

# Customary International Law (With Reference To S.S Lotus Case)

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## ABSTRACT

Customary laws/ customary rules are practices are one of the sources of International Law. As the world in today's era is considered as a "Global Village". International laws have become very important. And the correct interpretation of these laws should be done as it involves various nations and conflict between them create many problems with respect to Globalisation. Customary Law & practices means the general behaviour of the nations which can be accepted legally by all the nations. And every state should follow these customary rules/laws. Example of customary law is Granting diplomatic immunity, for was an unwritten international custom until 1961, when the Vienna Convention on Diplomatic Relations came into force, making such immunity legally obligatory.<sup>1</sup> Now, for the better understanding we will do analysis of the customary law with the help of a very landmark case of International Law S.S LOTUS CASE (S.S. Lotus, France v. Turkey).

## RESEARCH QUESTIONS AND METHODOLOGY

The Research Methodology which is used in the current research paper is Descriptive and Analytical Approach. As it gives description of what are customary laws and it also describes the complete S.S Lotus Case. Also, it analyses those how different nations follows the customary international law.<sup>2</sup>

<sup>1</sup> Sushant Biswakarma, "Importance of Customary International Law" available at: <http://www.blogpleaders.in> (last modified: March 28,2020)

<sup>2</sup> Title : Towards A Proper Understanding Of General International Law, Customary International Law, And The Judiciary In Global Societ Recueil des Cours, Collected Courses, Volume 342 (2007) Page Number : 220-265

## Research questions

- ✓ What are Customary laws and Practices.
- ✓ How customary law is explained in S.S Lotus Case
- ✓ Does flag on ship determines the jurisdiction?

## SCOPE AND OBJECTIVE OF THE STUDY

Purpose of this research paper: -

- ✓ To understand what are customary laws
- ✓ To study the SS Lotus case
- ✓ To explain the Laws related to S.S Lotus case
- ✓ To see if the jurisdiction is determined by the flag flying on the ship?

The scope of the current Research paper is to describe what are customary law and practices with reference to the S.S Lotus Case. A deep analysis of the customary rules and the case as well.

## I. LITERATURE REVIEW

### ❖ CHAPTER 1: - Customary Laws and Practices

Customary International Law has been defined under Article 38(1)(b) of the International Court of Justice Statute as a "usual and general practice that is accepted as a law".<sup>3</sup>

Customary laws are the laws which are the general or the usual behaviour of the nations while dealing with each other. They are not written laws or you can say codified laws. Despite of that they are still followed by the international laws. And the violation of these customary laws can be raised in the international courts in the same way as the violation of codified/Written international laws. And it is also considered as the primary sources of International Law.

<sup>3</sup> Sushant Biswakarma, "Importance of Customary International Law" available at: <http://www.blogpleaders.in> (last modified: March 28,2020)

**Elements of Customary International Laws:** - these states that what could be treated as customary international law :-

- General state practice – means there exists a specific usage

For example- refugees and asylum seekers .

- **Opinio Juris** – It means ‘opinion of the law’. It is the belief that state practices is legally obligatory. Adoption of exclusive economic zone.

#### **Jus cogens**

According to the Human Rights Convention, there are many rights which are considered as very important such as “Right to Life and Liberty”. These important rights are called Jus Cogens. As these rights are very important for the basic survival of a Human Being.

#### ❖ **CHAPTER-2 S.S. Lotus, France v. Turkey**

- **Facts:** - The case is between the two states i.e., Turkey and France for their ships. SS Lotus is the name of the French ship, and Boz-kurt is the name of the Turkish ship. They collided in the high seas, resulting in the deaths of eight Turks. When the French ship reaches in the Turkish seas boundaries, they arrest all the officers of the France ship and starts a trial against them and as a result of the trial they put all the French officers into the prison. French government opposes this act of Turkey and says either the Turkey release all the French officers or refer the case to the French Courts. But Turkey did not agree with that. As a result, they have referred the case to the Permanent Court of International Justice (PCIJ), popularly known as the World Court. The following are the claims made by the French in PCIJ: - that it is customary law that the jurisdiction of trial will be of that country whose flag is on the ship and on the S.S. Lotus ship there was French flag and the Criminal Jurisdiction will be of French Courts. Also, because the French Courts have criminal jurisdiction.

**ISSUE:** - The punishment given by the Turkish Court to the French citizens is violating any customary law or not?

**PCIJ OBSERVATION:** - PCIJ comes to the conclusion that there is no such customary rule in international law which states that the jurisdiction will be of that country whose flag is on the ship. So, at the time of collision both countries can exercise their jurisdictions. In the present case Turkey did not violate any Customary International Law.

**DECISION AFTER THE CASE:** - After this case Geneva Convention 1958 and UN Convention on High seas said that the jurisdiction will be of that country whose flag is on the ship.

#### **CHAPTER 3 CHARACTERISTICS OF CUSTOMARY INTERNATIONAL LAW**

The characteristics which customary laws follows are as follows: -

- ✓ **Unwritten Nature:** - The customary laws are based on the general practices which is carried over a period of time or you can say behavioral practices. You can relate that to the Hindu Personal law as in that also in various sections exceptions are given to the custom and traditions. As, the law is historical and cannot only run-on codified laws or statues there are always the customs which are the primary sources of these laws. So, the customary laws are the unwritten laws.
- ✓ **Flexibility:** - As the customary laws are unwritten laws they are not as rigid as Codified laws. A slight flexibility will always exist. Flexibility here does not means that you will completely modify the actual custom.
- ✓ **No Uniform Body:** - There is no specific uniform body to regulate and govern the customary laws, or to determine what will constitute it. If, any dispute arises regarding the same will be decided in the International Courts.
- ✓ **Acceptability:** - A customary law is acceptable on an international level. Then only it will be recognized as a customary law in the International Law.<sup>4</sup>

#### **CHAPTER 4 :- RATIFICATION OF CUSTOMARY LAW WHEN REQUIRED**

There are various countries unlike human beings they are able to survive by their own and do not require anyone else’s support for their survival . they do so because they try to avoid the responsibility of various state . To avoid such situation a treaty should me made and signed by all the countries (i.e., Ratified) so that everyone will be bound to follow it.

**Customary rule is an exception of iyt and does not require any kind of ratification.**

#### **II. CONCLUSION**

Customary law and practices are uncodified laws which are followed by the nations on an international level. In other words, they are

<sup>4</sup> Characteristics of Customary Law , available at : <http://www.bsscholarly.com> (Last visited:- 05 Jan,2022)

uncodified. In S.S Lotus case the question which arose was that jurisdiction is determined by the flag on the ship or not is a customary law or not. In that case the PCIJ said that it is not the customary law and any of the nation can trial the French Citizens.

### **BIBLIOGRAPHY**

#### **CONVENTIONS**

- ✓ UN Conventions on the Law of High Seas (UNCLOS) 1982: - Article 97
- ✓ Geneva Convention on the High Seas 1958: - Article 11
- ✓ The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1998 :- Article 1(a) and Article 1(g) and Article

#### **ACTS**

- ✓ Article 6 of Turkish Penal Court
- ✓ SUA Act 1998

#### **WEB SOURCES REFERRED**

- ✓ [www.icj.cij.org](http://www.icj.cij.org)
- ✓ [www.worldcourts.com](http://www.worldcourts.com)
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- ✓ Anand, R. P. Confrontation or Cooperation: International Law and the Developing Countries (1987)
- ✓ Dixon, M. (2007). Textbook on international law (6th ed.). Oxford: Oxford University Press.