

Part IIQ.4Historical Evolution and Development

The international law has developed through many ages historically. The historical development of international law has three phases of its evolution which are:

- i) Middle ages and before (5th-15th century)
- ii) The evolution and development in 16th and 17th century.
- iii) The evolution and development in 18th century and afterwards.

The evolution of international law basically started from the middle ages till the 15th century. and The second phase started from the 16th century till 17th century in which many major developments occurred. The final era is from 18th century and afterwards which is modern development of international law.

Here is the detailed explanation of the phases of international law development.

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Ex

Introduction

Historical
Development

Conclusion

5th to 15th
century

16th and 17th
century

18th century and
onwards

i) From 5th to 15th Century

The international law is first introduced by the people in the 5th from the 5th to 15th century. Its first evolution and development occur in this era. In this era, the contribution in development of international law is done contributed by many different empires and ethnicities like Jews, Greeks, Romans and Muslims.

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5th to 15th century

Contribution
of Jews

Contribution
of Greeks

Contribution
of Romans

Contribution
of Muslims

Contribution of Jews

Jews contributed in the early evolution of international law. They developed different principles which developed the international law.

Following is the contribution of Jews in the evolution of international law.

i) Jews introduced the concept of internationalism.

This concept means that the Jews introduced that there should be laws that govern the process of city states.

ii) They developed the ~~rated~~ rules for giving the diplomatic immunities to the diplomatic agents.

iii) The Jews believed in the laws of treaties.

Contribution of Greeks

Greeks also contributed in the early development of ~~laws~~ international law through following actions:

- i) The Greeks ~~developed~~ the laws of war and peace.
- ii) They also developed the laws of treaties.

Contributions of Romans

The Romans also contributed in the early development of the international law.

The Romans also developed the laws of war and also differentiated between the just and unjust war. The components of unjust war are:

- i) ~~at~~ Attack on Roman territory
- ii) ~~Not~~ ~~in~~ respecting the immunity of diplomatic agents.
- iii) Attack ~~on~~ Roman territory by a friendly state.

Romans also developed certain laws named

Jus Naturale: Laws common to all human beings

Jus Gentium: Laws common for the foreigners and the civilians of Rome.

Contribution by Muslims

Muslims contribution is following in the developmen.

- i) Laws of war.
- ii) Laws of treaties.
- iii) Common laws.
- iv) Laws for prisoners.

ii) 16th 16th and 17th century

Two major contributions occurred in the international law in this era which are:

