

1. The nature and sources of international law. The rules of international law are not a fully developed, integrated legal system such as that which governs the conduct of individuals within our own borders. Domestic law stems from an authority which is accepted by those subject to the rules it promulgates and the rules can be enforced by that same authority. In the field of international law, on the other hand, there is no supreme authority recognized by all nations and the rules of law which exist are founded upon formal agreements into which nations have entered and courses of conduct which they have adopted and recognized as rules of law.

Since international agreements and generally accepted courses of conduct are the principal bases of international law, it is necessary to look to them in the first instance for specific rules governing particular fact situations. In addition, resort can be had to general principles of law and justice, to treatises on international law, and to domestic and international judicial decisions. All of these sources have been recognized and relied upon by the Supreme Court of the United States and have been prescribed as the criteria for decisions by the Permanent Court of International Justice.

The rules of warfare are but one branch of the whole body of international law. In this particular branch the inadequacies which are generally apparent throughout international law are particularly evident. They are not in any sense of the word a legal system. They are merely

a conglomeration of isolated rules which had developed through the execution of international agreements covering specified problems involved in wars and from the limited number of instances in which nations at war have followed consistent courses of conduct. Accordingly, there are many gaps in the general body of rules of warfare and each successive war reveals more areas which are not within the scope of existing rules. This is true in part because new methods of warfare develop and in part because the general body of rules has not developed to the extent that it covers all problems known to exist.

An analysis of the rules of warfare for the purpose of answering a specific question must be undertaken, therefore, with the thought clearly in mind that existing rules may have to be applied to new ~~spots~~ sets of facts and new rules may have to be established where none have existed in the past.