

SOURCES OF PUBLIC INTERNATIONAL LAW

introduction



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sources of law



art. 38 of the Statute of the International Court of Justice

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
 - **international custom**, as evidence of a general practice accepted as law;
 - the **general principles of law** recognized by civilized nations;
 - 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.

art. 38 of the Statute of the Permanent Court of International Justice

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. 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. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

art. 21 of the Rome Statute of the International Criminal Court

1. The Court shall apply:
 - a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

art. 20 of the Protocol of the Court of African Union

1. The Court, whose function is to decide in accordance with international law such disputes, as are submitted to it, shall have regard to:
 - a) The Act;
 - b) International treaties whether general or particular, establishing rules expressly recognized by the contesting states;
 - c) International custom, as evidence of a general practice accepted as law;
 - d) The general principles of law recognized universally or by African States;
 - e) Subject to Article 37 of this Protocol, judicial decisions and the writings of the most highly qualified publicists of various nations as well as the regulations, directives and decisions of the Union as subsidiary means for the determination of the 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.

art. 293 of the United Nations Convention on the Law of the Sea

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

hierarchy of sources of international law

hierarchy of sources of international law

unilateral
acts of
States

treaties

doctrine

binding
decisions of
international
organizations

judicial
decisions *

general
principles
recognized
by civilized
nations

customary
rules

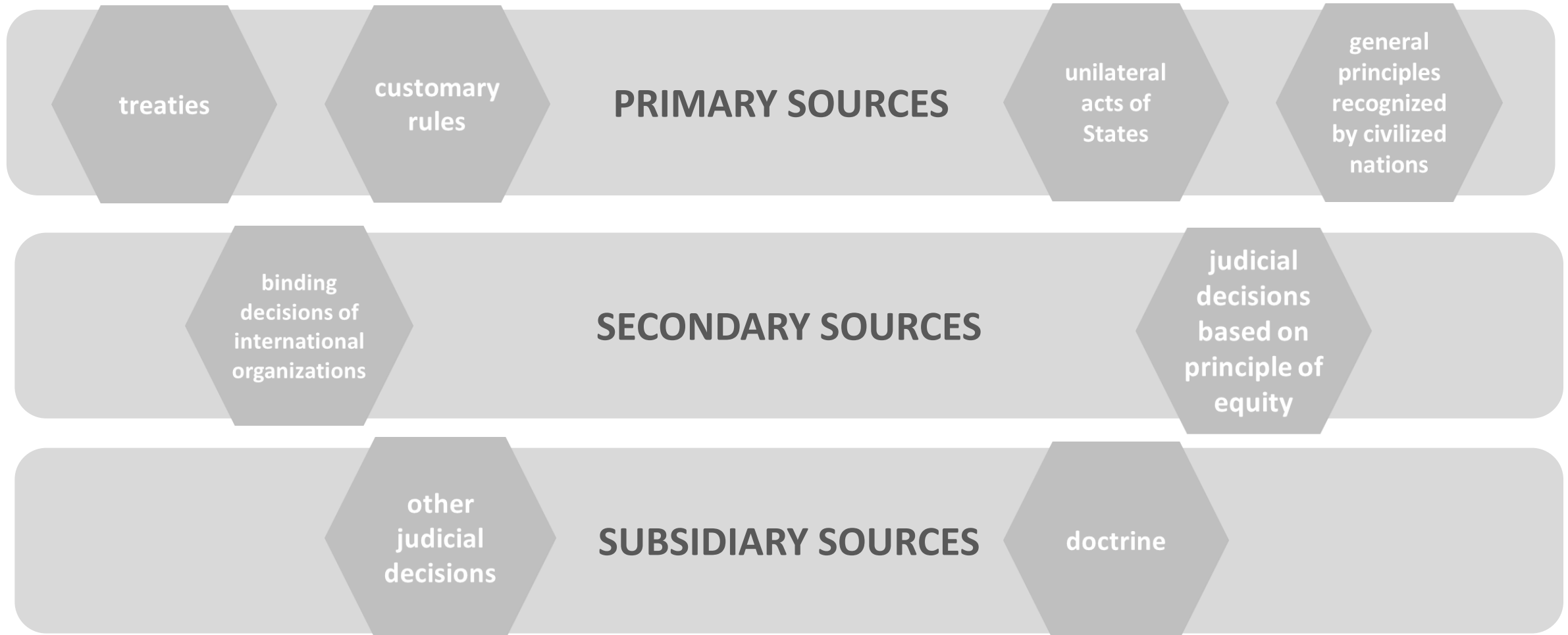
hierarchy of sources of international law

