

LAST-MINUTE TIPS

ni Atty. G

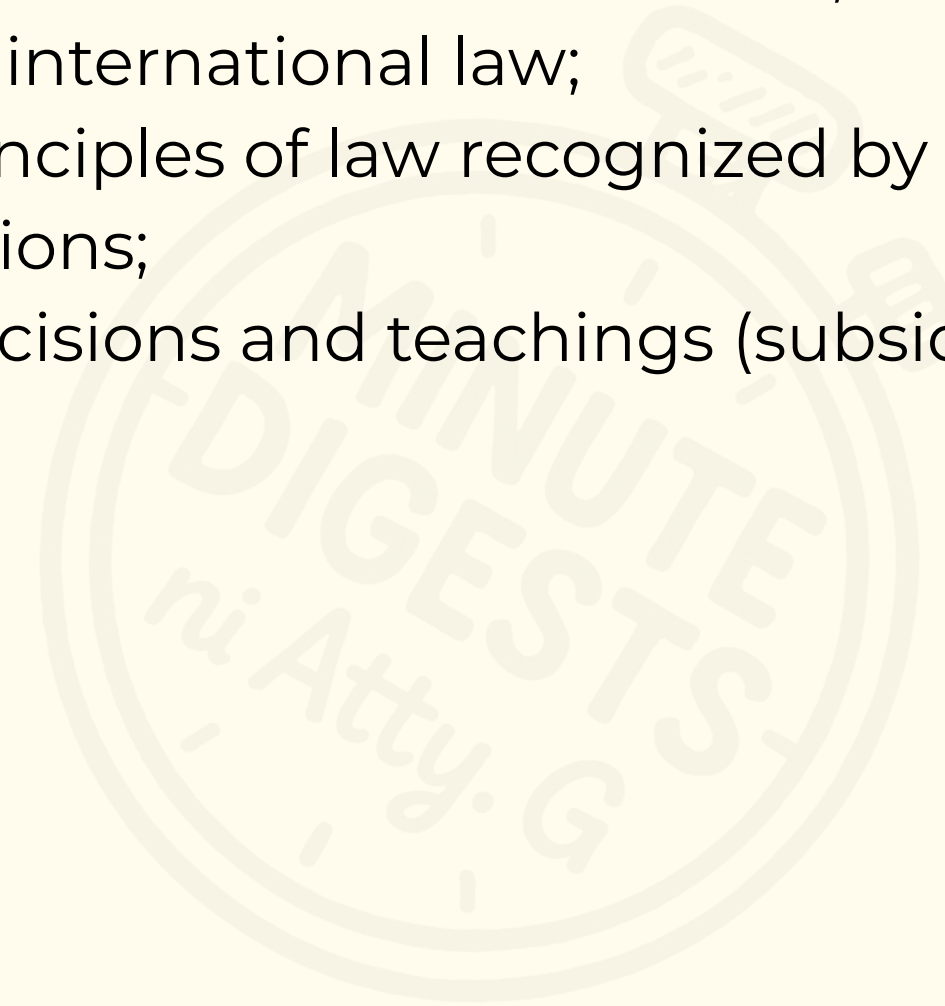


PUBLIC INTERNATIONAL LAW

1

SOURCES OF INTERNATIONAL LAW

1. International conventions or treaties;
2. Customary international law;
3. General principles of law recognized by civilized nations;
4. Judicial decisions and teachings (subsidiary source)



1

SOURCES OF INTERNATIONAL LAW

1. International conventions or treaties

- Agreements between states or international organizations, governed by international law;
- May be oral or written, but the VCLT applies only to written treaties;
- Principle of auto-limitation;
- General rule: treaties only bind the parties. Exception: treaty provisions that codify *jus cogens* norms bind all states.

1

SOURCES OF INTERNATIONAL LAW

2. Customary international law

- Objective + subjective elements;
- Objective element = state practice
 - General, uniform, and consistent practice
 - Over a long period of time
- Subjective element = *opinion juris sive necessitates*.

