International Law Outline:

I. Sources & Methods of International Law

A. Nature and History of International Law

A hundred years ago, a student would have called it the 'law of nations'. And, indeed it was: States were regarded as the only legitimate int'l actors, the only entities capable of exercising int'l rights and duties. But in the 20th Century, States ceased to be the sole subjects of int'l legal rules. This is certainly one of the most significant developments in this area of law, for it makes possible the application of norms of conduct to a wide range of individuals, institutions, and businesses. In short, it had 'democratized' law for int'l relations and opened vast vistas of practice opportunities for legal advisors around the world. **Int'l law is**: i) the normative expression of a political system; ii) the product of its particular 'society', it's political system; a construct of norms, standards, principles, institutions, and procedures; iii) about harnessing power (political or otherwise). **Purpose is**: to establish and maintain order and enhance reliable expectations, to protect 'persons', their property and other interests, to further other values. **Constituency is**: states, institutions, individuals, businesses, etc. But states remain 'basic constituent entities' and int'l law continues to be described and characterized as the law of 'the state system' or 'inter-state law', long ago renamed 'int'l law'. **Requisites are/were**: Int'l law has never flourished in times of anarchy nor, for that matter, in times of hegemony. The ideal environment for the development of int'l law have been times of multi-polar int'l relations, where a number of states (which themselves have strong internal institutions and a profound self-awareness/sense of nationalism) have competed and cooperated in a particular part of the world. The birth of int'l law is often given as 1648 or the end of the 30 Years War, which culminated in the Treaty of Westphalia. The Treaty was also the birthplace of the notion of:

> Sovereignty: the idea that states are autonomous and independent, and accountable only to the whim of their rulers, or (in what was then the exceptional case) the popular will of the people. States thus owed no allegiance to a higher authority – not to god, a moral order, or an ideological ideal. States answered to nothing but themselves and to the extent that int'l law existed it was only because states had specifically consented to be bound by such rules; sovereignty is understood to have impose certain kinds of limits on int'l law; **Pros** – reflects the local will, self-determination, and independence; **Cons** – hyper-nationalism
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> > ***Corfu Channel Case/U.K. v. Albania*** (p. 4): "This notion has evolved, and we must not adopt a conception of it which will be in harmony with the new conditions of social life. We can no longer regard sovereignty as an absolute and individual right of every state, as used to be done under the old law founded on the individualist regime, according to which states were only bond by the rules, which they had accepted. Today, owing to social interdependence and to the predominance of the general interest, the states are bound by many ruled which have not been ordered by their will. **The sovereignty of states has no become an institution, an int'l social function of a psychological character, which has to be exercises in accordance with the new int'l law**."
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> New Substantive Rules of Int'l Conduct & New Procedures of Dispute Settlement between Int'l Actors: almost always on the coattails of war; it thus appeared that int'l law was the stepchild of war and destruction, offering a utopian hope of order and moral renewal.

Two Schools on Int'l Law: collision between the two at the height of slavery debate

Naturalists - Hugo de Groot (aka "Grotius" aka "the father of int'l law") who wrote On the Laws of War and Peace – a 'common law' of states backed up by religious and philosophical principles of good faith and good will between nations and people; (What we should do/ethics)

Positivists – Emmerich de Vattel (had a greater influence than Groot) who wrote The Law of Nations – States are subject to no moral authority above them; reigned supreme from 1848-1919 (What we must do/law)

Treaty of Versailles and the Covenant of the League of Nations (1919): history's first attempt at an organization for global peace and security; was doomed from the start due to WWII and the Cold War; established an ambitions program for codifying int'l law and systematizing the rules of int'l conduct; established a permanent int'l judicial tribunal; was concerned with issues of significance to people, and not just gov'ts such as: economic developments, protection of the rights of minorities, and prevention of disease; but these were still unable to keep the peace

