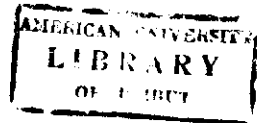


+ Solution ①



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Student

PSPA 225
Professor Nawaf Salam

Mid-Term Exam / Fall 2003-4

2

extra / or 1

Part I (35%):

1- Discuss: Is International Law true Law?

International law is not true law because it is ^{often} considered as a 'soft' law in that it is fragile and ~~a~~ always subject to challenge. For example, the jurisdictional scope is not necessarily universally applicable in that nation-states; being sovereign & equal, ^Q they have the right to not sign international treaty thereby leaving them outside the jurisdiction of international law which it has not subscribed to. It is b/c ~~of its~~ it does not have universal jurisdiction.

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2- Explain and Compare *monism* and *dualism*.

Monism is derived from natural law, ~~also~~ meaning that state law & intl. law are regarded as inseparable. According to Kelson, there exists a hierarchy of laws whereby intl. law takes precedence over other ~~for~~ laws such as constitutional law, law, decrees, etc. Thus, the relationship between state law & intl. law is that ~~state law~~ state law must be DELEGATE from international law.

Dualism argues that state law & international law are separate and exclusive and that international law must therefore be TRANSFORMED into state law.

Diff: — subject
rights

10

3- Define and illustrate: material and psychological elements of customary rules

Material elements of customary rules consist of traditional practices in international relations that have been ~~historically uniform & consistent~~ employed uniformly & consistently & has withstood the scope of time in this respect & the more nations (particularly civilised nations) that have employed it in the manner described, the more valid it becomes as a ~~source of~~ material source of law

The Paquete Habana illustrates this case in that the customary intl. rule of ~~not attacking~~ permitting ~~shipping~~ ^{fishing} vessels ~~to~~ ^{to conduct their affairs} ~~from~~ ^{coming from} countries that are ~~at war~~ when their respective country is at war w/ another country.

Psychological elements involve the willingness of nation states to regard ~~customary~~ ^{usage} international ~~law~~ as having the ~~force of~~ ~~internati~~ same weight as ~~codified~~ international law itself & give full effect to this.

law

Part II (65%):

Illustrate each of the following concepts or rules with a relevant example:

1- Law-making treaty: Geneva Convention. ~~A treaty which~~ An example of a multi-lateral convention that ~~sets the standard~~ creates international law and is of universal application as opposed to a treaty contract and hence, even non-signatory states are expected to adhere to it

2- Rights of individuals under Int'l Law against their own States. United Nations declaration of Human Rights sets guidelines & standards from which states are expected to aspire to although it is a 'soft' law

3- Ratification of a treaty After having signed a treaty, parties are expected to ~~sign~~ ~~put~~ the treaty through a ~~popular~~ subject the treaty to popular consent or disapproval such as passing the treaty through parliament ^{in an open & transparent manner} ~~once~~ ratified the party has given its consent to uphold its rights & obligations & it is at this point, a treaty becomes legally binding.

4- Concurrent jurisdiction In strict legal terms, Jerusalem is considered as an intl. enclave in that both Israel & PNA have jurisdiction over.

5- "Fixed" territory not being an essential element of statehood The territorial boundaries of a nation-state are not necessarily fixed in that territorial fluctuations does not necessarily deny statehood provided that the boundaries remain more or less consistent over time.

6- General principles of Law as a material source of Int'l Law Morally accepted behavior which is logically sound. Substantive: values & norms applied under special cases in intl. law procedural: values & norms whose validity is not questioned because they are "intact"

7- Direct responsibility of individuals under Int'l Law

5 Nuremberg Trial prosecuted individuals for being direct responsible for committing war crimes as opposed to their resp state having to ~~act~~ represent them in an intl. tribunal

8- Treaty-contract

3 As opposed to a law-making treaty, a treaty-contract confers rights & obligations upon signatory states only & 3rd parties must provide their consent if they are to be conferred the same rights, obligations as non-parties. It thus doesn't have universal applicabil

9- "Specific adoption" of Int'l Law

Adhesion of a treaty, partial acceptance of a treaty by a non-signatory state

10- Compatibility of a reservation

5 if a states reservations to certain provisions of a treaty do not contra the object & purpose of the treaty itself, it is ^{be} considered as a part to the treaty. ~~provided that~~

11- Right granted to People (as distinguished from States) under Int'l Law

European Court of Justice considers individuals ~~as~~ also as subjects of int'l law with Rights & obligations & the procedural capacity to bring a case before an international tribunal ^{Scip}
The right that int'l law grant to pple ~~of detention~~

12- State violation of its duty not to perform acts of sovereignty on the territory of another State

~~Iraq's invasion of Kuwait in 1990 & the subsequent~~ ~~invoked~~ ~~chapter 7~~ ~~invoked to enforce~~ Lotus Case, the principle of territorial sovereignty takes precedence over principle of nation. No state is allowed to invade any other sovereign state, it is considered one of the duties of a state (or spying) ex: Israel invade

13- Judicial decisions as subsidiary means for the determination of rules of Int'l Law

A protocol ^{can} is a ~~subsidiary~~ instrument to a convention in that it provides for interpretation for clauses or provisions of a treaty created in a convention