PRIMARY SOURCES

SECONDARY SOURCES

SUBSIDIARY SOURCES

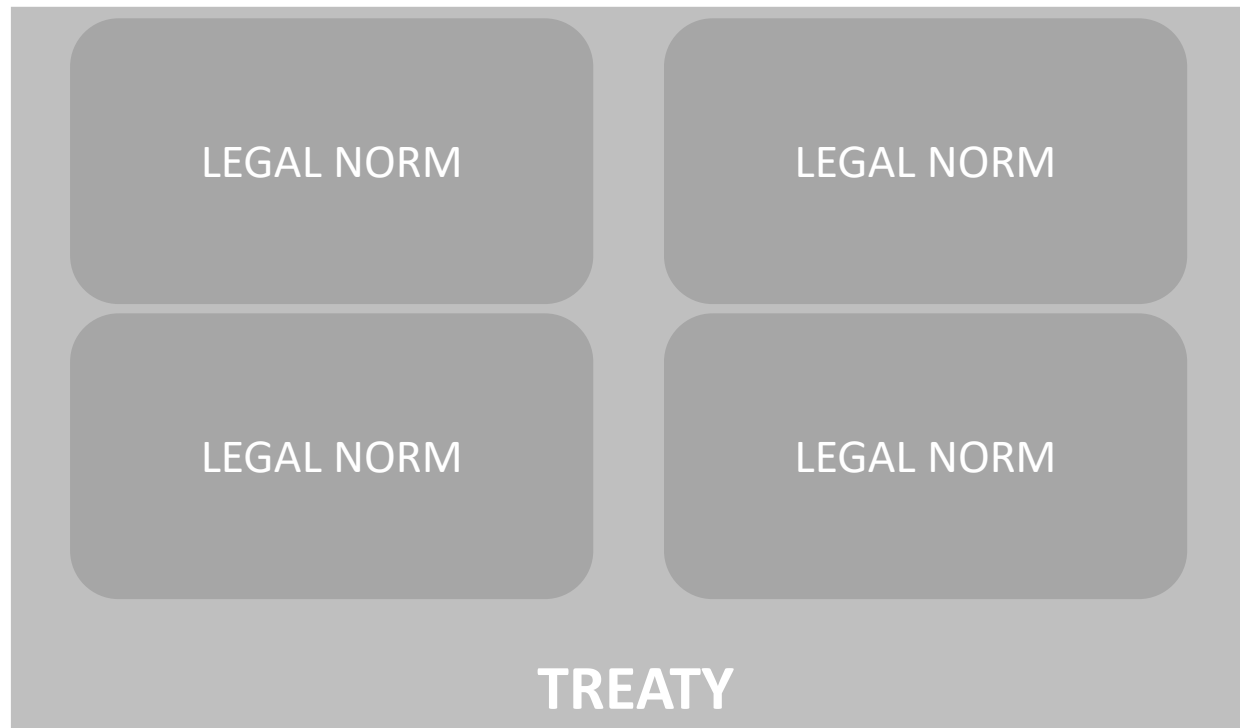
hierarchy of sources of international law



unilateral acts of States

- 1. PROTEST – unilateral declaration designed to object to an act or action performed by another State;**
its purpose and legal effect is to show that the protesting State does not recognize, accept, or acquiesce in the act or action; or preserves the right to challenge that act or action
- 2. RECOGNITION (of act or conduct) – unilateral transaction (or, in the case of tacit or implicit recognition, conduct) aimed at considering as legitimate that situation or conduct**
its legal effect is to bar the recognizing State from subsequently challenging what had been previously recognized
- 3. RENUNCIATION – willing unilateral abandonment of a right, which is deliberate and clear (although it may be explicit or tacit)**
- 4. NOTIFICATION - act by which State makes other States informed of a certain action it has performed**
its legal effect is to preclude the other States from subsequently claiming that, not knowing the action notified, they were entitled to behave differently
- 5. PROMISE – unilateral declaration by which a State undertakes to behave in a certain manner**
it establishes a new rule binding the promising State toward one or more States

hierarchy of norms of international law



hierarchy of norms of international law

I. **Ius cogens / peremptory norms**

hierarchy of norms of international law

I. **Ius cogens / peremptory norms**

art. 53 of the Vienna Convention on the law of treaties

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

For the purposes of the present Convention, a peremptory norm of general international law is a **norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.**

hierarchy of norms of international law

I. **Ius cogens / peremptory norms**

- Prohibition of the treat or use of force
- Prohibition of genocide
- Prohibition of tortures
- Prohibition of slavery
- Prohibition of racial segregation

hierarchy of norms of international law

II. legal obligations derived from the Charter of the United Nations

hierarchy of norms of international law

II. legal obligations derived from the Charter of the United Nations

art. 103 of the Charter on the United Nations

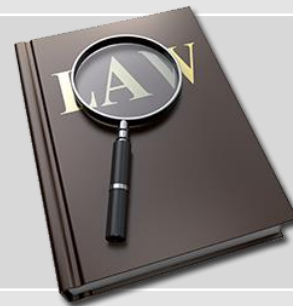
In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

subsidiary sources of international law

subsidiary sources of international law



judicial decisions



doctrine