

XIAMEN ACADEMY OF INTERNATIONAL LAW

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**The Structural Principles of the
International Legal System**

General Course on Public International Law



Course Outline & Materials

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The Structural Principles of the International Legal System

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Materials

§1 The Structural Principles of the International Legal System

Doc 1

‘Every State has the duty to fulfil in good faith its obligations under generally recognized principles and rules of international law.’ (Friendly Relations Declaration, UN General Assembly resolution 2625 (XXV), 1970, principle VII, para. 1)

Doc 2

Article 38 ICJ Statute, 1945

‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: [...]

c. the general principles of law recognized by civilized nations;’

§2 State sovereignty in general

Doc 3

‘[a]dherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State.’ (ICJ, Nicaragua case, 1986)

Doc 4

‘The principle of State sovereignty is a fundamental principle of international law upon which other principles of international law rest. It is also the primary principle of the Charter of the United Nations [...]. The principle of respect for State sovereignty and territorial integrity [...] has constituted the most important principle of international law and the basic norm governing international relations.’ (Written Statement by the People’s Republic of China to the ICJ in the Kosovo case, 2011)

Doc 5

‘In particular, sovereign equality includes the following elements: [...] (b) Each State enjoys the rights inherent in full sovereignty’ (Friendly Relations Declaration, 1970)

§3 Freedom of action

Doc 6

‘International law governs the relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.’ (PCIJ, The S.S. Lotus, 1927)

Doc 7

‘First of all, in virtue of the principle of sovereignty, we treat as generally admitted the presumption that the state may accomplish any acts, which are not prohibited under international law. Basically, international law is a system of limitations, rather than permissions.’ (Legality of the Threat or Use of Nuclear Weapons, Statement of the Russian Federation, 1995)

Doc 8

‘[e]ach . . . State within the community of nations accepting some subtraction from its full sovereignty in return for similar concessions on the side of the others.’ (UK, House of Lords, The Cristina, 1938)

Doc 9

‘The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.’ (PCIJ, The S.S. Wimbledon, 1923)

Doc 10

‘State sovereignty evidently extends to the area of its foreign policy, and [...] there is no rule of customary international law to prevent a State from choosing and conducting a foreign policy in co-ordination with that of another State.’ (ICJ, Nicaragua case, 1986)

Doc 11

Article 24 UN Charter, 1945

‘1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.’

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.’

Doc 12

‘[t]he necessities of international life may point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organizations can exercise such powers, known as “implied” powers.’ (ICJ, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996)

Doc 13

‘Each State has the right freely to choose and develop its political, social, economic and cultural systems.’ (Friendly Relations Declaration, 1970)

Doc 14

Article 48 ILC Articles on State Responsibility, 2001

‘1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

- (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
- (b) the obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

- (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
- (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.’

Doc 15

Article 19 of the Charter of the Organization of American States, 1948 (as amended)
'No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.'

§4 Sovereign equality

Doc 16

Article 2 (1) UN Charter, 1945

‘The Organization is based on the principle of the sovereign equality of all its Members.’

Doc 17

‘Since men are by nature equal, and their individual rights and obligations the same, as coming equally from nature, Nations, which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness, in this case, counts for nothing. A dwarf is as much a man as a giant; a small Republic is no less a sovereign State than the most powerful Kingdom.’ (Emer de Vattel, *The Law of Nations*, 1758)

Doc 18

‘[t]he principle of sovereign equality of states continues to have full validity in the contemporary world. [...].’

The principle of sovereign equality of states reaches far beyond the issues of state succession. It is basic to the entire United Nations system. It is also essential in the process of treaty making, in the field of diplomatic relations and in all other fields of international life of a state. Even in the European Union, a highly integrated regional arrangement, of which the Republic of Slovenia is a member, sovereign equality has not been superseded by any other principle.

In brief, sovereign equality of states remains a vital foundation of the organized international community.’ (Danilo Türk, President of Slovenia, Speech at the ICJ, 2011)

Doc 19

‘No single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the Law of Nations, it rests upon the common consent of civilized countries. It is of force, not because it is prescribed by any superior power, but because it has been generally accepted as a rule of conduct.’ (US Supreme Court, *The Scotia*, 1871)

Doc 20

Article 38(1) ICJ Statute, 1945

‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;’

Doc 21

‘If it were necessary to do so, I would accept that China has been a persistent objector to restrictive immunity. That is a fact which emerges from the [Office of the Commissioner of the Ministry of Foreign Affairs of China in Hong Kong] OCMFA’s letters.