The U.N. System: end of war WWII (1945) spawned the system; created an organizational architecture for the int'l community; the U.N. system has since reached out into every aspect and spectrum of human cooperation; has placed state concerns (i.e. sovereignty and maintaining peace) side-by-side with the principle of protecting and extending the dignity of individual human beings; at least partly premised on a natural law notion of the inherent worth of human beings, and is manifested in the creation of rules by which a state must treat its own citizens; **cannot impose its will on any state**; was founded on the prohibition of the use or threat of force between states (Article 2(4)) so, the Security Council was not conceived as a body that would police/enforce int'l law generally and the charter did not create institutions to enforce int'l law, except in respect of the prohibition on the use of force and related threats to int'l peace and security

Article 1 of the U.N. Charter (1945 - - post WWII) – sets forth its major purposes (p. 1 of the Supp)

1) To maintain int'l peace and security
2) To develop friendly relations among nations
3) To achieve int'l co-operation in solving int'l problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all

Note: Preamble contains a clause whereby the peoples of the U.N. "dedicated themselves to practice tolerance and live together with one another as good neighbors"

The Cold War: dominated the int'l law scene particularly because both the USSR and the US had veto power in the U.N.; int'l law took a back seat to this conflict but it flourished in the post cold war era, which lasted about 10 years

Post 9/11 Era: where we are now; security is the central focus of the int'l law scene

Is Int'l Law Really Law at All?: debate continues since there is no 'world government' to legislate, judge, and enforce int'l laws; the int'l law system is set up horizontally not vertically as is the case within nations; law is enforced by: sanctions/economic pressure, 'mobilization of shame' (the classic example is S. Africa & Apartheid; usually the role of NGO's and int'l organizations such as the U.N.), exclusion of participation in int'l organizations (i.e. the World Bank), national courts are occasionally used to enforce int'l law; emergence of int'l courts that directly enforce int'l law upon individuals; anyway, most of int'l law is just a codification of existing mores; **Effect**: int'l is mostly successful; it affects most facets of our lives (i.e. world trade, security, travel (which includes entering state B but also the actual trip to get there),

international mail, etc.; hard part is building a coherent law in the face of diversity (i.e. race, religion, gender, economic systems) and different legal systems

In the U.S.: per Restatement 3rd on Foreign Relations Law of the U.S. Part I, Chapter I, "int'l law is like other law, promoting order, guiding, restraining, regulated behavior. States, the principal addressees of int'l law, treated is as law, consider themselves bound by it, attend to it with a sense of legal obligation and with concern for the consequences of violation…It is part of the law of the U.S., respected by presidents and congresses, and by the states and given effect by the courts."

Responses to Objections to Int'l Law Based on Lack of Enforcement Mechanisms **(p. 23):**

1) There is ***much more voluntary compliance*** with int'l law than the critics would like to acknowledge; if we understand the forces that motivate voluntary compliance, then perhaps we can improve the content of the rules, or improve the system for making rules, so that a greater portion of the system will exert a greater pull towards compliance
2) There are ***more sanctions for disobedience*** than is generally realized, although some of those sanctions are relatively soft; the force of public opinion and the 'mobilization of shame' are not trivial kids of enforcement mechanisms; also NGO's effectively bring the glare of publicity on violations of int'l law, to mobilize public pressure for compliance
3) There are ***more coercive sanctions for disobedience*** than the critics would admit, although those sanctions are largely decentralized and non-forcible; i.e. economic sanctions, suspension or termination of treaties, etc.
4) There may be ***non-forcible remedies available in national courts***; i.e. a victim state might use its own courts or other domestic tribunals to adjudicate claims of its national against the breaching state; alternatively, it may be possible to invoke judicial remedies in 3rd party countries for violation of int'l obligations
5) There are ***some forcible measures*** which provide even stronger forms of compulsion; if one state violates the rule prohibiting force against another's territorial integrity or political independence, then the victim state can respond with individual or collective self-defense
6) There are ***embryonic centralized enforcement mechanisms***, both forcible and non-forcible; the primary source of these is Chapter VII of the U.N. Charter; i.e. collective economic sanctions, the use of multilateral military force for enforcement purposes, etc.
7) Some ***centralized organs now exist for the enforcement of int'l criminal law against individuals***; the ad hoc International Criminal Tribunals have been created through the authority of the Security Council under Chapter VII; substantial progress has been made toward the establishment of a standing international criminal court
8) The int'l ***system is currently undergoing significant changes*** that could substantially transform the effectiveness of coercive enforcement

