LAWXPERTSMV.	INTERNATIONAL LAW
NATURE OF INTERNATIONAL LAW	

REFER PREVIOUS MODULE OF HISTORY, DEFINITION & SCOPE OF INTERNATIONAL LAW

COMPREHENSIVE NOTES

REVISION NOTES STARTS AT PAGE 11

Discuss the nature and basis of International Law.
UPSC 2016. Question 5(a)
"International law has progressed by leaps and bounds; yet the theoretical controversy about the nature of international law is far, from over." Comment.
UPSC 2001. Question 5(a)
Pointers : Summarize Austin, Holland and finally with views of Approach 2. [Refer below]

One approach is that International Law is not a true law just containing rules of conduct of moral force only.	*Another approach* is that International Law is a true law, and it is to be regarded as law in the same way as that of ordinary laws of a State which are binding upon the individuals.

Analysing the divergence in the approach towards the international law,

Edward Collins, perfectly summed up the issue that "Whether or not, one wishes to attribute a legal character to the norms of international law depends *largely upon the definition of law' he chooses to accept".*	*Lawrence*, remarked that "Is there a true International Law' thus: "Everything depends upon the definition of law which we choose to adopt. The controversy is really a logomachy – a dispute about words, not the things."

NATURE OF INTERNATIONAL LAW | ANALYTICAL OVERVIEW

1. The answer depends on what is meant by 'law'.
2. When a crime happens, it is daily reported in media, but only serious breach of international law is reported in media. This can *can give a distorted impression of the nature of international law.*
3. Fact is International law has no easy sanction for its breach, and there is no international police force or army that can immediately step in. On this count, international law is often perceived as not really law.
4. However Hart – who argues that - law derives its strength from acceptance by society that its rules are binding, not from its enforceability. Then, International law is law.
5. When we look at the sources of international law, its binding force does not come from the existence of police, courts and prisons. It is based on *the* ***consent (express or implied) of***

States, *and national self-interest*: if a State is seen to ignore international law, other States may do the same. The resulting chaos would not be in the interest of any State.

6. While the language of diplomacy has changed over the centuries from Latin to French to English, international law has provided a vitally important and constantly developing bond between States. Today in many areas of international law the rules are well settled. As with most domestic law, it is how the rules are to be applied to the particular facts that cause most problems.
7. The *raison d'être of international law* is that relations between States should be governed by common principles and rules. Yet, what they are is determined by national interest, which in turn is often driven by domestic concerns. Those matters on which international law developed early on included *the immunity of diplomats and freedom of the high seas*. The latter was crucial to the increase in international trade, the famous *1654 Treaty of Peace and Commerce between Queen Christina and Oliver Cromwell epitomising this.*
8. There are legal advisers for every foreign minister in every country. Point is these legal advisers are trained in law, not to practise law, rather to advise foreign ministers. If international law is not law, then legal advisers to foreign ministries are all drawing their salaries under false pretences.

If we examine the 'opinions' on the definition of International Law, we are inclined to ask: 'What is so international in the so-called International Law?'- Analyse.
UPSC 2002.
Pointers : Try to summarize both Austin and Holland view.

APPROACH 1 : INTERNATIONAL LAW IS NOT LAW IN THE TRUE SENSE OF THE TERM

GENERAL OVERVIEW | ***Hobbes, Pufendorf and Austin*** subscribed to the view that law 'properly so called' is a command of the sovereign, as there is no sovereign in International level, they deny legal character of International Law.

EXPONENTS : *Holland, Jermy, Bentham, Hethro Brown, Lord Salisbury, etc*. are other prominent jurists accepting this approach.

CONCLUSIONS :

1. In municipal law, there is a determinate superior political authority which may compel the citizens to observe the law. No such political authority exists in international law. Thereby, International Law *lacks sanction* which is an essential element of law.
2. As compared to Municipal Law, International Law lacks an *effective legislative machinery or executive agency.*
3. International law further *does not have a potent judiciary.* ICJ & ICC jurisdiction and powers are limited, and too much dependant on the consent of the states.
4. International Law is considered by some writers as a quasi-law.

According to D.J. Lathan Brown, "International Law is a body of principles and rules embodying general and particular commitments, binding in honour, which are formulated by States and

their agents to deal with certain aspects of their external relationships. Commitments of honour are a species of quasi law on the verge of true law, properly treated as a branch of jurisprudence.

