



# **SOURCES OF INTERNATIONAL LAW**

**Introduction into International Law**



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# CATEGORIES OF SOURCES OF IL

- **Material**
- **Formal**
  - Statue of the International Court of Justice → Article 38(I):
    - a. international treaties
    - b. international custom
    - c. general principles of law (recognized by civilized nations)
    - d. judicial decisions (case-law)
    - e. teachings of the mostly qualified publicists

# INTERNATIONAL TREATIES

- Contract between subjects of international law
- Labeled as: convention, protocol, agreement, etc.
- **Form**
  - Written
  - Oral
- **Categories**
  - Bilateral, multilateral or plurilateral
  - Regional or global
  - Codifying treaties → a codification from customary rules towards a developed and complex set of norms → the law of the sea, the entirely new arena of space law, the law of diplomatic relations, the law of consular relations, the law of treaties as such, etc.

# VIENNA CONVENTION ON THE LAW OF TREATIES

- 1969
- Treaties → Art. 2(1) VCLT → ...*in written form*...
- Conclusion and entry into force of treaties
  - Full power → Art. 7 VCLT
  - Authorization X adoption
- Reservations → Art. 19-23 VCLT
- Pacta sunt servanda → Art. 26 VCLT
- Rebus sic stantibus → Art. 62 VCLT
- *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*
- Rules of interpretation → Art. 31, 32 VCLT
- Rights for a third state → Art. 34 VCLT

# INTERNATIONAL CUSTOM

- **Two element theory**
- **I. state practice (usus longevus)**
  - Established, widespread, and consistent practice on the part of subjects of international law, also called the objective element of a custom
- **II. opinio juris (opinio juris sive necessitates)**
  - Opinion as to the law or necessity
  - Subjective psychological element of a custom meaning that the subject are of the view that such norm is binding and that not behaving accordingly would constitute breach of international law
- **Persistent objector**

# GENERAL PRINCIPLES OF LAW (RECOGNIZED BY CIVILIZED NATIONS)

- E. g. *statute of limitations, lis alibi pendens, res judicata, pacta sunt servanda, etc.*
- “recognized by civilized nations”
  - History of the Statue of the PCIJ
  - Difference between civilized nations (themselves) and non-civilized nations who (in the Great War’s victors’ eyes) needed to be taken care of via colonial rule or mandate administration under the League of Nations

# JUDICIAL DECISIONS, TEACHINGS

- sui generis database of evidence of the existence and particular nature of respective norms of international law
- **Judicial decisions**
  - Art. 59 ICJ Statute
  - Persuasive nature
- **Teachings**
  - Vitoria, Vattel, Grotius, James Crawford