

Total Marks : 250

Total Time Allotted : 3 Hours

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

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Subject: INTERNATIONAL LAW - II
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Teacher's Remark

Law Optional Test Series No - 04
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Section - A

Q.1(a). Write short note on: State Sponsored Terrorism (10 Marks, 150 words)

The Global efforts of eradication of Terrorism has yielded much effort through formulation of UN Resolutions, Global Anti-terrorism bodies and forums. An emerging menace in the form of State sponsored Terrorism has brought the focus back on undertaking comprehensive efforts.

As in the case of Terrorism, State sponsored terrorism also lacks a universal definition.

However, constituents of State sponsored Terrorism

include -

- (a) Violent subversive Action
- (b) State Backing
- (c) Intended Political Outcome
- (d) Act furthering the achievement of intended outcome.

→ lost the
⇒ I don't know

In the case of Nicaragua v/s USA, Contras were not held to be part of USA state sponsored action as USA did not effectively control their actions.

Designation of State sponsored Terrorism

As per International conventions and practices only 4 countries has been designated as state sponsors of Terrorism -

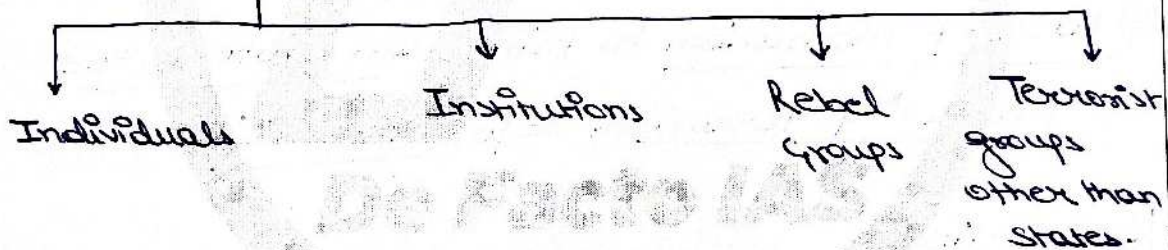
- a) North Korea
- b) Iran
- c) Syria
- d) Sudan

Thus, there exists many ambiguities in the definition which excludes states like Pakistan from getting designated as state sponsors for Terrorism and thus it needs a comprehensive overhaul.

Q.1(b). Discuss the challenges of prosecuting non-state actors for acts of terrorism at the International Criminal Court. [10 Marks, 150 words]

The Rome Statute (1998) created the International Criminal Court to prosecute individuals and non-state actors which cannot be made parties in other forums like ICJ for crimes of grave danger threatening International Peace & security.

Non-state Actors



Challenges of Prosecution

(1) Lack of Enforcement Mechanism ⇒ ICC lacks independent enforcement mechanism to carry out its orders and depends on the will of the states to carry out its orders.

(2) Lack of universal Jurisdiction → All states are not parties before ICC and therefore ICC lacks jurisdiction and ability to prosecute non-state actors for terrorism.

(3) Ambiguity in Definition & Determination of Terrorist Activities.

(4) Efficiency of ICC affected due to lack of state support

(5) Lack of mechanism to bring non-state actors promoting terrorism before the ICC.

Suggestions

(1) Having a universally accepted definition of Terrorist activities

(2) Ensuring universal ratification through consensus building.

Thus the recent decision of ICC to prosecute Vladimir Putin begs the question of enforcement which needs to be resolved at the earliest.

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Q.1(c). Discuss the various peaceful means of resolving International Disputes. Which one according to you is more practical in the context of problems of the present day? Give reasons (10 Marks, 150 words)

Articles 33-38 under Chapter VI of UN Charter provides for various peaceful means of resolving disputes which are defined as disagreement over a point of law or fact ~~and~~ or concerning International Law.

Various Peaceful Means

(a) Arbitration ⇒ Involves party autonomy and binding award. Hague convention established Permanent court of Arbitration for settlement of disputes.

(b) Judicial Settlement ⇒ A-92 of UN Charter prefers Judicial settlement through ICJ which applies law as per A-38 of ICJ charter and provides a binding Judgement.

(c) Mediation → Involves facilitation of dispute through mediator who recommends a course of action.

(d) Negotiation → Does not involve a third party and parties undertake to ~~Negotiate~~ on peaceful terms.

(e) Conciliation → Refers to methods of dispute settlement through mutual understanding and co-operation.

(f) Enquiry → Setting up an enquiry commission which recommends its fact finding report.

