INTERNATIONAL LAW consists of rules, norms, and principles that apply to nations in their dealings with one another. But it should not be thought of as rules imposed on the approximately 190 nations in the world today; rather the rules were generated by the nations (and their predecessors) themselves over the past 5,000 years.

One of the earliest of these rules was the immunity of ambassadors and envoys. The rule gives state A assurance that when it sends its ambassador into state B, the ambassador will not be personally harassed or injured. But state A must pay a price for this confidence: it must itself refrain from injuring or harassing B's ambassador. Behind every rule of international law is a similar cost-benefit component. The idea of cost-benefit in turn suggests two even more fundamental principles of international law—the principle of equality and the principle of reciprocity. Under the principle of equality, state A has the same rights and obligations under international law as state B. Thus, A may be an island state of one square mile and B may be a superpower; they have equal rights, duties, and obligations under international law. Under the principle of reciprocity, state A is put on notice that if it harms B's ambassador, state B may retaliate by harming, or at least arresting and holding hostage, A's own ambassador.

Rules of international law have arisen because states have perceived their national interest to be served by a set of rules, norms, and principles that are grounded in equality and reciprocity. Even though the international legal system has no legislature, no chief executive, and no court of universal jurisdiction, its rules are obeyed as much as, if not more than, the rules of law within any given state. International law is not more frequently violated than, for example, ordinary criminal law. Moreover, as the rules of international law in-
crease in coverage and density over time, the overarching principle of reciprocity ensures that the rules will be treated as a package. Thus, if state A violates a particular rule of international law because it has decided that its self-interest requires the violation, state A may find that other states will retaliate by violating other rules that state A wants to preserve. In 1979, when Iran resorted to the historically unprecedented action of arresting fifty United States diplomats and consular officers, the United States retaliated by invading Iran’s bank accounts and freezing $13 billion of Iranian assets. This invasion of a state’s property was clearly a transgression of international law on its face, but it was justified as a “countermeasure” to force Iran to release the prisoners. Iran had no rational economic choice but to cave in. It returned the prisoners unharmed to the United States, and the United States unfroze the assets. The selection by a victimized state of a different rule of international law for its countermeasure is a variation of game theory’s tit-for-tat strategy, which might be called “tit-for-a-different-tat.” It is a fundamental principle that operates to reinforce the authority of the entire package of international rules.

In early times, when the rules of international law were few, resort to war was a more likely form of retaliation than it is today. As the rules of international law grew more dense with the passage of time, as more nations appeared on the scene, and as communication among states and people became easier, many more possibilities for tit-for-a-different-tat countermeasures have arisen. A victimized state today can select a countermeasure that is proportionate to the initial violation. A significant result is the lessening of the tendency of tit-for-tat retaliation to escalate. There is less need to resort to the ultimate countermeasure—war itself.

Sources. If a controversy arises between two states, where do we find the applicable rules? First we see if the states have entered into a treaty that governs the dispute. If so, the treaty rules prevail in all cases except where the treaty itself may be illegal (for example, treaties concerning the transport of human slaves); illegal treaties are banned by the customary international law of jus cogens. If the treaty is ambiguous, the parties look to the customary international law of treaty interpretation, codified in the Vienna Convention on the Law of Treaties (1969).

If the controversy is not covered by a treaty, then the parties look to customary international law. This pervasive body of law, which may be viewed as the default rules of international law, is similar to common law, except that it developed through the practice of states and not primarily through judicial decisions. As states engaged in practices over a period of time, those practices became regarded as constituting norms, deviation from which was deemed unjustified or illegal. These norms were almost invariably in the long-term interests of the majority of states, or they would not have evolved and persisted.

After treaties and custom, rules of international law may be found in various subsidiary sources. “General principles of law,” reflecting the laws of most states, have been used as sources of procedural rules for international courts and tribunals. The decisions of national courts on questions of international law are not, strictly speaking, determinations of international law itself, but rather constitute authoritative expressions of the practice of the state in which the court sits. This practice, in turn, contributes to the formation of customary international law. “Equity” has sometimes been championed as a source of international law, but the decision of the International Court of Justice in the Continental Shelf Cases put an end to that contention. A still-surviving subsidiary source of international law is the writing of international law scholars. It is felt that a person who devotes his life to the study of international law has achieved a measure of respect for the principles of reciprocity and equality that give some degree of authoritative weight to his conclusions about the content of various rules and norms.

