UGC NET LAW — A COMPLETE STUDY COMPANION

The World Beyond Borders

A Story of Nations, Laws & the Quest for Justice

This book walks you through Unit III of UGC NET Law — Public International Law and IHL — told not as a dry textbook, but as an unfolding story of how humanity tried, failed, argued, negotiated, and finally wrote the rules that govern our world. Every page is a lesson. Every lesson is a journey.

PART ONE — CHAPTERS 1 TO 9 · 50+ PAGES

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A Note Before You Begin

> *"Imagine you are standing at the border of two countries. On one side is a man fleeing war. On the other is a government that wants him back. Between them stands only one thing — the law. Not a wall. Not a soldier. Just the law.*
>
> *That is what this book is about."*

International Law is not just for diplomats and UN officials. It is for every law student who wants to understand how the world actually works — how 193 nations somehow manage to coexist, trade, fight, and occasionally make peace with each other.

This book is written for *you* — the UGC NET aspirant sitting at a study table, tired of dry definitions. Here, we will tell the story of international law the way it deserves to be told: as a drama, a negotiation, and sometimes a tragedy.

Each chapter opens like a novel — with context and feeling — and then gives you the exact concepts, cases, and PYQs you need to crack the exam. Small font. Big ideas. Zero boredom.

Let's begin.

CHAPTER ONE

What Is International Law? The Big Question Nobody Can Fully Answer

"Is it really law if no one can force you to follow it?"

It was 1832. A British philosopher named John Austin sat down and wrote something that would haunt international lawyers for the next two centuries. He said, quite simply: *International Law is not really law at all.*

His argument? Law, he said, is a command from a sovereign — a superior authority — backed by a sanction. If you break domestic law, a judge can put you in prison. But if a country breaks international law... who punishes it? There is no world police. There is no global prison. So, Austin concluded, international law is just "positive morality" — a fancy name for rules that people follow when they feel like it.

This was controversial then. It is still debated now. And it is **exactly the kind of question UGC NET loves to ask**.

1.1 — Definitions: What the Great Jurists Said

Let us first understand what different scholars meant by "International Law." These definitions are *direct exam material*.

JURIST	DEFINITION	KEY IDEA
Oppenheim	"Law of Nations or International Law is the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other."	Custom + Convention; Between civilized states
J.L. Brierly	"The body of rules and principles of action which are binding upon civilized states in their relations with one another."	Emphasis on 'binding'; civilized states
J.G. Starke	"That body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and do commonly observe, in their relations with each other."	States feel bound; commonly observed
Schwarzenberger	"The body of legal rules which apply between sovereign states and such other entities as have been granted international personality."	Includes non-state actors with international personality
Philip Jessup	Coined the term *Transnational Law* — covering all law that regulates actions or events that transcend national frontiers.	Broader concept including individuals

> ⭐ PYQ ALERT — ASKED MULTIPLE TIMES
>
> **Q:** Which of the following jurists defined International Law as "body of rules and principles of action binding upon civilized states"?
> **A:** J.L. Brierly
>
> **Q:** Who coined the term 'Transnational Law'?
> **A:** Philip Jessup

1.2 — The Nature of International Law: Austin's Challenge

Now we come back to Austin's bomb. Let's understand his argument properly before we tear it apart — because exam questions often present his view to see if you can *critique* it.

Austin's Analytical Theory: Law = Command of a sovereign + backed by a sanction. International law has no sovereign above states, therefore it is NOT law. It is "positive morality."

Sounds logical. But think about it this way: domestic law also fails sometimes. Powerful people break laws and escape. Does that mean domestic law is not real law? Of course not. The *existence* of law does not depend on its *perfect enforcement*.

Why Austin Was Wrong (The Counter-Arguments)

- **States do obey:** In practice, states follow international law most of the time — not because they are forced, but because it is in their interest. Trade agreements, treaties, diplomatic relations — all function on this basis.
- **Sanctions exist:** Sanctions are not only police action. Economic blockades, expulsion from international organizations, diplomatic isolation — these are all sanctions.
- **Consent as sovereign:** When a state signs a treaty, it is consenting to be bound. Its own sovereignty is the source of the obligation.
- **Structural analogy:** Even within domestic law, enforcement is not universal. Tax evasion by the rich often goes unpunished. Does that make tax law "not law"?
- **Modern development:** International courts (ICJ), international criminal tribunals (ICC), WTO panels — these show that enforcement mechanisms do exist, even if imperfect.

🏛️ LANDMARK CASE

S.S. Lotus Case (1927) — PCIJ

A French steamer (Lotus) collided with a Turkish vessel on high seas. Turkey arrested the French officer. France objected. The PCIJ held that *states are free to do anything not prohibited by international law* — establishing the principle of state sovereignty and consent as the basis of international law. This case also shows international law DOES work as a binding system.

1.3 — The Basis of International Law: Why Do States Obey?

This is the philosophical heart of the subject. Three main schools of thought explain why international law has binding force. *This is extremely important for UGC NET.*

🌿 NATURALIST SCHOOL

Key thinkers: Grotius, Vattel, Pufendorf

International law derives its force from *natural law* — universal moral principles that exist above man-made law. These rules come from reason and the nature of human beings. Nations are like individuals in a "state of nature" — they must follow moral rules simply because it is right.

Hugo Grotius — the "Father of International Law" — argued in his 1625 masterpiece *De Jure Belli ac Pacis* (The Law of War and Peace) that natural law binds states even without their consent.

📜 POSITIVIST SCHOOL

Key thinkers: Bynkershoek, Moser, Austin

International law binds states only because states have *consented* to it — through treaties, custom, or practice. There is no "higher law." What matters is what states have actually agreed to. If there's no consent, there's no obligation.

This is the dominant modern view, especially in treaty-based international law. The *Vienna Convention on Law of Treaties* and the ICJ Statute are both positivist in approach.

Eclectic/Grotian Theory (Middle Path): Also called the "Sociological" or "Consensual" school. It says that both natural reason AND state consent together create binding force. Most modern international lawyers take this balanced view. Key thinkers: Oppenheim, Starke, Lauterpacht.

⭐ PYQ — VERY FREQUENTLY ASKED

Q (2019): Who is known as the "Father of International Law"?
A: Hugo Grotius

Q: The Positivist school of international law emphasizes:
A: Consent of states as the basis of international law

Q: Which theory holds that international law has its basis in both natural law and consent of states?
A: Eclectic/Grotian Theory

1.4 — International Law vs. Municipal Law

Another critical debate: how does international law relate to a country's domestic (municipal) law? Two competing theories:

ASPECT	MONISM	DUALISM
Core Idea	International law and domestic law are ONE legal system. IL is automatically part of domestic law.	They are TWO separate legal systems. IL must be "transformed" into domestic law through legislation.
If Conflict	International law prevails (Kelsen)	Domestic law prevails in domestic courts until converted
Key Thinkers	Hans Kelsen, Lauterpacht	Triepel, Anzilotti, Oppenheim
India's Position	India follows modified dualism — treaties need Parliamentary implementation, but customary IL is automatically incorporated if not inconsistent with domestic law (Art. 51, 253 of Constitution)	

💡 EXAM TIP

Article 51 of the Indian Constitution directs the State to "foster respect for international law and treaty obligations." Article 253 gives Parliament power to make laws implementing international treaties. India follows DUALISM for treaties but MONISM for customary international law.

CHAPTER TWO

Sources of International Law
Where Does the Law Come From?

"When two nations disagree, they look to the same rulebook — Article 38."

Imagine you are a judge at the International Court of Justice in The Hague. Two countries are before you. One says: "You broke international law!" The other says: "Which law exactly?" You, as the judge, must answer: where does the law come from that I will use to decide this case?

The answer is written in one single provision — **Article 38 of the ICJ Statute**. This is the most important provision in all of international law for examination purposes.

Article 38(1) of the ICJ Statute — The Four Sources
The Court shall apply:
(a) *International conventions*, whether general or particular, establishing rules expressly recognized by 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) *Judicial decisions and teachings* of the most highly qualified publicists — as subsidiary means for determination of rules of law.

★ PYQ — DIRECTLY ASKED

Q (2021): According to Article 38 of the ICJ Statute, which is NOT a primary source of international law?
A: Judicial decisions and teachings (these are subsidiary/secondary means)

Q: How many primary sources of international law are mentioned in Art. 38?
A: Three (treaties, custom, general principles)

2.1 — Source 1: International Conventions (Treaties)

Think of treaties like contracts between nations. When two or more countries write down their agreement and sign it, that becomes a *treaty*. And a treaty is law — at least for those countries that sign it.

