

IL Foundational Reading Class SUMMARY / IL Test Aid

Room 1 — Introduction (p 433) & Defining International Law: Is International Law Real Law? (pp 433 to 435).

- Int'l law:** created to provide nations with mutual benefit, or be considered ethically correct by powerful nations.
 - Diversity:** diff. among people in terms of political systems, religion, culture, traditions, belief systems, geography.
 - Sovereignty:** the right of nations to make and enforce laws within their boundaries.
 - Domestic Law:** laws specific to one state or nation. Effective domestic law must specify...1. The behaviour that people/parties must follow 2. What the penalties are for people/parties who fail to comply 3. How the ongoing enforcement of it will be achieved.
 - International Law:** practices that have occurred among countries. Is it realistic to expect governments to surrender to a world government?
- Examples of International Law in Action**
- Adjudication:** judgement made by a third party, not through negotiation, where one side wins and one side loses. The UN, while not being a 'world government', has facilitated nations reaching common goals and settling disputes.
 - Economic sanctions:** actions that either minimize or prevent economic activity that would otherwise occur, can be used as a tool for nations to criticize other nation's activities.
 - Trade Boycott:** form of protest where people abstain from buying or using another nation's goods or services to pressure it into changing its behaviour.
 - Trade Embargo:** Laws or policies that prohibit/restrict the import or export of goods. Nations could also cease humanitarian efforts, or use military action, sever diplomatic ties, etc.
 - Tribunal:** any gov't body/official group of people engaged in resolving a dispute (**PURPOSE:** to demonstrate *collective will* among nations to solve disputes/ offer informed opinions that lead to dispute resolution). "**ad hoc tribunals**" = temporary courts.
 - Genocide:** Systemic killing of human beings based on ethnicity/religion. Accepted definition of international law: customs, rules and agreements that govern relations between sovereign states.
 - In conclusion,** international law is real law.

Room 2 — Defining International Law: The History of International Law (Eurocentric POV) (pp 435 to 437).

- Arbitration (private process to resolve dispute w/out litigation).
- Dutch lawyer and scholar, Hugo Grotius, AKA founder of International Law.
- 16th century, *Peace (Treaty) of Westphalia* signed, ending the Thirty Years War in Germany.
- 17th century, new era of international law; ind. economic/political/cultural relationships between states.
- 19th century, influx of treaties/conventions; Congress of Vienna (treatment of diplomats), Declaration of Paris (blockade rules), Geneva Convention (humane treatment during conflict).
- 1899-1907, Hague Conferences- originally intended for arms limit... resulted in 1st attempt at an international court (Hague Tribunal).
- post WW1, League of Nations for int'l conflict res., disbanded at the start of WW2, foundation for UN (formed after WW2).
- post Cold War (Soviet Union disbanded), nations cooperate for new int'l law and a new multilateral world order.
- recently, the UN struggled with when to use military force, send peacekeepers, & bend will of indiv. nations.
- 2002, first international criminal court established, where nations congregate to prosecute international "universal" crimes.

Room 3 — Sources of International Law: Formal Agreements (pp 437 to 440) & Treaties (pp 8 to 9).

Formal Agreements

- Common means of establishing rules internationally, could be called treaties, conventions, protocols, covenants, acts, pacts, agreements, statutes, or charters. Sets out their mutual legal rights and obligations. Main source of international law. All signatories (signers) of the agreement will follow for their mutual benefit.

Bilateral

- A treaty is considered bilateral if it has been established between two nations (e.g., *Pacific Salmon Treaty 1985, Agreement on Air Quality 1991..etc*).

Multilateral

- It is multilateral if three or more nations have agreed to it (e.g., *North American Free Trade Agreement 1994, Kyoto Protocol 1994*).

Treaties

- A formal agreement between two or more states that sets out their mutual legal rights and obligations. Treaties are negotiated by government representatives and are the main sources of international law. After a treaty is drafted and signed, it must be ***ratified**, or formally approved and authorized by each nation according to a procedure set by its government, or else a country might not adhere to the treaty. Treaties can either codify existing laws or introduce new legislation. Can be created quickly and contain a clear explanation of the law but they only bind those countries that agree to sign.

