

Total Time Allotted: 3 Hours

Total Marks : 250

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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Name: RUPAL JAISWAL
Subject: INTERNATIONAL LAW
Phone: 715

Teacher's Remark

You have informed

Section - A

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

State-sponsored terrorism refers to the acts of terrorism conducted by a non-state actor with the direct support of a state.

Justice Nagendra Singh in Military and paramilitary activities case (Nicaragua v/s USA) in 1980 recognised a state actor supporting armed terrorism of mercenaries as "state-sponsored terrorism".

Rationale for state sponsored terrorism

- ① UN charter outlaws use of force against another state, thus need for tacit attack eg. Pakistani ISI militants threatening India

- ④ To avoid consequences of aggression
ie. collective enforcement measures
of UNSC under chapter VII

HOW IS IT DIFFERENT FROM TERRORISM
SIMPLICITER

Basis	Terrorism	state-sponsored terrorism
Definition	Acts of <u>violence</u> causing <u>serious bodily injury or death</u> or <u>intimidation</u> to <u>compel certain acts of or omission</u>	Same as terrorism but supported by a state eg through supply of <u>arms, training</u>
Actors	always non-state actors eg. Al Qaeda	non-state actors with active back-end support of state actors
Example	Hijack of IC-814	Attack on US consular staff (US v Iran)

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

UNSC council in its Resolution 1373 (2001) recognised terrorism as the most significant threat to our rule-based order.

Despite setting up of ICC, it is difficult to prosecute non-state actors.

CHALLENGES IN PROSECUTING NON-STATE ACTORS BY ICC

- ① No definition of terrorism under international law which ICC can apply.
- ② ICC cannot prosecute crimes not mentioned in Rome Statute. Terrorism not mentioned therein. Other crimes like aggression, war crimes rarely apply.

③ Rome Statute based on legality principle i.e. all crimes must be tried as per law strictly applied. In the absence of law on terrorism, no trial possible eg 9/11 terrorists could not be tried.

④ Extradition issues: When a state is unwilling to extradite or even prosecute, ICC cannot enforce its arrest warrant eg Arrest Warrant case (when Jordan refused arrest of Sudan Head of state)

To ensure that non-state terrorists don't escape justice, UNCYF is working on Draft Convention on International Terrorism. Further efforts should be made to amend Rome Statute to include 'terrorism'.

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)

Article 33(1) of the United Nations Charter mentions member states' obligation to settle their disputes using peaceful means mentioned therein.

This reinforces UN's obligation to ensure peaceful settlement of disputes so that no breach of international peace and security.

Modes of Peaceful Settlement under International Law -

- ① Arbitration - where experts appointed by parties issue a binding award
eg. Kutch Arbitration (Pakistan v/s India)
- ② Mediation - a neutral third party facilitates communication, resolves dispute

eg Russian mediation led to Tashkent Agreement b/w India and Pakistan

③ Good offices - eg. by UN secretary General or any state if china helped Iran and Saudi Arabia settle differences

④ Conciliation - a third party conducts enquiry and drafts terms of settlement

⑤ Judicial adjudication by a court issuing binding judgment eg. ICJ.

WHICH IS THE MOST PRACTICAL?

→ Arbitration combines the best features of both third party neutral arbitrator and a binding final judicial award. Thus, appears apt for settling border disputes, recovery claims etc.

BUT judicial adjudication by ICC etc required in international crimes

A combination of arbitration and judicial adjudication are most practical.

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)

Competence Competence principle in international law grants a court authority to rule on its own jurisdiction.

Since ICJ is the highest adjudicatory organ of the United Nations, Statute of ICJ explicitly empowers it to rule on own jurisdiction [Art. 39].

Case laws on competence Competence jurisdiction of ICJ

- ① ~~North Sea Continental Shelf~~ case (Germany v/s Norway) - Norway claimed Germany has not ratified Geneva Convention 1958, so cannot bring a case. The court ruled it had jurisdiction.

