

PUBLIC INTERNATIONAL LAW

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SOURCES OF INTERNATIONAL LAW

Unlike national (domestic/municipal) law International law sources are not certain.

There is no legislature at international level (*UN General Assembly is not equivalent to a legislature at national level.*)

According to Oppenheim, there are two sources of international law

Express consent of states i.e Common Consent.

Tacit Consent: Same as silent or consent without words

Lawrence says there is only one source of law - Consent of nations, this consent can be express or implied.



o, considering the above information there can be two types of sources of international law i.e. Treaties (Express Consens) and Customs (Implied Consent).

Other than treaties and customs we have certain international bodies which have the power of making decisions which are followed by nations.

Other than that, there are certain fundamental laws which all humans follow like Natural Justice, Equity and good conscience, Res Judicata, Basic Human rights etc.

THERE IS NO FORMAL HIERARCHY OF THE SOURCES

Sources (not exhaustive)

- **International Conventions**
- **International Customs**
- **General Principles of law recognized by civilized nations**
- **Judicial Decisions and Juristic Works**
- **Equity and Conscience and Justice**
- **Decisions or determinations of the organs of international Institutions**
- **Resolutions of International Conferences**
- **Decisions of Municipal courts touching International Matters.**

1. INTERNATIONAL CONVENTIONS

The term Convention under article 38 (ICJ) implies any **convention, treaty, protocol or agreement** etc.' These can be *General or particular, establishing rules expressly recognized by the contesting states.*

As defined by Article 2 of Vienna Convention on the Law of Treaties, 1969, "a treaty is an agreement whereby two or more States establish or seek to establish relationship between them governed by international law."

Other subjects of international law such as **international organizations can also conclude treaties. (Art. 3 of Vienna Convention, 1969)**

Non-Sovereign States can also conclude treaties; some examples of non-sovereign states are **Colonies, Trust Territory, Protectorate, Vassal State.**

Treaty is a **written agreement** between two or more countries.

Convention is a special type of treaty.

Protocol is a method for alteration of a treaty.

pacta tertiis nec nocent nec prosunt - A treaty binds the parties and only the parties. It means that a treaty does not create obligations for a third state.

- **Exceptions.**

1. The third party accepts obligation (via a collateral agreement) in writing
2. Rights for third states can be created.
3. International customs created by treaty binding upon third states also.

International Treaties may be of following two types-

- a) Law-Making Treaties; and
- b) Treaty Contracts.

(a) Law-Making Treaties- Law-making treaties are those treaties which are entered into by a large number of States. These are the direct sources of international law.

(b) Treaty Contracts- Treaty Contracts are those treaties which are entered into by two or more States. The provisions of such treaties are binding only on the parties to the treaty. Such type of treaties are also the source of international law because they help in the development of customary rules of international law.



HOW A TREATY IS FORMED?

Appointment of the representation by the Contracting States

Negotiations and Adoption

Signatures

Ratification

Accession or Adhesion

Entry into Force

Registration and Publication



Termination of Treaties

By consent of the parties

By denunciation or withdrawal of a party

By concluding Another Treaty

By material Breach

Impossibility of Performance

According to provisions of treaty

Outbreak of war

Jus Cogens

Rebus Sic Stantibus



◦ **Reservation of treaties**

- Accepting a treaty but with exclusion or modification in certain parts of the treaty is called accepting the treaty with reservations.
- Reservations are allowed or prohibited by treaty if
- If the treaty is silent about reservations, then reservations can be made as long as it is not against the object and purpose of the treaty.
- If a State objects to reservation made by another state then the treaty would not operate between the objecting state and the state which made the reservation.

SPAIN V. CANADA (FISHERIES JURISDICTION) (1998)


A fishing vessel flying the Spanish flag and manned by a Spanish crew, was intercepted and boarded some 245 miles from the Canadian coast, in Division 3L of the **Northwest Atlantic Fisheries Organization (NAFO)** Regulatory Area, by Canadian Government.