More Practical Method

Arbitration shall be the preferred method -

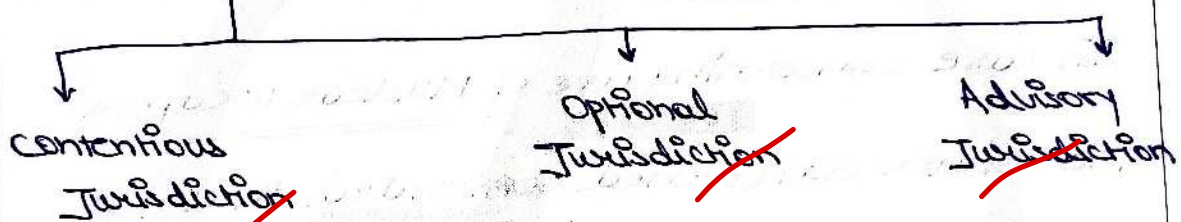
- (a) Involves respect for Party Autonomy
- (b) Less expensive and faster dispute resolution
- (c) Greater flexibility in procedure.

Thus UN Charter envisages comprehensive dispute resolution mechanisms in view of problems of present day and time.

Q.1(d). Does the International Court of Justice (ICJ) have the competence to determine its own jurisdiction? Discuss with case law (10 Marks, 150 words)

ICJ is the principal judicial organ of the UN, established under A-92 of UN charter and ICJ charter provisions.

Types of Jurisdiction



ICJ determines the settlement on the basis of application of law as per A-38 of the ICJ charter.

Competence to determine Jurisdiction

As per ICJ charter, the ICJ possesses the competence to determine its own jurisdiction in view of the peculiar facts and circumstances of the case and laws applicable.

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Thus the essential conditions for determining Jurisdiction involve -

- (a) Parties should be UN Members
- (b) Applicable rules and laws
- (c) Facts of the case.

Case law

In case concerning use of Nuclear Weapons the states concerned contended that ICJ is not the appropriate forum for dispute resolution.

However, ICJ invoking its charter held that it possesses the inherent powers to determine its own Jurisdiction as per the ICJ charter and dismissed the contention of states concerned.

Thus ICJ stands as ~~as~~ a cornerstone of Judicial Settlement within UN and shall be strengthened further.

Q.1(e). Explain and discuss in particular the emergence of Soft Law and principles of International Environmental Law and how this has influenced the development of this area of International Law. (10 Marks, 150 words)

'Soft law' in the context of development of International Environment law refers to a law devoid of pressing sanctions and which demands co-operation and obedience as part of shared responsibility of members of world community.

Emergence of Soft law 2 International Environmental law

(1) UN Conference on Human Environment ~~(S.M. 17/12)~~ ~~→ Popularity~~
referred as Stockholm conference represents the earliest declarations towards preservation of environment and taking steps towards developing measures [26 Agendas]

(2) Sustainable development and Bruntland
commission report delineated on the need for development being mindful of environmental concerns.

(3) UN conference on Environment and development

The Rio conference brought two major Instruments of Soft law in Environmental domain - CBD and UNFCCC. along with Rio Principles like Polluter's Pay Principle (Agenda 15) and Precautionary principle (Agenda 16)

Development of International law

- (1) Stockholm convention on Persistently organic pollutants borrows heavily from Rio conference and states responsibility to terminate & eliminate use of POP.
 - (2) Kyoto Protocols mandate mitigation & adaptation through Joint efforts. like Clean development mechanism, Joint implementation etc.
 - (3) Paris principles $\Rightarrow$ Soft law that mandates arresting Global temp. to $1.5^{\circ}\text{C} - 2^{\circ}\text{C}$ rise.
- Thus International envt-law has greatly influenced development of rules & principles in this domain

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Q.2(a). Discuss the Geneva Conventions and their additional protocols in the context of contemporary conflicts. How do they address the issues of civilian protection and combatant status? (20 marks)

The International Humanitarian law emerged to regulate the conduct of wars or armed conflicts. Geneva conventions along with additional protocols and Hague conventions serves as instruments propounding principles of Armed conflict rules.

Geneva Conventions and Additional Protocols

Ist Geneva Convention ⇒ Framed to regulate conduct of armed forces in the event of war and armed conflict between states.

IInd Geneva convention ⇒ Mandated the application of rules of war & armed conflict on maritime warfare as well.

IIIrd Geneva conventions → Codifies provision with respect to treatment of Prisoners of war and their human and non-discriminatory application.

