

## Question-03

What are the material sources of international law? Discuss any two of them in detail with necessary examples.

Answer:

### 1. Introduction:

The material sources of international law provide the substantive foundation for the rules that govern the behavior of states and international entities. These sources are reflected in Article 38(1) of the Statute of International Court of Justice, which lists the various forms of evidence for the rules of international law. Among these, the decisions of judicial or arbitral tribunals and juristic works hold significant importance.

## 2. Sources Of International Law:

Article 38 (1) of Statute of International Court of Justice (ICJ) States:

"1. The court whose function is to decide in accordance with international law, such disputes are as 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 general practice accepted as law;

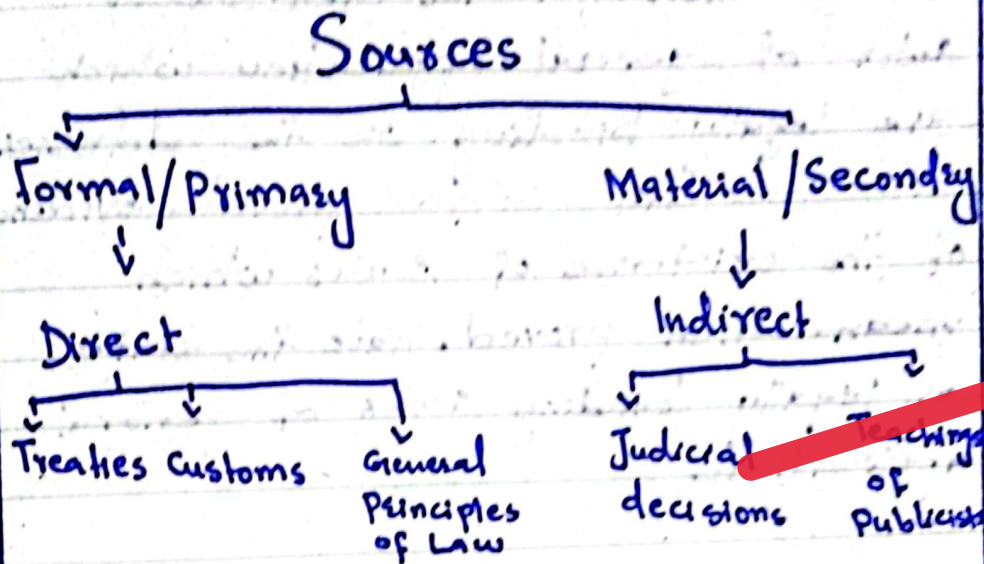
c) -the general principles of law recognized by civilized nations;

d) subject to provisions of Article 59, judicial decisions and the teachings of the most highly

Subheadings or a flowchart



qualified publicists of the various nations, as subsidiary means for the determination of 'rules of law'.



### 3. Material Sources of International Law:

As pointed out by J.G.

Starke :

"The material sources of international law may be defined as the actual material from which an international lawyer determines the rule applicable to a given situation".

A distinction is made between formal sources and material sources of international law. The formal sources are those legal procedures and methods for the creation of rules of general application which are legally binding on the addressees. The material sources provide evidence of the existence of rules which, when proved, have the status of legally binding rules of general application.

### 3.1 The First Material Source: Decisions of Judicial or Arbitral Tribunals:

In the modern period international Court of Justice is the main international arbitral tribunal. It was established as a successor of Permanent Court of International Justice. However, the decisions of ICJ are not binding. Article 59 of Statute of ICJ makes it clear that the decision of court will have "no binding force except



between the parties and in respect of particular case". Earlier decisions of court are not binding on itself too, it can deviate from those decisions. It does not follow the "doctrine of Precedent" in principle, but in practice it ordinarily follows it. Advisor of ICJ is not binding to all. However, some of the decisions of ICJ are treated as weighty precedents. Judge Lauterpacht has aptly written:

"One of the reasons usually given for its (PCA's) inadequacy was that awards rendered by its tribunals were not legal in form..."

ICJ also works on the principle of *Ex aequo et bono* (where the parties agree on the certain point as a compromise then ICJ will dispose off the case).

### Case Examples under ICJ:

(a) Corfu Channel case 1949:

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• Facts of the case:

In 1946, during Greek civil war, Greece installed mines in Albanian waters. Albania was aware of this but did not announce it. Resultantly, British naval ships were damaged by mines in Corfu Strait. UK claimed Albania had knowledge of mines but did not warn UK.

• Ruling of the case:

The ICJ held that Albania was responsible for not announcing the establishment of minefields. The case clarified the responsibility of state, sovereignty and duty of care of international waters.

(b) Nicaragua V.S. U.S. (1986):

• Facts of the case:

Nicaragua claimed U.S. alleged support to rebellion on its land and impeaching its sovereignty, etc.



### Ruling of the case:

ICJ found U.S. guilty and ordered to pay compensation. It enforced the principle of non intervention and sovereignty.

### 3.2 Juristic Works as Second material Source:

The writings of eminent legal scholars, known as juristic works, are recognized as material source of Int. Law. These writings provide valuable insights into the interpretation, application and development of legal principles. However, the weight of juristic work depends upon the reputation and expertise of the author.

"The views of jurists are not direct source of Int. Law. But they sometimes become instrumental in development of international customs"  
(Kapoor and Tandon, International Law):

The importance of works of jurists has been stressed by Justice Gray in Paquete Habana:

"... where there is no treaty, no controlling executive or legislative act or judicial decision, resort may be had to the works of jurists, who by years of labor, experience, and research had made themselves well acquainted with the subject they treat..."

### • Practical Example:

In the S.S. Lotus case (1927), the PCIJ heavily relied on jurists' works to address gaps in law regarding jurisdiction of crimes committed on high seas.

### • Examples of Influential Juristic Works:

- (i) Hugo Grotius (De jure Belli ac Pacis, 1625): considered as a foundational text in international law, establishing principles of war, peace, and diplomacy.
- (ii) Emerich de Vattel (The Law of Nations, 1758): focused on state sovereignty and conduct of states.
- (iii) Oppenheim's "International Law": A widely cited modern treatise explaining the evolution



and principles of International Law.

#### 4. Conclusion: Concise your conclusion

The sources of international law are described in Article 38 (1) of Statute of ICJ. These sources are divided into formal and material sources. While material sources are further classified in judicial decisions of tribunals and juristic works. The judicial decisions are not always binding but set a precedent for the court. Corfu Channel case and Nicaragua vs. U.S. case highlight the importance of judicial decisions in developing international law. Similarly, the works of jurists are also significant in materializing the international law legally. Hugo Grotius, Emerich de Vattel and Oppenheim are some of the prominent jurists. These both sources play a prominent role in determining international law.

Good!

You have got good command on the topic and you attempt it in the right manner

Good luck!