

Public International Law

KSLU LL.B. — Complete Exam-Ready Study Bundle (All Five Units)

KSLU LL.B. Study Bundle

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Read this first page, then go to your unit. This bundle holds the whole subject: how to use the notes, the rules that win marks, and all five units of content. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real exam questions.

How to Use These Notes

What this is. A complete, exam-focused bundle covering all five units of KSLU Public International Law. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time.

Who it is for. The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

What is inside every topic — the same seven blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
Jurist / Statutory Quotes	Exact definitions & sections	Examiners reward precise authority
In Simple Terms	Plain-English translation	Ensures you <i>understand</i>
The Visual (chart)	Maps the topic structure	Recall and structure at a glance
Case Laws	Landmark judgments + ratio	Case names with years are pure marks
Tracker + Risk Alert	Answer plan + applied IRAC	Converts knowledge into a scoring answer

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the Tracker and one Risk Alert.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap.**
2. **Follow the Blueprint Tracker** stage by stage.
3. **Name the case AND the year** every time.
4. **Quote the exact section / jurist** where given.
5. **Translate every Latin maxim in [brackets].**
6. **Use the four IRAC headings** for problems; spot the decoy fact.
7. **Always give a definite verdict.**
8. **Use the chart's structure** to organise the body.
9. **Close with a short, confident conclusion.**
10. **Manage time** so no high-mark question is left unwritten.

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Public International Law – Unit I

Study Notes

Nature, Definition, Origin & Basis · Sources · Municipal vs International Law · Subjects

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1. Definition, Nature & Origin of International Law

Previous Year Questions

- **[16M]** Define International Law. Trace its origin and development / different stages. (Aug 2024, Jan 2025, July 2025, Mar 2021, Mar 2024, Apr 2022, Dec 2021, Nov/Dec 2020, Dec 2019, Dec 2017, Dec 2015, Jan 2012)
- **[16M]** Evaluate the concept of International Law in the light of definitions by different jurists. (July 2025, Mar 2023, June/July 2018, June/July 2017, Dec 2014)
- **[Short Note]** Hugo Grotius (Nov 2022); Austin and International Law (Oct 2023); Weakness of International Law (June 2011).

The Hook

In **1927**, a **French steamer, the S.S. Lotus**, collided with a **Turkish ship on the high seas**, killing eight Turkish sailors. Turkey put the French officer on trial. France

protested. The case went to the Permanent Court of International Justice, which gave a line that still defines the whole subject: *international law governs relations between independent States, and its rules flow from their own free will*. That single idea — law made by States, for States, out of their own consent — is where Unit I begins.

What is International Law?

International Law (also called the “**law of nations**”) is the body of rules, principles and standards that the members of the international community accept as **legally binding** in their dealings with one another. It brings order, stability and predictability to a world of nearly 200 sovereign States.

L. Oppenheim (Traditional): *“Law of Nations is the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other.”*

J.G. Starke (Modern): *International law is the body of law made up mostly of the rules of conduct which States feel bound to observe — and which also includes the rules of international institutions and certain rules relating to individuals and non-State entities.*

Charles Fenwick: *“The body of general principles and specific rules which are binding upon the members of the international community in their mutual relations.”*

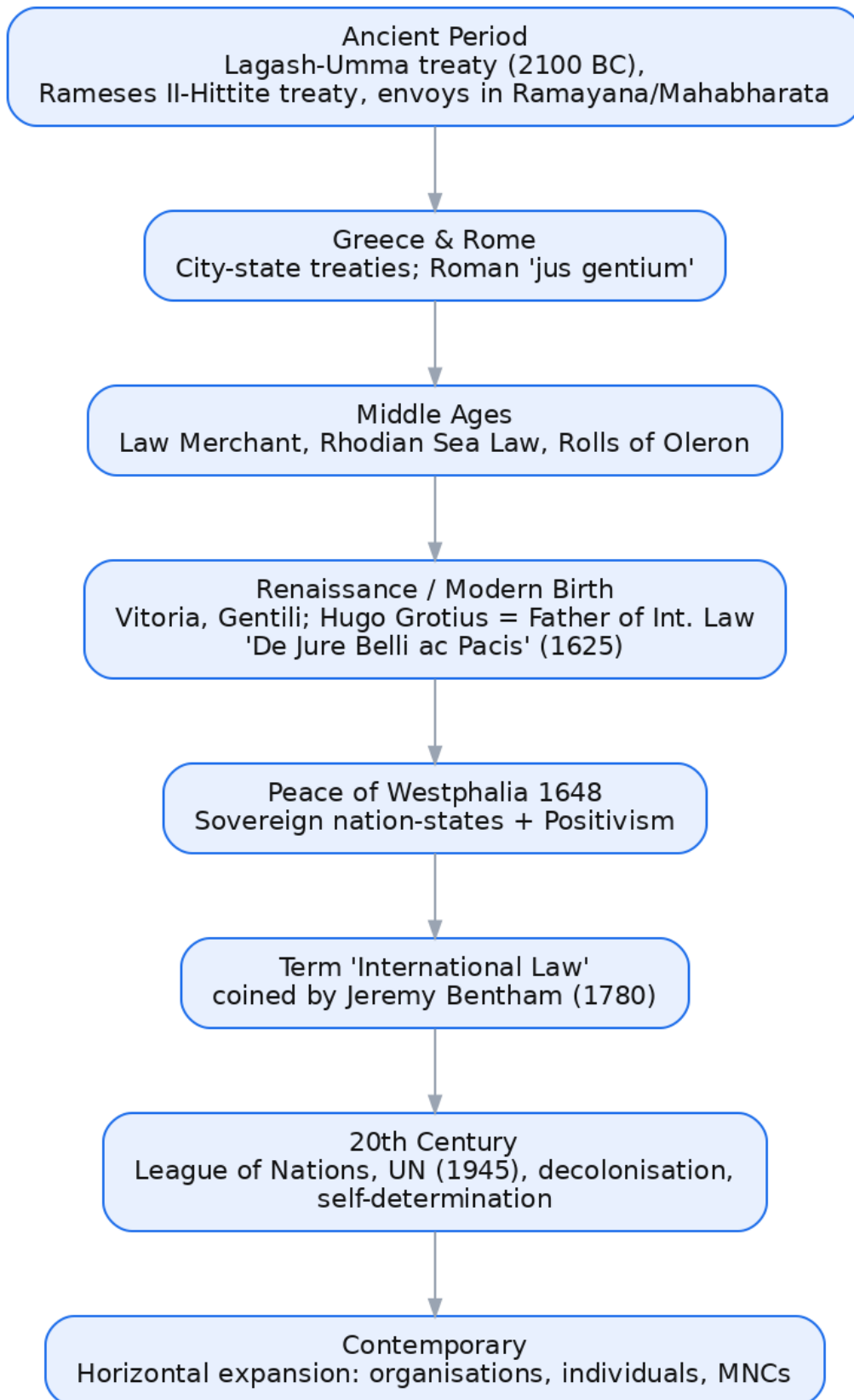
In Simple Terms: Old definitions said international law was *only* about States. The modern view is wider — it also covers the UN and other organisations, and even individuals (think war-crimes trials and human rights). So Oppenheim’s “civilised States” definition is now treated as outdated and too narrow.

