



Introduction to International Law

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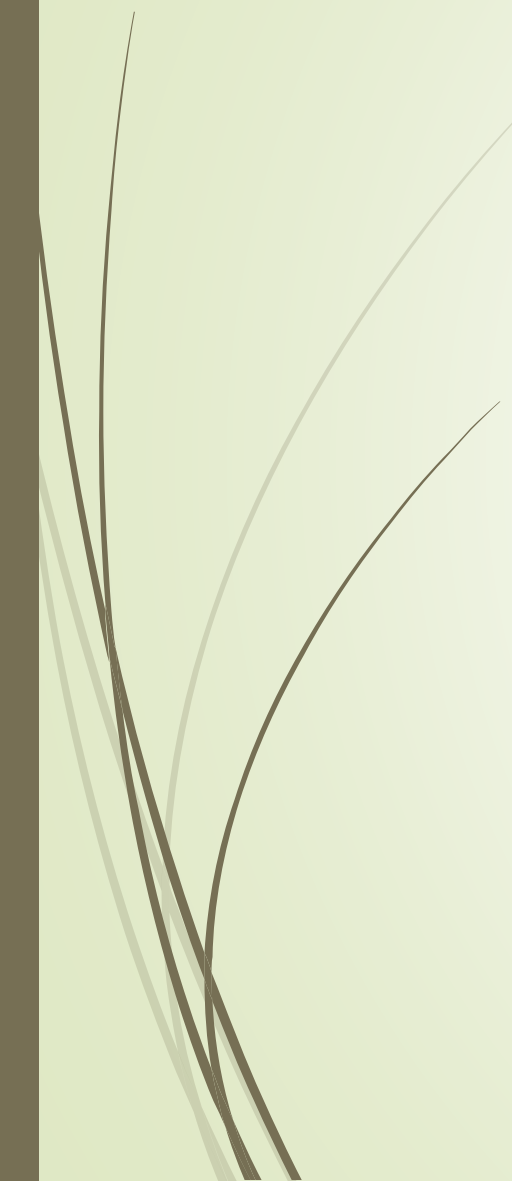


Overview

- Fundamentals of International Law
 - Sources of International Law
 - Subjects of International Law
 - International Law in Action
 - Pakistan and International Law
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The Fundamentals of International Law

- What is LAW?
 - Law may be defined as the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behaviour of its members.
 - Thus we can say Law is a formal mechanism of social control.
 - These rules may be enforced by the imposition of some form of penalty.
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The Fundamentals of International Law

Sovereignty:

- *Sovereignty* is the exclusive right to exercise supreme political authority over a defined territory (land, airspace and certain maritime areas such as the territorial sea) and the people within that territory. No other State can have formal political authority within that State. Therefore, sovereignty is closely associated with the concept of political *independence*.



The Fundamentals of International Law

Statehood – Fundamental Characteristics:-

- (1) a permanent population;
- (2) a defined territory;
- (3) a government; and
- (4) the capacity to enter into relations with other States.
- Some writers also argue that a State must be **fully independent** and **be recognized as a State** by other States.