*Ratification

- For a state to be bound by a treaty, the state must ratify or officially consent to be bound by that treaty. Signing a treaty is not the same as **ratifying** a treaty.

Treaties in Action

Antarctic Treaty

- Was put in place to preserve the environment of Antarctica because it is "sovereignless land". In 1959, 11 countries signed the *Antarctic Treaty* including Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, the Soviet Union, Great Britain, and the United States. Provides plant and animal protection, bans nuclear waste and the disposal, promotes cooperation in scientific investigations.

Treaties of the Seas

- Some of the oldest treaties that are still used today. In the 1400s, a distinction was made between the "high seas" and coastal water; high seas being international/sovereignless water and coastal water being a belt of sea extending 3 nautical miles from a country's shore (today it is 12 nautical miles). *UN Convention on the Law of the Sea* was enacted in 1994, now has over 138 signatory states; this convention helped ratify the exclusification of rights for oil, gas and fishing extending 200 nautical miles from the shore.

The Stars

Space Law - The body of law that applies to outer space and governs space related activities. Addresses matters such as military activities, preservation of space and earth, liability for damages, settlement of disputes, protection of national interests, rescue of astronauts, etc. *Outer Space Treaty of 1967* stated no nation could make claims of sovereignty over outer space, the moon, or other celestial bodies. Dennis Hope of the "Lunar Embassy" chooses to ignore these terms and has sold parcels of the moon to thousands.

Room 4 — Sources of International Law: Customary Practices, General Principles of Law, & Judicial Decisions and Teachings (pp 440 to 441) & Customary international law (pp 7 to 8).

Customary Practices - Practices that countries choose to follow in the absence of any formally written agreements, because they feel ethically bound to do so.

- In the absence of any formal agreements nations may agree to engage with one another with practices they feel are legally bound to based on their own domestic Laws.
- (Example) Diplomatic Immunity, shielded from being charged with a crime/sued while in a foreign country. Started out as customary practice.
- A question which occurs within the scenarios is when does a practice between nations occur for long enough and with such consistency that it becomes the law?
- In 1900 the United States Supreme Court ruled that what originally may have been custom, became the rule of law in civilized Nations.
- A distinction can be made between practices that are followed out of courtesy and those which are done to create legally binding obligations. (Customary international law).
- Customary International Law, laws that start out as customs, and eventually become law due to repeated behaviour.
- Customary law is based on what countries *actually* do, rather than what they have formally agreed to.
- The strengths of customary law lies in the fact that all countries can be bound to it whether or not they formally agree to it. The weaknesses of customary law are slow to change as it is based on continued behaviour and b)the laws are often unclear & imprecise.

General principles - Listed in Article 38 of the Statute of the ICJ as a third source of law.

- Recognized by "civilized" nations.
- Difficult to achieve international consensus on both the definition of "civilized" and the scope of these general principles.
- Raises the following questions: Would these principles be derived from domestic or international law? Would they include principles of justice, or natural law, or equity, or all three?

Judicial Decisions and Teachings - Decisions are made by the International court of Justice and domestic courts.

- Considered to be a persuasive force these decisions can be consulted but have no binding force.
- These decisions are not used to influence or determine outcomes in the same way that precedent is used in common law.
- These decisions can help shape international custom and practice but they are not legally binding.
- Teachings and writings of legal scholars are also sources of international law.
- Legal experts can contribute to the understanding of current practices and also pinpoint or highlight new approaches to, or principles of, international law.

Room 5 — Concepts in International Law: Sovereignty (pp 442 to 444).

