

Law School Survival Guide

International Law **Outlines and Case Summaries**

2011
Edition

Law School Survival Guide

International Law

Outlines and Case Summaries

TELLER

BOOKS

INTERNATIONAL LAW
Outlines and Case Summaries
Law School Survival Guide

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Some judicial decisions discussed in this book, due to their ambiguity, are subject to different interpretations. Other authors may come to conclusions different from those presented herein. No representation is therefore made that these materials reflect a definitive statement of the state of the law or of the views that will be applied by any court in any particular case or jurisdiction.

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ABBREVIATIONS

Where appropriate, acronyms correspond to the names of treaties as they are commonly known (e.g., “MT” for Moon Treaty), rather than by the full treaty title.

ACHR	American Convention on Human Rights (1969)
ADRDM	American Declaration of the Rights and Duties of Man (1948)
APM	Anti-Personnel Mine
ATCA	Alien Tort Claims Act (28 USC 1350)
ATS	Antarctic Treaty System (Antarctic Treaty and related agreements) (1961)
AU	African Union
CBU	cluster bomb unit
CC	Chicago Convention on International Civil Aviation (1944) (Chicago Convention)
CCW	UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Geneva, 1980)
CDHRI	Cairo Declaration on Human Rights in Islam
CDR	Cartagena Declaration on Refugees
COE	Council of Europe
CEDAW	The Convention on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CFC	chlorofluorocarbon
CFREU	The Charter of Fundamental Rights of the European Union (2000)
COAS	Charter of the Organization of American States (1967)
CPHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
CPPG	Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) (1948)
CRC	Committee on the Rights of the Child
CRSR	Convention Relating to the Status of Refugees (1951)
CUN	Charter of the United Nations (1945)
DARS	Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) (Draft Articles on State Responsibility) (ILC document)
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
EU	European Union
GA	General Assembly (of the UN)
GATT	General Agreement on Tariffs and Trade
GC I	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)

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GC II	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)
GC III	Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva (1949)
GC IV	Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva (1949)
GCTS	Geneva Convention on the Territorial Sea and Contiguous Zone
HC IV	Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907)
HCPIIL	Hague Conference on Private International Law
HRC	Human Rights Committee (of the ICCPR)
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
ILC	International Law Commission
ILO	International Labor Organization
IMT	International Military Tribunal (Nuremberg)
IMTFE	International Military Tribunal for the Far East
ISA	International Seabed Authority
ITLS	International Tribunal for the Law of the Sea
ITO	International Trade Organization
LC	Charter of the International Military Tribunal (London Charter) (1945)
MBT	Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty)
MT	Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979) (Moon Treaty)
NAT	North Atlantic Treaty
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organisation of African Unity
OIC	Organisation of the Islamic Conference
OST	Treaty on principles governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies (1967) (Outer Space Treaty)
PCT	Patent Cooperation Treaty (1970)

ABBREVIATIONS

PRC	People's Republic of China
RC	Republic of China
RFR	Restatement 3d of the Foreign Relations Law of the U.S.
§	Section
SC	Security Council (of the UN)
SCSL	Special Court for Sierra Leone
SDR	Special Drawing Rights
SICC	Rome Statute of the International Criminal Court
SICJ	Statute of the International Court of Justice
STL	Special Tribunal for Lebanon
TC	Trusteeship Council
UDHR	Universal Declaration of Human Rights (1948)
UN	United Nations
UNCED	United Nations Conference on Environment and Development (Earth Summit)
UNCHR	United Nations Commission on Human Rights (ECOSOC subsidiary)
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNCLOS I	First United Nations Conference on the Law of the Sea (1958)
UNCLOS II	Second United Nations Conference on the Law of the Sea (1960)
UNCLOS III	Third United Nations Conference on the Law of the Sea (1982)
UNCRC	UN Convention on the Rights of the Child (1989)
UNEP	United Nations Environment Programme
UNFCCC	UN Framework Convention on Climate Change (1992)
UNHCHR	Office of the United Nations High Commissioner for Human Rights
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHRC	UN Human Rights Council
UNIDROIT	International Institute for the Unification of Private Law
UNS	United Nations Secretariat
US	United States of America
USC	United States Code
USPTO	US Patent and Trademark Office
USSR	Union of Soviet Socialist Republics
VCDR	Vienna Convention on Diplomatic Relations (1961)
VCLT	Vienna Convention on the Law of Treaties (1969)
WCED	World Commission on Environment and Development
WIPO	World Intellectual Property Organization
WSSD	World Summit on Sustainable Development (2002)
WTO	World Trade Organization
WWII	World War II

TABLE OF INTERNATIONAL INSTRUMENTS

These treaties and other international instruments are listed according to the year in which they were concluded and opened for signature—not necessarily the year in which they entered into force. They are listed according to the name or acronym by which they are commonly known.

- 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field
- 1891 Madrid Agreement Concerning the International Registration of Marks
- 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field
- 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land
- 1919 Convention Relating to the Regulation of Aerial Navigation (Paris Convention)
- 1929 Geneva Convention Relative to the Treatment of Prisoners of War
- 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention)
- 1944 Chicago Convention on International Civil Aviation (Chicago Convention)
- 1945 Charter of the United Nations and Statute of the International Court of Justice (signed June 26, 1945)
- 1945 London Charter of the Nuremberg International Military Tribunal (London Charter) (issued August 8, 1945)
- 1947 General Agreement on Tariffs and Trade
- 1948 American Declaration of the Rights and Duties of Man (signed April 1948)
- 1948 Convention on the Prevention and Punishment of the Crime of Genocide (signed 9 December, 1948)
- 1948 Universal Declaration of Human Rights (adopted 10 December 1948)
- 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War
- 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War
- 1949 North Atlantic Treaty
- 1950 European Convention on Human Rights
- 1951 Convention Relating to the Status of Refugees
- 1958 Geneva Convention on the Territorial Sea and Contiguous Zone
- 1958 Geneva Convention on the High Seas
- 1958 Geneva Convention on the Continental Shelf
- 1958 Geneva Convention on Fishing and Conservation of Living Resources of the High Seas
- 1961 Vienna Convention on Diplomatic Relations
- 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

