Modern International Law: Introduction and Overview

I. Introduction: International law is the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. The term was coined by the English philosopher Jeremy Bentham (1748–1832).

A. Definition and scope:

According to Bentham's classic definition, international law is a collection of rules governing relations between states. It is a mark of how far international law has evolved that this original definition omits individuals and international organizations—two of the most dynamic and vital elements of modern international law. Furthermore, it is no longer accurate to view international law as simply a collection of rules; rather, it is a rapidly developing complex of rules and influential—though not directly binding—principles, practices, and assertions coupled with increasingly sophisticated structures and processes. In its broadest sense, international law provides normative guidelines as well as methods, mechanisms, and a common conceptual language to international actors—i.e., primarily sovereign states but also increasingly international organizations and some individuals. The range of subjects and actors directly concerned with international law has widened considerably, moving beyond the classical questions of war, peace, and diplomacy to include human rights, economic and trade issues, space law, and international organizations. Although international law is a legal order and not an ethical one, it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights.

International law is distinct from international comity, which comprises legally nonbinding practices adopted by states for reasons of courtesy (e.g., the saluting of the flags of foreign warships at sea). In addition, the study of international law, or public international law, is distinguished from the field of conflict of laws[1], or private

---

[1] **Conflicts of Law:** the existence worldwide of a multiplicity of different sets of courts and different sets of private law (*i.e.,* the law governing relations between private individuals or between an individual and the state considered as an individual without special position or privilege). The "law of the conflict of laws"—also called private international law—has to do with the resolution of the problems resulting from such diversity of courts and law.

Both civil and criminal procedure may have a variety of international aspects: the plaintiff and defendant may be foreign citizens or may reside outside the country of the court (called the forum state); evidence may have to be taken in a foreign country; or, finally, a decision rendered in one country may have to be enforced in another. Growing international activities, primarily for business purposes but also of a private nature, have decisively increased the practical relevance of these international aspects of procedural law.

Legal problems arising from the international aspects of civil and criminal proceedings are a result of the multiplicity of different sets of courts and different systems of law in the world. Each nation maintains its

international law, which is concerned with the rules of municipal law—as international lawyers term the domestic law of states—of different countries where foreign elements are involved.

International law is an independent system of law existing outside the legal orders of particular states. It differs from domestic legal systems in a number of respects. For example, although the United Nations (UN) General Assembly, which consists of representatives of some 190 countries, has the outward appearances of a legislature, it has no power to issue binding laws. Rather, its resolutions serve only as recommendations—except in specific cases and for certain purposes within the UN system, such as determining the UN budget, admitting new members of the UN, and, with the involvement of the Security Council, electing new judges to the International Court of Justice (ICJ)[2]. Also, there is no system of courts with comprehensive jurisdiction in

---

own set of courts in complete independence of every other nation, and each nation has its own set of laws, written or unwritten. The rules and provisions that deal with the international aspects of various national legal systems are called the law of conflict of laws.

[2]**International Court of Justice (ICJ):** the principal judicial organ of the United Nations (UN). The idea for the creation of an international court to arbitrate international disputes first arose during the various conferences that produced the Hague Conventions in the late 19th and early 20th centuries. The body subsequently established, the Permanent Court of Arbitration, was the precursor of the Permanent Court of International Justice (PCIJ), which was established by the League of Nations. From 1921 to 1939 the PCIJ issued more than 30 decisions and delivered nearly as many advisory opinions, though none were related to the issues that threatened to engulf Europe in a second world war in 20 years. The ICJ was established in 1945 by the San Francisco Conference, which also created the UN. All members of the UN are parties to the statute of the ICJ, and nonmembers may also become parties. The court's inaugural sitting was in 1946.

The ICJ is a continuing and autonomous body that is permanently in session. It consists of 15 judges—no two of whom may be nationals of the same state—who are elected to nine-year terms by majority votes in the UN General Assembly and the Security Council. The judges, one-third of whom are elected every three years, are eligible for reelection. The judges elect their own president and vice president, each of whom serves a three-year term, and can appoint administrative personnel as necessary.

The seat of the ICJ is at The Hague, but sessions may be held elsewhere when the court considers it desirable to do so. The official languages of the court are French and English.

The court's primary function is to pass judgment upon disputes between sovereign states. Only states may be parties in cases before the court, and no state can be sued before the World Court unless it consents to such an action. Under article 36 of the court's statute, any state may consent to the court's compulsory jurisdiction in advance by filing a declaration to that effect with the UN secretary-general, and by 2000 more than 60 countries had issued such a declaration. The declaration (the “optional clause”) may be made unconditionally, or it may be made on condition of reciprocity on the part of other states or for a certain time. In proceedings before the court, written and oral arguments are presented, and the court may hear witnesses and appoint commissions of experts to make investigations and reports when necessary.

Cases before the ICJ are resolved in one of three ways: (1) they can be settled by the parties at any time during the proceedings; (2) a state can discontinue the proceedings and withdraw at any point; or (3) the court can deliver a verdict. The ICJ decides disputes in accordance with international law as reflected in international conventions, international custom, general principles of law recognized by civilized nations, judicial decisions, and writings of the most highly qualified experts on international law. Although the judges deliberate in secret, their verdicts—rendered in both English and French—are delivered in open court. Any judge who does not agree in whole or in part with the court's decision may file a separate

international law. The ICJ's jurisdiction in contentious cases is founded upon the consent of the particular states involved. There is no international police force or comprehensive system of law enforcement, and there also is no supreme executive authority. The UN Security Council may authorize the use of force to compel states to comply with its decisions, but only in specific and limited circumstances; essentially, there must be a prior act of aggression or the threat of such an act. Moreover, any such enforcement action can be vetoed by any of the council's five permanent members (China, France, Russia, the United Kingdom, and the United States). Because there is no standing UN military, the forces involved must be assembled from member states on an ad hoc basis.

International law is a distinctive part of the general structure of international relations. In contemplating responses to a particular international situation, states usually consider relevant international laws. Although considerable attention is invariably focused on violations of international law, states generally are careful to ensure that their actions conform to the rules and principles of international law, because acting otherwise would be regarded negatively by the international community. The rules of international law are rarely enforced by military means or even by the use of economic sanctions. Instead, the system is sustained by reciprocity or a sense of enlightened self-interest. States that breach international rules suffer a decline in credibility that may prejudice them in future relations with other states. Thus, a violation of a treaty by one state to its advantage may induce other states to breach other treaties and thereby cause harm to the original violator. Furthermore, it is generally realized that consistent rule violations would jeopardize the value that the system brings to the community of states, international

---

opinion, and few decisions represent the unanimous opinion of the judges. The court's judgment is final and without appeal.

The court's decisions, numbering approximately 70 from 1946 to 2000, are binding on the parties and have been concerned with issues such as land and maritime boundaries, territorial sovereignty, diplomatic relations, the right of asylum, nationality, and economic rights. The ICJ is also empowered to give advisory opinions on legal questions at the request of other organs of the UN and its specialized agencies when authorized to do so by the General Assembly. Although advisory opinions—numbering about 25 over its first 50 years—are not binding and are only consultative, they are considered important. They have been concerned with issues such as admission to the UN, the expenses of UN operations, and the territorial status of South West Africa (Namibia) and Western Sahara. The court may also be granted jurisdiction over certain cases by treaty or convention. By the late 1990s approximately 400 bilateral and multilateral treaties deposited at the UN conferred compulsory jurisdiction to the ICJ.