Treaties can be **bilateral** (between two states) or **multilateral** (between many states). Some multilateral treaties are so widely accepted that they are considered to represent general international law — the UN Charter is the best example.

Key Terminology

- **Ratification:** The formal confirmation by a state that it will be bound by a treaty it has signed. Signing ≠ Ratification.
- **Reservation:** A unilateral statement by a state saying it will not apply certain parts of a treaty. Must be compatible with the treaty's object and purpose.
- **Accession:** A state joins a treaty it did not originally sign.
- **Entry into force:** The date when a treaty becomes legally binding.
- **Jus Cogens:** IMP Peremptory norms — certain fundamental rules of international law from which no treaty can derogate. Example: prohibition of torture, genocide, slavery. A treaty violating jus cogens is *void*.

★ PYQ — CRITICAL CONCEPT

Q (2020): A treaty conflicting with a Jus Cogens norm is:
A: Void ab initio (void from the beginning)

Q: The difference between signing and ratification of a treaty is:
A: Signing indicates intent; Ratification creates legal obligation

2.2 — Source 2: International Custom MOST IMPORTANT

Custom is the oldest source of international law. Long before states started writing treaties, they had *habits* — consistent ways of dealing with each other. Over time, these habits became rules. These rules became law. That is international custom.

But how do you prove that something is customary international law? Two elements must be present — and you **must** know both:

ELEMENT 1: STATE PRACTICE (OBJECTIVE)

There must be a *consistent and general practice* by states. This means:

- Acts of state (government acts, official statements)
- Must be widespread — not just one or two countries
- Must be consistent — not just occasionally

ELEMENT 2: OPINIO JURIS (SUBJECTIVE)

States must practice it because they *believe they are legally obligated* to do so — not merely out of courtesy or habit.

This is the crucial mental element. If states do something just out of politeness (like gun salutes to foreign warships), that is courtesy, not law.

Opinio juris separates *legal obligation* from *social habit*.

- Duration: practice over long time OR can be relatively short if intensive

Evidence: Diplomatic correspondence, treaties, domestic legislation, court decisions, military manuals

Latin: *Opinio juris sive necessitatis* = "opinion that it is law"

🏛️ LANDMARK CASE — MUST KNOW

North Sea Continental Shelf Cases (1969) — ICJ
Germany, Denmark and the Netherlands disputed their continental shelf boundaries. The ICJ held that Article 6 of the 1958 Geneva Convention was NOT customary international law because it lacked opinio juris. The Court clarified: both state practice AND opinio juris must coexist for a rule to become customary international law. **This is the defining case on customary IL.**

🏛️ IMPORTANT CASE

Nicaragua v. United States (1986) — ICJ
The US supported Contra rebels in Nicaragua. The ICJ found US violated customary international law prohibiting use of force and non-intervention principle. Crucial finding: *Opinio juris can be derived from how states vote in UN General Assembly resolutions.* UN GA resolutions, though not binding themselves, can be evidence of opinio juris.

Persistent Objector Rule

A state that consistently and persistently objects to an emerging customary rule from the very beginning is NOT bound by it. But the objection must be early, consistent, and publicly known.

⭐ PYQ — EXAM FAVOURITE

Q (2018): The two elements of customary international law are:
A: State practice and Opinio Juris

Q: The North Sea Continental Shelf Case is relevant to which source of international law?
A: Customary International Law — both elements required

Q: A state that consistently objects to an emerging custom from the beginning is called:
A: Persistent Objector — not bound by that custom

2.3 — Source 3: General Principles of Law

Sometimes neither treaties nor custom provide a clear rule. Then the ICJ turns to general principles of law recognized by civilized nations. These are principles so fundamental that they appear in most developed legal systems.

Examples: Good faith, res judicata (a decided case cannot be re-opened), equity, the principle that no one should benefit from their own wrong, estoppel, reparation for injury caused.

💡 KEY POINT

General Principles are a "gap-filler." They prevent the court from saying "non liquet" (we cannot decide because there is no law). The court always has a duty to decide.

2.4 — Subsidiary Means: Article 38(1)(d)

These are NOT sources of law in themselves — they are *evidence* of what the law is:

- **Judicial decisions:** ICJ judgments, PCIJ decisions, arbitral awards. Note: ICJ decisions bind only the parties (Art. 59), but have persuasive authority.
- **Teachings of publicists:** Scholarly writings of great international lawyers like Grotius, Vattel, Oppenheim. Used rarely but can fill gaps.

2.5 — Other Modern Sources (Beyond Art. 38)

The world has changed since 1920 when the PCIJ Statute was drafted. Scholars now recognize additional sources:

- **UN General Assembly Resolutions:** Not technically binding, but widely followed. Strong evidence of opinio juris. Example: UNGA Resolution 1514 on decolonization.
- **Soft Law:** Non-binding but influential instruments like declarations, guidelines, codes of conduct. Example: Stockholm Declaration (1972), Rio Declaration (1992) on environment.
- **Acts of International Organizations:** Security Council Resolutions under Chapter VII are binding on all UN members.

⭐ PYQ

Q: UN Security Council resolutions adopted under Chapter VII of the UN Charter are:
A: Binding on all member states

Q: Teachings of highly qualified publicists under Article 38 of ICJ Statute are:
A: Subsidiary means for determination of rules of law (not primary sources)

CHAPTER THREE

The Vienna Convention on Law of Treaties (1969)
The Constitution of Treaty-Making

"How do nations make, break, and escape from their promises?"

In 1969, after years of negotiations, the international community signed the **Vienna Convention on the Law of Treaties (VCLT)**. It entered into force in 1980. Think of it as the "rulebook for making rulebooks." If international law is about what states have promised each other, then VCLT is the law about *how those promises are made, kept, interpreted, and broken*.

VCLT in a Nutshell:
Full name: Vienna Convention on the Law of Treaties
Year: Concluded 1969, Entered into force: 1980
Parties: 116+ states (India is a party)
Covers: Only treaties between states (not international organizations — those have a separate 1986 convention)

3.1 — Definition of Treaty (Art. 2)

A "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.

So: treaties, conventions, pacts, protocols, charters, statutes, agreements — they are all "treaties" in VCLT's sense.

3.2 — Key Principles Under VCLT

Pacta Sunt Servanda (Art. 26) MOST ASKED

This Latin phrase means *"agreements must be kept."* It is the foundational principle of treaty law. Every treaty in force is binding on its parties and must be performed by them in *good faith*.

Principle of Good Faith (Art. 26, 31)

Treaties must be performed in good faith. They must also be interpreted in good faith, in accordance with the ordinary meaning of terms, in their context, and in light of the treaty's object and purpose.

Non-Retroactivity (Art. 28)

Unless a different intention appears, a treaty's provisions do not bind a party in relation to any act or situation which took place before the treaty entered into force for that party.

Territorial Application (Art. 29)

Unless otherwise provided, a treaty is binding on each party in respect of its entire territory.

3.3 — Invalidity of Treaties

Not all treaties are valid. VCLT lays down grounds on which a treaty can be declared void or voidable:

GROUND	ARTICLES	EFFECT
Violation of internal law regarding competence to conclude treaties	Art. 46	Voidable (if violation was manifest)
Error of fact	Art. 48	Voidable
Fraud by another party	Art. 49	Voidable
Corruption of state representative	Art. 50	Voidable
Coercion of a state representative	Art. 51	Void (absolute)
Coercion of state by threat or use of force	Art. 52	Void (absolute)
Conflict with Jus Cogens (peremptory norm)	Art. 53	Void (absolute)

★ PYQ — ARTICLE NUMBERS VERY IMPORTANT

Q (2019): Under VCLT, a treaty concluded by coercion of a state by threat or use of force is:
A: Void — Art. 52

Q: Which article of VCLT deals with Jus Cogens?

A: Art. 53 (existing norms) and Art. 64 (new emerging norms)

Q: Pacta Sunt Servanda is contained in which article of VCLT?
A: Article 26

3.4 — Termination and Suspension of Treaties

- **Consent of parties (Art. 54):** A treaty may be terminated at any time by consent of all parties after consultation.
- **Denunciation (Art. 56):** A party can withdraw from a treaty if the treaty permits it or if it can be established that the parties intended to permit it.
- **Material Breach (Art. 60):** If one party materially breaches a treaty, the other party may suspend or terminate it.
- **Rebus Sic Stantibus (Art. 62):** VERY IMPORTANT "Fundamental Change of Circumstances" — A party may invoke a fundamental change of circumstances as a ground to withdraw from the treaty, but only if: (i) the changed circumstances were not foreseen at time of conclusion, and (ii) the change radically transforms the obligations.
- **Supervening impossibility (Art. 61):** If the subject matter of a treaty permanently disappears (e.g., an island sinks into the sea), a party may invoke impossibility of performance.
- **Armed conflict:** Whether war terminates treaties is debated — VCLT is silent on this; governed by customary law.

