

Introduction to International Law and International Humanitarian Law

Dr. V. Balakista Reddy

Professor of International Law

NALSAR University of Law, Hyderabad

E-mail: vbreddy@nalsarlawuniv.org

balakistareddy@yahoo.com

Introduction to International Law

- ▶ What is Law and International Law and what is IHL?
- ▶ Why we have to discuss IHL?
- ▶ IHL is part of IL, branch of IL
- ▶ Definition, Nature, Scope and development of International Law
- ▶ Sources of International Law
- ▶ Relations between Int. Law and Municipal Law
- ▶ Subjects of International Law

What is International Law?

- ▶ International Law has two Branches- Law of War and Law of Peace
- ▶ Law of war also called Law of Armed Conflict and now we called IHL
- ▶ International law is also called as:
- ▶ (1) Law of Nations--Law which regulate the behavior of nation-states
- ▶ (2) Public International Law-- there is private I.L. or conflict of Laws
- ▶ (3) Inter-state Law - I.L. also provides a system of Rules governing the conduct of inter-state relations
- ▶ (4) Philip Jessup called I.L. as Trans-national Law
- ▶ (5) C.W. Jenks called I.L. as Common Law of Mankind etc.

Definitions of International Law

- ▶ Definitions of I.L –Traditionalist and Modernist View
- ▶ Traditional View – I.L. regulates the relations between or among states or states alone are the subjects of I.L. Ex: Oppenheim, J.L. Brierly, Hackworth etc.
- ▶ **Oppenheim:** Law of Nations or International Law is “the name for the body of customary and treaty rules which are considered legally binding by civilized states in their intercourse with each other”.
- ▶ There are three components in this definitions.
- ▶ (1) Body of rules governing the relations between states.
(2) States regard these rules as binding on them in their relation with one another. And
- ▶ (3) such rules derived from customs and treaties.

Modern Definitions of IL

- ▶ Modernist View– I.L. not only regulates the behavior of states, but also regulate the conduct of Int. Organization, Individuals and non-state entities to certain extent. Ex: J.G. Starke, C.G. Fenwick, Whitman etc...
- ▶ **J.G. 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 includes also.
- ▶ (a) The rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relations with states and individuals; and
- ▶ (b) Certain rules of relating to individuals and non-states entities so far as the rights or duties of such individuals and non-state entities are the concern of the international community.

Criticism of Traditional Definitions

Criticism of Oppenheim's definition:

- ▶ Not only states but also international organization
- ▶ P.E. Corbett: "The future of International law is one with the future of International Organizations."
- ▶ Civilized states also criticized.
- ▶ Individuals and other private persons have rights and duties in International Law.
- ▶ Not only customary and conventional International Law but also general principles of Law.
- ▶ International Law is not only body of law but also like all living laws.

Modern I.L regulates not only the relations between states but also

- ▶ International Organizations
- ▶ Individuals
- ▶ Non State entities
- ▶ Not only customary and conventional rules but also general principles of Law
- ▶ No body of rules – law is changing process.
- ▶ Communist challenge
- ▶ Emergence of large number of new states. Examples: U.N. membership

International humanitarian law

- ▶ What is IHL? IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict.
- ▶ It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.
- ▶ IHL seeks to limit suffering caused by war
- ▶ IHL offers special protections to children and women
- ▶ IHL applies to both international and non-international conflicts, and to **all** Parties to conflict

IHL is Part of IL

- ▶ Traditionally: International law regulates the relationship between States
- ▶ States are the core subjects of international law; states have rights and obligations
- ▶ But individuals can to a certain extent be subjects (duty-bearers and rights-holders) under international law
 - International humanitarian law a good example
- ▶ International humanitarian law is a part of international law
 - Sources, methods, implementation, enforcement...
 - But with some special characteristics
 - Students without previous knowledge of international law are encouraged to familiarise themselves with textbooks on international law, in addition to Kolb's short introduction

Scope of IL and IHL

- ▶ Scope of I.L. has expanded due to:
- ▶ Inclusion of new subjects of I.L.
- ▶ Establishment of Int. organizations
- ▶ Emergence of New States
- ▶ From euro-centric to hetro-centric
- ▶ Emergence of New fields
- ▶ Emergence of New Problems