The court itself has no powers of enforcement, but according to article 94 of the Charter of the United Nations:

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Few state parties to a case before the ICJ (or before its predecessor, the PCIJ) have failed to carry out the court's decisions. Two exceptions are Albania, which failed to pay £843,947 in damages to the United Kingdom in the Corfu Channel case (1949), and the United States, which refused to pay reparations to the Sandinista government of Nicaragua (1986). The United States also withdrew its declaration of compulsory jurisdiction and blocked Nicaragua's appeal to the UN Security Council. In general, however, enforcement is made possible because the court's decisions, though few in number, are viewed as legitimate by the international community.

organizations, and other actors. This value consists in the certainty, predictability, and sense of common purpose in international affairs that derives from the existence of a set of rules accepted by all international actors. International law also provides a framework and a set of procedures for international interaction, as well as a common set of concepts for understanding it.

B. Historical development:

International law reflects the establishment and subsequent modification of a world system founded almost exclusively on the notion that independent sovereign states are the only relevant actors in the international system. The essential structure of international law was mapped out during the European Renaissance[3], though its origins lay deep in history and can be traced to cooperative agreements between peoples in the ancient Middle East. Among the earliest of these agreements were a treaty between the rulers of Lagash and Umma (in the area of Mesopotamia) in approximately 2100 BC and an agreement between the Egyptian pharaoh Ramses II and Hattusilis III, the king of the Hittites, concluded in 1258 BC. A number of pacts were subsequently negotiated by various Middle Eastern empires. The long and rich cultural traditions of ancient Israel, the Indian subcontinent, and China were also vital in the development of international law. In addition, basic notions of governance, of political relations, and of the interaction of independent units provided by ancient Greek political philosophy and the relations between the Greek city-states constituted important sources for the evolution of the international legal system.

Many of the concepts that today underpin the international legal order were established during the Roman Empire. The *jus gentium* (Latin: "law of nations"), for example, was invented by the Romans to govern the status of foreigners and the relations between foreigners and Roman citizens. In accord with the Greek concept of natural law, which they adopted, the Romans conceived of the *jus gentium* as having universal application. In the Middle Ages, the concept of natural law, infused with religious principles through the writings of the Jewish philosopher Moses Maimonides (1135–1204) and the theologian St. Thomas Aquinas (1224/25–1274), became the intellectual foundation of the new discipline of the law of nations, regarded as that part of natural law that applied to the relations between sovereign states.

After the collapse of the western Roman Empire in the 5th century AD, Europe suffered from frequent warring for nearly 500 years. Eventually, a group of nation-states emerged, and a number of supranational sets of rules were developed to govern interstate relations, including canon law, the law merchant (which governed trade), and various codes of maritime law—e.g., the 12th-century Rolls of Oléron, named for an island off the west

[3]**Renaissance:** literally "rebirth," the period in European civilization immediately following the Middle Ages beginning in the thirteenth century, conventionally held to have been characterized by a surge of interest in classical learning and values. The Renaissance also witnessed the discovery and exploration of new continents, the substitution of the Copernican for the Ptolemaic system of astronomy, the decline of the feudal system and the growth of commerce, and the invention or application of such potentially powerful innovations as paper, printing, the mariner's compass, and gunpowder. To the scholars and thinkers of the day, however, it was primarily a time of the revival of classical learning and wisdom after a long period of cultural decline and stagnation.

coast of France, and the Laws of Wisby (Visby), the seat of the Hanseatic League until 1361. In the 15th century the arrival of Greek scholars in Europe from the collapsing Byzantine Empire[4] and the introduction of the printing press spurred the development of scientific, humanistic, and individualist thought, while the expansion of ocean navigation by European explorers spread European norms throughout the world and broadened the intellectual and geographic horizons of western Europe. The subsequent consolidation of European states with increasing wealth and ambitions, coupled with the growth in trade, necessitated the establishment of a set of rules to regulate their relations. In the 16th century the concept of sovereignty[5] provided a basis for the entrenchment of power in the person of the king and was later transformed into a principle of collective sovereignty as the divine right of kings gave way constitutionally to parliamentary or representative forms of government. Sovereignty also acquired an external meaning, referring to independence within a system of competing nation-states.

Early writers who dealt with questions of governance and relations between nations included the Italian lawyers Bartolo da Sassoferrato (1313/14–1357), regarded as the founder of the modern study of private international law, and Baldo degli Ubaldi (1327–1400), a famed teacher, papal adviser, and authority on Roman and feudal law. The essence of the new approach, however, can be more directly traced to the philosophers of the Spanish Golden Age of the 16th and 17th centuries. Both Francisco de Vitoria (1486–1546), who was particularly concerned with the treatment of the indigenous peoples of South America by the conquering Spanish forces, and Francisco Suárez (1548–1617) emphasized that international law was founded upon the law of nature. In 1598 Italian jurist Alberico Gentili (1552–1608), considered the originator of the secular school of thought in international law, published *De jure belli libri tres* (1598; *Three Books on the Law of War*), which contained a comprehensive discussion of the laws of war and treaties. Gentili's work initiated a transformation of the law of nature from a theological concept to a concept of secular philosophy founded on reason. The Dutch jurist Hugo Grotius (1583–1645) has influenced the development of the field to an extent unequaled by any other theorist, though his reputation as the father of international law has perhaps been exaggerated. Grotius excised theology from international law and organized it into a comprehensive system, especially in *De Jure Belli ac Pacis* (1625; *On the Law of War and Peace*). Grotius emphasized the freedom of the high seas, a notion that rapidly gained acceptance among the northern European powers that were embarking upon extensive missions of exploration and colonization around the world.

The scholars who followed Grotius can be grouped into two schools, the naturalists and the positivists. The former camp included the German jurist Samuel von Pufendorf (1632–94), who stressed the supremacy of the law of nature. In contrast, positivist

---

[4]**Byzantine Empire:** the eastern half of the Roman Empire, which survived for a thousand years after the western half had crumbled into various feudal kingdoms and which finally fell to Ottoman Turkish onslaughts in 1453.

[5]**Sovereignty:** in political theory, the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order. The concept of sovereignty, one of the most controversial ideas in political science and international law, is closely related to the difficult concepts of state and government, of independence and democracy. Originally, as derived from the Latin term *superanus* through the French term *souveraineté*, sovereignty was meant to be the equivalent of supreme power. It has departed, however, quite often from this traditional meaning.

writers, such as Richard Zouche (1590–1661) in England and Cornelis van Bynkershoek (1673–1743) in the Netherlands, emphasized the actual practice of contemporary states over concepts derived from biblical sources, Greek thought, or Roman law. These new writings also focused greater attention on the law of peace and the conduct of interstate relations than on the law of war, as the focus of international law shifted away from the conditions necessary to justify the resort to force in order to deal with increasingly sophisticated interstate relations in areas such as the law of the sea and commercial treaties. The positivist school made use of the new scientific method and was in that respect consistent with the empiricist and inductive approach to philosophy that was then gaining acceptance in Europe. Elements of both positivism and natural law appear in the works of the German philosopher Christian Wolff (1679–1754) and the Swiss jurist Emerich de Vattel (1714–67), both of whom attempted to develop an approach that avoided the extremes of each school. During the 18th century, the naturalist school was gradually eclipsed by the positivist tradition, though, at the same time, the concept of natural rights—which played a prominent role in the American and French revolutions—was becoming a vital element in international politics. In international law, however, the concept of natural rights had only marginal significance until the 20th century.

