



# **INTERNATIONAL LAW**

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## INTRODUCTION:

- Present age is the age of Internationalism.
- INL is necessary to regulate the relations between the states.
- It is very essential to settle the dispute between the states without the use of force.
- Again, it is very much necessary for the successful operation of Internationalism & to promote a stable World Order.
- Normally the weak states attaches great importance to International Law.



## MEANING OF INL:

- The word INL is coined by Jeremy Bentham in 1790.
- It is a body of rules to regulate the behavior of states both in times of war as well as peace.
- “International Law is a body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other.” – Oppenheim
- These rules not only relate to the functioning of the international institutions but also concerned with the actions of the states, individuals in so far as their rights and duties are concerned.



## NATURE OF INL:

- INL is a law among the states and not above the states.
- Now the question is whether International law is really a law at all ?
- It is a debatable issue.
- To some, it is not a proper law.
- To some others, it is really a law.
- Yet another group argues that it is a weak law.



# WHY IT IS NOT A PROPER LAW:

- Following are the arguments why it is not treated as a proper law. They are –
  1. No International sovereign authority to issue commands.
  2. No legislature to make international law.
  3. No executive authority to enforce it.
  4. No sanction behind international law.
  5. No courts to interpret it.
  6. It is a limitation on the concept of National Sovereignty.
  7. It is violated very often especially during the times of war, and so on.
- The legal character of the international law is questioned as per the opinions of Austin, Hobbes, Bentham and others as it has no effective binding force behind it.



# WHY INTERNATIONAL LAW IS REALLY A LAW?

- Following are the arguments in support of treating international law as a law. They are –
  1. Law is always not a command.
  2. There are courts to interpret and enforce it.
  3. External sovereignty of a state is not a reality.
  4. International law is often violated is not a valid argument.
  5. International law is a part of Municipal Law.
  6. States feel themselves bound by international law.
  7. Constituent elements of national law and international law is the same (legislations, customs & precedents, etc.)
- Scholars like Oppenheim, Hall, Lawrence, Henry Maine, Brierly and others regard international law as a real law.



# WHY IT IS SAID TO BE A WEAK LAW?

- Following are the reasons resulting to consider it as a weak law. They are –
  1. International law is not clear & certain.
  2. No permanent legislature to legislate.
  3. No organized sanction behind it.
  4. No judicial system pertaining to it.
- Thus, according to Starke “international law is a weak law.”
- In the words of Fredrick Pollock, international law is on the way of becoming law.



# SOURCES OF INL:

- Some important sources of the international law may be listed as follows –
  1. International Customs & Conventions,
  2. International Treaties & Agreements,
  3. General Principles of Law,
  4. Judicial Decisions,
  5. Municipal Law,
  6. Eminent works,
  7. International comity
  8. International legislations, etc.



# 1. INTERNATIONAL CUSTOMS & CONVENTIONS:

- Customs recognized by international community forms the major source of international law.
- International law based on customs and conventions are known as customary international law.
- Many rules relating to maritime warfare, rights of the aliens, freedom of the seas are greatly determined by international customs.
- Most of the rules relating to diplomats are also based on customs.
- Thus, customs and conventions are a major contributory source of international law.



## 2. INTERNATIONAL TREATIES & AGREEMENTS:

- Treaties & agreements especially the multilateral treaties entered into with other states constitutes a major source of international law.
- Law making treaties which lay down general rules are binding on majority of states are a direct source of international law.
- For example, the Treaty of Westphalia(1648), the Treaty of Paris(1763), the Treaty of Versailles (1783), the Covenant of the League of Nations, the Charter of the UN, etc. are contributory sources.



### 3. GENERAL PRINCIPLES OF LAW:

- The general principles of law includes justice right reason, commonsense, principles of private law which are observed and administered in the national courts are also applicable in international law.
- These principles also includes morality and equality which are followed in the laws relating to war, peace and neutrality.
- These general principles need to be recognized by the nations in order to be considered as the source of international law.



## 4. JUDICIAL DECISIONS:

- The judgments and advisory opinions given by International court of Justice and other tribunals also contributed to the development of international law.
- Many a times these judgments are taken as precedents in deciding similar cases.



## 5. MUNICIPAL LAW:

- It also constitutes another source of international law.
- Parts of Municipal law like rules relating to citizenship, diplomacy, extradition, tariffs, etc. also forms part of international law.



## 6. EMINENT WORKS:

- Scientific commentaries of eminent scholars and jurists on international law also constitutes another important source.
- ‘The law of War and Peace’ written by Hugo Grotius is a source book of international law.
- The writings of Oppenheim also constitutes an important source of international law.



## 7. INTERNATIONAL COMITY:

- International comity refers to the reciprocal courtesy which one member of the family of nations owes to the other.
- In other words, it indicates politeness and goodwill in international intercourse.
- Oppenheim opines that the international comity has influenced the growth of international law.