→ 36 ()
→ 36 ()
→ 36 ()

② Ukraine v/ Russia case (2022) -
Ukraine approached ICJ to rule that
Russia's claims that its attack
legitimized to prevent genocide of
ethnic Russian in Ukraine, is invalid.
ICJ ruled it had "compromisory
jurisdiction" under Genocide Convention
[1948] vide Article 36(1).

③ Nicaragua v/ USA (1984) - USA claimed
since Nicaragua has not notified consent
to be bound by ICJ jurisdiction, not
justiciable by ICJ.

But ICJ ruled if a ratification
instrument under PCIJ was deposited,
it can be considered consent under
ICJ jurisdiction.

Therefore, since it started functioning
ICJ has ruled on its own jurisdiction
numerous times.

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' under international environmental law refers to declarations, resolutions, statements, conference papers etc. which are not binding but have persuasive value.

Emergence of International Environmental Law principles

- ① UN Declaration on Human Environment (1972) in Stockholm Conference first mentioned "~~stockholm~~ sustainable development" as a principle.
- ② Earth Charter / Rio Declaration (1992) adopted Agenda 21 and other 27 principles - basis for precautionary principle.
- ③ Johannesburg Summit (2002) - affirmed

differential responsibility for environmental degradation.

- ④ Convention on Migratory Species - provide a framework for international MOUs to protect habitat / migration corridors.
- ⑤ UN Climate Action Summit (2019)
 - need to finance climate adaptation and mitigation
 - LIFE Mission by Indian PM + Panchsmit

Principles of International Law affected

- ① Precautionary principle - i.e. even if slightest possibility of environment damage and when two possibilities, a state to lean in favour of environment.
- ② Polluter Pays Principle - A person who pollutes the environment must compensate for it. Shri Ram Industries case
- ③ United Nations Convention on Climate Change, Biodiversity and Land Degradation based on Earth Charter

Thus, soft law instruments played major role in development of

Q.3(a). Write explanatory notes on the International Criminal Court. Also discuss its effectiveness (20 marks)

International Criminal Court was established in 2002 after the adoption of Rome Statute of the ICC by United Nations.

It was established to ensure that "international crimes which affect the common interests of international community" are tried by an independent and impartial court (Statute).

ORGANS OF THE ICC

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- ① Office of the Prosecutor receives complaints, opens investigation, coordinates with victims.
- ② Pre-trial Division - if Office of Prosecutor refuses to investigate, party

can approach PTD. It also conducts trial to determine admissibility of a case.

- ③ Trial Division: After case admitted by PTD, TD conducts full-fledged trial, hears evidence, provides victims compensation, pronounces sentence.
- ④ Appeals Division: Hears appeals from sentence passed by TD.

JURISDICTION OF ICC

- ① Subject matter: "most serious crimes of international nature" i.e. crimes against humanity (Art. 7), war crimes (Art. 8), genocide and Aggression.
- ② Temporal jurisdiction → only post-2002 crimes.
- ③ Territorial jurisdiction → only if crime committed on a party's territory or by a party's national.

- ④ Complementarily principle & only when a party unwilling ~~or~~ or unable to prosecute, will ICC exercise jurisdiction.

EFFECTIVENESS OF ICC JURISDICTION

Successes:

- ① Brought several heads of states to justice eg Prosecutor v/s Omar Al Bashir case
- ② No immunity even if crimes on superior's orders eg. Kumarac case
- ③ Victims Protection Scheme to grant intimate compensation to victims of war crimes
- ④ enlarged jurisdiction when an unstable state can't try own head of state eg Prosecutor v/s Muammar Gaddafi

Ineffectiveness and failures:

- ① several states not parties to the ICC statute of Israel, India
- ② No power to enforce - relies on member states even for providing prisons
- ③ Delayed trials as ~~the~~ arrest warrants not honoured eg. Omar Al Bashir case
- ④ continued war crimes unabated eg. Russia using vacuum bombs, forced displacement a war crime. warrant against Russian President issued but no follow up.
- ⑤ No jurisdiction on passive nationality basis of Palestine is a member. but Israel is the accused. Though Palestinian victims cannot approach as Israel not a party.