The vessel was seized and its master arrested on charges of **violations of the Coastal Fisheries Protection Act**, in particular illegal fishing for Greenland halibut (a type of fish); part of the ship's catch was confiscated.

Spain complained about a violation of the international law in force, since these acts took place outside the 200-mile zone.

The Canadian Government stated that it had taken the said measures on basis of the amended Section 2 of the Coastal Fisheries Protection Act.

It also stated that the Court lacked jurisdiction to deal with the Application filed by Spain, by reason of paragraph 2 (d) of a Declaration made by Spain on 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court but exclude
t under certain circumstances.



The Court analysed the question whether the Parties had conferred upon it jurisdiction in respect of that dispute. In order to decide this question, the Court had to interpret subparagraph (b) of paragraph 2 of **Canada's declaration, which excluded the Court's jurisdiction** as:

*"Disputes arising out of or concerning **conservation and management** measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures".*

Held- The Court concluded that the dispute submitted to it by the claimant constituted a dispute arising out of "**conservation and management** measures taken by Canada with respect to vessel fishing" in the NAFO Regulatory Area" and "the enforcement of such measures". It followed that this dispute came within the terms of the reservation contained in paragraph 2 (d) of the Canadian declaration of 10 May 1994. The **Court consequently** and no jurisdiction to adjudicate upon the present dispute.

NORTH SEA CONTINENTAL SHELF CASE (GERMANY V. DENMARK & THE NETHERLANDS) (1969) - ICJ

Series of Disputes between Germany V. Denmark and Netherlands regarding the 'delimitation' of areas of the continental shelf of the North Sea.

Dispute: If the delimitation was done by equidistance principle Germany would be at a loss because Germany had concave coasts and Denmark and Netherlands have convex coasts. Germany wanted the length of the coast as the factor determining delimitation. Denmark and Netherlands had ratified the 1958 Geneva continental shelf convention which said that equidistance principle was to be applied.

Question: Was Equidistance Principle comes under Customary International Law?

held: It is indeed possible for **Conventions**, while only contractual in origin, to **pass into the *corpus* of international law**, and thus become binding for countries which have never become parties to the Convention. But this was not the case here.

The court decided that it is an unusual preface for it to be a general rule of law. Also the meaning of equidistance principle in Article 6 of the convention is not clear.

The court ultimately urged the parties to "abate the effects of an accidental special feature [Germany's concave coast] from which an unjustifiable difference of treatment could result."

The states should grant to **Germany most of the additional territory it sought.**

INTERNATIONAL CUSTOM

Usage: International habit which hasn't taken the form of a law.

Custom: usage which has taken force of law.

Two conditions must be fulfilled for a usage to become a custom

There should be sufficiently uniform state practice for a continuous period

- **Corpus test:** There should be a material fact of the actual observance of a line of conduct for that custom by the States.
- **Opinio Juris:** which is the short form of the above phrase which means 'An opinion of law or necessity'

There should be a belief that such practice is obligatory
opinio Juris)

- **Animus test:** There must be an intention to follow the custom. It reaches a stage of approval '**opinio juris sive necessitatis**'


PORTUGAL V. INDIA (1960) - RIGHT OF PASSAGE OVER INDIAN TERRITORY - ICJ

Facts: Portuguese possessed many small enclaves of the territory of India. Some were on the coast but others were inland. Portugal wanted Right of Passage which was a right according to regional custom.

Issue: India argued before the Court that practice between only two states was not sufficient to form a local custom.

Held: The Court rejected this reasoning, finding no reason why a century and a quarter of practice based on mutual rights and obligations was insufficient for local custom to arise. The court held that a particular practice between two States may give rise to binding customary law for them. It was held that

Portugal had a right of passage for civilians but not for military officials.



In the **Paquete Habana Case (1900)** the Court (U.S. Supreme Court) held that looking to all the facts & circumstances, there was uniform practice of giving 'immunity to small fishing vessels from belligerent action in times of war. This was recognised as an International Customary Law

In the **Lotus Case (France v. Turkey (1927))**, the Court (P.C.I.J.) held that the opinion juris must be drawn from all the circumstances, & not merely from the facts on hand.