> 💡 MEMORY TRICK — REBUS SIC STANTIBUS
> "Things standing thus" — the clause says: "I made this promise when the world was like THIS. Now the world has changed so fundamentally that holding me to the promise would be deeply unfair." It is an *exception* to pacta sunt servanda and must be applied narrowly.

3.5 — Treaty Interpretation (Arts. 31-33)

Three main rules for interpreting treaties:

1. **General Rule (Art. 31):** Ordinary meaning of terms, in context, in light of object and purpose, in good faith.
2. **Supplementary means (Art. 32):** Travaux préparatoires (preparatory works) and circumstances of conclusion — used when Art. 31 interpretation is ambiguous.
3. **Authentic texts (Art. 33):** If a treaty is authenticated in multiple languages, all texts are equally authoritative.

CHAPTER FOUR

Recognition of States and Governments When Does a Nation Become Real?

"A country needs more than a flag and an anthem — it needs the world to say: yes, you exist."

In 1991, when Yugoslavia broke apart and Slovenia, Croatia, and Bosnia declared independence — who decided they were "real" countries? In 2008, Kosovo declared independence from Serbia. Russia and China said: not a real country. The US and most of Europe said: yes, a real country. Who was right?

This puzzle — when does a state truly come into existence in international law — is the heart of the doctrine of recognition.

4.1 — Criteria for Statehood: The Montevideo Convention (1933)

The Montevideo Convention on Rights and Duties of States (1933) laid down the classic four criteria for statehood:

1. **Permanent population** — No minimum number; even tiny island states qualify
2. **Defined territory** — Settled borders, though exact demarcation need not be perfect
3. **Effective government** — Ability to maintain order and enter into international relations
4. **Capacity to enter into relations with other states** — Independence, not under another state's control

⭐ PYQ — EXTREMELY FREQUENTLY ASKED

Q (2017, 2020): The criteria for statehood under international law are found in:
A: Montevideo Convention, 1933

Q: According to Montevideo Convention, which is NOT a criterion for statehood?
A: Recognition by other states (that is NOT a criterion under Montevideo!)

4.2 — The Two Great Theories of Recognition

🏛️ CONSTITUTIVE THEORY

Idea: A state does NOT exist in international law until and unless it is recognized by other states. Recognition *creates* the state as an international legal person.

Key thinkers: Anzilotti, Oppenheim (early position), Hegel

Problem: What if only some states recognize? Is it a half-state? Also, which states have the power to create new states? This theory gives too much power to existing states.

📜 DECLARATORY THEORY

Idea: A state exists the moment it meets the factual criteria (Montevideo). Recognition merely *declares* or acknowledges an existing fact. It does not create the state.

Key thinkers: Brierly, Hall, Lauterpacht

Modern view: This is now the dominant theory in international law. The Montevideo Convention (Art. 3) also supports this: "The political existence of the state is independent of recognition by other states."

⭐ PYQ

Q (2018, 2022): According to the Declaratory Theory of recognition:
A: Recognition is merely an acknowledgment of an already existing fact; state exists before recognition

Q: The Constitutive Theory of recognition is associated with which jurist?
A: Oppenheim and Anzilotti

4.3 — De Facto vs. De Jure Recognition

ASPECT	DE FACTO RECOGNITION	DE JURE RECOGNITION
Meaning	"In fact" — provisional, tentative recognition	"In law" — full, formal recognition
Nature	Conditional, can be withdrawn	Permanent, cannot easily be withdrawn
When granted	When state/govt effectively controls territory but legitimacy is doubtful	When state/govt has firmly established itself
Legal consequences	Limited rights — cannot sue in foreign courts (generally)	Full rights — can sue in foreign courts, diplomatic immunity applies
Example	UK recognized Soviet Russia de facto in 1921, de jure in 1924	Full diplomatic relations established

🏛️ IMPORTANT CASE

Luther v. Sagor (1921) — UK Court of Appeal

A British court refused to recognize a decree of the Soviet government because the UK had not yet formally recognized it. Later, after de facto recognition, the court reversed its decision. This shows the practical importance of de facto vs. de jure recognition in domestic courts.

4.4 — Collective Recognition

Modern trend: recognition through membership in international organizations. When a state is admitted to the UN, it is collectively recognized by all UN members. This has largely reduced the political controversies of bilateral recognition.

4.5 — Implied Recognition

Recognition can be implied through conduct — establishing diplomatic relations, signing a bilateral treaty, or inviting a state's head to an official state visit all imply recognition. However, voting for a state's UN membership or attending the same international conference does NOT necessarily imply recognition.

4.6 — Premature Recognition and Non-Recognition

- **Premature Recognition:** Recognizing a rebel group as a government before it has established control constitutes intervention in the internal affairs of the parent state — a violation of international law.
- **Stimson Doctrine (Non-Recognition):** Formulated by US Secretary of State Henry Stimson in 1932 in response to Japan's invasion of Manchuria. States should not recognize any situation, treaty, or agreement brought about by means contrary to the Kellogg-Briand Pact (use of force).

⭐ PYQ

Q: The doctrine of non-recognition (Stimson Doctrine) means:
A: States shall not recognize any territorial change achieved by unlawful use of force

Q: Premature recognition of a revolutionary government amounts to:
A: Illegal intervention in the internal affairs of the parent state

CHAPTER FIVE

Nationality, Refugees, IDPs & Statelessness When You Belong Nowhere

"A man without a country is a man without a legal identity. He is, in the eyes of the world, invisible."

In 1938, a man named Friedrich Rainer was stripped of his German citizenship by the Nazi regime. He fled to France. France said: we don't want you. Britain said: not our problem. He had no passport, no citizenship, no country. He was *stateless* — a ghost in the legal world. His story is one of millions that pushed the international community to create a framework for nationality and refugee protection.

5.1 — Nationality: The Legal Bond

Nationality is the legal bond between an individual and a state, creating mutual rights and obligations. It gives the individual the right to diplomatic protection and the state the right to exercise jurisdiction over the individual.

> *"Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties." — ICJ in the Nottebohm Case (1955)*

Methods of Acquiring Nationality

METHOD	MEANING	EXAMPLE
Jus Soli	"Law of the soil" — nationality by birth on a state's territory	USA, Canada (birthright citizenship)
Jus Sanguinis	"Law of blood" — nationality by descent from parents	Germany, India (for most purposes)
Naturalization	Voluntary acquisition by meeting residency and other requirements	Immigrants who apply for citizenship
Marriage	Some states grant nationality on marriage to a citizen	Varies by domestic law
By cession/conquest	When territory changes hands, inhabitants may acquire new nationality	Historical — rarely used now

Methods of Losing Nationality

- **Renunciation:** Voluntary giving up of nationality
- **Deprivation:** State strips nationality as punishment (controversial — can lead to statelessness)
- **Automatic loss:** On acquiring another nationality (in states that don't allow dual nationality)
- **Long absence:** Some states have automatic loss after extended periods abroad

🏛️ LANDMARK CASE — MUST KNOW

Nottebohm Case (1955) — ICJ (Liechtenstein v. Guatemala)
Friedrich Nottebohm was a German by birth who lived in Guatemala for 34 years. Just before WWII, he obtained Liechtenstein nationality hurriedly. Guatemala confiscated his property during the war. Liechtenstein sued Guatemala on his behalf.
ICJ HELD: Liechtenstein cannot exercise diplomatic protection because there was no "genuine link" (effective nationality) between Nottebohm and Liechtenstein. **Key principle: Nationality must be based on a GENUINE CONNECTION (genuine link doctrine).**

⭐ PYQ — VERY FREQUENTLY ASKED

Q (2019, 2021): The "genuine link" doctrine in nationality law was established in:
A: Nottebohm Case (1955) — ICJ

Q: Jus Soli means:
A: Nationality by birth on the territory of the state

Q: Jus Sanguinis means:
A: Nationality by descent/blood

5.2 — Statelessness: The Invisible Person

Stateless Person: A person who is not considered as a national by any state under the operation of its law (Definition from 1954 Convention on Stateless Persons).

