

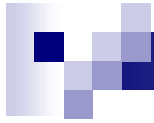
# **THE LEGAL ASPECTS OF FOREIGN INTERVENTION IN DOMESTIC AFFAIRS**

## ***Managing an International Crisis***

**Centre d'Études et de Recherches Internationales (CÉRIUM) Summer School  
(in collaboration with the International Forum of Public Universities)  
Université de Montréal**

**July 7, 2010**

**Prof. Dr. Pedro B. A. Dallari  
Universidade de São Paulo**

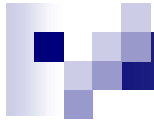


# INTRODUCING MYSELF

## Current activities

Professor of International Law at the Faculty of Law and the Institute of International Relations of the University of São Paulo.

Senior partner of a Law firm devoted to crisis management.



# INTRODUCING MYSELF

## The academic background

1981 – Graduation in Law, University of São Paulo

1985 – Graduation in Business Administration, Fundação Getúlio Vargas (São Paulo)

1992 – Master in International Law (“Constitutional International Law”), University of São Paulo

1999 – Doctor (PhD) in International Law (“Law of the treaties”), University of São Paulo

2009 – *Livre-docente* (post-doctorate) in International Law (“Administrative tribunals of international organizations”), University of São Paulo



## **INTRODUCING MYSELF**

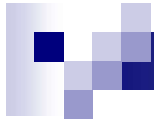
### **The public activities**

1989-91 – Counselor at the City Council of São Paulo.

1991-99 – Assemblyperson at the Assembly of the State of São Paulo.

1992 – Chief of Staff of the Mayor of São Paulo.

1998-2006 – Member of the Human Rights Commission of the Brazilian Bar Association.

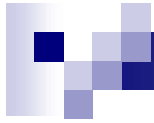


## **INTRODUCING MYSELF**

### **The public activities in the international field**

2004-08 – Judge at the Administrative Tribunal of the Inter American Development Bank (President of the Court in 2007 and 2008); Washington (USA).

2009 – Member, as an International Law Expert, of the Monitoring Commission of the Mission of the Secretary General of the Organization of American States for the conflict between Colombia and Ecuador; Bogota (Colombia), Quito (Ecuador) and Washington (USA).



# **INTERNATIONAL LAW**

**THE QUESTION OF THIS MORNING:**

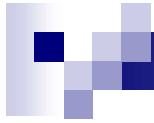
**TWO MAIN PRINCIPLES: CONTRADICTORY OR COMPATIBLE ?**

**PRINCIPLE OF SELF-DETERMINATION OF PEOPLES**

Non-intervention – defense of State sovereignty

**PRINCIPLE OF PREVALENCE OF HUMAN RIGHTS**

Humanitarian intervention – restrictions to State sovereignty

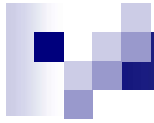


# INTERNATIONAL LAW

## THE ANSWER:

Contemporary International Law is directed to the protection of the State against foreign intervention to warrant the self-determination of its society but, simultaneously, to the protection of such society against its State actions that deny the fundamental rights of its members

To understand this institutional reality – its virtues, problems and perspectives – it is necessary to examine, first, the attribute of State sovereignty and the transformations it went through since the advent of the modern State.

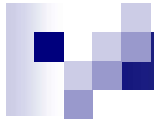


# STATE SOVEREIGNTY

## THE THEORY

- Prevalence of the legal system produced by its institutions over any other system of rules of conduct existing in its territory.
- Non-subordination of the state legal system to the rules arising out of a foreign normative system (sovereignty is synonym of independence and presupposes the absence of external intervention)

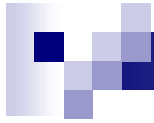




# STATE SOVEREIGNTY

## THE REALITY OF THE 19<sup>th</sup> CENTURY

- State sovereignty was a political concept, without legal effect in International Law
- State sovereignty was frequently disregarded outside the European scope
- The intervention in foreign states might be even viewed as an affirmative element indispensable to the power that would be internationally exercised by England in the 19<sup>th</sup> century and by the United States in the beginning of the 20<sup>th</sup> century



# **COVENANT OF THE LEAGUE OF NATIONS, 1919**

## **Article 10**

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.



