

Question-02

Define International Law. Discuss its nature and scope. To what extent it is relevant and effective in modern times?

ANSWER:

1. Introduction:

International law are those laws which are either customary or treaty rules adopted by civilized nations in their relations with each other. These laws are also called 'law of nations'. International law emerges from treaties, customs, practices of civilized nations, judicial decisions of preceding courts and judges and renowned literary works of its scholars. Although, international law is widely accepted and binding upon signatory states its nature is not agreed among scholars of various schools of thought. For

Some of it is a true law and has binding nature. For others, the law is a weak law, which lacks both executive and legislative authority. There are also some scholars who consider international law as a positive morality. However, whatsoever the nature it poses, it has averted catastrophic global issues to become pandemics like both global wars. In modern times, on the one hand international law is struggling to solve humanitarian crisis in the world. On the other hand, it has promoted peace and security in global arena.

Concise and restructure your intro

2. What is International Law?

International law is a set of rules and principles governing the relations and conduct of sovereign states with each other, as well as international organizations and individuals.

• Oppenheim's Definition of International Law:

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

- J.L. Briery's View of International Law:

"The Law of nations or international law may be defined as the body of rules or rules and principles of action which are binding upon civilized states in their relation with one another."

- What did Torsten Gihl say about International Law:

Scholars prior to Torsten Gihl only included states' relations under international law. Torsten Gihl used the term international community to widen the scope of international

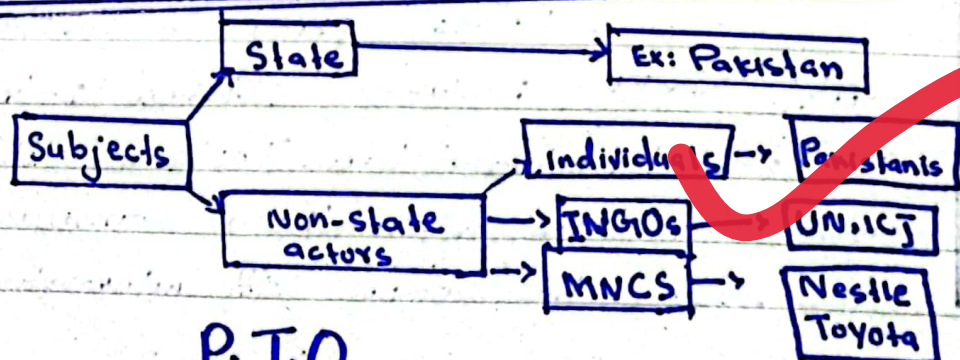
Law. He says:

"The term International Law means the body of rules of law which apply within the international community or society of states."

- Definition of International law according to West Rand Central Gold Mining Ltd. case:

In this case the court observed:
"International law may be defined as the form of the rules accepted by civilized states as determining their conduct towards each others and towards each others' subjects."

3. Subjects of International law:



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4.

Nature of International Law:

Jurists are divided into two groups regarding the nature of international law. The two views are:

(a) International law is not a law in the sense (positive morality)

(b) True law.

(a)

International law is not a true law:

The followers of this view call international law as 'positive morality'. According to them:

"Law is command of sovereign, enforced by superior political authority."

These scholars consider sanctions as important element of law. Austin, Hobbes, and Holland are the main proponents of this perspective. They focus on the definition of international law which varies from person to person. They argue that no political authority exists in international law. Also, its rules are in the form of treaties therefore it lacks an effective legislative body. And absence of an effective legislative and

executive body leads to lack of sanctions.

Moreover, ICJ also has limited power. Therefore it is a 'Quasi Law'.

(b) International law is a true Law:

"Law is a body of conduct which shall be enforced by common consent of community" (Oppenheim).

The preachers of this view assert that international law is reflected in the policies and relations among states. Also, UN charter provides certain sanction. Oppenheim, Starke, and Brierty are the chief supporters of this point of view. They state that states do not deny existence of international law. And, customary rules of international law are being replaced by treaties and conventions. Moreover, Int. Law is treated as part of domestic law in UK, U.S.A. and Denmark.

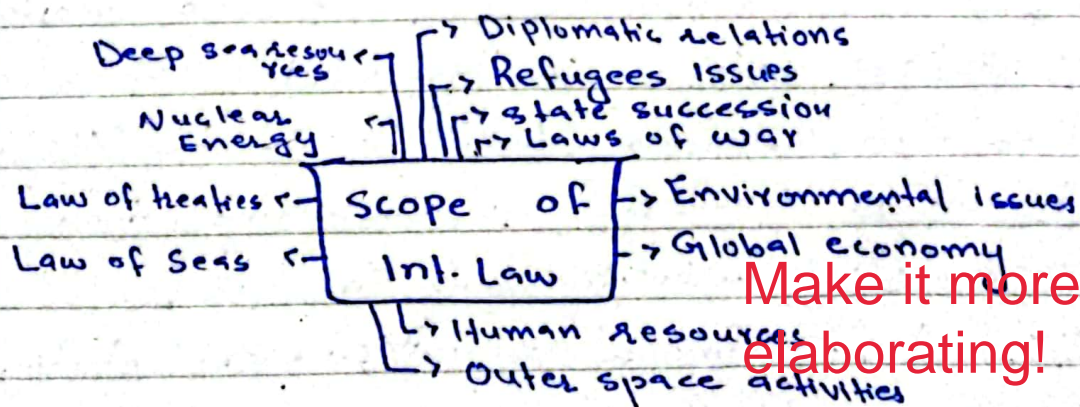
"In primitive society there was no sovereign authority yet there were laws" (Henry Maine).

Moreover, if we accept Austin's concept of customary rules then law of England loses its legality. Violation of Law does not

mean that the law does not exist because municipal law is also frequently violated.

5. Scope of International law:

International law in past only dealt with states. However, in today's world it applies beyond states too. Inter-governmental organizations are under its jurisdiction. Moreover, NGOs and MNCs which work beyond border also fall under its jurisdiction. Further individuals are also subject to international law with emergence of human rights, dual nationality and declaration against discrimination. It is because states are the society of individuals and rights and duties of states under int. law directly deals with individuals living in it. International law also deals with:



6. Relevance and Effectiveness of International Law in modern times:

International law is both effective and relevant in addressing modern day challenges, though its impact often depends on state cooperation and enforcement mechanism. For example international agreement like Paris Agreement on Climate Change and United Nations convention on Law of Seas (UNCLOS) demonstrate its capacity to create framework for collective action. Institutions like ICC hold criminals of war and genocide accountable. For example, ICC has released the arrest warrants of Benjamin Netanyahu for Gaza genocide. International law remains essential in promoting global order, fostering cooperation and addressing transnational issues.

7. Conclusion:

International law is a set of rules adopted by civilized nations in their relations with each other, their individuals, NGOs, IGOs and MNC. Int. law is considered as weak law which lacks binding authority, but its scope is wider than municipal law. Moreover, Int. law promotes global peace and maintains transnational balance.

"Int. law is neither a myth nor a Panacea but an institution by which we can build a better int. order." - Brierly.