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SOURCES OF INTERNATIONAL LAW

3. General principles of law recognized by civilized nations

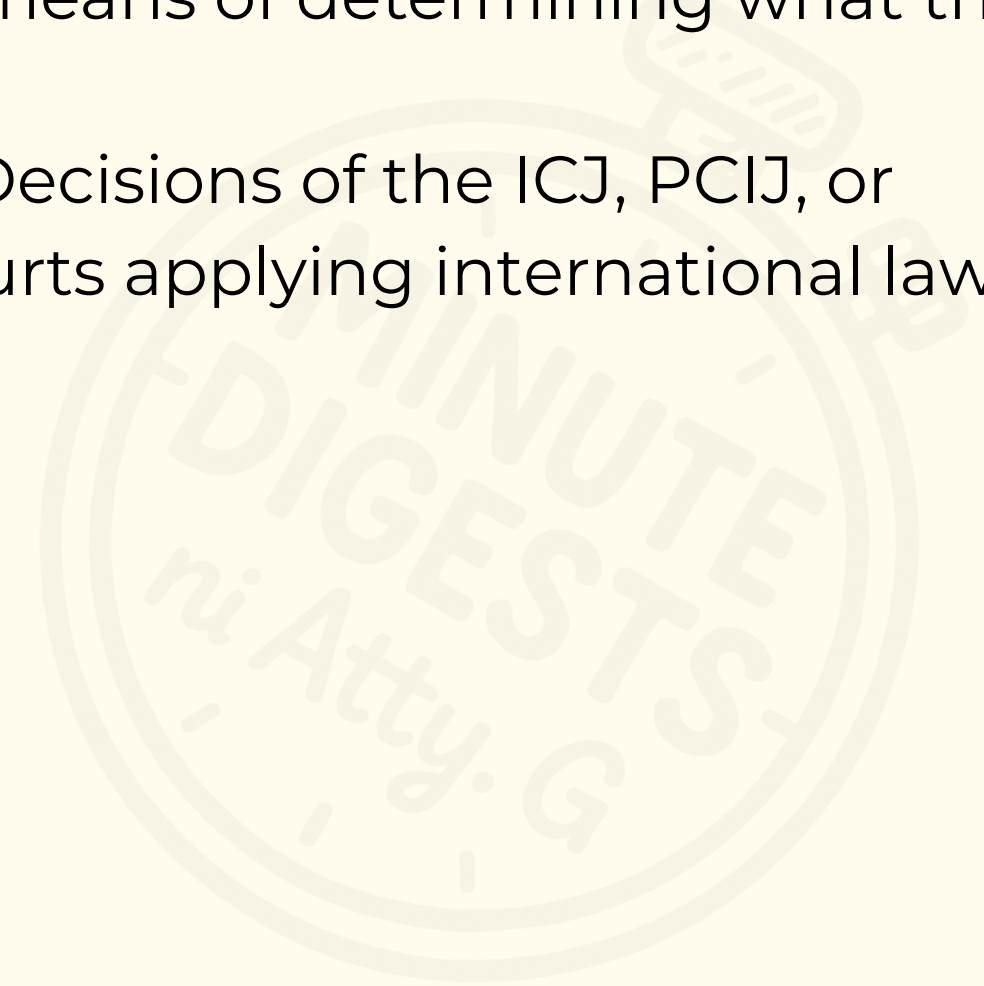
- General principles common to the major legal systems, established by a process of reasoning or judicial logic;
- Examples:
 - general principles of equity;
 - recognition of foreign judgments;
 - status of foundlings as natural-born citizens of the country where they are found (Poe v. Llamanzares);
 - presumption of GF;
 - presumption of innocence;
 - unjust enrichment;
 - right to due process;
 - right to notice and hearing;
 - right to impartial tribunal;
 - laches;
 - estoppel;
 - res judicata.
- Constitution, Art. II, Sec. 2

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SOURCES OF INTERNATIONAL LAW

4. Judicial decisions and teachings

- Subsidiary means of determining what the rule is;
- Examples: Decisions of the ICJ, PCIJ, or national courts applying international law principles.