Statelessness arises when:

- A state deprives a person of nationality without them acquiring another
- Conflict of nationality laws (some states follow jus soli, others jus sanguinis — a child can fall through the cracks)
- State succession without provision for new nationality
- Administrative failures (undocumented persons)

Key Instruments on Statelessness

- **Convention Relating to the Status of Stateless Persons (1954):** Defines stateless person; gives them rights similar to refugees (right to identity documents, work, access to courts).
- **Convention on the Reduction of Statelessness (1961):** Requires states to grant nationality to those born in their territory who would otherwise be stateless; prohibits arbitrary deprivation of nationality.
- **Universal Declaration of Human Rights (1948), Art. 15:** "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality."

> ⭐ PYQ
>
> **Q:** Article 15 of UDHR deals with:
> **A:** Right to nationality
>
> **Q:** The Convention on Reduction of Statelessness was adopted in:
> **A:** 1961

5.3 — Refugees: The Law of Sanctuary

A refugee is more than just a person who has fled their home. In international law, it has a precise technical meaning, and getting this definition right is crucial for your exam.

Definition of "Refugee" — 1951 Refugee Convention, Art. 1A(2):
A person who, owing to a well-founded fear of being persecuted for reasons of *race, religion, nationality, membership of a particular social group, or political opinion*, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

The 5 Grounds of Persecution (Memory Tool: RRNMP)

1. **R**ace
2. **R**eligion
3. **N**ationality
4. **M**embership of a particular social group
5. **P**olitical opinion

> ⚠️ **Important Distinction:** Economic migrants flee poverty — they are NOT refugees under international law. War refugees are covered but only if the war results in specific persecution under one of the 5 grounds. Climate refugees have no formal legal status yet.

The 1951 Refugee Convention and 1967 Protocol

INSTRUMENT	YEAR	KEY SCOPE
1951 Refugee Convention	1951	Originally limited to events before 1951 in Europe
1967 Protocol	1967	Removed geographical and time limitations; universal scope
Together	—	Core global refugee law framework

Non-Refoulement: The Most Important Refugee Principle MUST KNOW

Non-Refoulement (Art. 33): No contracting state shall expel or return ("refouler") a refugee to territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.

This is considered a *jus cogens norm* — binding on all states even those not party to the Convention. India is not a signatory to the 1951 Convention but is bound by non-refoulement as customary international law.

> ⭐ PYQ — MOST IMPORTANT IN THIS SECTION
>
> **Q (2018, 2020, 2022):** The principle of Non-Refoulement is contained in:
> **A:** Art. 33 of the 1951 Refugee Convention
>
> **Q:** Is India a party to the 1951 Refugee Convention?
> **A:** No — India has not signed the 1951 Refugee Convention
>
> **Q:** The 1967 Protocol to the Refugee Convention removed:
> **A:** Geographical limitation (Europe only) and temporal limitation (events before 1951)

5.4 — Internally Displaced Persons (IDPs)

IDPs: Persons forced to flee their homes but who remain within their country's borders. They have NOT crossed an international border, so they are NOT refugees.

IDPs are covered by the UN Guiding Principles on Internal Displacement (1998) — not a binding treaty, but widely accepted. IDPs are often in a worse situation than refugees because they remain under the jurisdiction of the same state that may have caused their displacement.

💡 DISTINCTION TABLE — EXAM FAVOURITE

CATEGORY	CROSSED BORDER?	PROTECTED BY?	LEGAL STATUS
Refugee	Yes	1951 Convention + UNHCR	International protection
IDP	No	UN Guiding Principles 1998	Under home state jurisdiction
Stateless	May or may not	1954 and 1961 Conventions	No nationality from any state
Migrant	Yes (voluntary)	Domestic immigration law	Not a refugee; economic motivation

⭐ PYQ

Q: The key difference between a refugee and an IDP is:
A: IDPs have not crossed an international border; refugees have

Q: The UN agency dealing with refugees is:
A: UNHCR — United Nations High Commissioner for Refugees (established 1950)

CHAPTER SIX

Extradition and Asylum
The Drama at the Border

"One man runs from justice. Another runs toward it. International law decides which is which."

It is 2013. Edward Snowden, former NSA contractor, has just leaked classified US documents. He is in a Russian airport, hunted by the most powerful government on earth. The US demands his extradition. Russia refuses. Julian Assange spends years in the Ecuadorian embassy in London claiming asylum from UK authorities. These real dramas illustrate two of the most fascinating doctrines in international law — extradition and asylum.

6.1 — Extradition: The Law of Surrender

Extradition is the process by which one state (the requested state) surrenders a person to another state (the requesting state) for trial or punishment for crimes committed in the requesting state's jurisdiction.

Key Principles of Extradition

1. DOUBLE CRIMINALITY MOST ASKED

The act for which extradition is sought must be a crime under the law of *both* the requesting AND the requested state. If it is a crime in Country A but not in Country B, Country B cannot extradite. Example: Euthanasia may be legal in Netherlands but not in India — India cannot extradite for euthanasia to Netherlands-based prosecution.

2. SPECIALTY / SPECIALITY DOCTRINE IMPORTANT

Once extradited, a person can only be tried for the specific offense for which extradition was granted. You cannot hand someone over for murder and then put them on trial for terrorism.

3. POLITICAL OFFENSE EXCEPTION

Most extradition treaties contain an exception for political offenses. A person cannot be extradited for purely political crimes. But this exception does not extend to terrorism, genocide, or war crimes — these are never considered "political offenses."

4. NON-EXTRADITION OF NATIONALS

Many states (including France, Germany) refuse to extradite their own nationals. Instead, they prosecute the person themselves under the principle *aut dedere aut judicare* — "either extradite or prosecute."

5. NO EXTRADITION WITHOUT A TREATY (GENERALLY)

Most states require a treaty before extraditing. There is no general obligation in customary international law to extradite without a treaty.

⭐ PYQ — VERY FREQUENTLY ASKED

Q (2019, 2021): The doctrine of "Double Criminality" in extradition means:
A: The act must be a crime in both the requesting and the requested state

Q: The Specialty doctrine in extradition states that:
A: A person extradited can be tried only for the offence for which extradition was granted

Q: The Latin maxim 'aut dedere aut judicare' means:
A: Either extradite or prosecute (punish)

India and Extradition

India's extradition is governed by the **Extradition Act, 1962**. India has bilateral extradition treaties with many states. Notable cases: India-UK extradition treaty; attempts to extradite Vijay Mallya and Nirav Modi from the UK are under this treaty. India also follows the non-extradition of own nationals rule generally, but this can vary by treaty.

6.2 — Asylum: The Right to Sanctuary

Asylum is the protection granted by a state to a person who has left their home country as a political refugee or because of fear of persecution.

Types of Asylum

TERRITORIAL ASYLUM

Granted within the territory of the asylum-granting state. The most common form. A person enters a country and requests asylum there. The state has the

EXTRA-TERRITORIAL ASYLUM

Asylum granted by a state outside its own territory — typically in diplomatic premises (embassies) or on ships/aircraft.

sovereign right to grant or refuse it.

Key: *States have a right to GRANT asylum. Individuals have a right to SEEK asylum (UDHR Art. 14). But no individual has an absolute right to be GRANTED asylum.*

This is controversial. There is *no general right* to diplomatic asylum under international law. It is a Latin American practice (Havana Convention 1928, Caracas Convention 1954).

🏛️ FAMOUS CASE — COLOMBO ASYLUM CASE

Colombian-Peruvian Asylum Case (1950) — ICJ

Colombia granted asylum in its Lima embassy to Victor Haya de la Torre, a Peruvian political leader wanted for military rebellion. Colombia claimed a right of diplomatic asylum under Latin American custom. ICJ HELD: Colombia could not prove that a regional custom existed giving the asylum-granting state the exclusive right to characterize the offence. Peru was not bound by such a regional custom. **Key lesson: Diplomatic asylum is not universal international law.**

💡 KEY DISTINCTION — EXAM TESTED

UDHR Article 14: Everyone has the right to seek and enjoy asylum from persecution in other countries. Note: the right is to "SEEK and ENJOY" — NOT to be granted. The decision to grant asylum is a sovereign act of the state. Only refugees recognized under the 1951 Convention have clearer protections.

⭐ PYQ

Q (2020): Diplomatic asylum refers to:
A: Asylum granted in embassies and diplomatic premises outside home territory

Q: Article 14 of UDHR deals with:
A: Right to seek and enjoy asylum from persecution

Q: The Colombian-Peruvian Asylum Case (1950) was decided by:
A: International Court of Justice (ICJ)

CHAPTER SEVEN

The United Nations and Its Organs
The House That War Built

"After 50 million deaths, humanity sat down together and wrote four words: Never again. Those two words became the United Nations Charter."