International Community



Citizens of the State





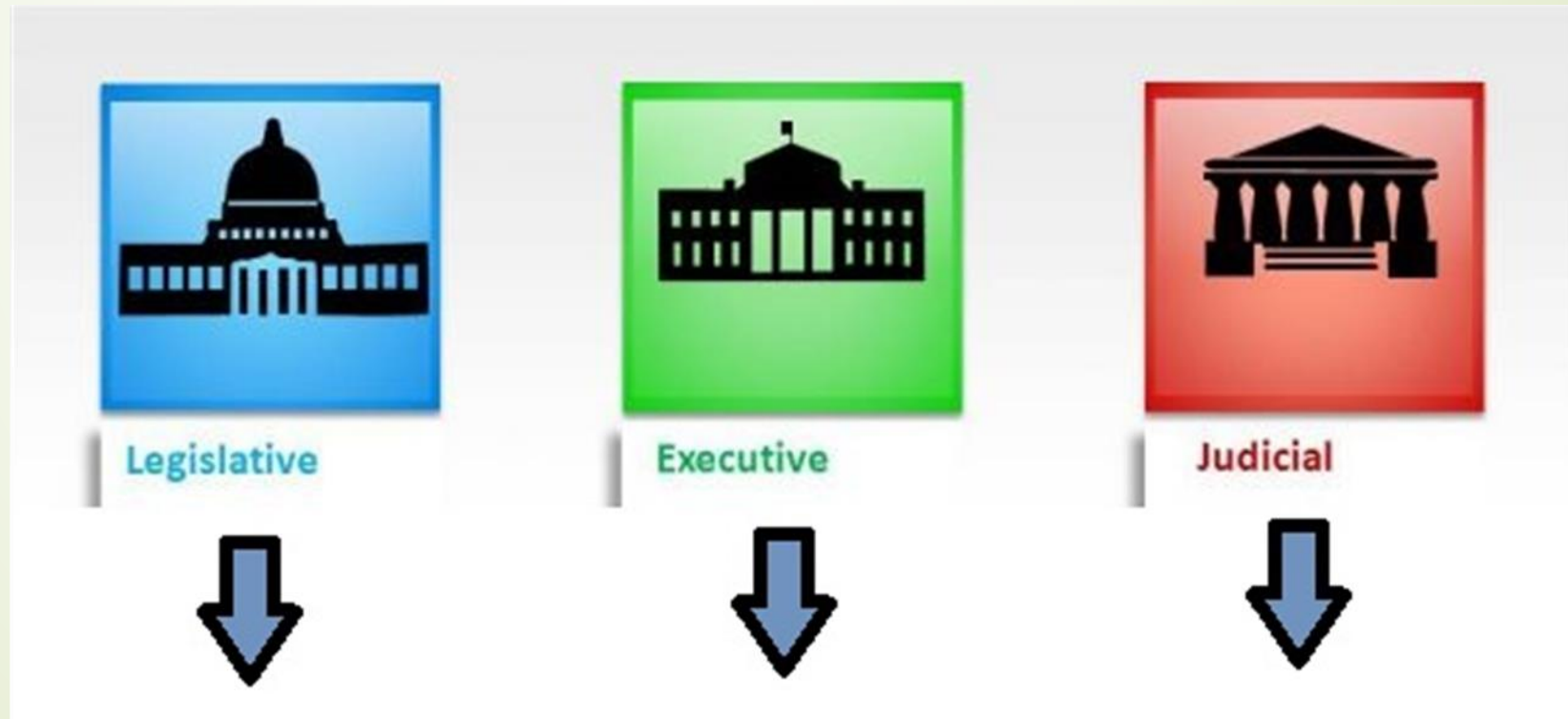
The Fundamentals of International Law

Common Patterns of National Legal Systems:

1. The Central organs of the State operate on behalf of the whole community and perform the 3 main functions of any legal Systems:
 - The Legislature is involved in Law Making
 - The Judiciary is involved in Law Determination/Interpretation
 - The Executive is involved in Law Enforcement
2. State Monopoly on Legitimate Violence

The Fundamentals of International Law

The State's Vertical Relationship with the Community



The Fundamentals of International Law

At the International Plane:

- No real International Legislature.
- No real International Executive.
- No real International Judiciary.



UN General
Assembly/ Security
Council



International
Court of Justice



International
Criminal Court





The Fundamentals of International Law

- At the International plane matters are decentralized.
 - No central authority exists that can impose its will on all States.
 - All States, at least theoretically, are equal.
- Power to make law is therefore dispersed among the States.
- The States generally implement international law through self-enforcement.
- We, therefore, say that at the International plane a Horizontal relationship exists between States.

