

Name

Faizan Ullah

Batch

412

Lms id

41684

ن ن ن ن ن ن

Question No - 1

Answer

1) Introduction

There is great relationship between Natural Law Theory, Positivism and International Law. They (Natural Law Theory & Positivism) provide base to international law. There they play important role in evolution and development of International Law.

2) Relationship between Positive Law Theory and International Law

Positive Law Theory or

Simply Positivism provided basis for international law theory.

According to this international law derived from consent of states. means that consent is required for international law then it will be bound it.

Moreover, the consent will be in form of treaties and convention. Hence it gave the idea of that states are sovereign and not binding to international until consent of states. Hence international law is not natural, it is the production of states treaties.

3) Relationship between International Law and Natural law theory

Natural law theory acts as a basis for

International law. According to Natural law there are some general principles and rights inherently to the states and individuals. Hence according to this theory international law is binding on states because some general principles and rights inherently for ever states which must follow it. For example, right of life, liberty, property these are binding on every state to protect these rights.

4 Natural Law Theory and Positivism Contribution to the Historical Evolution and Development of International Law

International law traced back to western, European

origin. Greek and Roman contributed to International Law. "Jus Cogens" of Roman is great contribution which regulated relation between Roman citizen and foreign citizen. Then the treaty of Lalephalic (peace treaties series) provide also basis for sovereignty, non-interference in internal affairs.

Natural Law is consider the earliest law and contribution to international law. This theory first provide the concept of right to life, equality, ~~and~~ property to states and individual and these rights become international law accepted by states.

The legal positivism also contributed to evolution of international law. During 17th and 18th Century the concept of nationalism

is rising among people as
Mesopotamian Peace treaties, USA
revolution, French revolution
and two world war provide
Sovereignty to states and
ended colonialism. Hence states
become independent. Now
Positive law concept come
and state that states will
binding to international law
until consent to it. Hence
in the contemporary world, states
binding to international until
~~so~~ serious violation of internal
law of nations

5) Conclusion

Therefore, there is great
relation between positive law
theory, natural law theory and
international law theory. Both legal
theories ~~and~~ contribute to the
evolution and contribution to international

Question 7

Answer

1) Introduction

The Concept of State succession in International law is explain by different theories such Constructivist theory of State Succession, Clean State Doctrine, Roman Concept theory of state success. I am going to copy Constructionist theory to the Durand line ~~theory~~ dispute between Pakistan and Afghanistan.

2) The Concept of State Success in International Law

When a State is replaced by other State or divided among

Many state which state continue to be succession state or state starts from beginning to making treaties and rule regulation. For example, USSR dissolution and resulted in to many states. The question here is which state continue its previous status and legal treaties. Russia gained the status in because it hold 51% of its population and 70% of its territory. There are different theory which explain it.

1) Constructionist Theory of State Succession

According to this theory, the succession states follow some important treaties, rule and regulations of the

Previous states - for example
as Russian continue the
status of USSR and its place
in UN, UN General Council
as a member.

2) ~~State~~ Roman Based Succession Theory of State

According to it, there
is continuation of estate. Hence
there is not concept of ending
the state but continuation of
the previous one for example
Nigeria

3) Doctrine of Clean State

According to this, the
new state (succession state) is
new and starts from initially.
making treaties and placement in

International institution.

4) Is State Succession Term Misnomer in Modern International law?

No, because many historical evidence show that Greece nation has continue state succession. For example,

USSR and Russia and Current People Republic of China. Here Russia and People Republic of China are continue state succession and enjoy positions in international institution such as member of UN General Council member and have veto power.

5) Logical Status of Boundary treaties and Durand Line Dispute between Pakistan and Afghan

A little known theory which is Constructionist theory of State is followed by greatest nation Russia and China.