The most important norm of 20th Century int'l law: the prohibition of the use or threat of force between states -- Article 2(4) of the U.N. Charter

B. Sources and Evidence of International Law

Sources and Evidence of Int'l Law:

1) **A rule of int'l law** is one that has been accepted as such by the int'l community of states
   a. In the form of customary law
   b. By int'l agreement
   c. Or by derivation from general principles common to the major legal systems of the world
2) **Customary int'l law** results from a general and consistent practice of states followed by them from a sense of legal obligation

3) **Int'l agreements** create law for the states parties thereto and may lead to the creation of customary int'l law when such agreements are intended for adherence by states generally and are in fact widely accepted
4) **General principles** common to the major legal systems, even if not incorporated or reflected in customary law or int'l agreement, may be invoked as supplementary rules of int'l law where appropriate

Where do we look to find the rules of international law on any given point?

i) Municipal law: domestic law of other countries (term used in international context)
ii) Common law
iii) Legislation: statutes, constitutions, etc.

Note: Number of sources makes this a complicated area of int'l law

Restatement 3rd §102 (p. 56): goes to international law but is a U.S. statement; Article 38 below is the actual 'source of sources'

Statute of the Int'l Court of Justice - Article 38 (p.56) ****KNOW THIS****

1. 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.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Ex Aequo et bono: according to what is equitable and good on the merits of the case - - equity rather than points of law

Notes: if you learn nothing else in this class, ***for the love of gawd know Article 38***; it gives no express hierarchy but treaties are placed first in the text because they are express agreements but in actuality both treaties and custom have the same weight (with priority given to what was set up later in time); Summary = tells us about the identity of the sources of international law and that there are different ones

Voluntarism: is the classic doctrine of state sovereignty applied to the formation of int'l law; it holds that int'l legal rules emanate exclusively from the free will of states as expressed in conventions or by usages generally accepted at law; supporters emphasize its necessity for a heterogeneous pluralistic world society and the importance of maintaining a clear distinction between existing law (lex lata) and law in formation (les ferenda)

Positivism: emphasizes the obligatory nature of legal norms and the fixed authoritative character of the formal sources; it also tends to consider that to be 'law', the int'l norm must be capable, in principle, of application by a judicial body

Positivist voluntarism: means that states are at once the creators and addressees of the norms of int'l law and that there can be no question today, any more than yesterday, of some 'int'l democracy' in which a majority or representative proportion of states is considered to speak in the name of all and thus be entitled to impose its will on other states; absent voluntarism, int'l law would no longer be performing its function

Do we need new sources? Does it have to be enumerated in article 38 to have any meaning?
Pros and cons of expanding sources: Progressive development but if you expand, you'll have legitimacy problem of having too many sources.

Primary Sources: roughly as a practical matter this is the order in which you approach an issue

A. Custom: not clearly written down or clearly agreed to internationally; often referred to as a 'mysterious phenomenon'; two basic elements we need to establish to say that a customary international law exists/**Test**: 1) general and actual practice of it (widespread preferred) – objective test [legislation; official connotations – things done at official governmental level and expressed officially] **AND** 2) general acceptance of it as a legal obligation (aka opinio juris) – subjective test; sometimes it is held that only the first prong is necessary however, as a practical matter, you really do need to satisfy both

Hilton v. Guyot (p. 65): **The extent to which the United States, or any state, honors the judicial decrees of foreign nations is a matter of choice**, governed by "the comity of nations." Comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." **United States courts generally recognize foreign judgments and decrees unless enforcement would be prejudicial or contrary to the country's interests.**