- i) Treaty of Westphalia
- ii) Basis of International law

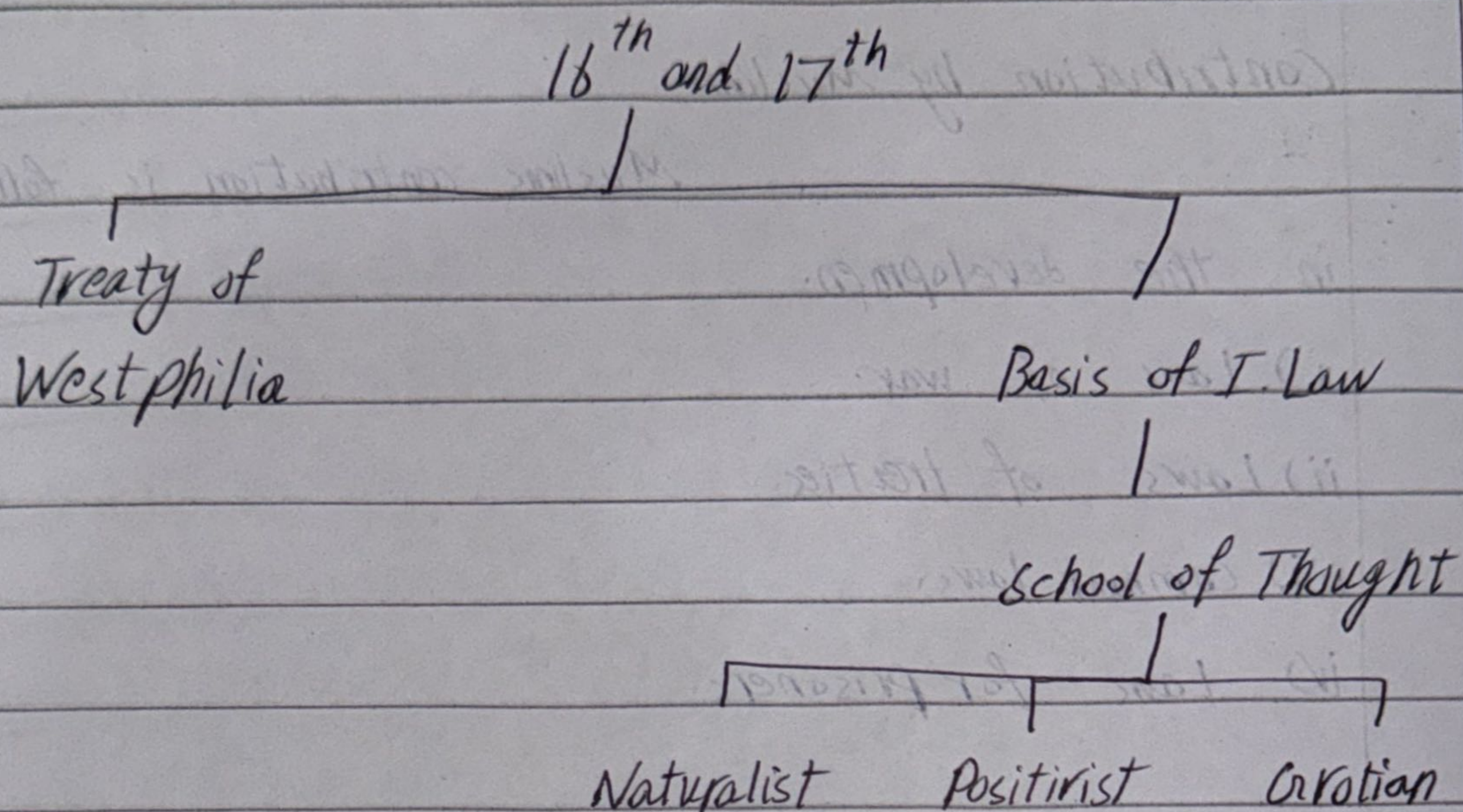
Treaty of Westphalia

The treaty of ~~West~~ Westphalia is a great landmark in the development of International law. The treaty of Westphalia mainly did following contribution:

- i) End of feudalism.
- ii) Transferring the powers of law making from Church to the politicians.

Q. 11 (b)

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~~Naturalist~~ Naturalist

The naturalist school of thought is basically a thought which ~~was~~ earlier thought that the law comes from the religion called as divine law.

Later it was adapted by modern jurists that the law comes from the nature of man and originates from the rational thinking.

~~The~~ This school of thought is considered to be the basis of international law.

Criticism: The criticism is that every jurist gave its own definition of this schools which becomes difficult to interpret.

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Positivist

This school of thought says that the law is the legislature by the designated parties. Law is basically followed and adopted once it is passed by the authorities and the parties under the authorities need to accept that law.

Criticism: The article 2(7) of UN charter is the criticism of this school of thought. Which says that the UN charter is binding on all the states whether they are member of UN or not.

Grotian

This school of thought is proposed by Hugo Grotian, the father of I.Law. The grotian school of thought stands between the naturalist and positivist school of thought and its key aspects explain the state and statehood and components of international law.

18th Century and onwards

This era is also called the codification era.

Basically this era started when the WWI happened

from 1914 to 1919. To tackle such situations in future, the EU league formed after WWI.

Then in late 40's the WWII happened.

Then this EU league converted to the league of nations which further formed the United Nations. By these institutes, the current form of international law produced.

Conclusion

In conclusion, the introduction of international law happened in middle ages in which the

Jews, Greeks, Romans, and Muslims participated in its evolution. The contribution of the

Treaty of Westphalia and schools of thought.

After that the codification of era. These things

By these things, it is evident that the international law ~~era~~ is continuously evolving

from the middle ages till today and due

to changing circumstances it will evolve more in future.