Positivism's influence peaked during the expansionist and industrial 19th century, when the notion of state sovereignty was buttressed by the ideas of exclusive domestic jurisdiction and nonintervention in the affairs of other states—ideas that had been spread throughout the world by the European imperial powers. In the 20th century, however, positivism's dominance in international law was undermined by the impact of two world wars, the resulting growth of international organizations—e.g., the League of Nations, founded in 1919, and the UN, founded in 1945—and the increasing importance of human rights. Having become geographically international through the colonial expansion of the European powers, international law became truly international in the first decades after World War II, when decolonization resulted in the establishment of scores of newly independent states. The varying political and economic interests and needs of these states, along with their diverse cultural backgrounds, infused the hitherto European-dominated principles and practices of international law with new influences.

The development of international law—both its rules and its institutions—is inevitably shaped by international political events. From the end of World War II until the 1990s, most events that threatened international peace and security were connected to the Cold War between the Soviet Union and its allies and the U.S.-led Western alliance. The UN Security Council was unable to function as intended, because resolutions proposed by one side were likely to be vetoed by the other. The bipolar system of alliances prompted the development of regional organizations—e.g., the Warsaw Pact organized by the Soviet Union and the North Atlantic Treaty Organization (NATO) established by the United States—and encouraged the proliferation of conflicts on the peripheries of the two blocs, including in Korea, Vietnam, and Berlin. Furthermore, the development of norms for protecting human rights proceeded unevenly, slowed by sharp ideological divisions.

The Cold War also gave rise to the coalescence of a group of nonaligned and often newly decolonized states, the so-called “Third World,” whose support was eagerly sought by both the United States and the Soviet Union. The developing world's increased

prominence focused attention upon the interests of those states, particularly as they related to decolonization, racial discrimination, and economic aid. It also fostered greater universalism in international politics and international law. The ICJ's statute, for example, declared that the organization of the court must reflect the main forms of civilization and the principal legal systems of the world. Similarly, an informal agreement among members of the UN requires that nonpermanent seats on the Security Council be apportioned to ensure equitable regional representation; 5 of the 10 seats have regularly gone to Africa or Asia, two to Latin America, and the remainder to Europe or other states. Other UN organs are structured in a similar fashion.

The collapse of the Soviet Union and the end of the Cold War in the early 1990s increased political cooperation between the United States and Russia and their allies across the Northern Hemisphere, but tensions also increased between states of the north and those of the south, especially on issues such as trade, human rights, and the law of the sea. Technology and globalization—the rapidly escalating growth in the international movement in goods, services, currency, information, and persons—also became significant forces, spurring international cooperation and somewhat reducing the ideological barriers that divided the world, though globalization also led to increasing trade tensions between allies such as the United States and the European Union (EU).

Since the 1980s, globalization has increased the number and sphere of influence of international and regional organizations and required the expansion of international law to cover the rights and obligations of these actors. Because of its complexity and the sheer number of actors it affects, new international law is now frequently created through processes that require near-universal consensus. In the area of the environment, for example, bilateral negotiations have been supplemented—and in some cases replaced—by multilateral ones, transmuting the process of individual state consent into community acceptance. Various environmental agreements and the Law of the Sea treaty (1982) have been negotiated through this consensus-building process. International law as a system is complex. Although in principle it is “horizontal,” in the sense of being founded upon the concept of the equality of states—one of the basic principles of international law—in reality some states continue to be more important than others in creating and maintaining international law.

II. The nature and development of international law: International law and municipal law

In principle, international law operates only at the international level and not within domestic legal systems—a perspective consistent with positivism, which recognizes international law and municipal law as distinct and independent systems. Conversely, advocates of natural law maintain that municipal and international law form a single legal system, an approach sometimes referred to as monism. Such a system, according to monists, may arise either out of a unified ethical approach emphasizing universal human rights or out of a formalistic, hierarchical approach positing the existence of one fundamental norm underpinning both international law and municipal law.

A principle recognized both in international case law (e.g., the *Alabama* v. claims case between the United States and the United Kingdom following the American Civil War) and in treaties (e.g., Article 27 of the 1969 Vienna Convention on the Law of Treaties) is that no municipal rule may be relied upon as a justification for violating international law. The position of international law within municipal law is more complex and depends upon a country's domestic legislation. In particular, treaties must be distinguished from customary international law. Treaties are written agreements that are signed and ratified by the parties and binding on them. Customary international law consists of those rules that have arisen as a consequence of practices engaged in by states.

The Constitution of the United States stipulates (Article VI, Section 2) that treaties "shall be the supreme Law of the Land." Treaties are negotiated by the president but can be ratified only with the approval of two-thirds of the Senate (Article II)—except in the case of executive agreements, which are made by the president on his own authority. Further, a treaty may be either self-executing or non-self-executing, depending upon whether domestic legislation must be enacted in order for the treaty to enter into force. In the United States, self-executing treaties apply directly as part of the supreme law of the land without the need for further action. Whether a treaty is deemed to be self-executing depends upon the intention of the signatories and the interpretation of the courts. In *Sei Fujii* v. *State of California* (1952), for example, the California Supreme Court held that the UN Charter was not self-executing because its relevant principles concerning human rights lacked the mandatory quality and certainty required to create justiciable rights for private persons upon its ratification; since then the ruling has been consistently applied by other courts in the United States. In contrast, customary international law was interpreted as part of federal law in the *Paquette Habana* v. case (1900), in which the U.S. Supreme Court ruled that international law forbade the U.S. Navy from selling, as prizes of war, Cuban fishing vessels it had seized. Domestic legislation is supreme in the United States even if it breaches international law, though the government may be held liable for such a breach at the international level. In order to mitigate such a possibility, there is a presumption that the U.S. Congress will not legislate contrary to the country's international obligations.

The United Kingdom takes an incorporationist view, holding that customary international law forms part of the common law. British law, however, views treaties as purely executive, rather than legislative, acts. Thus, a treaty becomes part of domestic law only if relevant legislation is adopted. The same principle applies in other countries where the English common law has been accepted (e.g., the majority of Commonwealth states and Israel). Although the incorporationist view regards customary law as part of the law of the land and presumes that municipal laws should not be inconsistent with international law, municipal laws take precedence over international law in cases of conflict. Those common-law countries that have adopted a written constitution generally have taken slightly different positions on the incorporation of international law into municipal law. Ireland's constitution, for example, states that the country will not be bound by any treaty involving public funds without the consent of the national legislature, and in Cyprus treaties concluded in accordance with its constitution have a status superior to municipal law on the condition of reciprocity.

In most civil-law countries, the adoption of a treaty is a legislative act. The relationship between municipal and international law varies, and the status of an international treaty within domestic law is determined by the country's constitutional provisions. In federal systems, the application of international law is complex, and the rules of international law are generally deemed to be part of the federal law. Although a treaty generally becomes operative only when it has been ratified by a national legislature, EU countries have agreed that regulations and decisions emanating from EU institutions are directly applicable and enforceable without the need for enabling legislation—except for legislation permitting this form of lawmaking, which is adopted upon the country's entry into the union (e.g., Britain's adoption of the European Communities Act in 1972).

III. Sources of international law:

Article 38 (1) of the ICJ's statute identifies three sources of international law: treaties, custom, and general principles. Because the system of international law is horizontal and decentralized, the creation of international laws is inevitably more complicated than the creation of laws in domestic systems.