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- 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (also known as the Nuclear Test Ban Treaty)
- 1966 International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entry into force 3 January 1976)
- 1966 International Covenant on Civil and Political Rights, 16 December 1966 (entry into force 23 March 1976)
- 1966 International Convention on the Elimination of All Forms of Racial Discrimination
- 1967 Charter of the Organization of American States
- 1967 Treaty on principles governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies (Outer Space Treaty)
- 1967 Protocol Relating to the Status of Refugees
- 1969 American Convention on Human Rights (Pact of San José)
- 1969 Vienna Convention on the Law of Treaties
- 1970 Patent Cooperation Treaty, done at Washington on June 19, 1970
- 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (entry into force 7 December 1979)
- 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (entry into force 7 December 1979)
- 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty)
- 1979 Convention on the Elimination of All Forms of Discrimination Against Women
- 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects
- 1981 African Charter on Human and Peoples' Rights
- 1982 UN Convention on the Law of the Sea
- 1989 Indigenous and Tribal Peoples Convention
- 1989 UN Convention on the Rights of the Child
- 1992 UN Framework Convention on Climate Change
- 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
- 1994 General Agreement on Tariffs and Trade
- 1996 Comprehensive Nuclear Test Ban Treaty
- 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty)
- 1998 Statute of the International Criminal Court (Rome Statute) (entry into force 2002)
- 1999 Convention for the Unification of Certain Rules for International Carriage (Montreal Convention)
- 2000 The Charter of Fundamental Rights of the European Union
- 2005 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005 (entry into force 14 January 2006)

Table of ICJ Cases

- 1949 *Albania v. Great Britain* (Corfu Channel case) (1949) –Albania was ordered to compensate Britain for damage caused by Albania’s mining of the channel.
- 1981 *Canada v. United States* (Delimitation of the Maritime Boundary in the Gulf of Maine Area).
- 1982 *United States v. Iran* (“US Diplomatic and Consular Staff in Tehran case”) – states are responsible for the conduct of non-state actors if they subsequently ratify the conduct and adopt it as their own.
- 1984 *The Republic of Nicaragua v. The United States of America* – by supporting Contra guerrillas in their rebellion against the Nicaraguan government, the US had violated “its obligations under customary international law not to use force against another State,” “not to intervene in its affairs,” “not to violate its sovereignty,” “not to interrupt peaceful maritime commerce,” and “its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956.”
- 1985 *Libyan Arab Jamahiriya v. Malta* (“Continental Shelf case”) – state practice, together with the *opinio juris* of states, forms the substance of customary law.
- 1995 *New Zealand v. France* (“Nuclear Tests Case”) – .
- 1998 *Libyan Arab Jamahiriya v. United States of America* (“Lockerbie Case”).
- 1999 *Botswana v. Namibia* – territorial dispute case in which the ICJ ruled in favor of Botswana’s claim over Sedudu Island.
- 1999 *Yugoslavia v. Belgium* (Legality of the Use of Force Application of the Federal Republic of Yugoslavia) – for the ICJ to have jurisdiction over the case, Yugoslavia would have had to have accepted compulsory jurisdiction under article 36(2) SICJ prior to the occurrence of the events.
- 2004 *Mexico v. United States* (Case Concerning Avena and other Mexican Nationals) – the US was found to be in breach of the VCDR for failing to inform certain Mexican nationals imprisoned in the US of their right to contact their embassy and was required to review all sentences of the nationals.
- 2007 *Bosnia and Herzegovina v. Serbia and Montenegro* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) – Belgrade breached international law by failing to prevent the 1995 Srebrenica genocide and for failing to try or transfer the persons accused of genocide to the ICTY.
- 2010 *ICJ advisory opinion on Kosovo's declaration of independence* – declared that Kosovo’s unilateral declaration of independence did not violate international law.

CHAPTER 1. INTRODUCTION

I. THE DEFINITION AND ORIGINS OF INTERNATIONAL LAW

International Law can be defined as the set of binding rules and principles that govern the relations and dealings of nations and international organizations with one another and with natural or juridical persons. The Restatement 3d of the Foreign Relations Law of the U.S. thus states that international law “consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical” (§ 101 RFR).

International law can be said to have begun with the Dutch jurist Hugo Grotius (1583-1645), whose writings established the basis of international law based on natural law, as well as with the Peace of Westphalia of 1648, which put an end to the Thirty Years War in the Holy Roman Empire and the Eighty Years’ War (1568–1648) between Spain and the Dutch Republic and gave rise to the birth of modern nation states, which looked to the new development of international law to govern the relationships and conduct among each another.

II. PUBLIC VERSUS PRIVATE INTERNATIONAL LAW

Public international law concerns itself with questions of rights between several nations and some questions of rights between nations and the citizens or subjects of other nations. Private international law, in contrast, governs the activities of and relations between natural and juridical persons when they cross national borders. Private international law involves such areas as trade and commerce, finance and banking, trusts and estates, and family law matters, including international child abduction between private litigants when a foreign element is present. In these cases, conflict of law provisions must be invoked in order to determine (i) which jurisdictions have competence to hear a case; and (ii) the laws of which jurisdiction are to be applied by the court hearing the case.

