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ABC of International Law



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Three prominent Swiss persons who have influenced international law	

Illustrations in the brochure: International law governs the behaviour of States towards each other through bilateral and multilateral agreements and entails binding, internationally applicable regulations.

Introduction

International law is the term used to refer to all legally binding rules that apply at the international level. International law, which concerns the way in which States behave towards one another, has a primarily regulatory function for the purpose of facilitating international cooperation and giving it a predictable pattern on the basis of binding rules. One of the main objectives of international law is to create the conditions for international peace and stability.

Relations in the framework of international law have acquired greater importance as a result of increasing globalisation, and have also become more complex. Since many of the problems which individual States face today cannot easily be solved at the national level, modern international law is of growing relevance in areas that were once the exclusive domain of national law. These include individual rights, environmental protection and efforts to combat crime. The range of norms and standards of international law extends from core peremptory rules (such as the prohibition of the use of force and the fundamental human rights guarantees), to basic institutional regulations (the law on treaties or the law on international organisations), operational norms for cooperation (for example in the area of judicial assistance), and provisions of a technical-administrative nature (for example air travel safety, radio frequency allocations and food). The provisions of international law apply in a wide range of areas, as illustrated by the following:

- Prohibition of the use of force: States must settle their disputes by peaceful means.
- Human rights: every individual may claim certain fundamental rights (right to life, physical integrity, individual freedom, freedom of opinion, freedom of conscience, etc.).¹

¹ Cf. "ABC of Human Rights,, brochure (published by the Federal Department of Foreign Affairs (FDFA); www.eda.admin.ch/eda/en/home/doc/publi/phumig.html)

- Protection of persons in armed conflicts: international humanitarian law contains rules that apply in times of armed conflict, in particular for the protection of civilians, the wounded and prisoners of war.²
- Fight against terrorism and other serious crimes: this can only be prosecuted effectively through international cooperation.
- Environment: regulations for the protection of the climate and the conservation of natural resources will be more effective if universally applied.
- Trade and development: Switzerland earns half of its income abroad. This is possible only thanks to the existence of a functioning, stable international legal environment.
- Telecommunications: without international regulations it would be impossible to telephone abroad.
- Transport: ensuring that train and airplane passengers arrive safely at their destinations requires international treaties.

International law is created by States and above all concerns the affairs of States. Thus, for a long time only States were the subjects of international law. In international law each State is sovereign and equal under the law – big and small, rich and poor.

International organisations such as the United Nations have played an increasingly important role in the past few decades. These organisations were created by the international community to respond to specific needs that are beyond the power of individual States. Today, there are considerably more international organisations than there are States. Only a relatively small number however are of truly global significance, and many of them are part of the United Nations System or affiliated with it. These international organisations are of considerable importance for international law because they are taking on an increasing number of tasks that traditionally belong to sovereign States. Furthermore, multi-lateral instruments of law are almost without exception negotiated in the framework of these organisations, which have thus become the “incubator” of international law.

² Cf. “ABC of International Humanitarian Law” brochure (published by the Federal Department of Foreign Affairs (FDFA); www.eda.admin.ch/eda/en/home/doc/publi/pintl.html)

Other intergovernmental organisations such as non-governmental organisations, transnational companies and academic institutions are as a rule not subject to international law. The same can be said for individuals, although they too have increasingly come under the scrutiny of international law since the middle of the 20th century. A growing number of areas of international law concern the protection of individuals and the responsibility of individuals. This is particularly clear in the way human rights, international humanitarian law and international criminal law have developed. Individuals have thus become both holders of rights and subject to obligations under international law which can be invoked and upheld before international courts or by supervisory mechanisms with similar judicial powers. Modern international law has long since ceased to be exclusively concerned with relations between States in the narrow sense, extending directly into all aspects of daily life of individuals, through the structures of States and international organisations.

Far from being exclusively concerned with establishing a legal framework for the international community, modern international law increasingly focuses on the protection and well-being of individuals. This inevitably has an influence on the meaning of national sovereignty, which can no longer be seen as merely the (passive) right to defend the State against foreign interference but also has an active aspect: the sovereignty of a State includes responsibility to provide for the safety and well-being of its citizens.

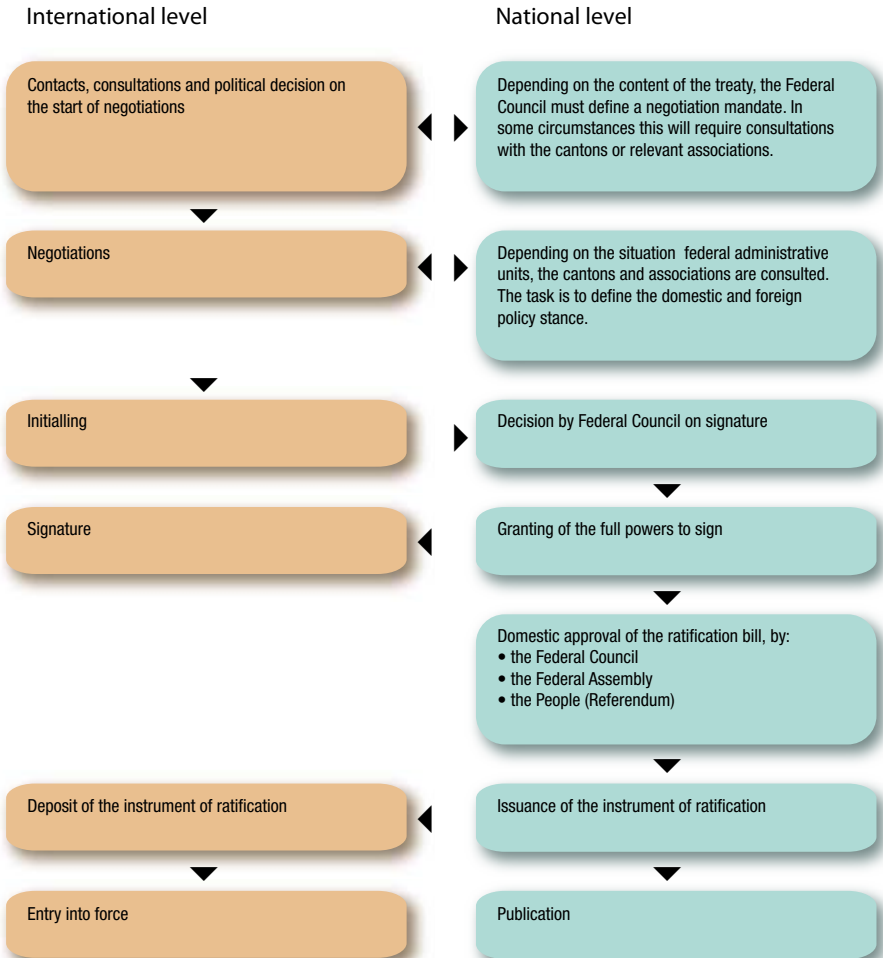
As the influence of international law on the domestic affairs of States steadily grows so its democratic legitimacy is increasingly being called into question. The fact is that international law is created entirely differently than national law. Whereas domestic laws are created by elected or appointed national representatives, international treaties are the result of negotiations between government representatives. Unlike in national legislative procedures, hardly ever will there be a vote in treaty