Do you agree with the view that International law is merely a positive morality ? Discuss the nature and scope of International law.

Asked in UPSC 2020. Question 6(c) / UPSC 2006.

AUSTIN [IS INTERNATIONAL LAW A MERE POSITIVE MORALITY?]

DEFINITION GIVEN BY AUSTIN : According to Austin,

- "*International Law is not true law, but a Code of rules of conduct of moral force only*"
- "*Law is the command of the sovereign. Law is the aggregate of rules set by men as politically superior or sovereign, to mean as politically subject*."

TWO ELEMENTS OF HIS DEFINITION : This definition contains two important elements.

1. Law is a command enacted by the sovereign legislative authority i.e. any rule which is not enacted by sovereign or superior cannot be regarded as law, and
2. Command must be enforced by the sovereign authority, i.e. if laws are violated, there should be 'adequate sanction behind it' OR 'orders backed by threats'.

If these two elements are not there, such rule is not considered as a 'proper' Law.

AUSTIN VIEW ON INTERNATIONAL LAW :

- International Law cannot be called law proper in true sense, because, it lacks two elements of law i.e., it has neither *sovereign legislative authority to enact law* nor *there is an adequate sanction behind it.*
- In international law, there is no enforcement agency which can enforce it as a body of rules.

These are the reasons for the Austin preferred to call International Law as *'positive international morality'.*

POSITIVE MORALITY :

- *Positive,* in jurisprudence parlance, means that rules presently enforceable.
- Since there is no sovereign authority and sanctions behind international law, it has been regarded by him as a rule of morality.
- Such rules or morality which are in existence with common consent of the community are different from rules of law which are enforced by external power.

LAW	MORALITY
Law demands an absolute subjection to its rules and commands.	Morality demands that States should act from a sense of ethical duty.
Law has enforcing authority	Morality has no such enforcing authority.

Law is heteronomous (being imposed upon the outer life of men)	Morality is autonomous (coming from the inner life of men).
Law applies to all the subjects whether they want or not.	Morality defers in application from subject to subject.

CONCLUSION : International law is a body of rules governing the relations of sovereign States inter se, as there is no sovereign political authority of State inter se, and there is neither any supreme executive government to enforce these laws nor there exists any judicial organisation with compulsory jurisdiction. Hence International Law cannot be accepted as a legal system.

CRITICISM OF VIEW OF AUSTIN :

Professor HLA Hart criticised the Austin approach of International law:

1. States often reapproach each other for immoral conduct or praise themselves or others for living upto the standard of international morality. But on clear appraisal of International law, one can understand that *formulation of claims, demands, and the acknowledgment of rights and obligations of the states* are acknowledgeable as opposed to mere morality.

These claims in International law *may not use the terms as used in Municipal law*, but states address to each other over disputed matters of international law, are references to precedents, treaties and juristic writings instead of referring to as to who is right or wrong or good or bad.

2. The rules of international law; like those of municipal law are often morally quite indifferent. Such rules of International law exist not because of moral importance, rather because of *convenience or necessity.*
3. Practice of states indicate that claims expose the offender to serious criticism and are held to justify claims for *compensation or retaliation.*

CRITICISM ON AUSTIN VIEW | OTHER POINTS [THAT IL IS NOT MORALITY]

1. *Sir Pollock* argues that framers of states papers concerning foreign policy do not focus on moral argument or righteousness , rather focus on to precedents, treaties and opinions of specialists.[1]
2. UN Charter-law is based on the true legality of international law.
3. ICJ can decide in accordance with international law such disputes as are submitted to it vide Article 38 of the ICJ Statute.
4. In addition to customs, a substantial amount of international legislation in the form of treaties and conventions has come into existence through established means of law making in International law.

[1] Sir Pollock rightly said, "If international law were only a kind of morality, the framers of States papers concerning foreign policy would throw all their strength on moral argument. But as a matter of fact this is what not they do. They appear not to the general feeling of moral rightness, but to precedents, to treaties and 10 opinions of specialists. They assume the existence among statesmen and publicists of a series of legalas distinguished from moral obligations in the affair of nations."

5. Since the States look upon international law as governing their relations inter se, and ipso facto binding upon them, it would be pedantic to consider such a body of rules as 'true law'.

