

CANADA AND INTERNATIONAL LAW

INTERNATIONAL LAW

- Governs the relationships between States
- States must follow the rules of International Laws when they form relationships with each other.
- In International Law: State refers to a group of people that:
 - A: Recognized as an independent country
 - B: Has a territory that is ruled by an independent government that can enter into relationships with other states.

International Law is Based on 3 types of law:

Customary Law

Treaty Law

Resolutions

CUSTOMARY LAW

- Is formed by practices that states develop overtime and that they assume to be required.
- It is not written down, but found in the written judgments of international court cases
- Customary Law reflects the following 8 basic principals:
 - Sovereignty
 - Recognition
 - Consent
 - Good Faith
 - Freedom of the Seas
 - International Responsibility
 - Self-Defense
 - Humanitarianism

8 PRINCIPALS OF CUSTOMARY LAW

- **1: Sovereignty** – A nation's absolute right to govern itself, to apply laws and have equal status regardless of size, population or military.
- **2: Recognition** – States gain recognition as sovereign by other sovereign nations. This is not guaranteed. (Quebec/Canada)
- **3: Consent** – States are only bound by International law after they freely give their consent. (Can't be threatened)
- **4: Good Faith** – states are expected to govern their affairs with reasonableness and common sense. They must show good faith in how they interpret international law.

8 PRINCIPALS OF CUSTOMARY LAW

- **5: Freedom of The Seas** – States cannot claim ownership on any area of the high seas. (During war states may interfere with shipping routes)
- **6: International Responsibility** – The state that does not meet an international obligation has committed a wrongful act. May face criminal penalties, or compensation – ex: causing environmental damage inside another states borders
- **7: Self- Defense** – The Charter of the United Nations – declare it is unlawful to threaten or use force against other states. However you have a right to self-defense.
- **8: Humanitarianism** – Respect for interest of human kind – ex Famine Relief efforts, disaster relief efforts.

TREATY LAW

- These are binding written agreements, freely entered into by states, that spell out rights and obligations to each other.
- Bilateral treaties – two states
- Multilateral Treaties – 3 or more states.
- **Classes of Treaties:**
 - Charters – Establish international organizations
 - Conventions – treaties negotiated by many countries that all countries may become partners in.
 - Protocols – Treaties that add to earlier treaties on the same topic.

TREATY LAW

- Treaties are the main method for addressing international problems and conflicts.
- They deal with:
 - **Territory** – definition of where borders lie – it also bans seizure of territory in 3 areas – Oceans, Antarctica and Space.
 - **Diplomatic Law and Immunity** – states carry on relations through diplomats and envoys – they have privileges and immunities that average citizens do not. - 1961- *Vienna convention on Diplomatic Relations*
 - **The Protection of Nationals abroad** - Foreign Nationals (people traveling abroad) are entitled to protection of life liberty and property. However states can seize private property in national interest but with compensation.

TREATY LAW

- **Extradition and Asylum** – These treaties let countries bring people home who are trying to escape justice. This person is returned home to face penalties there. If a state had no treaty – they may grant asylum.
- **International Trade** – Globalization – leads to new trade agreements between countries – NAFTA. – eliminate taxes on goods.
- **Arms Control** – Cold War – led to fear of Nuclear Annihilation. Laws were developed banning the use of nuclear weapons / Chemical aimed at preventing nuclear war. (testing bans)

RESOLUTIONS

- They are considered “ soft law”
- They do not have the force of customary law or treaties.
- They are not considered binding even when they are voted for.

- Why use them then?

- They are quickly adopted
- They focus international attention on an issue that demands quick action
- They can form a basis for larger negotiations on treaties.

YOU BE THE JUDGE

- Canada and the United States have an extradition treaty. However in February 2001, The Supreme Court of Canada ruled that Canada's Constitution forbids the extradition of Canadian Citizens and foreigners to the United States if they face a possible death penalty there.
 - Do you think that the supreme court ruling could encourage American fugitives facing the death penalty to seek haven in Canada? Explain.
 - 3 Marks

YOU BE THE JUDGE

- In January 2001 a Russian Diplomat in Ottawa, Andrei Knyazev killed a woman with his car. He refused a breath test, saying he has diplomatic immunity. He was expelled from Canada and returned to Moscow. International Law bans the detention of diplomats and protects them from persecution. Canadian courts have ruled that a breath test is detention.
 - Should diplomats have the right to refuse a breath test? Explain.
 - Research the final outcome of the Knyazev case and revise your explanation
 - 5 Marks.