

International Law:

Question No. 2:- *Is law has wider?*

Introduction:-

The Basis of international law are derived from mainly two theories that a natural law theory and Positive law theory. These are theories are very much related to each other and had help to develop the international law. Both schools of law have their own principles which developed the modern international law. Therefore, Both these theories are have historical evolution and development of international law.

Natural law theory and International Law:-

In law of nature or natural law theory, jurists are argued international law is a part of laws of nature. As law of nature was connected with religion and divine. It was considered the divine law. In 16th 17th century the experts secularized the concept of laws of nature.

Grotius and Law of nature:

As per Grotius, the law of nature, which natural law was the dictate of 'right reason'. Further, his followers applied the law of nature as an ideal law which was found on the nature of man as a 'reasonable' being.

Criticism on Law of nature:-

The exponents of nature laws are of the view that it is the basis of international law and has conferred binding force in international law. However, despite the criticism, the law of nature has greatly influenced by the growth of International law.

Positive Law theory and International law:

Based on laws of positivism. The positivists are of views on the actual practice of the state. In their view treaties and customs are the main sources of international law.

Doctrine of Positivism:-

The doctrine of positivism teaches that international law is the sum of rules by which states have consented to be bound, and that nothing can be the law to which they have not consented to be bound.

Relationship between Natural and Positive Law:-

The positivists argue international law is based on the consent of the states > for form truth. While in practice the state had already given their consent.

The norm 'pacta sunt servanda' has however, been abandoned by most theorists.

As the agreement must be followed as good faith of state (a norm that > deriving from natural law. Moreover, as per Grotians supported both laws i.e. law of nature and positive law. Grotians, international law has originated not only from customs and treaties (as per positivists) but also from natural law.

Development of International law by these theories:-

These theories developed international law.

It has encouraged realistic outlook in international law. In several cases concerning the customary rules of international law, the international court of justice has adopted the positivist attitude in

Asylum case:

ICJ and Asylum case:-

The party which relies on a custom, must prove that this custom is established in such a manner that it has become binding on the other party.

Conclusion:-

These both theories had influenced the development of today's international law. Both these theory have their impact on international law. As the customs are of a positivist theory same as the reasoning is connected to the natural law theory. Therefore, both these theories helped in evolution and development of international law.

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Question No 3:- ~~What is legal~~

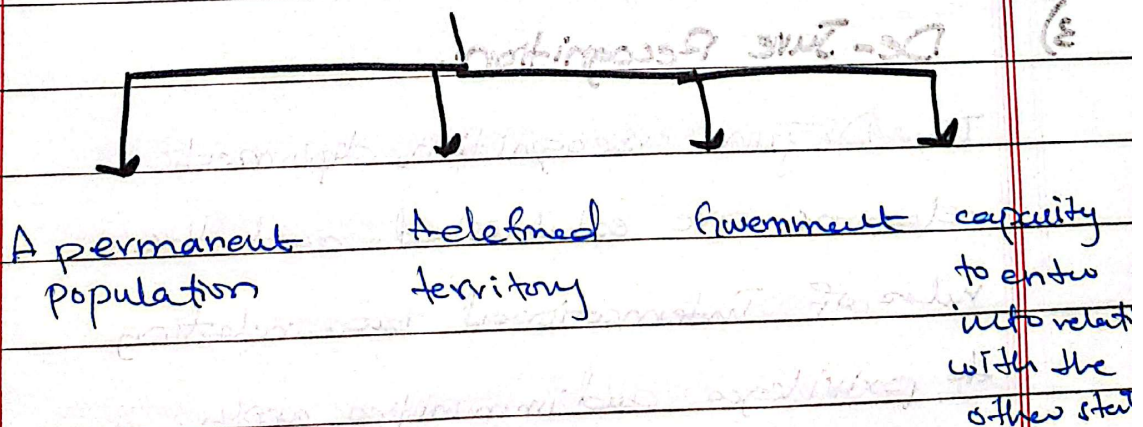
Introduction:-

The recognition of state is very important in international law. In recognising a state as a member of international community, the existing state declare that in their opinion the new state fulfil the conditions of statehood as required by international law.

Article 1 of Montevideo-convention, legal status:-

The first legal status of state recognition rise from article 1 of montevideo-convention. The state as a person of International law:

State Should Posses:



Legal Effect of State Recognition:-

Recognition is a political diplomatic function and depends upon the discretion of the recognizing state. Recognized state acquires certain rights, privileges and immunities under I. law as well as municipal/ domestic law.