According to Anthony Aust, the major difference between public and private international law is that while public international law seeks to layout a regime of supranational norms that govern issues having foreign elements, private international law is a body of domestic legal rules that are used to determine which laws should be applied when such a case having foreign elements arises. While true (public) international law is a system of positive international legal instruments, private international law is merely domestic *conflict of laws*. Thus, organizations such as HCPIL, UNIDROIT, and UNCITRAL that seek to harmonize states’ domestic laws in a variety of areas ranging from conflict of laws to international trade law fall within private international law

(conflict of laws), and organizations such as the WTO that write international laws binding on member states fall within public international law, as they do not deal with states' domestic laws strictly speaking.

Public international law, which is often referred to simply as “international law,” is the main subject of this treatise. Private international law will only be mentioned in passing.

III. SUBJECTS OF INTERNATIONAL LAW

A. Overview

The subjects of international law are thus (i) states; (ii) international organizations; (iii) juridical persons; and (iv) natural persons. All of these subjects bear the rights and responsibilities of international law.

States are the primary subjects of international law. International law developed to regulate states as a result of state interaction, particularly in times of war. The laws of war developed because of the mutual interests of all states to regulate the use of force in wartime and to create a legal framework that will make the emergence of war less likely.

Both natural and juridical persons are also subjects of international law. The natural person has increasingly become accepted as an independent actor subject to and benefiting from international law. Although natural persons are not parties to international law, they may bear rights and duties emanating from international law. Juridical persons—whether corporations or other business associations or registered non-governmental organizations, such as charities—similarly may bear rights and responsibilities under international law.

Finally, international organizations are subjects of international law that are comprised either solely or primarily of states. Examples of international organizations include the United Nations, the European Union, and the Organization of American States.

B. Individuals in the International Order

1. Overview

Historically, the subjects of international law have been states. International law may also apply to natural persons (individuals) and legal persons (such as corporations), all of which increasingly hold rights and obligations under international law. However, traditionally, such rights and obligations could only be enforced through states. Today, however, there are increasing treaties between states that enable individuals to bring suits before international tribunals and there are domestic laws that enable residents (both citizens and resident aliens) to sue states for torts or other wrongs suffered.

However, only states, and increasingly, international organizations, have full legal personality under international law; individuals only have legal personality in the international order to the extent that states allow. For example, individual victims of violations of international criminal law

may refer the crime to a state prosecutor, who may bring the case before the International Criminal Court if the state has become a party thereto (art. 13(a) SICC).

In this chapter, we will explore the extent to which international law has enabled non-state actors (other than international organizations) to serve as subjects and objects in the international legal order.

2. *Examples of Individuals in the International Order*

Individuals may serve as subjects in the international order who may enforce their rights in national and international courts as well as objects in the international order who may be called to account for breaching their duties and responsibilities under international law. Among the examples of individuals in the international order, we may point to:

- Aliens as subjects of tort law against their states of residence (*e.g.*, ATCA)
- Individuals as objects who may be sued civilly under domestic law for the violation of international law (*e.g.*, ATCA);
- As subjects of international human rights law (*e.g.*, American Convention on Human Rights; European Convention on Human Rights; the ICCPR through its Human Rights Committee);
- As objects of international criminal law in venues such as the ICC or in *ad hoc* tribunals, such as the IMT (state actors) or the ICTY, ICTR, or SCSL (state and non-state actors).

IV. INTERSECTION OF THE BRANCHES OF INTERNATIONAL LAW

Although the principles and customs of international law date back many centuries, the codification of international law is a relatively new phenomenon. Some of this codification, such as the Vienna Convention on the Law of Treaties, codifies principles that are already accepted in international customary law. Other developments in international law are innovative. For example, the Charter of the Nuremberg IMT laid down principles that were at the time novel, such as the principle that persons may be individually responsible for violations of international law.

The development and codification of international law is welcomed by many as bringing light to principles that otherwise have been uncertain. At the same time, because it is relatively new, there has been a great deal of overlap among the various branches of international law. For example, an crime may be classified as an international crime if it has an international dimension; if it is a crime that violates a basic right of an individual and is committed by a state, it may be classified as a human rights violation; if the same crime is committed in a systematic and organized fashion as part of a state policy, it may be considered a war crime in violation of international humanitarian law, as well as a human rights violation and an international crime. Thus, international institutions such as the ICC may be responsible for overseeing cases that fall not only into the category of international criminal law, but also human rights and international humanitarian and war law.

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CHAPTER 2. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW

I. OVERVIEW

An international organization is a body created by a treaty with a permanent institutional structure whose membership consists either exclusively or in large part of states. The treaty is the constituent instrument of the organization. Although the main subject of international law has traditionally been the state, international law has evolved in the last century to include international and regional organizations. International organizations are subjects of international law because they have duties and rights under international law and can make international law.

One cannot understand international law without understanding the international organizations that make, apply, and enforce international law. Among these organizations, we can consider the United Nations, the European Union, NATO, and many others. Several of these organizations, such as the UN, OAS and EU, have their own legal arms that deal with issues ranging from international trade to human rights.

II. THE UNITED NATIONS

A. Overview of the United Nations

At the conclusion of World War I, the Treaty of Versailles, which established peace between Germany and the Allied Powers and established the League of Nations, was signed between Germany and the Allied Powers in 1919. However, because the Treaty required Germany to accept sole responsibility for causing the war and to make substantial territorial concessions and pay reparations deemed by many economists to be excessive, the Treaty was later largely ignored by Germany. The peace would ultimately collapse and the Treaty would be used by radical factions in Germany to win support for a nationalist cause that eventually gave rise to the Nazi Party and to World War II.