Clearly ICC presently needs reforms based on consensus.

explan Crim in detail

Q.3(b). Evaluate the role of the World Trade Organization (WTO) in managing international trade disputes. Discuss its dispute resolution mechanism and its effectiveness in enforcing trade laws. (15 marks)

Annex II of the Marrakesh Agreement establishing WTO is a crown jewel of WTO as an institution. It contains detailed "Dispute Settlement Undertaking" (DSU).

The DSU is compulsory for every WTO member.

ROLE OF WTO IN TRADE DISPUTES

Successes

- ① Pacific settlement through consultation:
eg India US solar panel disputes resolved through consultation
- ② Compulsory to submit to DSU:
prevents a member from unilaterally

rescinding obligations

③ Enforcement through countermeasures
if a member refuses to "cease and desist"

④ Adoption of Panel Report through automatic route i.e. negative consensus required to reject it. Prevents a losing party from preventing adoption

⑤ (failures:)

① inability to coerce the economic superpowers of the U.S.

② No appellate Panel/Body as appointments blocked by the U.S. - thus, enforcement of several orders is languishing.

③ No enforcement mechanism of its

own

STRUCTURE AND PROCEDURE OF DSU

- ① compulsory consultation first -
issue a notice - if no reply by other
party, notice to settle through
arbitration/ mediation provided by
WTO
- ② If still no settlement, Panel formed by
Dispute Settlement Board. Parties
to nominate members but if 10 days'
delay, DSB itself to nominate.
- ③ Report of Panel Body adopted within
60 days
- ④ Appeal to Appellate Body with 45 days.
- ⑤ Automatic adoption of Report by
members of DSB.

Since Appellate body non-existent
at present, several members agreed to a
Multi-lateral Arbitral Agreement to ensure
speedy enforcement of orders.

Q.3(c). Discuss the principle of 'non-intervention' and its exceptions under international law. Provide examples where intervention has been justified on humanitarian grounds. (15 marks)

Prof Quincy Wright defines intervention as "interference in affairs of another state by either diplomatic or military means to alter the existing state of things."

Article 2(4) of the UN Charter implicitly prohibits intervention and obligation / principle of "non-intervention" evolved.

Exception to non-intervention

- ① Self-defence (Art 51 of the UN Charter): Parties can resort to use of force or threat of it if itself subject to armed attack (a form of intervention)

- ② Collective measures by UNSC :
ordinarily under Art 2(7), UNSC
barred from interfering in "domestic
affairs" of a member state.

However, if there is a threat to
international peace and security, UNSC
can order peaceful blockade, economic
sanctions (Art. 39, 41) or even armed
intervention via Chapter VII enforcement
measures.

- ③ Peacekeeping forces deployment with
consent, to not practically intervention

JUSTIFICATIONS OF INTERVENTION IN PRACTICE

- ① To establish democracy - used by USA
for intervention in favour of Syrian
democratic forces
- ② To protect human rights which are
violated by another state if in

Iraq, US intervened for Kurdish people

③ To enforce self determination principle of India's military intervention in East Pakistan (1971) to establish Bangladesh

④ In self-defence (pre-emptive self-defence propounded by Bush Doctrine to intervene and destroy Al Qaeda in Afghanistan)

⑤ Protection of own ethnic people from genocide of Russian intervention in Ukraine for enforcing Genocide Convention (1948).

Clearly, non-intervention principle has become a ~~tragedy~~ tragedy been subjected to aggravated assault, ~~are~~ are international scholars. There is need to strictly interpret Art 2(4) as prohibiting intervention on humanitarian grounds.

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

In the Advisory Opinion on Legality of Threat or Use of Nuclear Weapons, ICJ opened that no conclusion can be arrived if use of nuclear weapons is prohibited under international law in all circumstances.

