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EVOLUTION OF SOURCES OF INTERNATIONAL LAW IN THE CONTEXT OF GLOBALIZATION

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Kazakhstan was admitted to membership in the United Nations (UN) on March 2, 1992. Afterwards Kazakhstan played main role in the international arena, also joined many international conferences, conventions, and bilateral/multilateral agreements. Today Kazakhstan is one of the active and responsible member of international relations system, hence it is deeply engaged in the international law circulating. That's why we should carefully study what is international law and where its roots.

International Law is one way of solving collective problems internationally. Traditionally, international law consisted of rules and principles governing the relations and dealing of nations with each other, tough recently, the scope of international law has been redefined to include relations between states and individuals, and relations between international organizations[1].

I want to mention about origin of international law (IL) in international relations (IRs). Scholar's idea divide about it, such as some scholars origin of IL formed ancient times (476 BC) in Greece, Persia and Rome [1], or around 2100 BC, for instance, a solemn treaty was signed between the rulers of Lagash and Umma, the city-states situated in the area known to historians as Mesopotamia, and modern period the Peace of Westphalia formally ended the Thirty Years' War in Europe. About last prevailing view, most scholars agree with this period. It was adopted on October 24,1648. These treaties laid down the basic principles of the modern law of nations, for example: sovereignty, equality, religious neutrality, and the balance of power. Many great wars caused the evolution of the rules and discipline of international law. Modern international law first took shape in 1625 during the 30 years war when Hugo Grotius, a Dutch diplomat, produced his great work, On the Law of War and Peace [2] . Grotius saw that the old order in Europe was breaking down and the allegiance to the Pope and the Emperor was losing its grip over numerous states. With numerous states being released from the authority of the Pope and the Emperor, Grotius feared there would be little restraint among society and lawlessness would prevail. To avoid this, Grotius created a set of principles for the newly released states to obey in their dealings with each other. Hence, modern international law emerged [3].

In 1648, with the Peace of Westphalia many new nations large and small emerged and the smallest states would have had no chance of survival if there were not a rudimentary international legal system. After the carnage of the French revolutionary wars ended in 1815, a great effort was mounted to establish a peaceful world at the Congress of Vienna. This did not succeed, but the momentum for peace kept growing. In the 19th century there were around 400 peace societies around the world. A momentous step forward occurred when the Tsar of Russia Nicholas II summoned all the sovereigns to a peace conference at The Hague in 1899. This was a great advance in world history because here at last was a bridge between world powers. The 1899 Peace Conference sought to achieve a means for the peaceful settlement of disputes, rejecting the principle widely believed in at the time that war was the natural means of resolving international disputes. A proposal was made for the establishment of a Permanent Court of International Justice which would settle disputes between nations. At the time this was not achieved owing to resistance by the great powers. Rather, a Permanent Court of Arbitration was established making available a panel of experts in international law for countries to settle their disputes. It was successful in resolving a number of disputes that would have otherwise resulted in war. This Court system, however, was not sufficient to prevent World War I from occurring in 1914. The War resulted in an enormous loss of

life and further intensified the drive for peace and international law. In the Treaty of Versailles in 1919, the Permanent Court of International Justice was established with jurisdiction to settle international disputes if the states concerned were prepared to refer their disputes to the court [4]. Consisting of a highly qualified, regular body of judges, this Court was empowered to apply the principles of international law to disputes before them, and functioned with great professional competence. International law thus gained in stature and acceptance.

However, this was still insufficient to prevent war because states were not required to submit disputes to the court. The world underwent the agony of a second world war. Afterwards, the Court of International Justice was given greater stature through the creation of the United Nations and the acceptance of the UN Charter of which the Statute of the International Court of Justice was made an integral part. By this Charter, war was outlawed and the peaceful settlement of disputes was required. The Charter was a tremendous advance and a great milestone on the road to the enthronement of international law. In other words, The Permanent Court of International Justice was set up in 1921 at The Hague and was succeeded in 1945 by the International Court of Justice. This time one of the crucial Article 38 adopted. It was sources of International Law. Also, it is play main role of international law and/or international relations. Article 38 restricts the evolution and applicability of legal principles to states. It ignores other entities that qualify as subjects of international law. The foundation stone of international law is the protection of sovereignty and the equality of states. The Statute of the ICJ was drafted with the world order at the end of the Second World War in mind. International law at that juncture presumed that states were the only subjects of the law. A slew of human rights conventions, regional treaties governing regional alliances, and conventions addressing violent non-state actors (such as terrorist) all suggest the induction of non-state entities as subjects of international law. Article 38 continues to presuppose that international law deal with states alone. It ignores all non-state actors, which have evolved as subjects of international law today.

Then, I am going to define sources of international law. The term “sources of International Law” is used to mean two things: first, the actual materials determining the rules applicable to a given international situation (the material sources) and second, the legal methods creating rules of general application (the formal sources). However, because it is difficult to maintain this distinction, the two meanings are used interchangeably. Article 38(1) of the Statute of the International Court of Justice is widely recognized as the most authoritative and complete statement as to the sources of international law. It provides that: the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the 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) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law[5]. Then, how do sources of international law globalized. I attempt to explain in detail. Sources of international law can be divided into two categories, the first being formal and the second being material sources. Formal sources are those that constitute what the law is, namely International Treaties, Customary Law, and the General principles of law. Material sources are those that designate where the law can be found and these are the judicial decisions and the Juristic teachings. Since there is no world government, there is no world Congress or parliament to make international law the way domestic legislatures create laws for one country. As such, there can be significant difficulty in establishing exactly what international law is. First type source of international law “treaty” is used as a generic term embracing all kinds of international agreements which are known variety of different names such as, conventions, pacts, general acts, charters, statutes, declarations, covenants, protocol, as well as, the name agreements itself. Treaties are the strongest and most binding type because they represent consensual agreements between the countries who sign them. At the same time, as stated in the statute of the International Court of Justice (ICJ), rules of international law can be found in customary state practice, general principles of law common to many countries, domestic judicial decisions, and the