Treaties are known by a variety of terms—conventions, agreements, pacts, general acts, charters, and covenants—all of which signify written instruments in which the participants (usually but not always states) agree to be bound by the negotiated terms. Some agreements are governed by municipal law (e.g., commercial accords between states and international enterprises), in which case international law is inapplicable. Informal, nonbinding political statements or declarations are excluded from the category of treaties.

A. Treaties:

Treaties may be bilateral or multilateral. Treaties with a number of parties are more likely to have international significance, though many of the most important treaties (e.g., those emanating from Strategic Arms Limitation Talks) have been bilateral. A number of contemporary treaties, such as the Geneva Conventions (1949) and the Law of the Sea treaty (1982; formally the United Nations Convention on the Law of the Sea), have more than 150 parties to them, reflecting both their importance and the evolution of the treaty as a method of general legislation in international law. Other significant treaties include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Vienna Convention on Diplomatic Relations (1961), the Antarctic Treaty (1959), and the Rome Statute establishing the International Criminal Court (1998). Whereas some treaties create international organizations and provide their constitutions (e.g., the UN Charter of 1945), others deal with more mundane issues (e.g., visa regulations, travel arrangements, and bilateral economic assistance).

Countries that do not sign and ratify a treaty are not bound by its provisions. Nevertheless, treaty provisions may form the basis of an international custom in certain circumstances, provided that the provision in question is capable of such generalization or is “of a fundamentally norm-creating character,” as the ICJ termed the process in the *North Sea Continental Shelf* v. cases (1969). A treaty is based on the consent of the parties to it, is binding, and must be executed in good faith. The concept known by the

Latin formula *pacta sunt servanda* (“agreements must be kept”) is arguably the oldest principle of international law. Without such a rule, no international agreement would be binding or enforceable. *Pacta sunt servanda* is directly referred to in many international agreements governing treaties, including the Vienna Convention on the Law of Treaties (1969), which concerns treaties between states, and the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986).

There is no prescribed form or procedure for making or concluding treaties. They may be drafted between heads of state or between government departments. The most crucial element in the conclusion of a treaty is the signaling of the state's consent, which may be done by signature, an exchange of instruments, ratification, or accession. Ratification is the usual method of declaring consent—unless the agreement is a low-level one, in which case a signature is usually sufficient. Ratification procedures vary, depending on the country's constitutional structure.

Treaties may allow signatories to opt out of a particular provision, a tactic that enables countries that accept the basic principles of a treaty to become a party to it even though they may have concerns about peripheral issues. These concerns are referred to as “reservations,” which are distinguished from interpretative declarations, which have no binding effect. States may make reservations to a treaty where the treaty does not prevent doing so and provided that the reservation is not incompatible with the treaty's object and purpose. Other states may accept or object to such reservations. In the former case, the treaty as modified by the terms of the reservations comes into force between the states concerned. In the latter case, the treaty comes into force between the states concerned except for the provisions to which the reservations relate and to the extent of the reservations. An obvious defect of this system is that each government determines whether the reservations are permissible, and there can be disagreement regarding the legal consequences if a reservation is deemed impermissible.

A set of rules to interpret treaties has evolved. A treaty is expected to be interpreted in good faith and in accordance with the ordinary meanings of its terms, given the context, object, and purpose of the treaty. Supplementary means of interpretation, including the use of *travaux préparatoires* (French: “preparatory works”) and consideration of the circumstances surrounding the conclusion of the treaty, may be used when the treaty's text is ambiguous. In certain cases, a more flexible method of treaty interpretation, based on the principle of effectiveness (i.e., an interpretation that would not allow the provision in question to be rendered useless) coupled with a broader-purposes approach (i.e., taking into account the basic purposes of the treaty in interpreting a particular provision), has been adopted. Where the treaty is also the constitutional document of an international organization, a more programmatic or purpose-oriented approach is used in order to assist the organization in coping with change. A purpose-oriented approach also has been deemed appropriate for what have been described as “living instruments,” such as human rights treaties that establish an implementation system; in the case of the European Convention on Human Rights of 1950, this approach has allowed the criminalization of homosexuality to be regarded as a violation of human rights in the contemporary period despite the fact that it was the norm when the treaty itself was signed.

A treaty may be terminated or suspended in accordance with one of its provisions (if any exist) or by the consent of the parties. If neither is the case, other provisions may become relevant. If a material breach of a bilateral treaty occurs, the innocent party may invoke that breach as a ground for terminating the treaty or suspending its operation. The termination of multilateral treaties is more complex. By unanimous agreement, all the parties may terminate or suspend the treaty in whole or in part, and a party specially affected by a breach may suspend the agreement between itself and the defaulting state. Any other party may suspend either the entire agreement or part of it in cases where the treaty is such that a material breach will radically change the position of every party with regard to its obligations under the treaty. The ICJ, for example, issued an advisory opinion in 1971 that regarded as legitimate the General Assembly's termination of the mandate for South West Africa. A breach of a treaty is generally regarded as material if there is an impermissible repudiation of the treaty or if there is a violation of a provision essential to the treaty's object or purpose.

The concept of *rebus sic stantibus* (Latin: “things standing thus”) stipulates that, where there has been a fundamental change of circumstances, a party may withdraw from or terminate the treaty in question. An obvious example would be one in which a relevant island has become submerged. A fundamental change of circumstances, however, is not sufficient for termination or withdrawal unless the existence of the original circumstances was an essential basis of the consent of the parties to be bound by the treaty and the change radically transforms the extent of obligations still to be performed. This exception does not apply if the treaty establishes a boundary or if the fundamental change is the result of a breach by the party invoking it of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

B. Custom:

The ICJ's statute refers to “international custom, as evidence of a general practice accepted as law,” as a second source of international law. Custom, whose importance reflects the decentralized nature of the international system, involves two fundamental elements: the actual practice of states and the acceptance by states of that practice as law. The actual practice of states (termed the “material fact”) covers various elements, including the duration, consistency, repetition, and generality of a particular kind of behavior by states. All such elements are relevant in determining whether a practice may form the basis of a binding international custom. The ICJ has required that practices amount to a “constant and uniform usage” or be “extensive and virtually uniform” to be considered binding. Although all states may contribute to the development of a new or modified custom, they are not all equal in the process. The major states generally possess a greater significance in the establishment of customs. For example, during the 1960s the United States and the Soviet Union played a far more crucial role in the development of customs relating to space law than did the states that had little or no practice in this area. After a practice has been established, a second element converts a mere usage into a binding custom—the practice must be accepted as *opinio juris sive necessitatis* (Latin: “opinion that an act is necessary by rule of law”). In the *North Sea Continental Shelf* v. cases, the ICJ stated that the practice in question must have “occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.”

Once a practice becomes a custom, all states in the international community are bound by it whether or not individual states have expressly consented—except in cases where a state has objected from the start of the custom, a stringent test to demonstrate. A particular practice may be restricted to a specified group of states (e.g., the Latin American states) or even to two states, in which cases the standard for acceptance as a custom is generally high. Customs can develop from a generalizable treaty provision, and a binding customary rule and a multilateral treaty provision on the same subject matter (e.g., the right to self-defense) may exist at the same time.

C. General principles of law:

A third source of international law identified by the ICJ's statute is "the general principles of law recognized by civilized nations." These principles essentially provide a mechanism to address international issues not already subject either to treaty provisions or to binding customary rules. Such general principles may arise either through municipal law or through international law, and many are in fact procedural or evidential principles or those that deal with the machinery of the judicial process—e.g., the principle, established in *Chorzow Factory* v. (1927–28), that the breach of an engagement involves an obligation to make reparation. Accordingly, in the *Chorzow Factory* v. case, Poland was obliged to pay compensation to Germany for the illegal expropriation of a factory.