IVth Geneva convention → Codifies provisions with respect to protection of civil population and mandates non-use of force against civilian population.

Ist Additional Protocol → Provision with respect to conduct of activities during International Armed conflict.

IInd Additional Protocol → Provision with respect to conduct of activities during Non-International Armed conflict. (Eg) Syrian civil war.

IIIrd Additional Protocol → Treatment of civilian and POW population.

Redressal of Issues of civil Protection

IVth Geneva conventions provides certain rules
for protection of civilian population which includes -

(1) Principle of Necessity & Proportionality → Only
necessary and non-excessive force needs to
be deployed.

(2) Principle of Distinction → Civilian and military
population needs to be distinguished and
use of force only against armed outfits are
allowed.

(3) Principle of Non-discrimination → Civilian population
cannot be discriminated on basis of gender, race,
religion, caste etc.

(4) Special provisions for protection of women & children.

Redressal of Issues of Combatant Status

- (1) Humane treatment to be meted out for combatants.
- (2) No killing or use of force against surrendered combatants.
- (3) No subjection to torture.
- (4) No use of combatants for scientific and experimentation purposes.
- (5) Principle of No collective punishment.
- (6) Non-use of combatants towards their own state.

∴ The Geneva conventions along with Hague conventions have established certain principles of International Humanitarian law as customary rules of International law which needs to be followed in letter & spirit.

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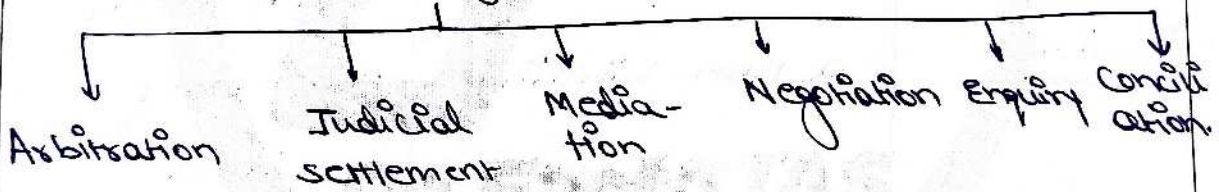
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Q.2(b). Compare and contrast the roles of mediation and arbitration in the peaceful settlement of international disputes. (15 marks)

An International dispute refers to disagreement on a particular point of law or fact or competing interests or claims by different parties.
(Oppenheim)

The UN Charter under Ch. VI provides for various mechanisms to settle International disputes peacefully and includes -



Role of Mediation and Arbitration

Basis	Mediation	Arbitration
<u>Meaning</u>	Involvement of a third party as mediator facilitating dispute resolution.	Involves use of an arbitrator to distinguish competing claims.

<u>Type of Mechanism</u>	Informal	Formal
<u>Institution</u>	Mediation Board or party appointed mediator or UN appointed mediator	Arbitral tribunal appointed by parties or Permanent court of Arbitration
<u>Decision</u>	In the form of a non-binding award which can be enforced through treaty provisions / agreements between parties	In the form of a binding arbitral award capable of being enforced and a state party can sue for non-compliance

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<u>Examples</u>	Russia acted as a mediator in India Pakistan dispute and drawing up of Tashkent Agreement	Trail Smelter arbitration case
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Challenges Associated

- ↳ ~~Both~~ Non-enforcement ⇒ State parties suffer from issues of non-enforcement especially with respect to mediation awards which renders the outcome a nullity.
 - ↳ Contemporary conflicts ⇒ Emergence of contemporary conflicts gives political will of parties precedence over resolution efforts.
- ∴ Both Arbitration and mediation serve the ends of resolution of international dispute in accordance with UN provisions under [Chapter 6].

Q.2(c). Analyse the impact of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) on global nuclear disarmament efforts. Why has its entry into force been delayed, and what are the implications? (15 marks)

The Comprehensive Test Ban Treaty (CTBT) envisages complete prohibition on nuclear Test explosions by state parties and provides for efforts towards Nuclear Disarmament efforts (CTBT provisions)

Impact

- (1) Provides for comprehensive framework of law banning Nuclear Test explosions.
- (2) Nuclear proliferation ⇒ Provides mechanism to contain nuclear proliferation through safeguard mechanism and comprehensive review

(3) Nuclear Disarmament → Provides state parties the objective of no new development of Nuclear weapons while also depleting the existing arsenal of Nuclear weapons.