The Paquete Habana (p. 62): an incredibly important foundational case for U.S. Int'l Attorneys; what court is this and how did this question of customary int'l law come up?: U.S. Supreme Court in 1900, context is the Spanish American War, foreign nat'ls going to u.s. courts to challenge u.s. confiscation/impounding of their boats/property; court says – seizure was unlawful under customary int'l law (they were willing to look at that law b/c int'l law is part of the federal common law & there was no controlling treaty in place at the time); see ***Hilton v. Guyot***; how does he find an int'l customary law to justify his ruling that such seizures is wrong = a history of leaving ships alone during times of war, especially civilian ships; he actually looks at, previous wars and agreements during them, judicial decisions during other times of war, national laws in various countries, executive and monarchical degrees in history, acts of military commanders, and judgments of national courts; looks at mostly European, 'civilized' countries (really just means England and France); Note: today 'civilized' mean everyone with an organized national government – dropped the racist/time dated connotations/limitations; often referred to as one of the greatest upsets in American jurisprudence b/c foreign nat'ls were able to use the U.S. court against U.S. parties; p. 66, 1st partial paragraph, "no civilized nation….";

The Case of the S.S. Lotus (France v. Turkey) (p. 68): which court are we in? permanent court of international justice – which is a construct of the league of nations (aka PCIJ – first institution of its kind, very active during the period, won some and lost some); year is 1927; CIL comes up collision b/w French and Turkish ships; absent an international law on the matter, CIL is resorted to; PCIJ agrees with turkey and says that all they have to show that there is no CIL which prohibits exercising jurisdiction; French come up with one such law; court rejects this b/c they don't buy that the rule the French are citing to actually exists/is customarily practiced because that practice only went to one ship crashing into non-ships and only went to French ships = not applicable here; also there was another practice in France which suggested concurrent jurisdiction; so, France loses; important classical rule here: that which is not prohibited to states is deemed permitted

Legality of the Threat or use of Nuclear Weapons (p. 77): most important international comment to date; this case was really pushed by non-legal parties (not gov'ts); how does the

question of CIL come up here?: nuclear weapons had only been used once = no custom; not all states have nuclear capabilities = no custom; Issue: is the threat or use of nukes ever permitted (implicitly then ever forbidden) under int'l law?; court looks at int'l treaties but none of them fully answer the question here, general assembly resolutions and the states who have pulled together to say they prohibit the use of nukes, which the courts find can be evidence of CIL but are not here b/c the ones sited were designed to have international effect; court ultimately decides – you can't use a threat that fails to meet ***Hilton v. Guyot*** but you can us it if it is an issue of survival or humanitarian law (you can't use nukes when it is against the law to do so – PCIJ, CIL, and treaties; but we can't say that it would always be unlawful); criticism by Higgins of court here is that they turned it into a non liquet = a legal question to which there is no answer, when they didn't have to and really should have done the interpretive work to figure this one out. **Note**: the court does say that there exists an obligation to pursue negotiations in good faith leading up to a nuke threat and/or use.

- There are treaties like the Antarctica Treaty of 1959 the Test-Ban Treaty in 1963 that do completely legally prohibit the use of nuclear weapons; these treaties however do not add up to a prohibition because there are exceptions to the prohibitions;
- **Customary law**: what is the problem with this source of law; nuclear weapons have only been used once; since then never been used, this isn't a custom because circumstances may arise again where nuclear weapons may be used; there are assumption we cannot make; states do not practice deterrence not because of legal requirement but rather because of fear; the need has not arisen; why states follow deterrence is not clear
- General assembly resolutions are not binding; what is the content of the resolution and the conditions of the adoption of that resolution; if these are voted for by all members of the UN then it can't really show custom
- The use of nuclear weapons would be in direct conflict with the rules of armed conflict; when nuclear weapons are used civilians are not protected or excluded, this violates int'l law rules on warfare
- Possession itself is in conflict with non-usage; don't want to use them, don't need to have them
- There are no parties in this case, it's an advisory opinion; the jurisdiction being used is advisory jurisdiction; it's not solving a dispute between two states; it's answering a question posed to it by an authorized body to the UN
- Justice Weeramantry is from Sri Lanka, and his nation would be dramatically affected by a nuclear war between India and Pakistan
- Is the outcome of this case useful? The court did the only thing it could under the circumstances; it tried to maintain credibility when faced with so many conflicting ideas of the use of nuclear weapons

Opinio Juris sive necessitatis: ("opinion that an acct is necessary by rule of law")The principle that for a country's conduct to rise to the level of int'l customary law, it must be shown that the conduct stems from the country's belief that int'l law (rather than a moral obligation) mandates the conduct

North Sea Continental Shelf Cases ICJ 1969: 92

The dispute arises over who owns a greater portion of the continental shelf; Germany v. Denmark and Netherlands; has this treaty become a custom of intl. law?

