

# **INTERNATIONAL LAW SUMMARY**



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# 1. Nature of International Law

## 1.1 What is international law

International Law (IL) can be defined as a body of rules and principles that regulates relations:

- between States and public international organisations inter se;
- among States and individuals in the field of international human rights law;  
and
- between the international society and individuals who have committed international crimes.

Prior to WW1, the concept of IL was regarded as a system of legally binding rules and principles that regulated relations solely among sovereign States. These States were considered to be the only subjects of IL and the only entities possessing legal personality at an international level.

## 1.2 Evolution and extent of international law

IL goes as far back as the period of antiquity. A summary of the development of IL is considered below:

- Archaeologists have discovered treaties between kings of city – states in ancient Mesopotamia, dating from around 3000 BC. Treaty relations among rulers.
- The use of treaties among rulers remained a key attribute of political life throughout antiquity in areas of the Middle East and the Mediterranean. During this period, most civilisations acknowledged the binding force of treaties and respected persons of diplomatic ambassadors.
- Medieval Europe enjoyed a more intricate form of IL, though the structure of feudal realms was not well suited to the emergence of a distinctly separate legal system for the regulation of relations among monarchs. Power was shared internally between an aristocratic class and federal princes who upheld their own vassals, which regularly owed political allegiance to external authorities such as the Holy Roman Emperor or the Church.
- During the course of the 15<sup>th</sup> and 16<sup>th</sup> centuries, several authoritative States surfaced (England, France, Sweden, Netherlands, Spain and

Portugal). Such States declined to follow political authority beyond their own jurisdictional rule. This prepared the way for the modern system of IL.

- At the start, the contemporary system of IL was concerned almost wholly with regulating relations among States as armed actors on the European stage.
- Rising from the chaos of Europe's religious wars in the 16th and 17th centuries, modern IL was long subjugated by norms regulating the behavior of war and illuminating matters about which disagreements might lead to conflict.
- The agreements concluding the Peace of Westphalia at the end of the Thirty Years War (1618 – 1648) confirmed the contemporary State system and feudal ideas of international order were quenched as a potent force animating intra – European relations.
- The peace treaties confirmed the authority of States based on differing versions of Christianity, recognised that no political authority or influence existed over States, and protected the principle of religious tolerance for minorities in several parts of Europe.
- In 1815, the Final Act of the Congress of Vienna (FACV) and related international agreements sought to adopt the Westphalian State system to considerably novel state of affairs.
- The main European powers established a formal arrangement of collective security against revolutionary and radical disorder everywhere within Europe, which was effectively invoked on several occasions.
- The FACV's official denunciation of the slave trade was also an important development in IL, and made another vital theoretical link between human rights concerns and the continuation of international tranquility.
- In 1864, the Geneva Convention gave legal protection to the injured in global military conflicts and to those seeking to help the wounded.
- 10 years later in 1874, the Brussels Conference and the Hague Peace Conferences (HPC) of 1899 – 1907 prepared and settled upon rules protecting non – combatant civilians, and the treatment of prisoners of war, in the area of international armed conflicts.

- The HPC of 1899 also established the Permanent Court of Arbitration in an effort to give a standing mechanism for the diplomatic and peaceful resolution of international disputes.
- Numerous authors have argued that the first immense age of globalisation transpired in the late 19<sup>th</sup> and very early 20<sup>th</sup> centuries. This era of IL began to evolve further beyond matters of war and peace, focusing on the facilitation of international cooperation in a range of areas. Noteworthy accomplishments during this period include:
  1. the Paris Convention establishing the International Telegraph Union (1865);
  2. the Berne Convention establishing the General Postal Union (1874);
  3. the Paris Convention for the Protection of Industrial Property (1883); and
  4. the Berne Convention for the Protection of Literary and Artistic Works (1886).
- In 1919, the Versailles Peace Conference established the League of Nations (LON). This led to the establishment of the Permanent Court of International Justice (PCIJ) by the LON in 1921. Although the PCIJ only lasted until 1945, it made lasting contributions to the expansion of IL in a variety of fields. By the time the PCIJ had finished, it had handed down 32 judgments in contentious cases between States, and 27 advisory opinions at the request institutions related to the LON.
- Significantly, the International Court of Justice (ICJ) replaced the PCIJ in 1945 upon the establishment of the United Nations (UN).
- On 26 June 1945, the UN Charter was opened for signature while the war against Japan was still continuing. By 24 October 1945, the UN Charter had entered into force and the International Military Tribunal for the Punishment of War Criminals had held its first session in Germany.
- Notably, the trial and conviction of numerous Nazi leaders for offenses against the peace, crimes against humanity and war crimes, was of immense importance in demonstrating that accountability for the most

serious offence against IL could attach to political and military leaders and not merely to the State whose dealings they directed.

- In relation to human rights protection, IL's traditional connection with the preservation of international peace was recognised in numerous international instruments:
  1. the Preambles to the Universal Declaration of Human Rights (1948);
  2. the European Convention on Human Rights (1950);
  3. the International Covenant on Civil and Political Rights (1966) (ICCPR); and
  4. the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).
- The social order of IL has since the Peace of Westphalia and the transmission of the European State system to the rest the world, been under the political authority of the society of States. The actions of these States produce the treaties and customs that represent positive IL.

### ***1.3 arrangement of the international system***

#### **1.3.1 Legal norms**

In IL, it is not possible to point to institutions endowed with readily particular legislative and executive functions. In this sense, there is no international government or system of international legislation. Consider two prominent exceptions:

1. Some resolutions adopted by the UN Security Council will enforce legally binding obligations on all States; and
2. The European Union's legislative organs may adopt laws which are binding on member States in such a way that they may be directly relied upon by litigants in domestic courts or tribunals.

Generally, IL is primarily a system of customary law, progressively complemented by rules and principles that are agreed upon in treaties among States.

There is no doctrine of *stare decisis* in IL. Consequently, international courts and tribunals are not bound by earlier judicial decisions.

**If you have any queries regarding the international law summary  
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