Thus, the Treaty on prohibition of Nuclear weapons was born in 2017 to clearly and explicitly prohibit them.

IMPACT OF THE TREATY ON DISARMAMENT

① Provisions of Treaty:

- declaration of nuclear stockpiles
- prohibition on not just use but also development, testing of nuclear weapons

↳ international verification through IAEA to build mutual confidence
↳ victims of nuclear weapons to be compensated.

② Reduced nuclear testing - less than 12 tests since its adoption

③ Imposes monetary liability to not just compensate but also rehabilitation thus detering nuclear use.

However, still disarmament eludes as Russia walked out of START Treaty

↳ very few ratifications - major non nuclear weapon states like India and Pakistan not parties

↳ nuclear weapons not to be destroyed but no timeline given - thus no accountability.

Clearly, Treaty on Prohibition of Nuclear Weapons is a mixed bag of outcomes. Need to enforce it strictly to achieve

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

As per the Hague Convention of 1970, hijacking means "acquiring control of an aircraft in flight from its lawful commander and committing / threatening bodily injury or death to force a state to do / omit to do certain acts illegally."

Due to similarity with piracy, also called "airial piracy".

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Provisions of Hague Convention

- ① Municipal law to criminalize hijacking of India enacted Anti-Hijacking Act
- ② Hijacking declared as an extraditable

crime i.e. no state on whose territory a hijacked plane lands, can refuse to extradite.

③ Obligation to secure lawful control of commander over the aircraft if to prevent incidents like IC-814 where Taliban forced India to release dreaded criminals in exchange

④ Obligation to accept persons handed over by the aircraft's commander if deboarded / sick passengers or even the flyers themselves.

However, the enforcement of the Hague Convention not very effective. Thus, Tokyo Convention in 1971 adopted. It included even placing hazardous substances on aircraft as hijacking - a welcome move.

Q.5(c) Write a short note on : Terrorism in International Law' (10 Marks, 150 words)

Terrorism under international law refers to acts of crime committed with intent to induce terror in minds of the victims and causing either bodily injury, death, intimidation etc. ~~The~~ ultimate motive is to achieve some political, economic or religious motive eg. Al Qaeda in Afghanistan, Jem in Pakistan, ISIS in Syria.

Issues surrounding terrorism

- ① No precise definition, however UNSC Resolution 1373 (2001) tried to define - not binding
- ② Lack of political will to prosecute

~~eg~~ US armed and supported the Taliban when Russia invaded Afghanistan

③ Terrorism as a tool of foreign policy of Pakistan ISI declared its aim "to blow India through a thousand cuts" by sending armed militants

④ UNSC ineffectiveness to counter terrorism : UNSC Resolution 1267 calls for designation and sanctions against terrorists but China retains India's efforts to include terrorists.

Recently, India favoured drafting of Convention on International Terrorism by UNGA. It must be speeded up so that terrorism can be curbed

~~Realist~~
~~Communist~~
~~Liberalist~~

5

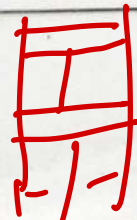
Q.5(d). Differentiate between Human Right Law and International Humanitarian law (10 Marks, 150 words)

The aim of both Human Rights Law and International ^{humanitarian} ~~rights~~ Law is to protect Individuals and ensure their well being.

They appear to be two sides of the same coin, however some differences

DIFFERENCES

Basis	Human Rights Law	Humanitarian Law
Evolution	From the 15th century, Enlightenment era. American and French Revolution precipitated life, liberty, equality	Since ancient custom of war, crystallized through Hague Convention (1899) and now has customary status



Scope	Applicable during both <u>peace</u> and <u>war time</u> [ICT in <u>Wall case</u>]	Applicable during <u>war time</u> - both <u>international</u> and ~~non international~~ <u>armed conflicts</u> [ICT in <u>Military</u> and <u>paramilitary case</u>]
Subjects	Protects all <u>human beings</u> and obligation on state to ensure protection	Protects <u>combatants</u> as well as <u>civilians</u> but obliges both state and non-state actors of <u>Arakan Army</u> in <u>myanmar</u>
Applicable Conventions	<u>Universal Declaration of human rights</u> , <u>ICCPR</u> , <u>ICESCR</u> , <u>Genocide Convention</u>	<u>Geneva Convention</u> (1949) and 3 additional protocols (1977) and (2005)