Perhaps the most important principle of international law is that of good faith. It governs the creation and performance of legal obligations and is the foundation of treaty law. Another important general principle is that of equity, which permits international law to have a degree of flexibility in its application and enforcement. The Law of the Sea treaty, for example, called for the delimitation on the basis of equity of exclusive economic zones and continental shelves between states with opposing or adjacent coasts.

D. Other sources:

Article 38 (1) of the ICJ's statute also recognizes judicial decisions and scholarly writings as subsidiary means for the determination of the law. Both municipal and international judicial decisions can serve to establish new principles and rules. In municipal cases, international legal rules can become clear through their consistent application by the courts of a number of states. A clearer method of law determination, however, is constituted by the international judicial decisions of bodies such as the ICJ at The Hague, the UN International Tribunal for the Law of the Sea at Hamburg (Germany), and international arbitral tribunals.

International law can arise indirectly through other mechanisms. UN General Assembly resolutions, for example, are not binding—except with respect to certain organizational procedures—but they can be extremely influential. Resolutions may assist in the creation of new customary rules, both in terms of state practice and in the process of establishing a custom by demonstrating the acceptance by states of the practice "as law" (the *opinio juris*). For this to occur, a resolution must contain generalizable provisions and attract substantial support from countries with diverse ideological, cultural, and political perspectives. Examples of such resolutions include the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Declaration on the Legal

Principles Governing Activities of States in the Exploration and Use of Outer Space (1963), and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States (1970).

Unilateral actions by a state may give rise to legal obligations when it is clear that the state intends to be bound by the obligation and when its intention is publicly announced. An example of such a case was France's decision to stop atmospheric nuclear testing during litigation at the ICJ between it and Australia and New Zealand (1974) concerning the legality of such testing. Unilateral statements also may constitute evidence of a state's views on a particular issue. Even when an instrument or document does not entail a legal obligation, it may be influential within the international community. The Helsinki Accords (1975), which attempted to reduce tensions between the Soviet Union and the United States during the Cold War, was expressly not binding but had immense political effects. In certain areas, such as environmental law and economic law, a range of recommendations, guidelines, codes of practice, and standards may produce what is termed “soft law”—that is, an instrument that has no strict legal value but constitutes an important statement.

F. Hierarchies of sources and norms:

General principles are complementary to treaty law and custom. Sources that are of more recent origin are generally accepted as more authoritative, and specific rules take precedence over general rules. *Jus cogens* (Latin: “compelling law”) rules are peremptory norms that cannot be deviated from by states; they possess a higher status than *jus dispositivum* (Latin: “law subject to the dispensation of the parties”), or normal international rules, and can be altered only by subsequent norms of the same status. Rules in the former category include the prohibitions against genocide, slavery, and piracy and the outlawing of aggression. Other examples of *jus cogens* rules are more controversial. The Vienna Convention on the Law of Treaties provides (Article 53) that a treaty will be void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. Further, the wrongfulness of a state action is precluded if the act is required by a peremptory norm of general international law. For a *jus cogens* norm to be created, the principle must first be established as a rule of international law and then recognized by the international community as a peremptory rule of law from which no derogation is permitted.

International law also has established a category of *erga omnes* (Latin: “toward all”) obligations, which apply to all states. Whereas in ordinary obligations the defaulting state bears responsibility toward particular interested states (e.g., other parties to the treaty that has been breached), in the breach of *erga omnes* obligations, all states have an interest and may take appropriate actions in response.

IV. States in International Law:

Although states are not the only entities with international legal standing and are not the exclusive international actors, they are the primary subjects of international law and possess the greatest range of rights and obligations. Unlike states, which possess rights and obligations automatically, international organizations, individuals, and others derive

their rights and duties in international law directly from particular instruments. Individuals may, for example, assert their rights under international law under the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, both of which entered into force in 1976.

A. Creation of states:

The process of creating new states is a mixture of fact and law, involving the establishment of particular factual conditions and compliance with relevant rules. The accepted criteria of statehood were laid down in the Montevideo Convention (1933), which provided that a state must possess a permanent population, a defined territory, a government, and the capacity to conduct international relations.

The need for a permanent population and a defined territory is clear, though boundary disputes—e.g., those concerning Albania after World War I and Israel in 1948—do not preclude statehood. The international community (including the UN) has recognized some states while they were embroiled in a civil war (e.g., the Congo in 1960 and Angola in 1975), thus eroding the effective-government criterion. Croatia and Bosnia and Herzegovina were also recognized as new states by much of the international community in 1992, though at the time neither was able to exercise any effective control over significant parts of its territory. Although independence is required, it need not be more than formal constitutional independence.

States may become extinct through merger (North and South Yemen in 1990), absorption (the accession of the *Länder* [states] of the German Democratic Republic into the Federal Republic of Germany in 1990), dissolution and reestablishment as new and separate states (the creation of separate Czech and Slovak republics from Czechoslovakia in 1993), limited dismemberment with a territorially smaller state continuing the identity of the larger state coupled with the emergence of new states from part of the territory of the latter (the Soviet Union in 1991), or, historically, annexation (Nazi Germany's Anschluss of Austria in 1938).

B. Recognition:

Recognition is a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality. The process of recognizing as a state a new entity that conforms with the criteria of statehood is a political one, each country deciding for itself whether to extend such acknowledgment. Normal sovereign and diplomatic immunities are generally extended only after a state's executive authority has formally recognized another state. International recognition is important evidence that the factual criteria of statehood actually have been fulfilled. A large number of recognitions may buttress a claim to statehood even in circumstances where the conditions for statehood have been fulfilled imperfectly (e.g., Bosnia and Herzegovina in 1992). According to the “declaratory” theory of recognition, which is supported by international practice, the act of recognition signifies no more than the acceptance of an already-existing factual situation—i.e., conformity with the criteria of statehood. The

“constitutive” theory, in contrast, contends that the act of recognition itself actually creates the state.

Before granting recognition, states may require the fulfillment of additional conditions. The European Community (now embedded within the EU), for example, issued declarations in 1991 on the new states that were then forming in eastern Europe, the former Soviet Union, and Yugoslavia that required, inter alia, respect for minority rights, the inviolability of frontiers, and commitments to disarmament and nuclear nonproliferation. The timing of any recognition is crucial—particularly when a new state has been formed partly from an existing one. Premature recognition in a case of secession can amount to intervention in a state's internal affairs, a violation of one of the fundamental principles of international law. Recognition of governments is distinguished from the recognition of a state. The contemporary trend is in fact no longer to recognize governments formally but to focus instead upon the continuation (or discontinuation) of diplomatic relations. By this change, states seek to avoid the political difficulties involved in deciding whether or not to “recognize” new regimes taking power by nonconstitutional means.

Although states are not obliged to recognize new claimants to statehood, circumstances sometimes arise that make it a positive duty not to recognize a state. During the 1930s, U.S. Secretary of State Henry Stimson propounded the doctrine of the nonrecognition of situations created as a result of aggression, an approach that has been reinforced since the end of World War II. In the 1960s, the UN Security Council “called upon” all states not to recognize the Rhodesian white-minority regime's declaration of independence and imposed economic sanctions. Similar international action was taken in the 1970s and '80s in response to South Africa's creation of Bantustans, or homelands, which were territories that the white-minority government designated as “independent states” as part of its policy of apartheid. The Security Council also pronounced the purported independence of Turkish-occupied northern Cyprus as “legally invalid” (1983) and declared “null and void” Iraq's annexation of Kuwait (1990). The UN also has declared that Israel's purported annexation of the Golan Heights (conquered from Syria in 1967) is invalid and has ruled similarly with regard to Israel's extension of its jurisdiction to formerly Jordanian-controlled East Jerusalem.