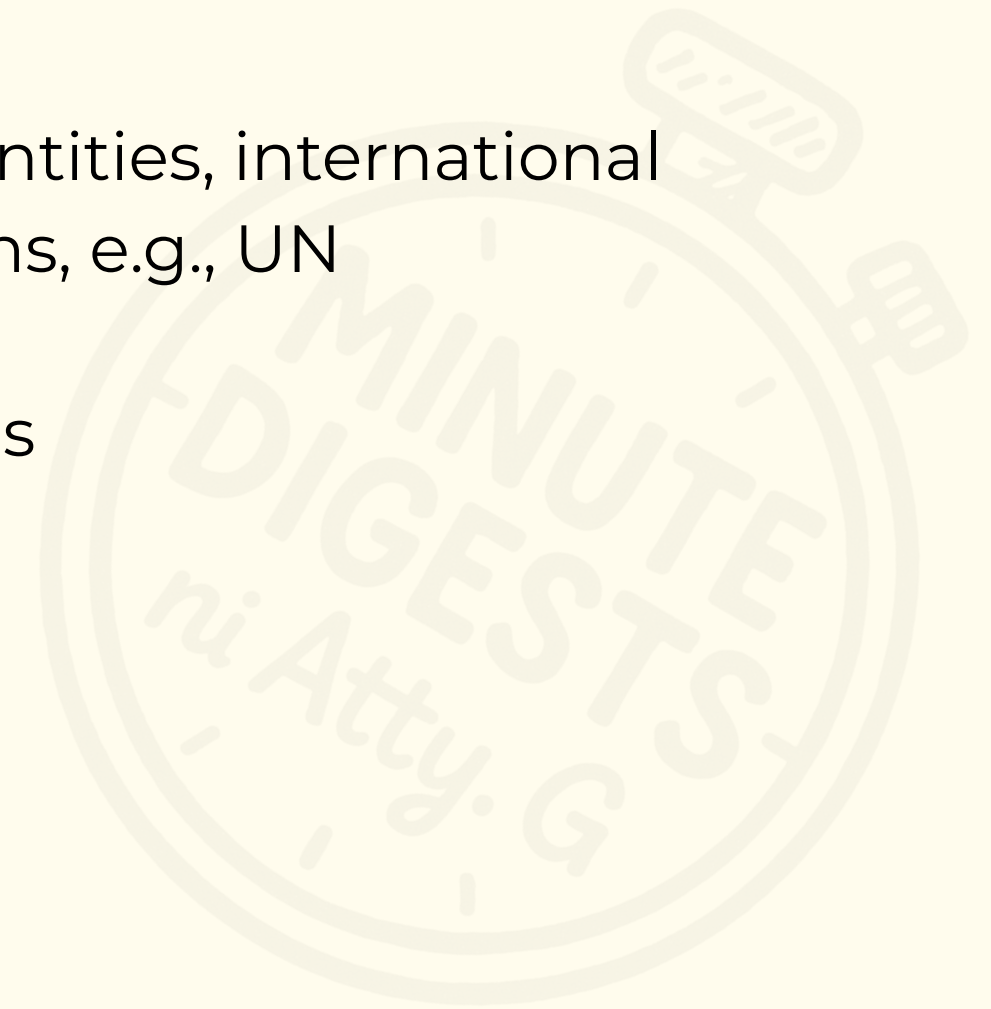
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INTERNATIONAL LEGAL PERSONALITY

The capacity of a person or entity to have rights and duties under international law:

Subjects of IL:

- States;
- Non-state entities, international organizations, e.g., UN
- Individuals
- Corporations



2

INTERNATIONAL LEGAL PERSONALITY

Subjects of IL; International organizations

The United Nations (UN)

UNGA

Main deliberative, policymaking, and representative organ

Deals with international issues

Resolutions are generally non-binding (recommendatory)