Nature of International Law (key features)

International law is **horizontal**, not vertical. Domestic (municipal) law has a clear hierarchy — a legislature to make law, courts with compulsory power, and a police/ executive to enforce it. International law has none of these in the same way; instead, over 190 legally **equal** States create rules mainly through **treaties** and **custom**, based on their own consent. It must be distinguished from mere **international comity** (courtesy, e.g. saluting flags at sea) and from international **morality** — it is a true legal discipline.

Origin & Development (the stages to write in the exam)

The Visual



Two names you must remember: **Hugo Grotius** (the *father of international law*, who took theology out and based the law on human reason) and **Jeremy Bentham** (who *coined the term* “International Law” in 1780).

Case Laws

- **S.S. Lotus (France v. Turkey, 1927):** International law governs relations between independent States; rules emanate from their free will. Restrictions on State independence cannot be presumed.
- **Reparation for Injuries (ICJ, 1949):** International law has grown beyond States — even the UN can be an “international person.” Use this to prove the *modern* definition.
- **Nicaragua v. USA (1986):** Obligations arise only from rules a State accepts by treaty or otherwise — confirms the consensual nature.
- **West Rand Central Gold Mining Co. v. R.** and **R. v. Keyn:** International law rests on the long practice and common consent of States.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** Open with the one-line “law of nations” definition; tell the examiner you will define it, examine its nature, then trace its growth.
- **STAGE 2** → **Comparative Juxtaposition:** Contrast Oppenheim’s traditional “civilised States” definition with Starke/Fenwick’s modern multi-actor reality. Explicitly target why “civilised States” is obsolete (organisations + individuals now bound).
- **STAGE 3** → **Structural Mapping:** Frame the subject as a **horizontal** system built on shared consent (treaties + custom of ~200 equal States), not a vertical domestic authority grid. Distinguish it from comity and morality.
- **STAGE 4** → **Chronology Sprint:** Walk the development stages using the chart — ancient treaties → Greece/Rome (*jus gentium*) → Middle Ages → Grotius (father) & Bentham (coined term, 1780) → Westphalia 1648 → UN 1945 → contemporary expansion.
- **STAGE 5** → **Verdict:** Conclude it is a dynamic, expanding legal system; weave in *S.S. Lotus* (consent) and *Reparation* (expanded subjects).

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: State A claims it is not bound by a long-standing rule of international law because it “never signed any treaty agreeing to it,” and argues international law is merely morality, not real law that limits a sovereign.

- **I — ISSUE:** Is international law a true law binding on a State, and can a State escape it merely by pointing to the absence of an express treaty?
- **R — RULE:** *S.S. Lotus (1927)* — rules flow from the free will of States expressed in treaties **and custom**; restrictions on independence are not lightly presumed, but established custom binds. Modern definitions (*Starke*) confirm legal, not moral, force.
- **A — ANALYSIS:** Identify whether the rule is customary (State practice + *opinio juris*). If it is, State A is bound regardless of any specific treaty signature; the “only morality” argument fails because States plead such rules in legal, not moral, terms.
- **C — CONCLUSION:** State A remains bound; international law is true law and consent can be expressed through custom, not treaty alone.

2. Is International Law a True Law?

Previous Year Questions

- **[16M]** “Is International Law a true law?” Discuss. (Often combined with the definition question.) (Mar 2022, Jan 2012, and within most definition questions)
- **[Short Note]** Austin and International Law (Oct 2023); Weakness of International Law (June 2011).

The Hook

The 19th-century jurist **John Austin** looked at international law and dismissed it. For Austin, “law” meant a **command of a sovereign backed by a sanction (punishment)**. International law has no world sovereign and no world police — so he called it merely “**positive international morality**,” not true law. Generations of students have argued with him ever since.