The year is 1945. World War II is ending. The ruins of cities from Warsaw to Hiroshima are still smoking. In San Francisco, representatives of 50 nations gathered to build something the world had never seen: a permanent international organization to prevent another world war. On June 26, 1945, the **UN Charter** was signed. The United Nations came into existence on October 24, 1945 — a date we now call *UN Day*.

7.1 — The UN Charter: Foundation and Purpose

UN Charter Basics:
Signed: June 26, 1945 (San Francisco)
Entered into force: October 24, 1945
Original signatories: 51 nations
Current members: 193 states
Headquarters: New York, USA

Purposes of the UN (Art. 1 of Charter)

1. To maintain international peace and security
2. To develop friendly relations among nations based on equal rights and self-determination
3. To achieve international cooperation in solving economic, social, cultural, and humanitarian problems
4. To be a center for harmonizing actions of nations in attaining common ends

Principles of the UN (Art. 2 of Charter) IMP

- **Sovereign equality** of all member states
- **Good faith** fulfillment of Charter obligations
- **Peaceful settlement** of disputes
- **Non-use of force** against territorial integrity or political independence of any state
- **Non-intervention** in matters essentially within domestic jurisdiction
- Assisting UN action and not assisting states under sanctions
- Non-member states should act in accordance with Charter principles

> ★ PYQ
>
> **Q:** The UN was established on:
> **A:** October 24, 1945 (UN Day)
>
> **Q:** How many nations were original signatories to the UN Charter?
> **A:** 51
>
> **Q:** Article 2(4) of the UN Charter prohibits:
> **A:** Threat or use of force against the territorial integrity or political independence of any state

7.2 — The Six Principal Organs of the UN (Art. 7)

Organ 1: General Assembly (GA)

ASPECT	DETAILS
Composition	All 193 member states — each gets ONE vote
Voting	Important questions: 2/3 majority. Procedural: simple majority
Important questions	Peace and security, budget, membership, trusteeship, suspension/expulsion
Sessions	Annual regular session (September); Special and Emergency Special sessions possible
Powers	Deliberative body; NOT legislative; resolutions NOT binding (except budget)
Key function	Discuss any matter within scope of Charter; recommend (not compel); approve UN budget

Organ 2: Security Council (SC) MOST IMPORTANT ORGAN

ASPECT	DETAILS
Composition	15 members: 5 Permanent (P5) + 10 Non-Permanent
P5 Members	USA, Russia, UK, France, China
Non-Permanent	10 members elected by GA for 2-year terms (regional distribution)
Voting	Procedural: 9/15. Substantive: 9/15 INCLUDING concurring votes of all P5 members
VETO Power	Any P5 member can veto substantive resolutions
Primary responsibility	Maintenance of international peace and security
Binding Decisions	SC decisions under Chapter VII (Threats to peace, acts of aggression) are BINDING on all members

Veto Power — Understanding the P5 Veto:
Art. 27(3) — Substantive decisions require 9 affirmative votes INCLUDING concurring votes of all 5 permanent members. This means any one of P5 can block a resolution by voting "No" — this is the veto. Abstention by a P5 member does NOT count as a veto (established practice).

Chapter VI vs. Chapter VII — Critical Distinction

CHAPTER VI — PACIFIC SETTLEMENT

SC recommends methods of peaceful settlement. Resolutions are recommendations, not binding. Used for disputes where peace is threatened but not yet broken. Example: Good offices, mediation, arbitration recommendations.

CHAPTER VII — ENFORCEMENT ACTION

When there is a *threat to peace, breach of peace, or act of aggression*, SC can take binding enforcement action including economic sanctions (Art. 41) and military force (Art. 42). These decisions BIND all member states.

⭐ PYQ — VERY IMPORTANT

Q (multiple years): The veto power in the UN Security Council is available to:
A: Five Permanent Members (P5) — USA, Russia, UK, France, China

Q: UN Security Council Resolutions under Chapter VII are:
A: Binding on all member states

Q: For substantive decisions of Security Council, how many votes are required?
A: 9 affirmative votes including all 5 P5 members' concurring votes

Q: If a P5 member abstains from voting in Security Council:
A: Abstention is NOT a veto — resolution can pass (established practice)

Organ 3: International Court of Justice (ICJ)

ASPECT	DETAILS
Location	The Hague, Netherlands
Composition	15 judges elected by GA and SC simultaneously for 9-year terms
Quorum	9 judges
Jurisdiction types	Contentious (between states) + Advisory (opinions for UN organs)
Parties	Only STATES can be parties in contentious cases (not individuals)
Jurisdiction basis	Consent-based: Optional Clause (Art. 36(2)), treaty clause, special agreement
Decisions	Binding ONLY on parties; Article 59 — no precedent rule (stare decisis does not apply)
Enforcement	If a state doesn't comply, aggrieved party can approach SC under Art. 94

Optional Clause / Compulsory Jurisdiction (Art. 36(2)):
States may declare that they recognize ICJ's jurisdiction as compulsory in relation to other states accepting the same obligation. India has accepted this jurisdiction with reservations.

Organ 4: Secretariat

The administrative backbone of the UN. Headed by the **Secretary-General**, the chief administrative officer, appointed by GA on recommendation of SC for a 5-year renewable term. Can bring matters threatening peace to SC's attention (Art. 99). Current SG: António Guterres (Portugal).

Organ 5: ECOSOC (Economic and Social Council)

54 member states elected by GA for 3-year terms. Coordinates the economic, social, and related work of 15 UN specialized agencies (WHO, ILO, UNESCO, etc.) and functional commissions.

Organ 6: Trusteeship Council

Supervised the administration of Trust Territories (formerly colonial territories). Suspended operation in 1994 when Palau (last trust territory) became independent. Now largely dormant.

> ⭐ PYQ
>
> **Q:** The ICJ is located at:
> **A:** The Hague, Netherlands
>
> **Q:** How many judges constitute the ICJ?
> **A:** 15 judges (quorum of 9)
>
> **Q:** ICJ judgments under Art. 59 bind:
> **A:** Only the parties to the dispute (no binding precedent)
>
> **Q:** Which UN organ's work became largely dormant after 1994?
> **A:** Trusteeship Council

CHAPTER EIGHT

Settlement of International Disputes When Nations Fight, How Do They Stop?

"The alternative to peaceful settlement is not war — it's a war that nobody wins."

Nations disagree. They always have. But how they disagree — and how they resolve those disagreements — is what defines the character of the international legal system. The UN Charter, in Article 2(3), mandates that states settle their disputes by peaceful means. Article 33 lists the specific methods. Let us walk through them all.

8.1 — The Obligation: Article 33 of UN Charter

Art. 33(1) — UN Charter: The parties to any dispute likely to endanger international peace and security shall first seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

8.2 — Pacific (Peaceful) Means of Settlement

A. *Diplomatic Methods (Non-Legal, Political)*

METHOD	DEFINITION	KEY FEATURE
Negotiation	Direct discussion between disputing parties through diplomatic channels	Most common; no third party; parties control the process
Good Offices	A third party (state or individual) offers its assistance to bring parties together but does NOT participate in negotiations	Third party as facilitator, not participant
Mediation	A third party actively participates in negotiations and proposes solutions	Mediator PROPOSES solutions; parties free to reject
Inquiry / Enquiry	Fact-finding by a commission appointed to investigate disputed facts	Establishes the FACTS, not the legal solution; Hague Conventions 1899 & 1907
Conciliation	A commission investigates the dispute and proposes terms of settlement; not binding	Combines inquiry and mediation; report not binding

⭐ PYQ

Q: In 'Good Offices', the role of the third party is:
A: Only to bring parties together — it does NOT participate in negotiations or propose solutions

Q: Which method of dispute settlement involves a commission that investigates facts and then proposes solutions?
A: Conciliation

B. *Legal/Judicial Methods*

ARBITRATION

A semi-judicial process where disputing parties agree to submit their dispute to a tribunal they have chosen. The decision (award) is *binding*. Unlike courts, arbitral tribunals are ad hoc — formed for one specific dispute.

Key features: Parties choose arbitrators; parties agree on procedural rules; award is binding; PCA (Permanent Court of Arbitration) at The Hague facilitates arbitration.

🏛 FAMOUS ARBITRATION

Alabama Claims Arbitration (1872)
USA v. UK — Britain had allowed Confederate ships to be built in British ports during the American Civil War. This early arbitration helped establish the modern arbitration system and the concept of state responsibility.

JUDICIAL SETTLEMENT — ICJ

The most formal method — submission to the ICJ. The ICJ is a permanent court with established procedures. Its decisions are binding on the parties. Unlike arbitration, parties cannot choose their judges (except for ad hoc judges when no judge of their nationality is on the bench).