making. Negotiations usually continue until a compromise acceptable to all States is found. The democratic element at the international level lies in the principle of the equality of all States, big and small. Moreover, it is the sovereign right of each State to decide freely whether to accept the treaty that results from negotiations or not.

In Switzerland, international treaties are subject to approval by the Swiss parliament (Federal Assembly) unless it has previously delegated this right to the government (Federal Council). Furthermore, the Swiss electorate has the right to an optional referendum on any international treaty that will have the force of national law. In some cases, treaties are even subject to an obligatory referendum, for example those on whether or not to join the United Nations or the European Union. Moreover, Swiss citizens have a right to launch a “people’s initiative” even where the latter conflicts with international law. This right is only limited by peremptory norms of international law, such as the prohibition of torture, that are binding on all States at all times without derogation. No other State in the world grants its citizens such extensive rights to co-determination with regard to international treaties as Switzerland. There is no justification for the broad assertion that international law is undemocratic.

When serious violations of international law occur, there is criticism that international law lacks enforceability. Certainly, it is dreadful and unacceptable when serious violations of human rights or international humanitarian law remain unpunished, for example. The general perception that international law is difficult to enforce is false however. To begin with, even in the absence of a genuine world police force, most States do observe international law. Furthermore, there are an increasing number of international courts and authorities able, in certain circumstances, to impose appropriate sanctions in the name of the international community. The most notable recent example is the International Criminal

Process for the conclusion of an international treaty



Court in The Hague. Respect for international law primarily depends on two main factors:

- States have accepted their international obligations on their own free will. This means that in principle they see the existence of international legal standards as in their own interest. Violations of norms by one State are an encouragement for others to do the same – which can well turn against them.
- Increased interconnection between States means that States that respect international law have an ever greater range of more or less subtle ways to bring influence to bear on States that do not. In this way, States that systematically evade their obligations under international law will eventually be marginalised.

When Switzerland adopts international legal norms and standards, these take in principle precedence over any domestic laws that may differ. Otherwise it would be difficult to ensure that Switzerland actually does respect its international obligations. In practice, any conflicts that might arise, i.e. that have not already been discovered and eliminated at the time of ratification of an international treaty, can usually be resolved by means of a technique called “interpretation in conformity with international law”: domestic law is thus to be considered in the light of international law. Moreover, most international agreements can be terminated.

Switzerland, which is no great political or military power, is committed to ensure that international relations are governed by “law” rather than by “power”. The Swiss Confederation plays an active part in creating, updating and developing international law and ensuring its effective application. This reflects the overall objective of Swiss foreign policy: safeguarding the nation’s interests. The Swiss Confederation is committed to the goal of a peaceful and lawful international order (Art. 2 par. 4, Federal Constitution). This national objective is also the precept underlying the various foreign policy objectives enshrined in Article 54

of the Federal Constitution, which include preservation of the nation's independence and welfare, contributing to the alleviation of need and poverty in the world, promoting respect for human rights, democracy and the peaceful co-existence of peoples, and the preservation of natural resources. These objectives can only be achieved in harmony and with the help of international law. They require a functioning international legal framework governing relations with other States and with international organisations.

Glossary

A

Ad hoc tribunals

Following the conflicts in Rwanda and the former Yugoslavia, the Security Council of the > *United Nations* established two ad hoc international criminal tribunals to prosecute > *War crimes*, > *Genocide* and > *Crimes against humanity*. The jurisdiction of these tribunals, unlike that of the > *International Criminal Court*, is limited in duration, and to a specific conflict.

There are other mixed courts, made up of local and international members of staff, which prosecute crimes committed in particular conflicts or under specific regimes. Examples are the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

Aggression

Aggression is the use of armed force by one > *State* against the sovereignty, territorial integrity, or political independence of another State. Although international law in principle prohibits the use of military force it allows for two exceptions: military self-defence in well-defined circumstances or in the context of measures to maintain or restore international peace and security on the basis of a decision taken by the United Nations Security Council under Chapter VII of the > *Charter of the United Nations*.

The international law concept of aggression involving two or more States is not to be confused with the concept of aggression in international criminal law. The latter addresses the criminal responsibility of individuals and is not yet based on an internationally recognised definition.

