

PRIMARY, SUBSIDIARY AND OTHER POSSIBLE SOURCES OF INTERNATIONAL LAW

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Introduction

Commentators on classical international law do not seem to have a clear idea of the signification of the word 'sources'. Most of them have confused it with the foundation of international law. The word is used to express various concepts, for example, cause, origin, basis and evidence.¹ As such, there was no consensus upon the classification or respective importance of the various sources of international law.

The confusion among commentators concerning the meaning of the term 'sources' became clearer along with the growth and development of international law in general.

The Naturalists denied that there was any positive law of nations² and maintained that it was only a part of the law of nature.³ According to them, the States were bound to regulate their conduct towards one another by the law of nature as they had no common superior. They saw international law existing above and beyond the purview of individual States.

The Positivists, on the other hand, defended the existence of international law as the outcome of customs or international treaties. They did not consider natural law as of any importance and contended that the principles underlying customs and treaties constituted a positive law distinct from the natural law. They regarded the practice of States in their mutual relations as the true source of international law.⁴

The Eclectics took an intermediate position between the Naturalists and the Positivists. They considered that the natural and positive law were of equal

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