UNSC

Primarily responsible for maintaining international peace and security

Deals with enforcement acts

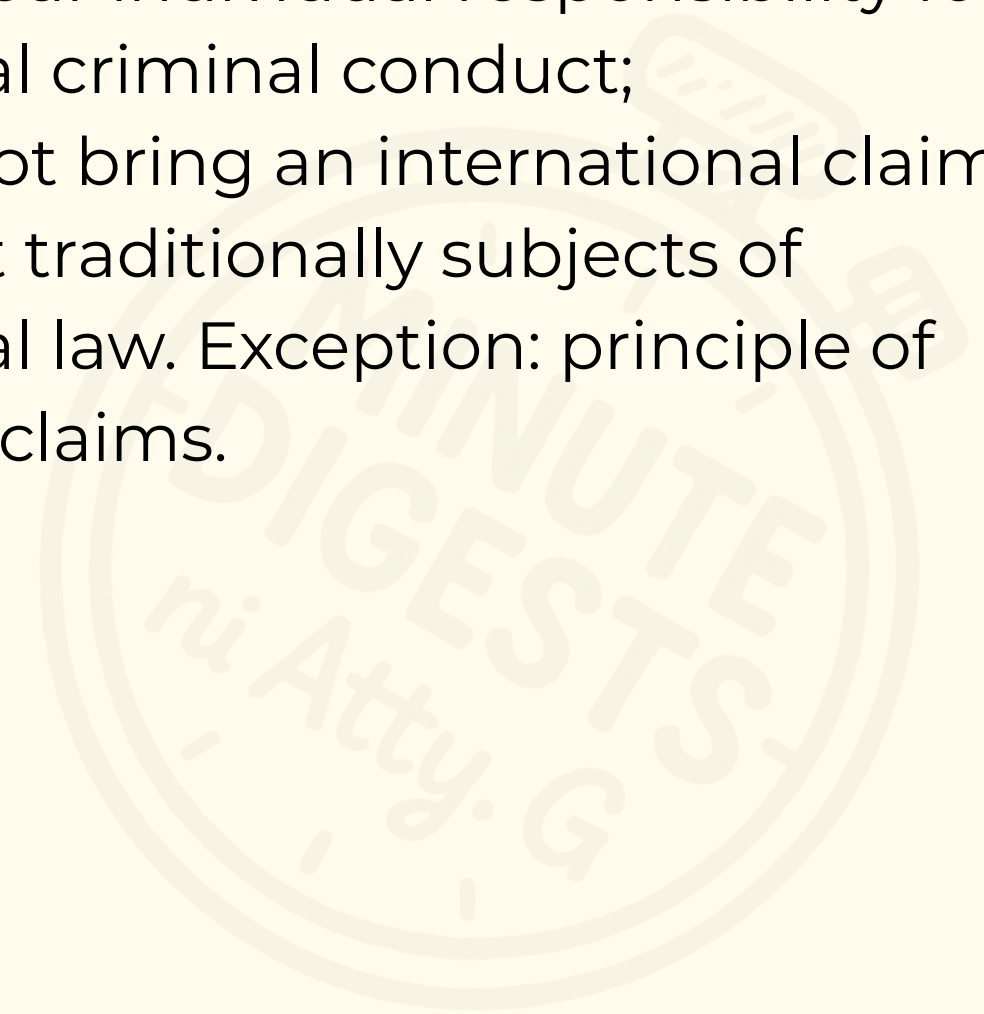
Resolutions are generally binding on member states

2

INTERNATIONAL LEGAL PERSONALITY

Subjects of IL; Individuals

- They can incur individual responsibility for international criminal conduct;
- They may not bring an international claim as they are not traditionally subjects of international law. Exception: principle of espousal of claims.