After the failure of the Treaty of Versailles and the League of Nations during World War II, the United Nations was founded in 1945 to maintain peace and security, develop friendly relations among nations, achieve international cooperation in solving international problems, and be a center for harmonizing the actions of the nations and attaining their common ends. The UN has been the locus for the development of binding laws and advisory standards, such as the Universal Declaration of Human Rights, and has established various organizations for the promulgation of rules ranging from labor to intellectual property standards. Among these organizations are the ILO, the World Health Organization, the World Intellectual Property Organization, the

International Telecommunication Union, UNESCO, the World Trade Organization, and the International Monetary Fund.

B. Charter of the United Nations

1. Overview of the Charter

The Charter of the United Nations (CUN), together with the Statute of the International Court of Justice (ICJ), is the principal legal instrument of the UN. It was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The CUN has been promulgated in order to achieve the UN's goals of attaining peace and security, friendly relations among nations, and international cooperation. The CUN has been adhered to by virtually all states; the few remaining non-member states have acquiesced in the principles established in the CUN.

2. Preamble of the Charter

The Charter consists of a Preamble and a series of articles grouped into chapters. The preamble consists of three parts:

- *An outline of the purposes for the establishment of the UN:* to save succeeding generations from the scourge of war; to affirm fundamental human rights and human dignity; to establish justice and respect for the rule of law; and to promote social progress and better standards of life;
- *A covenant among member states that agree to:* practice tolerance; unite strength to maintain peace and security; ensure that armed force not be used except in the common interest; and promote international economic and social progress; and
- A declaration that the governments of the peoples of the UN have agreed to the CUN.

3. Body of the Charter

The body of the Charter consists of nineteen chapters as follow:

- *Chapter I.* Sets forth the purposes and principles of the United Nations and provisions for the maintenance of international peace and security.
- *Chapter II.* Defines the criteria for membership in the United Nations, stating that the UN is "open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations" (art. 4.1 CUN).
- *Chapters III-V.* Describe the organs of the UN with specific attention given to the GA and SC.
- *Chapter VI.* Deals with the pacific settlement of disputes and the SC's power to investigate and mediate disputes (Ch. VI).
- *Chapters VII.* Outlines the SCs' power to take action in disputes through imposing sanctions and authorizing the use of military force in cases involving threats to and breaches of the peace and acts of aggression (Ch. VII). For further treatment, see "UN Collective Security Measures," *infra*.

- *Chapter VIII*. Makes possible regional arrangements for maintaining peace and security within their own regions;
- *Chapters IX and X*. Lay out a framework for international economic and social cooperation and establish ECOSOC, which oversees this framework.
- *Chapters XI-XIII*. A declaration regarding non-self-governing territories and an outline of the international trusteeship system, which oversaw decolonization.
- *Chapters XIV-XV*. Description of the ICJ and UN Secretariat and their respective powers and roles. *See supra.*, “Legal Institution: the International Court of Justice” for a full description of the ICJ and the SICJ.
- *Chapters XVI-XVII*. Miscellaneous provisions and transitional security arrangements related to World War II for integrating the UN with established international law.
- *Chapters XVIII-XIX*. The Charter amendment and ratification processes and signature by respective member governments.

C. Principal Non-Legal Organs

The UN is comprised of six principal organs: the General Assembly, the Security Council, ECOSOC, the Trusteeship Council, the Secretariat, and the International Court of Justice. In this section, we will examine the first five organs. In the following section, we will examine the International Court of Justice.

1. *The General Assembly (Ch. IV CUN)*

The General Assembly (GA), the main deliberative body of the UN, is composed of delegates of all member states. The decisions of the GA, which are made by a two-thirds majority or by a simple majority according to art. 18 CUN, largely mandate the activities and direction of the UN each year.

Apart from approval of budgetary matters regarding the allotment and collection of dues, the resolutions of the GA are not binding on UN members. The GA may make recommendations on any matters within the scope of the UN, except matters of peace and security under SC consideration. The GA may also adopt conventions, such as the 1948 Genocide Convention, that states are free to adopt and ratify. While the conventions on their own are not binding, they become binding on member states that sign and ratify them.

Although the resolutions of the GA are not legally binding *per se*, states sometimes express their opinions about the status of customary international law through declarations and recommendations of the GA, and this may in turn shape the content of customary international law. Furthermore, as will be mentioned below, the resolutions and declarations of international organizations such as the UN may constitute *opinio juris*, one of the five sources of international law.

2. *Security Council (Ch. V CUN)*

The SC has primary responsibility for the maintenance of international peace and security. It has the ability to make decisions that are legally binding on member states. Under the Charter, members of the UN agree to “accept and carry out the decisions of the Security Council in

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CHAPTER 3. SOURCES OF INTERNATIONAL LAW

I. INTRODUCTION

The Statute of the ICJ in its thirty eighth article indicates the following 4 sources of international law that apply to disputes submitted to it:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law” (art. 38 SICJ).

II. INTERNATIONAL TREATIES AND CONVENTIONS

The most important sources of international law are international treaties and conventions. These multilateral agreements govern the interaction of nations, multinational businesses, or nongovernmental organizations.

A. Overview

A treaty can be defined as a bilateral or multilateral agreement between states, between states and international organizations, or between international organizations that is governed by and binding under international law. According to the VCLT, treaties may be “embodied in a single instrument or in two or more related instruments” (art. 2(1)(a) VCLT). Treaties are generally in written form, and the VCLT includes the written form of treaties as part of their definition (art. 2(1)(a) VCLT), yet under customary international law, treaties do not necessarily need to be written.

Treaties are a source of international obligation for those states that agree to be bound by them. A unilateral law that governs the relations of a state with other states or that defines a state’s foreign policies is not however a treaty if it is not binding on one or more other states or international organizations.

The designation of a treaty as such is not an essential element of the agreement. A treaty may thus be titled “agreement,” “convention,” or any other term that denotes the same, and yet still fall into the definition of a treaty.