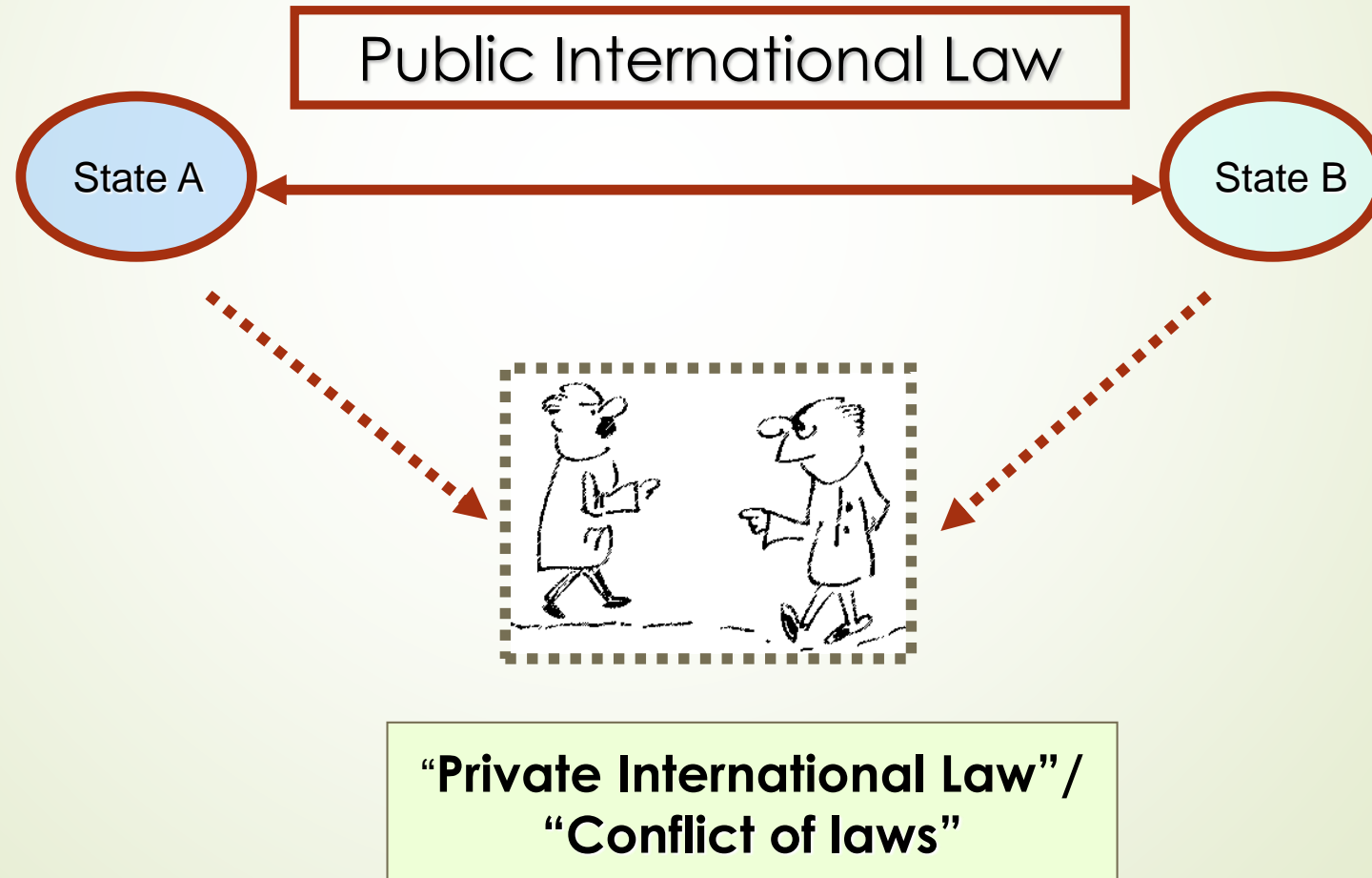
The Fundamentals of International Law

- Defining International Law:
 - International law comprises a system of rules and principles that govern relations between sovereign states and other institutional subjects of international law. Such as the United Nations, the Arab League, the African Union, etc.
 - Its primary focus has been States and International Organizations, however, since the Second World War, there has been a gradual shift towards making the individual a direct subject of International Law.