(4) Peaceful use of Nuclear energy → Provides impetus for developing countries to use Nuclear energy through peaceful uses.

Delayed entry into Force

State parties possessing Nuclear weapons are yet to sign/ratify the treaty which mandates 44 signatures/ratifications by Annexure countries for entry into force. Reasons attributed are

(a) Discriminatory treatment towards newly developed nuclear states as opposed to completed prohibition of Nuclear weapons.

(b) Ambiguity on timelines of Nuclear disarmament

(c) Violation of state sovereignty through inspection and safeguard mechanisms

(d) Geo-political realities and hostility in neighbourhood

(Eg.) Indian Neighbourhood and Israel's neighbourhood.

Implications of Delayed entry

(a) Nuclear weaponisation of non-state actors like terrorist groups etc. threatening global peace & security.

(b) Energy security of developing nations threatened due to non-usage of nuclear energy for peaceful purposes.

Thus, there is a need for fair, equitable and just treatment under CTBT to promote global

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Efforts for Nuclear Disarmament.

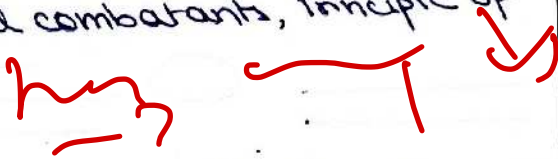
Q.4(a). "Certain provisions of the four Geneva Conventions (1949) and their additional protocols of 1977 have assumed the status of customary principles (ius cogens) of IHL today." Do you agree with the above statement? Elucidate. (20 marks)

The four Geneva conventions along with their additional protocols of 1977 and Hague conventions of 1899 and 1907 propound the International Humanitarian law around the world.

While Geneva conventions deal with conduct of war and treatment of civilians, prisoners of war and armed combatants during the armed conflict, Hague conventions deal with general obligations of state during Armed conflict.

Provisions of Geneva Convention

(1) 1st Geneva convention → Deals with general conduct of war & armed conflict including

humane treatment for all combatants, Principle of Non-discrimination etc. 

(2) IInd Geneva convention → Application of General rules of warfare for ~~transit~~ maritime warfare.

(3) IIIrd Geneva convention → Deals with protection & prohibition of ~~unlawful~~ violence against Prisoners of war.

(4) IVth Geneva convention → Protection for civilian population.

In addition to the convention there are three additional protocols also -

(a) Ist Additional Protocol → Deals with victims of International Armed conflicts

(b) IInd Additional Protocol $\Rightarrow$ Deals with victims of Non-International Armed conflict.

(c) IIIrd Additional Protocol $\Rightarrow$ Deals with other victims of Armed conflict & general conduct of warfare.

Provisions bearing customary International law Status

(a) Right to Non-excessive use of force $\Rightarrow$ International Red cross society (ICRC) mandated Proportional use of force along with necessity as CIL.

(b) Principle of Distinction $\Rightarrow$ Distinction between civilian and armed population is necessary under Geneva Convention.

(c) Principle of Non-discrimination $\Rightarrow$ Discrimination

based on Race, colour, gender, religion, age etc. is not allowed while using force.

(d) Principle of No torture for surrendered POW

(e) Principle of cessation of violence once control established.

(f) No collective punishment can be meted out

(g) Subjects of one state cannot be used against their own state

(h) No use of subjects for scientific or experimentation purposes.

(i) Special provisions for protection of women & children in an armed conflict

Thus, the recent events in Gaza and indiscriminate use of force has revived the need for application of IHL universally and equitably.

How this law is born

Q.4(b). What do you mean by 'self-defence' under Article 51 of the United Nations Charter. How has its interpretation evolved in the context of non-state actors and cyber attacks? (15 marks)

A. 51 of the UN Charter empowers states to act in self defence and for collective security upon a threat or material injury due to a violent act or action of another state or body.

In the Caroline case (1871), Mr. Webster gave a test to determine the validity of an action taken in self defence.

Four fold test

- (1) Urgency of action required
- (2) Overwhelming nature of act
- (3) No opportunity for deliberation
- (4) No alternatives available.

The test was subsequently reaffirmed in the case of Corfu Channel by the ICJ. UN has repeatedly called upon states to exercise restraint in using self-defence.

Facets of Self-defence

It involves both -

- a) self-defence
- b) Acting in defence of other

However, the charter provision requires that an action precedent must have been conducted in order to require state to act in self-defence and only an indication/threat thereof shall not validate the action.