B. Binding Force of Treaties

That treaties are binding on those states that agree to be bound by them is a general principle of law and is also established by international custom. States that agree to be bound by a treaty are known as “parties” to the treaty. States that sign a treaty are known as “signatories,” and are not bound by a treaty until the state has agreed to be bound (usually through ratifying the treaty) and the treaty has entered into force.

To give further weight to the binding nature of treaties on parties to them, the VCLT establishes in its 26th article (*Pacta sunt servanda*) that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” (art. 26 VCLT). The VCLT is binding on the 111 state parties to the convention and other nations, such as the United States and France, which have not ratified the VCLT, are bound by their respective treaties under international custom and under the general principles of law, which consider the breach of a valid treaty to be a breach of international law. Thus, the breach of a provision of the VCLT by a state that has not ratified the VCLT would only be considered a breach of international law if the provision of the VCLT being breached were also a provision of international custom or of the general principles of law.

C. Vienna Convention on the Law of Treaties

1. Consent to be Bound by Treaties

The Vienna Convention on the Law of Treaties (VCLT) both codifies existing customary international law and adds to it. Signed at Vienna in 1969 and entering into force in 1980, it applies to treaties between states. Under the Convention, once a state consents to be bound to a treaty and a treaty enters into force, the state becomes a party bound by the treaty (art. 2(1)(g) VCLT). Consent to be bound by a treaty may be expressed “by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed” (art. 11 VCLT).

The Convention goes on to explain the various ways that a state may express its intent to ratify, to be bound, and to accede to a treaty. In processes with both a signature and ratification, the signature demonstrates the intent to ratify, but not necessarily consent to be bound (art. 12 VCLT). Ratification is the act whereby a state expresses its consent to be bound (art. 14 VCLT) and in those cases where a state has not signed a treaty and the treaty is no longer open for signature, the state may “accede” to the treaty, whereby the state expresses its consent to be bound by the treaty (art. 15 VCLT).

In the period between a state’s signing a treaty and the ratification of the treaty, or between the ratification of a treaty by a state and the entry into force of a treaty, the signatory or ratifying state may not undertake any actions that defeat the object and purpose of the treaty (art. 18 VCLT). However, this should not be construed to prohibit a state from unsigning a treaty that it no longer intends to ratify. If the state unsigns a treaty, it is no longer bound from taking actions that may defeat the object or purpose of the treaty.

2. *Interpretation of Treaties*

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (art. 31.1 VCLT). This context comprises:

- any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; and
- any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty (art. 31.2 VCLT).

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty (*travaux préparatoires*) and the circumstances of its conclusion, in order to confirm the meaning of the treaty (art. 32 VCLT).

3. *Invalidity, Termination, and Suspension of Treaties*

Treaties may be held invalid for a variety of reasons, ranging from a state representative's incompetence to conclude a treaty to fraud, corruption, or duress or coercion (arts. 46-52 VCLT). Similarly, a treaty is void if at the time of its conclusion, it conflicts with peremptory norms of general international law (*jus cogens*) (art. 53 VCLT).

A treaty may be terminated or suspended as a consequence of its breach. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation (art. 60.1 VCLT).

The material breach of a multilateral treaty by one of the parties entitles the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it in relation between themselves and the defaulting state or as between all the parties. A material breach of a multilateral treaty by one of the parties also entitles a party affected by the breach to invoke the breach as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting state and entitles any other party than the defaulting state to “invoke the breach as ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that the material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty” (art. 60.2 VCLT).

A material breach may consist in: “(a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty” (art. 60.3 VCLT).

The decision of a state not to suspend or revoke a treaty that has been materially breached does not impair its ability to seek other means of compensation or reparation, including seeking damages or submitting to international arbitration.

III. CUSTOMARY INTERNATIONAL LAW

Customary international law can be defined according to the following three elements: (i) a consistent and recurrent state practice; (ii) developed over time; that is (iii) undertaken out of a sense of legal obligation. In this manner, the Restatement 3d of the Foreign Relations Law of the U.S. defines customary international law as resulting “from a general and consistent practice of states followed by them from a sense of legal obligation” (§ 102(2) RFR). This general and consistent practice is often referred to as “state practice.” As the ICJ has declared in the Libya/Malta case (1985), this state practice, together with the *opinio juris* of states, forms the substance of customary law.

Although customary international law does not have to be universal, it must be widely enough practiced among states to qualify as “general” and “consistent” before it can serve as a source of the law. Widespread departure from customary international law may be an indication of the evolution of customary international law; if enough states adopt new practices, customary law may change and adopt the new practices as custom, even if these practices initially violate the customary international law in place at the time.

Historically, customary international law has been the most important source of international legal obligations and legal instruments such as the VCLT have been seen by some states as a mere restatement or codification of customary law.

We can determine the content of customary international law by looking to various sources, including the jurisprudential of international tribunals, the practices of international organs, and states’ domestic laws and military and administrative practices.

If, during the development of a new rule of customary international law, a state repeatedly publicly announces its opposition to the rule, then the persistent objector will not be legally bound by the rule when it becomes customary law. This legal exemption will last as long as the state continues to object, unless the customary international law develops the status of *jus cogens* (a peremptory norm of general international law). If enough states object to the practice, then it will not become customary international law. If, however, a small group of states object to the practice, then they may develop their own special custom, which may be binding on them, but not on other nations, which would be bound by the customary law to which they implicitly or tacitly accepted.

IV. GENERAL PRINCIPLES OF LAW

Article 38 of the SICJ also defines “general principles of law recognized by civilized nations” as a source of international law. The general principles of law are used as gap fillers by international courts when there is no applicable treaty provision or rule of customary international law. The court will try to ascertain general principles of law by finding commonalities among well-development legal systems in the world. These general principles may include both principles of law and principles of equity.

