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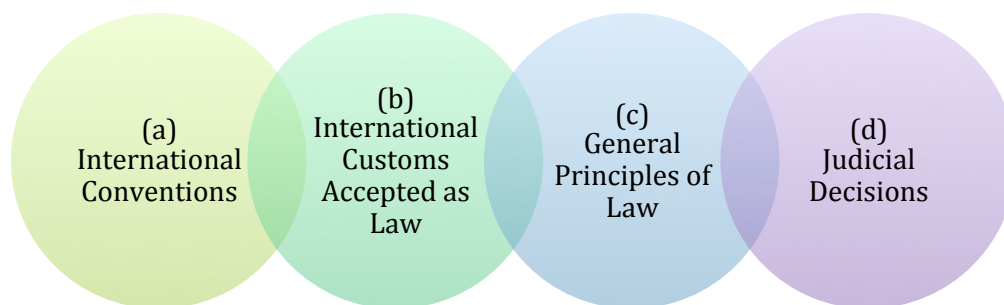
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Sources of International Law

- Broadly, international law covers human rights, trade and environmental issues.
- As each state retains sovereignty there are explicit sources of international law creating binding obligations on nation-states. These sources are outlined in the [STATUTE OF THE INTERNATIONAL COURT OF JUSTICE ARTICLE 38](#).



- This is a fairly conclusive list of sources

International Conventions

- Written agreements where states legally bind themselves to act in particular ways.
- See: Law of Treaties

International Customary Law

- Crystallizes around an international norm, however the states must be aware that the conduct carries a legal obligation.
- May be a global, regional or bilateral custom (*Right of Passage over Indian Territory*).

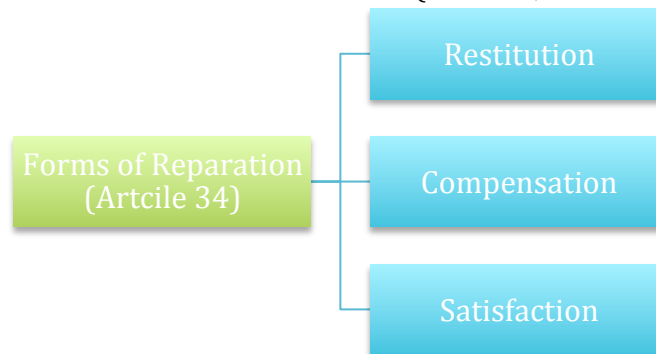
Elements



- [STATE PRACTICE](#):
 - Objective standard
 - Must be a 'constant and uniform' practice (*Anglo Norwegian Fisheries*).

Reparation (Article 31)

- The responsible state is under an obligation to make full reparation for the injury caused by the internationally wrongful act
 - Includes both material and moral damage (*Rainbow Warrior*)
- Can combine any form of reparations to fully repair the damage.
- Reparations can account for interest rates (*ARISWA*, Article 38).



- **RESTITUTION (ARISWA, ARTICLE 35)**: Re-establishes the situation that existed before the wrongful act was committed.
 - Burden imposed must be proportionate to the benefit gained.
 - Retrospective and preferred method
 - E.g. returning stole items, repatriating prisoners, returning territory to state.
 - Cannot be used if it is materially impossible
- **COMPENSATION (ARISWA, ARTICLE 36)**: Limited to damage actually suffered as a result of the internationally wrongful act.
 - Excludes damage that is indirect or remote
 - Includes loss of profits
 - Includes moral damage → pain and suffering caused to individuals, loss of loved ones, and intrusion on home/private life (*Rainbow Warrior Case*).
- **SATISFACTION (ARISWA, ARTICLE 37)**: Acknowledgement of breach such as a formal apology, expression of regret.
 - Applicable where restitution or compensation cannot repair.
 - Must be proportionate to the injury and may not take a humiliating form.

Serious Breach (Cooperation of States)

- States shall cooperate to bring an end through lawful means to any *serious breach* of international law (*ARISWA*, Article 41(1)).
 - **'SERIOUS BREACH'**: breach of an obligation arising under a peremptory norm of international law + involving gross or systematic failure of the responsible State (*ARISWA*, Article 40)
- State shall not recognise a serious breach as lawful, or render aid/assistance to maintain the situation (*ARISWA*, Article 41(2))

Key Cases

- **YOUMANS V UNITED MEXICAN STATES**
 - **Facts**: Involved U.S. supervisions and Mexican workers in a labor dispute. Mayor sent a Lieutenant and troops to quell the riot and protect the Americans. Upon arriving troops open fired on the house, resurging the



Collective Self-Defence

- Where a State requests assistance from another State in the event of an armed attack.
- General requirements include all of those for use of force and:
 - A DECLARATION by State of being a victim of an armed attack (*Nicaragua Case*)
 - A REQUEST by that State for military aid (*Nicaragua Case*)
- States cannot simply interfere in another states affairs unrequested (*Nicaragua Case*).

Anticipatory Self Defence

- Use of force is only permitted as a result of defence in the event of an armed attack.
 - If Article 51 is read and interpreted strictly anticipatory self-defence would likely not be permitted.
- There is a view taken that denying anticipatory self-defence denies a victim of aggression military advantage.
- ICJ RULINGS:
 - If an attack is merely possible/foreseeable= force never permitted.
 - If an attack is imminent or inevitable= use of force has not been explicitly ruled out.
 - General assumption that neither will be permitted.

Possible Exceptions

Protection of Nationals Abroad

- Where the lives/safety of a State's nationals are in danger, it may be possible for the State to rescue them.
 - JUSTIFICATION: Non-restrictive reading of Article 51 → an attack on a national is an attack on the State itself.
- Not explicitly a 'right' per se, but UN has remained silent on incidences it has occurred, potentially indicating that in circumstances it is likely allowed (*Entebbe Incident*)
- If exercised, the general operation of imperiled nationals must strictly not use excessive force or a refusal to leave or it will be an automatic breach.

International Responsibility to Protect Nationals

- Nations have a duty to protect their citizens and ensure their welfare → Where they act contrary, other states MAY have a right to intervene and protect.
- UN 2005 *World Summit Outcome Document*, Articles 138-139 outline the responsibility to 'protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'
 - More than a right → imposes a responsibility on the state AND the international community.
 - Requires the international community to act through UNSC to take measures.
 - Strictly confined to the acts outlined in the document and may be considered a mechanism of customary law.