

# World Affairs Council of Philadelphia *Mock ICJ Student Training Session*

---

## Sources of International Law

January 29, 2008

© Diane Edelman 2008



# Common Terminology

---

- Dispute
- Party
- Jurisdiction
- Sources of law
  - Domestic/U.S.
  - Foreign
  - International

# International Courts

---

- ❑ International Court of Justice
- ❑ Criminal Tribunals (Rwanda, Former Yugoslavia, etc.)
- ❑ European Court of Human Rights
- ❑ Inter-American Court of Human Rights
- ❑ International Criminal Court

# Facts about the ICJ

---

- ❑ Located in The Hague, The Netherlands
- ❑ Established pursuant to the ICJ Statute (UN)
- ❑ Web site: [www.icj-cij.org](http://www.icj-cij.org)
- ❑ Jurisdiction: Application or *Compromis*
- ❑ Parties to cases must be countries ("States")
- ❑ Parties represented by teams of Agents and Counsel
- ❑ No "oral argument" in real cases
- ❑ Sources of law: Article 38 of the ICJ Statute

# Article 38 of the ICJ Statute

---

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.

# Treaties

---

## □ Titles

- Convention
- Treaty
- Accord
- Agreement
- Protocol

## □ Arrangements

- bilateral
- multilateral

## □ Types

- Contractual
- Legislative
- Constitutional
- Aspirational

## □ Sources

- Treaties in Force (U.S.)
- Multilateral . . . (U.S. not a party)

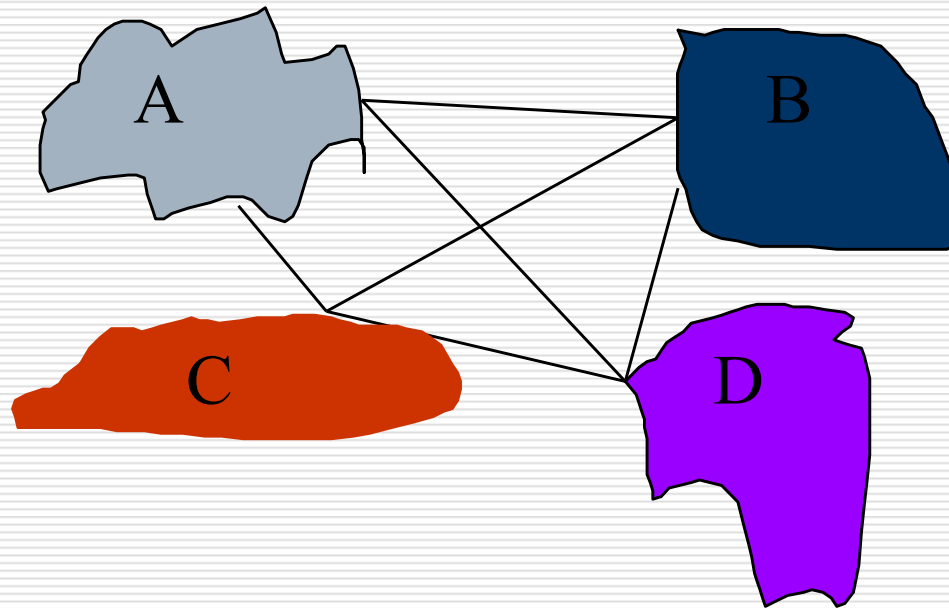
# More treaty terms . . .

---

- *travaux preparatoires*
- *pacta sunt servanda*
- Reservation
- Understanding
- Entry into force
- Termination