Non-state Actors

↳ Right to self-defence exists in form of

defending against armed individuals, terrorists and terrorist groups along with other non-state actors threatening peace & sovereignty.

↳ collective right to intervention shall exist for human rights violations that threaten international peace & security.

Cyber Attacks

↳ International telecommunication union (ITU) mandates use of proportional force to secure critical digital infra as an extension of principal of state sovereignty & integrity.

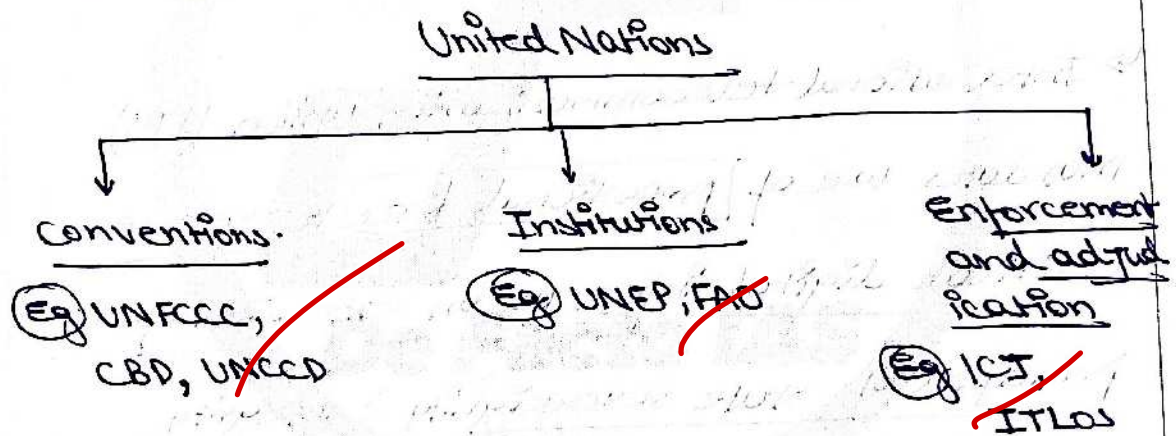
↳ Rights to self defence extends towards preserving and developing lines of communication.

∴ The evolving domains of self-defence needs to be further enlarged in order to protect against varied forms of threat.

Q.4(c). Discuss the role of United Nations in protection and improvement of human environment. (15 marks)

United Nations along with its specialised agencies and associated bodies plays an important role in protection and improvement of Human Environment.

Mechanism



Emergence and Evolution

(1) UN conference on Human Environment → Stockholm conference and subsequent declarations propounds Agendas and binding principles

for protection and improvement of human environment.

↳ Also led to the emergence of UNEP, a specialised body for co-ordinating efforts.

(2) UN conference on Environment & Development ⇒

Rio Declaration forged consensus on issues surrounding climate change, sustainable development and Biodiversity preservation.

(3) Rio +20 ⇒ Emergence of UN Env't. Assembly

(UNEA) as a global legislative body for framing of legislation.

Role of UN

(1) Legislative Actions ⇒ Through authoritative

decisions and soft law developments in the field of International Environment law (Eg UNEA, Gen. Ass. mby resolution, security council resolutions.

(2) Treaty formulation → Under UN, various conferences including Stockholm, Rio, Kyoto, Paris have set binding targets & principles

(3) Enforcement mechanism → UN through its organs like Gen. Assembly, Security Council and ICJ involves enforcement.

(4) Institutional support → UNEP and FAO acts as institutional bodies providing secretarial and managerial services to various conventions.

(5) Funding support → UN in association with World Bank, IMF provides support to GEF etc.

(6) Co-ordination and Awareness through education

(7) Evolving nature of support through Cartagena protocol

Thus UN has played a frontal role in development,

2017

Q.5(a). Examine the impact of the Treaty on the Prohibition of Nuclear Weapons on global disarmament efforts. (10 Marks, 150 words)

The Treaty on Prohibition of Nuclear Weapons (TPNW) was signed in 2017 and opened for signature in 2018. It represents an effort to prohibit complete use and development of Nuclear weapons by state parties in the larger cause of humanity.

The treaty prohibits -

- a) Development
 - b) Stockpiling
 - c) Use
 - d) Threat to use
 - e) Research
- of Nuclear weapons or any other nuclear device.

Impact

(1) Push for Disarmament efforts → In view of global heightened tensions. (Eg) Russia - Ukraine war, Gaza - Israel crisis.

(2) Responsible use of Nuclear Technology by
state parties.

