BLOGS

MCQ’s on Public International Laws for CLAT PG [Part 3]

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The Colombian Government has finally invoked American international law in general. In addition to the rules arising from agreements which have already been considered, it has relied on an alleged regional or local custom peculiar to Latin-American States. The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party.

The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State. This follows from Article 38 of the Statute of the Court, which refers to international custom, as evidence of a general practice accepted as law.

In support of its contention concerning the existence of such a custom, the Colombian Government has referred to a large number of extradition treaties which, as already explained, can have no bearing on the question now under consideration. It has cited conventions and agreements which do not contain any provision concerning the alleged rule of unilateral and definitive qualification such as the Montevideo Convention of 1889 on international penal law, the Bolivarian Agreement of 1911 and the Havana Convention of 1928.

It has invoked conventions which have not been ratified by Peru, such as the Montevideo Conventions of 1933 and 1939. The Convention of 1933 has, in fact, been ratified by not more than eleven States and the Convention of 1939 by two States only.

It is particularly the Montevideo Convention of 1933 which Counsel for the Colombian Government has also relied on in this connexion. It is contended that this Convention has merely codified principles which were already recognized by Latin-American custom, and that it is valid against Peru as a proof of customary law. The limited number of States which have ratified this Convention reveals the weakness of this argument, and furthermore, it is invalidated by the preamble which states that this Convention modifies the Havana Convention.

Finally, the Colombian Government has referred to a large number of particular cases in which diplomatic asylum was in fact granted and respected. But it has not shown that the alleged rule of unilateral and definitive qualification was invoked or—if in some cases it was in fact invoked—that it was, apart from conventional stipulations, exercised by the States granting asylum as a right appertaining to them and respected by the territorial States as a duty incumbent on them and not merely for reasons of political expediency.

The facts brought to the knowledge of the Court disclose so much uncertainty and contradiction, so much fluctuation and discrepancy in the exercise of diplomatic asylum and in the official views expressed on various occasions, there has been so much inconsistency in the rapid succession of conventions on asylum, ratified by some States and rejected by others, and the practice has been so much influenced by considerations of political expediency in the various cases, that it is not possible to discern in all this any constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence.

The Court cannot therefore find that the Colombian Government has proved the existence of such a custom. But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum.

— Extract from ICJ Asylum Case Judgment (1950)

Q1. The passage most strongly reinforces which requirement for the formation of customary international law?

a. Mere repetition of conduct by a few States

b. Practice accompanied by political convenience

c. Constant and uniform State practice accepted as law

d. Codification through multilateral treaties

Q2. The Court’s insistence that Colombia “prove” the custom primarily reflects which principle?

a. Presumption in favour of regional customs

b. Burden of proof lies on the party asserting a custom

c. Treaties automatically generate custom

d. Judicial notice of diplomatic practices

Q3. Why did the Court reject reliance on extradition treaties to establish the alleged asylum rule?

a. Extradition treaties are obsolete

b. They concerned a different legal subject-matter

c. They were not signed by Colombia

d. They lacked enforcement mechanisms

Q4. The limited ratification of the Montevideo Conventions weakened Colombia's claim because it showed:

a. Absence of legislative intent

b. Lack of opinio juris among States

c. Political hostility to asylum

d. Non-recognition by the ICJ

Q5. Which concept best explains why Peru could not be bound even if a Latin American custom existed?

a. Universal jurisdiction

b. Jus cogens

c. Persistent objector doctrine

d. State succession

Q6. The Court's emphasis on "political expediency" suggests that:

a. Political motives can replace legal obligation

b. Practice driven by convenience lacks normative force

c. Expediency strengthens custom

d. Diplomacy overrides legality

Q7. The passage reflects which understanding of Article 38 of the ICJ Statute?

a. Custom arises from treaties alone

b. Custom equals regional consensus

c. Custom requires practice plus acceptance as law

d. Custom is inferred from judicial opinions

Q8. Why did the Court treat the Montevideo Convention of 1933 with caution as evidence of custom?

a. It had been denounced

b. It modified earlier conventions

c. It lacked enforcement clauses

d. It was drafted unilaterally

Q9. The phrase "constant and uniform usage" primarily targets which defect in Colombia's claim?

