

The customary international law and its main requirements

Law



The customary international law is such a source of international law that encompasses it itself the aspect of custom. Taking into consideration the nature of the international system, in international law, the aspect of custom is considered to be the acting principle of law. As written in Article 38 (1) (b) of the Statute of the International Court of Justice (Statute of ICJ) the main requirement for the emergence of customary international law is that at first, a state practice and secondly, the acceptance of this state practice as law. “ As the International Court noted in the Libya/Malta case, the substance of customary law must be ‘ looked for primarily in the actual practice and opinio juris of states’ ” (Shaw, 2008, p. 74). So “ the general practice accepted as the law” is the main requirement for the customary international law to come forth.

There are two main cases that display the application of the main requirements, that are mentioned above, for the customary international law to emerge. The first case, the Nuclear Weapons case is that the Court states that if the “ opinio juris” is established and exists, the general practice can be adopted as a law. “ Opinio juris sive necessitates” is a legal terminology brought by François Gény which means that there is a belief by states that they behaved in a specific way because they were legally obliged and that they are ordered by the requirements of international law to behave in this way. This instance asserts that “ the general practice accepted as law”, which is also the existence of opinio juris, is the main need to form customary international law. The second case, North Sea Continental Shelf case, is about the controversy between Germany at one side, and Holland and Denmark at the other.

The dispute was about the demarcation of the continental shelf. In this case, it is discussed that there is another requirement for the emergence of customary international law which is uniform and extensive general practice. The ICJ stated that state practice should be both virtually uniform, consistent and extensive (Shaw, 2008, p. 77). However, coming to the end it was concluded that uniformity of the state practice is more important than the consistent practice of law during a long period of time. “ It is possible to point to something called ‘ instant’ customary law in certain circumstances that can prescribe valid rules without having to undergo a long period of gestation” (Shaw, 2008, p. 74). In conclusion, in this paper, I discussed what is customary international law and what are the requirements for its emergence. The customary international law is such a source of international law that includes the aspect of custom and is defined as uniform and extensive state practice and acceptance of this practice as law, which is also called “ opinion juris”.