International law.

Not a clear ennumaration of sources of international law. Art 38 icj.

Customer international law.
Unwritten law.
Created by the generality of states so not all the states but it's banding in all states.
We have to understand how to identify the rules. So we look for the formation.
Determination of cil, one hand the two element approach, other hand 1 element approach, elements for determine the existence of a cil rule.

Two element approach:
Material element: practice adopted by the majority of states. Repeated over time in a consistent manner. PRACTICE. REPEATED. CONSISTENT.
Psychological element: opinion iuris. Belief that the rule is necessary by a legal prospective.

One element approach:
One of the elements is enough, it may be the material or the psychological.
Modern custom.

The safest way to determine a rule, is to use the 2 element approach. This has been constantly asseted by international court of justice. 1965 north sea continental shelf. Confirmed that the 2 element approach was the one to use. Also repeated it in the 1986 military and paramirity activities in and against Nicaragua.
We have in 2 approacj defending: art 38

2 element approach is the most relive approach, material element reflects effectiveness, the other element shows the legal nature of the rule.
With one element without opinion iuris we will find a lot of rules looking of what states do.
Modern vs traditional customrty traditional law 2 elements. Modern custom is another way to call 1 element approach.

Who to determine the practice of states:
Declarations: important also if it is verbal acts. They are considered acts.
Also domestic courts practice in national states.
Legislative practice.
Practice has to be constant and repeated. TIME ELEMENT. Uniform and widespread. Now the amount of time for the creation of a role is shorter, in customer international law.
Logical criticism, looks the period of formation but also to the change when states act another condopt.

Creation and application, created by the majority but the application is for all the states.
Particular customer rules, without any qualification it refers to general customer role, if we're referring to particular we have to be specific.
Particular customer can be:

1. Geographic: local or regional.

1.1 Local can be rights relevant for the local rule. Concept of each and every state involved in this rule is necessary to be proved.

1.2 Regional, region of the world, more states. The regional customer rule can be created only be a generality and not all states.
2. By a organization: all the states members who accepts the treat of the organization. The custom can change the treat if the generality of states use it.

GENERAL PRINCIPES OF LAW.

Definition, nature, function.
Definition: General principles of law recognized by civilized nations. Art 38. Highly controversial. What means recognize and by whom, who are civilized nations? What happens if is no rule for a certain case? Court can say law because there is no law. In domestic system there is prohibition of no law (not in penal law). Problem of completeness. If there is no law the solution state is free to do as they like.
Recognized by states in the international legal system or in the domestic legal system. International legal system is incomplete so in the absence of international law we have to find in the domestic system if we find some useful role. General principles could be domestic or international. Aldo the local ones they operated as international ones.
In the actual practice which is the role of general principles?
Expression used also to refers to a important precedents or important roles. Difficult to know. Pactas us servanda. Important rule.

Codification is transposition of unwritten law to written in principle treat rules. Codification refers to customer international law. General law and customer law both unwritten, it writes it. It is binding also if is unwritten but the reason to codify is to : ensure legal rule. Codification is a really ancient process, late nnghteen century.

International law commission, of onu. Permanent organ for codification created by the general assembly.
Formed by persons.
34 members should represent all kinds of legal system.
Codification convention: 1959 convention of codification of treaties. Very important.

- The Vienna Convention on the Law of Treaties
- The Vienna Convention on Succession of States in respect of Treaties
- The Vienna Convention on Diplomatic Relations
- The Draft Articles on the Responsibility of States for Internationally Wrongful Acts

The problem of the codification convention and custom legal law, the conventions are not legally binding, there are just documents. If the draft od the commission doesn't became a treaty is not binding. The ONU cannot create a subsidiary organ that can create bindings.

Montego bay convention 1992 it is a codification convention, law of the sea, not elaborated by international law commission but assembly. Assembly could use other ways to promote the codification of international law.

