

Chapter 2: Making International Law

Glossary

Accession: process by which a state joins a treaty that it did not sign

Acquiescence: tacit support for state practice as reflected by inaction

Active protest: physical or verbal acts that demonstrate that a state disagrees with a particular asserted rule

Chronological paradox: conceptual problem that underlies the creation of customary international law: a belief in law is necessary for customary international law, but how can states hold such beliefs before law exists?

Contra bono mores: Latin for “against good morals”; reason sometimes provided for the claim that a treaty is invalid because it conflicts with natural law

Default rules: rules that can be changed by parties to a contract

Derogation: decision by a pair or group of states to exempt themselves from a norm in their relations with one another

Duration: criterion for assessing state practice: how long has a state followed a proposed rule?

Entry into force: the point in time at which a treaty becomes legally binding for states that have fully consented to be bound

Exit clause: a treaty clause that specified conditions under which a state may exit a treaty

Fundamental change of circumstances: modern version of *rebus sic stantibus*; a state can leave a treaty if there is an unexpected change in circumstances of sufficient importance and magnitude

Generality: criterion for assessing state practice: how widespread is a proposed rule across different states?

Good faith: the principle that parties to an agreement must act fairly and honestly towards one another

Internal consistency: criterion for assessing state practice: how uniformly has a state followed a proposed rule?

International Law Commission: international organization created by the UN General Assembly in 1947 to study legal issues and make recommendations about the codification and development of international law

Interpretation: the process by which actors understand the meaning of a legal text, and then apply the text's meaning to a factual situation

Jus cogens: Latin for “mandatory law”; rules that cannot be changed by states via treaties

Jus dispositivum: Latin for “law adopted by consent”; rules that can be changed by states via treaties

Mandatory rules: rules that cannot be changed by parties to a contract

Material breach: “a repudiation of the treaty not sanctioned by the [VCLT, or] the violation of a provision essential to the accomplishment of the object or purpose of the treaty”

Object and purpose test: practice under which a treaty reservation is assessed based on whether it is compatible with the object and purpose of the treaty

Opinio juris: Latin for “acceptance as law”; second component of customary international law: states must accept that a rule is legally binding

Pacta sunt servanda: Latin for “agreements must be kept”: the legal principle that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

Peremptory norm: according to the VCLT, “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”

Persistent objector doctrine: the claim that a state that disagrees with a rule before it becomes customary law is not constrained by the rule after it becomes customary law

Precedent: the legal principle that current judges should defer to legal rulings made by prior judges in relevant cases

Ratification: under international law, “the international act ... whereby a state establishes on the international plane its consent to be bound by a treaty”

***Rebus sic stantibus*:** Latin for “things thus standing”; the claim that a leader can or should break his promises if economic or political circumstances have changed

Repetition: criterion for assessing state practice: how many times has a state followed a proposed rule?

Representation: criterion for assessing state practice: are the states that follow a proposed rule diverse with respect to their economic, political, and legal systems?

Reservation: “a unilateral statement ... made by a state [that] purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.”

Severable: able to be cut away; when a reservation is severable, it can be invalidated without affecting a state’s ratification of a treaty

Signature: process by which a state indicates its support for a treaty and its intent to join the treaty

Soft law: international agreements that are not legally binding

Specially affected states doctrine: the claim that customary international law gives (or should give) more deference to the behavior of states that are more likely to be affected by the formation of a particular rule

Stare decisis: Latin for “let the decision stand”; the legal principle that current judges should defer to legal rulings made by prior judges in relevant cases (same meaning as precedent)

State practice: first component of customary international law: the conduct of states must match the behavior that is required by the proposed rule

Treaty: “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”

Travaux préparatoires: French for “preparatory work”; the body of official written documents from a treaty’s negotiation

Unilateral declaration: a unilateral statement that creates a legal obligation; must be public and demonstrate a state intention to be bound