

## AN ANALYTICAL STUDY REGARDING SUBJECT MATTER OF INTERNATIONAL LAWS

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### **ABSTRACT:**

International law is a set of rules which are binding between countries and aims to ensure security and peace among various nations. The subject of question under international law isn't only the Nation/state but can be an individual also. Moreover, it has emerged through a number of sources which are codified in Article 38 of the ICJ statute, according to which, customs, treaties and general principles are considered to be the source of International Law. International law is there to maintain world order and peace, settle various disputes among different nations/states and individuals and to provide fundamental rights. However, there are still various shortcomings due to which international relations are suffering.

The main purpose behind research is to understand nature of international law and also understand orderly system of international relations. It emphasizes international peace, reconciliation, arbitration and human rights.

**KEYWORDS:** sources of international law, International law and state law, Basis of International Law

## INTRODUCTION:

The formulation of law depends on the social environment. The powerful states of the world shape international law in such a way as to maintain their dominance, existence and system over the world; But organizations of weak states include rules of reciprocity and joint control; E.g., the 1971 Montreal Convention on Civil Aviation and the 1982 United Nations Convention on the Law of the Sea.<sup>1</sup>

Historical Perspective: Since the beginning of human history, the ancient civilizations of the world have formulated some rules of international law. The states of India, Egypt and China made laws based on religion, sovereignty, war and protection of ambassadors.

In the Middle Ages, Greek city-states and Roman-dominated states developed regulations regarding the declaration of war, prisoners of war, and commerce. In the 15th and 16th centuries, jurists such as Baudin (French), Machiavelli, Baillie and Gentiles (Italian), and Hobbes (English) codified the customary rules of international law. However, the 17th century Dutch scholar Grotius is considered the 'Father of International Law' for his comprehensive book 'The Law of War and Peace'.

Modern international law has developed over the last four centuries. Emergence of new independent states, researches, industrial revolution, development of trade and transport and increase in ferocity of war etc. are its driving forces. The Paris Congress of 1856 attempted to codify the rules of naval warfare. The Hague Conventions of 1899 and 1907 established the Permanent Court of Arbitration. The International Labor Union was established in 1919 and the Permanent Court of International Justice was established in 1920, which was replaced by the International Court of Justice in 1946. The International Military Commissions conducted by the Allies, the Nuremberg and Tokyo War Crimes Trials of 1946–47 respectively and the United Nations and other conventions and treaties from 1946 to date on military aggression, arms control, nuclear threats, maritime law, space law, diplomatic and commercial relations, treaty rules, etc. are formulated. These rules are examined from various points of view, social, historical and moral. From a moral perspective, human civilization and international law are mutually linked to subjective moral standards. One of the foundations of international law is the 'principles of law recognized by developed countries'. Culture is an ever-evolving process of inter-species relations. The relationship between culture and international law is currently

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<sup>1</sup> <https://blog.ipleaders.in/international-law-meaning-definitions/>

under a strain due to weapons of mass destruction, expulsion of foreigners, genocide, international terrorism, etc.

### **LITRATURE REVIEW:**

#### **1. The United Nations Declaration of Human Rights (1948),**

There are two principles that underpin international law, namely 'naturalism' and 'realism'. Proponents of the law of nature, such as Vattel, believe that all law is dictated by the conscience of mankind and is understood by everyone.

#### **2. The International Law Commission's Declaration on the Rights and Duties of States (1949) and the judgments of the International Military Commissions (1946–47) are based on naturalism.**

According to realists such as Hegel and Anzilotti, international law depends on agreements voluntarily entered into by states. However, these principles do not explain customary rules and international law applicable to emerging states.

### **OBJECTIVES:**

1. To Study sources of international law.
2. To Study International law and state law.
3. To Study Basis of International Law.

### **HYPOTHESES:**

The powerful states of the world shape international law in such a way as to maintain their dominance The formulation of law depends on the social environment.

### **RESEARCH METHODOLOGY:**

This research is purely based on secondary data only.