It is settled that a state cannot opt out of a rule of customary international law once it has crystallised into such a rule. But there is the question of a state’s persistent objection to a practice preventing that practice from crystallising into a rule of customary international law or at least enabling that state to avoid being bound by that rule despite such crystallisation.’ (Hong Kong Court of Final Appeal, *Democratic Republic of the Congo and Others v FG Hemisphere Associates*, 2011)

Doc 22

Article 34 Vienna Convention on the Law of Treaties, 1969

‘A Treaty does not create either obligations or rights for a third State without its consent.’

Doc 23

Article 36(1) Vienna Convention on the Law of Treaties, 1969

‘A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.’

Doc 24

Article 35(2) UN Charter, 1945

‘A State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided for in the present Charter.’

Doc 25

‘It is well established that in its treaty relations a State cannot be bound without its consent, and that consequently no reservation can be effective against any State without its agreement thereto.’ (ICJ, Reservations to the Genocide Convention, 1951)

Doc 26

Article 16 Vienna Convention on Succession of States in respect to Treaties, 1978

‘A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.’

Doc 27

Article 48 Vienna Convention on Diplomatic Relations, 1961

‘The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.’

Doc 28

Article 53 Vienna Convention on the Law of Treaties, 1969

‘[a] peremptory norm of general international law is 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.’

Doc 29

‘[a]n essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.’ (ICJ, Barcelona Traction, 1970)

Doc 30

Article 25 UN Charter, 1945

‘The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.’

Doc 31

‘[e]very nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency amongst civilised states’.
(US Secretary of State Webster, 1842)

Doc 32

Article 11 Vienna Convention on Succession of States in respect of Treaties, 1978

‘A succession of States does not as such affect:

- (a) a boundary established by a treaty; or
- (b) obligations and rights established by a treaty and relating to the regime of a boundary.’

Doc 33

Art. 2(6) UN Charter, 1945

‘The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.’

Doc 34

‘[b]earing in mind the fact that its jurisdiction is limited, that it is invariably based on the consent of the respondent and only exists in so far as this consent has been given.’ (PCIJ, Mavrommatis Palestine Concessions, 1924)

Doc 35

Article IX Genocide Convention, 1948

‘Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those to the responsibility of a State for genocide [...] shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.’

Doc 36

Article 36(2) ICJ Statute, 1945

‘The State Parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes [...]’

Doc 37

Article 38(5) of the ICJ Rules of Court, 1978

‘When the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court’s jurisdiction for the purposes of the case.’

Doc 38

‘In order, therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her; and, if so, to determine also the amount of compensation. [...] To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court’s Statute, namely, that the Court can only exercise jurisdiction over a State with its consent.’ (ICJ, Monetary Gold case, 1954)

Doc 39

‘A comparison between the two Declarations shows that the French Declaration accepts the Court’s jurisdiction within narrower limits than the Norwegian Declaration; consequently, the common will of the Parties, which is the basis of the Court’s jurisdiction, exists within these narrower limits indicated by the French reservation. [...]’

The Court considers that the Norwegian Government is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French Declaration of March 1st, 1949; that this reservation excludes from the jurisdiction of the Court the dispute which has been referred to it by the Application of the French Government; that consequently the Court is without jurisdiction to entertain the Application.’ (ICJ, Norwegian Loans case, 1957)

Doc 40

Article 59 ICJ Statute, 1945

‘The decision of the Court has no binding force except between the parties and in respect of that particular case.’

Doc 41

Article 286 UN Convention on the Law of the Sea, 1982

‘[...] any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.’

Doc 42

Article 62 ICJ Statute, 1945

‘1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. [...].’

Doc 43

Article 96 UN Charter, 1945

‘1. The General Assembly or the Security Council may request the International Court of Justice to give advisory opinions on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising from the scope of their activities.’