• When can treaty law provision rise to level of custom that would bind non-signatory state? The treaty can give rise to a customary norm, but there are a range of issues- the number of ratifications; the amount of practice in support of a treaty; the nature of the provision (is it absolute? Is reservation inherent in it?)

• This case sets the "bar" high for the allowance of customary rules; why? Because it can bind states that do not agree to the custom so the court must be sure of what it allows becoming a customary norm; This case was resolved by "equitable" principles to be fair to all states involved

Case Concerning Military and Paramilitary Activities In and Against Nicaragua ICJ 1986: 96

Nicaragua claims unlawful military action by the U.S.; this case goes thru an analysis of customary intl. law; the body of customary norms is separate from the body of treaty law; the norms prohibiting the use of force here are called jus cogens ((("compelling law") a mandatory norm of general international law from which no two or more national may except themselves or release on another; the fundamental peremptory norms, can only be replaced by another norm of the same level)

• Court does not just rely on treaty principles for use of force but also relies on a separate legal basis- co-existing custom principles for non-use of force and the attribute referred to expresses an opinio juris respecting such rule.

• What is a Persistent Objector? A state may escape the effect of customary rules of law if the State has persistently, promptly and consistently object to the application of that rule from its inception. If a custom becomes established as a general rule of intl. law, it binds all States which did not oppose it even if they themselves had not been active in its formation; to NOT be bound by customary norm, a state must expressly oppose it, except jus cogens (example: rule against apartheid); what about new-born states being bound to pre-existing norms; these states begin with a clean slate (free from all treaties and customs).

B. Treaties:

Conventions (written documents); **Treaties**

• No express hierarchy in Article 38 but treaties are placed first in the text because they are express agreements but in actuality both treaties and custom have the same weight (priority to the later in time); some say the treaty only binds the parties in it.

• Treaty law: International convention law: a written agreement between states governed by international law. Some treaties are about obligations between specific states and some treaties are broad law making treaty. To bind non-treaty states it must rise to the level of customary international law. Broad source of law. Specific rule prevails over general rule. Norm of customary law can get developed to rise to the level of treaty.

• Codification and Progressive development:

Progressive Development: is about creating new treaty law that comes about with time that still requires ratification; states changing the rule; deciding on a new rule; breaking with custom, whereas

Codification: is already generally accepted and a more precise systemization of rules (supported by precedent and past customs); putting down on paper what previously existed; enshrining; codification is less controversial

• Intl. Law Commission is a body assigned the task of promoting both progressive development and codification of the law; they draft texts for the UN that are to be negotiated by states

• Treaty-making goes on all the time and is vibrant. Live source of international law.

• Bilateral treaties are clearly a source of law as to the two contracting parties. Bilateral treaties are not usually considered a source of general international law when the reason for concluding them was to create an international obligation that did not exist under general international law.

Extradition treaties fall into the category of contract-law. Absent a bilateral agreement, general international law would not usually require the extradition of an alleged offender. The mere existence of a network of bilateral extradition treaties in and of itself has no general law-creating effect.

• Multilateral conventions with a large number of States parties may be a source of international law, either as evidence of what these states declare the law to be, or by setting forth a new rule of law by implication affecting all states. See ***Case Concerning Reservations to the Genocide Convention.***

C. General Principles of Law (aka int'l **common law** among civilized nations): include a rule of good faith in int'l obligations (known as pacta sunt servanda: ("agreements must be kept") The rule that agreements and stipulation, esp. those contained in treaties, must be observed; see ***Quebec Case***) and the doctrines of necessity and self-defense; the least abstract (and more concrete) the principle, the more useful it is, but also the more difficult it is to find a consensus among domestic legal systems (good example of this is the principles of statue of limitations/laches or, as its known in civil law systems extinctive prescription); recognized by civilized nations (done within the nations); ICJ will not determine presence of GP unless it finds principles across different many systems and legal systems. Actual law, not custom. Near universal private law rules may be indicative of principles of public international law.