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CHAPTER 5. INTERNATIONAL HUMANITARIAN LAW: THE LAW OF ARMED CONFLICT

I. INTRODUCTION

A. Overview

International humanitarian law (IHL), also known as the law of war, the law of armed conflict, or *jus in bello*, is an area of international law that concerns the protection of members of armed forces and civilians during wars, armed conflicts, and military occupations of territories. IHL sets standards for the humanitarian treatment of victims and prisoners of war, seeks to limit the effects of armed conflict on civilians who are not or are no longer participating in hostilities, and restricts the means and methods of warfare.

B. Origins

The law of war can be said to have originated with the Dutch jurist Hugo Grotius (1583-1645), whose writings established the basis of international law based on natural law. In his treatise *De jure belli ac pacis libri tres* (*On the Law of War and Peace: Three books*), published in 1625, Grotius advances a system of principles of natural law, whereby what is “just” is consistent with the nature of a society of rational beings. He holds these principles to be binding on all people and nations regardless of local custom, and then goes on to outline the circumstances under which war may be justly executed. The book is divided into three parts, as follow:

- *Book I: General conception.* Offers a conception of war and of natural justice, arguing that there are some circumstances in which war is justifiable.
- *Book II: Jus ad bellum (justice in the resort to war).* Describes three “just causes” for war: self-defense, reparation of injury, and punishment; Grotius considers a wide variety of circumstances under which these causes apply.
- *Book III: Jus in bello (justice in the conduct of war).* Enumerates the rules governing the conduct of war once it has begun. Grotius argues that all parties to war are bound by such rules, whether or not their cause is just.

The purposes of the law of armed conflict are fourfold:

- Limit the damages, casualties, and other consequences of conflict;
- Protect combatants and civilians from unnecessary suffering;
- Guarantee the fundamental rights of combatants and civilians; and
- Prevent the escalation of conflict.

C. International Humanitarian Law and Human Rights Law

In some ways, IHL can be viewed as a set of specialized human rights regulations that apply during war and armed conflict. However, this does not mean that ordinary human rights regulations cease to be operational when IHL is applied. Rather, it means that, unless normal human rights law is derogated by treaty or otherwise, the rules of IHL apply in addition to human rights law.

For example, in a state where domestic law prohibits discrimination by state actors (a domestic human rights provision, often termed a “civil right” because it is domestic), citizens of that state that continue to enjoy the right to be free from discrimination even if their territory were being occupied by a foreign military force. During such an occupation, not only would IHL’s regulations providing for the protection of civilians and civilian objects, the care for the sick and the wounded, the treatment of POWs, and limitations on the use of weapons and methods of war apply, but those provisions of domestic or international human rights law, such as the right to be free from discrimination, would continue to apply, whether civilians in the occupied territory were under the authority of their own civil government or of the foreign occupation force.

II. PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

A. Protection of Persons

1. *Distinction (Discrimination)*

Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare civilian population and property.

- *Civilians.* An attacker may not intentionally attack civilians or employ methods that would cause excessive collateral casualties among protected civilians. Civilians may, however, lose their protected status if the defender fails to separate civilians and civilian objects from military targets.
- *Civilian Objects.* This principle imposes a requirement to distinguish, or discriminate, between military objects, which may be targets of an attack, and civilian objects, which may not be targeted. Civilian objects such as places of worship, hospitals, and dwellings may, however, lose their protected status if they become tools for military action.

2. *Proportionality with Respect to Civilian Losses*

Those who plan military operations must take into consideration the extent of civilian destruction and probable casualties that will result and, to the extent consistent with the necessities of the military situation, seek to avoid or minimize such casualties and destruction. While civilian losses must be proportionate to the military advantages sought, this principle must be consistent with the allowable risk to the attacking force; the attacker need not expose himself to excessive risk simply in order to minimize civilian losses.

B. Conduct, Weapons, Use of Force

1. *Military Necessity*

Military necessity permits the application of only that degree of regulated force required for the partial or complete submission of the enemy with the least expenditure of life, time and resources. Attacks must be limited to military objects, which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization offers a definite military advantage (*e.g.*, troops, supplies, headquarters).

Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

2. *Humanity*

The right of parties to a conflict to adopt means of injuring the enemy is not unlimited. Also known as the principle of unnecessary suffering, the principle of humanity prohibits the employment of any degree of force that is not necessary for the purposes of military mission accomplishment by causing unnecessary losses or excessive suffering.

III. PROTECTION OF PERSONS IN ARMED CONFLICTS: THE GENEVA CONVENTIONS

A. Overview

The Geneva Conventions comprise four treaties and three additional protocols. Prior to the first Geneva Convention of 1864, only customary law applied to the conduct of states at war. It was only with the first Geneva Convention that the rules of armed conflict were codified. Prior to the Convention, the nations' customs and traditions governing the conduct of war varied among states or were temporary.

After the Geneva Conventions were adopted, clear sets of rules were defined to require those engaged in armed conflict to respect IHL and to ensure the respect of IHL. While the ICRC is regarded as the "guardian" of the Geneva Conventions and other treaties that constitute IHL, it cannot serve as policeman or judge. These functions belong to states parties to international treaties, who are required to respect IHL, ensure the respect of IHL, and punish those responsible for "grave breaches" of the Geneva Conventions.

B. Main Principles

C. Conventions Preceding the 1949 Geneva Conventions

The governments of Europe and America came together in 1864 to establish rules governing conduct during warfare. The resulting Convention of 1864 was replaced by the Geneva Conventions of 1906, 1929 and 1949, all of which expanded the original and added provisions

relating to war at sea, prisoners of war, and civilians. The original treaties continued to have binding force only between those countries that did not ratify the later treaties.