(3) Equity & fairness → Treaty calls for complete
prohibition of Nuclear efforts / weapons by all
weapon states.

(4) Comprehensive coverage of all types of
explosion, testing etc.

Challenges

(1) No universal signing & ratification

(2) Reluctance on part of weapon-possessing states

(3) No timeline envisioned for Disarmament

(4) Enforcement issues.

∴ The TPNW represents a renewed push
towards Disarmament efforts however more
initiative needs to be undertaken by weapon
states to make it into reality.

Q.5(b). Define 'hijacking' and discuss the main provisions of the Hague Convention, 1970. (10 Marks, 150 words)

Hijacking refers to the act of overtaking an aircraft and the control thereof with an intent of political outcome or objective for designated goals.

(Eg) IC 814 hijacking by slain terror groups for releasing certain terrorists from Indian prisons.

Additionally, the International community has expanded the definition of hijacking to other vessels including merchant ships and other ships.

Provisions of Hague Convention

(1) Principle of No Harm → Mandates that there should be no harm which should be meted

out to innocent civilian population.

(2) No state support to Hijacking activities →

Mandates that ~~states~~ should not provide logistical communication or other support to hijackers

(3) Special protection of women & children

(4) Safety of passengers and arrangement for hospitable and humane treatment

(5) States to negotiate with hijackers being mindful of International peace & security

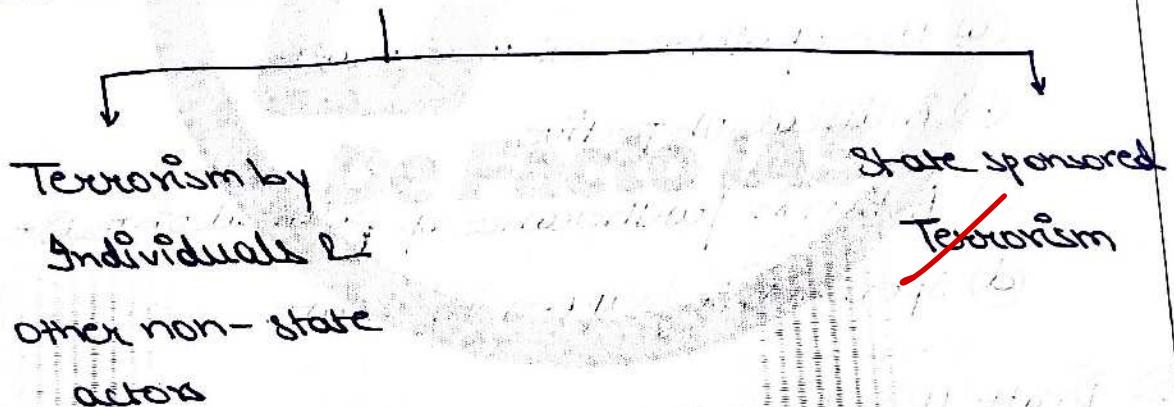
(6) Rapid response teams shall be deployed by all states at all airports to prevent delay in decisive action

Thus Hijacking concerns larger interests of Human rights and International peace & security and ICAO and other org. shall collaborate and co-ordinate to prevent it.

Q.5(c) Write a short note on : Terrorism in International Law (10 Marks)

Terrorism lacks a universal and codified definition however it generally refers to a violent act committed by individuals or groups in furtherance of the objective to spread terror or political, social or ideological compulsions.

Manifestation of Terrorism



Non-state actors

① They generally take responsibility for terrorist acts committed.

② Sanctions under Global counter terrorism forum (GCTF) and UNOCT (UN Office on counter terrorism) can be imposed

③ Collective intervention and states acting in self defence can use violence or force against such terrorists (A:51)

State - sponsored terrorism

① Four fold test includes -

(a) Use of violent subversive act

(b) Political objective

(c) Action in furtherance of political objective

(d) Sponsorship / support by state

② Draft ILC Art 8 & 11 recognises state sponsored terrorism and mandate strict provision

③ Art-2(4) of UN mandate friendly relations among states

Thus terrorism has emerged as an acute concern

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for International community and needs to be arrested at the earliest

Q.5(d). Differentiate between Human Right Law and International Humanitarian law (10 Marks, 150 words)

The International Human Rights law and International Humanitarian law differs significantly on the basis of its meaning, scope, implementation, execution, institutions etc.