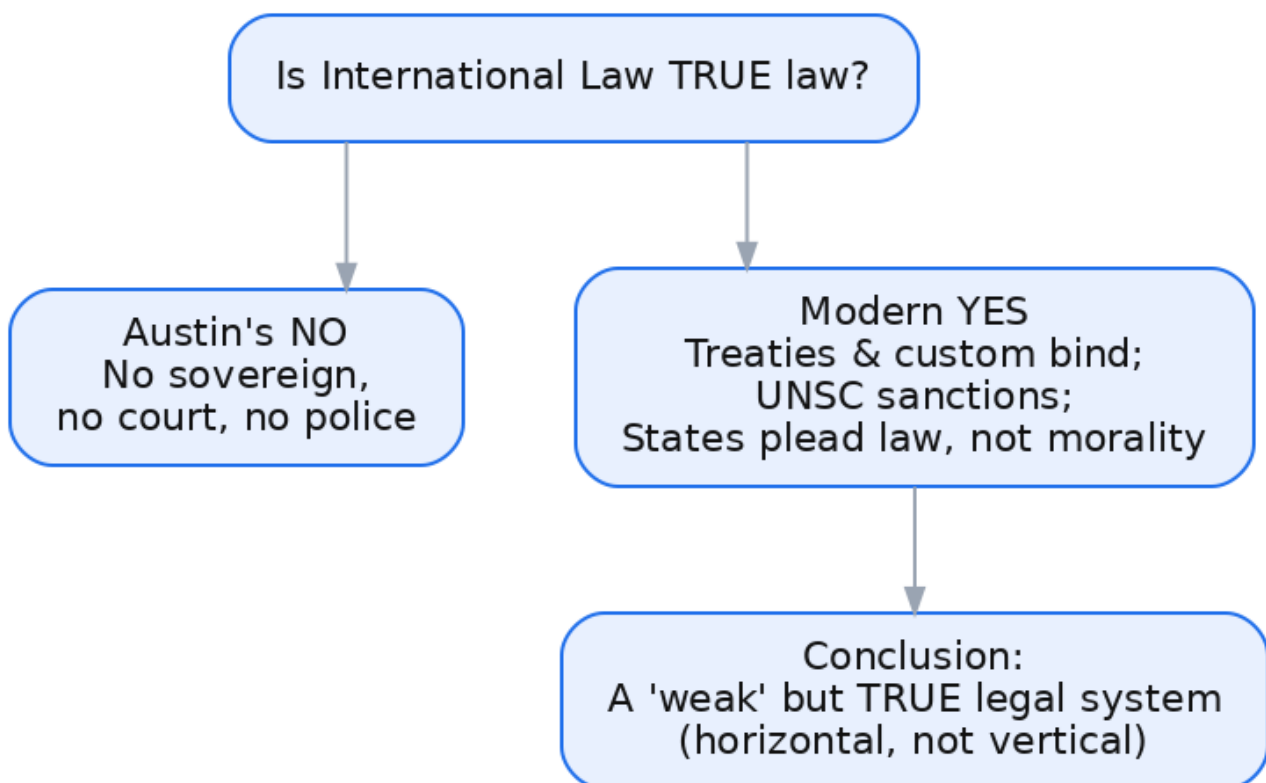
The Two Sides

John Austin (against): Law is the command of a determinate sovereign, enforced by sanctions. International law has no sovereign legislature, no court with compulsory jurisdiction, and no central enforcer — so it is only “positive morality.”

Oppenheim, Starke, Hall (for): A rule is legal if the community treats it as binding. States do treat international law as binding — they argue in legal language, not moral pleas.

In Simple Terms: Austin defined “law” too narrowly. By his test, even early customary law and constitutional conventions would not be “law.” The better test is: *do the subjects feel bound and behave as if bound?* States overwhelmingly obey international law and justify breaches in **legal** terms — proof that they accept it as law.

The Visual



Case Laws

- **S.S. Lotus (1927):** States deliberately bind themselves to a legal order through free will.
- **Chorzow Factory (1928):** “Any breach of an engagement involves an obligation to make reparation” — legal consequences, not moral ones.

- **Nicaragua v. USA (1986):** Even a superpower's conduct is judged against binding rules (prohibition on use of force = *jus cogens*).

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Frame the Debate:** Introduce Austin's **command theory** (law = command of a determinate sovereign + sanction) and his charge that international law is mere "positive morality." Promise to test it.
- **STAGE 2** → **State the Charge Fairly:** Lay out the three classic weaknesses — no world **legislature**, no **court** with compulsory jurisdiction, no central **executive/police**.
- **STAGE 3** → **Rebut Point-by-Point:** Austin's definition is too narrow (it would also exclude custom and constitutional conventions). The real test is whether subjects feel bound and behave as bound — States plead law, not morality. Note real enforcement: UNSC sanctions, self-defence, ICJ.
- **STAGE 4** → **Case Proof:** *S.S. Lotus* (free-will binding), *Chorzów Factory* (breach = legal duty to repair), *Nicaragua* (superpower judged against binding rules).
- **STAGE 5** → **Verdict:** It **is** true law — merely weaker, decentralised, horizontal — not stripped of legal character.

⚠️ FACT-PATTERN RISK ALERT

Scenario: State X breaches a binding international obligation, then argues that because no global police force exists to punish it, the rule was never really "law" and no consequence can follow.

- **I — ISSUE:** Does the absence of a centralised enforcer mean international law imposes no real legal consequence on a breaching State?
- **R — RULE:** *Chorzów Factory* (1928) — "any breach of an engagement involves an obligation to make reparation." Enforcement also exists through UNSC sanctions, countermeasures, and ICJ adjudication.
- **A — ANALYSIS:** Lack of a world police changes the mode of enforcement, not the legal character of the duty. X's breach triggers a legal obligation to repair and exposes it to lawful countermeasures.
- **C — CONCLUSION:** State X is legally liable; decentralised enforcement does not negate the binding force of international law.