1) Sue in Courts:-

The Recognized state becomes entitled to sue in the courts of the recognizing state.

2) Legislative Acts:-

The courts of the recognizing state give effect to the past as well as present legislation and executive acts of the recognized state.

3) De-Jure Recognition:-

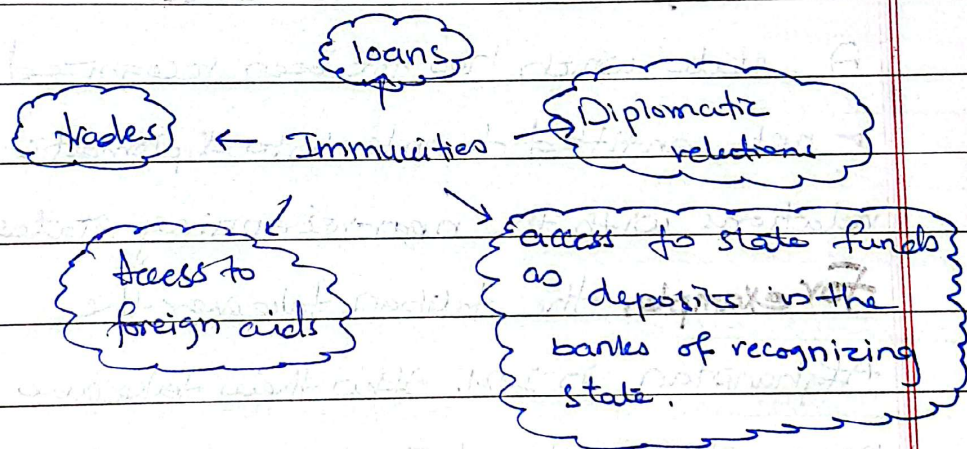
In De-jure recognition, diplomatic relations are established and the rules of International law relating to privileges and immunities apply.

4) Sovereign Immunity Applies:- Legal act (2)

A recognised state is entitled to sovereign immunity for itself as well its property. In the courts of the recognising state.

5) Become member of International community:-

State recognized by other state, it becomes a member of international community; it acquires certain rights as well as duties under International law. (2)



Consequences arising when a state cease to exist :-

In this modern world state cannot become easily cease to exist. However, if a state cease to exist then follow consequence can be arise.

1) No legal status:-

An unrecognised state cannot be sue in the courts of non-recognising state.

As it like cease to exist. For example: in

Russian Socialist Federated Soviet

Republic U. S. v. Cuba 1921 - the New York

court had observed that such a state

cannot sue, as matter of right, in

American Courts.

2) No Diplomatic Immunity as state is not recognized or cease to exist:-

A state which has not been recognized

is not entitled to enter into diplomatic relations with the non-recognising states.

For example, the Taliban takeover the

Afghanistan in 2021. After their takeover

many state, closed its diplomatic offices.

3) No Immunities:-

The diplomatic representatives of state

which has ^{not} been recognized do not possess

immunities from legal process in

foreign states

4)

Not entitled to Possess Foreign Property:-

Such state which are ceased to exist are also not entitled to get their property situated in foreign state. For example, in Bank of China v. Wells Fargo Bank & Union Trust Co; Court held that court of the opinion that us (should recognize) the nationalist Govt. of China as legally entitled of exercise, the controlling corporate authority of the Bank of China.

Conclusion :-

The State recognition have legal consequences to the other state and in international community. If a state did not recognized then its (state) status become ceased to exist. As it is not exist in the world. Then the international community will ^{not} be ^{show} any concerned to it. Therefore, the recognition is very important for the state to acquire legal benefit from other state as well as legal ^{international} community.

Q No. 5 :-

Introduction:-

The Law of Nations or International Law is the name for the body of customary and treaty rules which are considered legally binding by civilized states in their intercourse with each other - as per Oppenheim. The international law develops with time. Moreover, it helps states to cooperate with each other and promote and protect the peace between the states and organizations including the individuals.

Historical Accounts of the origin of International Law:-

The international law originates from different accounts of events, principles and doctrines.

These events are as follows:

Wars:-

Most of the international law origins can be traced from the World War-I and World War 2. Because before these wars the territories are captured by war. Thus wars help the evolution and development.

of international law.