Codification which include development and transforming general international law to written rules. ARTICLE 13 ONU CHART
Codification is the transformation of the rule that exist already and write it possibly in treaties.
Progressive development means the rule that doesn't exist already but it has to emerge.
Crystallize effect, the rule became stronger and became part of international law. A promotional effect when the rule doesn't exist already.
The question could be: difference between codification and progressive development. Important the difference.
If the codification becomes a codification convention, the rules which in principle correspond to customer rules that we find in a treaty but they are binding every state and the treaty doesn't. the treaty doesn't bind everyone. Even if codification treaties show customer rules, the treaty binds just the states who accepted them. Judge has to verify if the rule in a treaty is a customer rule. So It can be codification for progressive development and not for codification so the rule doesn't exist yet.
Costumer int. law is independent from the treaty. The costumer rule changes automatically and evolves constantly, the treaty has to be changed, is not automatic. Maybe a year a treaty reflects customer international law and after 10 years the costumer law changes so it doesn't reflect it more, but what about the states that are in the treaty? We apply the treaty even if dosn't correspond any longer at customer international law. Treaties prevail over costumer international law because is necessary law between the states. Ratione personae. Ratione materiae. Prevails the most precise law and they are more precise of the customer law. We have to verify weather customer prevails over treaty and if all the stats of that treaty have contribute of a customer rule. If we can verify that the new customer rule is applicated between states of the treaty we can say the states have derogated the treaty rule and apply the new customer rule.

Sources of Int law.
All states:
Customer international law
General principles of international law
Codification: treaties
Legally binds of organizations

The constituent treaty explains if the rules of a specific international organizations are binding or not. We have to distinguish the bindings and the not bindings roles of the organizations. The organization can have other treaties besides constituent treaty. Not always clear of the bindings of the organs of the international organization. Majority of organizations are not entrusted to be legally binding.
WHO is binding- WTO also but only certain provisions. EU too.

Soft law. Not legally binding. All the recommendation for example.

Art 102 provision about registration of treaties but it has not conecuence. If lawers has to look ans search for a treati they we'll find in the onu becose usually it are registred.
Difference between signatorist and parties for the treaties. Signature not impline the consent to be blind.
Difference between signature and ratification is really relevant.

Dececlarations and reservations.

Interpretation of treaties and legally effects of the treaties.
How to interpretate it: who is concerned to the interpretation of the treaty: states, all organs of the states are interested in interpretate it and can interpretate it. International law nad tribuals have privded contribution of interepration of treaties. Meaning of the treaties. O
BJECTIVE METHOD is the mainly text.
SUBJECTIVE METHOD Other kind of interpretation: original will of the states.
Subjective method is considered in a second place, a subsidiary method because the primary method is the objective one.
In daily life treaties are the most common source of international law. Internstionsl court of justice has said tht rules in Vienna convention law of treaties, codify costumer international law.

ARTICLE 31 OF VIENNA CONVENTION OBJECTIVE METHOD
Article 31, GENERAL RULE OF INTERPRETATION
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended. Article 32. SU

INVALIDITY OF TREATY STUDIARE

TERMINATION OF TREATIES:
TERMINATION: 1. TREATY PROVIDES IT: WITH DURATION, WITHDRAWAL OR DENUCIATION CLAUSES. 2. NO PROVISION FOR IT. 3. LATER TREATY.

Realizes the parties of any obligations farther, in the future, not affect the rights and obbligations of the prior application of the traty.
Suspention is the same but only in the period of the suspention.
Provision of the treaty providing a duration. Most famous instance is the European community of steal and carbon, duration of 15 years.
Other termination is: withdraw of the treaty!! What if is not comtainted in the trety any provision? Very difficoult to say if a country can withdrow. ‘is not subject to denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty’. 17 Article 56(2), in turn, requires twelve months’ notice before a withdrawal or denunciation effectuated pursuant to either of these clauses takes effect.1

Withdrawal and denunciation is the same, but the first is about one country in multilateral treaty and the second one is about bilateral treaties.

A later treaty with coincidence of parties, with the same subject, and says the earlier treaty is termined, the early one is termined.
If parties is the same and subject is the same and there is incompatibility the earliy one is terminated.

IMPOSSIIBLITY OF PERFORMANCE:
Termination of the treaty also if the object of the treaty disappears, es. A river. It has to be fundamental for the performance.

REBUS SIXTANTIBUS:
A radical change of the circunstances, quite controversial, open to discretion. Change needs to be fundamental, and the circustancies need to be fundamental.

CONFLICT WITH A LATER PEREMPTORY NORM:
Norm has to be after the coclusion of the treaty, if is before the treay is invalid.

PAY ATTENTION TO THE DIFFERENCE BETWEEN INVALIDITY AND TERMINATION.

STUDY OBLIGATIONS ERGA OMNES.