3. Basis of International Law (Theories)

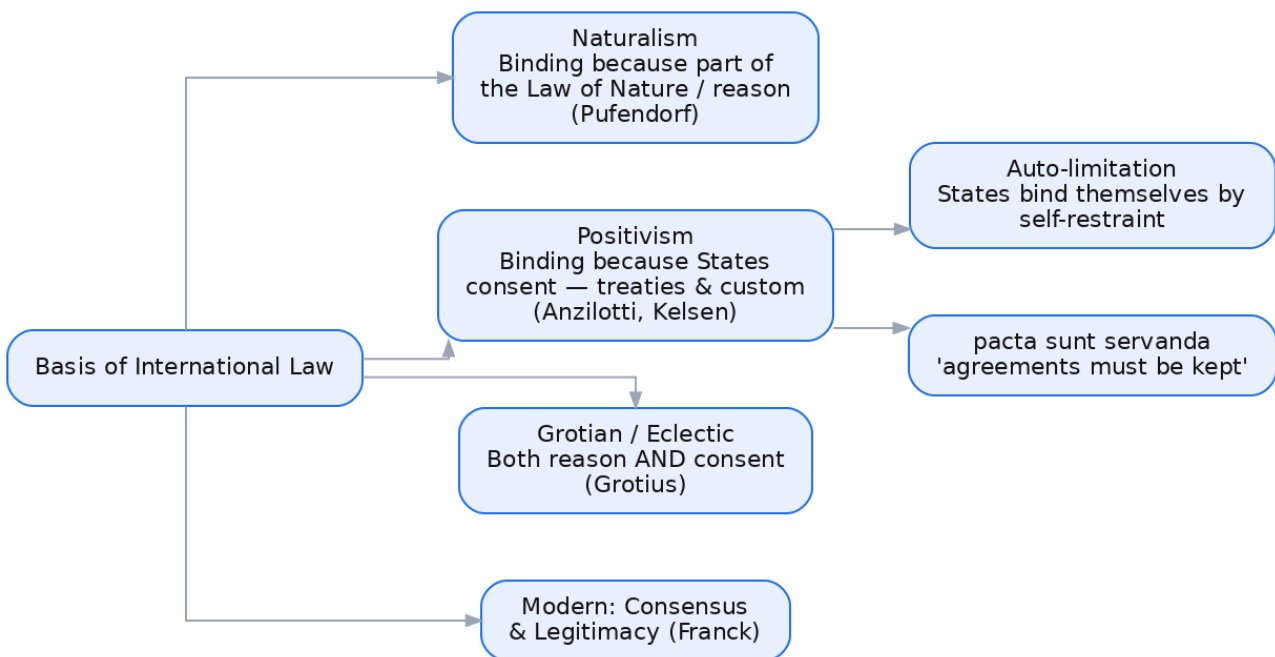
Previous Year Questions

- **[16M]** Examine the theories regarding the nature and basis of International Law. (July 2025, Apr 2022, Mar 2023)
- **[Short Note]** Auto-limitation theory (Mar 2023); Basis of International Law (Aug 2024, Apr 2023, June 2012).

What “Basis” Means

The question “What is the *basis* of international law?” really asks: **Why is it binding? Why do States obey it?** Jurists answer this with competing theories.

The Visual



The Theories

1. Naturalism (Law of Nature): International law binds because it is part of a higher natural law based on reason, common to all mankind (Stoics, Pufendorf). *Criticism:* “Law of Nature” is vague — read as reason, justice or utility by different writers, and ignores actual State practice.

2. Positivism (Consent / Will of States): Law is what *actually exists* (*ius positivum*), not what ought to be. International law binds because sovereign States **consented** to it through treaties and custom.

Auto-limitation theory: Since a State is sovereign and cannot be subjected to a higher power, it can only be bound by **limiting its own will** — it voluntarily restricts its own powers. **Anzilotti** grounded this on the single supreme norm **pacta sunt servanda** [agreements must be kept].

Criticism of consent theory: A **new State** is bound by existing customary rules the moment it is born, without giving express consent. And *pacta sunt servanda* is itself a customary rule — so consent cannot be the ultimate basis (a logical circle).

3. Grotian / Eclectic view: Grotius blends both — law comes from *Jus Naturae* (natural law/reason) **and** *Jus Voluntarium* (the voluntary law of treaties and custom).

4. Modern theories: Consensus (States accept the *whole system* even if not every rule) and **Thomas Franck's Legitimacy** theory (States obey because the rules were made by a fair, legitimate process).

In Simple Terms: “Basis” simply asks *why* States obey international law. Naturalists say it binds because it flows from reason and natural justice; positivists say it binds only because States consented through treaties and custom (auto-limitation, *pacta sunt servanda*). Neither alone is complete — a new State is bound by custom it never signed up to, yet pure natural law ignores what States actually do. The workable answer is a blend: States are bound by what they have consented to *and* by general custom they cannot escape, because an ordered world serves their common interest.

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- **STAGE 1** → **Reframe the Question:** Clarify that “basis” means **why international law is binding and why States obey it**. Promise the competing theories.
- **STAGE 2** → **Naturalism:** Binds as part of a higher **Law of Nature** / reason (Stoics, Pufendorf). Criticism: “Law of Nature” is vague and ignores actual State practice.
- **STAGE 3** → **Positivism (most space):** Binds through **consent** via treaties + custom; bring in **auto-limitation** and Anzilotti's **pacta sunt servanda** [agreements must be kept]. Criticism: a new State is bound by existing custom without consent, and *pacta sunt servanda* is itself custom (circularity).
- **STAGE 4** → **Grotian + Modern:** Grotian/eclectic bridge (reason **and** consent); then consensus theory and Franck's legitimacy theory.
- **STAGE 5** → **Verdict:** No single theory suffices — the real basis is a **combination** of consent, custom, and the common interest in an ordered world.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: A newly independent State, born last year, is sued for violating a customary rule. It argues it never consented to any rule made before it existed, so nothing binds it.

- **I — ISSUE:** Can a new State avoid customary international law on the ground that it never expressly consented to rules pre-dating its birth?
- **R — RULE:** Positivist consent theory is qualified by the **new-State problem** — established custom binds new States automatically; *pacta sunt servanda* itself is a pre-existing customary norm.
- **A — ANALYSIS:** The State's pure-consent argument collapses on the very logic positivists concede; general custom forms part of the legal order it joins upon statehood, so it is bound without fresh consent.
- **C — CONCLUSION:** The new State is bound by general custom; consent is not the sole basis of obligation.