World War-I and LEAGUE OF Nations:-

As the great event of all the time World War-I from 1914-1918. This war developed the League of Nations in 1920 to protect the human kind and the international community. For example, in the WW-I many innocent civilians are died in WW-I, harsh violation of human rights.

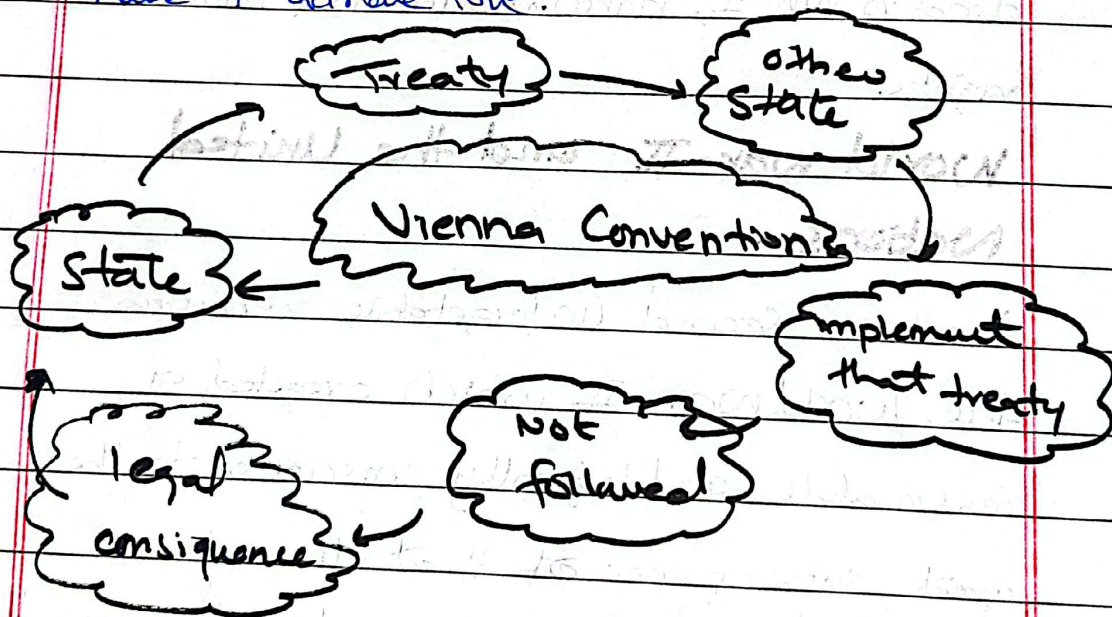
World War-II and the United Nations:-

Another second unforgettable even was the World War-II which created a reasonable and logically conscience to the great super powers of that time to create international body and international law to protect the peace, humanity and mankind. The WW-II which happened in 1939-1945 which after the United Nations was created in 1945. To protect the international peace and

humanity and the state-territory.

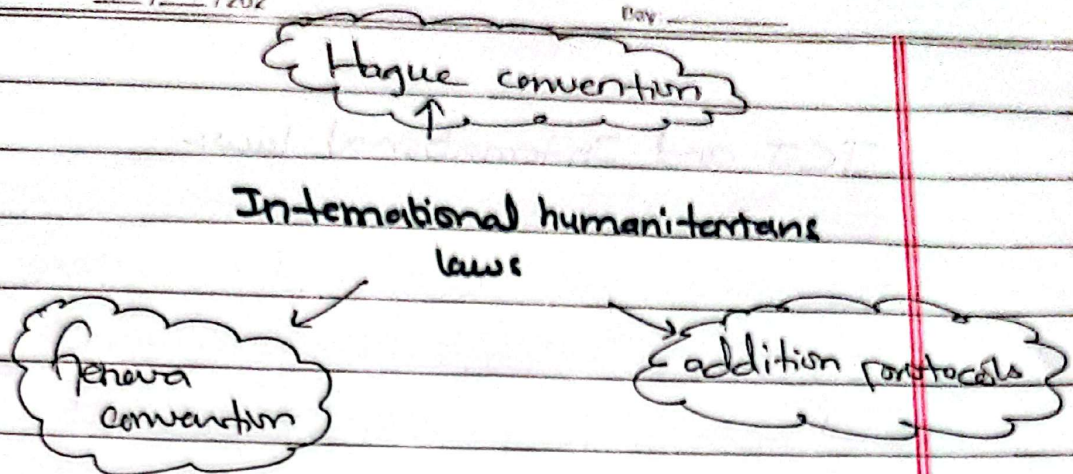
Laws of Treaties and Vienna Convention:-

Treaties are an important and major source of international law. It is a convenient way by which the state deliberately enter into agreement with other states. Therefore, legally bound by it, thus creating rights and obligations under the international law which they have to adhere to.