JUDICIAL DECISIONS AND JURISTIC WORKS

Subject to the provisions of Article 59, it is a Subsidiary and indirect source of international law.

ICJ did not adopt the doctrine of precedent (*stare decisis*) - Art. 59

Statute of ICJ says that the decisions of the court shall not have an binding force except for the parties of the case only for that particular matter.

JUDICIAL DECISIONS- Uniform decisions of Municipal courts of various nations can serve as evidence of existence of an international custom;

JURISTIC WORKS - Only resorted to when all other sources listed are not enough to resolve the dispute.

GENERAL PRINCIPALS OF LAW ACCEPTED BY CIVILIZED NATIONS

By general principles we mean principles so general as to apply within all systems of law. Some Important General principles are given BELOW:

- **Pacta Sunt Servanda (*Agreements must be kept*)**
- ‘States are bound to fulfil in good faith the obligations assumed by them under treaties’

Article 26 of Vienna Convention on the law of treaties says that Every treaty in force is binding upon the parties to it and must be performed by them in good faith’

Article 27 of VCLT strengthens the rule by saying that no party to a treaty might attempt to justify its failure to perform any of its international treaty obligations by invocation of its internal law.

- **Exceptions To Pacta Sunt Servanda :**

- When a new state comes into existence as a result of revoc
- Treaty obligations which are related to property ceded or merged.
- **Clausula rebus sic stantibus** – Inapplicability of treaty or contract due to fundamental change of circumstances.
(Article 62 of VCLT)

JUS COGENS

- Certain principles which all states must observe (peremptory norms)
 - **Article 53 - Treaties conflicting with a peremptory norm of general international law (“jus cogens”)** - A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.
 - **Article 64 - Emergence of a new peremptory norm of general international law (“jus cogens”)** - If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

Natural Justice

Natural justice is technical terminology for the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*).

Res Judicata

According to this, a judgment given by a competent court, bars any suit by the parties on the same issue.

Right of Self Defence

Self-defense in international law refers to the inherent right of a state to use of force in response to an armed attack. Self- defense is one of the exceptions to the prohibition against use of force under Article 2(4) of the UN Charter and customary international law.




THE CAROLINE CASE (1837)

A group of Men staged a rebellious protest in Canada to force government to be democratic, they later fled to an island in the Niagara River.

The Caroline was a small steamer ship used by Americans in order to support Canadians against the British.

British men set the boat on fire resulting in death of one US citizen.

Now the Question was whether US had the right to self-defence in this situation.



It was held that under the laws of nations, self-defence is a right but the necessity of self-defence must be instant, overwhelming, and leave no choice of means and no moment for deliberation, this is called anticipatory

self-defence, also known as Caroline Test or Pre-emption doctrine

THE REPUBLIC OF NICARAGUA V. THE UNITED STATES OF AMERICA (1986)

Contras were trained, armed and financed by US to tackle Guerrillas in El Salvador which were supposedly financed by Nicaragua. Nicaragua brought a suit against the United States on the ground that the United States was responsible for illegal military and paramilitary activities in and against Nicaragua. The jurisdiction of the International Court of Justice to entertain the case as well as the admissibility of Nicaragua's application to the I.C.J. was challenged by the United States.

It was held that USA broke Customary international law by intervening in the affairs of another and by using force and threat against Nicaragua and It was not collective self-defence what US d



Prescription

the establishment of a claim of title to something under common law usually by use and enjoyment for a period fixed by statute

TEMPLE OF PREAH VIHEAR CASE (CAMBODIA VS. THAILAND) ICJ – (1962) - PRINCIPLE OF ACQUIESCENCE

Preah temple was an ancient and significant temple due to its cultural and historical value.

It was situated on the border of Thailand and Cambodia. Though Thailand was the historical owner of that area in 1904 when Cambodia was a colony of French they came to an agreement with Thailand; they agreed to divide the border according to the watershed.