4. Sources of International Law

Previous Year Questions

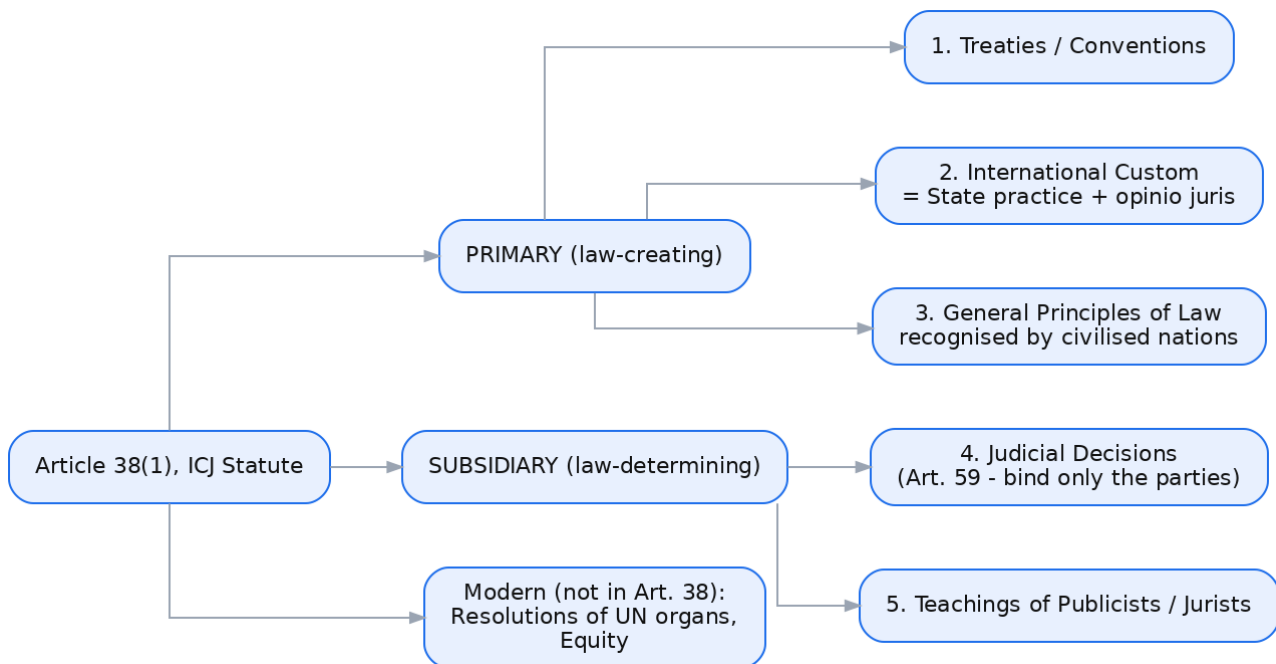
- **[16M]** What are the sources of International Law? Discuss with special reference to customs, treaties and the Statute of the ICJ (Art. 38). (Jan 2025, July 2025, Mar 2023, Mar 2024, Apr 2023, Nov 2021, Nov 2022, Oct 2023, Dec 2021, Dec 2018, Dec 2016, June/July 2016, June/July 2015, June/July 2014, June 2012) — **the single most repeated long question in Unit I.**
- **[Short Note]** Custom / International custom (Aug 2024, Apr 2022, Nov 2022, Nov/Dec 2020, June/July 2018, Jan 2012); General principles of law (Dec 2016); Juristic works (June/July 2014); Decisions of International Institutions (June/July 2015).

The Hook

When the ICJ must decide a dispute, where does it look for “the law”? The drafters answered this in **Article 38(1) of the Statute of the ICJ** — the single most important provision on sources. It is your roadmap for this answer.

Article 38(1) — The Source Map

The Visual



The Sources Explained

1. International Conventions (Treaties): Written agreements between States creating expressly recognised rules. **Law-making treaties** act like legislation. *Case — Qatar v. Bahrain (1994)*: even an exchange of letters/minutes can be a binding agreement.

2. International Custom — the oldest source. Needs **two elements**: - *Material element* — **State practice** that is uniform, constant and general. - *Psychological element* — **opinio juris** [the belief that the practice is legally obligatory].

Cases: - **North Sea Continental Shelf (1969)**: practice must be “extensive and virtually uniform” **plus opinio juris**. (Leading authority on custom.) - **Lotus (1927)**: mere abstention is not custom unless States abstain feeling a *duty* to. - **Right of Passage (Portugal v. India, 1960)**: even a **local custom** between two States, long and uniform, is binding. - **Asylum Case (Colombia v. Peru, 1950)**: a claimed regional custom failed because practice was uncertain and contradictory.

3. General Principles of Law: principles common to national legal systems (e.g. good faith, *res judicata* [a matter already decided], reparation). They fill gaps and prevent *non-liquet* [a court refusing to decide for want of law]. *Case — Chorzow Factory (1928)*: breach entails an obligation to make reparation.

4. Judicial Decisions (subsidiary): ICJ decisions bind only the parties (**Art. 59** — no strict *stare decisis* [binding precedent]), but are highly persuasive.

5. Teachings of Publicists (subsidiary): writings of eminent jurists as evidence of the law (used in *Lotus*).

6. Modern source — Resolutions of International Organisations: UN General Assembly/Security Council resolutions can evidence *opinio juris* or impose binding obligations. Cases — *Nuclear Weapons Advisory Opinion (1996)* and *Kosovo Advisory Opinion (2010)*.

In Simple Terms: Article 38(1) is the examiner's checklist of where international law comes from. Treaties (express agreements) and custom (what States actually do out of a sense of legal duty) are the heavy-hitters; general principles fill the gaps; judicial decisions and jurists' writings are only *evidence* of the law, not the law itself; and modern practice adds UN resolutions. Always open such an answer by naming Article 38 and splitting the list into **primary** and **subsidiary** sources.

Case Laws

- **North Sea Continental Shelf (1969):** custom needs practice that is “extensive and virtually uniform” plus *opinio juris* — the leading authority on custom.
- **Right of Passage (Portugal v. India, 1960):** a long, uniform bilateral practice can bind as a local custom.
- **Asylum Case (Colombia v. Peru, 1950):** a claimed regional custom fails where the practice is uncertain or contradictory.
- **Qatar v. Bahrain (1994):** even an exchange of letters or minutes can constitute a binding treaty.
- **Chorzow Factory (1928):** reparation for breach is a general principle recognised by all legal systems.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Anchor on Article 38(1)**: State that the authoritative list is **Art. 38(1) ICJ Statute**, splitting sources into **primary** (treaties, custom, general principles) and **subsidiary** (judicial decisions, publicists). Map the chart.
- **STAGE 2** → **Treaties**: Written agreements creating express rules; law-making treaties act like legislation (Qatar v. Bahrain — even letters can bind).
- **STAGE 3** → **Custom (most space)**: Two elements — uniform general **State practice** + **opinio juris** [belief it is legally obligatory]. Prove with North Sea Continental Shelf (extensive + uniform + opinio juris), Lotus (abstention ≠ custom), Right of Passage (local custom binds), Asylum Case (regional custom failed).
- **STAGE 4** → **Remaining + Modern**: General principles (good faith, res judicata [a matter already decided], reparation — prevent non-liquet; Chorzów Factory); subsidiary means (Art. 59 binds only parties; publicists); modern source — UN resolutions (Nuclear Weapons, Kosovo opinions).
- **STAGE 5** → **Verdict**: Sources are not rigidly ranked but work together; treaties and custom carry the greatest weight.

