THE SOURCES OF PUBLIC INTERNATIONAL LAW: A NARRATIVE APPROACH

INTRODUCTION OF STUDENT

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PROGRAMME : BS Political Science

SEMESTER : 7th

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Subject : Public International Law

Topic : Sources of International Law

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Introduction:

Public International Law is also known as Law of Nations and Inter-State Law. The father of international law is a Dutch scholar, lawyer and a diplomat **Hugo Grotius.** The term "international law" was first used by the English philosopher **Jeremy Bentham** in **1780** in his treatise entitled "**Introduction to the Principles of Morals and Legislation"**.

According to **Oppenheim**, ***"Law of nations or International Law is the name for body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other"*.**

The term 'sources' refer to method" or procedure by which international law is made **OR** The term 'sources' means those provisions within the legal system on a technical level. **'**Source', according to **Oppenheim**, means the ultimate origin from which the law originates. When we see a river and desire to see it's source, we must go up the river until we reach a particular point where the water is oozing out naturally from the soil. That is the source of the river. Similarly, the principal sources of the International Law are enumerated in **The Statue of International Court of Justice (ICJ),** particularly **Article 38(1)**.

Discussion:

Sources of International Law

- **Conventional Sources**
  - **Formal Sources**
    - International Conventions &Treaties
    - Customary International Law
    - General Principles of Law
  - **Material Sources**
    - Judicial Decisions
    - Writings of Publicists

└── **Unconventional Sources**

└── **United Nations**

├── General Assembly Resolutions

├── Security Council Resolutions

Formal Sources:

Oppenheim contends that **"**formal being the source from which the legal rule derives it's validity**"**. Formal sources are obligatory in nature and legally binding on the parties who are involved in their constitution. Therefore, they are also known as hard laws.

A. International Conventions & Treatise

Article 38(1)(A) of the ICJ uses the term international conventions and emphasis treatise as a source of Contractual Obligations. Treatise are also known as pact, charter, covenant, agreement and memorandum of understanding. They are formal, written agreements between two or more sovereign states or international organizations. **Article 2(1)(a) of the Vienna Convention (1969),** defines treaty as:

"*Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.***"**

There are two types of treatises: -

- **Law Making Treatise(traité-lois): -** These are the direct sources of international law and the development of these treaties was the result of changing circumstances. Law making treatise perform the same function as legislation does in the state field. These treatises have a large number of parties. Thus, they are also called multilateral treatise.
- **Treaty Contracts (traité contracts): -** Treaty contracts or Bilateral treaties are generally contracted between two parties. They are drafted in a way that only suit the object, and establish the rights and obligations against the parties in the contract. The **Simla Agreement of 1972** between Pakistan and India is an example of bilateral agreement.

Validity of Treaties

The validity of the treaties or conventions is founded upon the maxim, ***Pacta Sunt Servanda,*** which means promises once made shall be kept. The signatories of the agreement, in the absence of any provision, shall act in good faith. It is a governing principle of any convention, without which the contract is void. Further, it is enshrined in Article 2(2) of the UN charter as well. **Rebus *Sic Stantibus*** is the exception of the above rule.

Examples:

- **The United Nations Charter (1945)** established the United Nations and codified rules on the use of force, sovereignty, and human rights.
- **The Geneva Conventions (1949)** set standards for humanitarian treatment during armed conflicts.
- **The Paris Agreement (2015)** aims to combat climate change by reducing greenhouse gas emissions.

B. Customary International Law

Custom is known as one of the oldest sources of international law. Before the emergence of treaties, customs were the sole source of international law.

Customary International Law is formed from the consistent and general practices of states followed out of a sense of legal obligation, known as opinio juris. Unlike treaties, customary law is unwritten but equally binding on all states, including those not party to a treaty if the custom is general enough.

It is encapsulated under **Article 38(1)(b)** of the Statute of ICJ. Essentials of customs are:

- Uniformity and consistency of practice
- Generality of practice
- Long duration with wide acceptance
- Opinio Juris

C. General Principles of International Law

Article 38(1)(c) of the statute of the International Court of Justice refers to the general principles of law recognized by civilized nations as third of the sources of

International Law. The general principle of law means those rules or standards, which are repeated over time and are recognised by international community.

