

PUBLIC INTERNATIONAL LAW

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DEFINITION

There is no single universally accepted definition of international law, though some good attempts have been made in that direction. Eminent British jurist, *Jeremy Bentham* in 1780, used the words ‘international law’ for the first time. Expressions “international law” and “law of nations” are synonymous and are equivalent terms. Prior to it, international law was known as law of nations.

OPPENHEIM:

Law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other.

The above definition contains three important elements

1. International Law consists of a body of rules governing the relations between States
2. states regard these rules as being binding on them in their relations with one another
3. such rules derive from custom and treaties

THE DEFINITION, IS NOT ADEQUATE, AND IS SUBJECTED TO MANY CRITICISMS WHICH ARE AS FOLLOWS

The definition, is not adequate, and is subjected to many criticisms which are as follows

- 1) The definition takes into account the relations of 'states' only. Presently, International organizations and Institutions are also regarded as subjects of international law
- 2) After the establishment of the United Nations organizations, International Law also provides certain rights and duties to individuals too.
- 3) The definition lays down that the rules of international law derive only from custom and treaties, but it is not correct. A number of rules of international law derive from 'the general principles of law recognized by civilized Nations'.
- 4) The expression 'body of rules' denotes that international law is static. But it is not so, in fact, international law is a dynamic and living law. Its rules have been changing with the passage of time out of experiences and necessities of situations.

STARKE

International Law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which also includes

- A. The rules of law relating to the functioning of international institutions/organizations, their relations with each other, and their relations with state and individuals.
- B. Certain rules of law relating to individuals and non-state entities so far as the rules and duties of such individuals and the non-state entities are the concern of the international community



**NATURE OF INTERNATIONAL
LAW: IS INTERNATIONAL LAW
TRUE LAW**

One view is that international law is not a true law. It is a code of rules of conduct of moral force only. Another view is that international law is a true law, and it is to be regarded as law in the same way as that of ordinary laws of a state which is binding upon the individuals.

AUSTIN'S VIEW

Austin said that international law could not be called proper law in the true sense, because it has neither sovereign legislative authority to enact law nor there is an adequate sanction behind it. Moreover, there is no enforcement agency which can enforce it as a body of rules. The rules commonly called International Law in fact the rules of 'positive morality'. Another noted jurists holding similar opinion are Bentham, Holland, Hobbes etc.

CRITICISM OF AUSTIN'S VIEW

- Austin's definition of law commonly known as command theory has been vehemently criticized by the jurists belonging to sociological, legal realism and historical school on different grounds.
- Austin has taken into consideration in his definition only that part of law which is enacted by sovereign legislative authority. He completely ignored the customary or unwritten laws. It is not correct to say that laws are observed because of the fear of sanctions behind it. They are also observed because of inner morality.
- Henry Maine says that laws are obeyed not because of the fear of punishment but because of the habit of mind and practices of the community.

OPPENHEIM

Oppenheim regards International Law as law because of the following two reasons :-

1. International law is constantly recognised as law in practice, the Government of different states feel that they are legally as well as morally bound to follow it.
2. While breaking it, states never deny its legal existence, rather they recognise its existence and try to interpret International Law as justifying their conduct.

INTERNATIONAL LAW IS THE VANISHING POINT OF JURISPRUDENCE

The analytical jurist, Holland's remark that international law is the vanishing point of jurisprudence is not tenable. By using the words 'vanishing point' in relation to international law and jurisprudence, He meant that international law and jurisprudence are parallel to each other, and therefore are distinct and separate, though it might be appearing that they are one and the same at vanishing point – "a point at which parallel lines in the same plane appear to meet". Therefore, International Law cannot be kept in the category of law mainly because there is neither any sovereign authority nor there exists sanctions if its rules are violated.

THANK YOU

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