

Q. Discuss the historical account of origin of International law. What should be the focus and why it is initiated. What extent it is relevant and effective?

Historical Account of Origin of International Law:-

Ever since man started living in colonies he needed set of rules and principles to run it's life in an orderly manner. Since then rules existed at different levels. Barter trade system of Barbarians, Lagas Umma Treaty and Treaty of Kadesh are pre-historical evidence of existence of rules and laws.

i- Middle Ages and Before:-

With the complexity in colonies of man the complexity in relations resulted in the addition of rules and ^{gave} new directions to the relations.

Contribution of Greek:-

Greeks contributed through the laws of war and peace. They introduced arbitration and the concept of exchange of prisoners of war.

Contribution of Jews:-

Before Greeks, Jews gave the idea of internationalism. They had formulated laws of treaties and the idea of immunity and privilege to diplomats was introduced by Jews.

Contribution of Romans:-

After Greeks, Romans elaborated the laws of war and peace. They further gave basis of Just and unjust war. They evolved idea of Just Civile to idea of Jus naturale and Jus Gentium. Just war was initiated only if a treaty is violated or rules for diplomats were ignored. Assistance of friendly state towards enemy was also considered a just reason of war. Their treaties included treaties of friendship, assistance and hostilities.

Contribution of Muslims:

Muslims also played a major role in shaping the International law. They formulated laws of combatant and non combatant, humanitarian laws, laws concerning safety of nature and environment.

Other civilizations like Chinese, Hinduism and more also contributed to in shaping international Law in many ways.

16TH - 17TH Century:-

Treaty of Westphalia 1648:-

Thirty years of Europe war was ended after signing treaty of westphalia. It was a reason why death of continental system of religion declined and gave birth to supremacy of state.

This further gave three schools of thought for International Law.

The Nationalism:- This school considered divine law and then dictate of right reason to be the sole basis of International law.

Positivism:- Positivists argue that only laws which states consent upon are binding in nature.

Grotianism or Ecticism:- Subjugation of totality of International relations upon International law, acceptance of the dictate of right reason are the focus of Grotians.

With the passage of time and changes in Internationalism and due to the events like WWI, league of nations, WWII, Geneva conventions, UN Charter. the scope of International Law is further expanding and it is a continuous process of evolution with every engagement it is taking a new shape.

Focus of International Law:-

International Law is expanding with every turn of event. Though Hobbes presumed it to be a vanishing point of jurisprudence yet it is expanding and evolving in its scope and character and functions. It not only focuses on state to state relations only but

but it also encompasses state to international organizations, Intra-International organization level ^{relations}. individual - Individual and Individual-International organizations ^{relations} ~~and more~~. dealings and more. Initially only inter-state relations and dealings were considered its only focus.

Need for Initiation of International Law:-

In order to keep maintaining status quo and to protect what one has today for tomorrow protection of law is mandatory.

It always existed wherever there were interactions and relations.

Its function is to maintain peace and safety and help nations to protect their sovereignty. It was initiated to provide an environment where one with competing or cooperating ~~rel~~ needs may make relations on equal ground with others.

Evidences of its existence from pre historic eras and its presence in today's world is enough to argue that it is a necessity of every relation at state or inter state level.

If it does not exist states in relations with others would be in continuous worry of war and other such issues.

Effectiveness of International Law in Modern Times:-

Effectiveness of any law is stated to be dependent on the following three essentials.

Legislative function:-

Though International law does not have a body for legislation but it has quasi legislative bodies like UN. Also General Assemblies Sixth Committee and ~~four~~ Security Council's declarations also functions as legislative body of municipal law works.

Enforcement function:-

International law is binding only to signatories and to states upon their consent. It is not enforced on larger scale upon violations but states due to their self interests, dependency upon other states and fear of isolationism enforces these rules upon themselves.

Adjudication function:-

For this purpose arbitration courts, world courts and regional courts are present. Again Advice of world court is deemed binding upon parties as per Article 94 of UN Charter. Regional courts and arbitration courts also give judgements and awards respectively that are binding upon parties.

So, International law is effective even in today's world.

