PUBLIC INTERNATIONAL LAW

BY- ASST. PROF. SHRADDHA CHOUDHARY

PROGRAMME OUTCOMES

1
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ed
s

Apply the concept of research methodology to identify and formulate legal research problem, conduct legal research and reporting the conclusions.

PO2
Communicati on skills and Digital Literacy

Express and explain the ideas concepts and know conclusions, data effective communicate the thoug arguments with others u appropriate media using t on various digital platform media

3
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ing

Critically analysis the laws and apply legal knowledge, identify logical legal flaws and draw conclusions and real life situations.

PO4
Problem Solving

Apply the legal knowled given set of facts and det solutions from possible solutions.

PROGRAMME OUTCOMES

5
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Demonstrate comprehensive knowledge and understanding of core concepts of laws including the emerging guiding values and philosophies in the Constitutional Law

PO6
Moral and Ethical Awareness

Obey rules of professional upholding the dignity and i of legal fraternity and it's in Avoid unethical behavio defrauding clients, comm contempt of Court, plagia fabrication and falsify documents, etc. Learn and the Professional Etique

7
ation
ork /
ship

Work independently for solving of a case, collecting evidences, drafting arguments and appearing before the Court, citations etc. throughout the legal course. Also work in a team and lead it seeking cooperation and involvement of the members.

PO8
Self-directed Learning

Acquire skills required long learning, updat oneself with developm law and society.

Objective :

Define nature and development of international law.

How International Laws are formed? Classify the sources o international law and relationship between International la and Municipal Law.

(Treaties, agreements, conventions, customs and judicial decisions. No Enactments are possible because law is command of sovereign.)

How International Law promotes International Peace and Security.

To learn about United Nation Organisation which is instrumental in formation of International Law.

Promotion Of Human Rights.

Equality of Nations irrespective of the status.(Econo mic, Military, etc.)

How Natural Resources are shared?

Who are the subjects of International Law?

Rules for use of Air Space – Civil Aviation and Military Aircrafts.

Use of International Water, high seas for water navigation.

tcome Of The Study: -

- nowledge about formation of International Law.
- nowledge about role of International Organisation Maintaining Peace and Security in the World.
- ole of each Nation towards maintaining Peace and curity in the world.
- e of Outer Space for exploring and placing tellites in the orbit for scientific research, data llection and forecasting.
- nctioning of International Court of Justice.
- acticing in International Court of Justice as a awyer.

NATURE AND DEVELOPMENT OF INTERNATIONAL LAW

roduction :

The term 'International Law' was used for the first time b Jurist Jermy Benthem in the year 1780.

In the developing World, no state can live in Isolation, it needs to interact with other countries for it's economic an other development.

During the process, a Country has to enter into agreement with other countries for trade, business, exchange of Techniques, use of Territorial Water, Air Space and Outer Space Technology.

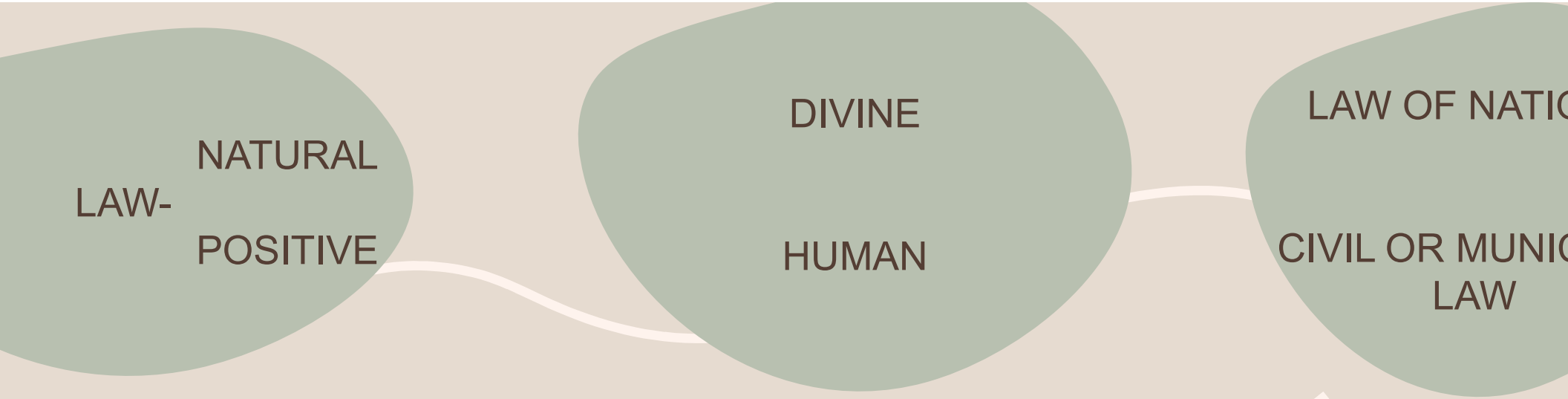
uring such interactions, such transactions are to be regulat
y certain law and rules, such bodies of rules which regulat
elation among states is known as 'Public International Law