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Q:7

(a)

Territorial Sea

The territorial sea of a state extend from the baseline of coast to the area of 12 Nm (1 Nm = 1.5 miles or 1.8 km). it is the area of 12 Nm from bas line.

It is the area where the state has the territorial sovereignty. In the territorial sea, the civil and criminal jurisdiction of the coastal state applies.

Rights and Obligations

The rights of the state under the UNCLOS in the territorial sea are that the other states cannot pass through or navigate from this zone without the permission of coastal state and coastal state has authority to apply their jurisdiction on unauthorised movements except the innocent Passage (IP).

Innocent Passage (IP): IP is the obligation on the coastal state. Basically IP is a passage,

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when the ships are moving from one high sea to another, they are authorised by the UNCLOS that they can pass through the innocent passage located in the territorial sea.

i) The coastal state can not stop or apply civil jurisdiction on the territorial innocent passage.

ii) The coastal state cannot apply the criminal jurisdiction on the ships moving in the innocent passage except:

- The ship is convicted of any harmful act.
- The ship is responsible for the ~~envi~~ creating propaganda to the coastal state.
- Robbery.
- Piracy etc.

iii) The coastal state cannot apply the criminal jurisdiction on foreign vessels except,

- They are carrying warfare practice.
- They are creating propaganda.
- These are the rights and obligations of a state over its territorial sea.

(b)

Contiguous Zone

EEZ

i) Contiguous Zone extends upto 24 Nm from the baseline.

The EEZ extends upto 200 Nm from the base line.

ii) The coastal state has rights and sovereignty over this zone.

ii) The coastal state do not have the sovereignty over this zone.

iii) Other state need the consent of the coastal state to pass through, navigate or carryout activities in this zone.

iii) Other states can pass through or navigate from this zone.

iv) Other states cannot carry out the activities on this zone.

iv) Other states can carry out activities.

v) Coastal state has the rights to develop islands and have the right over the property in this zone.

v) The coastal state has the specific economic rights like pipelines, oil reserves and other minerals etc in this region.

(C)

High Seas

The high seas start from mostly from 250 to 350 nm. The high seas are international water where there is no jurisdiction of any state.

Legal status

The legal status of the high seas is that these are the international waters where no state has any jurisdiction. In the high seas the ships from any state can pass through or navigate and the planes of every state can pass through this passage.

Jurisdiction over ships

In the high seas, the ships moving need to register themselves with a state. Ships can be registered with any state.

The jurisdiction on the ships is applied of the state they are registered to. The ships carry the flag of the country they are registered with.

Collision

In case of collision, the ship law applies on the ship is of country it is registered to and the country of registration of ship it ~~collided~~ collided with.

The ship

The Famous case in the aspect of Collision is S-S Lotus case: where a French steamer ship collided with the Turkish steamer and killed the people. Turkey arrested the captain and applied jurisdiction upon which France protested.

(d)

Continental shelf

The continental shelf is usually about 200 Nm but in certain cases, it extends upto 350 Nm from the base line. The coastal state do not have any sovereignty or territory in the continental shelf but they have certain economic rights like the pipelines, oil reserves, minerals and ~~and~~ other specific activities. ~~The continental~~

The continental shelf is open for the economic activities like trade and navigation by all states but the coastal state has certain economic rights over the continental shelf.

Beyond 200 Nm

If the continental shelf exceeds beyond the 200 Nm then till the continental shelf ends, the coastal state has specific economic rights and any other state cannot interrupt in it. If the continental shelf ends beyond 200 Nm then the High seas start which are international waters where no state has any rights and everyone moves with the flags of their registered countries.

Conclusion of All

The

Baseline

T.W 12 N.M	C.Z 24 N.M	EEZ 200	~~EEZ~~ HS 200-350 Nm	H.S
	C.S	C.S	C.S	

Basically, from all the discussion it is evident that these are all the specific zones that start from the baseline of the coastal state. And the coastal state has different sovereignty, rights and duties in these zones which varies. These zones extend till the High seas where the international law is applicable.

Q.1

State Succession

State succession is a process of the transfer of the duties, obligations, and territorial relations in international relations when a new state is formed.

According to Oppenheim "Succession is the transfer of rights and territorial aspects to a new state from an existing state it formed."