International Humanitarian law:-

Another laws which historical develop the international law which concerned the conduct of war and armed conflicts.



Beginning of International law:-

International law begins when the United Nation and its charter 1945 made which mainly governs the international law along with the other conventions like Genocide convention, Vienna convention and Hague convention.

International law is a Law:-

Modern time experts argues that international law is a law. As law provides all the principle which a law should have, which are as follows:

1) Customs and International law:-

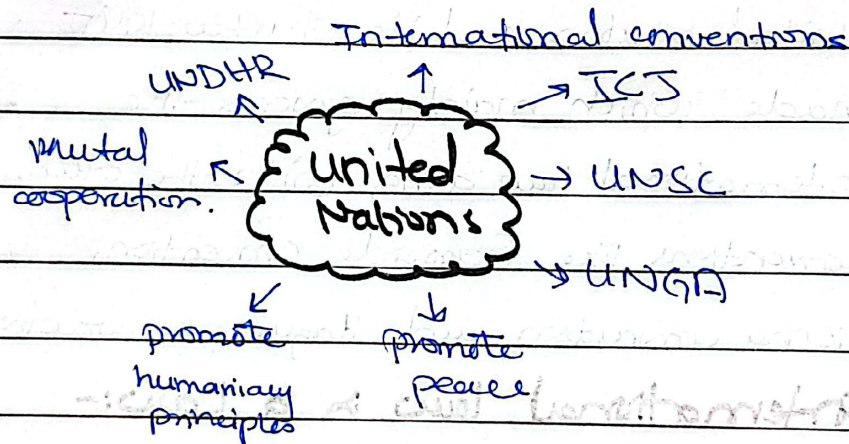
Customary rules of international laws are diminishing (becoming less) and are being replaced by law-making treaties and conventions.

ICTJ and International law:-

ICTJ decides cases in accordance with the international laws and conventions.

ICTJ Serves as a high court in the world and open to the parties to come and solve their dispute in a peaceful manner.

Decision of ICTJ is binding upon the parties only in respect of that dispute.



Conclusion:-

In the end, the historical events and principle help to developed the today's international law. These events are a thoughtful principles and example for human kind that war is not the solution.

Therefore, the strong state of that time created a International body and conventions to promote peace and humanity.

Q. N. 6:-

Introduction:-

The Statute of the International Court of Justice. The ICJ established by the United Nations as the principal judicial organ of the United Nations shall be constituted and shall perform the functions in accordance with the provisions of the ICJ Statute. Moreover, the ICJ Statute is the main document that the ICJ follows it to uphold international law.

Article 38(1) of the ICJ Statute:-

The court, whose function is to decide case in accordance with international law. The sources are as follow:

- 1) Treaties / conventions
- 2) customs / international customs
- 3) General Principles of law recognized by civilized nations.
- 4) Decisions of judicial or arbitral tribunals
- 5) Juristic works
- 6) Decision of determinations of the organs

of international institutions
7) Other Sources.

Treaties and Conventions:-

As defined in the article 2 of the Vienna convention on the law of the treaties, 1969. A treaty is an agreement where by two or more states establish or seek to establish a relationship between them governed by international law. For example, Indus water treaty between India and Pakistan to related water distribution. Moreover, same as Vienna convention which is a universal treaty to be followed by each state who ratified it.

