

## 02: RELATIONSHIP BETWEEN POSITIVE LAW THEORY, ~~NATURAL~~ <sup>NATURAL</sup> ~~INTERNATIONAL~~ LAW THEORY, AND INTERNATIONAL LAW:-

### INTRODUCTION:-

The relationship between positive law theory, natural law theory and international law reflects the intellectual foundation on which international law has developed. Natural law emphasizes moral principles inherent in human reason, while positive focuses on enacted law and state consent.

International law today is a product of these theories interacting, guiding the evolution of the treaties, customary norms and the principles of state sovereignty. Understanding this relationship is essential to comprehend how legal doctrines shape historical development of international laws.

### RELATIONSHIPS:

#### 1. NATURAL LAW THEORY AND INTERNATIONAL LAW:-

Natural law posits that legal principles

exist independently of the state enactments, derived from morality, justice, and reason.

Thinkers like Grotius and Vitoria argued that nations must observe moral duties even without codified law, laying the foundation for early customary international law.

## 2 POSITIVE LAW THEORY AND INTERNATIONAL LAW:

Positive law emphasizes rules created by the states through consent, treaties and legislation.

According to Starks "International Law as a law of consent" reflects positive law principles because obligations arise only when states agree.

## 3- INTERACTION BETWEEN NATURAL AND POSITIVE LAW:

Natural law provides the moral framework while positive law operationalizes it into enforceable treaties and customary norms. For example ~~jus cogens~~ jus cogens norms

combine moral imperatives (natural law) with binding treaties (positive law).

## CONTRIBUTIONS:

### 1- CONTRIBUTIONS TO CUSTOMARY INTERNATIONAL LAW:

Natural law influenced by early customary rules, such as the law of seas, diplomatic immunity and just war principles. Positive law formalizes these through treaties, eg Treaty of Westphalia (1648) establishing sovereign equality.

### 2- ROLE IN DEVELOPMENT OF TREATIES:

Positive Law facilitated codification of agreements while natural law justified fairness and moral obligations. Vienna Convention on the Law of Treaties (1969) embodied both state consent governs treaties but underlying principles like good faith reflects moral reasoning.

### 3. INFLUENCE ON PRINCIPLES OF STATE SOVEREIGNTY:-

Natural law emphasized equal moral worth of states, positive law operationalizes it in practice, recognizing sovereignty in law. Example Peace of Westphalia and ICJ ruling affirming sovereign equality.

### 4. SHAPING OF THE LAW OF WAR AND USE OF FORCE:-

Natural law theorists influenced prohibition on the war (jus ad Bellum) while positive law codified these rules into conventions like Hague Convention and UN Charter, integrating morality with enforceable law.

### 5. CONTRIBUTIONS TO HUMANITARIAN LAW:-

Natural law inspired protections for individuals and civilians, positive law translated into binding obligations, such as Geneva Convention establishing enforceable humanitarian standards.

### 6. MODERN INTEGRATION IN INTERNATIONAL LAW:-

Today International Law reflects a blend where positive law ensures enforceability through ICJ, UN and treaties; natural law underpins universal norms, including human rights and jus cogens providing moral legitimacy and legal authority.

### CONCLUSION:-

The historical evolution of the International Law has been shaped by the interplay of the natural law and positive law theories. Natural law provided the moral and ethical framework, while positive law ensured codification, consent and enforceability. Together they contributed to customary law, treaty development, state sovereignty, and modern principles like human rights, demonstrating that international law is both moral and legal system guiding state conduct in the international community.

## Q6:- SOURCES OF INTERNATIONAL LAW UNDER ARTICLE 38(1) OF ICT STATUTE:-

### INTRODUCTION:-

Sources of the International Law defines the legal foundation for regulating relationships between states and other actors. Article 38(1) of the ICT Statute identifies the primary sources, including treaties, customs, general principles and judicial decisions. In recent times doctrines like *ius cogens* and unilateral declaration have raised questions about their precise legal status, highlighting evolving interpretations of international law.

## SOURCES OF THE INTERNATIONAL LAW UNDER ARTICLE 38(1) ICT STATUTE:-

### 1- TREATIES (CONVENTIONS):-

Legally binding agreements between states, treaties are formal written sources

recognized under Article 38 (1)(a). For Example UN Charter, Vienna Convention on the Law of Treaties (1969).

### 2. CUSTOMARY INTERNATIONAL LAW:-

Customs arise from consistent state practice accompanied by the *opinio juris*. Example Law of the Sea under UNCLOS and diplomatic immunity.

### 3. GENERAL PRINCIPLES OF LAW:-

Fundamental principles common to domestic legal systems, recognized by ICT as supplementary law. Example good faith, equity, *pacta sunt servanda*.

### 4. JUDICIAL DECISIONS:-

ICT, PCIT and other tribunals provide jurisprudence as a subsidiary source to clarify and interpret law. Example: North Sea Continental Shelf Cases (1969).

## 5. TEACHING OF PUBLICISTS:

Writing of eminent jurists guides courts in interpreting law and resolving ambiguities.  
Example: Oppenheim, Stankovic, Grothius.

