

## **FACTS ON INTERNATIONAL LAW**

### **CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW**

Public International law<sup>\*</sup> is either “conventional” or “customary.”

Conventional international law, or treaty law, is based on international agreements, conventions and treaties: it is binding only on ratifying nations. Conventional Law is governed by the Vienna Convention on the Law of Treaties

Customary international law is a kind of international common law based on widespread state practice and acknowledgment of obligation; on the judgments of domestic and international tribunals; and on “the general principles of law recognized by civilized nations” and “the teachings of the most highly qualified publicists of the various nations.” It is binding on all nations and on non-state actors.

Conventional law can become customary, if it is widely perceived to embody fundamental laws.

Needless to say, the content of customary international law is far from settled.

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<sup>\*</sup>Private international law deals with the resolution of conflicts of law and generally with private matters such as business transactions and family law.

### **HUMAN RIGHTS AND HUMANITARIAN LAW**

Two of the major branches of public international law, incorporating both conventional and customary elements, are International Human Rights Law and International Humanitarian Law:

International Human Rights Law (IHRL) relates to human rights at the international, regional or domestic levels, including crimes against humanity and genocide. Conventional IHRL includes the United Nations Charter and the International Conventions on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as a network of over a hundred treaties, conventions, declarations and resolutions – known

collectively as the International Bill of Human Rights – dealing with the human rights of specific groups (among them: women, children, prisoners, indigenous populations). Customary IHRL includes the civil and political rights in the Universal Declaration on Human Rights, which was originally passed as a non-binding declaration (1948) but has acquired the status of customary law.

International Humanitarian Law (IHL) relates to armed conflicts [and refugees]. Conventional IHL includes the four Geneva Conventions (1949) and two Additional Protocols (1977) and the fourth section of The Hague Convention of 1907 on the Laws and Customs of War on Land and the Regulations annexed to it (1910). Like IHRL, IHL includes many highly specific treaties, conventions, declarations and resolutions, in this case on specific weapons and other aspects of armed conflict.

## **ENFORCEMENT**

International law is enforced by international courts, including the International Court of Justice, a United Nations organ, and the International Criminal Court, an independent international organization created by the Rome Statute (2002), and by domestic courts exercising “universal jurisdiction.”

Universal jurisdiction is the principle that states may prosecute certain crimes against international law regardless of where those crimes were committed and the nationality of the victims or the accused. Universal jurisdiction is codified in Customary International Humanitarian Law Rule 157 and in certain international conventions (e.g. the Fourth Geneva Convention and the Convention Against Torture). It is also codified in national law in Australia, Bangladesh, Belgium, Costa Rica and Spain.

## **INTERNATIONAL COURT OF JUSTICE**

The International Court of Justice (ICJ) is an organ of the United Nations, sitting in The Hague (Netherlands). Its 15 judges are elected to nine-year terms by the UN General Assembly and the Security Council. The ICJ adjudicates disputes between states: its decisions in particular disputes bind only the parties to the dispute, though some of those decisions, widely cited, can become customary international law.

The ICJ can also issue advisory opinions. However, only some 21 specified organizations can request such opinions, including the General Assembly and Security Council, but not States.

Every state that has signed on to the United Nations Charter has also agreed to the rules of the ICJ, but not necessarily to its jurisdiction.

## **INTERNATIONAL CRIMINAL COURT**

The International Criminal Court (ICC) is a permanent, treaty-based, independent international tribunal, sitting in The Hague (Netherlands): it is legally independent of the United Nations. It prosecutes individuals for genocide, crimes against humanity and war crimes (as well as the crime of aggression – when the party states agree on a definition and the conditions for prosecution).

The Court may exercise jurisdiction:  
where the accused is a national of a state party,  
where the alleged crime was committed on the territory of a state party (or a party that has accepted the court's jurisdiction), or  
where the Security Council has referred a situation to the Court.

Organs of the Court include: the three-judge Presidency, the 18-judge judicial divisions (Pre-Trial, Trial and Appeals), and the offices of the Prosecutor, the Public Counsel for Victims and the Public Counsel for Defense.

The Rome Statute (1998), which created the Court, became a binding treaty, in 2002, when it was ratified by 60 states. A review conference was held in 2010.

110 States have signed and ratified the Rome Statute, 38 have signed but not ratified, and three of those states have "unsigned" (Israel, the United States and Sudan). Eight states that had not signed by the deadline (December 31, 2000) have "acceded" to the Statute. India, Pakistan and China have opposed the Court.