B

Bilateralism

Term used to describe discussions or negotiations on foreign policy matters that take place between two parties. Although the term usually refers to relations between two > *States*, bilateral relations may equally involve one State and an > *International organisation*. Switzerland for example has concluded a whole series of bilateral agreements with the European Union. A different approach to relations is that of > *Multilateralism*.

C

Charter of the United Nations (UN Charter)

The > *International treaty* that founded the > *United Nations*. The Charter defines the rights and obligations of UN member States as well as the United Nations' areas of responsibility and organs, as an > *International organisation*. Among other things the Charter enshrines the > *Prohibition of the use of force*. A special feature of the Charter is that the obligations it places on member States, such as the implementation of > *Sanctions* imposed by the Security Council, take precedence over other international treaty obligations. This feature gives the Charter the character of a constitution although in fact no formal constitution exists in international law.



Bilateral agreements I and II govern relations between Switzerland and the EU. They cover such areas as freedom of movement for individuals, technical obstacles to trade, procurement, agriculture, air and terrestrial transport, research programmes, domestic security, asylum, the environment or culture.

Collective security

A system for keeping the peace in which all participating > *States* undertake as a fundamental principle to renounce recourse to military force against other States, adopting instead collective coercive measures against an aggressor (> *Aggression*). It differs from a purely defensive alliance in that the aggressor can be a State which is itself a member of the organisation for collective security. A collective security system of this type is thus not only outwardly but also inwardly directed. A prime example of such an organisation is the > *United Nations* which does not however impose an obligation to participate in coercive military measures.

Convention

Standard term for multilateral agreements (> *Multilateralism*) concluded as a rule in the framework of an > *International organisation*, and which regulate issues concerning international relations and international law. Examples: Vienna Convention on the Law of Treaties, the Hague Conventions and the Geneva Conventions.

Crimes against humanity

Acts intended to cause major suffering or serious impairment of physical or mental health qualify as crimes against humanity when committed as part of a widespread or systematic attack directed against a civilian population. In particular this includes murder, extermination, enslavement, deportation, deprivation of freedom in violation of the basic principles of international law, torture, rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilisation and similar forms of serious sexual violence, persecution on political, racial, nationalist, ethnic, cultural, religious or gender specific grounds, apartheid and the enforced disappearance of persons.

Customary international law

Along with international > *Conventions*, custom is one of the two main sources of the rights and obligations of States (> *sources of international law*). Customary international law is referred to when States adopt certain attitudes believing that they are acting in accordance with an obligation.

For customary law to develop, two elements are required: the systematic recurrence of the same pattern of behaviour by States, and the conviction of these States that they are acting in conformity with a rule of international law (and not on the basis of ethics or civility).



The Kyoto Protocol of 1997 set out for the first time binding regulations on the reduction of the emission of greenhouse gases.

D

Depositary

The depositary of an > *International treaty* is a > *State* or an > *International organisation* whose duties are primarily those of a notary and include the safekeeping of documents, certification of documents, as well as the acceptance, safekeeping and transmission of messages, reservations and declarations.

Diplomatic protection

Diplomatic protection allows a State to intervene on behalf of its citizens (individuals or legal entities) who have suffered prejudice of some kind at the hands of another State in violation of international law. The State alone decides on the appropriateness of such intervention. Diplomatic protection is based on the following five principles:

- In exercising diplomatic protection, a State asserts its own right.
- A State can offer diplomatic protection only to its own nationals.
- The exercise of diplomatic protection is possible only if another State has violated international law.
- The nationals in question must have exhausted all local remedies available to them.
- The injured party must not have caused or aggravated the prejudice in question.

Dualism

According to this principle, norms and standards of international law must be incorporated into the body of national laws in order to take effect within a country (in contrast to > *Monism*). Most States that practice dualism have adopted a weakened version: the requirement of incorporation into national law applies only to > *International treaties* since > *Customary international law* is in any case directly applicable. Examples of States that practice dualism are Germany, the United Kingdom and Sweden.

E

Erga omnes rules

The fundamental rules of international law, compliance with which a > *State* is bound both towards other individual States and the international community. Examples of erga omnes rules include the prohibition of > *Genocide*, protection against slavery and against racial discrimination, as well as the protection of other fundamental > *Human rights*. Respect for these obligations is not only in the interest of States that conduct relations in accordance with international law or customary international law but leads to the notion of responsibility towards all members of the international community. Any member of the international community can hold a State responsible for the violations of the rules in question. Although there is a relationship between erga omnes rules and the international law concept of > *ius cogens*, there is a difference in emphasis: in the case of erga omnes rules, it is the interest of the international community in seeing to their implementation that has priority, while in the case of *ius cogens*, it is the nature of these norms and their precedence over other international rules that is of prime concern.

Extraterritoriality

An important principle of international law holds that a > *State* can only exercise jurisdiction on its own territory. Only in exceptional cases can a nation's laws or sovereign acts have legal effect outside its own territory. International treaties and binding decisions of international organisations may provide for such extraterritorial validity. Otherwise, a State's own laws may be applicable in situations arising outside its own territory only when justified by the closeness of the relationship between the State and the object of regulation. Contrary to common belief, for example, the ground on which an embassy is sited in a foreign country does not have the benefit of extraterritoriality but remains the sovereign territory of the > *Host state*. Embassies only benefit from inviolability, i.e. they cannot be penetrated by the authorities of the host country without the prior consent of the sending country.

G

Genocide

Actions which aim at the complete or partial annihilation of a national, ethnic, racial or religious group qualify as genocide. These actions include notably:

- Killing
- Inflicting serious physical or mental injuries
- Measures designed to prevent births, or physically eliminate a particular group
- Enforced transfer of children to another group.

In 1948, the United Nations adopted a convention to prevent and punish genocide.

H

Host state

A State that hosts foreign representations (embassies, consulates) or > *International organisations* on its soil. The host State grants these representations as well as the international organisations (and staff) certain > *Privileges and immunities*. Switzerland, and in particular Geneva, is host to a great many international organisations.

