of Kuwait.

c. In ensuing years, it embarked on humanitarian intervention and state-building missions.

d. Several traits distinguish post-Cold War peacekeeping operations:

   (1) No clear line separates foes, which are not just states.

   (2) Peacekeepers find it difficult to be impartial.

   (3) Frequently, parties do not consent to a UN presence because they have something to gain from the conflict or they view the UN as an adversary.

   (4) Peacekeepers are more heavily armed because their missions are more dangerous.

   (5) Missions have broad mandates to rebuild governing institutions, ensure respect for human rights, and deliver humanitarian aid.

   (6) Examples:

      (a) UN Transitional Authority in Cambodia (1991–1993)

      (b) UN Protection Force (1992–1995)

D. The UN and the future

1. Funding the UN is a major challenge

   a. The UN regular budget is funded by assessments.

   b. Members are assessed on the basis of national income:

      (1) The US contributes 22 percent of the UN budget.

      (2) Japan pays 12.53 percent.

      (3) Germany pays 8.08 percent.

      (4) China pays 3.189 percent.

      (5) Almost half the member states pay the minimum (0.01 percent).

   c. The peacekeeping budget is also funded by a system of assessments.

   d. In recent decades, the US has been in arrears in its assessments:

      (1) Growing opposition in the UN to US policies.
Some Americans fear the UN as a threat to US sovereignty

Some believe the US financial contribution is too high

Some believe the UN bureaucracy is corrupt

Some view the UN as a vehicle for anti-American rhetoric

Conservatives argue the US does not need the UN and that UN actions are not in America’s national interest

2. The debate over Iraq

3. Calls for reform
   a. Corruption and misconduct
   b. Security Council reform
      (1) Membership
      (2) Veto power

4. Challenges in the years ahead
   a. Internal violence
   b. Social malaise
   c. economic decline
   d. terrorism
   e. crime
   f. state fragility and failure

V. Regional international organizations

A. The European Union
   1. From the end of World War I to the Schuman Plan
      a. The Marshall Plan and the Organization for European Economic Cooperation (OEEC)
      b. The Schuman Plan and the European Coal and Steel Community (ECSC)
   2. The continuing process of European integration
      a. Treaty of Rome (1957)
         (1) The European Atomic Energy Community (EURATOM)
         (2) European Economic Community (EEC)
b. Merger Treaty (1967) and the European Community (EC)
d. Maastricht Treaty (1992)
   (1) Three pillars of the EU
   (2) Began process toward Economic and Monetary Union (EMU)
e. Amsterdam Treaty (1997)
   (1) European institutions
g. Eastward expansion (2004 and 2007)

3. A European constitution?
a. The Laeken Declaration (2001)

4. European (dis)union?
a. Recent years have witnessed growing fissures in the EU, some of which reflect its expansion
   (1) Russian intervention in Ukraine
   (2) Refugee flows
   (3) Sovereign debt and austerity policies
   (4) “Brexit”

B. Other regional organizations

1. Africa
   a. African Union
   b. Economic Community of West African States (ECOWAS)

2. Middle East
   a. League of Arab States (LAS)

3. The Americas
   a. Organization of American States (OAS)
   b. North American Free Trade Agreement (NAFTA)
   c. Free Trade Area of the Americas (FTAA)
   d. Bolivarian Alternative for the Americas

4. Asia
   a. Association of Southeast Asian Nations (ASEAN)
b. Asia-Pacific Economic Cooperation (APEC) forum  
c. Trans-Pacific Partnership (TPP)

5. Europe  
a. North Atlantic Treaty Organization (NATO)  
b. Organization for Security and Cooperation in Europe (OSCE)

VI. Conclusion  
A. The “law of nations”  
B. International organizations  
C. The United Nations  
D. Regional international organizations