Public International Law Short Note

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Chapter one

General Introduction

Q. What is public international law?

- ✓ public international law is the law *that applies to international actions, whether committed by States, international organizations, or even individuals.*
- ✓ In other word ***it is the area of law that governs inter-State relations***.

Q. If so, who are the actors of public international law (herein after referred PIL)?

- ✓ The actors of PIL are mainly two;
  - **a)** **Primary Actor:** actors which created the international legal system or they are the background of an international legal system, in particular the primary actors are ***States (the parent of the international law)***
  - **b)** **Secondary Actors:** actors which comes up with the development and modernization of PIL, they are secondary because they are created by the states or their members are sovereign states. ***The main secondary actors are International Organizations (the offspring of the states)***

N.B. however , exceptionally, individuals are the actors of PIL, when there is gross violation of international human right law, criminal law and humanitarian law.

Q. What is the difference between private (conflict of law) & public international law?

Ground of Difference	Public international law	Private international law
Subjects (party governed)	➢ govern the relation between 2 or more states (not individual persons) as primary actors; ➢ International organizations (that involves at least two member states to the organization) as secondary actor and ➢ Exceptionally, govern individuals, when there is gross violation of international (human rights law, criminal law and humanitarian law)	➢ Individuals are the subject of conflict of law, i.e. whenever there exist a dispute between persons (at least two individuals, who come from two independent sovereign states or individuals who possessed at least two state nationality.)
Subject matter	• Focused on public issues (international criminal law, human right law and humanitarian law) and another laws that involve at least two states.	• Concerned with private matters, in particular civil matters (e.g. contract, tort, agency, arbitration and any other civil laws
Basis of law (legal backup)	• See art 38 of ICJ statute, the biases are; *treaties, customary law, general principles, judicial decisions, scholars teaching*….	• It is based on the national law of the forum state, unless there exist rejecting Renvoie.

Q. Is there independent written legal instrument called international law (like the civil code of Ethiopia)?

- ✓ *There is no independent written international law and no international government that has authority to pass such laws. Rather, international laws are the byproduct of actions – the actions of States and other international actors like the United Nations.*
- ✓ ***If the majority of powerful States in the world decided to cancel all their international commitments, then international law would cease to exist. (this makes PIL one of politically motivated area of law)***
- ✓ *This is not to say that international laws are weak; States are bound together rather tightly by good will and mutual interest*. The point here is that international laws depend almost entirely on the States that create these laws.

Q. Is the domestic law of a given state can be the source of PIL? And can a state raise its national as a defense before international law?

- ✓ The domestic laws of a given state (lets say Ethiopia – including the FDRE Constitution) are, for the most part, not relevant in deciding Ethiopia's international obligations in disputes before international tribunals.
- ✓ *This is true because a nation in an international court generally may not use its domestic laws as an excuse to alter its international obligations. (**state cannot argue by citing the provision of their domestic laws)***
- ✓ ***Another way of putting this is to say that a State's domestic laws simply are not a source of international law.***

Q. If so, what is the role of domestic laws in relation with international laws?

- ✓ On the other hand, *the domestic laws of a given state are extremely important in determining how international laws will apply in the domestic courts of such country.*
- ✓ Domestic courts often refer to treaties (and international customs) when deciding disputes between the individual litigants before them. (see art 13 (2) of FDRE constitution)

N.B. ***the basis of PIL in priority with any other things are the consent of the states. Provided that, any state which is not consented for a certain kinds of international relations are not forced to be governed by PIL and are not obliged to be bound.***

Q. Does it mean that state which does not give their consent to be governed under PIL are always not bound by international relations?

- ✓ NO! *a state may be bound by PIL even if a state does not give their free consent whenever there exist a general custom (a state practice accepted as a law)*
- ✓ Thus, international custom bound any states in the world without waiting the consent of a states.

Chapter Two

The State System

Q. What is the difference between national and international legal system?

National legal system	International Legal System
Individual people have rights and duties under the law.	States have rights and duties under the law.
The government makes the laws (typically the legislature).	There is no international legislature that makes laws applicable to all States. Rather, States have to consent to the laws individually.
The judiciary decides on the rights and duties of individual people. (have compulsory jurisdiction)	Although there are many international tribunals, none of them has compulsory jurisdiction to decide on the rights and duties of States. Rather, States must first consent to the jurisdiction of an international court
The government enforces the law (typically the executive branch).	Again, there is no international government with the authority to command States.