### **INTERNATIONAL LAW IS CONSIDERED WEAK LAW:**

Because, its compliance does not have the omnipotent coercive backing that state laws have. There is no more effective mechanism for ensuring compliance than international opinion or the threat of war. The United Nations Security Council took military action against illegal aggression in Korea in the 1950s and Kago in the 1960s. There is no permanent international police force for such measures. The United Nations General Assembly resolved to revoke

South Africa's mandate over Namibia in 1966. The Security Committee announced in 1969 that South Africa would withdraw its administration from Namibia. In 1970, its possession was declared illegal. In 1971, the International Court of Justice upheld that decision. Since 1963, the Security Committee has resolved economic boycotts of South Africa, but the apartheid policy did not change.<sup>2</sup>

States' approach to compliance with international law is also not uniform. Britain and America regard customary international law as part of state law and interpret state law so as not to conflict with international law; But where the state law clearly differs from international law, the state law takes precedence. Some countries do not consider non-customary treaty rules to be binding unless transformed into state law. West Germany, in Article 25 of its constitution, gave precedence to the rules of international law over the rules of its own state.

Litigation can be brought to the International Court of Justice at The Hague to settle interstate disputes, but its jurisdiction is discretionary with states and there is no effective mechanism for enforcing its decisions.

In addition to states, the subjects of international law include international organizations, territories alienated from independence and individuals. The rules made by the International Labor Union for workers apply to its member countries. The Nuremberg Trials (1945–1948) convicted prisoners of war for crimes against humanity. Any country can punish pirates and hijackers according to international law. The United Nations has recognized human rights and fundamental rights since the 1948 Declaration of Human Rights, as well as the European Commission and Court of Human Rights (1959).

### **REAL SOURCES OF INTERNATIONAL LAW:**

These are mainly customs, treaties, general principles of law accepted by developed states, judgments of international and national courts and arbitral tribunals, writings of jurists and resolutions of international organizations and conventions. Customs are evidenced from the practice of States, from recognition by States of them as law, and from their references in treaties. Treaties are global, regional, multi-state or bi-state. The main basis of the principles of law recognized by the reformed states is the law of nature. The Nuremberg and Tokyo trials

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<sup>2</sup> <https://blog.ipleaders.in/international-law-meaning-definitions/>

held belligerents punishable for crimes against humanity and illegal war crimes, invalidating the defence of obedience to superior orders.

International law and state law: Regarding the relationship between the two, advocates of 'dualism' such as the Italian realist Anzilotti believe that the two laws are distinct. The subjects of state law are individuals and have their origin in the will of the state, while the subjects of international law are states and have their origin in the universal will of the states and in the agreements entered into by those states voluntarily exercising their sovereignty. According to a 'monist' like Calson, all law is one unit, there is no distinction between the two, and states are made up of individuals, both laws are binding on them. The US Some states treat international law as part of state law, while others recognize international law by transposing it into state laws.

Basis of International Law: Austin, Hobbes, Writers like Pufendorf and Bentham do not consider international law as true law. According to him law is the command of the sovereign power and its obedience comes from the fear of its punishment. International law has no sovereign authority or punitive backing to enforce it, so it is simply a code of moral conduct.<sup>3</sup>

In answer to this it is said that

(1) in many nations systems of law not enacted by sovereign legislatures are valid; eg, Hindu and Muslim customary laws;

(2) Most rules of international law are derived from treaties concluded by sovereign states and conventions or from resolutions of international organizations. These are called international libraries;

(3) questions of international law are questions of law;

(4) an international court judges on the basis of international law;

(5) Underpinnings of international law are the opinions of states, coercive economic and military measures taken under the auspices of the United Nations and finally war of self-defence.