Basic definition: Exercising power over external or internal affairs. This concept of international law is doctrine of state sovereignty. Internal sovereignty is the result of the right against unhampered by outside influences. External sovereignty recognized that independent states are free to either enter or not enter into relationships with other states. For example, relationships with foreign states (trade agreements and shared responsibility). There's an increasing awareness of waste that countries' interdependence requires international cooperation and that this will increasingly affect our view of traditional sovereignty (*The Universal Declaration of Human Rights 1948 codified a number of human rights that, according to the declaration, should be considered universal*). There are examples of global cooperation, safeguarding the environment and the protection of human rights. **Important questions to ask:** Are these universally recognized human rights so important that one nation or one organization has the right to interfere in the internal affairs of another nation? Are these rights reflective of the diversity of values we see around the world? Do some countries' rights carry more weight in the international community?

Room 6 — Concepts in International Law: Extradition (pp 444 to 445).

Extradition: legal surrender or delivery of a fugitive to the jurisdiction of another state or government to face trial. Comes from latin, meaning "out" and meaning "handing over". Most extradition treaties contain the following principles and rules that must be complied with:

Double-criminality rule: a crime must be a crime in both nations.

Principle of reciprocity: if country A extradites a person to country B, then country B will reciprocate in the future.

Evidence of guilt must be provided; a request for extradition is not enough.

Principle of speciality: an accused will be charged only with the crime that is specified in the request for extradition. (This stops a country from engaging in subterfuge, or deception).

Reasons extraditions can be denied are refusal to extradite a "national" ie. one of their own citizens, if the accused has already been convicted and served a penalty, if they have been acquitted, or there are concerns about a fair trial. Humanitarian grounds may be taken into account: health or age of accused may make extradition seem unreasonable, some countries will not extradite if the death penalty might be used.

No right to extradition exists without a treaty.

Extradition Act Canada --Allowances have been made for Canada to extradite people not just to other nations but to international criminal courts and tribunals as well.

Room 7 — Concepts in International Law: Diplomatic Immunity (pp 448 to 450).

- Diplomatic corps: consists of a staff of trained officials whose function is to assist in implementing their country's policy in foreign countries.
- Embassies in foreign countries are headed by ambassadors, who are either career civil servants or political appointees.
- In case of commonwealth countries, the heads of embassies are called high commissioners.
- Over 3000 years ago, Egypt engaged in diplomatic negotiations with its neighbours.
- Diplomacy became more formalized in the twelfth and thirteenth centuries, with Italian city-states taking the lead.
- In the sixteenth century, other European states followed the Italian example. During this era, it also became clear that diplomats working abroad needed protection, especially in hostile territories.
- 1961 *Vienna Convention on Diplomatic Relations* laid out laws and ways by which some people would be protected under diplomatic immunity
- Diplomats in foreign countries are immune to laws of the country they are in.
- The embassy and its grounds are treated as if they were in the diplomat's home country. Embassy staff cannot be charged with any crime or be sued. These rights apply with some limitations to the family members of the embassy staff.
- The host country may declare a diplomat they are unhappy with as a "persona non grata" and may expel them home. This is taken very seriously and may damage relations between nations.
- Augusto Pinochet case: In Chile, in 1973, Augusto Pinochet became president through a coup d'état (Violent overthrow of the government), many people were tortured or "disappeared" under his rule. He left the presidency in 1990 and took a senatorial position for life in 1998. In the same year, a Spanish judge issued a warrant for his arrest for crimes against humanity and he was arrested in London by British police. Spain requested for his extradition to face trial for torture, hostage taking, murder, among others. London's High Court found that Pinochet was immune from arrest as he was the head of state at the time of the crimes, however he was held in custody and eventually returned to Chile in 2000 due to being in poor health. The Chilean Supreme Court ruled Pinochet should lose his parliamentary immunity and stand trial. After an indictment, an appeal, and a re-indictment, in 2002 Chile's highest court ruled the 86-year-old Pinochet's dementia should halt his prosecution. The Pinochet case shows how diplomatic immunity is not infinite, especially after one is no longer a diplomat.

Room 8 — What is international law? (p 4) & Who is governed by international law? (pp 5 to 6).

