

International security law

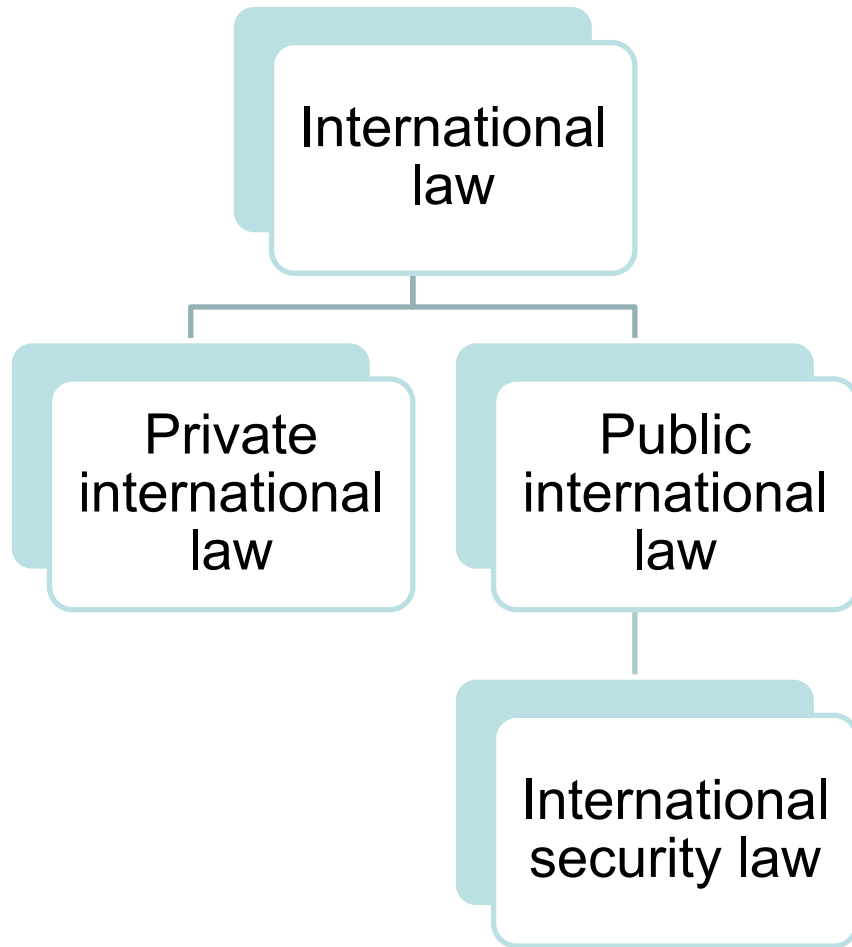
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Definition of international security law (Shaw 2003: 1-2)



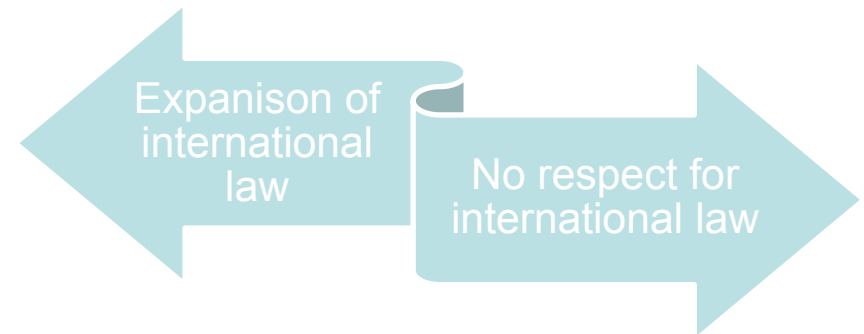
- „Public international law covers relation between states in all their myriad forms, from wars to satellites, and regulates the operations of the many international institutions. It may be universal or general, in which case the stipulated rules bind all states (or practically all depending upon the nature of rule), or regional, whereby a group of states linked geographically or ideologically may recognize special rules applying only to them“ (Shaw 2003: 2).

Characteristic features of public international law

Legal issues

- Sovereign equality;
- Dynamics of development;
- Strong role of customary law (however, growing codification)
- Asymmetry of material and processual law (Malenovský 2002: 12-15)

Political issues



Sources of international law

According to the Statute of the International Court of Justice:

- 1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- 2) international custom, as evidence of a general practice accepted as law;
- 3) the general principles of law recognized by civilized nations;
- 4) 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.

+ to decide a case *ex aequo et bono*, if the parties agree thereto.

<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

Custom ↔ Desuetudo (end of acceptance of the custom) (Malenovský 2002)

Hard law + soft law (resolutions, official statements etc.)

Subjects of international law

- States;
- Sui generis international entities and special cases;
- International organisations;
- Individuals.