Human rights³

Human rights are the freedoms to which all individuals are entitled as human beings, regardless of colour of skin, nationality, political or religious convictions, social status, age or sex. Human rights are protected through a system of agreements > *Conventions*, > *Resolutions* and declarations of > *International organisations* as well as in > *Customary international law*.

This international system for the protection of human rights is closely associated with > *International humanitarian law* and international refugee law. But although closely related these three branches are quite distinct in their fields of application. Thus international humanitarian law (i.e. the four Geneva Conventions of 1949 together with the Additional

³ Cf. "ABC of Human Rights" brochure
www.eda.admin.ch/eda/en/home/doc/publi/phumig.html

Protocols of 1977) applies in principle only to armed conflicts. International refugee law (e.g. the Geneva Convention relating to the Status of Refugees of 1951 and the Additional Protocol of 1967) applies only to persons with recognised refugee status, and to a limited extent also to asylum seekers. Nowadays, however, human rights apply to all people at all times.

I Immunity

A fundamental principle of international law according to which neither a > *State* nor its highest officials are subject to the jurisdiction of another State. This is a corollary of the principle of the sovereign equality of States and is part of > *Customary international law*. Since 2004, it has also been codified in the United Nations Convention on Jurisdictional Immunities of States and their Property, which is based on the draft articles of the > *International Law Commission*. This convention grants States immunity only with regard to sovereign acts. There is no immunity when an act of a State is comparable to commercial transactions. A head of State enjoys immunity for acts carried out in an official capacity, even at the end of his or her tenure. However recent developments indicate that there may be exceptions to this rule in the case of serious human rights violations. Heads of State do not have immunity before international criminal courts, since these are organs of the international community rather than of individual States.

I International arbitration

A type of > *Peaceful settlement of disputes*, by which the parties agree to submit their differences to an arbitration tribunal (made up of one or more arbitrators). They may refer to an existing dispute-settlement body (e.g. > *Permanent Court of Arbitration*) or to a forum expressly created for the purpose. The decisions of arbitration tribunals are binding on the parties in all cases. Today, the settlement of disputes is of great im-

portance in the realm of international investment protection law among other areas. The appropriate arbitration clauses in bilateral investment protection agreements make it possible for a private company to lodge a direct complaint against a State before an international arbitration tribunal in the case of a violation of the terms of a contract.

International Court of Justice (ICJ)

The most important judicial body of the > *United Nations*. Based in The Hague, the ICJ is composed of 15 judges elected by the General Assembly and the Security Council, with terms of office limited to nine years. It can hand down decisions on legal disputes between > *States* that have recognised its jurisdiction. Its decisions are binding on the parties. The ICJ can also give advisory opinions on legal questions submitted by United Nations organs or other specialised agencies empowered to do so. While its advisory opinions are not legally binding they are highly valued in view of the esteem which the ICJ enjoys in the international community. Since opening its doors in April 1946 as the successor to the Permanent Court of International Justice, the ICJ has handed down more than 120 decisions in disputes between States, as well as 25 advisory opinions.



The 1992 Chemical Weapons Convention prohibits the development, production, stockpiling, transfer and use of chemical weapons. It obliges States Parties to destroy any stocks they might have

International Criminal Court (ICC)

The International Criminal Court in The Hague prosecutes individuals for serious crimes of international concern: > *Genocide*, > *Crimes against humanity* and > *War crimes*. Once the international community has agreed on a definition of the concept of > *Aggression* it will also have jurisdiction over this crime. The ICC plays a complementary role, i.e. it only steps in once it becomes clear that the national authorities primarily responsible for prosecution are either unwilling or unable genuinely to carry out the necessary investigation and prosecution.

The legal basis for the ICC is the Rome Statute which came into force in 2002. To date (2008) 108 countries have acceded to the treaty, including Switzerland.

International criminal law

The branch of international law that provides for the criminal responsibility of individuals with regard to international crimes that have been committed. Examples of international crimes are: > *Genocide*, > *Crimes against humanity*, > *War crimes* and > *Aggression* (a definition of the latter has yet to be agreed on by the international community). According to the principle of universal jurisdiction any State has the power to prosecute and try in its own courts individuals deemed responsible for the international crimes mentioned above. An example is the indictment in Spain of the former Chilean head of State Augusto Pinochet, as a result of which he was arrested on a visit to the United Kingdom. In the 1990s, special > *Ad hoc tribunals* on the model of the Nuremberg and Tokyo trials were created by the United Nations Security Council for international crimes committed during conflicts in the former Yugoslavia and in Rwanda. Following the creation in 2002 of the > *International Criminal Court*, individuals can, in certain cases, be prosecuted for international crimes before the Court, although any such proceedings are subsidiary to those in national courts.

International humanitarian law ⁴

International humanitarian law (IHL) is also known as the Law of Armed Conflict, the International Law of War and “*ius in bello*”. It applies to all armed conflicts, whether lawful or not. IHL makes an effort to balance humanitarian and military interests. If total war and complete annihilation of the opponent is to be prevented, the parties to a conflict must not be left free to wage war by all the means and methods at their disposal. IHL is not only addressed to States, it also contains numerous provisions that must be complied with by individuals (including civilians). In addition to > *Customary international law*, the main sources of IHL are the universally ratified Geneva Conventions of 1949, their two Additional Protocols of 1977, the Hague Regulation of 1907 (Hague Convention), together with various other > *Conventions* prohibiting or restricting the use of specific weapons. Most of the provisions of the Geneva Conventions, their Additional Protocols, or other provisions on the conduct of hostilities have become part of customary international law.

International justice

To ensure universal respect for > *International law* and > *Human rights* the international community has created various courts and tribunals at the universal and regional levels. Their decisions are binding on all States that recognise the courts and tribunals in question.