Relevancy of International Law:-

International law is continuously evolving as per the need of time. So, it is not wrong to say that it is relevant in this modern world and will be relevant to coming years. The relevancy of International law is evident by the existence of UN which is based on its legality. This is the largest international body that is most relevant to every field of life, from humanitarian to societal, political to economical, strategic to military in all aspects of life it makes rules and imposes duties upon the subjects of International law.

Concluding Points:-

One cannot enlist the exact origin of International law and its accurate historical account but it is an evolving field with time and its relevancy and effectiveness is also increasing with the passage of time.

As Edward Collins states ~~that~~ it must be continuously developed by revision in its content, expansion in its scope and improvement of its compliance to stay relevant and effective all time.

Q2 Give such a definition of International law which could cover all the modern trends in it

International law has been defined by many scholars, jurists and law observers since many years. According to international law commission archives there are more than 40 definitions available. As International law has been evolving with the passage of time, not all definitions cover modern trends. Following are the few definitions of international law.

Definition by Proponents of International Law:-

Oppenheim:-

Law of nations or international law is the name of body of customary or conventional rules which are considered binding by civilized nations in their intercourse with each other.

J.L Briley:-

Body of rules and principles of actions which are binding upon states in their relations with one another.

Emer di Vattel:-

Law of rules and principles that states are bound to follow in their relational interaction with each other.

Soviets Definition of International

Law:-

Sum total of rules norms regulating relations of states in the process of struggle and cooperation, expressing the will of the ruling class of these states and secured by coercive exercise by state individually or collectively.

Definitions by World Courts:-

PCIJ on King case vs Mining cooperation:-

Forms of rules accepted by states as determining their conduct upon each and each other's subject.

ICJ North Sea Continent Shelf:-

Practices of states and accepted by them as law.

Criteria of a good definition:-

A definition for any field, study or subject and phenomenon must encompass all the essential elements of that particular field. All the above mentioned definitions lacks relevancy with modern international law.

As it is an evolving subject which has widened its scope and elements so it is important to critically examine these definitions and find their lackings.

Elements of International Law:-

Following are the elements of international law as per modern trends:-

Scope and dynamic nature:-

This law is a constantly evolving body whose scope is encompassing each with each turn of event.

Subjects and Objects:-

The subjects and objects of international law are those political bodies upon whom rights and duties are conferred and imposed respectively, States, International organizations, and individuals.

Sources of International Law:-

Sources are all those means from where laws are adapted. Customs, treaties, general principles of civilized nations, judicial works, orders, juristic works, comity, and state papers.

Evaluation of Above Mentioned Definitions:

	Dynamic nature	Subjects	Sources
Oppenheim	X	X	X
J.L Briley	X	X	X
Emer de Vattel	X	X	X
Soviet's	X	X	X
PCIJ	X	X	✓
ICJ	X	X	X

Oppenheim:^{Proposed} Oppenheim's definition fails to cover all modern trends. As Article 38 of Statute of International Court of Justice describes general principles along with customs and conventions as ~~the~~ sources of law. His proposed definition also ignores evolving scope and all subjects of international law other than state.

J.L Briley:-

Like Oppenheim he also has not included other sources of international law. He fails to address other subjects of the international law.

Emer di Vattel: All these three law proponents proposed definitions have major lacking if compared with modern international law. Not all rules are binding upon states except those to which state is a party or a signatory.

Soviet's Definition:^{:-} This definition is the most lacking the most. As it is not mandatory that these rules are the will of ruling class. Instead it also states about coercive exercises. If by consent states bind by law only then these states adopt the law there isn't any coercion exercised in order to make subjects of international law to abide by it.

Definitions by world courts - Even these definitions given on cases of International interests lack the detail of subject, sources and scope of international law. States are not the only source of international law as certain non states also enjoy legally binding status of international law.

Modern Trends of International Law:-

Scope and Dynamic Nature:-

It has encompassed its scope a lot. Not only matters related to international relations but also humanitarian issues within a boundary are now involved in International law. Conventions on Human Rights, Conventions on Economical, social and political rights. ~~and~~ are among those conventions which proves its dynamic nature and expanding scope.