⚠️ FACT-PATTERN RISK ALERT

Scenario: State A has silently permitted foreign commercial vessels to extract deep-sea minerals inside its waters for 60 years. After a change of government, State A seizes a vessel from State B under a new domestic statute claiming exclusive mineral rights. State B sues, claiming a binding regional custom has formed.

- **I — ISSUE:** Has long-term silence/acquiescence crystallised into a binding rule of custom that overrides State A's subsequent domestic legislation?
- **R — RULE:** North Sea Continental Shelf (1969) — custom requires **extensive and virtually uniform State practice plus** psychological **opinio juris**. Asylum Case shows an inconsistent/uncertain practice fails to bind.
- **A — ANALYSIS:** Match the 60-year timeline against the test. Decide whether the extraction was tolerated as a **legal obligation** (opinio juris) or as mere commercial convenience/comity. If only comity, no custom forms and State A's statute governs; if accompanied by opinio juris, a binding custom may override later domestic law.
- **C — CONCLUSION:** Deliver a clear verdict turning on the **presence or absence of opinio juris** — without proof of a sense of legal obligation, State B's custom claim fails.

5. International Law & Municipal Law

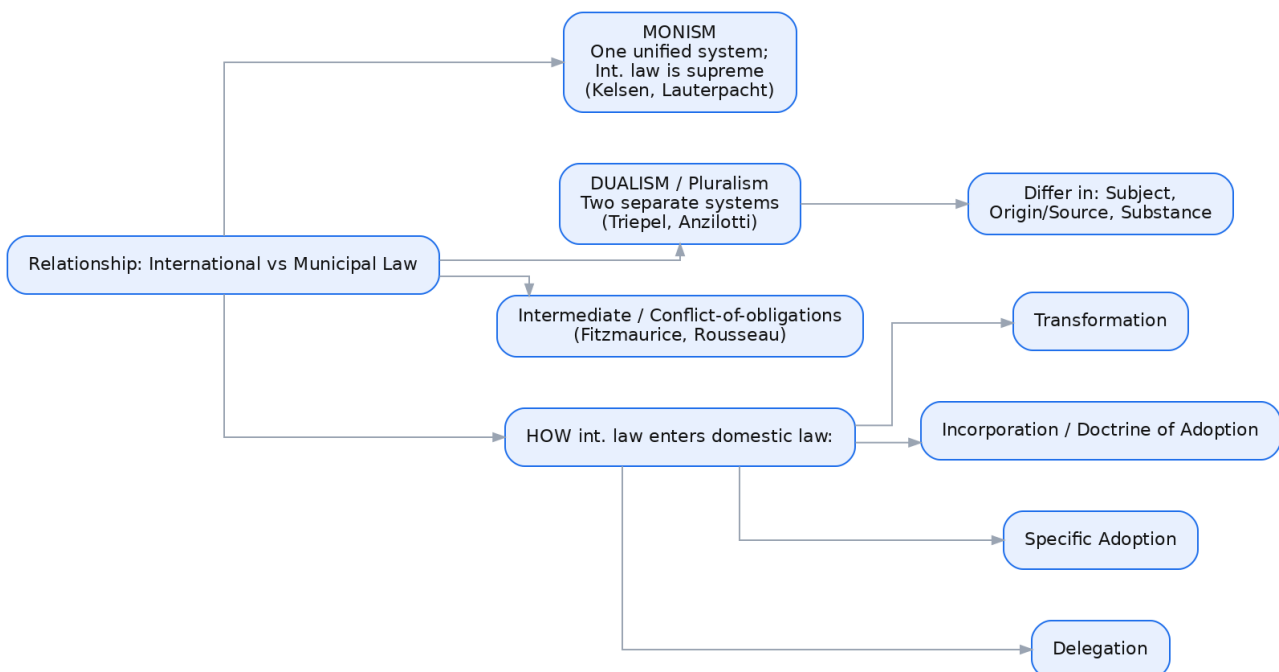
Previous Year Questions

- **[16M]** Explain the theories relating to the relationship between International Law and Municipal Law. (Aug 2024, Jan 2025, Mar 2023, Apr 2023, Apr 2022, Dec 2019, June/July 2018, Dec 2017, June/July 2017, June/July 2016, June/July 2015, Jan 2012)
- **[16M]** Explain the British / State practice as to the application of International Law in the municipal sphere. (July 2025, Nov 2022, Oct 2023, Nov/Dec 2020, Dec 2018, June/July 2014, June 2011)
- **[16M / SN]** Monism and Dualism — distinguish; distinguish Public & Private International Law. (Jan 2025, Mar 2021, Mar 2024, Oct 2023, June/July 2017, June 2012; Monism SN: July 2025, Mar 2024, Nov 2022, Oct 2023; Dualism SN: Mar 2024, Mar 2023)

The Core Question

Are international law and a country's own domestic law **one system or two**? And when they clash, which wins inside a national court?

The Visual



The Theories

Monism (Kelsen, Lauterpacht): International and municipal law are **two branches of one** legal system. All law ultimately regulates individuals, and international law is **supreme**. Kelsen traces validity to a single “basic norm”; Lauterpacht stresses protection of human rights.

Dualism / Pluralism (Triepel, Anzilotti): They are **two distinct systems** operating on different planes. **Triepel’s differences:** (a) Subject — municipal law governs individuals, international law governs States; (b) Origin — municipal law from a State’s will, international law from the common will of States.

Intermediate view (Fitzmaurice, Rousseau): Each is supreme **in its own field**; a clash is just a “conflict of obligations” — the domestic law stays valid at home, but the State bears international responsibility for the breach.

In Simple Terms: Monists say “one big system, international law on top.” Dualists say “two separate worlds.” The realistic middle view says “each rules its own house; break international law and you answer internationally, even if your domestic law is valid.”

British (State) Practice

This is a separate, frequently-asked question. British courts treat **custom** and **treaties** differently:

- **Customary international law → Doctrine of Incorporation:** custom is automatically part of the common law “so far as it is not inconsistent with Acts of Parliament or prior judicial decisions.” Cases — *Buvot v. Barbuit*; *Triquet v. Bath*; *West Rand Central Gold Mining Co. v. R.*; *Chung Chi Cheung v. R.*; *Trendtex Trading Corp. v. Central Bank of Nigeria (1977)*.
- **Treaties → Doctrine of Transformation / Specific Adoption:** a treaty does **not** automatically become English law; Parliament must pass enabling legislation (especially treaties affecting private rights, finances, or requiring law change). Case — *The Parlement Belge*.