a. Temporal inconsistency

b. Geographic limitation

c. Absence of judicial backing

d. Excessive codification

Q10. The Court's reasoning reflects skepticism toward which method of proving custom?

a. Demonstrating widespread ratification

b. Relying on isolated diplomatic incidents

c. Showing opinio juris

d. Invoking judicial precedent

Q11. Which of the following best captures the Court's view on regional customs?

a. They bind all States automatically

b. They are inferior to universal customs

c. They require clear acceptance by affected States

d. They arise from political solidarity

Q12. The Court's analysis underscores that treaties may evidence custom only when they:

a. Are concluded by major powers

b. Codify pre-existing general practice

c. Are registered with the UN

d. Contain enforcement clauses

Q13. The rejection of Colombia's claim illustrates which broader principle?

a. Treaties override custom

b. Custom must be proved, not presumed

c. Regional law is unconstitutional

d. Political practice equals law

Q14. The Court's reference to "uncertainty and contradiction" primarily negates which element of custom?

a. Territoriality

b. Duration

c. Uniformity of practice

d. Sovereign equality

Q15. The passage most closely aligns with which judicial attitude toward customary international law?

a. Expansionist

b. Presumptive

c. Evidentiary and cautious

d. Activist

Answers

1. Correct Answer: C – Constant and uniform State practice accepted as law

Explanation: The passage reiterates the orthodox two-fold requirement of customary international law: consistent State practice and *opinio juris*. Mere repetition of conduct is insufficient unless States follow it because they believe it to be legally obligatory.

2. Correct Answer: B – Burden of proof lies on the party asserting a custom

Explanation: The Court makes it clear that a State invoking a special or regional custom must affirmatively establish its existence. Custom is not presumed; it must be demonstrated through evidence of consistent practice and legal conviction.

3. Correct Answer: B – They concerned a different legal subject-matter

Explanation: Extradition treaties regulate surrender of offenders, not diplomatic asylum. The Court rejects Colombia's attempt to transpose rules from one legal domain to another, emphasizing doctrinal precision.

4. Correct Answer: B – Lack of *opinio juris* among States

Explanation: Limited ratification indicates that States did not regard the rule as legally binding. Without widespread acceptance as law, treaty provisions cannot be elevated into customary

norms.

5. Correct Answer: C – Persistent objector doctrine

Explanation: Even if a regional custom existed, Peru's consistent refusal to ratify relevant conventions shows non-acceptance. International law does not bind a State to a custom it has persistently opposed.

6. Correct Answer: B – Practice driven by convenience lacks normative force

Explanation: Acts motivated by political expediency reflect pragmatic compromise, not legal obligation. The Court distinguishes between courtesy and law, denying normative value to convenience-based conduct.

7. Correct Answer: C – Custom requires practice plus acceptance as law

Explanation: The Court's reasoning mirrors Article 38 of the ICJ Statute: custom emerges only when habitual conduct is accompanied by a belief in its legal necessity.

8. Correct Answer: B – It modified earlier conventions

Explanation: The Convention's own preamble shows it altered existing law, undermining Colombia's claim that it merely codified a pre-existing custom.

9. Correct Answer: A – Temporal inconsistency

Explanation: Fluctuating practice across time defeats the requirement of continuity. Custom cannot arise from erratic or contradictory behaviour.

10. Correct Answer: B – Relying on isolated diplomatic incidents

Explanation: Singular or exceptional instances cannot generate general rules. Custom demands generality and repetition, not episodic examples.

11. Correct Answer: C – They require clear acceptance by affected States

Explanation: Regional customs bind only those States that have clearly assented. They do not automatically apply merely because States belong to the same region.

12. Correct Answer: B – Codify pre-existing general practice

Explanation: Treaties may evidence custom only when they reflect already established usage. A treaty cannot itself create custom unless supported by independent practice.

13. Correct Answer: B – Custom must be proved, not presumed

Explanation: The Court resists assumptions based on geography or tradition. Legal obligation must be demonstrated through evidence, not inferred from regional identity.

14. Correct Answer: C – Uniformity of practice

Explanation: Contradictions in State behaviour destroy the element of uniformity, which is essential for custom to crystallize.

15. Correct Answer: C – Evidentiary and cautious

Explanation: The Court adopts a restrained approach, demanding rigorous proof before recognising a customary rule, especially one alleged to bind a dissenting State.