Professor Schlesinger refers to general principles as **"**a core of legal ideas which are common to all civilized legal systems**."**

Some general principles that have been recognized by the courts are:

a. Reparation and remedies
b. Prescription
c. Res Judicata
d. Estoppel

Material Sources:

Material Sources are the interpretation of obligatory(formal) rules.

A. Judicial Decisions

Judicial decisions of International Court of Justice and Arbitral tribunals have also acted as a fourth source of international law. This is followed by the courts not only as a source, but also the best evidence avaliable to show the existence of rules of International Law referred to in those decisions.

Article 59 of the statute of the International Court of Justice provides that the decision of the court will have no binding force except between parties and in respect of that particular case. However, decision of ICJ, International Criminal Court (ICC), and other tribunals help interpret treaties, customary law and general principles.

Example:

ICJ Advisory Opinion on the Legality of the Threat or Use of nuclear weapons (1996).

B. Writings of Publicists:

This is the source next to the precedents. The ICJ may prefer to the teachings of the most qualified; Publicists of the various nations. In the 16th & 17th centuries, writers on international law held a pre-eminent position as this system of law was in its ebb of development. Even today in areas where the law is uncertain the

classics of the jurists are referred to by the states before the I.C.J and arbitration tribunals in support of their arguments. The judges pay regard to the juristic writings as they are persuasive in nature.

Example:

The classical works of Gentili, Hugo Grotius, Zouche, Pufendorf, Bynkershoek, Moser, Van Martens, Vattel, etc, are relied upon. References are made to Lassa Oppenheim's treaties and Hersch Lauterpacht's writings, and to the texts of international law commission.

United Nations:

The modern or unconventional sources include decisions of the United Nations and its organs, and other international organisations. The United Nations is an international organization formed in **1945** that comprises **193 members**. The organization aims to maintain international peace and security and develop friendly relationships among the nations.

The decisions and resolutions of the UNGA, UNSC, and ICJ are the key sources of law. While ICJ is considered as a traditional source, UNGA and UNSC are categorized under unconventional sources.

Analysis

The study of international law reveals that its authority rests on clearly defined formal and material sources. Formal sources are treaties, customs, and general principles. Treaties are binding agreements between states based on the principle of pacta sunt servanda (promises must be kept). Customs emerge from consistent state practice accepted as law (opinio juris). General principles reflect common legal standards recognized across nations. In addition, judicial decisions and jurists' writings serve as supportive, non-binding references that help interpret and apply these rules.

Findings:

A. **Dual Framework** – International law is built upon a dual structure: formal sources and material sources.

B. **Treaties as Cornerstones —** Treaties remain the most explicit form of international obligations, providing legal certainty in diverse fields such as climate change, humanitarian law, and collective security.
C. **Customary law —** ensures uniform practices are enforced globally, even without written consent.
D. **General principles —** maintain fairness and stability in international dealings.
E. **United Nations Decisions —** Resolutions and decisions of UNGA, UNSC, and other organs influence international law, especially in maintaining peace and guiding state behavior.

Conclusion:

The sources of international law combine to form a structured yet flexible system that governs state behavior. Formal sources establish binding obligations, while material sources guide interpretation. Together, they ensure order, cooperation, and accountability in the international community, reflecting both tradition and modern legal developments.

References:

Bentham, J. (1780). An introduction to the principles of morals and legislation. London.

Brownlie, I. (2008). Principles of public international law (7th ed.). Oxford University Press.

Geneva Conventions. (1949).

Grotius, H. (1625). De jure belli ac pacis [On the law of war and peace]. Paris.

International Court of Justice. (1945). Statute of the International Court of Justice, Article 38.

International Court of Justice. (1996). Legality of the threat or use of nuclear weapons, ICJ Reports 1996, p. 226.

Lauterpacht, H. (1958). International law and human rights. Stevens.

Oppenheim, L. (1905). International law: A treatise. Longmans, Green & Co.

Paris Agreement. (2015). United Nations Framework Convention on Climate Change.

Schlesinger, R. B. (1957). Comparative law: Cases, text, materials. The Foundation Press.

Shaw, M. N. (2017). International law (8th ed.). Cambridge University Press.

United Nations. (1945). Charter of the United Nations.

United Nations Treaty Series. (1969). Vienna Convention on the Law of Treaties.