rinciples of International law.

principles of International law international law is based on the following two principals

Jus Gentium- These set of rules do not form part of legal statutes but mutually governs the relationship between two nations (it is a customary law)

Jus Inter Gents- These refer to those treaties and agreements that are accepted by both countries mutually. International law provides effective means through which peaceful settlement of disputes can be done.



er in 1624, **Hugo Grotius** (**Considered father of ernational law)**, He wrote a book called ***De Jure Belli ac cis*** (the law of war and peace) in which he divided law int following categories

vate International Law and Public International La

ublic International Law

refers to rules and
gulations governing
ternational relations
tween different states and
ternational institutions.

• Private International Law

Private International Law establishes
deals with the relationship between
citizens/private entities of different
countries. People from different parts
the world are often interacting with e
other forming legal relations, like
contracts, marriages, adoption etc.

lso referred to as, 'Conflict of laws' and the phrase was first used by Ulrich Huber i
ok-" De **Conflictu Legum Diversarum in Diversis Imperiis**" in 1689.

International law a true law?

e debatable question is "is the International Law really a law".

e view is that international law is not a true law. It is the code
es of conduct of moral force only.

other view is that international law is it true law and it
o be regarded as law as any other law of the state which are
ding upon individuals.

e controversy whether international law is a law or not revolv
und divergent definitions of the word law given by Jurists.

ists on International Law

didn’t consider international law as aw (mostly positivists)

ternational law is not
w it is just *Positive*
ternational Morality

John Austin

ustin's view

ccording to ***Austin***, law is the command of sovereign
ended by sanction in case of violation of the command.

In other words law should be limited to rules of conduct
acted by a determinate legislative authority and enforced by
ysical sanction.

he two important elements are ,

rstly law is a ***command enacted by the sovereign legislative thority.***

ondly it must be ***enforced by the sovereign authority.***

ustin said that international law can not be called law proper the true sense, because it has neither sovereign legislative thority to enact law nor there is adequate sanction behind it.

ore over there is no enforcement agency which can enforce it a body of rules. The rules commonly called international law e in fact the rules of positive morality.

ternational law is a code of conduct with moral force and thing more.

International Law is a body of rules governing the relations o
he states inter se, but there is no sovereign Power over and
above the Sovereign state which could enforce the rules
nternational law.

It Is also argued that there is no such executive power in
nternational law as may enforce decision of the international
Court of Justice and ensure observance of the provision of the
reaties.

