

Principles of Public International Law

What is public international law?

Public international law is a combination of rules and customs governing relations between states in different fields, such as armed conflict, human rights, the sea, space, trade, territorial boundaries, and diplomatic relations.

The United Nations Charter sets out the fundamental principles of modern public international law, notably:

- Promotion of human rights;
- The strict limitation on the right to use force against other states;
- The strict prohibition on the acquisition of territory by force.

Subjects of international law

States are the primary subject of international law. However, international law can also regulate the actions of other entities, namely: international organizations, non-state actors (including national liberation movements and individuals), international non-governmental organizations, and multinational companies. All can be defined as subjects of international law, and can be considered as having legal personality. This means that they have both duties and rights provided for by international law.

Public international law and the protection of human dignity

Several branches of public international law combine to protect universal values relating to human dignity. Each represents a tool of protection and all should be considered as complementary and must be applied comprehensively. These branches are: international humanitarian law, international refugee law, international criminal law and international human rights law.

What is the difference between public international law and private international law?

Public international law comprises a body of rules which is concerned solely with the rights and obligations of sovereign states. For example the United Nations Charter is a central instrument of public international law.

Private international law, also referred to as 'conflict of laws', consists of rules which govern relations between private entities and decide which domestic law and/or courts can adjudicate issues with an "international" component. For example, if a Chinese company was to sign a contract with the United States, private international law would regulate the applicable law if that contract was violated.

Relationship between domestic and international law

The relationship between domestic and international law on a procedural level can be complex, particularly where a national court is applying international law directly. It is important to remember that domestic law cannot be used as a justification for a failure to meet an international responsibility.

In the words of Hersch Lauterpact, who is recognised as one of the founders of modern international law:

"The self-evident principle of international law that a State cannot invoke its municipal law as the reason for the non-fulfillment of its international obligations."

Sources of international law

The norms and rules of international law are codified in a range of treaties and other materials. The main sources of international law are:

- Treaty law: Such as the United Nations Charter and the Geneva Conventions;
- Customary international law: Established by state practice and legal intention;
- General principles of law recognised by civilised nations: Seen as inspirational rather than direct sources of the law. Examples of this are the principles of estoppel and equity.

State responsibility

One of the fundamental principles of international law provides that any state that violates its international obligations must be held accountable for its actions. More concretely, according to the notion of state responsibility, states that do not respect their international duties are obliged to immediately stop their illegal actions and make reparations to the injured parties. The principle of state responsibility forms part of international customary law and is binding upon all states.

Third States also have an obligation not to assist other states who are violating international law, and have a legal duty under Common Article 1 of the Geneva Conventions to ensure respect for IHL.

Grave violations of international Law: Jus cogens and erga omnes obligations

A number of rules of international law reflect "jus cogens" norms, also referred to as peremptory norms of international law.

Jus cogens status is reserved for the most fundamental rules of international law, which are recognised and accepted by the international community as rules of which no exceptions are allowed (article 53 of the Vienna Convention on the Law of Treaties). All states are obliged to adhere to jus cogens rules at all times, regardless of the circumstances, and these rules cannot be superceded by international agreements or treaties.

Examples of jus cogens norms include the right of all peoples to self-determination, the prohibition on the acquisition of territory by force and the prohibition on genocide, slavery and torture.

Erga omnes

The violation of a number of provisions under international law - usually those that are categorised as jus cogens rules - gives rise to "erga omnes" obligations. Erga omnes is a Latin concept that translates as "towards all". When fundamental principles of international law are violated, an erga omnes obligation arises, meaning that all states have the right to take action. Examples of acts that would give rise to erga omnes obligations include piracy, genocide, slavery, torture and racial discrimination.

In July 2004 the International Court of Justice found "the right of peoples to self-determination" to be an erga omnes norm of international law.