<u>Basis</u>	<u>Human Rights Law</u>	<u>International Humanitarian law</u>
<u>Application</u>	Applies during all time including peace time, war time, armed conflict etc	Applies only during armed conflict, war etc
<u>Execution</u>	Applied by UN, UNHCR and UNHRC	Applied by ICRC (Red cross Society)

<u>Instruments</u>	Provided under UDHR, ICCPR, ICESCR etc.	Provided under Geneva Conventions along with additional protocol and Hague conventions.
<u>Subjects</u>	Universally applicable to all humans (lex Naturale)	Applicable to subjects of an armed conflict including Prisoners of war, civilian population etc.

However, there are certain similarities -

- (1) Both are complementary to each other and significantly overlap each other's provisions and application.
 - (2) Protection of Humans and prohibition of violence is the core principle.
- Thus, both IHL and HR laws need to be strengthened.

Q.5(e). Artificial Intelligence and Drones are two major Emerging factor in International Terrorism. Comment (10 Marks, 150 words)

International Terrorism refers to acts of violent nature committed by slain individuals or groups in furtherance of objective of spreading terror driven by ideological, political, social compulsions.

There are many emerging forms of International terrorism including use of Artificial Intelligence and Drones.

Use of Artificial Intelligence and Drones

- (1) Difficulty in Tracking source due to enmeshed web of activities.
- (2) Cross border supply of drugs, weapons and surveillance activities by ~~weapons~~ drones
- (3) Facial recognition and remote tracking

using AI.

(4) Misinformation campaigns and disinformation
spread using AI tech on social media.

(5) Deepfake development and furtherance of
ideological warfare.

(6) Drone bombings are rampant.

Instruments to Deal

① Bletchley declaration and Global Partnership
on AI headed by India to promote safe,
secure and productive development & deployment of AI.

② Drone regulations both Municipal and by
ICAO

③ Fact check websites and National programs
to curb misinformation

Thus there is greater need to curb the use of

Drones & AI in International terrorism to avoid

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violence and establish peace.

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Q.6(a). Discuss the concept of the 'New International Economic Order' (NIEO) and its relevance today. How do international institutions like the IMF and the World Bank contribute to or hinder its goals? (20 marks)

The Bretton Woods institutions like IMF, World Bank have long formed the core of global economic order however it is the New International Economic order which is replacing it today.

New International Economic Order refers to an order representing the modern global financial institutions driven by the objectives of Equity, sustainable development, poverty alleviation, Non-interference etc.

Concept of NIEO

(1) Framework ⇒ NIEO comprises of Global multilateral development banks like NDB, ADB, AIIB etc along with Trade bodies like UNCTAD, WTO etc.

- (2) Objective → further the developmental agenda by financing developmental, Humanitarian and poverty alleviation project with special focus on developing countries.

Relevance of NIEO

- (1) Focus on Developmental Initiatives helps projects in poor and developing and least developed countries.
- (2) Equity and fairness in resource allocation breaking the hegemonic western control
- (3) Institutional support of institutions like WTO replacing GATT which was meant to be a provisional measure.
- (4) Comprehensive coverage of all activities like WTO covers GATS, GATT, TRIPS etc.
- (5) Collaboration and co-ordination among

State parties.

(6) Finance for sustainable development →

Through multilateral development banks and banks like World Bank funding GEF.

(7) Respect for territorial sovereignty in Economic Sphere is ensured for all states

Contributions of IMF & World Banks to NIEO

(1) Developmental Guidance ⇒ Bretton Woods institutions with their rich experience in funding since 1944 offer guidance & pathways for NIEO.

(2) Collaboration and co-operation ⇒ IMF and World Bank provide complementarity to NIEO efforts.

(3) Secretarial services and capacity building of NIEO institutions.

(4) Data repository for NIEO institutions.

Hindrances caused by IMF & Worldbank to NIEO

(1) Spreads hegemonic western control as opposed to fairness & equity which are cornerstone of NIEO

(2) Propounds reciprocity and elevated debt charges which are often unsustainable for developing economies.

(3) Weak dispute settlement mechanisms under IMF and world bank

(4) Non-representation in institutions within IMF & World Bank of NIEO.

∴ Thus NIEO represents the New world order however much reform needs to be undertaken to establish it as the true reformed world order.

Q.6(b). What is the role of international law in combating international terrorism. Discuss the legal instruments and challenges in prosecuting terrorists across national borders. (15 marks)

International terrorism refers to subversive violent acts committed by individuals and groups in furtherance of a common objective of spreading terror driven by political, social or ideological motivations.

