

LAW2222 MODULE 1 Nature and Sources of International Law

- **Quiz 1:** Online quiz (10%) knowledge of AGLC (4th ed, 2018) 26 September – 3 October 2025 (Weeks 3-4 / if deferred: oral test)
- **Essay: Assignment (40%)** topic, marking criteria and submission information released by Week 2 due 23 October 2025 (Week 7 – mid-trimester break)
- **Quiz 2:** Written exam assessment (50%) Early December 2025

(Public) International Law was, traditionally, the body of rules binding on States (and/or International Organisations) in their relations with one another, determining their mutual rights and obligations.



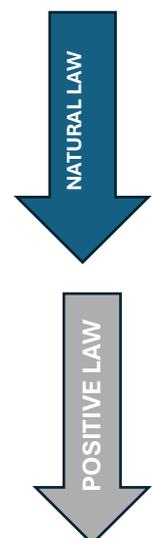
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Public vs Private International Law

Aspect	Public International Law	Private International Law
What it is	Rules between states & international bodies	Rules for cross-border private disputes
Parties	States, UN, WTO, etc.	Individuals & companies
Focus	Treaties, war, human rights, sovereignty	Jurisdiction, choice of law, foreign judgments
Example	Geneva Conventions, UN Charter	Divorce with different nationalities, contract across borders

Milestones in the development of international law

- 🔊 *Jus Gentium* inherited from Rome into the ‘Christendom’
- 🔊 de Vitoria, Grotius, Vattel
- 🔊 Peace Treaties of Westphalia (1648): birth of the modern state
- 🔊 Final Act of the Congress of Vienna (1815)
- 🔊 WW1: League of Nations (1919) + PCIJ (1921)
- 🔊 Kellogg-Briand Pact (1928)
- 🔊 WW2: United Nations Charter (1945) + ICJ (1946)
- 🔊 UDHR (1948) and the Human Rights Covenants (1966)
- 🔊 UN Convention on the Law of the Sea (1982)
- 🔊 Rome Statute of the International Criminal Court (1998)
- 🔊 Paris Agreement (2016)



International law today

States and IGOs remain the only entities with full international legal personality, however:

- ☞ Increasingly, other non-state actors like INGOs, corporations, armed groups, megacities etc. play a role in the development and application of rules in specific areas of transnational intercourse
- ☞ Individuals have become subjects of international law in specific areas (international crimes, human rights, foreign investment)

An increasingly complex world with increasingly pressing and complicated global and transborder problems

- ☞ Problems arising from within states (overpopulation, terrorism, transboundary pollution etc.)
- ☞ Problems arising between states (avoiding the 3rd world war)
- ☞ Problems global in nature (climate change; risks of artificial intelligence)

... **"International law"** consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations inter se, as well as with some of their relationships with persons, whether natural or juridical.

(American Law Institute)

How the international legal system works in practice

A horizontal, decentralized system of equal states can only work in a legal system based on:

Consent

- ✓ treaties, customary law
- ✓ no *stare decisis*

Reciprocity

- ✓ deterring from wrongdoing
 - ✓ justifying self-help (retorsion, reprisals)
-
- There is no system of precedence due to the horizontal setup.
 - International is based on reciprocity not authority



Is international law really 'law'? (critique)

- International law is "a science which explains to kings how far they can violate justice without damaging their own interests" (Baron de Montesquieu, judge and political philosopher)
- "International law is the law which the wicked do not obey and the righteous do not enforce" (Abba Eban, former ambassador of Israel to US)
- "International law is to law what professional wrestling is to wrestling" (Stephen Budiansky, historian)
- **"Where there is no common power, there is no law"** (Thomas Hobbes, philosopher)

Is international law really 'law'? (defence)

- domestic law also works mostly by voluntary compliance
- states generally do not deny the mandatory character of the norms of international law (*rather, they claim they have not breached them*)
- states violate int'l law, but this is an exception (*just like criminals in domestic law*)
- there is enforcement in international law (*even though imperfect*)

"Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." Louis Henkin, *How Nations Behave* (1979)

Art. 38(1) of the ICJ Statute

(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 recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law;
- c) the general principles of law recognized by civilized nations;
- d) ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as **subsidiary means for the determination of rules of law.**



International conventions (a.k.a. treaties, pacts, agreements etc.)

Binding agreements between two or more states and/or intergovernmental organisations

– 'Lawmaking' v 'contract' treaties?

- If a treaty is inconsistent with the *UN Charter* (1946), the charter prevails (Art. 103).
- The law governing treaties (formation, interpretation, termination etc.) is codified in the *Vienna Convention on the Law of Treaties* (1969).



International customary law (also regional, and even bilateral customary law)

OBJECTIVE ELEMENT

(general and consistent practice)

- General: not necessarily universal
- Consistent: not necessarily without exception

'In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule' (*Nicaragua v US*, ICJ 1986)

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See the role of the International Law Commission in the codification of customary international law

International Law Commission (ILC) - 1947

- Established by the UN General Assembly.
- Purpose: to codify and progressively develop international law.
- Achievements: Drafted the Vienna Convention on the Law of Treaties (1969), contributed to the Rome Statute of the ICC (1998), rules on state responsibility, immunities, etc.