## STATUS OF THE JUS COGENS AND UNILATERAL DECLARATION

### 1- JUS COGENS AS A DISTINCT SOURCE:

Jus cogens norms are peremptory principles from which no derogation is permitted (Vienna Convention 1969, Article 53).

Example: Prohibition of the genocide, slavery and torture.

### 2. RELATIONSHIP TO CUSTOMARY LAW:

Although similar to custom, jus cogens has higher normative force. It is binding on all states irrespective of consent distinguishing it from the ordinary, customary law.

## 3. UNILATERAL DECLARATION IN INTERNATIONAL LAW:

Unilateral declarations are statements or commitments made publicly by the state with the intention to be legally bound, even without the consent of other states. The ICJ in Nuclear Test Cases (France v. Australia 1974) held that France's statement limiting atmospheric nuclear test creating binding obligations, demonstrating that state's clear intent can generate enforceable international law. This mechanism allows state to voluntarily assume obligations, bridging gaps where formal treaties, customary law may not exist. Such declarations are important in arms control, environmental commitments, and maritime claims.

### 4. CLASSIFICATION DEBATE:-

Scholars debate whether unilateral declarations are treaty like, customary, or an independent source of law. ICJ jurisprudence treats them as binding commitments under general international law, distinct from treaties or customs. Analytically their effect hinges on state intent.

public reliance and good faith (pacta sunt servanda) highlighting international law adaptability in regulating obligations outside formal treaties. Contemporary practices such as the US pledge on no first use of nuclear weapon in 2010 illustrate the practical impact of unilateral commitments.

### 5- CONTEMPORARY EXAMPLE AND CHALLENGES:-

Modern unilateral declarations include, nuclear pledges, maritime claims, and climate commitments. For instance Japan and China's public statement on East China Sea boundaries creates legal expectations. Enforcement depends on the state intent, recognition by other states, and international acknowledgement reflecting evolving sources of law. Analytically, such declarations demonstrates how international law accommodates innovative state practices to regulate behavior beyond formal treaties or customs.

### CONCLUSION:-

Article 38(1) ICJ Statute provide the foundational sources of International Law such as treaties, customs, general principles, judicial decisions and scholarly writings. Jus cogens represents a distinct, preemptive source overriding ordinary customs while unilateral declaration are treated as independent binding commitments under International Law. Both concepts illustrate the dynamic and evolving nature of contemporary International Law.

Q7:

## INTRODUCTION:

State succession governs the replacement of one state by another in responsibility by territory, treaties and obligations.

It has evolved through decolonization, ~~secessions~~ secessions and dissolution of federations while traditionally termed "succession".

modern practice often favors continuity of legal obligations. The Demarc Line dispute illustrates the practical significance of succession in maintaining borders and legal stability.

## CONCEPT OF STATE SUCCESSION:

### 1- DEFINITION OF STATE SUCCESSION:

State succession occurs when a state replaces others in sovereignty over a territory, assuming certain rights, obligations, and responsibilities. State emphasized the impact on treaties, property, nationality,

and international relations. It ensures legal continuity, providing predictability in international law and even during political changes.

### 2. HISTORICAL DEVELOPMENT

State succession principles evolved through colonial independence, post Ottoman Europe, and dissolution of the federations. Early practice established rules regarding continuity of treaties, recognition of states and management of debts. These historical developments continue to shape modern succession laws.

### 3. TYPES OF SUCCESSION:

Succession can be:

- 1) Universal & Complete replacement eg. South Sudan.
- 2) Partial: Federation dissolution eg. USSR.

These types delineate which treaties, membership and obligations are automatically inherited. It also affects diplomatic relations and continuity in international organization.

## MISNOMER DEBATE:

### 1) MISNOMER IN MODERN INTERNATIONAL LAW:

Some scholars argue that ~~misnomer~~ "Succession" is misleading because legal obligations often continue despite political change. Pakistan's inheritance of British India's treaties in 1947 illustrate that legal continuity often prevails, highlighting that succession is more about legal adaptation than replacement.

### CONTINUITY VIS TABULA RASA DOCTRINE:

- 1) Continuity: the successor state inherits existing treaties, property and international obligations.
- 2) Tabula Rasa Doctrine: the successor starts fresh, selectively rejecting prior treaties.

Both doctrine co-exist depending on political context - particularly on post colonial states

seeking balance between stability and sovereignty.

### LEGAL STATUS OF BOUNDARY TREATIES DURING SUCCESSION:

#### 1- IMPORTANCE OF BOUNDARY TREATIES:-

Boundary treaties maintain stability, prevent disputes and ensure ~~clear~~ clear territorial jurisdiction. Uti possidetis juris preserves the colonial borders during decolonization, maintaining territorial continuity and minimizing conflict between newly independent states.

#### 2. DURAND LINE BACKGROUND:-

The Durand Line (1893) between British India and Afghanistan was inherited by Pakistan after 1947. Afghanistan contests its legitimacy arguing it was imposed under duress. This dispute illustrates the legal and political complexity of inherited boundary treaties.