Thus, international human rights law and humanitarian law both have acquired jus cogens status and ensure overall well-being of individuals

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

"International terrorism has moved from conventional warfare towards Cyber warfare"

- UN secretary general

Artificial intelligence and drones have moved to be two lubricants in this shift.

Role of AI and drones

AI

Drones

① enable terrorist funding through dark net, cryptocurrency

② Makes operations possible remotely eg autonomous underwater vehicles

① used for smuggling arms drugs etc to destabilise a nation

② used for ground surveillance before a terrorist attack

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③ Robotics used in training eg. bombing, using drones

③ Drones help drop supplies to co-militants eg. bullets, food, water etc.

④ Simulated environment for training eg. virtual reality environment to practice

④ Reconnaissance spying operation easier

However, the most used warfare by terrorists is still through conventional bombs, rifles eg. Charlie Hebdo's attack or Easter Attack in New Zealand.

Day is not far when terrorists will be able to deploy AI-trained robots to drop bombs / conduct lone wolf attacks.

The international community must step up efforts to nip AI / drone warfare in the bud.

Q.7(a). Discuss major international agreements and conventions in protecting the human environment and effectiveness thereof. (20 marks)

International Environmental Law is a successful crystallization of soft law instruments (persuasive) into hard law (binding).

~~Major to~~ The philosophy of international environmental law evolved from environmental common heritage of mankind and obligation that activities in one's territory don't result in harm to another states (Trail Smelter Arbitration case)

MAJOR INTERNATIONAL CONVENTIONS

- ① ~~Had~~ Ramsar Convention on Wetland (1971) - first major agreement to promote "wise use of wetlands"

- ② Convention on Migratory Species
(1973) - framework convention to protect migration corridors of migratory species eg. Central Asian flyway
- ③ UN convention on Climate Change
- to keep environment at the core of policy-making and promote sustainable development.
- ③ UN Convention on Biological Diversity
- to ensure access and benefit sharing and sustainable use of biological resources
- ④ UN Convention to Combat Desertification
(1992) - combat land degradation
- ⑤ Stockholm Convention on Persistent Organic Pollutants (2000) - to ban use of bio-accumulating chemicals
- ⑥ Kyoto Protocol (1997) - to affix historical responsibility to limit emissions on

developed countries.

- ① Paris Agreement: ⁽²⁰¹⁵⁾ target of limiting global warming to below 2°C.
- ② High Seas Treaty (2023) - to protect biodiversity beyond national jurisdiction.

EFFECTIVENESS

Successes:

- ① Evolved consensus on sustainable development of Rio Declaration, binding UNFCCC.
- ② Crystallised principles of precautionary approach of Environment Impact Assessment.
- ③ Polluter Pay principle to affix responsibility of common but differential responsibility.
- ④ Consensus on Loss and Damage Finance of in Dubai (COP28).
- ⑤ Successful protection of Ozone layer of vide near universal ratification.

of the Montreal Protocol.

Failures:

- ① failure to abate global warming;
eg steel, coal sectors still growing
- ② lack of chance for small island states and least developed countries [IPCC Synthesis Report]
- ③ No enforcement measures
eg Paris Agreement target far from being met [UNFCCC Secretariat Report]
- ④ Developed countries vs developing countries conflict unresolved & common but differentiated responsibility not implemented in action.

Ans

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Thus, international environmental Law has been miraculous growth few decades however its effectiveness remains controversial.

Q.7(b). Chapter VI of UN Charter is devoted to peaceful settlement of International Disputes. Discuss the methods mentioned and explain the role of Security Council and General Assembly in this regard. (15 marks)

Article 33(1) under Chapter VI obligates member states to submit disputes which have potential to threaten international peace and security to peaceful mechanisms prescribed therein.

