

General

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. **international conventions**, whether general or particular, establishing rules expressly recognised by the contesting states;
 - b. **international custom**, as evidence of a general practice accepted as law;
 - c. the **general principles of law** recognised by civilised nations;
 - d. subject to the provisions of Art. 59, **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.

☑ Rationale for sources

- “International law provides a normative framework for the conduct of interstate relations”.
- The “diffused character” of the sources sheds light on the decentralisation of international law-making.
- Hence the sources of the public international law articulate the rules of the system.
- International law operates on the general consent of the nations.
- Evidence of normative consensus among states and other relevant actors concerning particular rules or practices is all-important.

☑ Primary Sources

- International Conventions (treaties)
- Customary International Law
- General Principles of Law

☑ Secondary Sources (“evidence”)

- Judicial Decisions – compromise between common law system and civil law systems (which are much more code based)
- Teachings of most highly qualified publicists

International Conventions (Treaties)

- ☑ A treaty is defined an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation: [art. 2\(1\)\(a\), VCLT](#)

Customary International Law

- ☑ Custom consists of unwritten rules evinced from the generality and uniformity of the practice of States and is adhered to by such states out of a sense of legal obligation or opinio juris: [North Sea Continental Shelf Cases](#)

- State practice
- Accept as law – opinio juris

- ☑ Custom can be universal, or local or regional: [Asylum case](#).

State practice

- ☑ What is the material source of custom / State practice?

- May come in the form of treaties, decisions of international and national courts, national legislation, opinions of national legal advisers, the practice of international organisations, policy statements, press releases, official manuals on legal questions, including manuals of military law, executive decisions and practices, comments by governments on work of the International Law Commission and diplomatic correspondence.
 - ▶ “In the present context, **State practice** of particular significance is to be found in the judgments of national courts faced with the question whether a foreign State is immune, the legislation of those States which have enacted statutes dealing with immunity, the claims to immunity advanced by States before foreign courts and the statements made by States, first in the course of the extensive study of the subject by the International Law Commission and then in the context of the adoption of the United Nations Convention: [Nicaragua \(Merits\) case](#).

☑ General Standard

- The asserted rule must be of a “**fundamentally norm-creating character**”: [North Sea Continental Shelf Cases](#)
- Duration of practice:
 - ▶ Usually be over a “considerable period of time”, but **a shorter period is not a bar** if it is possible to show “**extensive and virtually uniform**” State practice, including **specially affected States**: [North Sea Continental Shelf Cases](#)
 - However, the passage of time can also be evidence of generality and uniformity.
- Consistency
 - ▶ “Constant and uniform usage”: [Asylum case](#).
 - A customary norm of international law arises in consequence of the **repeated** action of states.
- Generality
 - ▶ Must be general recognition of a rule/legal obligation: [North Sea Continental Shelf Cases](#)
 - It is not enough to look at the practice of the States in dispute: [Nicaragua \(Merits\) case](#).
 - You would need to have “**very widespread and representative participation in the convention** ... provided it included that of States **whose interests were specially affected**”: [North Sea Continental Shelf Cases](#)