After that, A French – Siamiz (now known as Thailand) commission drew a detailed map of the border where though by mistake, but still very clearly marked the Preah Vihear in the territory of Cambodia, the government never objected after officially receiving that map.



Later, after several years when Thai Prince went to visit that Temp
he saw the French Flag over the temple but did not raise any
objection

The main objection came by Thailand when UNESCO declared the
Preah Vihear as a world heritage site and thus gave a million dolla
project to save it, at that time thailand demanded it as their land
and put some military personnel, on the other hand, Cambodia
rejected that claim. On gradual dispute, it went to International
Court of Justice.

Main Issue: Whether Cambodia had sovereignty over the territory
of Preah Vihear?



Decision: Cambodia had sovereignty over the whole territory of the Preah Vihear and that, in consequence, Thailand was under an obligation to withdraw from that territory the Thai military or police forces.

The commission that marked the map finally was a joint commission from both party and both of the party adopted the same without any objection, therefore, Cambodia had sovereignty over that area according to their treaty.

ISLAND OF PALMAS ARBITRATION (1925)

Facts: Palmas was an island. USA said it is part of Philippines, the island had been ceded by Spain by the Treaty of Paris (1898), and its successor to the rights of Spain over Philippines, It is theirs.

Netherlands said it is theirs because they have exercised rights of sovereignty over the island from 1677.

Held: The Title of USA is inchoate, and an inchoate title cannot prevail over a definite title found on the continuous and peaceful display of sovereignty.

Territorial sovereignty of the Netherlands was not challenged by anyone from 1700 to 1906. The peaceful display of sovereignty is as good as title.



ANGLO NORWEGIAN FISHERIES CASE (UK VS NORWAY) (1951) (PERSISTENT OBJECTOR RULE)

Issue: UK argued that customary international law did not allow the length of a

baseline drawn across a bay to be longer than ten miles and Norway by following its own system of delimitation has violated the general principles of International Law.

Norway argued that its delimitation method was consistent with general principles of international law.

Norway was clear that its practice was not contrary to international law. It emphasized that its practice – even if it was a deviation from the general practice – was in conformity with international law.



In Norway's view, these rules of international law take into account the diversity of facts.

Persistent objector rule: An existing customary law rule would not apply

to a State if it objected to the application of the rule to itself; and the objection is from the initial stages and in a consistent manner.

Held: The court ruled in favor of Norway for the following reasons

- Norway had refused to accept the rule as regards to it in 1870. The Norwegian Minister of Foreign Affairs, in 1870 objected to the 10-mile rule.
- Norway had followed its own principles of delimitation in a consistent and uninterrupted manner from 1869 until the time of the dispute.

The Court held that the fact that this consistent and sufficiently long practice took place without any objection to the practice from other States (until the time of dispute) indicated that the States did not consider the Norwegian system to be “contrary to international law”.

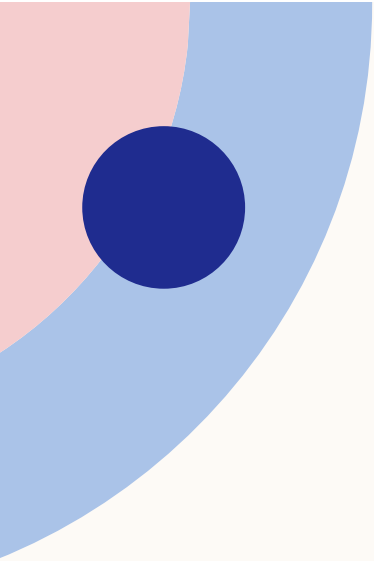


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**“ BUSINESS OPPORTUNITIES ARE
LIKE BUSES. THERE'S ALWAYS
ANOTHER ONE COMING. ”**