Doc 44

‘States are juridically equal.’ (Friendly Relations Declaration, 1970)

Doc 45

Article 10 Charter of Economic Rights and Duties of States, 1974

‘All States are juridically equal, and as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, inter alia, through the appropriate international organizations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom.’

Doc 46

Article 27 UN Charter, 1945

‘1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.’

Doc 47

Article XII, Section 5 Articles of Agreement of the IMF, 1945 (as amended 2011)

‘(a) The total votes of each member shall be equal to the sum of its basic votes and its quota-based votes.

- (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all the members of 5.502 percent of the aggregate sum of the total voting power of all the members, provided that there shall be no fractional basic votes.
- (ii) The quota-based votes of each member shall be the number of votes that results from the allocation of one vote for each part of its quota equivalent to one hundred thousand special drawing rights.’

Doc 48

‘The Court considers that the rule of State immunity occupies an important place in international law and international relations. It derives from the principle of sovereign equality of States, which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order. This principle has to be viewed together with the principle that each State possesses sovereignty over its own territory and that there flows from that sovereignty the jurisdiction of the State over events and persons within that territory. Exceptions to the immunity of the State represent a departure from the principle of sovereign equality. Immunity may represent a departure from the principle of territorial sovereignty and the jurisdiction which flows from it.’ (ICJ, Jurisdictional Immunities of the State case, 2012)

Doc 49

‘The contention that the rule of jurisdictional immunity has shrunk *ratione materiae* with regard to serious violations of human rights and international humanitarian law has no valid basis. It presupposes that a practice to the contrary has evolved which denies immunity in such instances.’ (Jurisdictional Immunities of the State case, Submission of Germany, 2011)

§5 Territorial Sovereignty

Doc 50

‘Between independent States, respect for territorial sovereignty is an essential foundation of international relations’ (ICJ, Corfu Channel case, 1949)

Doc 51

‘The territorial integrity and political independence of the States are inviolable.’

‘Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country’. (Friendly Relations Declaration, 1970)

Doc 52

‘The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible to no limitation not imposed by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.’ (US Supreme Court, *The Schooner Exchange v. McFaddon*, 1812)

Doc 53

Article 12 Rome Statute of the International Criminal Court, 1998

‘2. [...] the Court may exercise its jurisdiction if one or more of the following States are parties to this Statute [...]

- (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
- (b) The State of which the person accused of the crime is a national.’

Doc 54

Article 2(1) Charter of Economic Rights and Duties, 1974

‘Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.’

Doc 55

‘This principle [of sovereign equality] has to be viewed together with the principle that each State possesses sovereignty over its own territory and that there flows from that sovereignty the jurisdiction of the State over events and persons within that territory. Exceptions to the immunity of the State represent a departure from the principle of sovereign equality. Immunity may represent a departure from the principle of territorial sovereignty and the jurisdiction which flows from it.’ (ICJ, Jurisdictional Immunities of the State case, 2012)

Doc 56

‘[t]he exclusive right to display the activities of a State [...] has as a corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and war, together with the rights which each State may claim for its nationals in foreign territory.’ (Max Huber, Island of Palmas case, 1928)

Doc 57

‘The effects of the principle of respect for territorial sovereignty inevitably overlap with those of the principles of the prohibition of the use of force and of non-intervention.’ (ICJ, Nicaragua case, 1986)

Doc 58

Principle 21 Stockholm Declaration of the UN Conference on the Environment, 1972
‘States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.’

Doc 59

Article 51 UN Charter, 1945

‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.’

§6 Personal sovereignty

Doc 60

‘[i]t is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation.’ (ICJ, Nottebohm case, 1955)

Doc 61

Article 1 ILC Articles on Diplomatic Protection, 2006

‘[...] diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal persons that is a national of the former State with a view to the implementation of such responsibility.’

