

SSNMUN 2018

United Nations Security Council

Research Guide

First and foremost: To clarify, this document is NOT working of the assumption that the committee has a set time frame. It is to guide the delegates in “International Law” and the various types it exists in. Sensible usage of the knowledge below keeping in mind the status of the laws in the existing timeline of the committee is requested by the Executive Board.

Where does international law come from and how is it made?

These are some difficult questions than one might expect and require careful inspection. National law and similar application cannot be bought into an international legal system. Thus the question of “Code of International Law”. International law has no Parliament and nothing that can really be described as legislation. While there is an International Court of Justice and a range of specialised international courts and tribunals, jurisdiction of the abovementioned is simply voluntary and not in any way compelling or enforceable. To clarify, the following is the general assumption of what International law is, there is no fixed category of any kind that lists what is and what is not international law.

Article 38 of the Statute of the International Court of Justice states

“Article 38

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. subject to the provisions of Article 59, 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.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.”

Let’s look at all four in a simpler way.

To be noted: The assumption is that the contesting states will be all UN members as this is to serve as an equal stepping platform for all delegates. Please do note whether your country’s conformity to the law is ensured before going ahead with quoting the convention or law. (Example: DPRK and the

Non-Proliferation treaty in 2018). Also we feel no need to illustrate or explain the 4th sub clause mentioned above as it seems to be rather self-explanatory.

- 1) International agreements, conventions and treaties: The Non-Proliferation Treaty, the Geneva Conventions, the Vienna Convention on the Law of Treaties so on and so forth. Documents internationally recognized and ratified by nations involved in the conflict. These are subjective to signature and ratification, the difference of which is rather important.
 - a. **The signature to a treaty** indicates that the country accepts the treaty. It commits not to take any actions that would undermine the treaty's purposes. A treaty is signed by a senior representative of a country such as the president or the foreign minister.
 - b. **The ratification** symbolizes the official sanction of a treaty to make it legally binding for the government of a country. This process involves the treaty's adoption by the legislature of a country such as the parliament.
- 2) Customary International Law or Customary Law: These are laws that have come to be due to practice and norm. This law is, although not on paper or signed, considered the most binding of its kind due to the scale of practice. Some examples would include the following:
 - a. **The principle of non-refoulement** is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in other countries asylum from persecution, as set forth in Article 14 of the Universal Declaration of Human Rights, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger.
 - b. **Diplomatic immunity, in international law**, the immunities enjoyed by foreign states or international organizations and their official representatives from the jurisdiction of the country in which they are present. The inviolability of diplomatic envoys has been recognized by most civilizations and states throughout history. To ensure exchanges of information and to maintain contact, most societies—even preliterate ones—granted messengers safe-conduct. Traditional mechanisms of protecting diplomats included religious-based codes of hospitality and the frequent use of priests as emissaries. Just as religion buttressed this inviolability, custom sanctified it and reciprocity fortified it, and over time these sanctions became codified in national laws and international treaties.
- 3) **The general principles of law recognized by civilized nations**: General principles of law are used primarily as "lexicon fillers" when treaties or customary international law do not provide a rule of decision. It has been suggested by scholars that as new treaties and customary law develop to address areas of international concern not previously covered, the significance of general principles will fade as these gaps in international law are filled.

Additional Readings: (Highly Recommended)

http://legal.un.org/ilc/guide/1_14.shtml

<http://www.un.org/en/sections/un-charter/un-charter-full-text/>

https://drive.google.com/file/d/19ldo54_tt2EI0y6aN1I92PgIjoYVXAZk/view?usp=sharing

<http://www.un.org/en/sc/inc/pages/pdf/rules.pdf>

<http://www.publicinternationallaw.in/sites/default/files/salient/02-pacific%20Settlement%20of%20Disputes/02-ICJ%20Statute.pdf>