Nature of IL and IHL

- ▶ There are two views on the subject
- ▶ 1. I.L. is not a true law : John Austin, Hobbes, Holland, Pufendorf, Bentham
- ▶ International Law is not a true law: John Austin, Hobbes, Holland, Pufendorf, and Bentham.
- ▶ IL is Not True Law---Austin Definition of Law
- ▶ The rules of international law is positive morality:
- ▶ Holland Bentham, Brown etc., denied the legal character of international law.
- ▶ International law is not law because
- ▶ No agency for international legislation. . No organized force, No a determinate impartial arbitrator, The ICJ is no compulsory jurisdiction,
- ▶ Some writers called international law as a quasi-law, Starke: International law is a weak law, Queen Vs. Keyn: International law is not an exactly law.

International Law is True Law

- ▶ I.L. is a True Law : Oppenheim, Brierly, J.G. Starke, Kelson, Hart,
- ▶ Louis Henkens " Almost all nations observe almost all principals of IL & almost all there obligations, almost all the time.
- ▶ Sir Henry Maine – Historical jurisprudence – In primitive societies there was no sovereign political authority yet there were laws.
- ▶ Austin's concept of law denied customary rules of international law.
- ▶ Treaty and conventions are legislation of international law.
- ▶ When international questions states do not rely upon moral arguments but rely upon treaty precedents and opinion of specialists.
- ▶ States do not deny the existence of international law
- ▶ Some state (U.K. and USA) international law treated as part in their own true sense.
- ▶ As far as sanctions are concerned, international law does not completely lack it.
- ▶ Violations of law is in municipal laws also

Enforcement of IL and IHL

- Enforcement of Law at National and International levels
- Enforcement at Domestic Level-Organizational setup
- International public opinion;
- Countermeasures and self-help;
- Collective or bilateral sanctions;
- Afraid of losing reciprocal benefits of participating in the system;
- Collective actions of civil society;
- Domestic courts and enforcement of international law;
- State applying domestic law extraterritorially

Sanctions of observance of IL and IHL

- ▶ Voluntary Consent
- ▶ Good Faith Principle
- ▶ Chapter VII of the United Nations
- ▶ Economic Globalization & Inter-dependency of World
- ▶ WTO & Changing notion of International Law

Development of IL and IHL

- ▶ 1. Development of I.L and IHL. in Ancient times
- ▶ 2. Development of I.L and IHL in Middle Ages
- ▶ 3. Development of I.L and IHL. in Modern Times from 17th – 19th centuries
- ▶ 4. Development of I.L and IHL in the 20th Century—International treaties, theories and International Institutions
- ▶ IL and IHL in 21st Century

Basis or Theories of I.L. and IHL

- ▶ Natural Law Theory
- ▶ Positives Theory
- ▶ Grotius Theory
- ▶ Theory of Consent
- ▶ Theory of Good faith or Principle of *Pacta Sunt Servenda*
- ▶ Theory of Fundamental Rights

Perspectives on IL and IHL

- ▶ Division of World – based on ideology, economy, geography etc.,
- ▶ First World or Western Countries
- ▶ Second World or Socialist Countries
- ▶ Third World or Developing Countries.

Codification & Progressive Dev. of IL and IHL

- ▶ Is there any the difference between codification and progressive development?
- ▶ Why the codification and progressive development?
- ▶ IL is dynamic, changing according to the various needs of international society.
- ▶ Where from the mandate of the codification and development of IL comes?
- ▶ Role of Art.13 of UN Charter in this process

Codification and Development of IL and IHL

► Codification before the League Of Nations

1. *International Conferences:*

- 1856 Paris Declaration on Law of War
- The Hague Convention of 1899 and 1907

2. *International Associations and International Organizations:*

- Inter-governmental organizations Ex: U.P.U, I.T.U:
- International Law Association established in 1873 in London with the objective "the study, codification and development of International law"
- The Hague Academy of International Law
- The Harvard Law Research Institute
- The American Institute of International Law