Domain. The domain of present-day international law is vast. It includes:

The Oceans. Seventy-one percent of the earth’s surface is water. International rules, codified in the United Nations Convention on the Law of the Sea (1994), prescribe the breadth of the territorial sea (12 miles) and the extent of the exclusive economic zone (200 miles), the determination of the continental shelf, fisheries and conservation regimes, preservation of endangered aquatic species, mineral exploitation of the seabed, identification of vessels, freedom of navigation and commerce, and many other areas.

Polar Regions. The Arctic Circle is a water mass, subject to oceanic rules, Antarctica is a continent divided into sectors in which some nations have established predominant claims, subject to general principles of international law respecting environmental management and mining activities.

Airspace. The subjacent state has sovereignty over its airspace, but extensive treaty regimes have carved out principles of identification, duress, over-flight, and liability for accidents.

Outer Space. Once considered open territory, all
space above the airspace and all extraterrestrial objects are now regarded as the "common heritage of mankind." The United States, for instance, does not own the Moon, even though it was the first to land a spaceship there.

Artificial Satellites. Increasingly, the stratosphere is being populated with artificial communications and reconnaissance satellites. International law has developed rapidly in this area. The satellites belong to the nations that send them up; other nations have no right to shoot them down. If they fall to earth, the nation owning them has strict liability to pay for all damages.

Global Environment. If state A builds a factory near its border with state B, and the factory emits pollutants that drift over state B, A is liable for damages. Any nation that degrades the global environment (for example, by spillage from an oil tanker) is responsible under international environmental law to clean up the damage. Still controversial is the developing international law of state responsibility for preserving the environment in light of the desire of many nations for rapid economic growth. States so far have only been able to agree on a principle of "sustainable development," a nice-sounding but elusive concept.

Global Market. The transboundary movement of goods, services, and investment is governed by "private international law"—a complex interacting series of contractual arrangements. Yet the line between private and public international law is fuzzy; when there is a resort to default rules, they are the rules of public international law. For example, when governments engage in business transactions, are they shielded by sovereign immunity? Increasingly, the answer of public international law is "no." What about concession agreements—contracts between a government and a foreign corporation? The concession agreements themselves typically spell out their "conflict-of-law rules, but if the rules are ambiguous or incomplete, then public international law steps in. Recently, "antitrust rules have become a subject of international legal regulation. A state may want to regulate anticompetitive activities of subsidiary corporations abroad, yet this intrusive "legislative reach" is bounded by an international rule of reasonableness.

Global Communication. Some nations and religious groups want to regulate the content of international information disseminated over the airwaves and through the worldwide Internet. Content restrictions include advocacy of war or revolution, criticism of government officials or policies, regulation of advertising claims, and suppression of real or fictional depictions of pornography. International law in this area is developing rapidly. Its tendency is in the direction of freedom of information, with some clear exceptions such as child pornography.

International Crimes. The basic rules of international criminal law were developed in the great codification conventions of The Hague in 1899 and 1907 and Geneva in 1949. The Nuremberg and Far East Tribunals after World War II applied these rules to individuals. Nearly five decades later, these precedents have become salient again. The International Criminal Tribunal for Former Yugoslavia, established in The Hague, has been active in prosecuting and trying military and civilian leaders responsible for atrocities committed in Bosnia, Serbia, Croatia, and Kosovo. The public respect accorded this tribunal augurs well for the establishment of an International Criminal Court of universal jurisdiction. The jurisdiction of these special international tribunals over crimes including genocide, murder of civilians, deportation, persecution, rape, pillage, torture, and enslavement is not exclusive. National courts also can exercise jurisdiction over persons who have allegedly committed crimes against humanity or war crimes.

Terrorism and Hijacking. Both terrorism and hijacking are international crimes. But with the terrorist attacks on the World Trade Center in New York City on September 11, 2001, the United States and many of its allies have declared a "war on terrorism," a concept that expands the notion of "war" to include nonstate actors. The classic international law rules regarding belligerency and neutrality need to be revived in dealing with global terrorism. Under the old rules, a state loses its neutrality if it furnishes material support to one of the belligerents. These rules may now be applied to states that harbor terrorists, making such states a legitimate target in the war against terrorism.