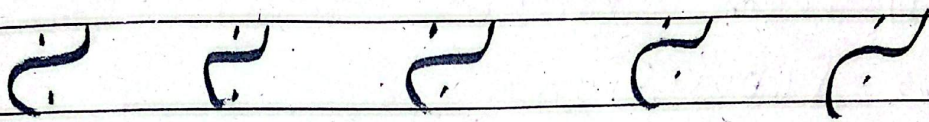
Super powers and apply it. This theory best explain the Durand line dispute, according this theory important treaties should continue by Succession state so according to this theory Pakistan has legal rights to continue the Durand line treaty with Afghanistan.

The another argument is England colonized America (USA). Is England claim USA? No.

In the same way Afghanistan claimed is baseless and Durand line is legally and internationally correct.

6) Conclusion

State Succession is a well known concept explain by many theories. More Durand line is correct fact according international law.



Question No-3

Answer

1) Introduction

Montevideo Convention on the Right and duties of State define State. Constitutive and declarative theory explain whether State recognition is require or not.

There many principle ruling when a State cease to exist.

2) The Concept of State and Legal Existence of State

According to Montevideo
Convention on the Rights and
Duties of States Article 1
define the Criteria of Statehood
According to it a state
have

- 1) legal territory
- 2) Population
- 3) Sovereignty
- 4) Government who have capacity
to enter in to treaties with
other entities.

3 Theories Explain the State Recognition

3.1) Constitutive Theory

According to this
theory, new state must
be represented by other
states.

3.2 Declarative Theory of State Recognition

According to this theory when state full fill the statehood condition it must consider state whether recognized by other state or not. Recognition violates the role of Sovereignty of state. UN adopted this perspective.

4) Role of State Recognition in the Commence- ment of the Legal Existence of a State:

According to Constitutive theory recognition of state play important role in legal existence of state for example Afghanistan taken by Taliban in 2001, not recognized by USA and western

14

states. Therefore it is hard for Afghanistan to enter into treaties with them at international level. Although implicitly other states can make treaties with Afghanistan as China, Pakistan, Russia, India although not recognized the countries which show the application of Declarative recognition of the state.

5 What principles Govern the Consequences arising when a State Cease to Exist?

When a state ceases to exist and state end.

Legal principles govern the arising consequences. The concept of state success apply and the new state take responsibilities of the ended state.

There are three theories which explain the idea.

① Constructionist theory says important treaties should be continue as Russia after USSR dissolution

② Roman Base Theory say continuation not ending concept of state for example nlesink

③ Doctrine of Clean State Theory → the Succession State state new rights, obligations and treaties

6) Conclusion

Hence, State recognition play some important role providing recogness in treaties but it does no means of state is exist.

Question No-4

Answer

1) Introduction

Article 1 of 1933 Montevideo Convention on the Rights and Duties of State is an accurate reflection of the criteria for statehood in the modern context of International Law.

2) Montevideo Convention On the Right and Duties of State is Valid Statehood in the Modern Context of International

According to Article One of Montevideo Convention on the Right and Duties of State explained following criteria for statehood as

17

Conditions of Statehood

1) People or Mass or Population

For a state population
are must; without population
state not exist.

2) Geography or Logical Territory

According to MC RDS for
a state logical territory
require. When population exists
then a logical territory required
for them for living

3) Sovereignty

Sovereignty is the supreme
power exercised by government.
The sovereignty must be
internal and accepted by people
with the boundary as well
external accepted by other nations.

LI Effective Government

The last one is effective government is required for state. The state government have the capacity to enter into treaty with other nation freely

=> Is MCARDs is Valid for Statehood Criteria in the modern Context of International Law

~~Yes~~ In the modern world the condition mentioned by the convention for the statehood right. Because, in current world, the states exist such as USA, India, Russia, China, Pakistan which are legal states and enjoy all privileges have some qualification as mentioned

In the Article 1 of Montevideo Convention on the Rights and Duties of the States

If a States have population, territory, effective government and Sovereignty is consider legal state.

Conclusion:

After the explanation of Montevideo Convention on State, it is shown the condition mentioned by this conventions is respect and accepted for Statehood in modern world and international law.

The End