## **COVENANT OF THE LEAGUE OF NATIONS, 1919**

### Article 11

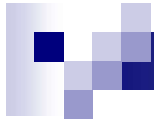
Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.



## **COVENANT OF THE LEAGUE OF NATIONS, 1919**

### Article 12

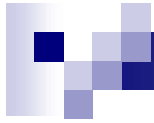
The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.



## **PACT OF PARIS or KELLOGG-BRIAND PACT, 1928**

### **Article I**

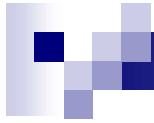
The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.



## **PACT OF PARIS or KELLOGG-BRIAND PACT, 1928**

### **Article II**

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.



# CHARTER OF THE UNITED NATIONS, 1945

## Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.



# CHARTER OF THE UNITED NATIONS, 1945

## Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. **The Organization is based on the principle of the sovereign equality of all its Members.**
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. **All Members shall refrain in their international relations 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.**





# CHARTER OF THE UNITED NATIONS, 1945

## Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. **The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.**
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; **but this principle shall not prejudice the application of enforcement measures under Chapter VII.**



# CHARTER OF THE UNITED NATIONS, 1945

## Article 23

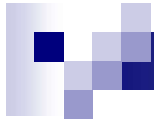
1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.



# CHARTER OF THE UNITED NATIONS, 1945

## Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.



# **CHARTER OF THE UNITED NATIONS, 1945**

## **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.



## **CHARTER OF THE UNITED NATIONS, 1945**

### **Article 51**

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.



## **UN – RESOLUTION NO. 2625, 1970 (GA)**

### **Co-operation among the States**

*Considering* that the progressive development and codification of the following principles:

- a) The principle that States shall refrain in their international relations 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 purpose of United Nations,
- b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
- c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,



## **UN – RESOLUTION NO. 2625, 1970 (GA)**

### **Co-operation among the States**

*Considering* that the progressive development and codification of the following principles:

- d) The duty of State to co-operate with one another in accordance with the Charter,
- e) The principle of equal rights and self-determination of peoples,
- f) The principle of sovereign equality of States,
- g) The principles that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more effective application within the international community, would promote the realization of purposes of the United Nations,



## **UN – RESOLUTION NO. 3314, 1974 (GA)**

### **Definition of aggression**

#### **Article 1**

Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.





## UN – RESOLUTION NO. 3314, 1974 (GA)

### Definition of aggression

#### Article 2

The first use of armed force by a State in contravention of Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that acts concerned or their consequences are not of sufficient gravity.



## **UN – RESOLUTION NO. 3314, 1974 (GA)**

### **Definition of aggression**

#### **Article 3**

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use or force of the territory of another State or part thereof;
- b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c) The blockade of the ports or coasts of a State by the armed forces of another State;
- d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;



## **UN – RESOLUTION NO. 3314, 1974 (GA)**

### **Definition of aggression**

#### **Article 3**

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the condition provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) The action of a State in allowing its territory, which it has placed at the disposal of another state, to be used by that other State for perpetrating an act of aggression against a third State;
- g) The sending by or on behalf of a State of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

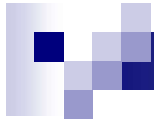


## **UN – RESOLUTION NO. 3314, 1974 (GA)**

### **Definition of aggression**

#### **Article 7**

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relation and Co-operation among State in accordance with the Charter of the United nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to the end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.



# **CHARTER OF THE UNITED NATIONS, 1945**

## **Article 39**

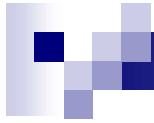
The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.



## **CHARTER OF THE UNITED NATIONS, 1945**

### **Article 40**

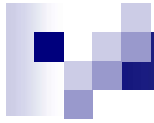
In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures 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.



# CHARTER OF THE UNITED NATIONS, 1945

## 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.



# CHARTER OF THE UNITED NATIONS, 1945

## 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.





## **UN – AN AGENDA FOR PEACE, 1992**

### **GA – Resolution A/47/120B, adopted in September 20, 1993**

**15.** With the end of the cold war there have been no such vetoes since 31 May 1990, and demands on the United Nations have surged. Its security arm, once disabled by circumstances it was not created or equipped to control, has emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace. Our aims must be:

- To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results;
- Where conflict erupts, to engage in peacemaking aimed at resolving the issues that have led to conflict;
- Through peace-keeping, to work to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peacemakers;
- To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war;
- And in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression.



