

INTERNATIONAL LAW NOTES

Topics Included:

- **Introduction**
- **Sources of international law**
- **The formation of treaties**
- **Interpretation and enforceability of treaties**
- **International and national law**
- **Statehood and personality**
- **State responsibility**
- **Treatment of foreign nationals**
- **State jurisdiction and immunity**
- **International dispute settlement**
- **International use of force**
- **International criminal law**

Topic 1: Introduction

- International law is a body of rules which regulates relations:
 - Among states and public international organisations
 - Between states and individuals in the field of human rights
 - Between the international society and individuals who have committed international crimes
- International law is “public” – uniform and autonomous system of norms regulating relations among subjects
- Private international law – norms developed within states as part of their own domestic legal orders to resolve disputes between private parties where a foreign element is involved
- Class between private and public: may be a result of failure to comply with a treaty

Sovereignty: emblematic of modern statehood – exercise of political authority unrestricted by external powers by limited by international law

History

- Globalisation saw IL begin to broaden its domain to facilitating international cooperation
- Versailles Peace Conference: established League of Nations
 - Established PCIJ – replaced by ICJ in 1945
- UN SC is able to authorise armed force to maintain or restore international peace and security; and can also require the use of economic sanctions

Legal Norms

- IL is decentralized and consensual – no compulsory jurisdiction
- No international government or system of international legislation, however:
 - SC can impose legally binding obligations on all states
 - The EU can adopt laws effective on all member-states

- Treaties and customary IL are considered “positive IL” – norms that they generate have been chosen or agreed upon by states
- **Customary norm:** one that finds widespread support and does not impose onerous burdens because states find compliance convenient
- **Treaties:** between states or between states and intergovernmental organisations
 - Can be in writing or oral
 - Unilateral declarations can also be binding in circumstances
- Treaty can be so widely adhered to that it becomes customary IL – even states not party to it are bound
- Treaty norm prevails over customary law
- **Jus cogens norm:** customary law from which cannot be derogated and will cause an inconsistent treaty to be void
- Resolutions of the GA do not create norms: however may be evidence of customary IL

Institutions

- Most frequent method of international relations is bilateral contact between diplomats of states e.g. through embassies
- UN is most universal in its membership (192 states)
- **Article 1 of the UN Charter sets out its purposes**
- Any other obligations under an international agreement subside to obligations under the UN Charter
- Every member of UN automatically a party to the ICJ statute: annexed to the UN Charter
- Subsidiary organs: bodies not established by UN Charter itself, but are organs of the UN e.g. World Food Programme; International Law Commission

Legal nature of IL

- Positive law – law of nature, set by men to men
 - Only sovereigns may set positive laws
- Some argue IL is really just a code of international ethics which states observe when convenient to do so:
 - But States always defend alleged breaches by trying to prove that IL rules have not been breached (not by claiming it is a private law matter)
 - But every day, countless dealings between states occur in full accordance with IL
 - Violations are much less common than in domestic law – impressively high rate of compliance
 - Every State can observe almost every action of another State, and breaches are easily detectable
- Legal character somewhat diminished by inability to enforce, however States can still resort to countermeasures that do not involve armed force
- The element that transforms a simple moral obligation into a fully legal one is the availability of enforcement

Topic 2: SOURCES OF LAW

- Art 38(1) of ICJ Statute outlines sources of IL:
 - Source of law – specifies the content of a legal obligation which may or may not be binding, depending on whether it is also encompassed by a formal source of law e.g. judicial decisions
 - Formal source of law – endows the obligation with a legally binding character i.e. treaty, custom, general principles of law
- **Pacta sunt servanda:** agreements are to be complied with
- Sources of Law:
 - Treaties
 - Customary Law
 - General principles of law

Treaties

- Treaties can be “general” – when a multilateral treaty is widely adhered to and can be regarded as “law-making” and binding on all states
- Multilateral treaty can reflect an existing customary norm, crystallise an emerging customary norm or generate a new customary norm when certain conditions are met

Custom

- Most basic source of positive law: precedes all other sources of positive law
- Customary law consists of two elements according to art 38 ICJ Statute:
 - General practice (usus)
 - Opinion juris – meaning a belief that the practice is required as a matter of legal right of obligation

State practice (usus)

- General practice of states an essential element in the emergence of customary IL
- The choices and conduct of persons who are not officials of a state or who are not acting under the control of state officials cannot be regarded as state practice; similarly the practice of private individuals, entities or NGO’s do not furnish practice
- Examples of State practice may include:
 - Domestic legislation
 - Reports of military or naval activities
 - Diplomatic correspondence
- State practice can also include omissions
- State practice element of a customary norm is not established because States occasionally behave in a way consistent with the norm: the practice must be general
- **Asylum Case:** in order for a usus to generate custom, it must be constant and uniform
- A practice can be general even if it is not universally accepted, but should still enjoy widespread acceptance (particularly among those so affected by the norm)
 - Occasional departures not fatal to the emergence of a rule
 - Breaches treated as inconsistent with the rule is good evidence

Protest and acquiescence

- Protest by just a few states will weight heavily against recognizing the rule’s emergence

- Acquiescence in the face of conduct inconsistent with an asserted new rule will count heavily against its recognition – same is true for already established customary rules
- Acquiescence in the face of practice said to reflect the new rule will be seen as consent