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<sup>3</sup> <https://blog.ipleaders.in/international-law-meaning-definitions/>

## **SUBJECTS OF INTERNATIONAL LAW:**

The main subject of international law is states. A sovereign state must have a permanent population, a fixed territory and the ability to form government and relations with other states. States have fundamental rights of liberty, equality, territorial sovereignty and self-defence and fundamental duties of ceasing hostilities, conscientious observance of treaties and non-interference with other states. States also have a duty to protect foreigners. The recognition of a foreign state or its government or territorial rights depends on the will of states. The General Assembly of the United Nations or the Union of Territorial States may also give recognition. A state of war or rebellion is also recognized. States acquire international status only after legal recognition and can sue the recognizing country in a national or international court, as well as the rights to appoint, dismiss, etc. ambassadors. New states are initially given de facto recognition, and legal recognition is given by examining their stability and international and mutual relations.

States are capable of entering into any type of agreement with each other. States have freedom of the high seas and can make full use of their waters. They have sovereignty over their territorial space and have the right to outer space and non-military use of outer space.

States have a duty to prevent genocide under the Genocide Convention of 1948 to protect the rights of aliens to grant residence, domicile or nationality, asylum and extradition. Also, under the New York Convention of 1961, states have a duty to prevent drug trafficking.

On the principle of equality, heads of states, ambassadors, consuls, warships etc. in foreign countries are exempt from territorial jurisdiction there.

International law prescribes peaceful and friendly means for the settlement of disputes between states. Repressive measures can be taken only if necessary. Among the peaceful means are arbitration, judicial settlement, assistance of well-wishers, mediation, conciliation, investigation and settlement under the auspices of the United Nations. Repressive measures include war or armed action, retort, reprisal, quiet blockade and intervention. According to the Kellogg-Beyond Agreement of 1928, war is illegal, but can be done in self-defense when other means fail. War prohibits the killing of civilians, the use of chemical or poisonous weapons, gases or nuclear weapons. The laws of war contain provisions for the protection of prisoners of war who are wounded, sick or captured from sinking ships (see the Hague Regulations of 1907, the Geneva Convention of 1929, the Geneva Convention on Prisoners of War of 1949,

the Treaty on the Prohibition of Nuclear Weapons of 1963.) The rules of relations between neutral states and belligerent states derive from customary law and treaties. States do not have an absolute right to neutrality as per the United Nations Charter. Every State has a duty to cooperate in measures taken by the United Nations against belligerent States.

International Organizations: Another important subject of international law is global or regional international organizations. The League of Nations was established in 1919 after World War I. His work for world peace rested on the rule of 'unanimity'. In 1919, the International Labor Union was founded. At present, it is an organization specially attached to the United Nations and prepares treaties for international co-operation between industry and labor and for improving the remuneration, facilities and living standards of labour. Most of the countries of the world are its members.

The United Nations was established in 1945 after World War II. Its objectives are to maintain international peace and security and to develop friendly relations among nations based on the principle of equal rights of peoples and self-determination. The United Nations has 193 (2020) members.

Its main components

- (1) General Assembly,
- (2) Safety Committee,
- (3) Economic and Social Committee,
- (4) Trusteeship Committee,
- (5) International Court of Justice and
- (6) Ministry.

The General Assembly meets once a year and deliberates on world peace, economic and political issues and passes resolutions in the form of recommendations. It takes decisions on the membership of states, i.e. admission, suspension and expulsion. It elects the non-permanent

members of the Security Committee, the members of the Economic and Social Committee and the judges of the International Court of Justice along with the Security Committee.<sup>4</sup>

It accepts in international treaty. When the Security Council fails to maintain peace in any part of the world, the General Assembly creates an emergency peacekeeping force of the United Nations through a resolution on 'Alliance for Peace'. Such forces were deployed in the Suez Canal region in 1956, in Kago in 1960, in Sinai in 1982, and in Beirut in 1983.

The most powerful organ of the United Nations is the Security Council. Its main function is to maintain peace and security in the world. Five of its fifteen members – Britain, the US, Russia, France and China – are permanent, while the other 10 are elected by the General Assembly.