General Principles of Law and Equity:

The Broad Expanse of General Principles of Law

1) The principles of municipal law "recognized by civilized nations": Laws within many nations that are basically transferred to the intl. level; the particular principles that are used in the intl. level are those procedural rules that have more to do with notions of fairness; procedural principles are more objective and thus more universal in appeal; intl. law is not a complete system; it's an emerging system by comparison to the old legal systems of many of the worlds nations; intl. law needs to fill in gaps in its rules so it reaches out to laws within nations; there must be a general acceptance before it can become customary; but there are differences between these general principles and customs
2) General principles of law "derived from the specific nature of the intl. community"
3) Principles "intrinsic to the idea of law and basic to all legal systems"
4) Principles "valid thru all kinds of societies in relationships of hierarchy and coordination"
5) Principles of justice founded on "the very nature of man as a rational and social being"

Considerations of Equity and Humanity

Most widely used and cited principle of intl. law is that of general equity; equity defined as consideration of fairness, reasonableness, and good faith

Diversion of Water from the Meuse (Netherlands v. Belgium) PCIJ 1937: 128

Belgium wants to build canals and the Netherlands filed this complaint because the canals alter the flow of water of the River Meuse; principles of equity have been seen in Anglo-American Law, Roman Law; equity has real historic routes; many states derive their civil laws from Roman law; it is appropriate to use equity in such a case; an agreement is a contract between two states and under contract law equity is used to judge such a case

• "He who seeks equity must do equity"; P here was not innocent had done some of the same stuff they were beefing with Belgium about;

Corfu Channel Case (UK v. Albania) ICJ 1949: 133

Similar to the Meuse case; Albania is exploding mines and UK naval ships are being damaged and the ICJ invokes general principles of humanity; elementary considerations of

humanity even more exacting in peace than in war; treaty rule (Hague Convention) not applicable cuz it's not a time of war; thus, General principle of elementary considerations of humanity requires Albania to notify countries that may pass through its waters.

Secondary Sources: Article 59 – Statute of the Int'l Court of Justice p. 37 in Supp; very often used as ways to interpret the primary sources

A. Judicial Decisions: (surprising to U.S. attorneys but done this way b/c not all countries in the world have judicial systems where our system/jurisprudence is as important/even exists – civil law countries are very different); only binding on the parties in the case; applies to municipal decisions and ICJ's decisions

- Enforcement is a separate problem.
- ICJ's decisions are not binding on future ICJ to the extent of stare decisis but the reality is that successive ICJ courts follow older ICJ cases and distinguish carefully. Highly persuasive.
- Other judicial decisions aren't as persuasive as ICJ

Statute of the Int'l Court of Justice – Chapter II Article 38(d) – p. 34 in Supp: The Court, whose function is to decide in accordance with int'l law such disputes as are submitted to it, shall apply: 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; these include:

1. Decisions of the ICJ – regarded by int'l lawyers as highly persuasive on existing int'l law
2. Decisions of Intl. Arbitral Tribunals and other intl. courts
3. Decisions of Municipal Courts

B. Scholarly Writings (aka the teachings of the most highly qualified commentators): Scholars/Judges/Professors/Associations. Never relied on to make new law but to understand existing law. Interpretive value. Problem of national bias not reflective of international view. Divergence of view among writers: who do you believe? Who's right? Historically, the role of writers was significant. Helped to create law. Kept track of international law. Its role is less important now due to the sophistication of IL today.