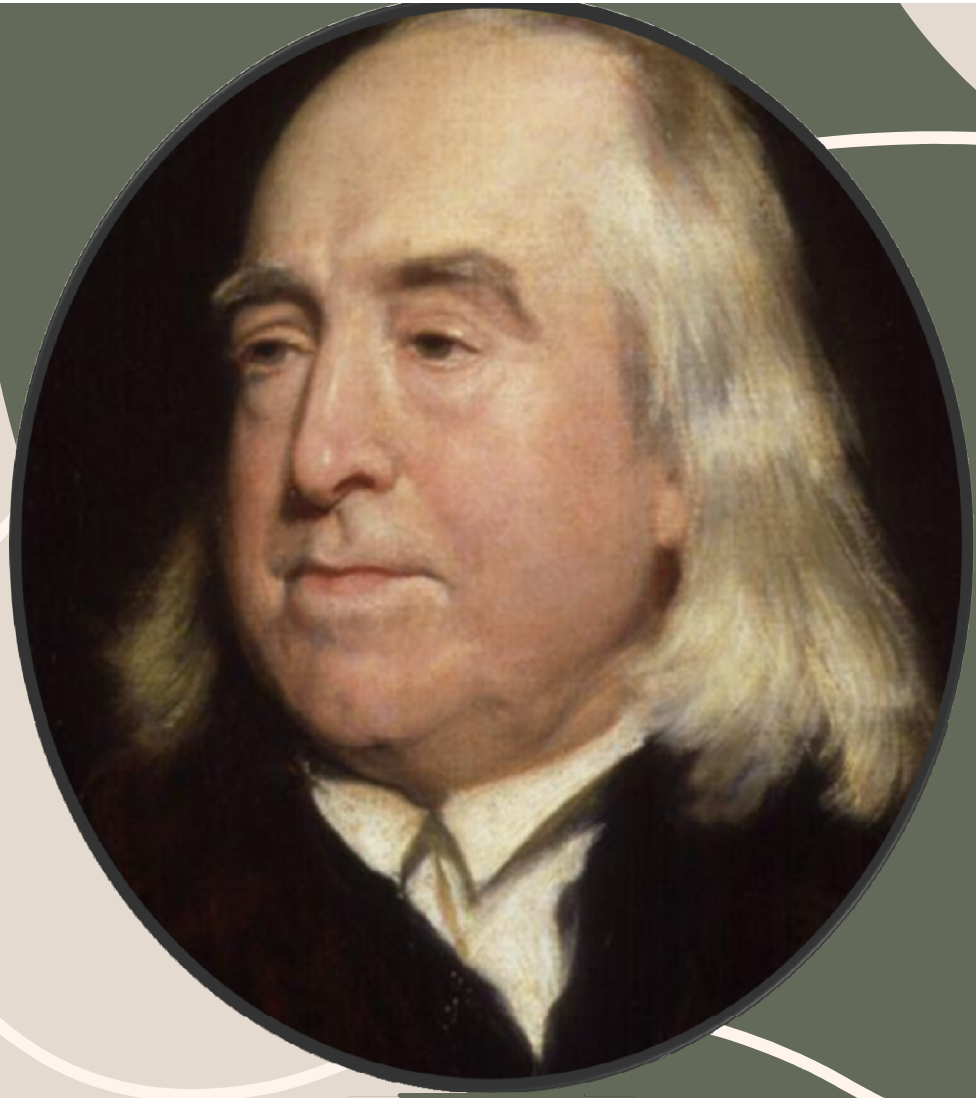
International law lacks potent judiciary.

ternational law is
nishing Point of
risprudence. He was of the
ew that as International
w lacks sanction and
erefore it cannot be kept
the category of true law.

Thomas Erskine Holla

rst person to use the term ernational Law')-

ernational Law lacks an ective Legislative chinery, an executive chinery and Potent iciary and the Sanction ch is necessary for orcement



Jeremy Bentham

Criticism of Austin's view

The above view which denies the legal character of international law has been severely criticized by a large number of Jurists.

According to Oppenheim's opinion it is not necessary that rules should be enacted through law making authority or there should be a law administering court within the community concerned.

no Considered International law as
e law (mostly naturalists)

e was a leading figure of
e positivist school in
ternational jurisprudence,
e Ignored natural law but
ll supported the freedom of
eas, the reason for that
eing modern practise.

Bynkershoek

ternational law is
llowed and enforced
nd just like positive law
s derived from
stom and precedent
it is a law

Hall and Lawrence

or a law to exist, the
nly condition is that it
recognized by the
olitical community as
inding them and
nternational law
atisfies this condition

Fredrick Pollo

Being a proponent of Natural Law School, he identified international law completely with the law of nature.

Samuel Pufendor

cording to Starke, International law is really a law. His arguments are

irstly ,in many primitive communities a system of law sted without there being legislative authority.

econdly, International legislation in the form of law making aties and conventions has come into existence today.

hirdly, authoritative agencies responsible for the maintenance international intercourse do not regard International Law as rely moral code.

astly, united Nations is based on the truly legality of ernational law.