CONCLUSION : Jurist Bryce considered the imperative theory of Austin is 'untrue as a matter of history. On consideration of the above-said criticism, Austin view that international law is not a law but merely a positive morality, does not appear to be correct.

"International Law is the vanishing point of Jurisprudence." Explain.
Asked in UPSC 2019. Question 5(a) [Compulsory]
"International Law is defined as 'Vanishing point of Jurisprudence'." (Holland). Examine this viewpoint with reference to the nature of International Law.
Asked in UPSC 2007. Question 5(a) [Compulsory

HOLLAND: INTERNATIONAL LAW IS THE VANISHING POINT OF JURISPRUDENCE (INTERNATIONAL LAW IS A LAW BY COURTESY

Holland | *International Law is the vanishing point of jurisprudence, since it lacks any arbiter of disputed questions, save public opinion, beyond and above the disputed parties themselves, and since, in proportion as it tends to become assimilated to true law by the aggregation of States into a larger society, it ceases to be itself, and is transmitted into the public law of a federal Government.*

Similar to Austin view, Holland consider that International Law cannot be kept in the category of law mainly because there is neither any sovereign authority nor there exists sanctions if its rules are violated.

Holland therefore, states that

- *International Law "can indeed be described as law only by courtesy*, since the rights with which it is concerned cannot properly be described as legal."
- The law of nations is but private law 'writ large'.
- International law lacks in any powerful arbiter and law without an arbiter is contradiction in terms. It is nothing more than the moral Code of nations; it is the vanishing point of jurisprudence.

His conclusion is based on the facts that

- International law lacks *an arbiter above the parties themselves* .
- In proportion, International law tends to become assimilated to true law by the aggregation of States into a larger society it ceases to be itself and is transmitted into the public law of a federal government.
- According to Holland, the true test of law lies in the fact that *it must be obeyed; if not obeyed, there is sanction (punishment).* But international law has neither any powerful machinery nor any sanction to punish its transgressors and the aggressor - States make frequent violations of it and they go unpunished. Hence international law cannot maintain its existence due to its frequent violations with impunity.

Lord Salisbury observes: “International can be enforced by no tribunal and therefore to apply to it the phrase ‘Law' is to some extent misleading.”

CRITICISM OF HOLLAND VIEW : Holland's view of **non-existence of sanctions** behind international law is not correct. It can be only said that sanctions behind international law are much weaker than their counterparts in the municipal law, but saying no sanctions at all behind international law cannot be true.

For example,

- if there is a threat to international peace and security, under Chapter VII of the UN Charter, the Security Council can take necessary action to maintain or restore international peace and security.
- Besides this, the decisions of the International Court of Justice are final and binding upon the parties to the dispute (Article 59 of the Statute of the Court).

Holland regards international law as the vanishing point of jurisprudence because in his view, there is **no arbiter or judge to decide international disputes** and that the rules of international law are followed by States by courtesy. This view is far from true in view of the developed and changed character of international law today. It is not correct to say that international legal system is without a Court to decide international disputes.

- The establishment of the Permanent Court of International Justice established under the League of Nations, has rightly been reckoned as a landmark for the development of international law because through it international legal system was provided with a judicial organ to resolve international disputes through the judicial decision. Now it is called International Court of Justice.

It must be admitted that international law is weak law but it does not mean that it does not exist and has no future. Its future is certainly high Hence it may be concluded that international law. In fact, law and it is wrong to say that it is the vanishing point of jurisprudence.

“The controversy whether International law is law or not is meaningless because, in fact, it is law and is generally obeyed.” Highlight the views of prominent writers about the above statement.

Asked in UPSC 2004.

APPROACH 2 : INTERNATIONAL LAW IS LAW IN THE TRUE SENSE OF THE TERM

The writers who consider the International Law is law in the true sense of the term are Oppenheim, Lawrence, Starke, Salmond, Hall and other historical school jurists founded by Savigny and Maine, Prof.

Oppenheim regards International Law as true law on the following grounds:

- International Law is constantly recognized as law in practice, Governments of different States feel that they are morally bound to follow and observe International Law.

- While breaking the rules of International Law, States do not deny its legal existence rather than recognise its existence and try to interpret International Law by justifying their conduct. Hence International Law may be properly interpreted to be a complete legal system.