C. *Settlement Through International Organizations*

The UN SC (Chapter VI and VII), UN GA (Uniting for Peace Resolution), regional organizations like the African Union, EU, ASEAN, Arab League — all play roles in dispute settlement.

Uniting for Peace Resolution (1950): When the Security Council fails to act due to P5 veto, the General Assembly can call an Emergency Special Session to recommend collective measures. Used first during Korea crisis (1950). Shows how the GA can step in when SC is deadlocked.

⭐ PYQ — IMPORTANT

Q (2019): The Uniting for Peace Resolution was adopted in:
A: 1950

Q: What is the difference between mediation and good offices?
A: In Good Offices, third party only facilitates; in Mediation, third party actively participates and proposes solutions

Q: An arbitral award is:
A: Binding on the parties to the dispute

8.3 — The ICJ and Contentious vs. Advisory Jurisdiction

CONTENTIOUS JURISDICTION

Between states only. Requires consent. Decision is legally binding on the parties. Example: Kulbhushan Jadhav Case (India v. Pakistan, 2019) — ICJ ordered Pakistan to provide consular access to Jadhav.

ADVISORY JURISDICTION

Only UN organs and specialized agencies can request advisory opinions. Advisory opinions are NOT binding but carry great moral and legal authority. Example: ICJ advisory opinion on "Legal Consequences of the Wall" (2004) — Israel's separation barrier in West Bank.

⭐ PYQ — INDIA SPECIFIC

Q: In the Kulbhushan Jadhav Case, the ICJ held:
A: Pakistan violated Art. 36 of Vienna Convention on Consular Relations by not informing India of Jadhav's arrest and not allowing consular access

Q: Advisory opinions of the ICJ are:
A: Not binding — they are advisory in nature but carry high legal authority

CHAPTER NINE

The World Trade Organization (WTO) The Marketplace of Nations

"After World War II, statesmen realized that trade wars become real wars. So they built a system of rules for trade."

In the 1930s, countries desperate to protect their own economies raised tariff barriers, restricted imports, and started what economists call "beggar-thy-neighbour" policies. This trade war deepened the Great Depression and contributed to the political tensions that led to World War II. After the war, the lesson was clear: free trade needs rules. Those rules became GATT, and then the WTO.

9.1 — From GATT to WTO

- **1944** — Bretton Woods Conference: IMF and World Bank created. An International Trade Organization (ITO) was proposed but never ratified.
- **1947** — **GATT** (General Agreement on Tariffs and Trade) signed as a temporary measure. 23 original contracting parties.
- **1986-94** — **Uruguay Round** of trade negotiations — the most ambitious round yet.
- **1994** — **Marrakesh Agreement** signed, creating the WTO.
- **1995** — **WTO** came into existence on January 1, 1995. Geneva, Switzerland.

> ⭐ PYQ
>
> **Q (2020):** The WTO was established in:
> **A:** January 1, 1995
>
> **Q:** GATT was replaced by WTO through:
> **A:** Marrakesh Agreement (1994) — Uruguay Round

9.2 — GATT vs. WTO: Key Differences

ASPECT	GATT	WTO
Nature	Agreement (not an organization)	Permanent international organization
Scope	Only goods (merchandise trade)	Goods + Services (GATS) + IP (TRIPS)
Members	Contracting parties	Members (currently 164)
Dispute Settlement	Weak, consensus-based	Strong, binding DSB
Secretariat	Had a de facto secretariat	Formal Secretariat; Director-General
Single Undertaking	No — members could pick and choose	Yes — must accept ALL agreements

9.3 — Key Principles of WTO/GATT EXTREMELY IMPORTANT

1. Most-Favoured-Nation (MFN) Treatment (Art. I GATT, Art. II GATS)

MFN Principle: Any advantage, favour, privilege, or immunity granted by any member to any product from any other country shall be accorded immediately and unconditionally to the like product from ALL other members.

In simple terms: *If you give special trade benefits to ONE country, you must give the SAME benefits to ALL WTO members.*

Example: If India reduces tariff on Japanese cars to 5%, it must reduce tariff on cars from ALL WTO members to 5%. You cannot discriminate between different WTO members.

Exceptions to MFN: Free Trade Areas and Customs Unions (Art. XXIV GATT), Generalized System of Preferences (GSP) for developing countries, Security exceptions.

2. National Treatment (Art. III GATT)

National Treatment: Once imported goods have paid the applicable tariff and entered a country, they must be treated the same as domestically produced goods in terms of internal taxes and regulations.

You can charge tariffs at the border. But once the goods are IN, you cannot discriminate against them.

Example: If India charges 12% GST on domestic soap, it must charge the same 12% on imported soap. It cannot charge 20% on imported soap to make it more expensive than Indian soap.

3. Tariff Binding

Members commit to maximum tariff levels (called "bound rates"). They can charge BELOW the bound rate, but not above it without negotiation.

4. Transparency

Members must publish their trade laws and regulations. No hidden barriers.

5. Prohibition of Quantitative Restrictions

Import/export quotas are generally prohibited. Tariffs are the preferred form of trade restriction. Exception: Balance of payments difficulties (Art. XII GATT).

> ⭐ PYQ — MOST TESTED WTO QUESTIONS
>
> **Q (2018, 2021):** The MFN principle under WTO means:
> **A:** Trade benefits given to one WTO member must be given to ALL WTO members without discrimination
>
> **Q:** National Treatment principle applies:
> **A:** After goods have entered the country — no discrimination between domestic and imported goods in internal taxation
>
> **Q:** TRIPS under WTO deals with:
> **A:** Trade-Related Aspects of Intellectual Property Rights
>
> **Q:** GATS under WTO deals with:
> **A:** General Agreement on Trade in Services

9.4 — WTO Agreements Architecture

AGREEMENT	FULL FORM	SUBJECT MATTER
GATT 1994	General Agreement on Tariffs and Trade	Trade in goods
GATS	General Agreement on Trade in Services	Trade in services
TRIPS	Trade-Related Intellectual Property Rights	IP protection
SPS Agreement	Sanitary and Phytosanitary Measures	Food safety, animal/plant health standards
TBT Agreement	Technical Barriers to Trade	Product standards, regulations
Anti-Dumping Agreement	Agreement on Anti-Dumping	Measures against dumping
SCM Agreement	Subsidies and Countervailing Measures	Government subsidies
DSU	Dispute Settlement Understanding	WTO dispute resolution

9.5 — WTO Dispute Settlement IMPORTANT

The WTO has the most sophisticated international trade dispute settlement system in the world.

Key Bodies:

- **Dispute Settlement Body (DSB):** Administers the dispute resolution process; composed of all WTO members
- **Panels:** Ad hoc three-member bodies that hear initial disputes; their reports can be appealed
- **Appellate Body (AB):** 7-member permanent standing body that reviews panel reports on legal questions; AB reports are binding unless reversed by consensus (negative consensus rule)

DSU Process (Simplified)

Consultation (60 days) → Panel Request → Panel established → Panel report → Appeal to AB (optional) → DSB adopts report → Compliance → Retaliation (if non-compliance)

Negative Consensus / Reverse Consensus

A panel/AB report is automatically adopted UNLESS ALL members, including the winning party, decide by consensus to reject it. This makes WTO dispute settlement extremely effective — near-automatic adoption.

> ⭐ PYQ
>
> **Q:** The WTO Appellate Body consists of:
> **A:** 7 members
>
> **Q:** What is "negative consensus" in WTO dispute settlement?
> **A:** Panel/AB reports are automatically adopted UNLESS all members unanimously decide to reject them (near-impossible in practice)

Q: The first stage in WTO dispute settlement is:

A: Consultations (must be requested before Panel can be established)

CHAPTER TEN

International Humanitarian Law (IHL) The Laws of War — Rules in Hell

"Even in war, there are rules. Especially in war, there are rules."

June 24, 1859. The Italian town of Solferino. A battle raged between French-Sardinian and Austrian forces. When the guns finally fell silent, 40,000 men lay dead or wounded on the field. A Swiss businessman named **Henry Dunant** happened to witness the horror. Thousands were dying from untreated wounds. There were no medical teams, no hospitals, no system to help the wounded.

Dunant organized local villagers to help. Later, he wrote a book — *A Memory of Solferino* — and proposed two things: a permanent relief society in every country, and a treaty protecting the wounded in war. This became the Red Cross Movement and eventually the Geneva Conventions. This is where IHL began.

10.1 — What is IHL?

