AILET

Nature of International Law

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The nature of international law refers to its essential features and how it functions as a distinct legal system governing the relations between states. The status of international law as “true law” has been a subject of long-standing intellectual debate among scholars and jurists, primarily due to its unique structural characteristics, which starkly differ from those of domestic legal systems.

This article examines three major, often conflicting, perspectives: the traditional positivist view that international law is not real law because it fundamentally lacks a central, coercive authority; the modern consensual view that it is indeed valid law, evidenced by the consistent acceptance and practice of states; and a pragmatic, nuanced view that it qualifies as real law, albeit one that is inherently weaker than domestic law due to limited enforcement capacity.

By exploring these diverse viewpoints this aims to clarify how international law manages to operate and maintain a degree of global order despite the absence of traditional legal institutions like a centralized legislature, judiciary, or police force.

To understand international law better, we first need to define the word “nature.” The nature of something means its main features, inherent character, or essential qualities. So, when we talk about the nature of international law, we are trying to comprehend what specific type of legal order it is, what its sources are, and how effective it is in regulating global society.

Views about Nature of International Law

The debate concerning the status and efficacy of international law can be categorized into three fundamental, opposing schools of thought, each based on different assumptions about the source of legal validity:

1. International law is not law at all.
2. International law is true law.
3. International law is true law, but it is weak law.

1. International Law Is Not Law at All

This traditional, highly skeptical view asserts that international law fails to meet the fundamental criteria required to be classified as “real law.” It concludes that international agreements and customs are merely a set of moral guidelines or political conventions, but hold no binding legal force in the true sense.

Supporters: John Austin and Holland

John Austin, a famous English jurist and the founder of the Analytical School of Law, rigorously argued that law must be defined as a “command issued by a sovereign, backed by a sanction (punishment)” if the command is not followed. In his positivist view, the international sphere lacks the necessary structural components: there is no recognized world sovereign or central authority empowered to issue binding commands to states or to impose a uniform, consistent punishment if international rules are broken. Therefore, he critically dismissed international law as merely a form of “positive morality” (rules enforced by public opinion or international goodwill) and not real, mandatory law.

Thomas Holland, another prominent jurist, supported this idea by focusing on the institutional deficiency. He stated that international law lacks a sovereign law-making body (a world legislature) that can enforce its decrees, so it fundamentally cannot be called law. In simple words, Austin and Holland believed that since international law has no supreme ruler, no formal legislative body, and no effective punitive mechanism, it cannot be considered law in the command-based legal sense.

1. International Law Is True Law

This view counters the positivists by arguing that international law is real law, even though its structure and enforcement mechanisms are significantly different from those found in a national system. Its legal validity rests on the consent and habitual practice of sovereign states.

Supporter: L. Oppenheim

1. Oppenheim, one of the most respected classical international law scholars, strongly believed that international law is true law because states explicitly accept and consistently follow it in their mutual relations. He contended that law does not always require a central, coercive authority for its existence; instead, it can also derive its binding force from customs, treaties, and general agreements shared among legal subjects. In his seminal work, International Law,

he wrote that the entire system is based on the common consent of states. The consistent actions of countries—their readiness to adhere to rules, negotiate and sign treaties, and respect established customs—demonstrate their belief in the legal, rather than merely moral, nature of international law. Therefore, according to Oppenheim, international law is true law because it is fundamentally followed by the subjects it governs and helps maintain peace and order in the global community.

2. International Law Is True Law, But Weak Law

This view adopts a pragmatic middle ground, acknowledging the legal value of international law while recognizing its structural limitations, classifying it as a less developed or imperfect legal system compared to national models.

Supporter: J.G. Starke

J.G. Starke, a modern jurist, agreed that international law has genuine legal value, but he noted that it is not very powerful or potent. He detailed the key institutional deficiencies that prevent it from achieving the strength of domestic law:

a) It lacks a central law-making body like a national parliament that can legislate rules binding on all states immediately.

b) It lacks a strong, compulsory court system with universal jurisdiction capable of settling all disputes (as the jurisdiction of bodies like the ICJ often depends on state consent).

c) It lacks an effective, unified police force or enforcement agency to physically ensure rules are obeyed and sanctions are carried out uniformly.

Despite these critical institutional shortcomings, Starke observed that states still habitually obey a vast number of international rules. This obedience is driven by powerful practical needs: the desire for peace, stable trade relations, diplomatic reciprocity, and overall good international relations.

Starke believed that international law is law, but only in a limited or constrained sense. It is not as institutionally strong or structurally perfect as national law, but it is undeniably effective and essential in managing relations and maintaining order in many aspects of global interaction.

The Role of International Law in the Modern World

Even though international law is structurally different from national law, lacking the central authority and coercive power found in sovereign states, it plays an irreplaceable and highly important role in the interconnected world today. Its influence extends far beyond mere diplomatic courtesy.

It provides essential frameworks for managing shared global resources, establishing rules for international conflict and humanitarian conduct, and promoting collective security.

The continued observance of treaties, the reliance on international customs, and the engagement in international agreements by the vast majority of sovereign states demonstrates that international law possesses real value and strength.

Conclusion

Although international law distinctly lacks some of the strong institutional features found in centralized national legal systems, such as a mandatory legislature, a compulsory judiciary, or a uniformed enforcement agency, it still functions as a legitimate and influential legal framework guiding sovereign entities.

The consistent and continued observance of treaties, customs, and international agreements by states worldwide demonstrates that international law is far more than just a set of moral guidelines; it is a recognized and respected system of rules.

While it may be inherently weaker in its enforcement mechanisms compared to domestic law (as noted by the pragmatic realists), its importance cannot be underestimated. International law plays a vital and fundamental role in guiding relations between sovereign states, promoting global cooperation, protecting human rights, addressing environmental protection, and ensuring a degree of legal predictability in today’s complex and interconnected global order.