# Visualizing International Law -- Treaties

---



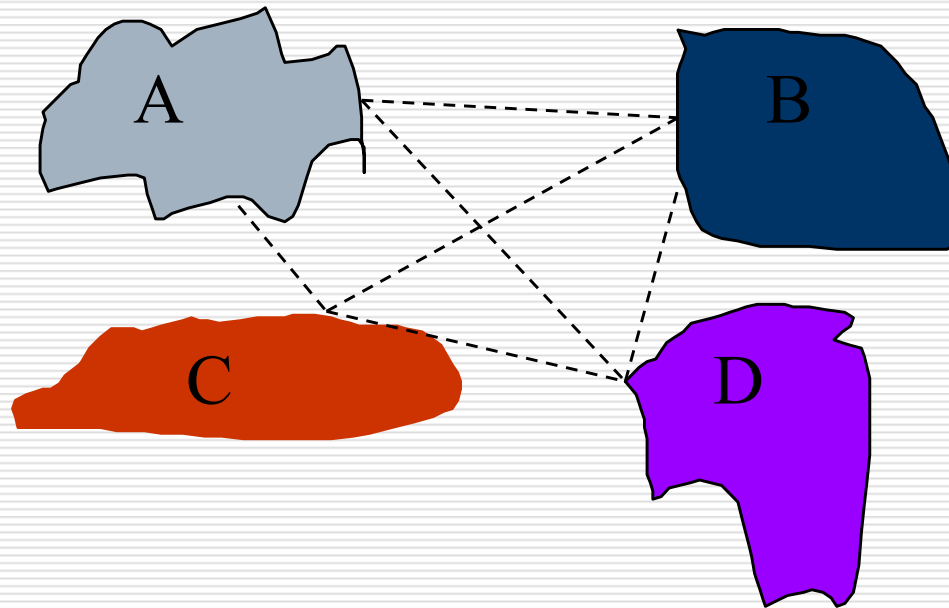
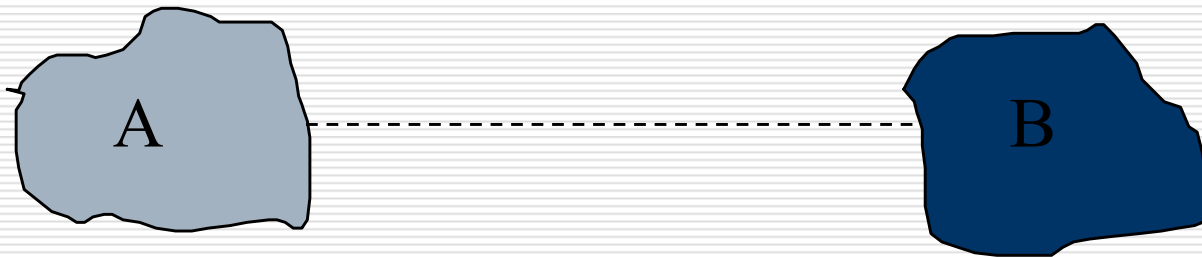
# Customary International Law

---

- When do we rely on it?
- Theory
- Elements
  - “Consistent” State practice
  - *Opinio juris sive necessitatis (opinio juris)*
- *Jus cogens*
- Regional customary international law
- “Instant” customary international law
- “Persistent Objector” doctrine

# Visualizing International Law -- Customary International Law

---



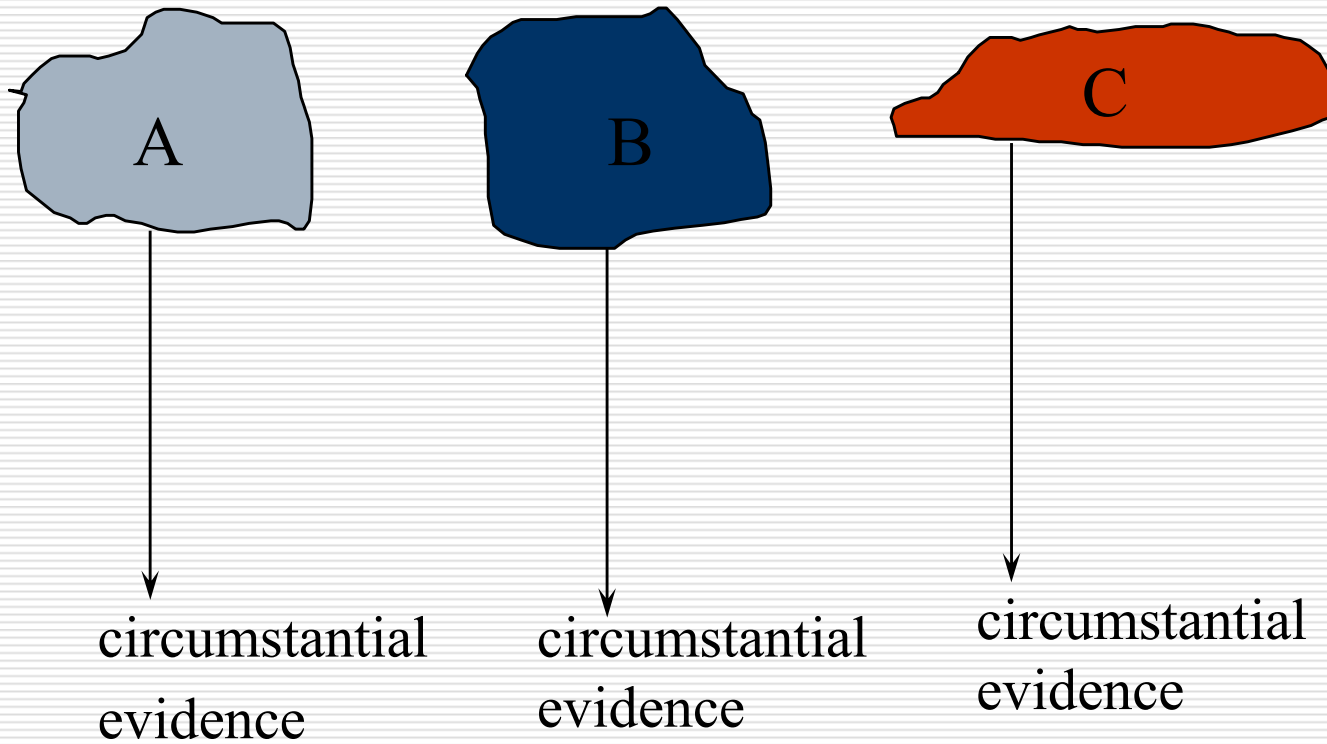
# “General Principles” of International Law

---

- Internal vs. external
- “Civilized” nation
- Examples
  - Estoppel (is a party prevented from raising a claim because of something the party did?)
  - Waiver (did a party give up a claim beforehand?)
  - Damages (what can a party recover?)
  - Evidence (what kind of evidence will a court allow an attorney to use?)
  - Privilege (is a document or conversation protected from being disclosed to the court or an opposing party?)