legal scholarship.Treaties are similar to contracts between countries; promises between States are exchanged, finalized in writing, and signed. States may debate the interpretation or implementation of a treaty, but the written provisions of a treaty are binding. Treaties can address any number of fields, such as trade relations, like the North American Free Trade Agreement, or control of nuclear weapons, such as the Nuclear Non-Proliferation Treaty. They can be either bilateral (between two countries) or multilateral (between many countries). They can have their own rules for enforcement, such as arbitration, or refer enforcement concerns to another agency, such as the International Court of Justice. The rules concerning how to decide disputes relating to treaties are even found in a treaty themselves the Vienna Convention on the Law of Treaties (United Nations, 1969). Customary international law (CIL) is more difficult to ascertain than the provisions of a written treaty. CIL is created by the actual actions of states (called "state practice") when they demonstrate that those states believe that acting otherwise would be illegal. Even if the rule of CIL is not written down, it still binds states, requiring them to follow it. Determining CIL is difficult, however, because, unlike a treaty, it is not written down. Some rules are so widely practiced and acknowledged by many states to be law, that there is little doubt that CIL exists regarding them; but other rules are not as universally recognized and disputes exists about whether they are truly CIL or not.

For general principles is the third source of international law is based on the theory of "natural law," which argues that laws are a reflection of the instinctual belief that some acts are right while other acts are wrong. "The general principles of law recognized by civilized nations" are certain legal beliefs and practices that are common to all developed legal systems (United Nations, 1945). For instance, most legal systems value "good faith," that is, the concept that everyone intends to comply with agreements they make. Courts in many countries will examine whether the parties to a case acted in good faith, and take this issue into consideration when deciding a matter. The very fact that many different countries take good faith into consideration in their domestic judicial systems indicates that "good faith" may be considered a standard of international law. General principles are most useful as sources of law when no treaty or CIL has conclusively addressed an issue. As well as, judicial decisions and legal scholarship (words) mentioned this Charter. The last two sources of international law are considered "subsidiary means for the determination of rules of law." While these sources are not by themselves international law, when coupled with evidence of international custom or general principles of law, they may help to prove the existence of a particular rule of international law. Especially influential are judicial decisions, both of the International Court of Justice (ICJ) and of national courts. The ICJ, as the principal legal body of the United Nations, is considered an authoritative expounder of law, and when the national courts of many countries begin accepting a certain principle as legal justification, this may signal a developing acceptance of that principle on a wide basis such that it may be considered part of international law. Legal scholarship, on the other hand, is not really authoritative in itself, but may describe rules of law that are widely followed around the world.

Briefly, these sources are main instrument of international law in international Relations. The scope of international law today is immense. From the regulation of space expeditions to the question of the division of the ocean floor, and from the protection of human rights to the management of the international financial system, its involvement has spread out from the primary concern with the preservation of peace, to embrace all the interests of contemporary international life [6]. For globalization is a phenomenon whose amplitude, implications and nature are contested. The history of globalization and international law have been inter-wined for much longer than the end of the twentieth Century and the most recent phase of globalization. Also, it has arguably accelerated a number of process that have been visible in the sources of international law for decades. The acceleration of the pace of normative production and the diversity of its sources has led to a cooperation and transformation of customary international law. Globalization stands for its own idea of either the equivalency of all international norms (thus allowing each sub-regime to operate without threat from the others) or the primacy of , for instance, market norms over statist controls. The idea that certain norms are higher up in the international legal hierarchy than others for example constitutional status has also become associated with converse efforts to, inter alia, to

start projecting a sense of the finality and purpose on globalization (Allen); hence, for example efforts to assert the superior value of human, particularly economic and social, rights over a reified vision of the unhampered operation of the market, or of civil and political rights over the demands of development, etc[7].

Finally, international law consists of rules and principles governing the conduct of states in their relations among themselves. In addition, since Second World War and the emergence of human rights law, international law governs how states treat their citizens and recognizes the rights of individuals. International law is the combination of treaties, conventions and customs which governs relations between and within states and lays down generally accepted norms of behavior for the entire world. Globalization has changed the conditions of production of international law. International legal developments were traditionally seen as very much the province of the states. Ever more pressing demands for participation by citizens groups, social movements, NGOs, and lobbies have made these into permanent fixtures at many international conferences, including a number of mega-conferences seeking to address issues characteristic of globalization (Beijing/women, Rio/environment, Durban/racism, Vienna/human right, Istanbul/habitat, Johannesburg/sustainable development, Cairo/population, Paris/climate change) [7]. Also, international law cannot afford to be watered down. Starting at the top, there are so many questions as to what the law itself is, and the what the true source is of something that has come to be law. True, the international branch of law has come to be known as soft law, but one cannot turn a blind eye to the areas that scream for improvement and that can, in fact, be improved. The sources of law are fraught with irregularities and questions still remain. Although Article 38 has helped define international law as a discipline distinct from politics and international relations, it has fallen short of seeing the process through. As dynamic as society is, law needs to be one step ahead to ensure that there is a means to keep actions and omissions in check [9]. Therefore, reviewing Article 38 would bode well for the evolution of international law.

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