Doc 62

‘This right is necessarily limited to intervention [by a State] on behalf of its own nationals because, in the absence of a special agreement, it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection, and it is as a part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged.’ (PCIJ, Panevezys-Saldutiskis Railway case, 1939)

Doc 63

‘Diplomatic protection deals with a very sensitive area of international relations, since the interest of a foreign State in the protection of its nationals confronts the rights of the territorial sovereign, a fact of which the general law on the subject has had to take cognizance in order to prevent abuses and friction.’ (ICJ, Barcelona Traction case, 1970)

Doc 64

‘By taking up the case of its subjects by resorting to diplomatic action or international judicial proceedings on his behalf, a state is in reality asserting its own rights, its right to ensure, in the person of its subjects, respect for the rules of international law’ (PCIJ, Mavrommatis Palestine Concessions case, 1924)

Doc 65

Article 25 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965

‘1. The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State [...] and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

2. [...] any natural person [or juridical person] who had the nationality of a Contracting State other than the State party to the dispute [...], but does not include any person who on either date also had the nationality of the Contracting State party to the dispute.’

Doc 66

Article 16 Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea

‘This regulations shall apply:

- (a) within the territory of the Community;
- (b) on board any aircraft or vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Community who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State; [...].’

Doc 67

Section 7 German Criminal Code, in the version promulgated 1998

Offences committed abroad-other cases

‘(1) German criminal law shall apply to offences committed abroad against a German, if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal jurisdiction.’

Doc 68

Article 12(2)(b) Rome Statute of the International Criminal Court, 1998

‘[...] the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court [...]

- (b) The state of which the person accused of the crime is a national.’

Doc 69

Article 105 UN Convention on the Law of the Sea, 1982

‘On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of

pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.'

§7 Autonomy

Doc 70

‘As regards the question whether it is French law which governs the contractual obligations in this case, the Court makes the following observations: Any contract which is not a contract between States in their capacity as subjects of international law is based on the municipal law of some country.’ (PCIJ, Serbian Loans case, 1929)

Doc 71

Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Article 1: ‘The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.’

Article 5: ‘The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide [...].’

Doc 72

Article 25 German Constitution, 1949

‘The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.’

Doc 73

Article 2(2) Vienna Convention on the Law of Treaties, 1969

‘The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.’

Doc 74

Article 2 ILC Articles on State Responsibility, 2001

‘An internationally wrongful act of a State requires that conduct consisting of an action or omission:

- (a) is attributable to the State under international law; [...]

Doc 75

Article 4(2) ILC Articles on State Responsibility, 2001

‘An organ includes any person or entity which has that status in accordance with the internal law of the State.’

Doc 76

Article 3 ILC Articles on State Responsibility, 2001

‘The characterization of an act of a State as internationally wrongful is governed by international law. The characterization is not affected by the characterization of the same act as lawful by internal law.’

Doc 77

Article 1(2) Draft Code of Crimes Against the Peace and Security of Mankind, 1996

‘Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.’

Doc 78

Article 13 Draft Declaration on Rights and Duties of States, 1949

‘Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.’

Doc 79

Article 27 Vienna Convention on the Law of Treaties, 1969

‘A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.’

Doc 80

Article 46 Vienna Convention on the Law of Treaties, 1969

‘1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.’

Doc 81

Article 32 ILC Articles on State Responsibility, 2001

‘The responsible State may not rely on the provision of its internal law as justification for failure to comply with its obligations under this Part.’

Doc 82

Article 4 ILC Articles on Diplomatic Protection, 2006

‘For the purpose of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.’

Doc 83

Article 9 ILC Articles on Diplomatic Protection, 2006

‘For the purpose of the diplomatic protection of a corporation, the State of nationality means the State under whose law the corporation was incorporated. [...]’

Doc 84

Article 13 International Covenant on Civil and Political Rights, 1966

‘An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law’.

Article 12 (4) African Charter on Human and Peoples’ Rights, 1981

‘A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.’

§8 Relativity

Doc 85

Article 30 Vienna Convention on the Law of Treaties, 1969

‘3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

- (a) as between States Parties to both treaties the same rule applies as in paragraph 3;
- (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.’

Doc 86

Article 20(4) Vienna Convention on the Law of Treaties, 1969

- ‘(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
- (b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State; [...].’

Doc 87

Article 21 Vienna Convention on the Law of Treaties, 1969

‘1. A reservation established with regard to another party [...]:

- (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
- (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.’

Doc 88

Article 60(2) Vienna Convention on the Law of Treaties, 1969

‘A material breach of a multilateral treaty by one of the parties entitles:

- (a) the other parties by unanimous agreement to suspend or terminate the agreement between themselves and the defaulting State
- (b) a specially affected State to suspend the treaty in the relation between itself and the defaulting State
- (c) any other States to suspend the treaty with respect to itself if the breach radically changes the position of every party.’

