

## The UN Charter as a World Constitution

The Charter of the United Nations is, without question, a highly significant document. It has an inherent significance, first, as the foundational document of the United Nations Organisation. As such, it creates and governs the operation of the Security Council, the General Assembly and the UN Secretariat, as well as (with the annexed Statute of the Court) the International Court of Justice. These institutions have, to a greater or lesser extent, shaped international affairs during the post-WWII era. The International Court of Justice has built upon the foundations of its predecessor, the Permanent Court of International Justice, to provide a peaceful means of conflict resolution in the international community, and has contributed to a growing sense of States as a community under Law. The General Assembly, too, has arguably contributed to the development of a single international community. As a body which represents all States (post 2002, when Switzerland joined the Organisation, the membership of the UN has been conventionally understood to include all acknowledged States with the possible exception of Vatican City and, post 2012, Palestine) the decisions of the General Assembly have a great deal of weight as political expressions (“soft law”), and can contribute to the formation of customary law as an expression of *opinio juris*. Arguably the most significant of all, however, is the Security Council. The Council has the remit of maintaining ‘international peace and security’, and has the right to direct armed force against a State for the purpose of fulfilling that goal.

While the Charter’s role as the foundational document of the United Nations is sufficient to characterise it as highly significant, more significant still is its substantive content. Most notably, article 2(4) of the Charter prohibits the threat or use of force by States (except in cases of consent, where that force is authorised by the Security Council, or where the State employing force is acting in self-defence). It had been previously understood that the use of force was a sovereign right of the State, a situation that had changed little from that detailed by Grotius in 1625. That prohibition has subsequently been confirmed as an injunction of customary, as well as conventional, character (see *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)*, Merits, Judgement, (1986) ICJ Reports 14, [188] et seq.), and has been described by the International Law Commission as a ‘conspicuous example’ of an *ius cogens* norm (International Law Commission, Commentary on Article 50 of the Draft Articles on the Law of Treaties, paragraph (1), ILC Yearbook, 1966-11, p.247.)

Such is the centrality of the Charter and its institutions to the modern international community that it can be observed, with Tomuschat, that ‘[t]he present-day world order rests entirely on the Charter’ (Christian Tomuschat, ‘Forward’ in Christian Tomuschat (ed), *The United Nations at Age Fifty: A Legal Perspective* (Kluwer Law International 1995) ix.) Some writers have gone further, though, and have suggested that the United Nations Charter goes beyond a mere treaty imposing synallagmatic obligations upon states, and has acquired a ‘constitutional’ quality. Bardo Fassbender’s article ‘The United Nations Charter as Constitution of the International Community’ is, perhaps, the best known example of such an argument. A more detailed exposition of Fassbender’s argument can be found in his 2009 book *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff Publishers). For those seeking further reading, Klabbers, Peters and Ulfstein’s *The Constitutionlization of International Law* (Oxford University Press, 2009) examines the constitutionalisation debate in relation to other areas of international law, while Aoife O’Donoghue provides an excellent critique of the constitutionalisation debate in *Constitutionalism in Global Constitutionalisation* (Cambridge University Press, 2014).

The documents selected here can do no more than give a flavour of this broad and multifaceted idea, but have been selected to give an indication of what a constitutional system of international law might look like, as well as to give an indication of the position of the United Nations in relation to other organisations and international actors. Finally, Immanuel Kant's essay 'Perpetual Peace' is included. Kant's dissertation on what would be necessary in order to achieve international peace (an unnatural state of affairs which must be maintained through appropriate institutions, in Kant's view) depicts a somewhat constitutionalised international order under a universal organisation, and is likely to have been of influence in the development of the United Nations.

- [Charter of the United Nations](#).
- [Bardo Fassbender, The United Nations Charter as Constitution of the International Community \(1998\)](#) (via Heinonline).
- [Universal Declaration of Human Rights \(1948\)](#).
- [International Covenant on Economic, Social and Cultural Rights \(1966\)](#).
- [International Covenant on Civil and Political Rights \(1996\)](#).
- [Declaration on Friendly Relations](#), annexed to UNGA Res 2625 (1970) GAOR 25th Session, 121.
- [Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, \(1949\) ICJ Rep 174](#).
- [Conjoined Cases of Behramati v France and Saramati v France, Germany and Norway](#)
- [Banković and Others v Belgium and Others](#).
- [Immanuel Kant, Perpetual Peace: A Philosophical Sketch \(1795\)](#).