Humanitarian Intervention. States may use military force for the limited purpose of preventing large-scale atrocities in other states. The American interventions in Grenada (1983), in Panama (1989), and with NATO's assistance in Kosovo (1999), in varying degrees exemplify this rule. In order to be legitimate under international law, military intervention must satisfy the following minimal criteria: (1) the goal must be to prevent a significant human-rights abuse; (2) the means employed must be proportionate to this goal (in other words, the cure cannot be worse than the disease); (3) all means short of military intervention must have been tried first; (4) U.N. and multilateral support must at least be solicited; (5) it
cannot be part of the goal of the intervenor to seek territorial aggrandizement for itself; (6) it cannot be part of the goal of the intervenor to seek a permanent change in the political independence of the target territory; (7) the intervenor must withdraw its forces as soon as the humanitarian goal is accomplished.

Human Rights. This is the most controversial extension of public international law. Under the classic concept, only states had standing under international law; people were invisible. But since the Holocaust of World War II, the Nuremberg trials, and Eleanor Roosevelt’s superb drafting of a General Assembly resolution entitled “The Universal Declaration of Human Rights” (1948), people are demanding direct access to public international law. Prior to 1945, a state could do anything it wanted to its citizens within its own territory, including murdering them, without any international accountability. Today, genocide, torture, enslavement, and other crimes, possibly extending to persecution and deportation, are illegal under customary international law even if they occur entirely within the territorial boundaries of a state and involve the state’s own nationals. The law of “human rights has a long way to go, but it is conceptually the biggest breakthrough in the 5,000-year history of international law. In effect, it is changing “international law” into “interpersonal law.” One of the major sources of controversy concerns the hierarchy of human rights: Are personal liberties more important than food and shelter? Are fair judicial procedures more important than the right to a job or the right to vacations with pay? Should “capital punishment be banned? What about capital punishment of juveniles? Should “abortion be legalized throughout the world? Should women have equal legal rights as men in countries that wish to preserve their cultural and religious values that hold that women to be subservient to men? It is no wonder that law students are increasingly demanding courses in international human rights.

Group Rights. Among the claims asserted by various groups are the right to self-determination, autonomy, secession, native community practices, native language, and freedom of religious exercise. In the past, these claims were considered to be within the exclusive jurisdiction of the state containing a particular group. But today these claims are becoming internationalized as the result of multilateral conventions and the growing popular conviction that attacks on groups are a form of cultural genocide.

Nationality. The most important link between a person and a state is nationality or “citizenship. International law imposes the requirement of a “genuine link” for nationality to be effective. This concept applies particularly to the nationality of vessels, and rules out “flags of convenience” where there is no genuine link between the ship and its state of incorporation.

The State. Finally, and most fundamentally, international law defines the state itself. It sets forth the basic principle that a government that is in effective control over a defined territory, and owes allegiance to no other government, is a state. The form of government is immaterial; it can be a democracy, a dictatorship, or totalitarian. Once a state is recognized as such, it immediately obtains the benefits, and incurs the obligations, of all the rules, norms, and principles of international law in all the categories enumerated above. It is also bound by the international law of state succession. If government X of state A is overthrown by a revolutionary force, and a new government Y is installed, all the treaties and obligations entered into by the former government X remain binding because they were incurred on behalf of state A itself. Thus a revolutionary government cannot get rid of the state’s previous treaties, as the Soviet Union partially attempted (but never succeeded) after the Revolution of 1917. States may no longer increase their size by aggression and conquest, as they used to centuries ago. Since the Kellogg-Briand Pact of 1928, acquisition of territory by force is illegal. Saddam Hussein learned this when he conquered Kuwait; the international community joined together in the Persian Gulf War to divest him forcibly of his conquest. But states may add to their territory by the consent of other states. An example is the purchase of Alaska from Russia in the nineteenth century.

International Law in National Courts. In some countries, such as Germany under article 25 of its Constitution, international law has the same standing in the courts as national law. In the United States, the relationship between international law and national law is more complex. Any treaty in which the United States is a party constitutes the supreme law of the land under article VI of the Constitution. Whether an individual may bring a lawsuit under a treaty depends on whether or not the treaty is “self-executing.” A treaty that requires further legislation by Congress for its implementation is not self-executing.

Various statutes have expanded the international rights of American citizens in national courts. A person may sue a foreign country for expropriating his property without compensation;
a person who is tortured abroad may, with certain restrictions, bring suit in an American court. The former “sovereign immunity” of foreign countries in American courts has been restricted by the Sovereign Immunities Act of 1976, which provides a “commercial exception” to immunity. Finally, federal courts increasingly recognize international customary law as comprising part of federal common law. But despite these advances, the United States seems to be moving slowly toward incorporating international law as part of its national law.

[See also Comparative Law; Foreign Trade and Investment Law; War Law of]

—Anthony D’Amato