(Malenovský 2002, Shaw 2003).

Principles of International Law

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970):

„(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(d) The duty of States to co-operate with one another in accordance with the Charter,

(e) The principle of equal rights and self-determination of peoples,

(f) The principle of sovereign equality of States,

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations“

(<http://www.law.hku.hk/conlawhk/conlaw/outline/Outline4/2625.htm>).

Principle of sovereign equality of States

- Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970):

„In particular, sovereign equality includes the following elements:

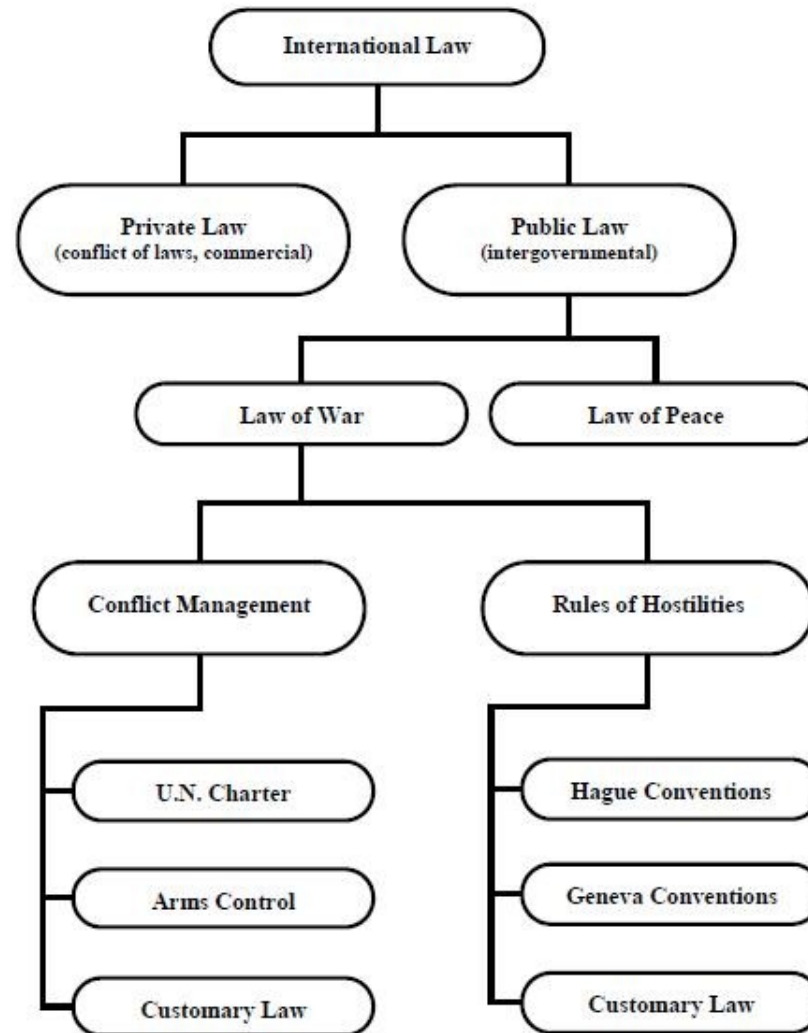
- (a) States are judicially equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States“.

But what about self-determination law? (current debate „Kosovo vs. Crimea“)?

(MM) Article by Marxsen: http://www.mpil.de/files/pdf4/Marxsen_2014_-_The_crimea_crisis_-_an_international_law_perspective.pdf

Law of the war in the system of international law

(Source: Bill et al. 2010)



Jus ad bellum and Jus in bello (Bill et al. 2010: 7)

Jus ad bellum	The law dealing with conflict management, and how States initiate armed conflict (i.e., under what circumstances the use of military power is legally and morally justified).
Jus in bello	The law governing the actions of States once conflict has started (i.e., what legal and moral restraints apply to the conduct of waging war).

Hague Tradition and Geneva Tradition (Bill et al. 2010: 17-18)

The “Hague Tradition”	Targeting Method	„This prong of the law of war focuses on regulating the means and methods of warfare (i.e., tactics, weapons, and targeting decisions)“.
The “Geneva Tradition”	Respect and Protect Method.	„This prong of the law of war is focused on establishing non-derogable protections for the “victims of war” (Wounded and Sick in the Field; Wounded, Sick, and Shipwrecked at Sea; Prisoners of War; Civilians)“.

Use of Force in International Law (Bill et al. 2010: 30-31)

- (1) actions authorized by the UN Security Council under Chapter VII of the UN Charter, and
 - (2) actions that constitute a legitimate act of individual or collective self-defense pursuant to Article 51 of the UN Charter and/or customary international law
- Criteria of self-defence:
 - Necessary use of force
 - Proportional use of force
 - Use of force as a “last resort.”