C. The responsibility of states:

The rights accorded to states under international law imply responsibilities. States are liable for breaches of their obligations, provided that the breach is attributable to the state itself. A state is responsible for direct violations of international law—e.g., the breach of a treaty or the violation of another state's territory. A state also is liable for breaches committed by its internal institutions, however they are defined by its domestic law; by entities and persons exercising governmental authority; and by persons acting under the direction or control of the state. These responsibilities exist even if the organ or entity exceeded its authority. Further, the state is internationally responsible for the private activities of persons to the extent that they are subsequently adopted by the state. In 1979, for example, the Iranian government officially supported the seizure of the U.S. embassy by militants and the subsequent holding of diplomats and other embassy staff as hostages.

A state is not internationally responsible if its conduct was required by a peremptory norm of general international law, if it was taken in conformity with the right to self-defense under the UN Charter, if it constituted a legitimate measure to pressure another state to comply with its international obligations, if it was taken as a result of a *force majeure* (French: "greater force") beyond the state's control, if it could not reasonably be avoided in order to save a life or lives, or if it constituted the only means of safeguarding an essential interest of the state against a grave and imminent peril, where no essential interest of the states toward which the obligation exists (or of the international community) was impaired.

A state must make full reparation for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of restitution of the original situation if possible, compensation where this is not possible, or satisfaction (i.e., acknowledgment of and apology for the breach) if neither is possible.

One controversial aspect of international law has been the suggestion, made by the International Law Commission in its 1996 draft on State Responsibility, that states can be held responsible for "international crimes" (comprising internationally wrongful acts resulting from the breach by a state of an international obligation so essential for the protection of the international community's fundamental interests that its breach is recognized as a crime by that community). Examples given included aggression, colonial domination, and genocide. In addition to the argument that states (as distinct from individuals) could not be guilty of crimes as such, serious definitional problems arose, and there was concern over the consequences of such crimes for states. Accordingly, in its draft articles finally adopted in 2001, the International Law Commission dispensed with this politically divisive approach but retained the idea of a more serious form of international wrong. The commission emphasized the concept of serious breaches of obligations arising under a peremptory norm of international law (i.e., the rules of *jus cogens*, or those deemed essential for the protection of fundamental international interests). In such circumstances, all states are under an obligation not to recognize such a situation and to cooperate in ending it.

States may take up the claims of individuals injured because of the acts or omissions of another state. In such circumstances, the injured persons must have exhausted all domestic remedies to hold the state responsible unless these are ineffective. Further, the injured person must be a national of the state adopting the claim. Although states alone possess the right to grant nationality, if the claim is pleaded against another state, the grant of nationality must conform to the requirements of international law and, in particular, demonstrate the existence of a genuine link between the individual and the state concerned.

D. Territory:

The sovereignty of a state is confined to a defined piece of territory, which is subject to the exclusive jurisdiction of the state and is protected by international law from violation by other states. Although frontier disputes do not detract from the sovereignty or independence of a particular state, it is inherent in statehood that there should be a core territory that is subject to the effective control of the authorities of the state. Additional

territory may be acquired by states through cession from other states (the *Island of Palmas* v. case in 1928); by the occupation of territory that is *terra nullius* (Latin: "the land of no one")—i.e., land not under the sovereignty or control of any other state or socially or politically organized grouping; or by prescription, where a state acquires territory through a continued period of uncontested sovereignty.

Under the UN Charter, sovereign title to territory cannot be acquired purely and simply by the use of force. Express or implied consent is required under international law for recognition of territory acquired by force, whether or not the use of force was legal. When states are created from the dissolution or dismemberment of existing countries, it is presumed that the frontiers of the new states will conform to the boundaries of prior internal administrative divisions. This doctrine, known as *uti possidetis* (Latin: "as you possess"), was established to ensure the stability of newly independent states whose colonial boundaries were often drawn arbitrarily.

E. Maritime spaces and boundaries:

The sovereign territory of a state extends to its recognized land boundaries and to the border of airspace and outer space above them. A state that has a coastal boundary also possesses certain areas of the sea. Sovereignty over bodies of water is regulated by four separate 1958 conventions—the Convention on the Territorial Sea and Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas—and by the comprehensive Law of the Sea treaty (1982), which entered into force in 1994.

The territory of states includes internal waters (i.e., harbors, lakes, and rivers that are on the landward side of the baselines from which the territorial sea and other maritime zones are measured), over which the state has full and complete sovereignty and exclusive jurisdiction. Through the Law of the Sea treaty and now under customary international law, a state may claim a territorial sea of up to 12 nautical miles from the baselines (essentially the low-water mark around the coasts of the state concerned), though, in cases where a coast is heavily indented, a series of straight baselines from projecting points may be drawn. A state has sovereignty over its territorial seas, but they are subject to the right of innocent passage—i.e., the right of all shipping to pass through the territorial waters of states, provided that the passage is not prejudicial. Examples of prejudicial conduct include the threat or use of force, spying, willful and serious pollution, breaches of customs, sanitary, fiscal, and immigration regulations, and fishing. Coastal states may exercise a limited degree of criminal jurisdiction with regard to foreign ships that are engaged in innocent passage through their territorial seas (e.g., in cases where the consequences of the crime alleged extend to the coastal state or where such measures are necessary for the suppression of the traffic of illicit drugs).

The 1958 Convention on the Territorial Sea and Contiguous Zone provided that states cannot suspend the innocent passage of foreign ships through straits that are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state. The 1982 treaty established a new right of transit passage for the purpose of continuous and expeditious transit in straits used for

international navigation between one part of the high seas or exclusive economic zone and another. Some international straits are subject to special regimes. The controversial Straits Question, for example, concerned restrictions in the 19th and 20th centuries that limited naval access to the Bosporus and Dardanelles—which connect the Black Sea with the Sea of Marmara and the Mediterranean Sea—to countries bordering the Black Sea.

A series of other maritime zones extend beyond territorial seas. A contiguous zone—which must be claimed and, unlike territorial seas, does not exist automatically—allows coastal states to exercise the control necessary to prevent and punish infringements of customs, sanitary, fiscal, and immigration regulations within and beyond its territory or territorial sea. The zone originally extended 12 nautical miles from the baselines but was doubled by the 1982 treaty. The exclusive economic zone developed out of claims to fishing zones. The 1982 treaty allowed states to claim such a zone, extending 200 nautical miles from the baselines, in which they would possess sovereign rights to explore, exploit, conserve, and manage the natural resources of the seas and seabed; to exercise jurisdiction over artificial installations and scientific research; and to protect and preserve the marine environment. The zone was accepted as part of customary international law in the ICJ's 1985 decision in the dispute between Libya and Malta, which concerned the delimitation of the continental shelf between them.

A state is automatically entitled to exercise sovereign rights to explore and exploit the natural resources in an adjacent continental shelf (i.e., the ledges projecting from the land into and under the sea). The shelf may extend either to the outer edge of the continental margin or to 200 miles from the baselines where the outer edge of the continental margin does not reach that distance. Thus, the continental shelf as a concept in international law becomes a legal fiction where the shelf does not in fact extend as far as 200 miles.

