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Week 1 – Introduction to Public International Law

Overview

- Public International Law (PIL) is the system of rules governing the relations between sovereign states and other international actors such as international organisations and, in limited cases, individuals.
- It aims to regulate coexistence and cooperation among states, promoting peace, order, and justice in global affairs.
- Distinct from:
 - Domestic law – created by a sovereign authority within a state.
 - Private international law – resolves conflicts of laws between jurisdictions.
- Modern PIL addresses areas such as:

- Use of force and collective security
- Human rights and humanitarian law
- Environmental protection and development
- Trade, investment, and maritime law
- State responsibility and dispute resolution

Historical Development

Pre-modern origins

- Ancient civilisations (Mesopotamia, China, India, Greece) observed diplomatic customs, envoy protection, and treaty practice.
- These norms were moral or political, not yet legal obligations.

Early modern Europe

- Concept of *jus gentium* (“law of nations”) emerged from Roman law, extended to dealings among sovereign entities.
- Natural law theorists like Francisco de Vitoria, Suárez, and Grotius argued that universal moral principles bound states.
- Grotius, *The Law of War and Peace* (1625):
 - Advocated restraint in war.
 - Distinguished between natural law and positive law.
 - Considered founding father of international law but criticised for rationalising colonial expansion.
- Treaties of Westphalia (1648) established state sovereignty and equality — foundation of the modern international system.

Nineteenth century

- Rise of legal positivism – law derived from state consent, not morality.
- Expansion of treaty-making, diplomacy, and codification (e.g. Hague Conferences 1899 & 1907).
- Emergence of international organisations for communication, trade, and humanitarian affairs.

Post-1945 era

- Failures of the League of Nations led to creation of the United Nations (UN) in 1945.
- UN Charter became constitutional framework for international order:
 - Art 2(4) – prohibits use of force.
 - Art 51 – recognises self-defence.
 - Ch VII – collective security powers.
- Major developments:
 - Universal Declaration of Human Rights (1948).
 - Geneva Conventions (1949).
 - Growth of specialised law (environment, trade, oceans, space).
- Global decolonisation – rise of new states, emphasis on self-determination and equality.

Nature and Sources of International Law

Nature

- Horizontal system – no central legislature or enforcer.

- Rules created through state consent and practice.
- Relies on reciprocity, reputation, and mutual interest for compliance.

Primary Sources (Art 38 ICJ Statute)

- International conventions (treaties).
- Customary international law (state practice + opinio juris).
- General principles of law recognised by civilised nations.

Subsidiary Sources

- Judicial decisions (ICJ, ITLOS, WTO panels, arbitral tribunals).
- Teachings of qualified publicists.

Soft Law

- Non-binding instruments (declarations, codes of conduct) that influence behaviour and norm development.

Is International Law Really “Law”?

Classical scepticism

- John Austin (1832): International law = “positive morality”; lacks sovereign and sanctions.
- Critique – too narrow a definition of law; does not account for custom or consensual systems.

Modern responses

- HLA Hart (1961): International law is law but “primitive”; consists mainly of primary rules without secondary rules of change and adjudication.
- Voluntarism (Lotus Case, 1927): States are bound only by their consent; limits include jus cogens and erga omnes obligations.
- Pragmatism (Henkin 1979): States obey law because it works; compliance is driven by interest, reputation, and habitual legitimacy.
- Realism: Law reflects power politics; obedience when convenient.
- Managerialist and Constructivist views: Compliance stems from efficiency, legitimacy, and socialisation.

Compliance and Enforcement

- No global police force – enforcement through:
 - Reciprocity and retorsion (non-military counter-measures).
 - Reputation and diplomatic pressure.
 - Economic sanctions (UN or unilateral).
 - International adjudication (ICJ judgments, arbitration).
 - UN Security Council (Ch VII) – binding sanctions and force authorisation.

Critical Perspectives

- Realism: Law serves state interest and power balances.
- Liberalism: Institutions enable cooperation and predictability.
- Marxism: Law sustains capitalist order and inequality.
- Third World Approaches (TWAIL): Challenges Euro-centric and colonial foundations; calls for redistributive justice.