INTERNATIONAL LAW

There are two kinds of international law: private and public. The former is concerned with the resolution of international disputes between individuals and companies, while the latter governs relations between states. It includes such things as claims to territory, use of the sea, **arms control**, and **human rights**.

All states have a supreme law-making body. The international community, however, has no equivalent authority. Instead, *treaties* are the principal means by which states establish legal obligations binding on each other. Since there are more and more activities that require international cooperation, treaties have proliferated and now deal with an enormous variety of subjects. There are two main types of treaties.

A bilateral treaty is concluded between two states whereas a **multilateral** treaty is concluded by more than two states. The most significant treaties are multilateral treaties concluded between all the states of the world. Each state has its own constitutional practices regulating the treatymaking **power** of its government. For example, in the United States the Constitution controls treaty-making power. The President can make treaties, which become binding only with the agreement of twothirds of the US Senate. International agreements that are not treaties, otherwise known as executive agreements, can be made by the President alone without the consent of the Senate and in recent years have become much more numerous than treaties.

There is no uniform procedure for the conclusion of a treaty, but generally the process involves a series of stages including negotiation, consent to be bound, ratification, and entry into force. Parties to the treaty may limit their commitment to certain aspects of the treaty through Reservations or may vary their obligations through Protocols. *Customary* international law is the second most important source of international law. It is formed by the common practices of states, which over a period of time become accepted as legally binding. Some practices carried out by a few states only attain the status of regional customary international law whilst other practices that are common to the vast majority of states attain the status of worldwide customary law. Until fairly recently, customary international law was the principal means by which international law was developed, but it has proved too slow to accommodate the rapidly changing nature of international law.

Today the multilateral treaty has overtaken it. Furthermore, the increase in the number of states from the small 'club of twenty' that existed after the

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First World War to today's 190 or so, has made it difficult to prove the consensus of practice needed to establish customary international law. However, some of the current law of the sea owes its development to the common practices of states, indicating that customary international law is still very important.

Customary international law is based on two factors. The first is a constant and uniform practice. It is necessary to prove that a large number of relatively strong states are involved in the practice and that it has been in use for a significant period of time. The second factor is the acceptance by states that the practice is legally binding. Some states may be bound by customary international law, even if they protest, where the vast majority of states have consented to it. For example, during the years of apartheid, the South African government used to protest that its racial policies did not breach international law, even though the international community considered those policies illegal.

The third main source of international law is **United Nations** *Resolutions*. Passed by the General Assembly as recommendations in the first instance, they may create international legal obligations by influencing the formation of customary international law and lead to the creation of multilateral treaties dealing with the issues raised by the Resolution. Some Resolutions are so important they receive the honorary title of Declaration. This is a formal instrument suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Declaration of Human Rights. Because Declarations are still only UN Resolutions, they cannot be made legally binding, even though there is a strong expectation that states will abide by their provisions.

The most important aspect of international law is that it cannot be enforced in the same way as domestic law. There is no international police force and states cannot be compelled to perform their legal obligations since there is no higher authority than the states themselves. The main ways in which international law is enforced between states are **reciprocity** and legal responsibility. States abide by their legal obligations because they want other states to do the same. A good example is diplomatic immunity. In addition, most states abide by international law most of the time because they want to be seen as law-abiding and legally responsible.

The vast majority of legal disputes between states are resolved through a combination of negotiation, mediation, and conciliation. The international community does have a weak judicial procedure to arbitrate disputes in the form of the International Court of Justice (ICJ). It has 15 judges who are

chosen to represent the different geographical areas of the world. Its function is to decide disputes submitted to it by states and to give advisory opinions on international legal matters submitted to it by international organisations. Only states can take cases before the Court. Individuals, groups, or non-governmental actors are prevented from taking complaints, although states can take complaints on their behalf, providing the rights which have been infringed are also the rights of the state. States cannot be forced to appear before the Court but will usually have signed a treaty which obliges them to do so, or have accepted the jurisdiction of the Court in a declaration. The role of the ICJ has not been without criticism. Many states have criticized the Court for declining to take a strong role in international legal affairs. The Court has tended to be conservative and to favour the established legal rights of the more powerful states. Like the United Nations, it relies on states taking into account world public **order** rather than their own **national interests** when deciding to abide by international law and the Court's decisions.

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