The Fundamentals of International Law

Two Categories of International Law



The Fundamentals of International Law

- Criticism of International Law:
 - Its not really law because powerful States can violate the law with impunity.
 - There is no real enforcement mechanism.
- But can International Law still be called law?
- International Law is overwhelmingly obeyed by most states most of the time. The reason for its seeming ineffectiveness is that the incidents of failure are headline making news and are brought to our attention – Genocide of Kurds, Kashmir Issue, Rwanda, Bosnia, US Invasion of Iraq, Israel's continued occupation of Palestine.

The Fundamentals of International Law

- ▶ Evidence of International Law as a System of Law?
 1. States believe that International Law Exists
 2. IL is practiced on a daily basis in Foreign Offices around the world.
 3. International Organizations such as the UN, WTO, IAEA, etc. exist and function due to International Law (Int'l Agreements).
 4. IL is discussed and applied in National Courts:
 - ▶ Kulbushan Jadhav Case (ICJ stay of execution implemented domestically)
 - ▶ Reko Diq – Bilateral Investment Treaties, International Arbitration (ICSID, etc.)
 - ▶ Dr. Aafia Siddiqui: Transfer of Sentenced Persons Treaties
 - ▶ Peshawar High Court Judgment on Drones
 - ▶ Extradition Case: Tauqir Sadiq – OGRA Scam

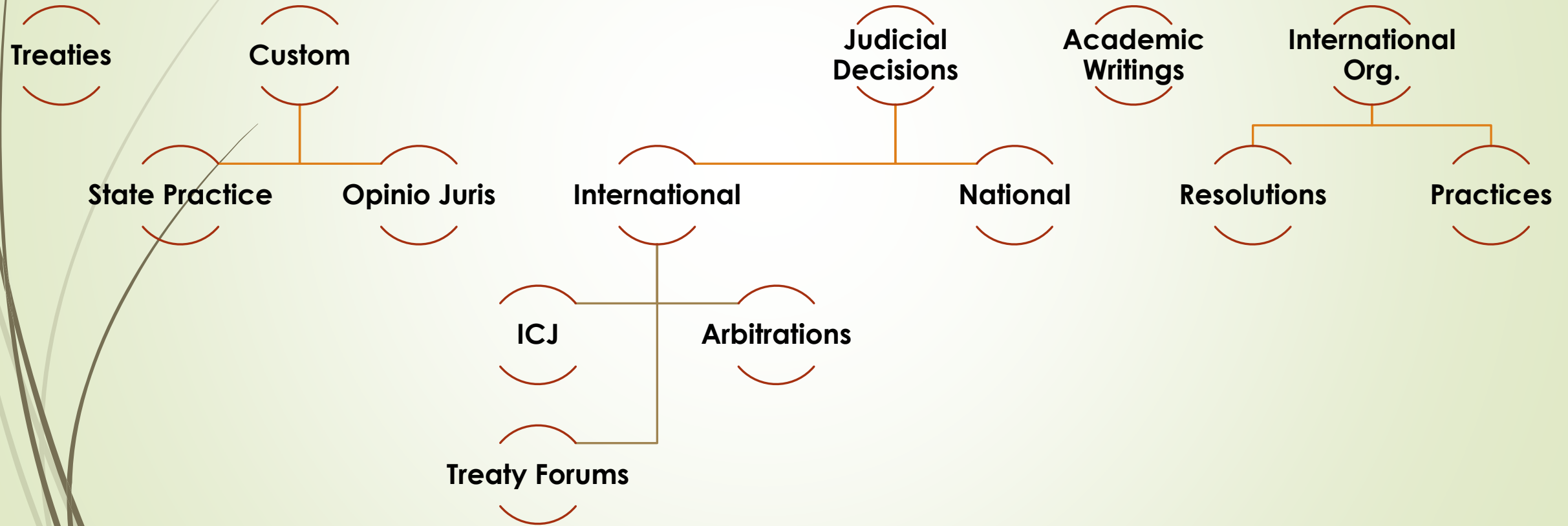
Sources of International Law

Article 38 (ICJ Statute)

- 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;
 - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.