1. Geneva Convention of 1864 for the Wounded in War

After the termination of the Geneva Conference of 1863, the Swiss Federal Council invited the governments of Europe and America to a diplomatic conference to adopt a convention for the amelioration of the condition of the wounded in war. The conference adopted a treaty comprised of ten articles—the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (Geneva, 1864), which provides relief to the sick and the wounded without distinction as to nationality. The wounded and sick must be collected and cared for by the party that has them in its power, and this protection was extended to medical personnel, establishments, transports and equipment. The Convention established the neutrality of medical personnel and medical establishments and units, and the distinctive signs of the red cross, red crescent or the red lion and sun on a white ground were established as signs of such protection.

The 1864 Convention ceased to have effect in 1966 when the Republic of Korea, the last party to the 1864 Convention that had not acceded to a later Convention, acceded to the 1949 Conventions.

2. Geneva Convention of 1906 for the Wounded and Shipwrecked at Sea

Several proposals were made after 1864 to revise the 1864 Convention of 1864. A conference was convened at Geneva in 1868 to adapt the principles of the 1864 Convention to sea warfare, but the additional articles were not ratified. The 1899 Hague Peace Conference proposed a special conference for the revision of the Geneva Convention of 1864, and this resulted in a 1906 Conference attended by 35 states that adopted the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. This new Convention replaced the old as between the contracting states.

With 33 articles rather than 10, the 1906 Convention is more detailed than the former and adds additional provisions for wounded, sick, and shipwrecked soldiers at sea during war, while changing some provisions. For example, the duty to repatriate the wounded who are unfit for further service was transformed into a recommendation.

3. Geneva Convention of 1929 for Prisoners of War

Provisions relating to the treatment of prisoners of war are contained in the 1899 and 1907 Hague Regulations. Due to their imprecision, the ICRC drafted a convention that would complete the Hague regulations by including a prohibition of reprisals and collective penalties, the organization of prisoners' work, and prisoners' designation of representatives. The Diplomatic Conference of Geneva adopted the Convention relative to the Treatment of Prisoners of War on July 27, 1929, containing 97 articles and an Annex model draft agreement concerning the direct repatriation or accommodation in a neutral country of prisoners of war for reasons of health.

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GLOSSARY

A

Aggression Also known as a CRIME AGAINST PEACE, it is a crime generally defined under customary international law and the Nuremberg Principles as the planning, preparation, initiation, or waging of any war in violation of international law, treaties, or agreements, including participation, conspiracy or complicity in the same (see Nuremberg Principles VI and VII). Because the crime of aggression has not been defined in the SICC, the ICC will not prosecute it until a precise definition has been adopted (art. 5.2 SICC).

Air law The body of laws concerning civil aviation. In its broadest sense, it may also refer to all law involving any use of the air, including but not limited to civil aviation. *Also known as AVIATION LAW.*

Alien Tort Claims Act A section of the USC that grants the federal district courts original jurisdiction “of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States” (28 USC 1350). The statute allows suit to be brought in US federal court by aliens for torts committed outside of the US in violation of international law.

Antarctic Treaty System System of treaties comprised of the Antarctic Treaty and related agreements, including the Convention for the Conservation of Antarctic Marine Living Resources (1980) and the Protocol on Environmental Protection to the Antarctic Treaty (1991). The Antarctic Treaty, signed by 47 countries and entering into force in 1961, sets aside Antarctica as a scientific preserve free from weapons testing and other military activity and establishes freedom of scientific investigation on the continent.

Aviation law *See AIR LAW.*

B

Baseline Line from which the seaward limits of a state’s territorial sea and other maritime zones of jurisdiction (contiguous zone, exclusive economic zone, etc.) are measured. Normally, a sea baseline follows the LOW-WATER LINE of a state’s coast (art. 5 UNCLOS), but it may also be drawn from the low-water line of reefs in the case of islands situated on atolls or of islands having fringing reefs (art. 6 UNCLOS) or, in the case of coastlines that are deeply indented and cut into or having fringing islands, straight baselines joining appropriate points may be used (art. 7.1 UNCLOS).

C

Cabotage The exclusive right of a country to control the air traffic within its borders.

Conciliation Means of conflict resolution where a permanent or *ad hoc* commission is set up to conduct an investigation and search for a set of settlement terms that would likely be accepted by both parties. The parties to conciliation are not bound by the proposed settlement terms. *Compare* MEDIATION.

APPENDICES

Continental shelf (*Geography*) Extended perimeter of each continent that is underwater by relatively shallow seas (known as shelf seas) and gulfs. (*Law*) Under UNCLOS, the continental shelf was legally defined as the stretch of the sea extending from the coast to the continental shelf.

Continental margin A steep continental slope followed by the flatter CONTINENTAL RISE.

Continental rise Pile of sediment that cascades down the slope and accumulates at the base of the continental slope. It is found between the continental slope and the abyssal plain.

Convention for the Protection of Human Rights and Fundamental Freedoms An international treaty to protect human rights and fundamental freedoms in Europe. It was drafted in 1950 by the then newly formed Council of Europe and entered into force in 1953. *Informally known as* EUROPEAN CONVENTION ON HUMAN RIGHTS.

Court An assembly, normally of a permanent nature, of one or more judges with the authority to judge on and adjudicate legal claims or disputes. Normally created by state law. *Compare* TRIBUNAL.

Crime against peace *See* AGGRESSION.

Crime of aggression *See* AGGRESSION.

Crimes against humanity Certain enumerated inhuman and odious acts committed as part of a systematic attack against any civilian population that constitute grave humiliation or degradation or a serious attack on human dignity. The SICC enumerates a series of crimes, including murder, extermination, and enslavement, that constitute crimes against humanity when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (art. 7.1 SICC).

Customary international law A source of international law consisting of (i) a consistent and recurrent state practice; (ii) developed over time; that is (iii) undertaken out of a sense of legal obligation. It thus results from a general and consistent practice of states followed by them from a sense of legal obligation.