Types of Succession

Succession is of four types:

Universal Succession: When the existing state fully

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dissolves and forms new states.

For example USSR.

Partial Succession: When a part of the existing state declared as a new state or territory.

For Example: separation of Pakistan and India.

Involuntary Succession: When a state surrenders its rights and obligations to another state.

Voluntary Succession: When a state is formed to the through resistance.

For example: Pakistan from British India

Theories of Succession

When There are two theories of state succession.

Theory of Continuity: When the existing rights and obligations are applied to existing state from the past state.

New Link Theory: When the new state start their rights and obligations ~~thru~~ by a new existence and do not get them from past state.

* Pakistan followed the new link theory.

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Misnomer
Yes, the traditional state succession is
a misnomer in the inter

2. Misnomer

3. Boundary
Treaties

Durand Line

State Succession

1. Introduction

Types

of Succession

Theories

of Succession

Misnomer

Yes, the traditional state succession is
a misnomer in the modern international
law. Be Fri

This is because the traditional state succession
terms that "there is transfer of rights and
obligations and duties with territory to newly formed
state." This basically means that the new
state gets the debt, treaties and alliances
of the past state which are obligatory
on the new state.

The famous jurists like Oppenheim and Ian Brownlie rejected this concept.

According to Oppenheim "There is no transfer of duties and obligations rather only the territory to the new states."

This concept is a misnomer in the modern international law because the modern international law states that the newly formed states are not responsible for the obligations of the past states. There should not be any kind of burden on the new states due to the obligations and the duties of past state.

The only thing which is transferred to the new state are rights and territories which are defined by the past states.

So, due to the above discussed proofs, it is evident that the traditional state succession is a misnomer for the modern international law as it is considered unfair to transfer the obligations of the past state to the new state.

Boundary Treaties

The legal status of the boundary treaties in the modern international state succession law is that the territorial boundary is transferred to the new state as it was in the past state.

All the boundary agreements of the past state with neighbouring states are valid and cannot be void with the formation of new state.

Durand Line

The Durand Line is a 2640 km long border between Pakistan and Afghanistan. The Durand Line issue raised with the formation of Pakistan in 1947 as Afghanistan denied to accept the Durand Line and demand the NWFP region of Pakistan.

The Durand Line Agreement was signed between Sir Durand and Nadir Shah of Afghanistan in 1883 defining the boundaries between the Afghanistan and British India.

With the formation of Pakistan, Afghanistan

claimed that they had agreement with British government. As a new country is formed so the agreement is void now.

Stance of Afg: Stance of Afg is that the existing agreement was with British government. As a new country is formed so the agreement is void now.

They claim NWFP as their Pashtun region and demand it back.

Stance of Pak: The stance of Pak is on the basis of I. law that according to I. law, the existing boundary agreements and treaties of past state are not cancelled once a new state is formed. So the Durand line will remain and NWFP is legally their region.

International stance: The international communities back the stance of Pakistan and consider it as legal according to international law.

Conclusion

In conclusion, state succession is transfer of rights and territory. There are four types

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and two theories of succession. It is evident from the discussion that the traditional concept of state succession is a misnomer in the modern international law. The Durand Line agreement, Pakistan has the right stance which is back by the international community.

Q: 3

Intervention

The unlawful interference by one state in the matters of another state to change or alter ~~some~~ certain things is termed as the intervention.

Concepts

Article 2(4)

According to the article 2(4) of UN charter, no state can intervene in the internal affairs of any other state.

Article 2(7)

According to article 2(7) of

HA

UN charter, United Nations cannot interfere in the internal affairs of any other domestic affairs of any state.

Self Defence (51)

According to article 51 of UN charter, ~~sta~~ states can reply back in terms of self defence on certain conditions.

Armed Attack: If the armed attack is carried out on the state, state can answer back the intervention until the UNSC resolves the issues.

Report to UNSC: States must need to report to UNSC.

Temporary: states have temporary authority of self defence until UNSC takes action.

Proportionate Action: State should only take action to answer the intervention not to start ~~ans~~ a war.

