

DATE: 13/12/2025

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Paper

International Law

## Part - II

### Q.2. Introduction

Human is a social animal that needs to live in collaboration with other individuals in a society or community.

The interaction among such individuals is governed by some traditions, values, norms or customs that are to be followed for a harmonious society and maintain peace.

If such traditions do not exist then the order of society would be disturbed and resulted in disorganization, conflicts and security threats. To avoid such atrocities,

some legal theories were proposed by people that contributed to the historical evolution and development of international law. The

theories are positive law theory, Natural Law theory, and International Law.

They are interconnected with one another and some of their propositions are inter-related.

Relationship between Positive Law Theory, Natural Law Theory and International Law:

There is a deep and

complex relationship among all the three theories.

### Positive Law Theory:

Positive law theory argues that law can be made as a result of consent of citizens inside a state and consent of individual states in international world for a peaceful global community.

### Natural Law:

Natural law came as a result of customs and traditions of legal people for smooth running of legal matters. It is natural and its existence is due to continuous practice as in the case of customary law.

### International Law:

International law is a body of rules and regulation that govern peace and security in the world and resolves disputes in case of conflicts.

### Relationship among them:

They are related with one another and borrow rules from one another. Positive law theory is based upon consent; natural law renders customary law based on practices.

while international law is an umbrella term which include both laws of positive theory and natural law theory.

### Contribution in Evolution and Development of International Law:

The above mentioned legal theories has largely contributed to the historical evolution and development of international law.

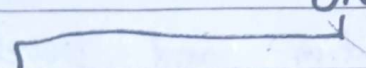
### Historical Evolution:

Historical evolution of modern law is based on "Vienna Convention of Laws in Treaties" (VCLT) after world war II with the establishment of "United Nations" for the purpose of peace and security in the world. Before 1945, international law was based on the rules of League of Nation (LoN). League of Nation used to resolve issues and conflicts through International Court of Arbitration and then UN came into being and replaced it with International Court of Justice (ICJ) and International Criminal Court (ICC). ICJ deals the issues among states while ICC look into the atrocities, genocide and violation of international law by

individuals.

## Developments in International Law by UN

UN

UN security council: 

It's executive system of international law under United Nations

UN General Assembly: It's legislative system of international law under UN.

UN International Court of Justice: It's judiciary system of international law under UN to dissolve disputes among nations.

## Conclusion:

Positive law theory with proposition of consent, natural law theory which argues <sup>about</sup> customary practices and international law that encompasses the points of both of them perform the function of a body that governs the system of international world. This law was initiated in pre-historic time, then leads to League of Nations and culminated on formation of UN after WW-II in 1945.

Q. 3

Answer no 3

Introduction:

Nation-state system arises after WW-I. State came into existence, if it has four qualities that are permanent territory, permanent population, sovereign government and recognition of its authority by other states and its relationship with them. If a state nation fulfills these four conditions that it can be considered as a legal state. The role of recognition by other state is an important factor that strengthens the existence of a state as legal in international world. If such principles do not exist then it shows that a state would cease to exist.

There are two doctrines for Recognition of Governments of a States.

1. Estrada Doctrine
2. Toban Doctrine

### 1. Estrada Doctrine:

This doctrine was formulated by Mexico foreign minister and argues that recognition of government of a state is actually

weakening the sovereignty of a state.  
 increase of transformation of government  
 whether it is constitutional or  
 unconstitutional could have nothing  
 to do with the external actors.

### Tobar Doctrine:

This doctrine was  
 formulated by Ecuador's foreign  
 minister and argue that state  
 should only recognize another  
 state <sup>government</sup> that comes as a result  
 of constitutional means.

### Role of State Recognition in the commencement of the legal existence of a state:

A state recognizes  
 another state by two methods.

1. De Jure Recognition
2. De Facto Recognition

#### 1. De Jure Recognition:

De jure  
 means "by law and legal".

This recognition is irrevocable,  
 permanent and irreversible and  
 is granted when the recognizing  
 state ensures its legitimacy and  
 conditions required for a state to

exist. Moreover, this recognition signifies the legitimacy of the recognized state as legal and fulfilling all the conditions of a statehood.

### Example:

Pakistan has recognized Saudi Arabia, UAE, USA, UK etc through "De Jure Recognition".

### De Facto Recognition:

"De facto = Factual"

De facto recognition is factual, reversible, non-permanent and revocable. It is granted to a state who is in initial phase, if it becomes a reliable state with the passage of time through progress, development and become legitimate then a state may grant De Jure recognition.

Legal Principles <sup>that</sup> govern the consequences arising when a state ceases to exist:

The legal principles that govern the consequences arising when a state ceases to exist are the four conditions I mentioned in the introduction. They are

permanent population which shows that permanent individuals of a land are necessary to claim for a statehood. Secondly, permanent territory is required. There is no restrictions on limitation of territory. There are states whose territory is too small yet they are consider as state according to international law. Thirdly, sovereign government needs to be there who would hold the authority of such territory and govern rules for smooth running. Lastly, recognition by other states and relation with them make a state eligible to exist. If all these four conditions are there then a statehood title would be given, otherwise not.

### Conclusion:

In conclusion, recognition play an important role for legitimacy of a state to exist. If four conditions are not fulfilled by a state then it ceases to exist as legal state in international system. Hence, recognition is important for a state.

Q.5

Answer no. 5

Introduction:

Human beings have a long history of existence and living from pre-historic period till this time. Since, there were no written records in pre-historic period, it is difficult to render an accurate historical record or account of the origin of international law. The central focus of any such account would be on primary resources and these are difficult to find in many cases. Lastly, international law began when human beings started interaction and exchange of goods, information or services with one another. Additionally, international law began because in the absence of it there would exist chaos, disharmony, conflicts and issues in society. To bring peace, prosperity and security, international law is inevitable.