# Visualizing International Law -- General Principles

---



# Subsidiary Means for Determining Rules of Law

---

- Source vs. Subsidiary Means
- Writings of Publicists
  - Who they are
  - Where they write
- Jurists
  - Which jurists?
  - Finding opinions/court decisions
  - Role of *stare decisis*
- *Ex aequo et bono*

# Recap

---

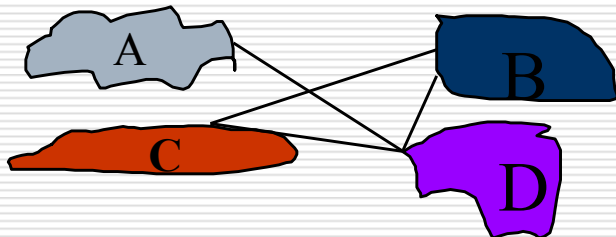
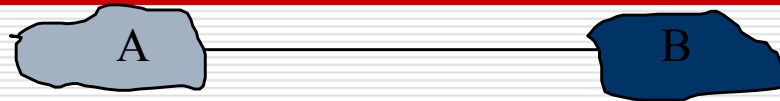
## □ Sources

- Treaties
- Custom
- General Principles

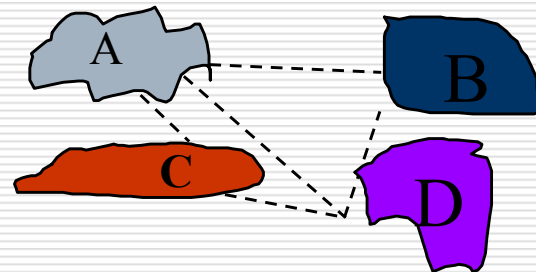
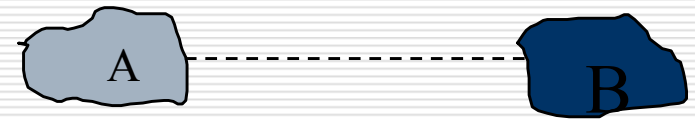
## □ *Subsidiary* Means

- Jurists
- Publicists (Scholars)

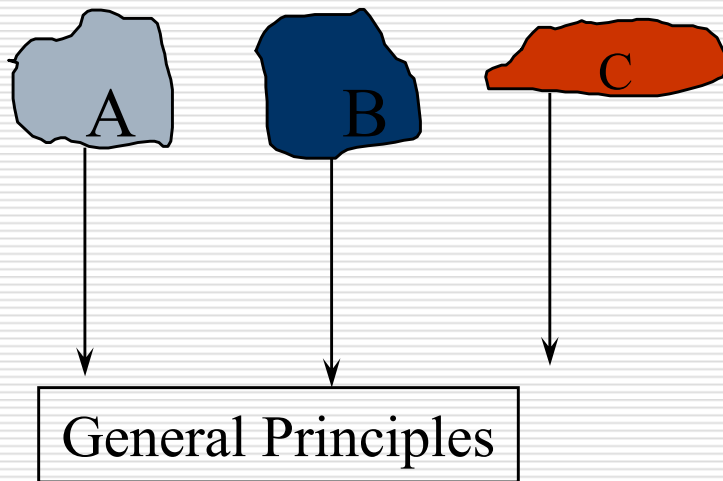
# Visualizing International Law -- Recap



Treaties



Customary International Law



# Useful Web Sites

---

- ❑ United Nations – [www.un.org](http://www.un.org)
- ❑ American Society of International Law (EISIL – Electronic Information System for International Law) – [www.asil.org](http://www.asil.org)
- ❑ International Law Students Association – [www.ilsa.org](http://www.ilsa.org)
- ❑ International Court of Justice – [www.icj-cij.org](http://www.icj-cij.org)

# Useful Materials

---

- ❑ United Nations Charter
- ❑ Statute of the International Court of Justice (especially article 38)
- ❑ Vienna Convention on the Law of Treaties
- ❑ United Nations Treaty Collection Treaty Reference Guide

# Contact Information

---

Diane Penneys Edelman

Assistant Dean for Legal Writing & Director of  
International Studies Programs  
Villanova University School of Law

[edelman@law.villanova.edu](mailto:edelman@law.villanova.edu)