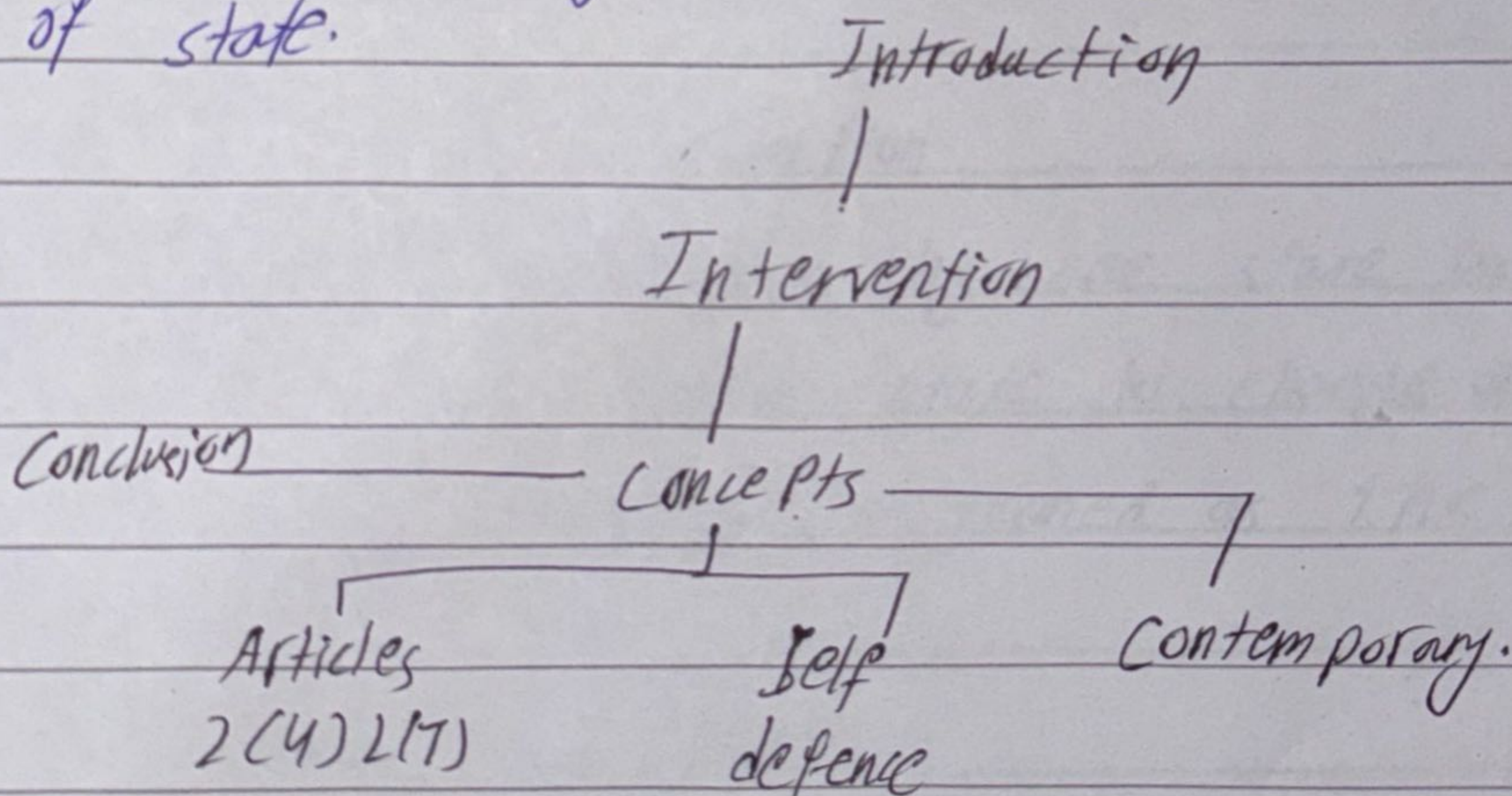
Reference: Caroline case

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Contemporary Practices

Yes, the contemporary practices like the cyber operations or economic coercion violate the sovereign equality of the states.

These actions are also considered as the intervention in the matters of state so the challenge the sovereign equality of state.



Conclusion

In conclusion it is evident that the sovereign equality of state is compromised by intervention.