Richard Branson



TIMELINE



AREAS OF FOCUS

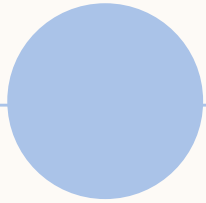
B2B MARKET SCENARIOS

- Develop winning strategies to keep ahead of the competition
- Capitalize on low-hanging fruit to identify a ballpark value
- Visualize customer directed convergence

CLOUD-BASED OPPORTUNITIES

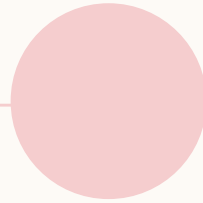
- Iterative approaches to corporate strategy
- Establish a management framework from the inside

HOW WE GET THERE



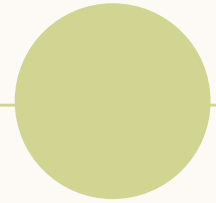
ROI

- Envision multimedia-based expertise and cross-media growth strategies
- Visualize quality intellectual capital
- Engage worldwide methodologies with web-enabled technologies



NICHE MARKETS

- Pursue scalable customer service through sustainable strategies
- Engage top-line web services with cutting-edge deliverables

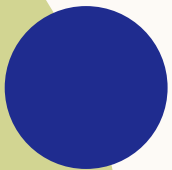
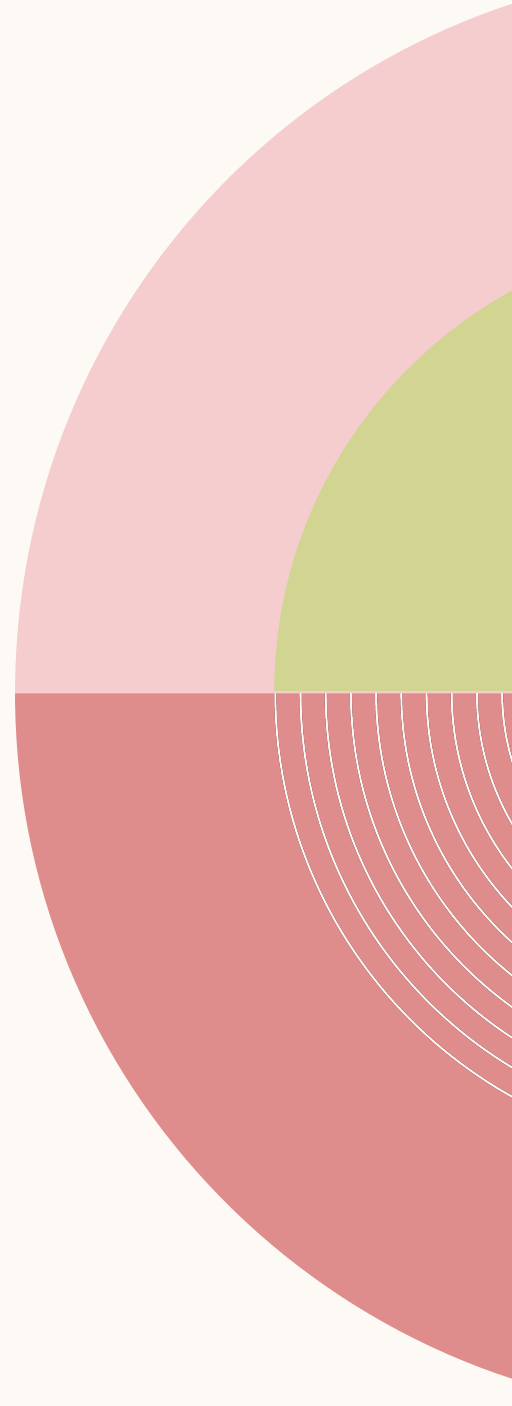


SUPPLY CHAINS

- Cultivate one-to-one customer service with robust ideas
- Maximize timely deliverables for real-time schemas

SUMMARY

At Contoso, we believe in giving 110%. By using our next-generation data architecture, we help organizations virtually manage agile workflows. We thrive because of our market knowledge and great team behind our product. As our CEO says, "Efficiencies will come from proactively transforming how we do business."



THANK YOU

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