- Int'l law is a set of **rules and customs** that govern the relationship between countries, known as states.
- Montevideo Convention* **States must have a permanent population, control over a defined territory, a government and be recognized by other states. (Doctrine of non-intervention).**
- The rule of law** is a fundamental legal principle in democratic societies. It strikes a **balance** between individual freedoms and needs of society. Rule of Law states that the "law applies equally to all persons, and that no one is above the law." The rule of law also means that once created any government officials cannot make up or change the set rules without any consultation.
- "National" or "Domestic" laws** affect people in their daily lives, and are divided between civil and criminal law.
- A country's **constitution** is typically the supreme law of the nation, which trumps any other national or local laws.
- States** have the **right of sovereignty**, (exclusive power over territory and population) and right to be free from intervention with regards to their legal or political affairs.
- International Governmental Organizations are set up by a treaty between two or more states, the UN is an IGO for e.g.
- NGO's are set up by individuals or groups, not states, the Red Cross are an NGO for e.g. (DLP)
- Individuals and corporations do **not** have the ability to enter into treaties, nor do they have legal rights and responsibilities under the law. (DLP)
- International law is **developed** as a result of **countries agreeing to act in certain ways** towards one another. (DLP)

Room 9 — The United Nations (pp 9 to 14).

- The UN was founded in 1945 after World War 2 - including the Holocaust. It was formed between countries in the means of keeping national peace between countries to prevent tragedies like genocide from happening.
- The UN consists of 192 Member States (almost every country in the world).
- Each member state has one equal vote, regardless of the size of the state or their economic status.
- The UN consists of sovereign states which means it depends on their co-operation of its member states in order to accept and carry out its decisions.
- The UN was designed to have 6 main bodies: General Assembly, Security Council, Economic and Social Council, Trusteeship Council (now largely inoperative) International Court of Justice (only deals with civil law referred to it), and Secretariat.

UN Charter:

- The United Nations Charter's (treaty) main goals include: promoting human rights, maintaining international peace, helping nations work together and reducing poverty and injustice. (Signed June 26, 1945)

The UN General Assembly:

- The UN General Assembly is where issues and problematic discussions take place in hopes of resolving such issues peacefully.

The UN Security Council:

- "The UN charter gives the security Council primary responsibility for the maintenance of international peace and security. The Security Council is the only UN body that can order the use of force to implement its decisions."
- The judicial part of the UN lies on the International Court of Justice. Disputes between members of the States do not have the jurisdiction to prosecute individuals accused of crime.

UN treaty-making and monitoring

- All treaties must be approved by the UN General Assembly in order for it to move forward.
- Agreement on a specified number of states must sign on for the treaty to be "activated". It then is entered into force.
- The signing of a treaty does not make it binding. States must ratify the treaty and implement it into their domestic law.

UN peacekeeping:

- Peacekeeping missions are placed in countries experiencing conflict. Peacekeepers are there to keep the harmony of a country.
- Peacekeepers may assist the promotion of human security, disarming opponents, repatriating refugees, strengthening the rule of law, delivering humanitarian relief, and training local police forces.

Room 10 — How is international law enforced? (pp 14 to 17).

- States are allowed to decide whether or not they want to participate in an international treaty (Consent-based system).
- If a state doesn't agree to participate in a treaty, it can't be punished if they commit an action that contradicts that said treaty.
- Customary laws apply to all states whether or not they agree to them (once settled law).
- To peacefully settle a dispute, parties involved can:
 - Negotiate in order to come to an agreeable resolution.
 - Mediation or Conciliation with a third party or committee.
 - Be sent to the International court which is administered by the UN.
 - Only states who participate in a certain treaty can appeal to the international court if they believe another state is not following their obligations to that treaty.
 - Both parties must agree that their dispute should be heard by the International Court of Justice which then gives the court the authority to create a binding decision in order to reconcile the parties involved.
- When states are unable to resolve disputes peacefully, the UN Security Council will intervene in an attempt to avoid an armed conflict / enforce ICJ decisions and/or UN resolutions..
- In the case study regarding *Omar Khadr*, we see the extraterritorial application of domestic law and how the *Canadian Charter of Rights and Freedoms* and international law stay consistent.