Codification Under League of Nations

- In 1924, League of Nations appointed 16 member Committee for codification. In 1927 it submitted report to the Assembly--- Topic wise discussion of Nationality, Territorial Waters and State Responsibility.
- Under the League of Nations UNIDROIT (The Rome International Institute for Unification of Private Law) was established in 1926 within the legal framework of the League.
- UNIDROIT Principles of International Commercial Contracts, International Leasing, Protection of Cultural Property are some of the contributions of UNIDROIT.
- Another landmark in this direction was the *League Codification Conference of 1930* which was represented by main forms of civilization and principal legal systems of the world.
- UNIDROIT Convention on Agency in the International Sale of Goods, Geneva, 1983; UNIDROIT Convention on International Factoring, Ottawa, 1988.
- League Codification Conference of 1930 and 1931--- which represented the main forms of civilization and the principal legal systems of the world.
- International Labour Organization

UN and Codification

Article 13 (1) (a) of the U.N. Charter lays down that the General Assembly shall initiate studies and make recommendations for the purpose of “promoting international co-operation in the political field” and “encouraging the progressive development of International Law and its codification”.

The main organs as well the specialized agencies of the United Nations have played a significant role in codifying the developing International law, International Economic/Trade Law through General Assembly Resolutions and International Conventions – in the form of both *Hard* and *Soft* Law.

Codification and development of IL in emerging areas including Human Rights, Environmental Protection etc..

Various UN General Assembly Resolutions including PSNR, NIEO, Charter of Economic Rights and Duties of State, etc..

The United Nations also created specialized institutions for this purpose i.e., UNCITRAL (United Nations Commission on International Trade Law).

Basic Principles of Modern I.L.

- ▶ Sovereign Equality of States
- ▶ Principle of Good Faith
- ▶ Peaceful Settlement of Int. Disputes
- ▶ Prohibition of Use of Force
- ▶ International Co-operation
- ▶ Non-Intervention, and
- ▶ Equal Rights and Self Determination

Relevance or Importance of I.L. and IHL

- ▶ Changing notion of Sovereignty
- ▶ Changing Role of State
- ▶ Independent states to Interdependence
- ▶ Regulators to Facilitators
- ▶ Transparencies and Reciprocity
- ▶ Law has changed from “command of Sovereign” to “science of social adjustment”.

Sources and IL and IHL

- ▶ Classification of Sources of I.L.
- ▶ Article 38 of the Statute of the ICJ
- ▶ International Treaties/Conventions
- ▶ International Customs
- ▶ General Principles of Law recognized by States
- ▶ Judicial Decisions and Juristic Works.
- ▶ Debate Between Tradition and Modern Sources
- ▶ General Assembly Resolutions/ Declarations

RELATION BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

- ▶ Introduction
- ▶ Theories on the application of International Law within Municipal Law
- ▶ Municipal Law before International Tribunals
- ▶ International Law within Municipal Sphere
- ▶ State Practices on the Domestic Application of International law—USA and UK Practice
- ▶ Domestic Implementation of International law in India—The Role of the Executive, Legislature and the Judiciary

Domestic Enforcement of I.L. in India

- ▶ India followed the Dualism and Transformation and adoption
- ▶ Constitutional provisions relating to I.L.-Pre-constitution: British practice
- ▶ Constitutional provisions (a) General art. 51 (b) Executive Provisions art. 53, 73, & 77 and Legislative Provisions art. 245, 253, etc.
- ▶ Indian courts dealt various issues relating to implementation of rules of I.L relating to customary and treaty rules
- ▶ Indian Judiciary and Customary Int. Law Ex: ADM Jabalpur Vs. S. Shukla (AIR 1976); Gramophone Co. of India Ltd. V. B.B. Pandey (AIR 1984) etc.,
- ▶ Indian Judiciary and Treaty Law Ex; State of Madras Vs. C.G. Menon (AIR 1954); Vishaka Vs. State of Rajasthan (AIR 1997) etc.,

SUBJECTS OF INTERNATIONAL LAW

- ▶ Debate between the “Subjects” and “Objects”
- ▶ Definitions, Characteristics, Kinds and the Role of States in International law
- ▶ State as a Subject of International Law
- ▶ International Organizations as Subjects
- ▶ Individual as a Subject of International law
- ▶ Non-State Entities as Subjects of IL and IHL