The > *International Court of Justice (ICJ)* in The Hague is the cornerstone of the system of international justice, being the principal judicial organ of the > *United Nations*. Only > *States* can be subject to the jurisdiction of the Court. The authority of the ICJ, based on the principle of the pre-eminence of law, enables it to make an important contribution to the peaceful settlement of disputes between States.

Today, it is the European Court of Human Rights that is most effective in protecting human rights. This Court, a body of the Council of Europe, ensures compliance of the State Parties with their obligations under the

⁴ Cf. “ABC of International Humanitarian Law” brochure
www.eda.admin.ch/eda/en/home/doc/publi/pintl.html

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Since the 1990s the international community has also created a number of war crimes tribunals (> *Ad hoc tribunals*): the International Criminal Tribunal for the Former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes by the Khmer Rouge (2004).

The creation in 2002 of the > *International Criminal Court (ICC)* in The Hague has given the international community a permanent judicial authority of universal character to prosecute the most serious crimes: > *Genocide*, > *Crimes against humanity* and > *War crimes*, as well as the crime of > *Aggression* once it has been defined.

The International Tribunal for the Law of the Sea, which was set up in 1996, may be invoked by the States Parties to the UN Convention on the Law of the Sea of 1982.



The 1972 Convention on International Liability for Damage Caused by Space Objects sets out the responsibility of States for any damage caused by such objects that are launched into space and return to earth.

International law

International law stems from interaction between > *States* and governs the relations between them. It provides a basis for peace and stability throughout the world and for the protection and well-being of peoples everywhere.

Relations between nations have become more intensive and complex with the advance of globalisation. International law covers many fields, including the > *Prohibition of the use of force*; > *Human rights* and the protection of individuals in times of war and armed conflict (> *International humanitarian law*) as well as international efforts to combat > *Terrorism* and serious crimes. It also extends into such areas as the environment, international trade, development, telecommunications and international transport.

In accordance with the principle of the > *Sovereignty* of States, a State is only obliged to comply with those rules of international law to which it has agreed to adhere (> *International treaties* and > *Customary international law*). Peremptory norms of international law are an exception to this principle because they apply to all States without exception, for example the prohibition of genocide (> *ius cogens*). In Switzerland, matters of international law are usually decided by parliament, as well as by the people through referenda, which may be obligatory or optional. In principle, international law takes precedence over national law (> *Monism*).

International Law Commission

A subsidiary organ of the > *United Nations* General Assembly. The International Law Commission consists of 34 recognised experts in international law, each elected by the General Assembly for a five-year period. Their task is to further develop and codify international law. In this context, the Commission prepares draft treaties for submission to the General Assembly which can then recommend that the UN member States conclude a multilateral > *International treaty* on the basis of the draft.

The most important treaties concluded in this way are the Vienna Convention on the Law of Treaties, the Vienna Conventions on Diplomatic and Consular Relations, the UN Convention on the Law of the Sea and the Rome Statute of the > *International Criminal Court*. The reputation of the Commission's members is such that their drafts have an influence even when they have not yet been adopted by the member States in the form of an international treaty. One example is the Commission's draft articles of 2001 on the responsibility of States, which often serves as a reference for legal decisions.



The Cartagena Protocol on Biosafety of 2000 is the first international legal tool that specifically addresses the safety of the environment and human health in relation to the use of genetically modified living organisms.

International organisation

An international organisation is a permanent association of at least two > *States* concerned with the autonomous execution of specific tasks, and for this purpose is equipped with at least one organ to act on its behalf. International organisations are usually established on the basis of a multilateral agreement, a statute or a charter, that defines their duties and objectives as well as the organs to be established by the organisation. International organisations derive their international legal capacity from States. In contrast to States as the “born” subjects of international law, international organisations are “created” subjects. The most notable example of an international organisation which is truly universal is the > *United Nations*.



The UN Convention on the Law of the Sea of 1982 is a comprehensive regime on the international legal principles regarding the use and protection of the oceans.

International treaty

An international treaty is an agreement between > *States*, or between one or more States and an > *International organisation*, laying down international rules in a given area. Together with > *Customary international law*, the international treaty is one of the two fundamental instruments forming the basis of the rights and obligations of States. Such agreements go under various names, but have equivalent meaning. These names include > *Convention*, agreement, protocol, declaration, charter (e.g. the > *Charter of the United Nations*), covenant, exchange of letters, etc.

Interpretative declaration

Declaration by a State party to an > *International treaty* about how it interprets one or more provisions of a treaty. An interpretative declaration is not to be confused with a > *Reservation*. Whereas in the case of a reservation the legal effect of a treaty provision is annulled or amended in some way, an interpretative declaration concerns admissible interpretation. In contrast to a reservation it does not therefore require acceptance by the other contracting parties.

Ius ad bellum, ius in bello

Ius ad bellum concerns the legality of the threat or use of military force. It is regulated by the > *Charter of the United Nations*.

Ius in bello or > *International humanitarian law* only applies in an armed conflict, regardless of the legality of such a conflict. It regulates both the conduct of war and the protection of victims.

Ius cogens

Denotes peremptory rules of > *Customary international law* to be observed in all circumstances. Any > *International treaty* or other legal acts that are in violation of ius cogens are to be considered null and void. In contrast to the related concept of > *erga omnes rules* (which all members of the international community must respect), ius cogens focuses on the content of norms and their respective precedence. Rules that are part of ius cogens include the > *Prohibition of the use of force*, of > *Genocide* and of torture.

Monism

Principle according to which international law norms and standards automatically acquire validity at the national level (in contrast to a system of > *Dualism*). The provisions of international law are accepted as part of national law. In a monist system there is therefore no need for any act of transformation into national law for an > *International treaty* or for > *Customary international law* to have domestic application. Examples of countries that have a monist system are France, the USA and Switzerland.