The rationale of Art. 33(1) is to provide flexibility to members to choose a dispute settlement mechanism suited for them.

METHODS MENTIONED UNDER ARTICLE 33(1)

① Arbitration - where party-selected arbitrators pass a binding award.
eg Permanent Court of Arbitration in South China Sea dispute

② Mediation - where a neutral third party facilitates settlement - not binding

- ③ Conciliation - by a third party who conducts independent enquiry and then passes proposes settlement terms
- ④ Good offices of Secretary General
Intervention of any other state of
its good office in Abraham Accords
- ⑤ Judicial settlement of by ICJ or
ICC who hear both parties on
evidence and pass binding judgment

ROLE OF SECURITY COUNCIL

Art. 23(2) states that if approached by a party or asked by UNGA, security council can recommend procedures to the parties for settlement of disputes.

Art 24 also imposes primary responsibility on UNSC to promote pacific settlement of disputes. It can propose terms of settlement.

UNSC can even direct parties to approach ICT if dispute unresolved.

ROLE OF GENERAL ASSEMBLY

- ↳ Art. 14(1) empowers UNGA to make recommendations for peaceful settlement
- ↳ can be approached by either parties or referred by the UNSC.

Effectiveness of peaceful settlement

successes

- ↳ Kutch Arbitration (India Pak)
- ↳ UN Peacekeeping forces after consultation with India and Pak
- ↳ kept peace between South Korea and North Korea

failures

- ↳ Failure led to war of Russia v/s Ukraine and Israel v/s Palestine
- ↳ ICJ interim order ineffective in South Africa v/s Israel

Q.7(c). Is the threat or the use of Nuclear Weapons in any circumstances permitted under International law? Discuss in the light of the advisory opinion given by the International Court of Justice (ICJ). (15 marks)

"Threat or Use of Nuclear Weapons"
was referred to the ICJ by UNSC
to seek advisory opinion.

ICJ opened the status of
use of nuclear weapons not determin-
-able basis present international
law.

ICJ'S ADVISORY OPINION

- ① Use of nuclear weapons violates international humanitarian laws principle of distinction - ~~so~~ inherently indiscriminate
- ② It is unclear if the use of nuclear weapons is possible in self-defence in case of an (under Art 51)

armed attack which threatens the very existence of state.

- ③ Use of nuclear weapons otherwise in peacetime definitely amount to use of force and falls foul of Art 2(4) of the UN Charter.

Ex p. 15

CURRENT STATUS

↳ State practice : All Nuclear weapon states maintain nuclear stockpiles for deterrence thus appears nuclear weapon threat as "credible minimum deterrence" permissible.

↳ Judicial decisions : Marshall Islands v/s India (2014) where ICJ refused to entertain any obligation

on nuclear weapon states to destroy
nuclear stockpiles.

↳ Treaty Law:

Treaty on Prohibition of Nuclear
Weapons (2017) now makes the use of nuclear

- a) Nuclear weapons use prohibited absolutely
- b) parties to declare stockpiles
- c) eventually reduce and ultimately destroy their nuclear weapons.

Thus, presently, use of nuclear weapons is prohibited under all circumstances. Although, state practice seems to vary. Only the states who sign the 2017 Treaty are bound to not use. Others not bound eg Israel, India.

Q.8(a). Define International Dispute. Explain the difference between peaceful settlement of disputes and compulsive settlement of disputes. (20 marks)

According to Mavromatis Palestine Concessions case, "International dispute" refers to differences in opinion on a question of law or fact between two states?

Even scholars like Brownlie and Oppenheim have affirmed the aforesaid definition.

What is not dispute?

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→ Marshall Islands v India (2014)

- ICJ held that India not being party to Non-Proliferation Treaty owes no obligation to disarm itself of nuclear weapons.