Doc 89

‘In any event, the ten-mile rule would appear to be incompatible as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.’ (ICJ, Anglo Norwegian Fisheries case, 1951)

§9 Personality

Doc 90

‘Each State has the duty to respect the personality of other States.’ (Friendly Relations Declaration, 1970)

Doc 91

‘States are artificial legal persons: they can only act through institutions and agencies of the States, which means, ultimately, through its officials and other individuals acting on behalf of the State.’ (Sir Arthur Watts, 1994)

Doc 92

‘1) The Committee considers:

a) that [...] the principles of public international law [...] serve to define the conditions on which an entity constitutes a state; that in this respect, the existence or disappearance of the state is a question of fact; that the effects of recognition by other states are purely declaratory;

b) that the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty; [...].’ (Badinter Commission, Opinion No. 1, 1991)

Doc 93

‘[f]ifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims.’ (ICJ, Reparations for Injuries case, 1949)

Doc 94

‘It may be readily admitted that, according to a well established principle of international law, [...] an international agreement, cannot, as such, create direct rights and obligations for private individuals.’ (PCIJ, Jurisdiction of the Courts of Danzig, 1928)

Doc 95

Article 36 Vienna Convention on Consular Relations, 1963

‘1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: [...]

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if [...] a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;’

§10 Universality

Doc 96

‘The Court has contributed to the growth of international law, to a universal system of international law. Over the years, the Court has interpreted, refined and advanced principles of international law that govern the whole of international society.’ (Address by the President of the ICJ, Judge Stephen M. Schwebel, to the General Assembly, 1998)

Doc 97

Article 8 Statute of the International Law Commission, 1947

‘At the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.’

Doc 98

Article 38 ICJ Statute, 1945

‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: [...]

c. the general principles of law recognized by civilized nations;

Doc 99

Article 9 ICJ Statute, 1945

‘At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.’

§11 Hierarchy

Doc 100

Article 38(1) ICJ Statute, 1945

‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.’

Doc 101

Article 53 Vienna Convention on the Law of Treaties, 1969

‘A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is 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.’

Doc 102

Article 50(1) ILC Articles on State Responsibility, 2001

‘Countermeasures shall not affect:

- (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
- (b) obligations for the protection of fundamental human rights;
- (c) obligations of a humanitarian character prohibiting reprisals;
- (d) other obligations under peremptory norms of general international law.’

Doc 103

‘Because of the importance of the values it protects, [the prohibition of torture] has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by states through international treaties or local or special customs or even general customary rules not endowed with the same normative force.’ (ICTY, Prosecutor v Furundžija, 1998)

Doc 104

Article 103 UN Charter, 1945

‘In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.’

Doc 105

‘Whereas both Libya and the United Kingdom, as Members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that prima facie this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;’ (ICJ, Lockerbie case, 1992)

Doc 106

Article 62(2) Vienna Convention on the Law of Treaties, 1969

‘A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty [or suspending the operation of the treaty]:

- (a) if the treaty establishes a boundary; [...].’

§12 Decentrality

Doc 107

‘[e]ach State which is a party to the Convention is entitled to appraise the validity of the reservation and it exercises this right individually and from its own standpoint. As no State can be bound by a reservation to which it has not consented, it necessarily follows that each State objecting to it will or will not, on the basis of its individual appraisal within the limits of the criterion of the object and purpose stated above, consider the reserving State to be a party to the Convention.’ (ICJ, Reservations to the Genocide Convention case, 1951)

Doc 108

Article 49(1) ILC Articles on State Responsibility, 2001

‘An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.’

Doc 109

Article 60 Vienna Convention on the Law of Treaties, 1969

‘1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles: [...]
(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State.’

Doc 110

‘The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.’ (United States, Alien Tort Statute, 1789)

Doc 111

Article 34 European Convention on Human Rights, 1950

‘The [European] Court [of Human Rights] may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.’

Doc 112

Article 20(2) Annex VI to the UN Convention on the Law of the Sea, 1982

‘The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.’

Doc 113

Article 25(1) Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965

‘The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State [...] and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.’