International Customs:-

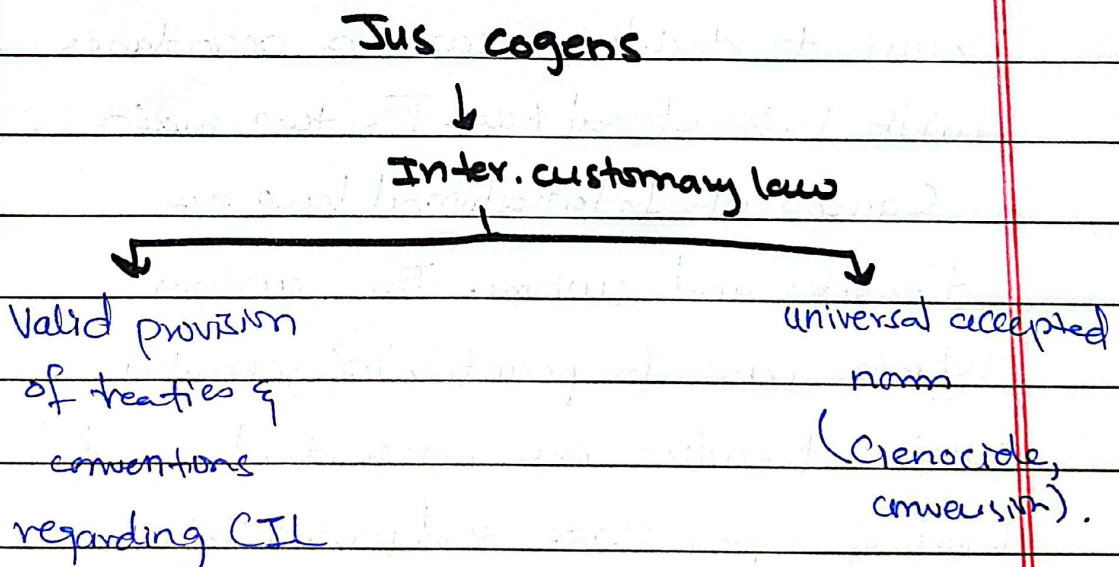
The international customs have been regarded as one of the prominent sources of international law for a long time. According Article 38(b) of ICJ recognises international customs, as evidence of general practice accept as law, as one of the source of

of international law.

Jus cogens and customary Law:-

The Jus cogens is very much connected to international customary law. It is a part of International customary law.

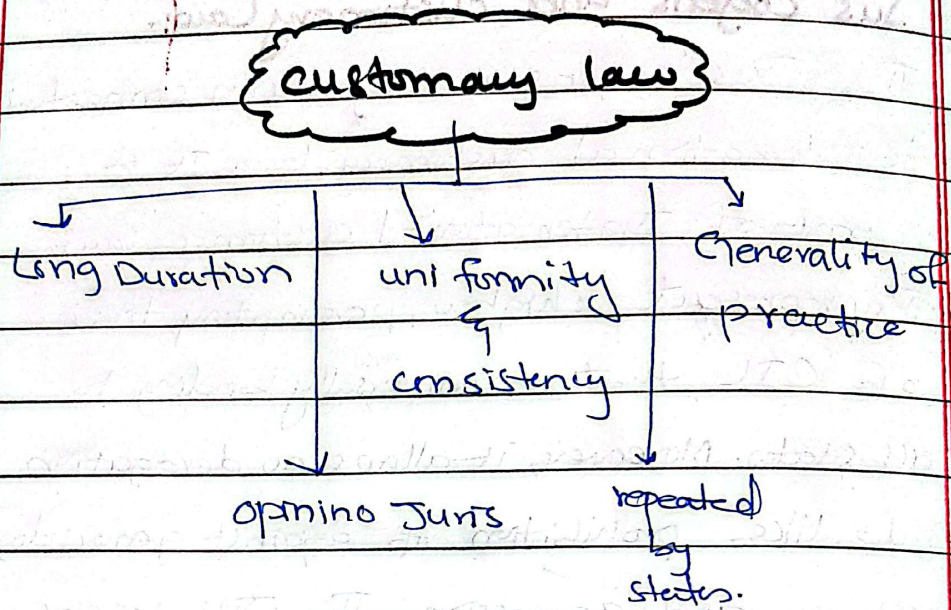
They represent a higher, peremptory tier of CIL that is universally binding to all states. Moreover, it allows no derogation rules like prohibition of genocide, slavery and aggression. The Jus cogens basically governs the customary law.



No unilateral Declaration in customary Laws:-

No state can unilateral declare the customary law unless it gains certain

prominancy which are as follow::



Conclusion:-

The ICS Sources are upheld by ICT court to decide a case in accordance with international law. The two main Sources of International law are treaties and customs. The customs which come to practice is generally while treaties are consensual and binding upon state and parties to it. Thus, both treaties and customs are main Source of international law and ICT court.