Violations do take place in municipal society by criminals as well that is the reason that jails in every country are always full of criminals. Does it mean that because municipal law is violated and therefore it is no law at all? Like ordinary law, international law is also frequently violated but it does not mean that it does not exist.

According J.L. Brierly, "The best evidence for the existence of international law is that every actual State recognizes that it does exist and that it is itself under obligation to observe it. States may often violate International Law, just as individuals often violate municipal law; but no more than individuals do States defend their violations by claiming that they are above the law."

Professor Starke has criticised the Austinian concept of law, and holds the view that International Law is true law on the following grounds:

- It has been established by modern historical jurisprudence that in many communities, a system of law existed and was being observed although those communities lacked formal legislative authority. **Such law did not differ in its binding operation from the law of any State with a true legislative authority to frame them**.
- Austinian's views on International Law, might have been correct in his time, but they are not true in the present scenario.
- Customary rules of International Law are diminishing and are being replaced by law making treaties and conventions. International Conventions on various subjects have become international legislations, so it cannot be said that there is no legislation under international system. Today bulk **of international law comprises of rules laid down by various law making treaties, Geneva, Hague Conventions**. The rules laid down by these treaties are binding although they do not emanate from ***a sovereign political authority***.
- The authoritative machinery responsible for maintenance of international intercourse between States, do not consider International Law - as merely a moral Code.

OTHER POINTS INDICATING INTERNATIONAL LAW AS TRUE LAW :

- United Nations established and is based on the true legality of international law. The decision and resolutions of the General Assembly and Security Council Constitute Law binding on the members of the UNO.
- Questions of international law are always treated as **legal questions** by those who conduct international business. Sir Pollock rightly observed that where international questions arise, States do not rely upon moral arguments but upon treaties, precedents and opinions of specialists.

In some states, International Law is treated as a part of their own law having the same force as the ordinary law binding their citizens. The US Supreme Court in the Paquete Habana case, Justice Gray observed, "International Law is part of our law, and must be ascertained and administered by the Courts of Justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination."

- **Sir Henry Maine**, one of the Chief exponents of historical school of jurisprudence firmly established that in primitive societies, there were no sovereign political authorities, yet there were laws to bind the members of the societies in their conduct.
- International law does **not lack sanction** such as the vigilant world public opinion, the sanction of the UN by collective security measures, intervention, violent self-help, defence and finally by war. The Security Council of United Nations imposes sanction upon the erring States.
- Law is also observed by the consideration of justice and convenience and ***mere existence of police force does not compel obedience to law***. It is not the existence of police force that makes the particular system of law strong and respected but the very strength of law is everything that makes the police force to be organised.
- The **element of fear** is also not altogether absent in so far an international law is concerned. Nations are afraid that any gross violation of any accepted rule of international law may result in displeasure of the world community. Even in cases of the nuclear powers there is balance of terror and each of the nuclear power is afraid of another nuclear power
- **The legally binding rules of international law** have been asserted again and again by the nations from time to time and the legal force of international law cannot be ignored as the Statute of the International Court of Justice (ICJ) annexed to the UN Charter clearly directs the Judges of the ICJ to decide the dispute submitted to it, in accordance with international law. Its decisions stand recognized as legal force.

CONCLUSION : No doubt International Law is less imperative and less explicit than the State law but nevertheless it is law.

SANCTIONS UNDER INTERNATIONAL LAW

One extreme view is that International Law is a system without sanctions. However, it is not quite true that there are no forcible means of compelling a state to comply with International Law.
UPSC 2011. Asked in Question 5(a)

MEANING OF SANCTION : Sanction' (Lat. 'Sanctio') is that part of a law which inflicts a penalty for its violation or bestows a reward for its observance. If rules are violated or obligations contained

therein are not observed by the subjects, enacted specific penalty or punishment which is imposed in order to enforce obedience to a law is called sanction.

VIEWS IN INTERNATIONAL LAW :

- According to another view, even if there is no sanction, still it is a law because sanction is not an essential element of law.
- There is also another view which holds that the International Law is not without sanction.

J.E.S. Fawcett says, "International order, far from perfect though it has its own sanctions, seldom imposed by force or command, but as it were, natural sanctions to mature and gradual in effect, but made compelling by the governing independence of the world"

According to **Kelsen, law is a coercive force.** The force may be either in the form of sanction or delinquency. In the International law, a sanction or delinquency is sanction. The only difference between the municipal law and the international law is of degree of concentration of force. Under municipal law the force is monopolised by the community but in international law, the individual States must make use of the force.