International Humanitarian Law (IHL) is a set of rules that, for humanitarian reasons, seeks to limit the effects of armed conflict. It protects persons who are not or are no longer participating in hostilities, and restricts the means and methods of warfare. Also called the *Law of Armed Conflict (LOAC)* or *Jus in Bello*.

IHL vs. Jus Ad Bellum

JUS AD BELLUM

"Law on going to war" — rules governing when a state may legally resort to force. Found in UN Charter Art. 2(4) (prohibition) and Art. 51 (self-defense), plus SC Chapter VII authorizations. This is SEPARATE from IHL.

JUS IN BELLO (IHL)

"Law in war" — rules governing how war is conducted, regardless of who started it or whether the war was lawful. IHL applies equally to all parties — the aggressor AND the defender.

💡 CRITICAL POINT — OFTEN CONFUSED

IHL does NOT care who is right or wrong in starting the war. Even if Country A illegally invaded Country B, BOTH A and B must follow IHL. The rules of war apply to everyone, including the victim of aggression.

10.2 — The Core Instruments: Four Geneva Conventions (1949)

Geneva Conventions — August 12, 1949
Currently the most universally ratified treaties in international law — 196 parties (every recognized state). India ratified all four in 1950.

CONVENTION	PROTECTS	IN A NUTSHELL
GC I	Wounded and sick soldiers on land	Military medical services; Red Cross emblem
GC II	Wounded, sick, and shipwrecked at sea	Naval warfare equivalent of GC I
GC III	Prisoners of War (POWs)	Minimum standards for treatment of captured soldiers
GC IV	Civilians in time of war and occupied territories	Protection of civilian population; occupation law

⭐ PYQ — MOST ASKED IN IHL

Q (2018, 2020, 2022): How many Geneva Conventions are there?
A: Four Geneva Conventions (1949)

Q: GC III (Third Geneva Convention) protects:
A: Prisoners of War (POWs)

Q: GC IV (Fourth Geneva Convention) protects:
A: Civilians in wartime and occupied territories

Q: Geneva Conventions were adopted on:
A: August 12, 1949

10.3 — Additional Protocols to Geneva Conventions

PROTOCOL	YEAR	COVERAGE

Additional Protocol I (AP I)	1977	Extends GC protections to international armed conflicts; includes protection of civilians from attacks; defines wars of national liberation as international conflicts
Additional Protocol II (AP II)	1977	Non-international armed conflicts (civil wars) — sets minimum standards; goes beyond Common Article 3
Additional Protocol III (AP III)	2005	Introduces the Red Crystal as a third emblem alongside Red Cross and Red Crescent

💡 MEMORY POINT

Common Article 3: All four Geneva Conventions contain an identical provision — Article 3. It is called "Common Article 3" and it applies to NON-international armed conflicts (civil wars, insurgencies). It provides minimum standards: no torture, no murder of those not fighting, no hostage-taking, humane treatment. It is sometimes called "a convention in miniature."

10.4 — Core Principles of IHL EXTREMELY IMPORTANT

1. Distinction

Parties to a conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives. Attacks may only be directed against combatants and military objectives.

Civilians may not be directly targeted. The moment a civilian takes direct part in hostilities, they lose protection — temporarily.

2. Proportionality

An attack which causes civilian casualties or damage to civilian objects must not be excessive in relation to the concrete and direct military advantage anticipated. You cannot bomb an entire city to kill one enemy soldier.

3. Military Necessity

Only force necessary to achieve the legitimate military aim may be used. You cannot destroy, kill, or damage more than is genuinely necessary to accomplish the military objective.

4. Precaution

Constant care must be taken to spare civilians and civilian objects. All feasible precautions must be taken before launching an attack — choosing weapons that minimize collateral damage, warning civilians when possible, etc.

5. Humanity

Even in war, certain minimum standards of human treatment apply. No torture, no inhumane treatment. Wounded and sick must be cared for.

6. Prohibition of Certain Weapons

IHL prohibits weapons that cause unnecessary suffering or are inherently indiscriminate:

- Chemical weapons (Chemical Weapons Convention, 1993)
- Biological weapons (Biological Weapons Convention, 1972)
- Blinding laser weapons
- Anti-personnel landmines (Ottawa Treaty, 1997)
- Cluster munitions (Oslo Convention, 2008)
- Nuclear weapons — ICJ advisory opinion (1996) — use generally incompatible with IHL

⭐ PYQ — IHL PRINCIPLES

Q (2019, 2021): The principle of 'distinction' in IHL requires:
A: Parties must distinguish between combatants and civilians, and between military and civilian objects

Q: The principle of proportionality in IHL means:
A: Civilian casualties must not be excessive in relation to the military advantage anticipated

Q: Common Article 3 of Geneva Conventions applies to:
A: Non-international armed conflicts (internal wars/civil wars)

10.5 — Protected Persons Under IHL

CATEGORY	STATUS	PROTECTION
Wounded and sick combatants	Hors de combat (out of combat)	Must be collected and cared for; may not be killed
POWs	Combatant captured	GC III — humane treatment; no torture; cannot be forced to work for war effort
Civilians	Non-combatants	May not be directly attacked; protected from arbitrary arrest, collective punishment
Medical personnel	Special status	Protected as long as they engage in medical acts only; Red Cross/Crescent emblem

Journalists	Civilians	Protected as civilians unless directly participating in hostilities
Mercenaries	Not entitled to POW status	If captured, can be tried as criminals; AP I Art. 47

10.6 — War Crimes, Crimes Against Humanity, Genocide

War Crimes: Grave breaches of IHL — deliberate killing of civilians, torture of POWs, hostage-taking, extensive destruction of civilian property. These are individual criminal offenses prosecutable before international tribunals.

Crimes Against Humanity: Widespread or systematic attacks against civilian populations — murder, extermination, deportation, torture, rape, persecution, apartheid. Need not occur in armed conflict.

Genocide (Convention on Prevention and Punishment of Crime of Genocide, 1948): Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. The "intent to destroy" (genocidal intent / dolus specialis) is the key distinguishing element.

International Criminal Tribunals

- **Nuremberg Tribunal (1945-46):** First international criminal tribunal; tried Nazi leaders for war crimes, crimes against peace, and crimes against humanity.
- **Tokyo Tribunal (1946-48):** Similar tribunal for Japanese war crimes in Asia (Far East).
- **ICTY (1993):** International Criminal Tribunal for former Yugoslavia — by SC resolution; tried Milošević among others.
- **ICTR (1994):** International Criminal Tribunal for Rwanda — tried leaders of the Rwandan genocide.
- **ICC (2002):** International Criminal Court — The Hague; permanent court under Rome Statute (1998); jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression. India has NOT ratified the Rome Statute.

> ⭐ PYQ — CRITICAL
>
> **Q (2019, 2020):** The Rome Statute established the:
> **A:** International Criminal Court (ICC) — entered into force 2002
>
> **Q:** The specific intent required for genocide is called:
> **A:** Dolus Specialis — intent to destroy a group in whole or in part
>
> **Q:** India's status regarding the Rome Statute is:
> **A:** India has NOT ratified the Rome Statute (and thus is not a member of ICC)
>
> **Q:** The first international criminal tribunal was:
> **A:** Nuremberg Tribunal (1945-46)

10.7 — The Role of ICRC

The **International Committee of the Red Cross (ICRC)** is the guardian of IHL. Based in Geneva, it is a private humanitarian institution but has a unique mandate under the Geneva Conventions. It:

- Visits POWs and political detainees to check their conditions
- Promotes and develops IHL
- Provides humanitarian assistance in armed conflict
- Maintains strict neutrality — it does not take sides in conflicts
- Has been awarded the Nobel Peace Prize three times (1917, 1944, 1963)

> ⭐ PYQ
>
> **Q:** ICRC stands for:
> **A:** International Committee of the Red Cross
>
> **Q:** The ICRC was founded by:
> **A:** Henry Dunant (inspired by Battle of Solferino, 1859)
>
> **Q:** ICRC has received Nobel Peace Prize how many times?
> **A:** Three times — 1917, 1944, 1963

QUICK REVISION

Master Tables & PYQ Compilation Everything You Need in One Place

"The last hour before the exam belongs to these pages."