## 8. INTERNATIONAL LEGISLATION:

- International legislation represents international conventions and is an important source of international law.
- International conventions aim at the administration of questions of common concern of many nations.



## CONCLUSION:

- According to Art. 38 of the statute of International Court of Justice, following are considered to be the sources of international law -
  1. International Conventions,
  2. International Customs accepted as law,
  3. The general principles of law as recognized by civilized nations &
  4. Judicial decisions and teachings of publicists as a subsidiary means in order to determine the rules of law.



# IMPORTANCE OF INTERNATIONAL LAW:

- International law plays a very significant role in promoting international peace and security in very many ways. They are –
  1. **Promotes better international order:** International law is essential for promoting a better international order because, it facilitates to regulate the relations between sovereign nations in a peaceful manner.
  2. **Protection of human rights:** it helps in protecting human rights of private citizens all over the globe. Protection of human rights is rightly regarded as one of the greatest achievement of international law.



## IMPORTANCE .....

3. **Averts war & promotes peace:** it provides a means of pacific settlement of disputes and averts war. The rules of warfare an important branch of international law humanize warfare.
4. **International cooperation:** it helps in achieving international cooperation in various fields like science, technology, commerce, etc through various bilateral and multilateral treaties.
5. **Smooth functioning of International bodies:** International Law provides rules which regulates the operation of world organizations like UNO and its specialized agencies.



## IMPORTANCE .....

6. **Limits the sovereignty of the states:** It helps in limiting the sovereignty and independence of the states and thereby promote the idea of establishment of internationalism.
7. **It protects the rights of the states:** International law is playing a dominant role in the protection of the rights of the sovereign states as it provides the means of averting wars.
  - A body of international law enables the systematic conduct of international relations.
  - According to Allan James, “indeed, the future of the world and its peace and tranquility will largely depend upon the effective enforcement of international law.



## KINDS OF INL:

- International law may be broadly divided into –
  1. Public International Law, &
  2. Private International Law.
- Public international law may be further sub divided into –
  1. Laws of War,
  2. Laws of Peace, &
  3. Laws of Neutrality.
- To the above, the following two more kinds of international law may be added –
  1. Administrative international law, &
  2. Admiralty law.



# 1. PUBLIC INTERNATIONAL LAW:

- These are the rules of conduct governing relations between states which are commonly accepted by all the states as binding in their dealings with each other.
- According to Schuman, Public international law has to do with the states as legal and political entities.
- Public international law may be further subdivided into laws of war, laws of peace & laws of neutrality.



## 2. PRIVATE INTERNATIONAL LAW:

- It is a set of rules dealing with the rights and duties of private individuals living in a foreign states.
- For example, the laws relating to citizenship, settlement, property, marriage, asylum, extradition, etc. come under private international law.
- Thus, private international law primarily deals with individuals rather than with the states.



### 3. LAWS OF WAR:

- It is a very important branch of public international law.
- Laws of war deals with kinds of war, rules of warfare, private property in war time, the protection to the medical personnel and the power of military commanders in the occupied enemy territory.
- The international laws relating to war has been evolved to harmonize war and regulate its course.
- Hague conferences held in 1899 and 1907 and a number of Geneva conventions have evolved the laws of war on land and sea.
- After the post war period, many rules relating to air, war and use of nuclear weapons have been established.



## 4. LAWS OF PEACE:

- These are a branch of public international laws which have been developed in the due course of history.
- These includes for example, like recognition of states, boundaries, diplomatic relationship, status of aliens, high seas, rules of treaties, territorial jurisdiction, etc.
- Means of pacific settlement also come under the laws of peace.



## 5. LAWS OF NEUTRALITY:

- The laws of neutrality deals with the forms of neutrality, the relations between the neutral states and the belligerent states, rights and duties of neutrals, etc.
- Laws of neutrality uphold the sovereign right of states to decide their course of action by not participating in any war.



## 6. ADMINISTRATIVE LAW:

- These are the rules which regulate the operations of world organizations like the UN and all its specialized agencies like the IMF, IBRD, ILO, WHO, and such other organizations.
- These rules are followed by the member states.



## 7. ADMIRALTY LAWS:

- This law relates to the large number of rules relating to regulating the maritime relations between the nations.
- For example, this law includes the rules of navigation, high seas, maritime commerce etc. which need to be followed even though each state has its own laws relating to these.



## CONCLUSION:

- Nations comply with international law for many reasons.
- Their desire to live in a peaceful way and to promote their own national interests and also their national prestige.
- The nations follow these rules of international law as it is expedient and less costly and some times because of the fear of punishment by regional or global organizations.
- International laws are the best means of pacific settlement of disputes and averting wars.

