

Chapter One

Introduction to International Law

- Definition:

The classic meaning of international law means a set of rules which govern the relations between States, during war or peace. However, this definition is no longer used as a result of dramatic changes which have occurred within the international relations scene. Contemporary international law can now be defined as a body of rules which regulate the conduct of the subjects of international law, such as States and other international organizations, in their dealings with each other.

- Is International Law Law?

International law is law. Most States acknowledge this and some States refer to international law in their own constitutions so that they can act in accordance with it. States will employ their own legal advisers to formulate, present and defend their State's position in international law. Even though international law is recognized, its effectiveness has been criticized. Such critics may have high expectations of how international law should operate which could prove to be unrealistic. International law cannot enforce States upon political issues. International law cannot, of itself and by itself, dictate the policies of States. As a result, the fact that law can be violated does not in itself actually negate a legal system's effectiveness. This may appear a rather contradictory statement.

International law is concerned with promoting international co-operation, and achieving co-existence among States. When international law is weakened, it is not the fault with international law itself, but with those who operate within the international legal system.

- The characteristics of International Law:

- International law is not imposed upon States and there is no international legislature. The international legal system is decentralized and it is established on consensus. International law is established essentially in one of two ways:
 - Through the practice of States which is known as *customary international law*.
 - Through agreements entered into by States which are known as *treaties*.
- Critics may argue that the lack of a strong enforcement mechanism within international law is a weakness. Two examples of the absence of enforcement measures within international law are:
 - There is no international police force.
 - There is no international court with compulsory jurisdiction to which States are required to submit.
- However, this does not mean that international law cannot be effective. International law can impose sanctions upon a State in an effort to control that State's conduct. Though some may argue that sanctions have not always proved that effective and can actually be counter-productive. If international law is violated, there is a recourse of action to which the Victim State can refer

to. Treaties can be suspended or even terminated, or the assets of an offending State may be frozen. The United Nations Security Council has the power to authorize economic sanctions and force may be used in specific circumstances.

- Public opinion can also be an effective sanction. States want to be seen to be complying with international law. This can be demonstrated in the way that some States will take considerable measures to justify their own particular position in international law.
- There is an international court to which States can refer their disputes to for settlement. States, however, must agree to submit to the court but there is no legal compulsion on them to do so. This in itself could also be seen as another element of weakness within international law as it is seen as both contradictory and excusatory.
- Despite this, the role of reciprocity in a State's observance to international law is important. One example is with regard to the position of sovereignty. It is within a State's own interest to respect territorial sovereignty of other States as they in response should respect its territorial sovereignty.

- The Development of International Law:

- International law is a relatively modern system. Contemporary international law has its roots in the growth of the secular sovereignty of Western Europe. There was a need for law to regulate the relations of States with each other. The rules of war and the rules concerning diplomatic immunity were the earliest expression of international law. The Age of Discovery in the sixteenth and seventeenth centuries brought with it the development of rules governing the attaining of territory. At the same time, the principle of the freedom of seas was being established. As such, international law grew out of necessity in order for States to co-exist and co-operate with each other.
- International law established the perimeters of State action and national competence so that States enjoyed freedom of action. International law continued to expand as international dealings increased and by the nineteenth century had evolved, geographically at least, into a universal system of law. It remained, however, rooted in Western European traditions maintaining values in both its concept and content with a European bias.
- The twentieth century has witnessed major changes which have had repercussions for the international legal system. The sovereign independent State has been challenged in many ways. Two world wars brought devastation but also former colonial territories gained their independence. The twentieth century has seen a greater emphasis on international co-operation which enable States to work together rather than individually. Those matters which were once considered exclusively within the domain of domestic jurisdiction are now susceptible to international regulation. However, the use of force has been prohibited except in defined circumstances.
- International law is no longer the preserve of some 50 states, as it now includes 193 States. As international law expands and encompasses more States, it can no longer be considered as an exclusively western domain. The

“new” States may hold and present their own viewpoints which can be contrary to those held by the “old” States. They do not challenge the existence of international law *per se*, but they do challenge the substantive content of some of the rules of international law. Examples include:

- The measure of compensation to be awarded in respect of the expropriation of property belonging to foreign owners.
- With respect to human rights, the articulation of “third generation” rights.
- The European bias of international law has now been effectively dismantled. Political ideologies other than those of capitalism are now heard within international discourses including those ideologies once considered as being communist or socialist. Modern technology has allowed more regular international contact and has created new areas for international regulation. Two examples of new areas for international regulation are outer space and the deep sea-bed.
- In addition, international law has had to meet new challenges which demand an international response either at governmental level or at the international level when individual State action proves to be inadequate or deficient. Two contemporary examples which have been the subject of international regulation are the environment and human rights.
- However, international regulation will only be effective if States respond by pursuing domestic policies which comply with common international opinion.