

PUBLIC INTERNATIONAL LAW

UNIT – I

Nature, Definition, Origin & Basis Sources • Municipal Law • Subjects

20 Slides • Formal Academic Edition

LEARNING ROADMAP

UNIT-I – 20 Slides Coverage

1. Definition of IL

2. Nature of IL

3. Origin of IL

4. Basis / Theories

5. Sources – Art 38

6. Treaties

7. Custom

8. General Principles

9. Subsidiary Means

10. Municipal & IL

11. Monism vs Dualism

12. Indian Position

13. Subjects of IL

14. States as Subjects

15. IOs & Individuals

16. Key Cases

17. Distinctions

18. Exam Strategy

19. Key Takeaways

20. Closing

Classical and Modern Views

International Law is the body of rules and principles that are legally binding upon States in their relations with one another and, in modern times, also govern the relations of international organisations and, to a limited extent, individuals.

Oppenheim

Body of rules which are legally binding on states in their intercourse with each other.

Modern View

Includes rules applicable to IOs, individuals (human rights, ICL) and other non-state actors.

Public vs Private

Public IL governs inter-state relations; Private IL (conflict of laws) is domestic.

Jus Gentium

Historical root – law of nations recognised by civilised peoples.

Key Characteristics

Horizontal System

No central superior authority; states are equal sovereigns.

Consent-Based

Binding force rests largely on consent (treaties) and accepted practice (custom).

Decentralised Enforcement

No regular police or compulsory court for all disputes.

Weak Sanctions

Compared to municipal law; relies on reciprocity, reputation, countermeasures.

Growing Institutionalisation

UN, ICJ, WTO, human rights bodies strengthen the system.

Still Law

Despite weaknesses, it is regarded as real law by states and courts.

Historical Development

Ancient Period

Treaties between city-states;
Roman jus gentium.

Medieval

Influence of Church and natural
law; early writers.

Grotius (1625)

De Jure Belli ac Pacis – Father of
International Law; secular natural
law approach.

Westphalia 1648

Peace treaties established
sovereign equality of states.

19th Century

Positivism; rise of treaties and
arbitration.

20th Century

League of Nations → United
Nations; codification; human
rights.

Theories of Obligation

Natural Law

IL derives from reason and justice inherent in nature.

Positivism

IL is based on the will / consent of states.

Consent Theory

States are bound because they have consented.

Auto-limitation

State limits its own will by accepting rules.

Pacta Sunt Servanda

Agreements must be kept – foundational principle.

Sociological

IL reflects social needs and interdependence of states.

Authoritative Statement

Article 38(1) of the ICJ Statute is the classic and most authoritative enumeration of the sources of International Law that the Court shall apply.

a. Treaties

International conventions, general or particular, establishing rules.

b. Custom

International custom as evidence of a general practice accepted as law.

c. General Principles

General principles of law recognised by civilised nations.

d. Subsidiary Means

Judicial decisions and teachings of highly qualified publicists.

Primary Source

Definition

Written agreements between subjects of IL governed by international law.

Types

Bilateral / Multilateral; Law-making treaties / Treaty-contracts.

VCLT 1969

Vienna Convention on the Law of Treaties – codifies most rules.

Pacta Sunt Servanda

Every treaty in force is binding and must be performed in good faith.

Formation

Negotiation, adoption, authentication, consent to be bound.

Importance

Most important modern source for detailed regulation.

Two Elements

Custom requires two elements: (1) State practice that is consistent, widespread and representative, and (2) *Opinio juris* – the belief that the practice is legally obligatory.

State Practice

Objective element – duration, consistency, generality.

Opinio Juris

Subjective element – sense of legal obligation.

Persistent Objector

State that objects from the beginning may not be bound.

Instant Custom

Possible in limited fields (e.g., outer space) – debated.

Completing the Sources

General Principles

Good faith, res judicata, estoppel, equity – drawn from municipal systems.

Function

Fill gaps when treaty and custom are silent.

Judicial Decisions

ICJ, PCIJ, arbitration awards – no formal stare decisis but highly persuasive.

Teachings of Publicists

Writings of highly qualified scholars (Grotius, Brownlie, etc.).