Multilateralism

An approach to international issues involving discussions and negotiations between more than two > *States*. Multilateral fora include such > *International organisations* and bodies as the > *United Nations*, the World Trade Organisation, the European Union and the Council of Europe.

An ever greater number of international treaties or conventions (> *Convention*) are negotiated in these multilateral fora, reflecting the ongoing process of globalisation.

N

Neutrality

The legal status of a > *State* which permanently or temporarily renounces participation in armed conflicts. The Hague Conventions of 1907, supported by > *Customary international law*, define the rights and duties of a neutral State.

Essentially, a neutral State has the following fundamental rights: its territory is inviolable; private companies on its territory may trade freely with the warring States; the freedom of private companies to trade also applies to weapons, munitions and other war material.

Neutral States above all have a duty to refrain from participating in armed conflicts between other States. They are expressly prohibited from supporting the belligerents with weapons or troops (and thus cannot take part in a military alliance such as NATO). Furthermore they may not allow warring parties to use their territory for military purposes. Any restrictions they adopt on trade in weapons, munitions and other war material must apply equally to all belligerents. Finally, a neutral State must be able to defend its own territory, if necessary by military force.

The status of neutrality is not relevant in the case of economic sanctions. Neutral States may participate in the application of economic > *Sanctions* adopted by the > *United Nations*, the European Union or any other group of nations.

Nor is neutrality relevant in the case of military sanctions adopted by the UN Security Council acting under Chapter VII of the UN > *Charter of the United Nations*. UN military sanctions should not be equated with war as defined in the Law on Neutrality but rather with legal measures to enforce the decisions of the Security Council on behalf of the international community for the restoration of peace and international security. Thus the Law of Neutrality does not prevent neutral States from participating in sanctions adopted by the Security Council in accordance with Chapter VII of the UN Charter.

Non-governmental organisation

Non-governmental organisations (NGOs) are private-law institutions which carry out their activities independently of State authorities. NGOs can exercise considerable influence on public perceptions of issues and situations, and on forming public opinion. They can obtain consultative status within an > *International organisation*, enter into cooperation agreements, or carry out mandates, e.g. in the context of humanitarian or protection missions.

Pacta sunt servanda

Latin expression meaning “Treaties are to be honoured”. > *States* and > *International organisations* must carry out or comply with the provisions of the treaties to which they are party. This principle is one of the main pillars of the international legal system. It is to be found in the Vienna Conventions on the Law of Treaties of 1969 and 1986, which state that: “Any treaty in force binds the Parties and must be executed by them in good faith.”



The Convention for the Protection of the Architectural Heritage of Europe of 1985 is considered to be one of the most important agreements drawn up by the Council of Europe for the protection of historical monuments.

Peacekeeping operations

International peacekeeping operations are an instrument of the international community for conflict resolution and crisis management. Both civilian and military means may be employed to create stable and peaceful relations. Since the end of the Cold War such operations have further developed and today often involve a much wider variety of tasks, including peacekeeping and peace enforcement, conflict prevention, peacebuilding and peace consolidation, as well as humanitarian operations. Peacekeeping operations are generally mandated by the United Nations and are based on the following principles: impartiality, consent of the conflicting parties to the deployment of peacekeeping troops, use of the minimum force necessary.

Peaceful settlement of disputes

Procedures to achieve the peaceful settlement of a dispute between two or more > *States* can take any of the following forms:

- Negotiation, which is the first and most usual way of resolving disputes. A meeting between the States in question might for example lead to an agreement.
- Procedures involving good offices in which a third State mediates between the parties and ensures the material organisation of a meeting.
- Conciliation and resolution procedures in which a third State or a conciliation commission proposes a solution to the parties concerned, which is however not binding.
- Inquiries, which in principle serve to establish the facts only.
- In the case of an arbitration procedure a panel of individuals designated by the parties has the power to make a final decision, which is binding.
- The States concerned may also submit the case to the International Court of Justice, whose decisions are binding (> *International Court of Justice*).

Permanent Court of Arbitration

An > *International organisation* with over 100 member States. The Permanent Court of Arbitration (PCA) is not a court in the usual sense but rather a forum providing services in the context of the > *Peaceful settlement of disputes*. For this purpose the PCA is able to call upon a pool of qualified arbitrators together with the necessary administrative personnel. The PCA was founded by > *International treaty* in 1899, making it the oldest universal mechanism for the settlement of disputes between > *States*. Today, the Court's services are in demand for disputes of all kinds involving not only States or international organisations but also private companies and even individuals.

Privileges and Immunities⁵

Prerogatives, tax exemptions and other advantages accorded to members of a diplomatic mission and their families as well as to individuals enjoying an equivalent status (for example international civil servants). These privileges and immunities include freedom of communication between the diplomatic mission and the authorities of the sending State; the inviolability of diplomatic staff, i.e. they may not be arrested or detained; the inviolability of diplomatic premises, i.e. the local authorities may not have access without prior authorisation from the head of the diplomatic mission; immunity of jurisdiction, i.e. legal action is not permitted against a diplomatic agent or his/her family; and tax concessions.

Privileges and immunities are not accorded for the personal benefit of the individuals concerned but rather to enable them to perform their duties in complete independence from the receiving State.

Those who enjoy such privileges and immunities are expected to respect the laws of the host country (Article 41 of the Vienna Convention on Diplomatic Relations and Article 55 of the Vienna Convention on Consular Relations).

⁵ Cf. "ABC of Diplomacy" brochure
www.eda.admin.ch/eda/en/home/doc/publi/pdipl.html

Prohibition of the use of force

The > *Charter of the United Nations* prohibits > *States* from resorting to armed force. War is prohibited as a matter of principle. The UN Charter does however permit the use of force in two specific instances:

- A State has the right to self-defence and to the use of military means in order to repel an armed attack on its territory until such time as the Security Council has taken appropriate measures.
- States may take steps to maintain or restore international peace by force with the express authorisation of the Security Council on the basis of a > *Resolution* under the terms of Chapter VII of the UN Charter.