## UN – AN AGENDA FOR PEACE, 1992

**20.** The terms preventive diplomacy, peacemaking and peace-keeping are integrally related and as used in this report are defined as follows:

- *Preventive diplomacy* is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.
- *Peacemaking* is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations.
- *Peace-keeping* is the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.



## **UN – AN AGENDA FOR PEACE, 1992**

**21.** The present report in addition will address the critically related concept of post-conflict peace-building - action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict. Preventive diplomacy seeks to resolve disputes before violence breaks out; peacemaking and peace-keeping are required to halt conflicts and preserve peace once it is attained. If successful, they strengthen the opportunity for post-conflict peace-building, which can prevent the recurrence of violence among nations and peoples.



## **UN – AN AGENDA FOR PEACE, 1992**

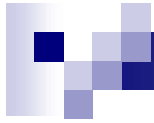
**22.** These four areas for action, taken together, and carried out with the backing of all Members, offer a coherent contribution towards securing peace in the spirit of the Charter. The United Nations has extensive experience not only in these fields, but in the wider realm of work for peace in which these four fields are set. Initiatives on decolonization, on the environment and sustainable development, on population, on the eradication of disease, on disarmament and on the growth of international law - these and many others have contributed immeasurably to the foundations for a peaceful world. The world has often been rent by conflict and plagued by massive human suffering and deprivation. Yet it would have been far more so without the continuing efforts of the United Nations. This wide experience must be taken into account in assessing the potential of the United Nations in maintaining international security not only in its traditional sense, but in the new dimensions presented by the era ahead.



## CHARTER OF THE UNITED NATIONS, 1945

We the people of United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

And for these ends to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,



## **CHARTER OF THE UNITED NATIONS, 1945**

Have resolved to combine our efforts to accomplish the aims,

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.



## **COVENANT OF THE LEAGUE OF NATIONS, 1919**

The high contracting parties,  
In order to promote international co-operation and to achieve international peace and security  
by the acceptance of obligations not to resort to war  
by the prescription of open, just and honourable relations between nations  
by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and  
by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another  
agree to this Covenant of the League of Nations.



## **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

**GA – Resolution 217-A, adopted in December 10, 1948**

**Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,**

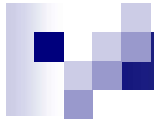
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Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

.....

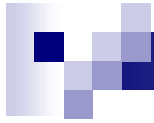




## **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.



# **HUMAN RIGHTS AND THE UN SECURITY COUNCIL**

1948 – Resolution no. 47 – Kashmir (India and Pakistan)

PERIPHERAL INSERTION ERA (1950s)

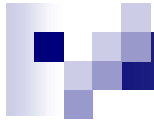
Korean War, Palestine

VICINITY ERA (1960s to the 1980s)

South Africa, Namibia, Zimbabwe, Iraq and Iran, Iraq and Kuwait,

PREDOMINANCE ERA (1990s)

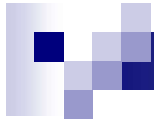
Former Yugoslavia, Somalia, Rwanda, Haiti



## **HUMAN RIGHTS AND THE UN SECURITY COUNCIL**

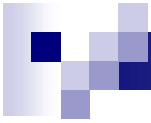
The upper treatment granted by the Security Council to human rights decreased as from 2001, when the attempt that took place in the city of New York in September brought terrorism to the central position of the Security Council's agenda.

But, this reflux tends to be reversed in view of the irreversible position upheld by human rights in the overall subjects of the international agenda.



## **INTERNATIONAL LAW IN THE 21<sup>th</sup> CENTURY**

It is in the perspective of associating the strengthening of international institutions with the need to preserve multiculturalism that the simultaneous presence and preservation of the principle of prevalence of human rights (which presupposes the possibility of intervention) and the principle of self-determination of the peoples (which presupposes non-interference and respect to State sovereignty) have to be understood. Managing them properly is an essential conduct in critical situations.



Thank you for your attention.