In case of armed conflict
In case of seccession of states

International law and national law: relationship

Existence of different theories. Monistic and dualistic, first one: they amount to one system, kelsen: one system, one universal community. Dualistic: 2 different systems but they interact. Consequence of dualistic theory: if system is different the international rules need to be incorporate. If we look the state practice there is a variety of ways to incorporate international laws: standing incorporation is permanent incorporation; ad hoc incorporation just for specific rules or treaties; ad hoc statutory if rule needs to be completed;
International law in national legal order has the same status than the domestic act incorporating it!!!
Problem: if there is sources with the same status in conflict with international law.
Costumer international law have a higher rank than ordinary legislation, in Italy japan and Germany.

Russia: constitution says that the international treaties have higher rank, constitutional rank.

Legal personality: capacity to have rights and obligations.
Succession of states: Vienna convention. Is the replacement of a state by another state in govern in a territorial community. Difficult to say if theirs is continuity. Not just an internal change,

Vienna convention is not a successful codification treaty in fact this codification convention provides an important example of codification. Codification consist in the transposition of existing rules (customer rules) into written rules.
Clean slate rules applies with the result of the continuity is only exceptional..
When there is the replacement one of the problem is define the legal consequences and one in the aspects is concerned with treaties, if they apply or not so tabula rasa.
The new state is not party of the Vienna convention so they have to make a declaration to apply.
2 categories of treaties: territorially grounded (straight connected with the utilization of a territory. Rights and obligations attached by the territory) and not territorially grounded.
Since under customary international law clean slate is for NOT territorially grounded. For territorially grounded the principle of continuity applies. Exception: the principle of continuity doesn't apply to those territorially grounded treaties with a strong political nature. Not territorially grounded treaties: principle of clean slate rules.
Emerged trend: by human rights committee under ONU system, individuals cannot be denied by their rights also if this kind of rights are not territorially grounded.

Separation: transfer of territory or secession.
Transfer: part of territory of state A is transferred to state B. Moving frontiers rule! Borders extend to include the new territory.
Secession: part of state A becomes an independent new state.
Dismemberment of a state and creation of new states, is another instance of secession, the rule of clean slate applies.
The moving frontiers rule: all treaties of state A apply to the incorporation.

State A and state B unificated and creates state C.

Attenuation of clean slate rule:
Notification of succession: consist in the communication by the succession state of his intention to be bind by a treaty signed by the precedent state. There is continuity and bind the new state from the beginning of their existence.

Other instruments that can't be considered attenuation of clean slate rule.
The evolution agreement: is not an attenuation since the successor state undertakes with the predecessor state to became parties of the treaties binding the predecessor state. Is not stipulated by the new state and the parties of the treaties, but between old and new state. PACTA TERCIS NEC NUOCES.

International law of the sea
To understand sovereignty of states. Several codification codes. The most 2 important: 1958 4 conventions adopted, and 1982 montego bay convention. Montego bay was adopted after several efforts. Entering to force in 1994. After modify part 11 about the C area, none sovereignty. Despite the fact costumer rules were codify by the 4 conventions od 1958 a new codification was adopter for take in account the new needs but also syntomatic of the needs of the modify of the provisions.
Division of the sea in two areas. 5 main sections, contigus zone, continental shaf, exclusive economic zone, …

Territorial sea: it's basically the belt of sea adjacent to the land territory and internal waters of a state, not exceeding 12 nautical miles. Problem with the measurement from the baseline. 2 techniques, the first one and usual method: low water baseline, determined by the low water. There are exeptions to the low water line rule: straight baseline, it takes in consideration when the water is particular indented so it's impossible to use the low water line which is properly a line, so they use the straight baseline method, it takes the appropriate points of the coast and make this artificial line. Sovereignty over territorial sea: it is basically equated to a land territory of a state. A state has all the functions necessaries to rule. But we have 2 specifics exceptions: 1. Innocent passage rule. The passage must be continuous and expedition 2. Exercise of criminal jurisdiction on board of foreign ships.

Use of force.
Historical development of the prohibition of use of force:

1. Prior world war 1, no prohibition to resort to use of force.

2. League of nations, they have to submit the matter to arbitration or judicial settlement. Is not a general prohibition. Art,12. Introduce conditions before war.

3. 1928 treaty of paris: condemn and refuse war.