D

Domestic law *See* MUNICIPAL LAW.

Draft Articles on the Responsibility of States for Internationally Wrongful Acts Non-binding declaration drafted by the ILC in 2001 that attempts to codify the rules under customary law for state responsibility. It serves as evidence of customary international law.

E

European Convention on Human Rights *See* CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

G

GATT *See* GENERAL AGREEMENT ON TARIFFS AND TRADE 1949 *and* GENERAL AGREEMENT ON TARIFFS AND TRADE 1994.

General Agreement on Tariffs and Trade (1949) An agreement negotiated during the UN Conference on Trade and Employment that was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). It was formed in 1949 and lasted until 1993. The World Trade Organization replaced it in 1995. *Known by its acronym GATT. See also GENERAL AGREEMENT ON TARIFFS AND TRADE (1994).*

General Agreement on Tariffs and Trade (1994) The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, signed by ministers in Marrakesh in 1994. In addition to the texts of the agreements, the Final Act also contains texts of Ministerial Decisions and Declarations which further clarify certain provisions of some of the agreements. The original 1947 GATT text is still in effect under the WTO system, subject to modifications under the 1994 GATT text. *See also GENERAL AGREEMENT ON TARIFFS AND TRADE (1949).*

General principle of law A source of international law that serves as a gap filler by international courts when there is no applicable treaty provision or rule of customary international law. The court will try to ascertain general principles of law by finding commonalities among well-developed legal systems in the world. These general principles may include both principles of law and principles of equity.

Genocide Defined under the Genocide Convention and the SICG as any of the following acts committed on members of any national, ethnical, religious or racial group with the intent to destroy it: killing, causing of serious bodily or mental harm, prevention of birth, transferring of children to another group, or infliction of conditions of life calculated to bring about its physical destruction (art. II CPPG; art. 6 SICG).

Grotius (Hugo) Dutch jurist whose writings established the basis of modern international law. In his treatise *De jure belli ac pacis libri tres (On the Law of War and Peace: Three books)*, he advances a system of principles of natural law that he holds to be binding on all people and nations regardless of local custom, and then goes on to outline the circumstances under which war may be justly executed.

H

Hague Conference on Private International Law Preeminent organization in private international law formed in 1893 to work for the progressive unification of the rules of private international law by assisting in the implementation of multilateral conventions promoting the harmonization of conflict of laws principles. Sixty-eight nations, including China, Russia, the United States, and all of the EU countries, are currently members.

House of Lords The UK's final appeals court.

Human Rights Committee HUMAN RIGHTS TREATY BODY of the International Covenant on Civil and Political Rights (ICCPR). It has power to: (i) elaborate on the norms in the ICCPR; and (ii) hear complaints from individuals against states.

Human rights treaty body Committee of independent experts charged with monitoring the implementation of an international human rights treaty and considering individual complaints or communications. Human rights treaty bodies are created by the human rights treaties that they implement.

I

Inland waters Lakes, rivers, and ports located within the boundaries of a state. States are fully sovereign over their inland waters and may enforce their laws in full against foreign marine ships.

International Committee of the Red Cross Impartial private humanitarian organization based in Geneva, Switzerland that works to protect the victims of international and domestic armed conflicts. Its mandate stems from the four Geneva Conventions of 1949 and states parties to the Conventions and their Protocols Additional of 1977 and 2005 have given the ICRC a mandate to protect the victims of war and armed violence.

International crime Internationally wrongful act resulting from the breach by a state, state agent, or non-state actor of a peremptory norm (*jus cogens*) so essential for the protection of the international community's fundamental interests that its breach is classified by the community as a crime (*e.g.*, aggression, torture, genocide).

International humanitarian law Set of rules regulating the conduct of war and armed hostilities. These rules restrict the means and methods of warfare and seek to limit the effects of armed conflict for humanitarian reasons by protecting civilians who are not or are no longer participating in the hostilities. *Also known as* LAW OF WAR, LAW OF ARMED CONFLICT, and *JUS IN BELLO*. *Compare* JUS AD BELLUM.

International Law Commission A commission established by the UN General Assembly in 1948 for the "promotion of the progressive development of international law and its codification" (art. 1 of the ILC Statute). It has held sessions in Geneva every year since 1949 that have led to the creation of the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations, and the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, among others.

International Law Institute A private, non-for-profit organization chartered by Georgetown University that conducts scholarly research, publishing, and practical legal training and technical assistance in order to promote economic development and rule of law and address the challenges faced by the international community.

International organization A body created by a treaty with a permanent institutional structure whose membership consists either exclusively or in large part of states. The treaty is the constituent instrument of the organization.

International seabed area Portion of the sea that lies beyond the limits of national jurisdiction, underlying most of the world's oceans.

International uniform law Refers to the situation whereby the domestic laws of nations have been made uniform by agreement.

J

Jus ad bellum (*Lat.*, "Justice in the resort to war") Laws that regulate recourse to the use of armed force. *Compare* JUS IN BELLO.

Jus Cogens (*Lat.*) *See* PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW.

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CHARTS AND GRAPHS

Common Articles 2 and 3 of the 1949 Geneva Conventions

Article	Content
Common Article 2 (for international conflicts)	<p>In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.</p> <p>The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.</p> <p>Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.</p>
Common Article 3 (for internal conflicts)	<p>In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:</p> <p>(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed <i>hors de combat</i> by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.</p> <p>To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:</p> <p>(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;</p> <p>(b) taking of hostages;</p> <p>(c) outrages upon personal dignity, in particular humiliating and degrading treatment;</p> <p>(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.</p> <p>(2) The wounded and sick shall be collected and cared for.</p> <p>An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.</p> <p>The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the</p>

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