Terrorism lacks a universal definition however generally accepted forms of terrorism includes -

- (a) Terrorism committed by groups & individuals
- (b) State sponsored terrorism.

Framework of International law

- (1) Global Counter Terrorism forum established in furtherance of Resolution 1323.

- (2) UN Counter Terrorism Committee
- (3) UN Office on Counter Terrorism (UNOCT)
- (4) ~~ILC~~ ILC Draft articles on prevention of Terrorism
- (5) UN Charter.

Role of International law

- (1) Art. 82(1) promote state co-operation on International Terrorism issues.
- (2) Prohibit use of force $\Rightarrow$ Art. 2(4) of UN Charter mandates states to prohibit from using force against other state.
- (3) Enforcement mechanism $\Rightarrow$ UNOCT, GCTF and other institutions take decisive effort against terror outfits.
- (4) International collaboration $\Rightarrow$ Collective intervention provisions empower UNSC to

take decisive action against terror outfits.

Legal Instruments for cross border terrorists

- (1) ICJ charter. [US v/s Iran and USA v/s Nicaragua]
- (2) UN charter [Art. 2(4)]
- (3) ICC and Rome Statute for individual prosecution
in line with crimes against humanity.
- (4) Draft Articles for state co-operation by ILC

Challenges

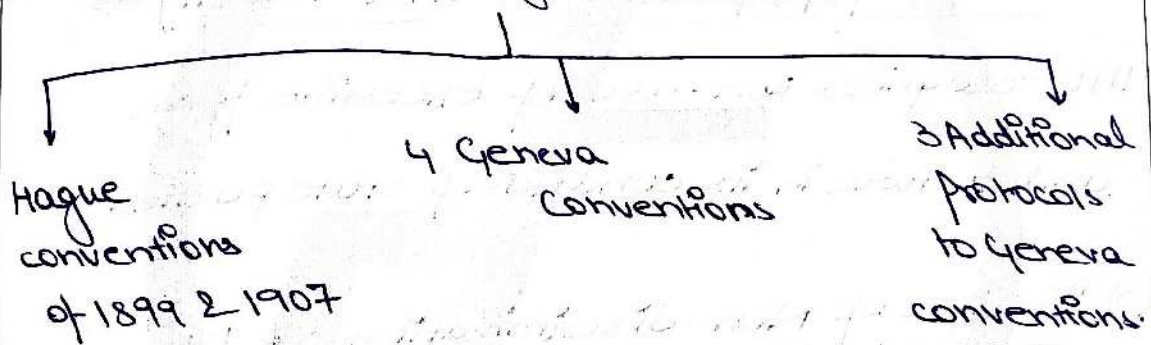
- (1) Global co-operation → lack of united efforts leads to further spread of terrorism
- (2) Funding & institutional support → state sponsorship of terrorist often provide funding
- (3) Traceability and Jurisdictional challenges
- (4) Responsibility affixation

Thus, the spread of terrorism demands united and collaborative efforts

Q.6(c). What are the Major principles of international Humanitarian Law? (15 marks)

The International Humanitarian law refers to the law applicable to armed conflicts and wars.

There is no universal definition of IHL however the principles forming the core of IHL are -



The Hague conventions provides for the responsibility of state while engaging in armed conflict while Geneva conventions along with its additional protocol focuses on prohibition of violence and protection of civilians, POW, maritime warfare combatants, victims of both International & Non-International Armed conflict.

Major Principles

(1) Principle of Distinction $\Rightarrow$ IHL requires states to distinguish between civilian and armed population and ensure no harm to civilian population.

(2) Principle of proportionality and Necessity $\rightarrow$
IHL recognises non-use of excessive force and torture in its conduct of state parties.

(3) Principle of Non-discrimination $\Rightarrow$ No discrimination on the basis of race, caste, religion, gender, age etc can be meted out in terms of awarding punishment.

(4) Principle of Not using captured prisoners for scientific or experimentation purposes.

- (5) Principle of Humane treatment → All captured individuals including POW shall be given adequate food & medical supplies.
- (6) Principle of prohibition of collective punishment
- (7) Principle of Non-usage of captured prisoners for armed conflict against their own state.
- (8) Principle of No torture to surrendered prisoners or armed combatants.

∴ The IHL provides for a commanding

directions & rules to prevent torture and
humiliation in armed conflict and promote
peace & security in accordance with

Jus Ad Bellum (Origin of rules of war) and

Jus Ad Bello (conduct during war)

De Facto IAS

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