Recognition

Declarative statement by one State that a new > *State* has come into being. With the act of recognition, a State expresses its acceptance of a newly independent territory as a State with which it is ready to deal at the intergovernmental level.

In principle, Switzerland recognises only States, not governments. A change of power in a State or a change in the form of government will thus have no effect on the recognition granted. A newly independent territory does not have an automatic right to recognition as a State. This is a voluntary act and may be made conditional.

Reservation

Declaration made by a State party to a multilateral treaty by which it announces its intention to exclude or change the application of a clause in the treaty. Reservations enable more States to become party to the treaty but are not conducive to its uniform application. An > *International treaty* may exclude the possibility of reservations, or limit them.



The UN Convention against Corruption of 2003 addresses the prevention of corruption and its punishment, as well as the regulation of procedural questions and international cooperation between States Parties to the Convention. It set out for the first time at the multilateral level binding rules on the restitution of illegally acquired assets.

Resolution

Decisions taken by an > *International organisation* and international conferences are called resolutions. Resolutions have a standardised format. They begin with a preamble, which is followed by a number of operative paragraphs. Most resolutions are not legally binding but have the character of a recommendation, as is the case for the resolutions of the General Assembly of the > *United Nations* (with the exception of those concerning the UN's internal law). Some resolutions of the United Nations Security Council can also have immediate effect and be binding on all > *States*. Occasionally, other terms are used in place of "resolution" including decision, recommendation, declaration or other similar terms.

Sanctions

The measures (diplomatic, economic or military) taken by a > *State* or an > *International organisation* to bring about an end to a violation of international law. Violations can be ascertained by an organisation or by a State which considers itself to be a victim.

The UN Security Council, on behalf of the international community, is responsible for declaring what sanctions are to be taken against a State that is endangering international peace.

The World Trade Organisation decides on sanctions in cases of violations of international trade rules.

In other areas, States may take whatever non-military sanctions they deem necessary, providing they are proportionate to the damage inflicted by the offending State. The > *Prohibition of the use of force* is enshrined in the UN Charter. Sanctions may only be implemented after due notification.



The European Convention on Human Rights of 1950 includes the principal rights and freedoms such as the right to life, the right to liberty and security and the freedom of expression.

Self-executing

A provision of international law is said to be “self-executing” when the rights and duties it establishes are sufficiently precise and clear in their formulation. In this case the provision is directly applicable by domestic courts and authorities. If on the other hand the provision of international law is only “programmatic” in character it must be given concrete shape in the form of national law before it can be applied by the courts or authorities (“non self-executing”).

The “self-executing” concept is particularly relevant in States that practise > *Monism*, in which case international law has automatic application. It can also be relevant in States that practise > *Dualism*, depending on the nature of the legal transformation required.

Signature, ratification and accession

An > *International treaty* is signed by the plenipotentiaries at the end of the treaty document. The act of signing marks the conclusion of the treaty. It is then incumbent on the > *State* to act in good faith in accordance with the provisions of the treaty. Unless the treaty provides otherwise, however, signing does not yet make the State a contracting party.

It is only after ratification that a State is bound in international law to observe the terms of the treaty in question. In Switzerland, it is the task of the Federal Assembly to approve ratification of treaties. In exceptional cases the government (Federal Council) may be empowered by law or treaty to sign and ratify a treaty by itself.

In the case of accession, a State becomes party to a treaty through a single act without prior signature.

Soft law

In addition to a legally binding > *International treaty* there are a number of other international instruments, which although not legally binding

are nonetheless intended to hold a > *State* or > *International organisation* to a certain form of behaviour (to do, or to refrain from doing). One example is a > *Resolution* of the > *United Nations* General Assembly, which has the character of a recommendation. These “soft” texts create expectations as to the behaviour of those being addressed, which the latter often find difficult to ignore. Soft law can eventually develop into > *Customary International Law* and ultimately acquire the status of a binding rule.

Sources of international law

The sources of international law are > *International treaties* and > *Customary international law* together with general principles of law. The latter are legal principles that are recognised in most of the world’s legal systems, for example the obligation to act in good faith. For the interpretation of these sources, use is also made of the decisions of courts as well as the writings of recognised international law experts. The most authoritative list of international law sources is given in Article 38 of the Statute of the > *International Court of Justice*.

Sovereignty

At the international level a > *State* is regarded as sovereign if it is independent of all other entities subject to international law (States or > *International organisations*). Consequently the State has no obligations except those it entered into itself and those imposed by peremptory norms of international law (> *ius cogens*).

State

The State is the fundamental legal entity in the framework of international law. States are considered to be the “born” i.e. original subjects of international law. Legal capacity under international law is inherent to

the State: States hold all rights and duties in international law and are fully entitled to enter into an > *International treaty* and to contribute to the creation of > *Customary international law*.

The State comprises three elements: its territory, its people and its government. Affairs between States are regulated by the principle of sovereign equality (> *Sovereignty*).

Terrorism

The concept of “terrorism” has not yet been defined in > *International law*. International law, > *Human rights* and > *International humanitarian law* nonetheless do prohibit many terrorism-related acts and activities. In fact, according to international humanitarian law (IHL), acts generally considered as acts of terrorism, such as attacks on the civilian population or civilian objects, indiscriminate attacks and hostage taking are prohibited both in international and non-international armed conflicts. Moreover, IHL prohibits acts or threats of violence whose primary purpose is to spread terror among the civilian population.