Subjects and Objects.

Settlement of investment Dispute Between State and Nationals of Other State, Convention on suppression and punishment on apartheid 1973 shows that not only states but also individuals are the political entities of law. Though states are major but

international organizations and individuals at lesser extent also a subjects of International law.

Subject Scope:-

Sources of International law:-

It is not only sources from body of rules, regulations but as Article 38 of Statute of International Court of Justice^{and practices of jurists} shows.

Treaties, customs, general principles, Juristic works, Judicial decisions, decisions of other organizations, comity, Equity and others are all sources of international law.

Proposed Definition:-

International law is a constantly evolving body of norms which are considered binding by members of international society.

These norms infer rights and impose obligations upon its subjects to state and to lesser extent on international organizations and individuals.

Q When all has been said it will be found that consent remains firmly the basis of international law, and there are as many, and only as many, sources of Int'l law as there are ways whereby the consent of states can be expressed? Discuss.

Basis of International Law:-

Basis of international law are those basic means which initiate a law. As after revolution of 17th Century different schools of basic originated. Few consider divine law as the basis of international law and dictate of right reason to be the desire of international law. While others totally negate this idea of dictate of right reason to be the basis of international law. The only school that solely term consent the basis of law is of positivism.

Positivism :-

Positivism is school of thought that originated in after years of Treaty of Westphalia. It negates the ideas of Naturalism - those who considered divine law later secularised into dictate of right reason as the basis of law - and states that states consent derives any interstate relation and at law. If a state has consented to any

particular law then that law will be binding upon them. Proponents of this school of thought includes Oppenheim, J.L. Briley, Treipel, Anzilloti and others.

Anzilloti:- He proposed the theory of Pacta Sunt Servanda that is considered general principle by Article 26 of Vienna Convention Laws of Treaty 1969. It is considered binding to all treaties and law. Treaties ^{and agreement.} entered by states must be kept and continued in good faith.

Many scholars criticise this school of thought and state that not in all cases consent is mandatory.

Starke: Not all members of a treaty ^{or law} show consent yet they have to follow that law.

Also this school of thought failed to describe the recognition of state.

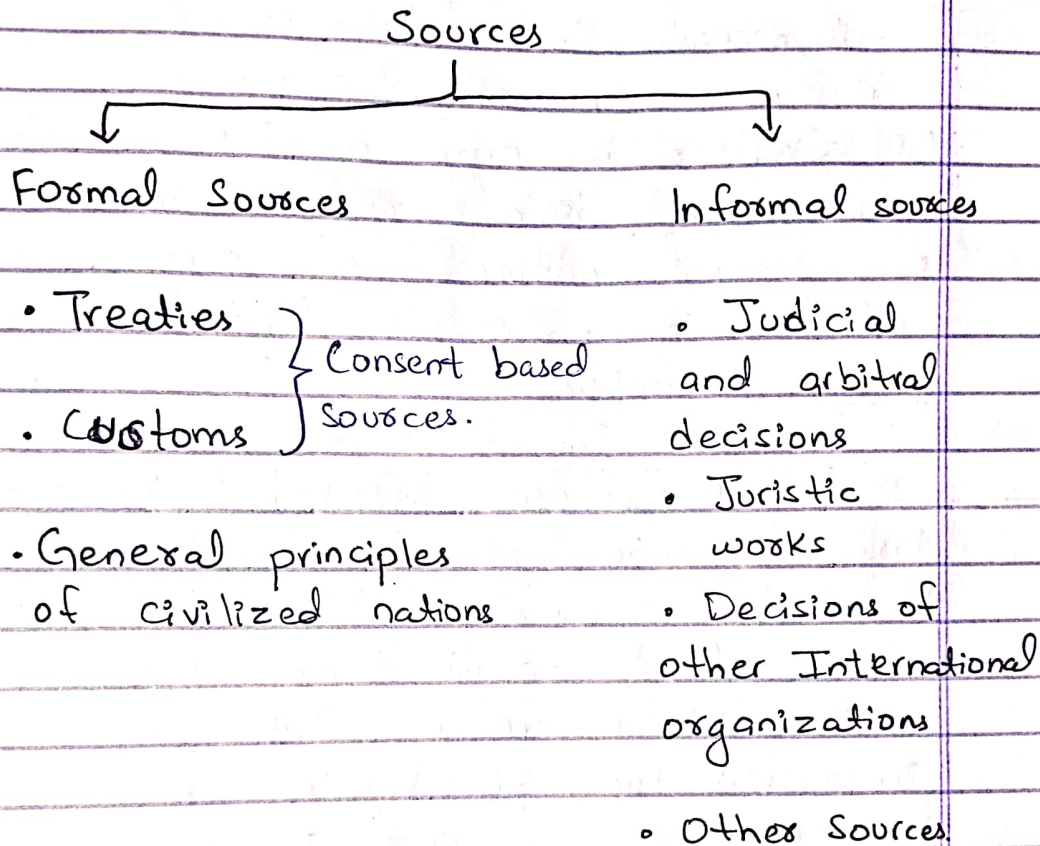
UN Charter Article of UN Charter Chapter 7 states that UN decisions are binding upon member as well as non member states.

