

PUBLIC INTERNATIONAL EXAM NOTES

Definition: Public International law - the relationship between **NATION STATES**

CRITICAL: Central concept around the **CONSENT** of nations to agree

- Either **Express or**;
- **Acquiescence** (Reluctant acceptance without protest)
 - o CASE EXAMPLE: Dissent from a rule after it has entered into custom is too late – the state is bound. *Anglo-Norwegian Fisheries Case* [1951] ICJ Rep 16
- Or; **Persistent objection**
 - o A 'persistent objector' – a state that has ALWAYS opposed the rule – will not be bound by the treaty unless the rule is a ***jus cogens***
 - CASE EXAMPLE: *Ango-Norwegian Fisheries Case* [1951]

SOURCES OF INTERNATIONAL LAW:

According to Statute of the International Court of Justice - Article 38 (1)(a)-(c)(d):

- (a) **Treaties or Conventions** – EG – Vienna Convention which provides a framework for diplomatic relations between independent countries
 - The *Vienna Convention on the Law of Treaties* 1969 (VCLT) which proscribed rules for making, interpreting and terminating treaties
 - Does not govern the operation of treaties that are not in 'written form'
 - '**RESERVATIONS**': Art 2(1)(d) of VLCT – a unilateral statement...whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the state (unless prohibited by the treaty)
 - the ***intention to create legal relations***
 - **codification** (i.e. treaty codifies pre-existing customary international law)
 - **crystallisation** (i.e. treaty helps to identify rules of customary international law)
 - **formation** (i.e. treaty is at the basis of the formation of a new customary international law rule).
 - The consent of a State to be bound by a treaty may be expressed by ***signature, exchange of instruments*** constituting a treaty, ***ratification, acceptance, approval*** or ***accession (consent to be bound)***, or by ***any other means if so agreed***.
 - VIP: it is not possible for a third party State to assume a binding obligation by acquiescence, oral consent, or implication from conduct.
 - Article 34: A treaty does not create either obligations or rights for a third State ***without its consent***.
- (b) **Customary International Law** – evidenced by 2 factors
 - a. **State Practice** (OBJECTIVE) – Anything that demonstrates the choices and conduct of persons in their capacities as State officials or under their control
 1. Speeches
 2. Domestic Legislation

3. Decisions of courts and tribunals
 4. Treaties
 5. Policy Statements
 6. Can include an omission
 - ii. Article 38(1)(b) of ICJ Statute...the practice must be 'general' and not 'occasional'
 - iii. *Nicaragua Case*: States **conduct inconsistent** with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule
 1. *US* in breach of customary international law obligation not to use force against another state when it directly attacked Nicaragua
 - b. *Opinio Juris* (SUBJECTIVE) – the practice is permitted or required as a matter of LEGAL RIGHT or obligation – acts or omissions are done following a belief that the said State is obligated by law to act or refrain from acting in a particular way
 1. *Lotus Case*: 'based on their being **conscious of having a duty** to abstain would it be possible to speak of an international custom
 2. International 'comity' – courtesy among states
 - ii. Both Factors noted by the ICJ in the *Continental Shelf Case (Germany v Denmark, Germany v Netherlands)* ICJ Rep (1969) 3 – 'show a **general recognition** that a rule of law or legal obligation is involved
- Customary international law can be instantaneous

BOTH: INTERPLAY between Treaties and Customary Law:

- A rule in a treaty can also be or become Customary international Law by:
 - o Codifying existing custom
 - o **Crystallising custom** as states agree on provisions during the treaty drafting process
 - o Becoming custom after the treaty's adoption (fundamentally norm-creating character...widespread representative participation)
 - o EG – Nicaragua Case/NSCS (North Sea Continental Shelf Case)
- Often compliment each other

(c) General principles of law recognised by all states

- a. Fill in the gap of international by looking to OTHER nation states for a source of law
- b. International Law may adopt principles common to all major legal systems
 - i. EG – Unjust enrichment (unfairly gains benefit) – *Sea-Lane Service Inc v Iran*
- c. The 'general principles of law' recognised by civilised nations identified by Art 38(1) of the ICJ Statute
- d. A source of real law for the regulation of international relations
- e. AKA: '*JUS GENTIUM*'the law of nations
- f. ESTOPPEL – pg 56 of textbook: International Tribunal for the Law of the Sea

(d) Subsidiary means of determining the law

- a. Decisions of domestic and international courts and tribunals
 - i. Judiciary Decisions Art 38(1)(d) of the ICJ Statute pg 60 textbook
- b. Views of eminent writers/Teachings of publicists – pg 61 – Positivism vs Natural

A & B – considered Primary Sources

C & D – considered Secondary Sources

DEVELOPMENT OVER THE CENTURIES

NATURAL LAW

- **WHAT:** The legal theory that recognises the connection between law and human morality. A system of right or justice held to be common to all humans and derived from nature rather than from the rules of society.

17th Century: **Hugo Grotius** laid the foundations for international law based on NATURAL law quote: 'fully convinced that there is a common law among nations'. Based on the notion that natural law must be independent of religion, applying to all people regardless

Treaty of Westphalia 1648 –

- Ended the 30 year war in the Roman Empire and;
- Ended the 80 year war between Spain and Dutch
- **SIGNIFICANCE:**
 - o Treaty provided the foundation of modern state system
 - o Paved the way for self-determination
 - o Sets the precedent of peace formulated by diplomatic congress
 - o Articulated the concept of territorial sovereignty
 - o NORM was set that stopped one in interfering in other's internal affairs
 - o Inter-state aggression was to be held in check by a balance of power

19th Century: Hague & Geneva Convention/Positivist Approach

The 1930 Hague Conference on the Codification of International Law:

- Right of innocent passage agreed
- Agreement over sovereign rights in the territorial sea
- No draft Convention: disagreement over the issue of the maximum permissible width of the territorial sea
- Sticking point: fisheries conservation
- Conservationist states wanted greater territorial sea rights to preserve fisheries

The 1949 GENEVA CONVENTIONS:

The **Geneva Conventions** are rules that apply only in times of armed conflict and seek to protect people who are not or are no longer taking part in hostilities; these include the sick and wounded of armed forces on the field, wounded, sick, and shipwrecked members of armed forces at sea, prisoners of war, and civilians.

KEY: marked a breakthrough, as it covered, for the first time, situations of non-international armed conflicts

- The Conventions and their Protocols call for measures to be taken to prevent or put an end to all breaches. They contain stringent rules to deal with what are known as "[grave breaches](#)". Those responsible for grave breaches must be sought, tried or extradited, whatever nationality they may hold.