The so-called “War on Terror” is a political concept, not a legal one. IHL applies exclusively to armed conflicts, for example in Afghanistan and Iraq. It does not apply to other situations associated with the “War on Terror”, such as the attacks in Madrid and London in the years 2004 and 2005. This is not to say that terrorist acts and efforts to combat them are not covered by law: human rights, the relevant national laws and various international > *Conventions* that deal with combating terrorism are applicable in such situations.

United Nations (UN)

The UN is an > *International organisation* of truly global reach. It has 192 member States (summer 2008) and provides a forum for the discussion of all topics of international significance.

The UN promotes international peace and security, the defence of

> *Human rights*, the reduction of social inequalities and protection of the environment. It also provides humanitarian aid in international emergencies.

The main organs of the United Nations are the following:

- The General Assembly (representatives of the member > *States*), which deliberates on matters of international order;
- The Security Council (15 member States), which is responsible for the maintenance of international peace and security;
- The Secretariat, which is responsible for administrative matters and for implementing the decisions of the other organs;
- The International Court of Justice, which is the principal judicial organ of the UN (> *International justice*).

The United Nations System also includes many specialised agencies which have the status of a legally independent international organisation and are linked to the United Nations System through special agreements (for example, the World Health Organisation, WHO).

Switzerland became a full member of the United Nations in 2002. Before that date (i.e. since 1948), the Confederation only had observer status although it was also a member of many specialised agencies.



The 1984 UN Convention against Torture prohibits acts of torture under all circumstances. Neither war or domestic unrest nor orders from a superior are acceptable justification for torture.

War crimes

War crimes are grave breaches of the provisions of the Geneva Conventions of 1949 protecting persons and objects, as well as other serious violations of the laws and customs that apply in an international or non-international armed conflict. War crimes include notably: wilful killing, torture, deportation, ill treatment, unlawful detention, hostage taking, wilful attacks against civilians and civilian objects, the recruitment of children in armed forces, and pillage. > *States* are under an obligation to prosecute or extradite persons suspected of having committed war crimes on their territory.

Annex

Three prominent Swiss persons who have influenced international law

The issue of regulating the peaceful co-existence of nations has occupied the minds of legal scholars and philosophers for many centuries. Three Swiss lawyers, namely Emer de Vattel, Max Huber and Paul Guggenheim, have had a major influence on the development of international law.

Emer(ich) de Vattel (1714–1767)

Swiss philosopher, legal theorist and diplomat. In his main work entitled *“Droit des gens, ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains”*¹, published in 1758, de Vattel set out the foundations of modern international law. He attempted to mould the principles of the liberal German philosopher Christian von Wolff into a legal system. His thesis was especially well received in the United Kingdom and the New World. Although the derivation of his basic premises from natural law is only partially accepted nowadays, many of his conclusions remain valid and still influence international legal thought:

- the legal personality of States (and *not* of Princes) in international law;
- the idea of sovereignty and formal equality between nations;
- the principle of non-intervention in the domestic affairs of other States;
- the “*pacta sunt servanda*” precept (treaties are to be honoured) as the basis for an international community;

¹ The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereign

- the meaning of neutrality;
- the requirement that States' actions must respect the principle of the rule of law and be founded constitutionally.

De Vattel was born in 1714 in the Val de Travers near Neuchâtel, which was under Prussian influence at that time. After studying philosophy in Basel and Geneva, around 1742 he went to Dresden where he enjoyed the patronage of Prime Minister Heinrich von Brühl and soon joined the diplomatic service of Saxony. He represented the principality in Bern although he resided mostly in Neuchâtel. In 1758, de Vattel was appointed privy councillor at the court of Prince Elector Frederick August II. De Vattel died in Neuchâtel in 1767.

Max Huber (1874–1960)

Max Huber was born in Zurich in 1874. Between 1894 and 1897, he studied law in Lausanne, Zurich and Berlin, obtaining a doctorate at the latter university in 1897. After several study periods abroad he was appointed professor of constitutional law, canon law and public international law at the University of Zurich in 1902. In addition, he was a permanent legal advisor to the Federal Political Department, which later became the Federal Department of Foreign Affairs. He represented Switzerland at the 2nd International Peace Conference in The Hague in 1907 and at the Paris Peace Conference in 1919. He led a number of Swiss delegations in various bodies of the League of Nations. Between 1920 and 1932, he was a member of the Permanent Court of International Justice in The Hague, taking on the role of President between 1924 and 1927. In addition, in 1928, Max Huber was President of the International Committee of the Red Cross (ICRC) and had a major influence on its activities. After retiring in 1944, he continued as honorary president of the ICRC, in which capacity he was awarded the Nobel Peace Prize in 1945.

Throughout his career Max Huber promoted a concept of international law which favoured the interests of the international community. For him international law was not a doctrine but first and foremost a means to establish a peaceful order based on international cooperation.

Paul Guggenheim (1899–1977)

Paul Guggenheim was born in Zurich in 1899. He studied law in Geneva, Rome and Berlin, obtaining a doctorate in 1924. He returned to Geneva in 1928 after a period working in Kiel and gaining his “*habilitation*” (the required qualification to teach at a university). From 1930 and for over 40 years he lectured at the Graduate Institute of International Studies, gaining a full professorship in 1941. In 1955, he took over the chair of international law at the University of Geneva and also lectured in The Hague and Bruges. At the same time, he was a judge, an attorney and a legal advisor for various governments and international organisations. In the *Interhandel Case*, when Switzerland instituted proceedings against the United States before the International Court of Justice in 1957, Paul Guggenheim represented Switzerland’s interests.

His formula of “neutrality, solidarity, availability and universality” served as a guiding principle for Swiss foreign policy after the Second World War. In addition to his many publications, it was first and foremost Guggenheim’s teaching which shaped Switzerland’s profile as a stronghold of international law. His principles still influence the many outstanding experts in international law working in Switzerland today.

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