### 3. LEGAL STATUS UNDER INTERNATIONAL LAW:-

Boundary treaties are generally preserved unless mutually renegotiated, to protect territorial integrity. State and ICJ jurisprudence emphasize continuity of obligations, reinforcing stability and predictability in international relations.

### 4. CONTEMPORARY CHALLENGES:

Modern challenges include dispute between historical boundaries and self-determination claims. Enforcement and recognition often depends on bilateral negotiations, political realities and willingness of states to adhere to inherited treaties.

### 5. RECENT EXAMPLES:

- 1) South Sudan (2011) inherited Sudanese borders and negotiated resources treaties to maintain legal continuity.
- 2) Kosovo (2008) selectively adopted international obligations, illustrating flexible application of succession rules.

### CONCLUSION:-

State succession balances continuity of legal obligations and political change. While the term may be a misnomer, modern law favors continuity particularly regarding boundary treaties. The Danubian line disputes highlight tensions between historical agreements and contemporary sovereignty challenges and claims. Overall, state succession demonstrates the evolving interplay of law, politics and stability in international law.

## Q4) ARTICLE 1 OF 1933 MONTEVIDEO CONVENTIONS ON RIGHTS AND DUTIES OF STATES:

### INTRODUCTION:

Statehood is a foundational concept in international law determining which entities possess legal personality and can exercise rights and duties. Article 1 of 1933 Montevideo Convention sets out ~~the~~ four criteria: Permanent population, defined territory, government, and capacity to enter into relations with other states. While historically influential, modern state practices, ICJ jurisprudence and contemporary challenges raise questions about the adequacy of the criteria in 21st century.

### REFLECTION OF CRITERIA FOR STATEHOOD IN MODERN CONTEXT.

### 1) DEFINITION OF STATEHOOD UNDER MONTEVIDEO CONVENTION:-

Article 1 identifies four criteria for statehood:

Permanent population, defined territory, government and capacity to conduct international relations. Starke notes these are widely ~~accepted~~ accepted but primarily reflect a formalist and declaratory approach to state recognition.

### 2) HISTORICAL BACKGROUND OF MONTEVIDEO CONVENTION:

The convention emerged in 1933 to codify customary international law principles of statehood. It reflected Latin American concerns over recognition, sovereignty, and territorial integrity, providing a formalized standard for new states in the interwar period.

### 3) PERMANENT POPULATION CRITERION:-

A stable and permanent population is essential for statehood. However ICJ and UN practice show that population size is relative, microstates like Monaco or Nauru satisfy statehood despite very small population highlighting the flexibility of criterion in practice.

#### 4. DEFINED TERRITORY CRITERION:

A defined territory ensures jurisdiction and control. Contemporary disputes like Kosovo v/s Serbia show that precise territorial boundaries are often contested yet entities can still achieve partial international recognition, revealing limitation in Montevideo's rigid approach.

#### 5. GOVERNMENT CRITERION:

Effective government is required to exercise authority and maintain order. Somalia's traditional government and the temporary absence of the centralized control challenge the notion that a fully effective government is strictly necessary for the state recognition.

#### 6. CAPACITY TO ENTER INTO RELATIONS WITH OTHER STATES:

International personality requires the ability to engage diplomatically and enter treaties. Recognition by other states,

ICJ acknowledgement and UN membership often act as practical indicators, complementing formal Montevideo's criteria.

#### 7. DECLARATIVE V/S CONSTITUTIVE

##### THEORIES:

Montevideo reflects the declaratory theory, where an entity is a state if criteria are met, independent of recognition. In practice, recognition (constitutive theory) is politically significant as seen in Palestine's UN observer status, indicating that both approaches coexist.

#### 1. CONTEMPORARY CHALLENGES TO MONTEVIDEO CRITERIA:

Modern context such as failed states, quasi states and secessionist regions challenge the rigidity of Montevideo. Entities may fulfill population and territory criteria but lack effective governance yet still gain partial international recognition.

### 4. ANALYTICAL OBSERVATION:-

Article 2 provides a foundational framework, statehood in modern law depends on combination of legal, political, practical factors. Flexibility and recognition practices often supplement or override strict adherence to Montevideo's rule. Though Montevideo criteria remains a reference point but contemporary international law emphasizes functional, political and normative dimensions. ICJ and UN practices show statehood is hybrid concept, balancing legal standards with recognition and political realities.

### EXAMPLES:-

- 1) South Sudan (2011) and Montevideo criteria gained recognition
- 2) Kosovo (2008) met most criteria but faced contested recognition.
- 3) Palestine recognized partially, highlighting limitations of purely declaratory criteria on modern practice.

### CONCLUSION:-

Article 1 of the Montevideo Convention provides framework for the statehoods reflecting declaratory principles of permanent population, territory, government and capacity for international relations. However modern practices show these criteria are necessary but not sufficient, as recognition, political acceptance and functional authority play decisive roles. Contemporary examples like South Sudan, Kosovo, Palestine highlight the adaptability and mutations of Montevideo Convention in 21st century confirming that statehood is dynamic, evolving concept in international law.