Starke has pointed out following force behind the international law:
i) Under the UN Charter, if there is any threat to the international peace and security or an aggression has taken place the Security Council can take necessary action to maintain international peace and security.
ii) The decision of the International Court of Justice are binding on the disputes parties.
iii) The Charter of the UN stipulates that the member States have undertaken that they shall respect the territorial integrity and independence of each other and shall not use force against each other.

Sometimes the acts of a particular State in violation of the International Law may be regarded by other States as illegal and inoperative. Prof. H.L.A. Hart states, "there exist among States rules imposing obligations upon them. **Thus, it cannot be denied that there is no sanction behind the international law.**

In classical International Law the sanction be imposed in the form of ***war and reprisals.***

- Sanctions in the modern International Law are quite different as the war as well as repraisals in most of the cases have become unlawful.
- Sanctions applied by the aggrieved State are required to be lawful and they must conform to the provisions of the UN Charter.
- Sanctions which are provided in International Law at present may be applied by the States individually or collectively by international organisations.

SANCTIONS BY STATES

- Individually a State may apply sanction by means of self-help.
- Self-help is a right of State which is available to the victim of a wrong.

- Kelsen states, “In early law the execution of the sanction was decentralised, that is to say, it was left to the individual whose interest was violated by the behaviour of another individual which constituted the delict. The primitive legal technique is called the principle of self-help.”
- At present, the action taken in self-help is required to be in strict compliance with the provisions of the Charter and within due limits of the powers vested in each of them. Armed attack is forbidden.

COLLECTIVE SANCTIONS

- The International organisations which States themselves have established have been empowered to take collective sanctions against a State which violates the rules.
- For example the UN Charter postulates economic, financial and military sanctions under Chapter VII.
- In addition, the UN may also apply political sanctions although the term 'political' has not been mentioned expressly in the Charter, Economic and financial sanctions may be applied against a State under the authority of the Security Council.
- They include the complete or partial severance of economic relations against a State or the application of embargo.
- In the past, it has been applied against many countries such as *South Rhodesia, South Africa, Cambodia,Liberia, Haiti, Angola, Rwanda, Syria etc*.
- Military sanctions includes use of air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades and other operations by air, sea or land forces of the members of the UN under the Security Council.
- Military Act has been taken against K*orea, in Gulf Crisis (1990-91), Somalia, Rwanda, Haiti etc.*
- Political measures such as appeal to a State to do or not to do certain acts, suspension of an exercise of the rights and privileges of the membership of the UN and expulsion from the membership of the organisation or from the specialised agencies thereof. Political measures are applied mainly to hurt the prestige of a State.
- Special agencies of the UN such as ILO, ICAO, WHO, IPO and ITO have also been authorised to take action in accordance with the provisions of their constitutions against a State which fails to perform the obligations contained therein.

Above are the sanctions which international legal system provides against a State which fails to observe its obligations. These sanctions may not as effective as one finds in the municipal law. Main reasons for its ineffectiveness lies in the fact that there is no international sovereign authority over sovereign States.

REVISION NOTES

TWO APPROACHES :

1ST Approach : **IL[International law**] is not true law, just rules of conduct of moral force only.

2nd Approach : IL is a true law.

Edward Collins & Lawrence says these *two approaches* of IL is the result of - how the exponents of these approaches- view the definition of 'what is law'?

NATURE OF INTERNATIONAL LAW | ANALYTICAL OVERVIEW .

- When a crime happens, it is daily reported in media, but only serious breach of international law is reported in media. This can *can give a distorted impression of the nature of international law*. Fact is International law has no easy sanction for its breach, and there is no international police force or army that can immediately step in. On this count, international law is often perceived as not really law.
- When we look at the sources of international law, its binding force does not come from the existence of police, courts and prisons. It is based on *the **consent (express or implied) of States,** and national self-interest*: if a State is seen to ignore international law, other States may do the same. The resulting chaos would not be in the interest of any State.
- The *raison d'être of international law* is that relations between States should be governed by common principles and rules.
- There are legal advisers for every foreign minister in every country. Point is these legal advisers are trained in law, not to practise law, rather to advise foreign ministers. If international law is not law, then legal advisers to foreign ministries are all drawing their salaries under false pretences.