The arguments of the Jurists who regard international law as really law, maybe summed up as follows:

- The term Law cannot be limited to rules of conduct enacted by a sovereign authority .Customary rules of law do exist, like common law of England.
- Rules laid down by treaties are binding although they do not emanate from a sovereign authority.
- The procedure for formulating international rules is well settled by means of treaties etc.
- When International Questions arise, states do not rely on moral arguments. But rely on treaties, precedents and opinion of specialists. Thus states don't deny of the existence of international law.

International conference and conventions also treat international Law in its true sense.

As per statute of International Court of Justice, the court to decide utes as are submitted to it in accordance with international law.

The courts decisions are binding upon the parties to dispute, under certa ditions it's decisions can be enforced.

Besides this there are a variety of international tribunals such as ribunal for the law of the sea.

housands of treaties have been concluded by the states, but the instanc heir violation are very few.

Rules regarding immunities provided to diplomatic agents are generally owed.

nternational law a weak law?

rke has Expressed the view that international law is a weak law

here is no effective executive authority to enforce the rules of rnational law.

he International Court of Justice lacks compulsory jurisdiction true sense of the term. The court acts with the consent of state hence lacks potent. The court does not have any real power to orce its decisions.

ue to lack of effective sanctions, rules of international law are uently violated.

compel the strong states for the observance of international law
omes difficult on a number of occasions.

ernational law has, in many cases failed to maintain order and
ce in the world.

Thus, international law is a weak law in comparison to
nicipal Law.

uggestions for improving international law :

The machinery to enforce the rules of international law ould be strengthened.

The united Nations charter should be amended so as to thorities the UN to intervene in such matters within the risdiction of the states as are International concern.

ICJ should be given compulsory jurisdiction in the true sense the term, over all International disputes. An international minal Court should be established to adjudicate cases relating international crimes.

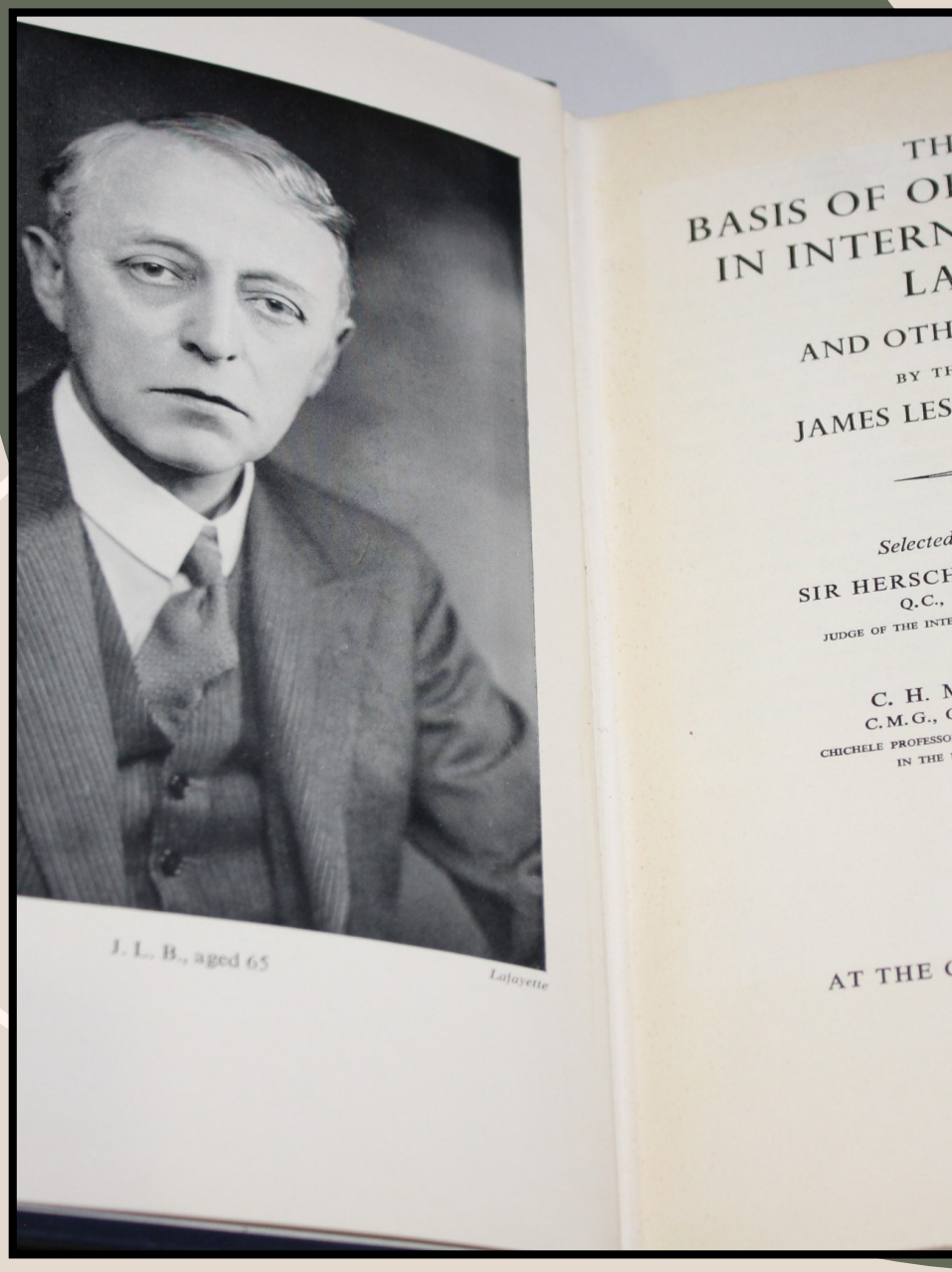
.The Doctrine of judicial precedents should be applied n the field of international law.