Sources of International Law



Customary International Law

- **State Practice:** widespread repetition by States of similar international acts over time.
 - The Objective Element
- ***Opinio Juris Sive Necessitates*:** the belief that an action was carried out because it was a legal necessity.
 - *Opinio juris* essentially means that states must act in compliance with the norm not merely out of convenience, habit, coincidence, or political expediency, but rather out of a sense of legal obligation.
 - The Subjective Element
 - Example: Diplomatic Immunity



Subjects of International Law

States

- Countries like:
- Pakistan
- India
- US
- South Africa

International Org.

- UN
- EU
- NATO
- SAARC

Corporations

- MNCs
- Oil Companies
- Investment Law

Individuals

- War Criminals
- Pirates
- Slavers
- Human Rights



International Law in Action

- ▶ Always knowing what time and date it is, anywhere in the world.
 - ▶ **International Meridian Conference, 1884.**
- ▶ Placing and receiving telephone calls worldwide possible by creating international communications network.
 - ▶ **International Telecommunications Union**
 - ▶ **UN Space Treaty 1967.**
- ▶ Flying shorter, more direct routes to international destinations without needing repeated permission:
 - ▶ **International Air Services Transit Agreement**
 - ▶ **Chicago Convention of International Civil Aviation**
 - ▶ **Bilateral Conventions**



International Law in Action

- ▶ Having access to your country's embassy or consulate if arrested abroad:
 - ▶ **Vienna Convention on Consular Relations 1963**
- ▶ Being able to use the same software on computers all across the world is possible because the **WIPO Copyright Treaty of 1996** provides rights of distribution and copyright to the authors of software.
- ▶ Enforcing Arbitral Awards without a local court having to rehear the case:
 - ▶ **UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958**

Pakistan and International Law

No.	Legal Issues	Applicable International Law
1	Reko diq	UNGA Resolutions on Natural Resources.
2	Corruption	UN Convention against Corruption 2003.
3	Mumbai Case	UNSCR 1373, The SAARC Convention on Mutual Legal Assistance in Criminal Matters 2004.
4	AQ Khan Matter	Nuclear Non Proliferation Treaty 1968, UNSCR 1540, IAEA Statute 1954.
5	Haqqani Network	Article 51 of UN Charter
6	Kashmir Issue	UN Security Council Resolutions, the Law of Occupation under International Humanitarian Law.

Pakistan and International Law

No.	Legal Issues	Applicable International Law
7	OBL Operation	Articles 2(4) and 51 of UN Charter, Law of intervention
8	Siachen Issue	International law of territory, Agreements b/w Pakistan and India.
9	Sir Creek Issue	UN Convention on the Law of Sea 1982.
10	Iran pipeline	UNSCR 1929/2010.
11	Water issues	Indus water treaty 1960, International law on upper-lower riparian states.
12	Nuclear safety	Convention on Nuclear Safety 1994 Convention on the Physical Protection of Nuclear Material 1979.

SIACHEN GLACIER AREA



“...thence north to the glaciers”
Karachi Agreement
Simla Agreement 1972



Pakistan and International Law

Pakistan is a party to thousands of multilateral and bilateral treaties. Estimated to have over 10,000 treaty based commitments.

For 8000 Federal Statutes there are approximately 150,000 lawyers

For 10,000 treaty based commitments there are 3-4 lawyers at the Ministry of Foreign Affairs and a handful at the Ministry of Law.



Discussion