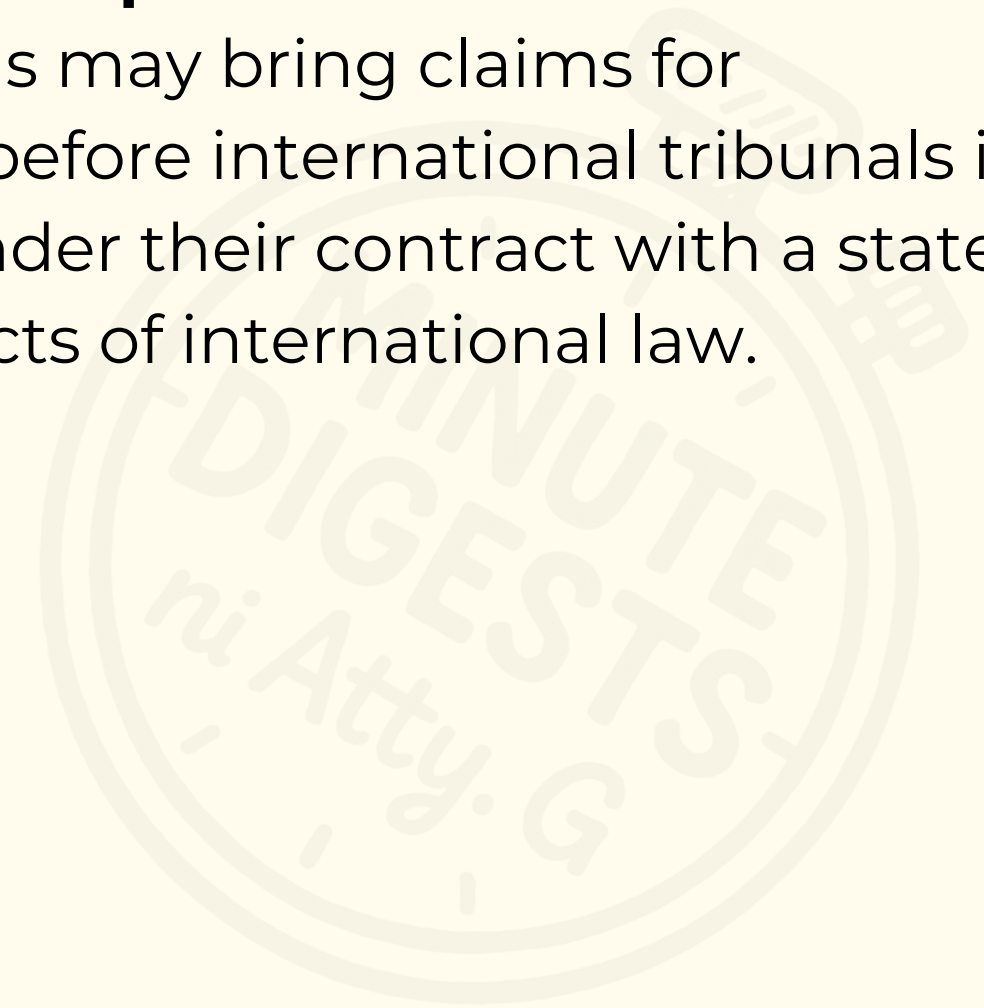


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INTERNATIONAL LEGAL PERSONALITY

Subjects of IL; Corporations

- Corporations may bring claims for arbitration before international tribunals if provided under their contract with a state or other subjects of international law.



3

JURISPRUDENCE UPDATES

Colmenares v. Duterte

G.R. Nos. 245981 & 246594, 09 August 2022

❑ **Facts:** The governments of the Philippines and China entered into a Memorandum of Understanding and exchanged notes regarding the financing of the Chico River Irrigation and Kaliwa Dam Projects. These negotiations culminated in the execution of loan agreements between the Philippine government, as borrower, and the Chinese EXIM Bank, as lender. The notes exchanged by the parties laid down the procedure for the procurement of the contractor for these projects. Among others, the contractor must be chosen from the list provided by the Chinese government after due diligence and verification.

❑ **Issue:** Are loan agreements valid despite deviations from the Government Procurement Reform Act?

❑ **Ruling:** Yes, the loan agreements are valid. The Philippines is duty-bound to observe the procurement procedure agreed upon with the Chinese government, following the principle of *pacta sunt servanda*.

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JURISPRUDENCE UPDATES

Pangilinan v. Cayetano

G.R. Nos. 238875, 239483 & 240954, 16 March 2021

❑ **Is the President's unilateral withdrawal from the Rome Statute valid, despite the lack of Senate concurrence?**

- SC: petitions were moot;
- SC laid down the guidelines for evaluating cases concerning the president's withdrawal from international agreements.

❑ **The Rome Statute**

- Created the International Criminal Court (ICC);
- The ICC has jurisdiction to "investigate, prosecute, and try" **individuals** accused of international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression;
- ICC's jurisdiction is only **complementary** to national criminal jurisdictions;
- The Rome Statute was signed in 2000, but transmitted to the Senate for concurrence only in 2011. It took effect in the Philippines on November 1, 2011.

3

JURISPRUDENCE UPDATES

Pangilinan v. Cayetano

G.R. Nos. 238875, 239483 & 240954, 16 March 2021

TREATY

Requires Senate
concurrence (2/3)

Formal agreements

Usually covers matters
that fundamentally
affects the country's
rights, sovereignty, or
international obligations

EXECUTIVE AGREEMENTS

Does not require Senate
concurrence

Less formal

Do not embody policies,
but simply implement
already existing ones

Both are binding and must be complied with in good faith under international law.

3

JURISPRUDENCE UPDATES

Pangilinan v. Cayetano

G.R. Nos. 238875, 239483 & 240954, 16 March 2021

❑ Guidelines for evaluating cases concerning the president's withdrawal from international agreements

- the president enjoys some leeway in withdrawing from agreements which he or she determines to be contrary to the Constitution or statutes;
- the president cannot unilaterally withdraw from agreements which were entered into pursuant to congressional imprimatur;
- the President cannot unilaterally withdraw from international agreements where the Senate concurred and expressly declared that any withdrawal must also be made with its concurrence.

❑ Under the Rome Statute, Withdrawal does not discharge obligations or liabilities already incurred while still a party to it.

Good!
Luck!