Problems have arisen over the delimitation of the various maritime zones between adjacent and opposing states. International law generally requires equitable resolutions of maritime territorial disputes. Although the definition of equity is unclear, relevant factors include the impact of natural prolongation of the land territory (i.e., the basic principle that the continental shelf is a continuation of the land territory into the sea), proportionality between the length of a disputing party's coastline and the extent of continental shelf it controls, the principle of equidistance (i.e., a line of equal distance from the two shores in question), and the existence (if any) of islands between the coastlines.

F. Jurisdiction:

Jurisdiction refers to the power of a state to affect persons, property, and circumstances within its territory. It may be exercised through legislative, executive, or judicial actions. International law particularly addresses questions of criminal law and essentially leaves civil jurisdiction to national control. According to the territorial principle, states have exclusive authority to deal with criminal issues arising within their territories; this principle has been modified to permit officials from one state to act within another state in certain circumstances (e.g., the Channel Tunnel arrangements between the United Kingdom and France and the 1994 peace treaty between Israel and Jordan). The nationality principle permits a country to exercise criminal jurisdiction over any of its

nationals accused of criminal offenses in another state. Historically, this principle has been associated more closely with civil-law systems than with common-law ones, though its use in common-law systems increased in the late 20th century (e.g., the adoption in Britain of the War Crimes Act in 1991 and the Sex Offenders Act in 1997). Ships and aircraft have the nationality of the state whose flag they fly or in which they are registered and are subject to its jurisdiction.

The passive personality principle allows states, in limited cases, to claim jurisdiction to try a foreign national for offenses committed abroad that affect its own citizens. This principle has been used by the United States to prosecute terrorists and even to arrest (in 1989–90) the de facto leader of Panama, Manuel Noriega, who was subsequently convicted by an American court of cocaine trafficking, racketeering, and money laundering. The principle appears in a number of conventions, including the International Convention Against the Taking of Hostages (1979), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The protective principle, which is included in the hostages and aircraft-hijacking conventions and the Convention on the Safety of United Nations and Associated Personnel (1994), can be invoked by a state in cases where an alien has committed an act abroad deemed prejudicial to that state's interests, as distinct from harming the interests of nationals (the passive personality principle). Finally, the universality principle allows for the assertion of jurisdiction in cases where the alleged crime may be prosecuted by all states (e.g., war crimes, crimes against the peace, crimes against humanity, slavery, and piracy).

Jurisdictional immunity exists in certain contexts. Diplomatic personnel, for example, have immunity from prosecution in the state in which they operate. In the 1960s, however, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations stipulated that the level of immunity varies according to the official's rank. Immunity is generally more extensive in criminal than in civil matters. A country's diplomatic mission and archives also are protected. International organizations possess immunity from local jurisdiction in accordance with international conventions (e.g., the General Convention on the Privileges and Immunities of the United Nations of 1946) and agreements signed with the state in which they are based. Certain immunities also extend to the judges of international courts and to visiting armed forces.

V. Disputes among States

A. Peaceful settlement:

International law provides a variety of methods for settling disputes peacefully, none of which takes precedence over any other. Nonbinding mechanisms include direct negotiations between the parties and the involvement of third parties through good offices, mediation, inquiry, and conciliation. The involvement of regional and global international organizations has increased dramatically since the end of World War II, as many of their charters contain specific peaceful-settlement mechanisms applicable to disputes between member states. The UN may be utilized at several levels. The secretary-

general, for example, may use his good offices to suggest the terms or modalities of a settlement, and the General Assembly may recommend particular solutions or methods to resolve disputes. Similarly, the Security Council may recommend solutions (e.g., its resolution in 1967 regarding the Arab-Israeli conflict) or, if there is a threat to or a breach of international peace and security or an act of aggression, issue binding decisions to impose economic sanctions or to authorize the use of military force (e.g., in Korea in 1950 and in Kuwait in 1990). Regional organizations, such as the Organization of American States and the African Union, also have played active roles in resolving interstate disputes.

Additional methods of binding dispute resolution include arbitration and judicial settlement. Arbitration occurs when the disputing states place their conflict before a binding tribunal. In some cases, the tribunal is required to make a number of decisions involving different claimants (e.g., in the dispute between the United States and Iran arising out of the 1979 Iranian revolution), while in others the tribunal will exercise jurisdiction over a single issue only. In a judicial settlement, a dispute is placed before an existing independent court. The most important and comprehensive of these courts is the ICJ, the successor of the Permanent Court of International Justice, created in 1920. Established by the UN Charter (Article 92) as the UN's principal judicial organ, the ICJ consists of 15 judges who represent the main forms of civilization and principal legal systems of the world. They are elected by the General Assembly and Security Council for nine-year terms.

The ICJ, whose decisions are binding upon the parties and extremely influential generally, possesses both contentious and advisory jurisdiction. Contentious jurisdiction enables the court to hear cases between states, provided that the states concerned have given their consent. This consent may be signaled through a special agreement, or *compromis* (French: “compromise”); through a convention that gives the court jurisdiction over matters that include the dispute in question (e.g., the genocide convention); or through the so-called optional clause, in which a state makes a declaration in advance accepting the ICJ's jurisdiction over matters relating to the dispute. The ICJ has issued rulings in numerous important cases, ranging from the *Corfu Channel* v. case (1949), in which Albania was ordered to pay compensation to Britain for the damage caused by Albania's mining of the channel, to the territorial dispute between Botswana and Namibia (1999), in which the ICJ favored Botswana's claim over Sedudu (Kasikili) Island. The ICJ's advisory jurisdiction enables it to give opinions on legal questions put to it by any body authorized by or acting in accordance with the UN Charter.

Other important international judicial bodies are the European Court of Human Rights, established by the European Convention on Human Rights; the Inter-American Court of Human Rights, created by the Inter-American Convention on Human Rights; and the International Tribunal for the Law of the Sea, set up under the Law of the Sea treaty. The World Trade Organization (WTO), established in 1995 to supervise and liberalize world trade, also has created dispute-settlement mechanisms.

B. Use of Force:

The UN Charter[6] prohibits the threat or the use of force against the territorial integrity or political independence of states or in any other manner inconsistent with the purposes of the Charter; these proscriptions also are part of customary international law. Force may be used by states only for self-defense or pursuant to a UN Security Council decision giving appropriate authorization (e.g., the decision to authorize the use of force against Iraq by the United States and its allies in the First Persian Gulf War in 1990–91). The right of self-defense exists in customary international law and permits states to resort to force if there is an instant and overwhelming need to act, but the use of such force must be proportionate to the threat. The right to self-defense is slightly more restricted under Article 51 of the UN Charter, which refers to the "inherent right of individual or collective self-defense if an armed attack occurs" until the Security Council has taken action. In a series of binding resolutions adopted after the terrorist September 11 attacks in 2001 against the World Trade Center and the Pentagon in the United States, the Security Council emphasized that the right to self-defense also applies with regard to international terrorism. Preemptive strikes by countries that reasonably believe that an attack upon them is imminent are controversial but permissible under international law, provided that the criteria of necessity and proportionality are present.

It has been argued that force may be used without prior UN authorization in cases of extreme domestic human rights abuses (e.g., the actions taken by NATO with regard to Kosovo in 1999 or India's intervention in East Pakistan [now Bangladesh] in 1971).