Indian position (useful extra): Article 51(c) of the Constitution directs the State to foster respect for international law; treaties need legislation under Article 253. Cases — *Vishaka v. State of Rajasthan*; *Gramophone Co. v. Birendra Bahadur Pandey* (custom incorporated unless contrary to statute).

Case Laws

- ***Trendtex Trading Corp. v. Central Bank of Nigeria (1977)*:** customary international law is incorporated into English common law as the custom itself evolves.

- **The Parlement Belge (1879):** a treaty affecting private rights takes domestic effect only after Parliament legislates (transformation).
- **Vishaka v. State of Rajasthan (1997):** Indian courts may read unincorporated international norms into domestic law to fill a legislative gap.
- **Gramophone Co. v. Birendra Bahadur Pandey (1984):** customary international law is part of Indian law unless it conflicts with a statute.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

Track A → **If asked about the THEORIES:** * **STAGE 1:** Frame the core problem — one system or two, and which prevails in a clash? * **STAGE 2:** Define **Monism** (one system, int. law supreme — Kelsen, Lauterpacht) vs **Dualism** (two systems — Triepel, Anzilotti; Triepel’s differences: subject + origin); add the intermediate “conflict of obligations” view (Fitzmaurice, Rousseau). * **STAGE 3:** Explain how int. law enters domestic law — **Transformation, Incorporation, Specific Adoption, Delegation.** * **STAGE 4 — Verdict:** Strict monism/dualism both too rigid; a State breaching int. law incurs responsibility even if its domestic law stays valid.

Track B → **If asked about BRITISH (State) practice:** * **STAGE 1 — Custom:** Doctrine of **Incorporation** — custom is automatically common law unless contrary to statute/precedent (*Buvot v. Barbut*, *Triquet v. Bath*, *West Rand*, *Chung Chi Cheung*, *Trendtex*). * **STAGE 2 — Treaties:** Doctrine of **Transformation** — binding only after Parliament legislates (*The Parlement Belge*). * **STAGE 3 — Bonus:** Indian position (Art. 51(c), Art. 253, *Vishaka*, *Gramophone Co.*), then conclude.

Track C → **If asked to distinguish PUBLIC vs PRIVATE int. law:** Contrast on three points — **parties** (States vs private persons), **source** (treaties/custom vs domestic law), **subject-matter** (relations between States vs conflict of laws between private parties).

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: State X ratifies a human-rights treaty but its Parliament passes no implementing legislation. A citizen sues in X's national court demanding the treaty be enforced directly against the government.

- **I — ISSUE:** Can an unincorporated treaty be enforced directly in a national court, or does it require enabling legislation?
- **R — RULE:** Under the **dualist/transformation** doctrine (British and Indian practice, Art. 253), a treaty does not become domestic law until Parliament enacts it; The *Parlement Belge* confirms treaties affecting private rights need legislation.
- **A — ANALYSIS:** Since no implementing statute exists, the court cannot give the treaty direct domestic effect. The citizen's claim fails internally, **but** State X still bears **international responsibility** for non-performance (conflict-of-obligations view).
- **C — CONCLUSION:** The treaty is unenforceable domestically without legislation, though State X remains internationally answerable for the breach.

6. Subjects of International Law

Previous Year Questions

- **[16M]** Discuss the subjects of International Law. Examine: "States alone are the subjects of International Law" / "The duties and rights of States are only the duties and rights of the men who compose them" (Westlake). Discuss the position of individuals. (Jan 2025, July 2025, Mar 2021, Mar 2023, Mar 2024, Nov 2021, Oct 2023, Dec 2021, June/July 2018, Dec 2016, June/July 2014, Dec 2014, Jan 2012, June 2012)
- **[Short Note / 6M]** Are individuals subjects of International Law? (Apr 2022, Apr 2023, Mar 2022); *Paquete Habana & Lola* case (Jan 2025, Mar 2024).

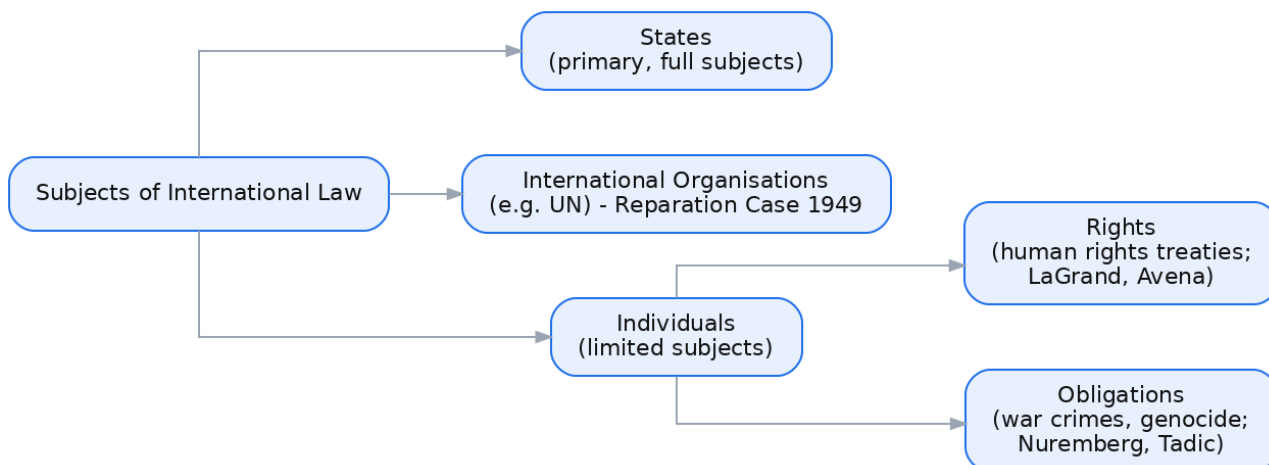
The Hook

After World War II, the **Nuremberg Tribunal** tried individual Nazi leaders. They argued they only acted for the State. The Tribunal rejected this with a famous line: "*Crimes against international law are committed by men, not by abstract entities.*" That moment proved individuals can bear duties **directly** under international law — and reshaped the debate on "subjects."