In light of this settled position,
no dispute exists between Marshall
Islands and India. Case dismissed.

→ Nottebohm Case - dispute between
a national of one state and another
state amounts to dispute between
the two nations - "Diplomatic
protection principle"

→ Dispute must be legal, not political
eg. ICJ cannot decide whether a
state can be recognized eg. Palestine
cannot approach for recognition.

DIFFERENCE BETWEEN ^{COMPULSIVE} POLITICAL AND
PEACIFIC SETTLEMENT OF DISPUTES

Basis	Pacific	Compulsive
Status	Recognized under Art-33(1) of UN Charter	Not recognized under international Law but some exceptions

Scope	several methods of arbitration, mediation, conciliation	methods include reprisal, retorsion, economic blockade, self-defence
Exception	When the parties fail to resolve, no war allowed. Must approach UNSC for recommendation	Art-51 provides for individual or collective self defence, within prescribed limits of "armed attack occurring" and necessity + proportionality

UN Charter under Art 33(1) obliges parties to settle disputes by pacific means while compulsive methods only allowed in exceptional circumstances. As "peace is the rule, war an exception".

Q.8(b). Discuss the significance of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). How does it impact global intellectual property laws and developing countries? (15 marks)

TRIPS Agreement forms integral part of Marrakesh Treaty under Annex 1C

It signifies the ability of international community to arrive at consensus-based international order.

SIGNIFICANCE

- ① No reservations allowed - "concept of single undertaking"
- ② frame work Convention, signifying minimum standards of protection of IPRs
- ③ variety of IPRs covered if

Patents, Layout of Integrated Circuits, Geographical Indication

- ④ Consolidates fragmented treaties on IPRs of Rome Convention, Patent Cooperation Treaty
- ⑤ Dispute Settlement Undertaking applicable - to resolve disputes.
- ⑥ Exceptions to IPRs of compulsory licensing of patents allowed.

IMPACT ON GLOBAL IPR Landscape

- ① Uniformity on IPRs throughout attempt of several municipal laws use TRIPS as baseline
- ② Pressure to not take unilateral measures of US Special 301 Report

criticized as violation.

- ③ Promotion of international technology collaborations as IPRs protected
- ④ Exhaustion of rights i.e. expiry of IPRs. helps maintain balance of private monopoly with public interest. However, some negative impacts :
- ↳ interests of Least developed countries not protected
 - ↳ public health concerns of life saving drugs not addressed
 - ↳ special protection to wines, spirits i.e. products of interest to developed nations.

Thus, TRIPS is a watermark in IPRs development but reforms needed to address concerns of the Global South.

Q.8(c). Recent Gaza palestine and Ukraine Russia Conflict Indicates the weakness of International humanitarian law. Do you agree? Discuss(15 marks)

In Oct 7, 2023, Hamas launched aggressive drone attacks on Israel on Holy Sabbath Day.

Today after almost a year, Israel is pounding even civilian areas of Gaza to protect its security interests.

Significance of the Conflict

- ① Indicates weakness of pacific dispute settlement procedures
- ② International Humanitarian Law (Jus in Bello) thrown to the wind:
→ Hostage taking is a war crime - committed by Hamas

-no action by ICC.

→ Israel violation of Geneva Convention (1949) by

a) refusing humanitarian aid to be taken to Gaza

b) bombing medical facilities

c) violation of principle of non-distinction

d) the full fledged war neither necessary, nor proportional

(fails Art 2(4) use of force standard too)

However, some measures indicate humanitarian laws are still "jus cogens"

① South Africa approached ICJ alleging Genocide by Israel

② UNSC passed resolution seeking
halt of Israel's attack - indicative
of opinio juris.

③ ICC ratified by Palestine
but not invoked as Israel not a
party.

④ UN Secretary General (A/99)
invoked power to bring "grave
breaches of Geneva Convention"
to the notice of the UNSC.

Heavily international Humanitarian
laws weaknesses have been
exposed. It is high time to plug
the gaps to prevent human kind
from the source of war.