

Definitions , Functions of international law

Dr . Bhanu Pratap , Faculty of Law , University of Lucknow .

Keywords : Definitions , Functions of international Law and Hugo Grotius .

[Type the abstract of the document here. The abstract is typically a short summary of the contents of the document. Type the abstract of the document here. The abstract is typically a short summary of the contents of the document.]

E CONTENT ON PUBLIC INTERNATIONAL LAW

Definitions of Public International Law :

- (1) According to Hall , “ International Law consists of certain rules of conduct which modern civilized states regard as binding on them in relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of their country and which they also regard as being enforceable by appropriate means in case of infringement.”
- (2) Philip Jessup , “ International Law or the law of nations must be defined as law applicable to states in their mutual relations with States . Further , International Law may also ... be applicable to certain inter relationships of individual themselves , which such inter relationships involve matter of international concern .”
- (3) Charles Fenwick , “ International Law may be defined in broad terms as the body of general principles and specific rules which are binding upon the members of the international community in their mutual relations.”
- (4) Hans Kelsen , “ International Law or the Law of Nations is the name of a body of rules which regulate the conduct of states in their intercourse with one another.”
- (5) 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 .
 - (b) Certain rules of law relating of individuals and non state entities so far as the rights or duties of such individuals and non state entities are the concern of the international community .
- (6) Definition of International Law according to Permanent Court of International Justice in S.S. Lotus case , “ International Law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in Conventions or by usages generally accepted as expressing principles of law and

established in order to regulate the relations between co existing independent communities or with a view to the achievement of common aims . Restrictions upon the independence of States cannot therefore be presumed .”

Hugo Grotius as the Father of International Law : Hugo Grotius reacted to the destruction of Thirty Years War (1618-1648) by advancing a rival solution to the problem of war . In 1625 , Grotius authored *De jure bellis ac pacis* (*Law of War and Peace*) which made a great impact on European affairs . For this work Grotius is called the father of public international law . In his treatise , Grotius called upon the great powers to resolve their conflicts by judicial procedures , rather than on battlefield and specified the legal principles he felt would encourage co operation , peace and a more humane treatment of people . His work is significant because it provided a guide to the operations of this new system of sovereign states One that accepts the sovereignty of States and even their right in certain circumstances to wage war but at the same time stresses the existence of shared values and necessity of international rules . Departing from the Realist tradition as espoused by Hobbes which favoured an international anarchical system , Grotius fashioned an approach to international relations that focused on natural law approach and established an ethical and legal underpinning for a society of states . Grotius labored to overcome the limitation of world order rooted in territorial sovereignty . Hersch Lauterpacht summarizes the Groatian tradition in international law :

- (1) Grotius conceived the relations governed between states to be governed by law .
- (2) Relations between States is governed by altruism and morality .
- (3) Individual is the ultimate unit of law.
- (4) Grotius asserted the sacredness of good faith and *pacta sunt servanda* in international law.
- (5) War as a means of settlement of disputes should be abolished.

Functions of International Law : (1) The first function of international law lies in delimiting the jurisdiction of the subjects (State, International Organisation and Individual) of International Law . International Law delimits jurisdiction :

- *Rationae territoriae* : The jurisdiction of one state ends where that of another State begins , i.e. at the internationally recognized border or where the international domain starts (eg ,

the high seas or space) . In principle , territorial jurisdiction applies , which means that a State can only exercise its competences within its territory .

- Rationae temporis : International law governs issues that may arise regarding the emergence of new States , State Succession or the extinction of states .
- Rationae materiae : this is relevant for international organizations which have only been attributed certain specific competences by the founding states.

(2) A second function of international law is therefore the regulation of the co existence of subject of international law.

(3) A third function of international law is to regulate international law is to regulate international co operation between subjects of international law .

The Law of coexistence	The Law of cooperation
Sovereign Equality of states.	Awareness of the relativity of sovereignty and the need to pool it .
States as hermetic entities pursuing selfish interests and merely co existing but not co operating.	States as interdependent actors . This is the hallmark of modern international law especially after the advent of Charter of United Nations.
No common interests between States , except for the needs for rules of delimitation of jurisdiction.	Common interests and values that cannot be protected or furthered unilaterally .
Peaceful co existence (control of jus ad bellum)	Enhancing co operation between states (International Trade Law).
Mostly prohibitions	Mostly obligations.
Non institutional	Institutional
Self help through countermeasures , retorsions , reprisals or war .	Sanctions, penalties , suspension , expulsion etc.

