

TOPIC 1: INTRODUCTION TO INTERNATIONAL LAW

What is international law?

Before WWII international law was defined by Western Nations as a body of law/principles of action binding upon civilised states. That definition was over 400 years old.

Following WWII the UN was created. The UN sought to facilitate non-state actors and diminish state monopolies.

The UN includes;

- International organisations
- Individuals
- Organs of national liberation
- Unrecognised states and governments
- Indigenous people
- Non self-governing governments and people
- Minorities
- Women
- Children
- Various disadvantaged groups

Definition after WWII

International law had become a body of rules/norms that regulate the conduct of states and other entities, recognised as having international personality in their relations with each other.

Source test of international law:

Art 38(1) – Statute of International Court of Justice (ICJ) 1945;

- Defines whether a rule, norm or practice is/is not recognised law.

Functional description is preferred over theoretical definition.

- A body of substantive principles, rules, norms and practices that regulate conduct/behaviours of its subjects, both state and non-state entities with legal personalities.

International Law distinguished

Jeremy Bentham 1780

Public international law as defined from private international law (traditional law)

Private international law is common, civil international law like foreign domestic practices

Private international law is common.

Trans National Law – complex grey areas i.e. state and multinational corporations – uses common general principles of both nations

Common general principles – Art 38 (1)(c) statute of the ICJ

Transnational crimes include – Trafficking, money laundering, corruption and bribery

Measures to combat transnational crimes:

- World declaration of Global Action Plan against Organised Transnational Crimes 1994
- UN convention against transnational Organised Crime and 2 additional protocols 2000
- European Civil Convention on Laundering, search seizure s and confiscation of proceeds of crime 1990
- Inter-American Convention against Corruption 1996
- Asia Pacific Group on Money Laundering 1997
- 1982 Awarded for Attribution between Kuwait and AMINOL

Nature and Features

- Austinian/Lockyeian idea of law with monolithic narratives that law is something greater than its subjects.
- Command Povitism; law of positive rules, definitive, made by parliament, enforced by judicial body and sovereign authority

Consensus based collective

- Binding law through consensus based collective and democratic dialogue
- Self-limitation rather than top down positivist command
- Co-ordination and Co-operation
- De centralised
- Lacking Authority
- Diverse
- Consensus

Consent and Reciprocity

- sovereign state can have no legal superior
- international law cannot serve as a higher authority
- state are both legislators and abiders of international law

Consensus Based Obligation

- determination of lowest common denominator
- binding obligation created through communicative dialogue
- consensus the basis of obligation
- maximum possible state autonomy
- largely discretionary
- frequency of violation of international law is not less than that of national law

Flexible and pragmatic

- more flexible
- less coercive
- binding effect seeks to stifle growth
- non-binding effect seeks to maximise participation

Voluntarism

- keeps system alive
- facilitative tool
- optional "imperfection"