These Activities are likely to play a positive role in emoving weakness of international law.

ubjects of Public nternational Law

state was considered to be the subject of international law rding to the **Realist Theory**. All efinitions below follow this oach, mostly they are saying the e thing.

Brierly, "The Law of Nations or national Law may be defined as ody of rules and principles of n, which are binding upon zed states in their relations with another."



f. L. Oppenheim, "Law of Nations or International Law is the nar
he body of customary and conventional rules which are consider
lly binding by the civilized states in their intercourse with each
r."

y said, "International law or the Law of Nations is the name of a
y of rules which according to their usual definitions regulate the
duct of states in their intercourse with each other."

sten Gihl, "The term International Law means the body of rules c
which apply within the International Community or society of
es."

ueen v. Keyn (1876), Lord Coleridge, C.J., defined internationa
as "The law of nations is that collection of usages which civilized
es have agreed to observe in their dealings with one another."
as international law also regulates the actions of other entities lik
national organizations and individuals, they were also added as
ect to international law.

. Kelsen is the supporter of the **Fictional Theory** which suggest
the subjects of international law are the individuals only and that
l order is for the well-being of the individuals. So, Nation/state ar
ing but aggregate of individuals as subjects.

n the Realist and the Fictional Theory take on an extreme
rse of opinion, but, according to **Functional Theory**, neit
e nor individuals are the only subjects. There are other
ects also like International Organizations.

warzenberger - International law is the body of legal rule
ch apply between sovereign states and such other entitie
ave been granted international personality.

conclude the following are considered the main subjects Public international law:

STATES

INDIVIDUALS

INTERNATIONAL ORGANIZATIONS

MULTINATIO COMPANIE

lationship between International law a
uniciple law

unicipal law is the **national, domestic, or internal law** o

vereign state.

blic International law is the **body of rules that is leg**

nding on states and international organizations in t

eraction with other states, international organizations, individ

d other entities.

nterrelationship between national and nternational law.