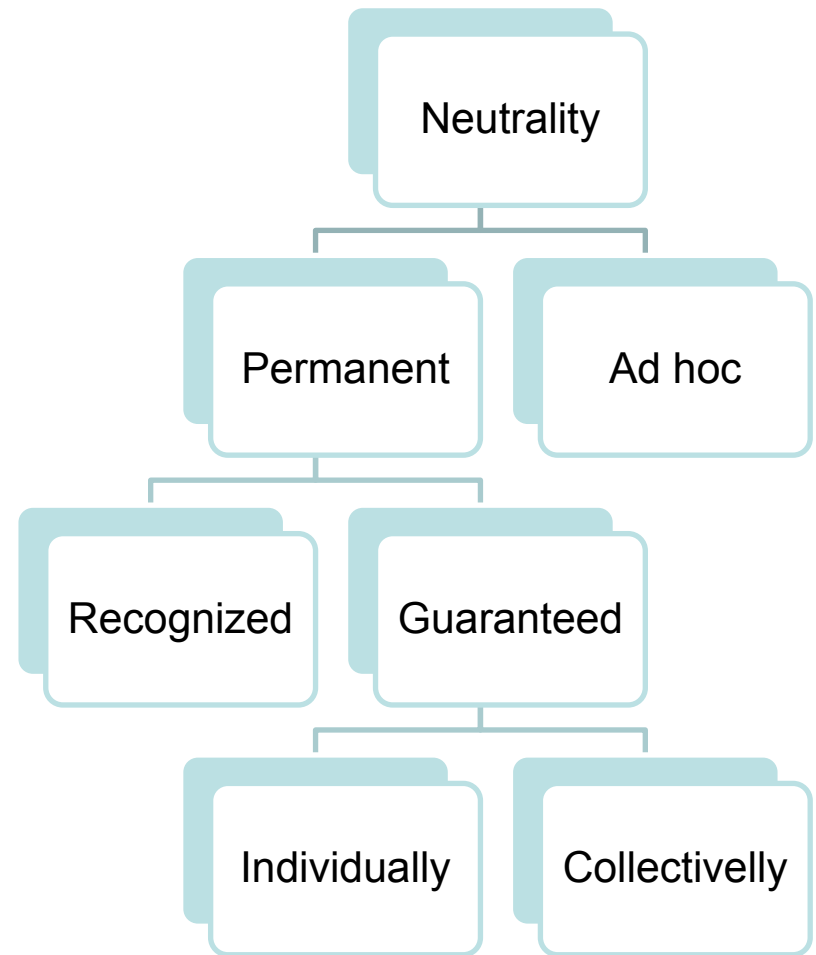
Neutrality

(Rosputinský 2010: 38-39; 54)

Ad hoc – Permanent

De facto – De iure

Armed – Non-Armed



International Criminal Law (Bassiouni 2003)

- „ICL is a complex legal discipline that consist of several components bound by their functional relationship in the pursuit of its value-oriented goals.
- These goals include the prevention and suppression of international criminality, enhancement of accountability and reduction of impunity, and the establishment of international criminal justice.
- Each of ICL s components derives from one or more legal disciplines and their respective branches, including international law, national criminal law, comparative criminal law and procedures, and international an regional human rights law“ (Bassiouni 2003: 1).