A permanent member has the power (veto) to stop discussion on any question, which is in violation of the right of equality of states under international law, and hinders the efforts of the United Nations for world peace. Weak states are not protected against the tyranny of such powerful oppressive states; E.g., American intervention in continental states like Nicaragua and Russian intervention in Eastern European states and Afghanistan. In the absence of a veto, the Security Committee restores peace by persuasion, economic measures, or coercive measures. The Security Council took military action in Korea in 1950 and Kago in 1960 and economic action in Rhodesia in 1964.

The Economic and Social Committee appoints commissions of inquiry for different regions of the world and investigates and negotiates on subjects such as human rights, transport, population, narcotic drugs, economic and social progress and human welfare works and prepares them in treaties and sends them to the General Assembly for approval.

The International Court of Justice was established in 1946 in The Hague. Its 15 judges are elected from the list of judges of the Permanent Court of Arbitration. Its jurisdiction over treaties is mandatory, otherwise discretionary. There is no effective mechanism to enforce its judgment. It interprets the rules of international law. Where such rules are not found, he decides according to the 'rules of law recognized by developed countries'. It has advisory powers to the General Assembly as well as the Safety Committee.

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<sup>4</sup> <https://www.britannica.com/topic/international-law>

In 1946, the United Nations formed the Trusteeship Council for the protection and independence of the institutions mandated by the League of Nations. Currently the islands of Micronesia are in the hands of the US as a 'strategic territory', while South Africa, which occupies South West Africa (Namibia), does not recognize the Council's authority and does not consider the judgments of the International Court of Justice for Namibia's independence.

Persons: Subjects of international law now include persons. Many treaties create rights and obligations of individuals. The United Nations Declaration of Human Rights of 1948, and the Treaties on Prisoners of War, Counterfeit Currency, Narcotic Drugs, Space Law, etc., and the Nuremberg and Tokyo Trials touch on individuals. Pirates and criminals against humanity are punishable in any state; E.g., the Aikman lawsuit (1962).

Importance of International Law in Modern Times : International law is indispensable for international transactions, peace and progress of mankind in today's context.

International Law and States: International law is primarily a collection of binding rules relating to international relations. In addition, it includes rules on the mutual relations of international organizations, the relations between them and states and the relations between them and individuals, and the rights and duties of individuals and non-state entities in so far as they relate to the international community. . Important sources of international law are ancient customs, treaties, judgments of international courts and tribunals, resolutions of international organizations and standard texts of jurists. Existence of rules and some treaties for the security of ambassadors and conduct of war in India, Egypt etc. in ancient times. Was In the Middle Ages, the city-states of Greece and the Roman Empire developed this law. It developed rapidly in the twentieth century as transportation increased.

Jurists differ on the extent to which sovereign states are bound to obey international law. According to Austin, international law is not true law, but merely a code of morally enforced rules of conduct or courtesy. According to the proponents of Saint Aquinas etc. 'Law of Nature', the law of nature is a set of rules dictated by nature to the human mind, which states and individuals are bound to obey, including all laws including international law. According to positivists such as Binkershoek, Anzilotti etc., international law is a set of rules accepted by states by treaty or otherwise voluntarily curtailing their sovereignty in relation to inter-state relations that originates from the will of the state and therefore becomes acceptable to the state.

### **FINDING:**

Many treaties and agreements regarding inter-state relations, cultural exchange, rights of foreigners, asylum, extradition, international crime, environment, human rights, nuclear energy regulation, etc. are based on international law.

### **RECOMMANDATION:**

It is a method and provides an ideal through principles of coexistence such as the United Nations Bill of Rights and Panchsheel. Even in the matter of world peace, except for minor wars, world wars can be concluded on the basis of international law from 1945 till today.

### **CONCLUSION:**

Scientific progress has increased the interdependence of states. Therefore, new rules are constantly being formulated by multi-state treaties.

Due to today's violence and unrest around the world, some people deny the existence of international law. Even states with powerful systems do not eradicate crime. In this way the law continues to be violated in the international arena. It can be said that international law is a weak law. Indeed, much of international law has nothing to do with war or peace.



## REFERENCES:

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