

Public International Law Exam Notes

Sources.....	Pg. 2
Maritime Zone.....	Pg. 6
Relationship - International & Municipal Law.....	Pg. 13
Personality & Recognition.....	Pg. 17
Jurisdiction.....	Pg. 23
Immunities from Jurisdiction.....	Pg. 26
Law of Treaties.....	Pg. 35
State Responsibility.....	Pg. 46
Peaceful Settlement of International Disputes.....	Pg. 54
Use of Force.....	Pg. 59

Sources

1.1 Introduction

Statute of the International Court of Justice - Article 38

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.

1.2 Hierarchy of sources?

1.3 Customary international law

1.3.1 Definition

Article 38(1)(b)

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- b. international custom, as evidence of a general practice accepted as law;

1.3.2 Elements of custom

2.3.2.1 General practice or State practice (objective element)

- Consistency

[*Lotus case*](#) (France v Turkey) (1927) PCIJ, Ser.A, no.10

[*Asylum case*](#) (Colombia v Peru) ICJ Reports (1950), pp.267-77

[*North Sea Continental Shelf cases*](#) (Germany v Denmark, Germany v Netherlands) ICJ Reports (1969), para.74

[*Case Concerning Military and Paramilitary Activities in and Against Nicaragua*](#)

(Nicaragua v. United States) (Merits) ICJ Reports (1986), para.186

[*Fisheries Jurisdiction case*](#) (United Kingdom v Iceland) (Merits) ICJ Reports (1973), p.50, Separate opinion of Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh and Ruda

- Time Factor

[*North Sea Continental Shelf cases*](#), per Judges Lachs (p.230); and Sorensen, (p.243-4)

- Generality

[*North Sea Continental Shelf cases*](#), p.42

[Anglo-Norwegian Fisheries case](#) (United Kingdom v Norway) (Merits), ICJ Reports (1951) p.139

[Asylum case](#), pp.276-77

1.3.2.2 *Opinio Juris* (subjective element)

[Lotus case](#) p.28

[North Sea Continental Shelf cases](#), pp.43-45, 76-77; and per Judge Tanaka (at 177) and Judge ad hoc Sørensen (at 248)

[Nicaragua v United States](#) (Merits), paras.77 and 188

[Asylum case](#), pp.266, 276-77

1.3.3 Local or Regional custom

[Right of Passage over Indian Territory case](#) (Portugal v India) (Merits) ICJ Reports (1960), pp.39-43

[Asylum case](#), p.276

1.3.4 Persistent objector and subsequent objector

[Anglo-Norwegian Fisheries case](#), pp.116, 131, 176ff

[Asylum case](#), p.277-78

1.3.5 *Jus cogens*

Article 53, [Vienna Convention on the Law of Treaties](#) (1969)('VCLT')

[North Sea Continental Shelf cases](#), per Judge Lachs (p.229)

1.3.6 Evidence

2.3.6.1 *General*

See 'Useful Links' on the [Lauterpacht Centre for International Law](#) website

1.3.6.2 *Australia*

[Australian Year Book of International Law](#)

1.3.6.3 *British*

[British Year Book of International Law](#)

1.3.6.4 *United States*

[American Journal of International Law](#)

1.4 Treaties

1.4.1 Definition

Article 38 (1)(a)

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;

1.4.2 Treaties and custom

[North Sea Continental Shelf cases](#), paras.71-76

[Nicaragua v United States](#) (Merits), para.179

1.5 General principles of law

Definition

Article 38(1)(c)

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

c. the general principles of law recognized by civilized nations;

[Chorzów Factory \(Indemnity\) case](#) (Germany v Poland) (Merits) (1928) PCIJ, Ser.A, No.17, pp.47-48

[Diversion of Water from the Meuse case](#) (Netherlands v Belgium) (1937) PCIJ, Ser.A/B, No.70, per Judge Hudson at 7677

1.6 Judicial decisions

Definition

Article 38(1)(d)

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

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.

[Asylum case](#), per Judge Azevedo at p.332

[Continental Shelf \(Libya v Malta\)](#) (*Application by Italy to Intervene*) ICJ Reports (1985) per Judge Jennings at 157

1.7 Teachings of publicists

1.8 Role of international organisations

1.8.1 General Assembly Resolutions

[Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons](#), ICJ Reports (1996), para.70

[Nicaragua v United States](#) (Merits), pp.98-103

1.8.2 Security Council Resolutions

Chapter VII, UN Charter

1.9 Soft law sources

1.9.1 Resolutions of international organizations (except SC)

1.9.2 Framework conventions

1.9.3 Declaratory instruments

2.9.3.1 Stockholm Declaration 1972

2.9.3.2 Rio Declaration 1992

1.9.4 Codes of Practice; Guidelines; and Recommended Practices and Procedures

Week 1 Notes

Big Contemporary Problems; Refugee Crisis, ISIS, Climate Change, E.U., South China Sea, Annexation of Crimea, Turkey, Human Rights in U.S. Race Issue

Other Contemporary Problems; U.S Presidency, Rio Olympics, Human Trafficking, Panama Papers, Snowden II, Australian Indigenous Youth Detention, North Korea Nuclear Program

Theoretical Questions; Proliferation/ Stockpiling Nuclear Weapons, Antibiotics non effectiveness, Excessive Surveillance, Stolen Identities, Drones, Drug Trafficking, Sharia Law, Super Viruses.

Australian National Law; Vertical nature; Hierarchy of Courts, the way the statute made law is created and enforced, common law – federal and state law is vertical as its power's ambit is over the Australian people.

International Law; Horizontal in nature – Nation States – agreements must be made – all states are equal and sovereign. 193 States currently. Creation and participation is a positive however it lacks in enforcement. Sources are found in Article 38 of the Statute of the International Court of Justice. In the United Nations Charter; 6 organs of United Nations specifically created by the Charter - General Assembly, Security Council, ICJ, ECOSOC, Trusteeship Council, etc. All other organs are subsidiary organs – 16 organisations ex. UNESCO.

- Only consensual Nation States can bring a claim.
- Advisory opinions are not legally binding; an opinion the court provides on a theoretical question or specific instances. Only the Charter organs can request an advisory opinion, States can not but General Assembly can request on behalf of States.
- Contested Claims - State vs. State;

- Hierarchy of Sources; Article 38 1 a, b and c are higher than d as the use of the word subsidiary make it subordinate.
- A, B and C are equal but Treaties are easier to apply if evident, but if not go onto Customs.
- C is a gap filler – domestic principles and fundamental building blocks of legal systems – overarching principles existing in all legal systems – considerations of equity, negligence, privity of contract, rule of law etc.
- D solves ambiguities – the law is already made in the article of the treaty/provision – the court is simply clarifying the law. It is not the Court making law. Times change, the article may take a new meaning but that is for the future ICJ to determine.
- ICJ – International Court of Justice.
- Courts do not generate law on their own.
- Declare is important in customary law – will declare whether it exists and declare the scope of content.
- Customary law – declared by the court – declares extent and scope.
- Publicists from ss D – Gilian Triggs, in her capacity as commissioner of the Human Rights Commission, has authority on understanding issues of International Law, and further developing international law. Researchers in creating, level of engagement on par with the ILC – International Law Commission. Impartiality – elected.