---

[6]According to its Charter, the UN aims:

> to save succeeding generations from the scourge of war,…to reaffirm faith in fundamental human rights,…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.

In addition to maintaining peace and security, other important objectives include developing friendly relations among countries based on respect for the principles of equal rights and self-determination of peoples; achieving worldwide cooperation to solve international economic, social, cultural, and humanitarian problems; respecting and promoting human rights; and serving as a centre where countries can coordinate their actions and activities toward these various ends.

The UN formed a continuum with the League of Nations in general purpose, structure, and functions; many of the UN's principal organs and related agencies were adopted from similar structures established earlier in the century. In some respects, however, the UN constituted a very different organization, especially with regard to its objective of maintaining international peace and security and its commitment to economic and social development.

Changes in the nature of international relations resulted in modifications in the responsibilities of the UN and its decision-making apparatus. Cold War tensions between the United States and the Soviet Union deeply affected the UN's security functions during its first 45 years. Extensive post-World War II decolonization in Africa, Asia, and the Middle East increased the volume and nature of political, economic, and social issues that confronted the organization. The Cold War's end in 1991 brought renewed attention and appeals to the UN. Amid an increasingly volatile geopolitical climate, there were new challenges to established practices and functions, especially in the areas of conflict resolution and humanitarian assistance. At the beginning of the 21st century, the UN and its programs and affiliated agencies struggled to address humanitarian crises and civil wars, unprecedented refugee flows, the devastation caused by the spread of AIDS, global financial disruptions, international terrorism, and the disparities in wealth between the world's richest and poorest peoples.

Nonetheless, humanitarian interventions are deeply controversial, because they contradict the principle of nonintervention in the domestic affairs of other states.

The use of force is regulated by the rules and principles of international humanitarian law[7]. The Geneva Conventions (1949) and their additional protocols (1977) deal with, among other topics, prisoners of war, the sick and wounded, war at sea, occupied territories, and the treatment of civilians. In addition, a number of conventions and declarations detail the types of weapons that may not be used in warfare. So-called "dum-dum bullets," which cause extensive tissue damage, poisonous gases, and chemical weapons are prohibited, and the use of mines has been restricted. Whether the use of nuclear weapons is per se illegal under international law is an issue of some controversy; in any event, the criteria of necessity and proportionality would have to be met.

VI. Non-State Actors in International Law

A. Individuals:

Historically, states were the only subjects of international law. During the 20th century, however, a growing body of international law was devoted to defining the rights and responsibilities of individuals. The rights of individuals under international law are detailed in various human rights instruments and agreements. Although references to the protection of human rights appear in the UN Charter, the principal engine of the process was the Universal Declaration of Human Rights (1948; UDHR). The UDHR has been supplemented by an impressive range of international treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989). With the exception of the convention on genocide, these agreements also have established monitoring committees, which, depending on the terms of the particular agreement, may examine the regular reports required of states, issue general and state-specific comments, and entertain petitions from individuals. The committee against torture may commence an inquiry on its own motion. The broad rights protected in these conventions include the right to life and due process, freedom from discrimination and torture, and freedom of expression and assembly. The

---

[7] **Humanitarian law**: rights that belong to an individual or group of individuals as a consequence of being human. They refer to a wide continuum of values or capabilities thought to enhance human agency and declared to be universal in character, in some sense equally claimed for all human beings.

It is a common observation that human beings everywhere demand the realization of diverse values or capabilities to ensure their individual and collective well-being. It also is a common observation that this demand is often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution, and other forms of deprivation. Deeply rooted in these twin observations are the beginnings of what today are called "human rights" and the national and international legal processes that are associated with them.

right to self-determination[8] and the rights of persons belonging to minority groups are protected by the convention on civil and political rights. In addition, the UN has established a range of organs and mechanisms to protect human rights, including the Commission on Human Rights.

Human rights protections also exist at the regional level. The best-developed system was established by the European Convention on Human Rights, which has more than 40 state parties as well as a court that can hear both interstate and individual applications. Other examples are the Inter-American Convention on Human Rights, which has a commission and a court, and the African Charter on Human and Peoples' Rights (1982), which has a commission and is developing a court.

In addition to the rights granted to individuals, international law also has endowed them with responsibilities. In particular, following the Nürnberg Charter (1945) and the subsequent establishment of a tribunal to prosecute Nazi war criminals, individuals have been subject to international criminal responsibility and have been directly liable for breaches of international law, irrespective of domestic legal considerations. Individual responsibility was affirmed in the Geneva Conventions and their additional protocols and was affirmed and put into effect by the statutes that created war crimes tribunals for Yugoslavia (1993) and Rwanda (1994), both of which prosecuted, convicted, and sentenced persons accused of war crimes. The Rome Statute of the International Criminal Court, which entered into force in 2002, also provides for individual international criminal responsibility.

B. International Organizations:

A major difference between 19th- and 21st-century international law is the prominent position now occupied by international organizations. The size and scope of international

---

[8]**Self-Determination:** the process by which a group of people, usually possessing a certain degree of national consciousness, form their own state and choose their own government. As a political principle, the idea of self-determination evolved at first as a by-product of the doctrine of nationalism, to which early expression was given by the French and American revolutions. In World War I the Allies accepted self-determination as a peace aim. In his Fourteen Points—the essential terms for peace—U.S. president Woodrow Wilson listed self-determination as an important objective for the postwar world; the result was the fragmentation of the old Austro-Hungarian and Ottoman empires and Russia's former Baltic territories into a number of new states.

After World War II, promotion of self-determination among subject peoples became one of the chief goals of the United Nations. The UN's predecessor, the League of Nations, had also recognized the principle; but it was in the UN that the idea received its clearest statement and affirmation.

The UN Charter clarifies two meanings of the term self-determination. First, a state is said to have the right of self-determination in the sense of having the right to choose freely its political, economic, social, and cultural systems. Second, the right to self-determination is defined as the right of a people to constitute itself in a state or otherwise freely determine the form of its association with an existing state. Both meanings have their basis in the charter (Article 1, paragraph 2; and Article 55, paragraph 1). With respect to dependent territories, the charter asserts that administering authorities should undertake to ensure political advancement and the development of self-government (Article 73, paragraphs a and b; and Article 76, paragraph b).

organizations vary. They may be bilateral, subregional, regional, or global, and they may address relatively narrow or very broad concerns. The powers and duties allocated to international organizations also differ widely. Some international organizations are legally recognized as international actors—and thus are liable for breaches of international legal obligations—while others are not.

Since the end of World War II, the leading international organization has been the UN. Although the General Assembly may pass only nonbinding resolutions, the Security Council can authorize the use of force if there is a threat to or a breach of international peace and security or an act of aggression. Since the end of the Cold War, the council has extended the definition of a threat to or a breach of international peace and security to encompass not only international conflicts but also internal conflicts (e.g., in Yugoslavia, Somalia, Liberia, and Rwanda) and even the overthrow of a democratic government and subsequent upheavals and refugee movements (e.g., in Haiti).

Other international organizations have developed significant roles in international relations. They include the World Bank, which provides aid to promote economic development, the International Monetary Fund, which helps countries manage their balance-of-payments problems, and the WTO, which supervises and regulates international trade. Regional organizations and agreements, such as the EU and the North American Free Trade Agreement between Canada, Mexico, and the United States, govern areas that traditionally have fallen within the domestic jurisdiction of states (e.g., trade, the environment, and labor standards). At the beginning of the 21st century, it was apparent that individuals and international organizations would play an increasingly vital role in international relations and international law.