Monism-

nternational law does not need to be translated into ational law.

nternational law can be directly applied by a national udge, and can be directly invoked by citizens, just as if it were national law.

he chief exponents of this theory are Kelsen, duguit, wright

his theory was propounded in the eighteenth century by tw erman scholars, Johann Jakob Moser (1701-85) & Georg riedrich von Martens(1756 - 1881). Later on, In the early ventieth century the monistic theory was developed by the ustrian scholar Kelsen.

ccording to this theory, all laws are in the form of a single gal system, that is, in the form of domestic legal order.

ccording to this theory, both national law and internationa w are part of a universal legal system serving the needs of t uman community.

ccording to this theory, international law and State law are
e components of one system of law in general.

his theory regards that law is a single unity consisting of
les, whether those rules are binding on States or on
dividuals or on entities other than States.

ccording to this theory, both State law and international la
timately regulate the conduct of individuals.

rof. Kelsen maintains that once it is conceded that
ternational law is law, it is impossible to deny that both the
gal systems are parts of a unified system of law

here are some writers like **Lauterpacht**, who take a more ractical approach, and maintain the monistic theory of the lation between the two legal systems.

ney start with the simple fact that the individual lies at the ot of all legal systems.

udge Lauterpacht has very aptly said, in 'The Function of la the international community', that

t is true that international law is made for States, and not ates for international law, but it is true in the sense that the ate is made for human beings, and not human eings for the State."

riticism:

s very difficult to disprove the view of Kelsen that man lies e root of all laws.

t in actual practice, **States do not follow this theory.** They ntend that Municipal Law and international law are two parate systems of law.

rther, **each state is sovereign** and as such is **not bound by ernational law.**

ates follow international law simply because they give their nsent to be bound and on account of other reasons.

Delegation Theory (Monist)

There is the delegation of constitution rules to the constitution of each state.

These rules decide when and how the international treaties/conventions will come into force.

cording to this theory, there is no transformation of a e of international law when such rule is adopted by the islative machinery of the State.

erefore, when a State legislature enacts legislation in rtherance of the treaty, it is the continuation of the treaty- king.

s another phase of a single act. It is not an act transformation.

estion of primacy-

cording to dualist theory in case of conflict between international la
d state law, state law will prevail over international law.

cisms:

The view that international law derives validity from State constitut
surd because it is generally agreed that disappearance of State
titution will not affect the validity of the international law.

When a new State is admitted to the family of nations it becomes bo
bey the rules of international law even against its will.

Most of the States have accepted the supremacy of international
constitutions.

Dualism

ere is difference between national and international law
latter must be incorporated by the former.

unicipal law and International Law are two different
tinct legal systems.

is supported by the advocates of positive law.

a dualist country there exists a need for translatio
ternational into Municipal law in order to give it an effect.

hese two legal systems differ regarding the sanction which hey possess.

ternational law does not get automatically embedded in unicipal law.

ontradicting parts of the Municipal law has to be amended e state, as it does not get automatically translated away i alist country.

pporter: hersch lauterpatch, triepel.

ountry which follows: United kingdom.

zilotti, another eminent jurist, maintains that these two tems are different for the following reasons:

- **State law is based on the fundamental principle that State legislation is to be obeyed, whereas international law is bas on the principle, pacta sunt servanda, that is, agreements between States are to be respected.**
- **These two systems being entirely differnet, no conflict between them is possible.**
- **According to them, the difference between the two legal systems lies in the fact that international law mostly consis of customary and treaty rules.**
- **whereas municipal law consists mainly of statutes passed b the Legislature and of judicial precedents.**

hich law is to prevail in case of conflict

e dualists maintain that, in such circumstances, the State L
ich is the creation of the sovereign will of the State, should
vail over international law.

e monists do not have a uniform opinion on this question.
ey are divided.

r example, a rule laid down in a regulation or an order of a
vernment is regulated by a supreme rule laid down by an A
he legislature.

its turn, the Act of the legislature is governed by the rule la
wn in the Constitution.

nsformation Theory (Dualist)

aties are of the nature of promises which have to
nsformed into municipal statutes which are of the natur
nmands.

orporation and transformation which leads to enactmen
slation, is not necessarily without any barriers, as it is or
cretion of the court whether to apply the principles of treat
.

pecific Adoption Theory (Dualist)

nternational law has no application in a sovereign state ntil and unless the sovereign state specifically adopts the nternational law by way of enactments.

Harmonisation Theory

Neither municipal law nor international law has the supremacy to each other; they are both made to solve the problems of humans.