Hence Positivist gave accepted theory like pacta sunt servanda and also theories like theory of consent one one hand and yet fails to recognize the many other existing non consent bound

basis of international law.

Sources of International Law

Sources of International Law are those means, materials and procedures by which law is governed.



Treaties and Conventions:-

They are the first source considered for any legal decision.

"Treaties are the means by which states establish or seek to establish relations between them on the basis to be governed by international law"

Vienna Convention on Laws of
Treaties 1969.

Treaties are of two types:-

Law Making Treaties:-

They work in the same way as the legal legislature works in state law. They govern treaties of universal and general principles.

a) Universal Such treaties are binding upon all the members.

UN Charter is one of its example.

b) General Such treaties are of general nature and scope and binding nature is limited. as

Vienna Convention

Contract Based Treaties:-

These treaties are established between two or more states in order to achieve a same goal. These states are bound to follow such treaty.

Indus Water Treaty, CPEC and Iran Pakistan Gas Pipeline Project are examples of such treaties.

Customs:-

After treaties customary rules are the consent based source of international law. Customs that are accepted and practiced by states in their relations with each others are used to govern laws. Often customs are misinterpreted as usage but the former is generally practiced, binding in nature and has enforcing rights if violated.

Essential of Customs:

Long duration of practice is not mandatory

Universal acceptance is not needed but substantial acceptance is required

General in practice

Opinio Juris

With the passage of time the common practices of states incorporate within the fabric of society that they are deemed as acceptable by all. By time through practicing customs in state or municipal rules states show their consent upon them. Part of UK state law is customary law.

Other Sources of International Law:-

General Principles of Rules of Civilized Nations.

It is the source which in order to give a decision courts or jurist seek from the party state's municipal rule or from other states principle of rules. Resjudicata, estopped are few examples.

Judicial or Arbitral Decisions:-

Judicial bodies like ICJ's decisions on the principle of doctrine and Ex Aequo et Bono are the sources of law.

Awards by arbitrators - which states choose by themselves in order to solve a dispute - are legally binding upon that states. Like judicial decisions they are also sources of International law.

Juristic Work:-

Grotius, Puffendorf and Vattel has worked a lot in modifying and evolving international law by their writings. Arbitrators, pleadings still use it at large extent but ICJ has limited using it now.

Decisions by other International Institutes:

The or international organizations decisions also if needed works as a source. Quasi legislation by UN is one such examples. ICJ's declarations transforming into conventions, is also an example of this source.

Other sources as reason, equity, International comity and state letters are the sources if from above mentioned sources laws could not be generated.

On the basis of consent only basis is the school of positivism that though criticized has given many generally accepted theories and laws. On the other hand consent based sources of law: Treaty and Customs are the

widely used and mentioned
sources of international law.

Article 38 of the Statute of
ICJ has given first preference
to treaties and the second to
customs as the sources of
international law.