Why Origin of International Law is Difficult to Find?

International law has been there since the existence of human beings. They live in caves with limited resources and access to facilities.

Then they started interaction through exchange of goods, services and information in pre-historic period.

Then they started occupying territories with the establishment of kingdoms followed by wars and succession with expansion and intervention.

However, true historical account of its origin is vague because of the absence of true and authentic resources at that time.

### Central Focus of such Account:

The central focus of any such account focuses on legitimacy, authenticity and relevancy. If the given information are from reliable source with primary evidences then, it could be considered as true. In contrast, if such conditions are not there then the given account would not be reliable and legitimate to be trusted and followed by state in international law. Therefore, it is very necessary to render accurate historical account that truly represent the origin of international law in a true sense.

## How and Why International Law Began:

International law is mandatory for human to live in co-existence with peace. In the absence of international law, each state would follow their rules and impose their ideas without accountability and reprimand.

## How International Law Began?

Pre-historic Era



Life in Cave



Community



Interaction



Customary Law



Norms and Tradition



Legal Law



Positive Law



International Law

International law began in prehistoric period, followed by life in community with general practices in the form of norms and tradition followed by legal and positive laws through consent and lastly resulted in the formation of International law.

Why International Law Began?



→ For Peace and Security



→ Harmony and Stability

→ Restriction of Atrocities

→ Existence of International Humanitarian law.

Conclusion:

To cut long story short international law has a long history but it is difficult to determine its true account.

The primary focus of such account would be on authenticity.

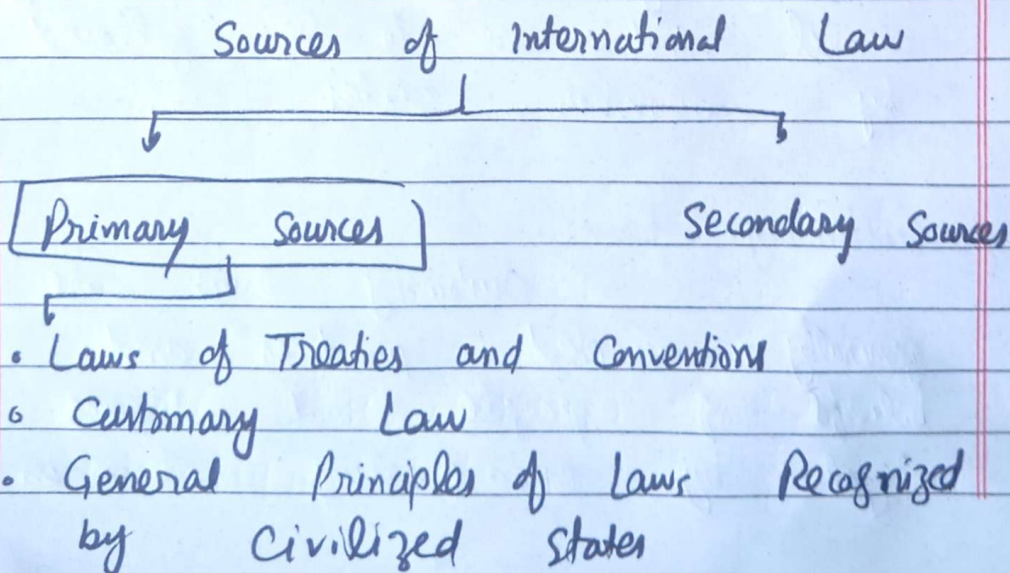
Lastly international law began from the very start of human life for the purpose of peace and security.

Q.6 Answer no. 6

Introduction:

International law is a body of custom, rules and regulation that run international world to bring peace and abolish atrocities and discrimination by prevailing of international humanitarian law.

There are various sources of international law such as treaties and conventions, customary law, legal decision of jurists. There are considered as primary sources of international law. There are also secondary sources of international law. Additionally, *ius cogens* as part of customary law. Lastly, unilateral declaration cannot be treated as treaty law, or custom but it may be considered as an independent source.



## Secondary Sources

- Decisions of International Institution
- Other Sources



Non-Binding

Primary Sources = Binding

### Treaties and Convention

Treaties are bilateral agreements between two states that are binding such as that of Indus Water Treaty between Pakistan and India. It may be multilateral such as that of United Nations decisions are imposed on each member of the UN.

Similarly, conventions are the set of rules and regulations passed by United Nations Security Council that are to be followed by member states.

### Customary Law:

Customary laws are generally accepted practices and beliefs of people that become legal by incorporating them in

## international law.

### Generally Accepted Principles Accepted by Civilized States:

These principles are part of international law came into being in the result of consent and recognition by all member states that are civilized and follow the rules of international law.

### Secondary sources:

Secondary sources are not binding and are less important than primary sources. They include the following sources.

- Decisions of Judicial and Arbitral Tribunal
- Juristic Work
- Decision of Organs of International Institutions
- Other Sources.

All these resources are non-binding but part of sources

of International Law.

Is Jus Cogens part of customary law?

Jus Cogens signifies the consent of member states and is part of customary law.

### Status of Unilateral Decisions:

Unilateral decisions have no rule in international law and are not treated as treaty law, custom law or custom. It may be considered as an independent decision of any powerful state. However, international law came into being as a result of general consensus on the basis of positivist theory or natural law that encompasses legal practices that govern international system. These sources are because of multi-lateral endorsement by member states of UN.

### Conclusion:

In conclusion, the sources of international law under Article 38(1) of the ICJ statutes are primary and secondary which renders the consent of individual states in international world.