Soft Law

Resolutions, guidelines – not binding but influential.

Hierarchy

No strict hierarchy, but treaties and custom are primary.

The Relationship

Dualism

- Two separate legal systems
- IL and municipal law are distinct
- IL needs transformation / adoption into domestic law
- Treaties require legislation for internal effect
- Classic dualist states: UK (to a large extent), India (for treaties)

Monism

- Single legal order
- IL and municipal law form one system
- IL may be superior or municipal law may be superior
- Direct applicability possible
- Some Continental systems lean monist

Constitution and Courts

Art. 51(c)

Directive Principle – foster respect for international law and treaty obligations.

Art. 253

Parliament can make laws to implement treaties even on State subjects.

Custom

Part of the law of the land if not inconsistent with municipal law.

Treaties

Generally require legislation for domestic enforceability (dualist approach).

Vishaka Case

Supreme Court used international conventions to fill gaps in domestic law.

Other Cases

Maganbhai, Kesavananda, National Legal Services Authority – receptive approach.

International Personality

Traditional View

Only States are subjects of IL.

Modern View

States (primary) + International Organisations + Individuals + Peoples (limited).

Personality

Capacity to possess rights and duties under IL and to bring international claims.

Relative

Personality is functional and relative, not absolute.

States

Full and original personality.

Others

Derived or limited personality depending on the context.

Montevideo Criteria

Permanent Population

People living in the territory – no minimum size.

Defined Territory

Even if borders are disputed, some territory is required.

Government

Effective government that exercises control.

Capacity to Enter Relations

Independence in foreign affairs – ability to conduct international relations.

Montevideo 1933

Most widely cited statement of the criteria of statehood.

Recognition

Declaratory theory preferred – recognition acknowledges existing fact.

Non-State Subjects

International Organisations

Derived personality – Reparation for Injuries case (ICJ) confirmed UN personality.

Individuals

Human rights, international criminal law (Nuremberg, ICC), investor-state arbitration.

Peoples

Right of self-determination.

NGOs / MNCs

Limited or indirect roles; no full personality.

Functional Approach

Personality depends on the needs of the international community.

Exam Tip

Always cite Reparation for Injuries for IO personality.

Must-Cite Authorities

SS Lotus (PCIJ)

Residual liberty of states; jurisdiction unless prohibited.

North Sea Continental Shelf

Elements of custom – practice + opinio juris.

Reparation for Injuries

UN has international personality.

Barcelona Traction

Diplomatic protection; nationality of corporations.

Nottebohm

Genuine link for nationality in certain contexts.

Vishaka v. State of Rajasthan

Use of international conventions in Indian courts.

For Exam Answers

Public IL vs Private IL

Inter-state rules vs conflict of laws (domestic).

Treaty vs Custom

Written consent-based vs practice + opinio juris.

Monism vs Dualism

Single system vs two separate systems.

State vs Individual

Full personality vs limited / functional personality.

Law-making vs Contractual Treaties

Create general rules vs specific reciprocal obligations.

Declaratory vs Constitutive Recognition

Acknowledges fact vs creates statehood.

How to Score

Start with Definition

Always begin with a clear one-line definition.

Cite Art. 38

For any sources question – list the four points.

Use Cases

Lotus, North Sea, Reparation, Vishaka – even short holdings help.

Draw Distinctions

Monism/Dualism table or Treaty/Custom table scores well.

Indian Angle

Mention Arts. 51 & 253 and dualist approach for treaties.

Structure

Definition → Explanation → Case → Conclusion.

KEY TAKEAWAYS

UNIT-I at a Glance

01

Definition & Nature

Horizontal, consent-based system governing mainly States.

02

Sources

Art. 38 ICJ Statute – Treaties, Custom, General Principles, Subsidiary means.

03

Custom

State practice + opinio juris; persistent objector rule.

04

Municipal–IL

India largely dualist for treaties; receptive to custom and soft law.

05

Subjects

States primary; IOs and individuals have functional personality.

06

Cases

Lotus, North Sea, Reparation, Vishaka – essential citations.

End of UNIT – I

Nature • Sources • Subjects of International Law

Next: UNIT-II – States, Recognition & Territorial Sovereignty