

« *Lawyers for Lawyers* »

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FILE N°2: PUBLIC INTERNATIONAL LAW : SOURCES AND PRINCIPLES

Public International Law governs relations between States, while International Human Rights Law governs relations between States and individuals, and relations between individuals.

The international legal system differs from the national legal system, and does not have the same characteristics or structure.

➤ What are the sources of international law ?

Reference : article 38 of the Statute of the International Court of Justice.

• Principal sources

▪ *Treaties*

- ✓ Definition : Voluntary agreement between States, which, upon signing, is intended to be legally effective between States Parties
- ✓ Characteristic: written document
- ✓ Applicable rules : Law of treaties is codified in the Vienna Convention of 1969.
- ✓ Legal effects:

-Binding legal effect between parties (customary principle *pacta sunt servanda* + art. 26 Vienna Convention): fulfilment in good faith. In the event of non-fulfilment, the State may be held responsible (art. 73 of the Vienna Convention).

-Relative effect with regard to third parties (customary rule + art. 34 of the Vienna Convention): a treaty does not create an obligation or right for a third State without its consent. In the absence of consent, only « objective » treaties (territorial statutes, for example) may be imposed upon third parties, and certain treaties (such as those relating to environmental protection) may have an *erga omnes* effect.



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- ✓ Legal status:
 - A specific treaty supersedes a general treaty
 - A subsequent treaty supersedes a previous treaty
 - A subsequent restricted treaty is unlawful.

- *International custom*

- ✓ Definition : proof of a general practice accepted as being law.
- ✓ Characteristic: unwritten law source
- ✓ Constituent element:
 - Material and objective element: a general practice: act repeated by some States, which are constant over time and uniform ;
 - Psychological and subjective element: *opinio juris* ; conviction to observe a rule of law.
- ✓ Legal scope: This depends on the consent of States. The custom applies to States having consented to it, either because they have been involved in developing it, or because they do not object to it.

- **Subsidiary sources**

- *The general principles of law*

- ✓ Nature:
 - They may stem from legal principles common to different national legal systems (they refer in general to legal and technical procedures)
 - They may stem from international law (from examples of conventions, or identified by an international judge).
- ✓ Content:
 - Principles relating to procedural law : authority of *res judicata*, the principle of adversarial proceedings.
 - Principles relating to substantive law : *pacta sunt servanda*, reparation of the unlawful act
- ✓ Legal scope: Supplemental character. Used by the international judge, they are applied in the absence of any conventional or customary rules.

- *Unilateral acts*

- ✓ Definition: act by which a sole subject of international law sets standards which generate rights and obligations in legal relations concerning other subjects of law.
- ✓ Categories and legal scope:
 - Unilateral acts of states: verbal or written declarations issued by competent authorities. These may involve a *notification* (formal instrument by which a State informs one or more parties of a specific fact having legal effects), an *acknowledgement* (act by which the State accepts a legal situation, which may be binding upon it), a *protest* (act by which a State expresses its disagreement with regard to a legal situation which thereby will not be binding upon it), a *waiver*

(act by which a State waives a right), an *undertaking* (act by which a State undertakes to act in a certain way in any given situation).

They may also relate to the implementation of an international agreement or an international custom.

These acts produce legal effects for its originator, and may create rights with regard to third parties, but only create obligations with their consent.

- Unilateral acts of international organisations: these do not constitute a direct source of international law, however they do play an important role. They concern all resolutions from international organisations: binding decisions (decisions of the UN Security Council taken within the framework of Ch VII of the Charter), and non-binding recommendations, but which may in certain cases have legal value (adoption of the recommendation by a representative majority of States in relation to its content, or because its content reflects the status of the customary law).

- *Means of determining legal rules*

Although they do not constitute a source of international law, doctrine, case-law and equity play an important role in the development of international law.

Doctrine: set of positions from experts in law, which constitute a critical and synthetic analysis of said law.

Case law: set of legal or arbitral decisions from national or international courts. They may be invoked before an international court as precedents or to express an international custom.

Equity: the idea of justice is inherent in any rule of law. It should guide international judges and help them in applying the law. It can also make it possible to moderate the law, complement it, or even reform it.

➤ **What are the major principles of international law ?**

These principles figure notably in the United Nations Charter and in Resolution 2625 (XXV) dated 24 October 1970 of the United Nations General Assembly *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*.

- Principle of equal rights of peoples and their right to self-determination (art. 1§2 UN Charter).
- Principle of sovereign equality of States (art. 2§1 UN Charter).
- Principle of prohibition of use of threats or force in relations between States (preamble, art 1 §1 and 2§ 4 UN Charter).
Exception of self-defence set out in article 51 of the UN Charter.
- Principle of peaceful settlement of disputes between States (art.2§3).
Peaceful means of settlement of disputes listed in art. 33 of the UN Charter.
- Principle of non-interference in the affairs of a State (article 2§7 of the UN Charter).
- Principle of collective security: aggression by a State meets with resistance from all others.
- *Pacta sunt servanda* : States fulfil their obligations and exercise their rights in good faith (cf. *above*).

Sources:

- Statute of the International Court of Justice.
- 1969 Vienna Convention relating to Treaty Law.
- United Nations Charter.
- David RUZIE, Gérard TEBoul, *Droit international Public*, Mémentos, Dalloz, 2010.

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