International crimes, delicts and infractions

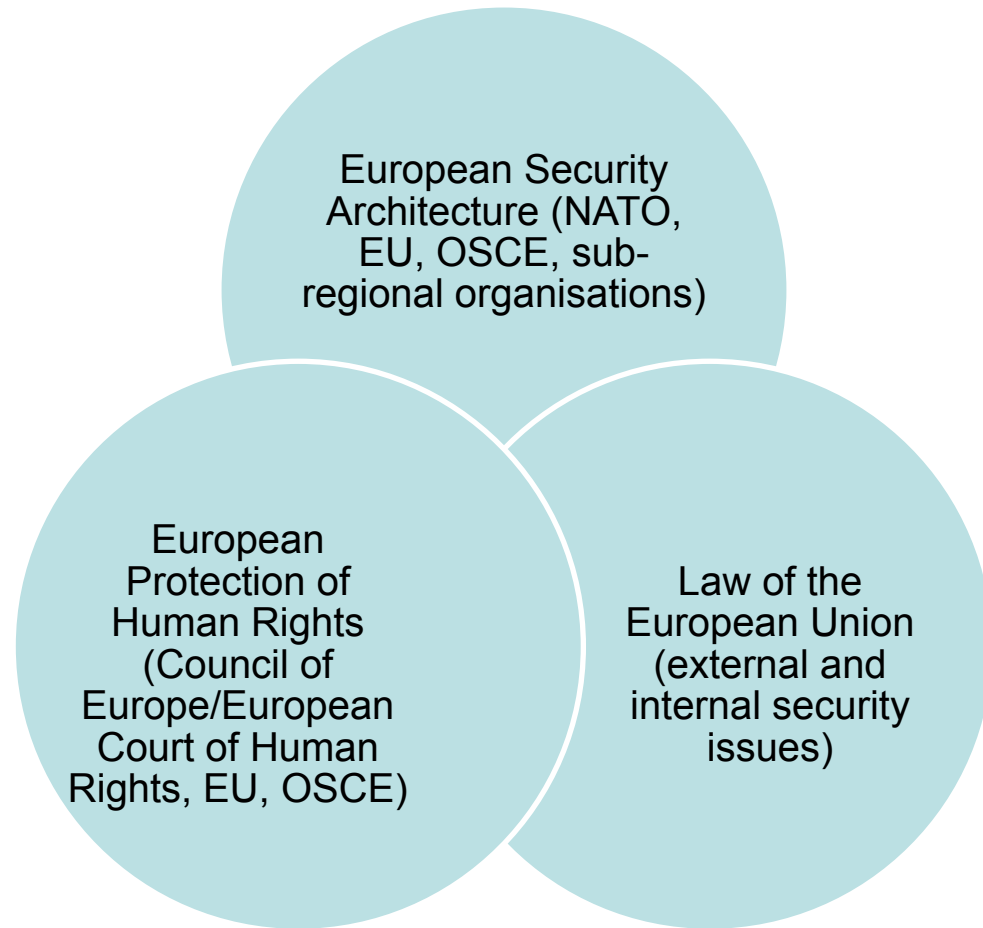
(Bassiouni 2003: 121-123)

International Crimes (affect the peace and security of humankind or contrary to fundamental humanitarian values, or which is the product of state action or a state-favoring policy)	International Delicts (affect an international protected interest; commission involves more than one state or harm victims from more than one state)	International Infractions (not included in the categories IC a ID).
(1) Agression; (2) Genocide; (3) Crimes against humanity; (4) War crimes; (5) Unlawful possession or use of emplacement of weapons; (6) Theft of nuclear materials; (7) Mercenarism; (8) Apartheid; (9) Slavery and slave-related practices; (10) Torture and other forms of cruel, inhuman or degrading treatment or punishment; (11) Unlawful human experimentation;	(12) Piracy; (13) Aircraft hijacking and unlawful acts against international air safety; (14) Unlawful acts against the safety of maritime navigation and the safety of platforms on the high seas; (15) Threat and use of force against internationally protected persons; (16) Crimes against United Nations and associated personnel; (17) Taking of civilian hostages; (18) Unlawful use of the mail; (19) Use of explosives; (20) Financing of terrorism; (21) Unlawful traffic in drugs and related drugs offenses; (22) Organized crimes; (23) Destruction and/or theft of national treasures; (24) Unlawful acts against certain internationally protected elements of the environment.	(25) International traffic in obscene materials; (26) Falsification and counterfeiting; (27) Unlawful interference with international submarine cables; (28) Bribery of foreign public officials.

International criminal courts (Válek 2009)

Source	Aim	Ad hoc	Permanent
Multilateral international treaty		International Military Tribunal („Nuremberg Trial“)(1945)	International Criminal Court (1998/2002)
Resolution (UN Security Council)		International Criminal Tribunal for Former Yugoslavia (1993) International Criminal Tribunal for Rwanda (1994) + International Residual Mechanism for Criminal Tribunals	
Treaty between UN and country (selection)		Special Court for Sierra Leone (2002) Extraordinary Chambers in the Courts of Cambodia for the Prosecutions of Crimes Committed during the Period of Democratic Kampuchea (2003) Special Tribunal for Lebanon (2007)	
Other		International Military Tribunal for the Far East („Tokyo Trial“) (1945) “	

European security law



Sources of European Law

(European Union 2010)

Primary law	<ul style="list-style-type: none">- Founding Treaties (Treaty on the EU and the Treaty on the Functioning of the EU);- The amending EU Treaties;- The protocols annexed to the founding Treaties and to the amending Treaties;- The Treaties on new Member States' accession to the EU.
Secondary law	<ul style="list-style-type: none">- Unilateral acts (a) those listed in Article 288 of the Treaty on the Functioning of the EU: regulations, directives, decisions, opinions and recommendations; b) those not listed in Article 288 of the Treaty on the Functioning of the EU, i.e. "atypical" acts such as communications and recommendations, and white and green papers)- Convention and agreements (international agreements, signed by the EU and a country or outside organisation; agreements between Member States; and interinstitutional agreements, i.e. agreements between the EU institutions)
Supplementary law	<ul style="list-style-type: none">- Case law of the Court of Justice- International law- General principles of law

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