Who is a “Subject”?

A **subject of international law** is an entity that (a) has international **rights and duties** and (b) can **maintain those rights by bringing international claims**.

The Visual



The Three Theories on Subjects

1. **States alone are subjects (Realist / traditional):** only States have rights and duties; individuals are mere **objects**. *Too narrow today.*
2. **Individuals alone are subjects (Westlake / Kelsen):** since States are abstractions made of people, ultimately the rights and duties are those of individuals. *Westlake:* “The duties and rights of States are only the duties and rights of the men who compose them.” *Too extreme — individuals lack full procedural capacity.*
3. **States are primary, but individuals and organisations are also subjects (Modern / correct view):** the accepted position today.

In Simple Terms: A “subject” is anyone international law gives rights and duties to *and* lets bring a claim. The old theory said only States qualify; the opposite extreme (Westlake) said only individuals truly matter. Today’s settled position sits in between — States are the primary subjects, but international organisations (the UN, after *Reparation*) and individuals (who now hold human-rights protections and bear war-crimes responsibility) are subjects too, even though an individual’s procedural capacity is limited and usually exercised through the State’s diplomatic protection.

Case Laws

- **Reparation for Injuries (ICJ, 1949):** the UN is an “international person” — **organisations** are subjects.
- **Nuremberg Tribunal (1945):** individuals bear **direct criminal responsibility**.
- **Prosecutor v. Tadić (ICTY, 1995):** individual responsibility extends even to internal armed conflicts.

- **LaGrand (Germany v. USA, 2001) & Avena (Mexico v. USA, 2004):** the Vienna Convention on Consular Relations **creates individual rights**.
- **Nottebohm (Liechtenstein v. Guatemala, 1955):** nationality is the “genuine link”; usually the State enforces an individual’s claim through **diplomatic protection**.
- **Paquete Habana & Lola (1900):** “International law is part of our law” — courts apply custom; coastal fishing vessels are exempt from capture as prize of war. (Shows custom binding within domestic courts.)

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Define the Test:** A **subject** has international **rights and duties** and can **maintain them by bringing international claims**. Apply this test to each candidate.
- **STAGE 2** → **Three Theories as a Progression:** (a) Realist — States alone, individuals are objects (too narrow); (b) Westlake/Kelsen — only individuals, quote Westlake (too extreme — no full procedural capacity); (c) Modern composite — States primary, but organisations + individuals also subjects (correct).
- **STAGE 3** → **Individuals in Two Halves: Duties** (direct criminal responsibility — Nuremberg, Tadić) and **rights** (LaGrand, Avena); procedural capacity usually exercised via **diplomatic protection** (Nottebohm genuine-link).
- **STAGE 4** → **Organisations:** Reparation for Injuries — the UN is an international person, hence a subject.
- **STAGE 5** → **Verdict:** States remain primary subjects; organisations and individuals are now firmly recognised. If the Westlake quote is highlighted, concede its philosophical truth but reject the extreme “individuals alone” view.

⚠ **FACT-PATTERN RISK ALERT**

Scenario: A military commander, prosecuted before an international tribunal for atrocities, argues he cannot be a subject of international law because only **States** — not individuals — bear duties under it.

- **I — ISSUE:** Can an individual bear direct duties (and criminal responsibility) under international law, or are only States subjects?
- **R — RULE:** Nuremberg Tribunal (1945) — “crimes against international law are committed by men, not abstract entities”; *Prosecutor v. Tadić* extends individual responsibility even to internal conflicts.
- **A — ANALYSIS:** The “States alone” theory is obsolete. The commander is a **limited subject** bearing direct obligations; acting on behalf of a State is no shield against personal criminal responsibility.
- **C — CONCLUSION:** The commander is a subject for the purpose of duties and is personally liable; his objection fails.

7. Quick Revision & Case Law Table

One-line memory hooks

- **Definition:** Oppenheim (old) → Starke/Fenwick (modern). Grotius = father; Bentham = coined the term.
- **True law?** Austin says no (command theory); modern view says yes (weak but true).
- **Basis:** Naturalism / Positivism (consent + auto-limitation + *pacta sunt servanda*) / Grotian / Legitimacy.
- **Sources:** Article 38 — Treaties, Custom (practice + *opinio juris*), General Principles + Judicial decisions, Publicists + UN resolutions.
- **Municipal relationship:** Monism (one system) vs Dualism (two). British practice: custom = Incorporation, treaties = Transformation.
- **Subjects:** States (primary) + Organisations (Reparation) + Individuals (rights & duties).

Master Case List for Unit I

Case	Topic	One-line ratio
S.S. Lotus (1927)	Nature, custom, sources	Rules flow from States' free will; restrictions not presumed.
Reparation for Injuries (1949)	Definition, subjects	UN is an international person / subject.
Nicaragua v. USA (1986)	Nature, sources	Non-use of force is custom & <i>jus cogens</i> .
Chorzow Factory (1928)	True law, gen. principles	Breach entails obligation to make reparation.
North Sea Continental Shelf (1969)	Custom	Practice must be extensive, uniform + <i>opinio juris</i> .
Right of Passage (1960)	Custom	Local/bilateral custom is binding.
Asylum Case, Colombia v. Peru (1950)	Custom	Regional custom failed — practice uncertain.
Qatar v. Bahrain (1994)	Treaties	Letters/minutes can be a binding treaty.
Trendtex v. Central Bank of Nigeria (1977)	British practice	Incorporation of custom into common law.
The Parlement Belge	British practice	Treaties need legislation (transformation).
Nuremberg Tribunal (1945)	Subjects	Individuals bear direct criminal responsibility.
LaGrand (2001) / Avena (2004)	Subjects	Vienna Convention creates individual rights.
Nottebohm (1955)	Subjects	Nationality = genuine link; diplomatic protection.
Paquete Habana & Lola (1900)	Sources, subjects	"International law is part of our law."

End of Unit I. Next: Unit II — Statehood, Recognition & Territorial Sovereignty.

