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Year-2023

Q6 According to Austin's law "properly so-called" are the commands of a sovereign, and "International law is no law, it is only positive morality." In Fitzmaurice view, "a necessary characteristic of any system of law, 'properly so-called' is its enforceability, and 'International law possesses that characteristic, even if only in a rough rudimentary form'."

In the light of the above statements, discuss the true nature of international law while taking into account the development that have taken place after the Second World War.

1. Introduction

The nature and legitimacy of international law have long been debated by legal theorists. John Austin, a 19th century legal positivist, claimed that international law "not law properly so called"

because it does not possess any central sovereign authority with coercive enforcement and binding power. In contrast, Sir Gerald Fitzmaurice, a 20th Century international jurist, argued that although international law lacks rigid enforcement, it nonetheless has effective mechanism and possesses all the characteristics of law - albeit in a rough and rudimentary form. Furthermore, after World War II, the creation of international institutions and the codification of various treaties and laws have reshaped the legal character of International law.

2. Austin's Position: International Law is not Law properly So-called

Lack of Sovereign authority

Absence of Coercive enforcement

No established legislature or judiciary

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2 (a) Lack of Sovereign authority

Austin argue that true law is a command issued by a sovereign and to the whom people obey. In international law, no superior authority exists above states, and no sovereign can issue binding commands.

2(b) Absence of Coercive enforcement

According to Austin, a key feature of law is the presence of sanctions to ensure obedience. But international law is folled by countries voluntarily. Since international law lack coercive power it is not true law.

2(c) No established legislature or judiciary

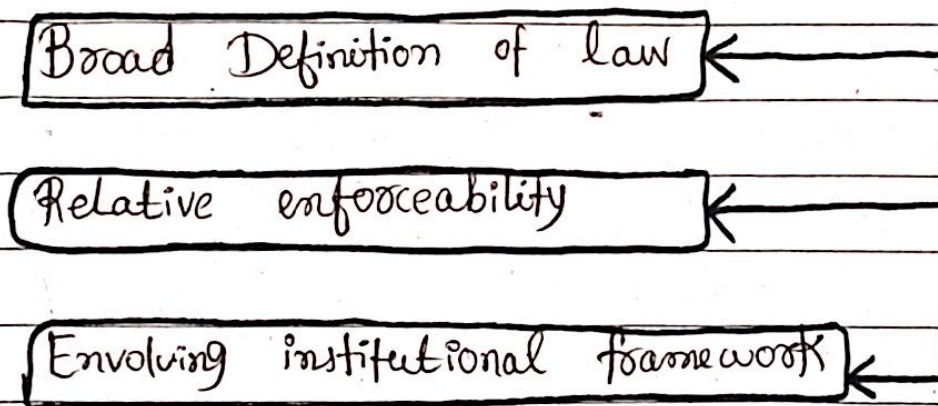
Austin claimed that

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international law lacks permanent legislature, a judiciary, and executive body. Since, international law does not have any on a global level it is a system of moral or political obligation.

3. Fitzmaurice's Position:

International law is law in a rough and rudimentary form



3 (a) Broad definition of Law

Fitzmaurice's believed

the absence of centralized enforcement does not negate the existence of law.

Instead, law can exist where there is widespread recognition of obligations and mechanisms to resolve disputes.

3(b)

Relative enforceability

Fitmaurice argues that international law is enforceable to a practical degree, albeit through decentralized and imperfect means, such as mutual consent, diplomatic pressure, and institutional mechanisms.

3(c)

Institutional Frameworks Evolve

Fitmaurice believes the modern system contains adjudication, norm setting, and enforcement sufficient. Even if not as developed as domestic law, it has progressed beyond mere morality.

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Nature of international law in the light of statements

Law based on consent of states

Decentralized yet binding

Presence of normative order

Institutional development

Legal personality of states

Increasing codification of rules

Emergence of jus cogens norms

Recognition of individual accountability

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Peaceful settlement of disputes

Principle of Pacta Sunt Servanda

Evolution and adaptability

4(a) **International law is based on the consent of States**

International law is getting power from consent of states. Countries sign a treaty, follow a convention, or accept customary rules, these principles give legal validity to international law without a central global authority.

Vienna Convention-Diplomatic Relations, 1961

Article, 11 Consent over number of diplomats

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4(b) Despite the absence of a central authority international law is binding on states once they have agreed to it

Although there is no central authority, international law once agreed is binding upon states. ~~Countries~~ States obey rules and treaties while dealing with other states. It is because states respect their commitments

UN Charter, Article 2(4)
Nicaragua vs. United States

4(c) International law provides a structured set of rules that govern state behavior

International law has a system of rules that guide how states behave with one another, especially in an important matters such as war,

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peace, human rights, and environment.

Statute of the international court of justice Article 38(1)

4(d) Internal law has developed institutions to apply and interpret the law

While international law lacks a government like a national system. However, it has created international institutions to apply, interpret, mechanisms and bodies to enforce its rules.

Six Principal Organs of the United Nations

and international law primarily dealt with these - ICJ, UNGA, UNSC

4(e) Sovereign States Possess full legal personality in international

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Sovereign states have full legal status in international law. Therefore, these states can enter into any treaty, sue any state or can be sued, can develop relations, and enjoy legal rights and duties.

Montevideo Convention
Article .1. Defines the criteria for statehood, which grants legal personality

4(f) Certain fundamental norms of internal law have attained a higher status. They are codified

The shift from customary law to codified law, written and signed by states brings clarity, access and legal certainty. Furthermore, these strengthen the authority of international legal system.

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Maxe Libesum, Hugo
Grotius 1609,
UNCLOS, Article 87

codified under above customary
norm

4(b) Some international law
are so important and
universal that no country
is allowed to break

Various international
law are crucial and countries are not
allowed to break any of them in
any condition. These rules are applied
to all states. They cannot be changed.

[Jus Cogens norms]

4(c) Modern international
law is no longer confined
to states

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Modern international law is now also applies to individuals, and non state actors. Now individuals can be held for crimes.

This shows that states are not the only subject of international law.

**Rome Statute of the
international Criminal
Court 1998**

4(i)

**International law
Promotes the peaceful
resolution of disputes through
legal means**

International law encourages ~~do~~ to settle disagreements peacefully through diplomacy and legal methods. Furthermore, these help in avoiding further conflict and disputes among states.

[UN Charter Article 33]

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4(K) The Principle of Pacta Sunt Servanda upholds the sanctity of agreements

Pacta Sunt Servanda is a core principle of treaty law. Once a country agrees and signs a treaty it is legally bound to follow. This principle ensures trust, reliability, and stability.

[Vienna Convention, Article 26]

4(L) International law is a dynamic system that evolves with changing global conditions

International law is not static in nature. It is dynamic and evolves with changing global conditions. Its adaptability has enabled it to remain relevant and functional despite lacking many features of domestic legal system.

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Paris Agreement, 2015

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Conclusion

To encapsulate the whole discussion, the debate between Austin and Fitzmaurice reveals contrasting legal philosophies. While Austin emphasizes sovereignty and command, Fitzmaurice views law through its functional role in regulating conduct and resolving disputes. International law particularly in the post-World War II era, has grown into a sophisticated body of rules with binding force, normative order, institutional development and, norms like *ius cogens*. Though it lacks few elements of municipal law it meets the criteria of law.