Important International Conventions — At A Glance

YEAR	CONVENTION/TREATY	CORE SUBJECT	KEY PROVISION
1899/1907	Hague Conventions	Laws of war, peaceful settlement	Inquiry commissions; PCA established
1928	Kellogg-Briand Pact	Outlawing war	Renunciation of war as a policy tool
1933	Montevideo Convention	Rights and duties of states	Four criteria for statehood
1945	UN Charter	International peace and security	Art. 2(4) — prohibition of force; Art. 51 — self-defense
1945	Nuremberg Charter	International criminal law	Individual criminal responsibility for international crimes
1948	UDHR	Human rights	Art. 14 — right to asylum; Art. 15 — right to nationality
1948	Genocide Convention	Prevention of genocide	Dolus specialis; individual responsibility
1949	Four Geneva Conventions	IHL — armed conflict	Common Art. 3; grave breaches = war crimes
1951	Refugee Convention	Refugees	Art. 33 — non-refoulement
1954	Stateless Persons Convention	Statelessness	Rights of stateless persons
1961	Reduction of Statelessness Conv.	Statelessness prevention	No arbitrary deprivation of nationality
1961	Vienna Conv. on Diplomatic Relations	Diplomatic immunity	Inviolability of diplomatic premises and agents
1963	Vienna Conv. on Consular Relations	Consular relations	Consular access to detained nationals
1967	Refugee Protocol	Refugees	Removed time and geographical limits of 1951 Conv.
1969	VCLT	Law of treaties	Pacta sunt servanda; jus cogens; rebus sic stantibus
1972	Biological Weapons Convention	WMD	Prohibition of biological weapons
1977	AP I and AP II to Geneva Conventions	IHL	AP I — international; AP II — non-international conflicts
1993	Chemical Weapons Convention	WMD	Prohibition and destruction of chemical weapons
1994	Marrakesh Agreement	Trade law	Established WTO from January 1, 1995
1997	Ottawa Treaty (Mine Ban)	IHL/Weapons	Prohibition of anti-personnel landmines
1998	Rome Statute	International criminal law	Established ICC; 4 core crimes

Key Cases — Master Reference

CASE	COURT/YEAR	ISSUE	KEY HOLDING
S.S. Lotus Case	PCIJ 1927	Criminal jurisdiction over high seas collision	States are free to do what is not prohibited; sovereign equality
North Sea Continental Shelf	ICJ 1969	Customary IL formation	Both state practice AND opinio juris needed
Nicaragua v. USA	ICJ 1986	Use of force, non-intervention	USA violated customary IL; UNGA resolutions can evidence opinio juris
Nottebohm Case	ICJ 1955	Nationality and diplomatic protection	Genuine link doctrine required for nationality to give diplomatic protection right

Colombian-Peruvian Asylum	ICJ 1950	Diplomatic asylum	No universal right of diplomatic asylum; regional custom must be proven
Luther v. Sagor	UK CA 1921	De facto recognition	Courts give effect to acts of recognized governments only
Nuclear Weapons Advisory	ICJ 1996	Legality of nuclear weapons	Threat/use of nuclear weapons generally incompatible with IHL
Kulbhushan Jadhav	ICJ 2019	Consular access (India v. Pakistan)	Pakistan violated Vienna Conv. Consular Relations Art. 36
Wall Advisory Opinion	ICJ 2004	Israel's West Bank barrier	Construction of wall in occupied Palestinian territories violates IL
Barcelona Traction Case	ICJ 1970	Diplomatic protection of companies	Obligations erga omnes — obligations owed to international community as a whole

PYQ Compilation — Unit III Must-Know Answers

QUESTION	ANSWER
Father of International Law	Hugo Grotius
Austin's criticism of IL	Not true law — lacks sovereign and sanction
Primary sources under Art. 38 ICJ Statute	Treaties, Custom, General Principles (3 sources)
Two elements of customary IL	State practice + Opinio juris
Case for customary IL elements	North Sea Continental Shelf (1969)
Jus Cogens definition	Peremptory norm from which no derogation is permitted
Pacta Sunt Servanda	Agreements must be kept — Art. 26 VCLT
Rebus Sic Stantibus	Fundamental change of circumstances — Art. 62 VCLT
Statehood criteria	Montevideo Convention 1933 — population, territory, government, capacity
Declaratory theory of recognition	Recognition declares existing fact; state exists before recognition
Genuine link doctrine	Nottebohm Case (1955)
Non-refoulement	Art. 33, 1951 Refugee Convention
Grounds for refugee status	RRNMP — Race, Religion, Nationality, Membership (social group), Political opinion
India and 1951 Refugee Convention	NOT a signatory
Double criminality in extradition	Act must be crime in BOTH requesting and requested state
Specialty doctrine	Extradited person can only be tried for offence specified in extradition request
Diplomatic asylum	Asylum in foreign embassy — not universal right; Latin American practice
UN Charter signed and entered into force	Signed June 26, 1945; in force October 24, 1945
UN Security Council members	15 total: 5 Permanent (P5) + 10 Non-Permanent
P5 members	USA, Russia, UK, France, China
SC substantive vote requirement	9 affirmative including all P5 concurring votes
P5 abstention = veto?	No — abstention does NOT count as veto
SC Chapter VII	Threats to peace, breach of peace, acts of aggression — binding enforcement action
ICJ location	The Hague, Netherlands
ICJ judges	15 judges, 9-year terms; quorum of 9
ICJ Art. 59	Decisions bind only the parties — no binding precedent
WTO established	January 1, 1995 — Marrakesh Agreement 1994
MFN principle	Trade benefits to one member must extend to ALL members
National Treatment	Imported goods treated same as domestic goods after entry
WTO Appellate Body	7 members
Four Geneva Conventions	1949 — GC I (wounded/land), GC II (sea), GC III (POWs), GC IV (civilians)

Common Article 3	Applies to non-international armed conflicts
IHL core principles	Distinction, Proportionality, Military Necessity, Precaution, Humanity
Genocide Convention year	1948
Dolus Specialis	Specific intent to destroy a group — element of genocide
Rome Statute / ICC established	Rome Statute 1998; ICC entered into force 2002
India and Rome Statute/ICC	India has NOT ratified — not a member of ICC
ICRC founded by	Henry Dunant — Battle of Solferino 1859
ICRC Nobel Peace Prizes	Three — 1917, 1944, 1963

Key Jurists and Their Contributions

JURIST	SCHOOL/THEORY	KEY CONTRIBUTION
Hugo Grotius (1583-1645)	Natural Law / Father of IL	De Jure Belli ac Pacis (1625); freedom of the seas; laws of war
Emmerich de Vattel (1714-67)	Natural Law	Law of Nations (1758); balance of power; sovereignty of states
Samuel Pufendorf (1632-94)	Natural Law	Connected natural law with social contract theory
Cornelius van Bynkershoek (1673-1743)	Positivist	State practice as basis; cannon-shot rule for territorial sea
John Austin (1790-1859)	Analytical/Command theory	International law is not true law — positive morality argument
L. Oppenheim (1858-1919)	Positivist/Eclectic	Defined IL; influential treatise; eclectic approach
J.L. Brierly (1881-1955)	Natural Law influenced	The Law of Nations; IL is law because of moral obligation
Hersch Lauterpacht (1897-1960)	Eclectic	Monism; individual as subject of IL; humanisation of IL
Hans Kelsen (1881-1973)	Monist/Positivist	Pure Theory of Law; Grundnorm; IL supreme over domestic law
J.G. Starke (1911-1995)	Positivist	Introduction to International Law — standard text
Philip Jessup (1897-1986)	Modern	Coined "Transnational Law"

Final Exam Strategy Notes

💡 LAST MINUTE TIPS

- **Art. 38 ICJ Statute** — Know all four sources and their hierarchy. Judicial decisions are SUBSIDIARY.
- **VCLT Articles** — Know: Art. 26 (pacta sunt servanda), Art. 31 (interpretation), Art. 53 (jus cogens), Art. 62 (rebus sic stantibus)
- **Four Geneva Conventions** — Match each to what it protects. GC III = POWs is most asked.
- **Common Art. 3** = Non-international conflicts. AP I = International. AP II = Non-international.
- **Non-Refoulement** — Art. 33 of 1951 Refugee Convention. India NOT a signatory but bound by customary IL.
- **WTO** — January 1, 1995. MFN = equal treatment between members. National Treatment = equal treatment after entry.
- **ICC** — Rome Statute 1998, in force 2002. India NOT a member. 4 crimes: genocide, crimes against humanity, war crimes, aggression.
- **P5 Veto** — Abstention ≠ Veto. Chapter VI = recommendations. Chapter VII = binding enforcement.
- **Nottebohm** = genuine link doctrine for nationality
- **North Sea Continental Shelf** = both elements for customary IL

✦ ✦ ✦

"The law is not a machine. It is a story told by humanity to itself — a promise that we can do better. Every treaty, every judgment, every convention is a chapter in that story. You are now part of it. Go write your answer sheet with confidence."

— End of Part One — More Chapters Coming in Part Two —