C. Declarations and Resolutions: "Soft law" (Outside of Article 38)
Soft law: collectively, rules that are neither strictly binding nor completely lacking in legal significance; guidelines, policy declarations, or codes of conduct that set standards of conduct but are not directly enforceable (i.e. General Assembly Resoluations). Plays an important role in international law. Soft law docs have legally binding sources. Not strictly enforceable in court but courts may look to them to interpret law, especially resolutions of UN Economic and Social Council. Common issuers of soft law: UN Crime Prevention Branch; UN Human Rights Commission. Example of soft law: Beijing Declaration on women's rights: global strategy to advance women's rights. Upside: ability to deal with emerging issues; allows standards to develop. Dynamic understanding. Downside: if you're not careful, you can undermine the law. Legitimacy is important in international law.

General Assembly Resolutions: can be cited as int'l law, depending on who & how many voted; 3 kinds

a. Law declarations
b. Procedural: binding effect on member states
c. Declaratory resolutions: argued to be less legal end of the spectrum.

Filartiga v. Pena-Irala US Ct. of App. 2nd Circ. 1980: 143

A wrongful death action brought in fed. dist. ct.; family of decedent bring suit for wrongful death by torture in Paraguay; violates the "law of nations"; deliberate torture under the color of official authority violated the universal rules of intl. law under the Universal Declaration of Human Rights a 1975 UN Gen. Assembly Declaration on the Protection of all Persons from Torture; "these are formal and solemn instruments, suitable for occasions when principles of great and lasting importance are being enunciated"; a declaration resolution - it is a text already followed that is purported to be followed; Is torture a violation of the law of nations?; US court looks at resolutions and declarations as evidence of customary international law. Court takes voting record into consideration: nature, language, voting record (adopted without dissent). Is the resolution repealed? States reaffirming some legal principles.

Texaco Overseas Petroleum Et al. v. Libyan Arab Republic Intl. Arbitral Award 1997: 148
Libya attempted to nationalize all the rights, interests, and property of 2 intl. oil companies within the nation; the companies assert this is a violation of the deeds of concession granted to them jointly by the govt.; the companies asked ICJ to appoint an arbitrator to hear the dispute; Libya contests this arbitration asserting nationalization = act of sovereignty; the arbitrator found in favor of the companies saying that the deeds should be given full force and effect; refusal to recognize a UN resolution must be qualified; the resolution seeks to create a balance between a state's rights of sovereignty and the adaptation of that sovereignty to intl. law, equity, and the principles of intl. cooperation; there is a resolution that supports Libya's view that protects sovereignty and another that tries to compel compliance to customary intl. law; the arbitrator looks at the voting conditions in these resolution like who voted and who abstained; the resolution that Libya is citing deals more with the compensation that a state can allot itself in such situations; another resolution deals with the natural resources of a nation; certain countries will/won't vote for a certain resolution because they have more interests around the world; Who has voted in favor or against? Major ideological divide.

• ***Texaco*** – looked at the particulars of each resolution and decided one was binding over the other; but the resolutions were (and are) given some weight internationally = an evolving approach towards sources of int'l law which are debated but evolving nonetheless
-Should we make these distinctions regarding UN resolutions? Yes, certain resolutions need more weight (i.e. *jus cogens)*; states may or may not apply resolutions to their own domestic laws; diff. resolutions do diff. things some being grandiose (creating new norms) some very forward looking not just stating law, some very technical
• UN Gen. Assembly resolutions are not formally binding (not formally legislation) but these statements have legal value; not independent source of law; often unanimously voted; there is no other body where all states are represented equally; these resolutions fit in the gray area; the way to understand resolutions is in relations to the 3 primary sources; they have legal value if seen as similar to treaty law

On International Law and Municipal Law -

General Considerations: Intl. law is binding on the state, states are obliged to give it effect, but states make and apply int'l law thru their gov't and their constitutional and legal systems; it does not replace domestic laws; obligation to int'l law is upon the state not on any particular branch of its govt. but any violation by any branch is the responsibility of the state; every state has the duty to carry out in good-faith its obligations arising from treaties and other sources of intl. law; regardless of what a state's domestic law may say about international law, all that matters to IL is whether that state is complying with IL. A state's own law is not a valid excuse for non-compliance of international law otherwise int'l law could be totally subverted.