

# Public International Law

## customary international law

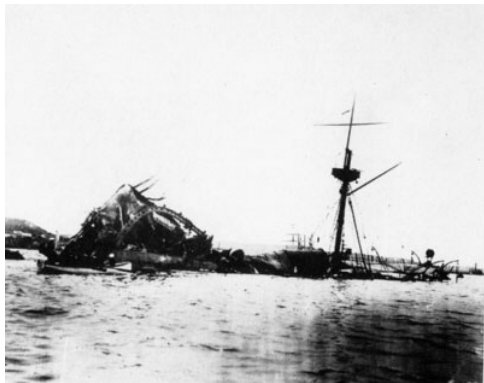
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## *Paquete Habana*

On what ground do the owners of these ships claim a remedy?

## *Paquete Habana*

According to the Supreme Court, what is required to create customary international law?

Does the Court look to *opinio juris*?

# *Opinio juris*

How does the International Law Association view *opinio juris*?

## *Opinio juris*

What would a legal positivist say about *opinio juris*?



# *Opinio juris*

Whose *opinio juris* should we care most about?

## *Opinio juris*

What is the difference between comity and obligation?

# State practice

What is state practice?

How long?

How uniform?

# State practice

To what extent do deviations from a rule undermine customary international law?

Could they ever strengthen it?

# Customary International Law

How fast can a rule of customary international law form?

When would we expect formation to be particularly fast?

# Customary International Law



# Customary International Law

Has customary international law become more or less important over time?

Why?

# Customary International Law

Are there reasons to be suspicious of customary international law from the perspective of democratic legitimacy?

Why should domestic courts look to customary international law?

Did the Supreme Court get it right in the *Paquete Habana* case?



# FDI cases

At issue in expropriation disputes:

- ▶ What law do we look to for the relevant compensation standard?
- ▶ What is that standard?
- ▶ Who will resolve disputes?

## FDI cases

“Full compensation” (prompt, adequate, effective)

vs.

“Appropriate” compensation

## FDI cases

What would be the law and economics prediction as to the effect of an “appropriate compensation” rule?

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What would be the law and economics prediction as to the effect of an “appropriate compensation” rule?

## FDI cases

Who are the actors in these cases?

What are the interests of the United States and other developed countries?

## CIL and soft law

What is the difference between custom and soft law?