All Contradictions between them must be harmonized, the judges must aim to harmonize both systems rather than treating one system superior to another.

his theory makes sense because international law unicipal law traditionally addressed relatively different iss

ternational law concentrates on relationship between st nd municipal law concentrates on relationship betw ersons.

ut now they have a convergence in their functions beca timately as the Harmonisation theory suggests the goa oth of them is to secure well-being of individuals. nvironmental laws, commercial laws, human right laws.

e practices regarding relationship between Internatio
and State Law

British Practice:

British Practice relating to the customary rules of international law
treaty rules is different.

ritish Practice regarding customary rules of International Law.-

ritain, customary rules of international law are treated as part of t
law. But these rules are subject to the following two conditions:

ules of international law should not be inconsistent with the British
utes.

When the highest Court determines the scope of a customary rule o
rnational law, all the courts in Britain are bound by it.

e influence of the above practice is that British Courts generally
rpret the statutes in such a way that they should not go against
rnational law. Besides this, in British Courts the rules of
rnational law need not be proved through evidence.

ere are following exceptions to the British practice in regard to
tomary rules of international law-

cts of State do not come within the purview of the British Cour
matter whether they violate the rules of international law

he british courts are bound by prerogative power of crown suc
ecognition of any state.

British Practice Regarding Treaty Rules.-

ne matters relating to **negotiations, signatures** etc. come nder the prerogative powers of the Crown.

case of some type of treaties the parliamentary consent is ecessary, while in other cases no consent is necessary for the pplication. Consent is necessary for the following types of eaties:-

) Treaties affecting the rights of British citizens;

) Treaties which amend or modify common or Statute ws of Britain;

Treaties conferring additional powers on Crown; and

Treaties which impose additional financial burden on the vernment.

addition to these, treaties which expressly provide that for ir implementation **consent of the Parliament is required**, sent of Parliament is essential for their application.

he consent of Parliament is also necessary for those treaties hich cede the British territory.

ther types of treaties do not require Parliamentary consent

erican Practice

merica also the practice regarding customary rules and ties rules of international law is different.

ractice regarding customary rules of International Law.-

merica the customary rules of international law are **treate** part of American law.

American Courts also interpret **Statutes of Congress** in su ay that they **should not go against international law.**

merican practice regarding Treaty Rules.-

merica the practice relating to treaty rules is based upon the provis
e Constitution.

rticle VI of the American Constitution provides that Constitution o
nited States, all laws made in pursuance thereof and the internatio
reaties entered into under the authority of the United Nations shall
he supreme law of the land.

hus in America, international treaties have been placed in the same
ategory as the State law.

wever, it has been held by the Supreme Court of the United Sta
merica that in case of conflict between the Constitution and
rnational Treaty, the Constitution shall prevail.

ides this, in case of conflict between international treaty and
nicipal law, whichever is later in date prevails.

merica treaties are divided into two categories.-

Self-executing treaties and non-self executing treaties.

lf-executing treaties become applicable in America without th
nsent of Congress,

hereas non-self-executing treaties require the consent of the
ngress to become applicable in the field of State law.

licial Discourse on the Relationship Between ernational Law and Municipal Law

State of West Bengal v Kesoram Industries Ltd. & others

this case, the Constitutional Bench of the Supreme Co
d that the Doctrine of Dualism is applicable in India and
doctrine of Monism however if the municipal law is
iting the extent of the statute, then, even if India is no
natory to the treaty, the Supreme Court can Interpreted
tute.

l Rights Vigilance Committee S.L.R.C. College of I galore v. Union of India and others

e High Court of Karnataka while deciding this case, defi e relationship between International Law and Municipal I d held that, with the increasing relevance of International the global and municipal scenario, several unique and ne eries are starting to be raised regarding the relations tween the two.

owever, the Hon'ble High Court held that Municipal Law ternational Law are established on different sources can m fferent systems go simply incompatible.

Conclusion

nism and dualism are usually conceived as two oppo
ories of the International law and Municipal law relation
nism and dualism are regarded by many modern schola
ing limited explanatory power as theories as they fa
ture how International law works within States.

withstanding anything, Monism and dualism hold powe
lytical tools. They go about as predictable beginning stage
minations of the connection between International
nicipal law. Various late choices in Municipal courts have
few researchers find Monism and dualism as pote
roaches to comprehending Municipal legal thinking
ernational law.

Thank you

SHRADDHA CHOUDHARY