APPROACH 1 : INTERNATIONAL LAW IS NOT LAW IN THE TRUE SENSE OF THE TERM

GENERAL OVERVIEW | *Hobbes, Pufendorf and Austin* subscribed to the view that law 'properly so called' is a command of the sovereign, as there is no sovereign in International level, they deny legal character of International Law. Supported by *Holland, Jermy, Bentham, Hethro Brown, Lord Salisbury, etc*.

CONCLUSIONS :

- In every country *[municipal law],* there is a determinate superior political authority which may compel the citizens to observe the law, there is no such authority in international law i.e., it lacks *lacks sanction* which is an essential element of law.

- In international law - there is no *effective legislative machinery or executive agency or potent judiciary*
- D.J. Lathan Brown calls IL as quasi-law.

AUSTIN [IS INTERNATIONAL LAW A MERE POSITIVE MORALITY?]

TWO ELEMENTS OF HIS DEFINITION : Austin definition contains two important elements of law.

- Law is a command enacted by the sovereign legislative authority i.e. any rule which is not enacted by sovereign or superior cannot be regarded as law, and
- Command must be enforced by the sovereign authority, i.e. if laws are violated, there should be 'adequate sanction behind it' OR 'orders backed by threats'.

If these two elements are not there, such rule is not considered as a 'proper' Law.

AUSTIN VIEW ON INTERNATIONAL LAW :

- International Law cannot be called law proper in true sense, because, it lacks two elements of law i.e., it has neither *sovereign legislative authority to enact law* nor *there is an adequate sanction behind it.*
- In international law, there is no enforcement agency which can enforce it as a body of rules.

These are the reasons for the Austin preferred to call International Law as *'positive international morality'.*

POSITIVE MORALITY : Since there is no sovereign authority and sanctions behind international law, it has been regarded by him as a rule of morality. .

CONCLUSION : Hence International Law cannot be accepted as a legal system.

CRITICISM OF VIEW OF AUSTIN :

Professor HLA Hart criticised the Austin approach of International law:

- Claims/Disputes in International law are solved with references to *precedents, treaties and juristic writings i*nstead of referring to as to who is right or wrong or good or bad.
- Rules of International law are different from Municipal law, and it exists not because of moral importance, rather because of *convenience or necessity.*
- Practice of states indicate that claims expose the offender to serious criticism and are held to justify claims for *compensation or retaliation.*

CRITICISM ON AUSTIN VIEW | OTHER POINTS [THAT IL IS NOT MORALITY]

- *Sir Pollock* argues that framers of states papers concerning foreign policy do not focus on moral argument or righteousness , rather focus on to precedents, treaties and opinions of specialists.
- *In addition to customs, treaties are now* established means of law making in International law.
- ICJ can decide disputes as are submitted to it vide Article 38 of the ICJ Statute as per IL.

- Since the States look upon international law as governing their relations inter se, and ipso facto binding upon them, it would be pedantic to consider such a body of rules as 'true law'.

CONCLUSION : Jurist Bryce considered the imperative theory of Austin is 'untrue as a matter of history. On consideration of the above-said criticism, Austin view that international law is not a law but merely a positive morality, does not appear to be correct.

HOLLAND: INTERNATIONAL LAW IS THE VANISHING POINT OF JURISPRUDENCE (INTERNATIONAL LAW IS A LAW BY COURTESY

Holland | *International Law is the vanishing point of jurisprudence, since it lacks any arbiter of disputed questions, save public opinion, beyond and above the disputed parties themselves, and since, in proportion as it tends to become assimilated to true law by the aggregation of States into a larger society, it ceases to be itself, and is transmitted into the public law of a federal Government.*

Holland therefore, states that

- *International Law "can indeed be described as law only by courtesy*, since the rights with which it is concerned cannot properly be described as legal."
- The law of nations is but private law 'writ large'.
- International law lacks in any powerful arbiter and law without an arbiter is contradiction in terms. It is nothing more than the moral Code of nations; it is the vanishing point of jurisprudence.

His conclusion is based on the facts that

- International law lacks *an arbiter above the parties themselves* .
- In proportion, International law tends to become assimilated to true law by the aggregation of States into a larger society it ceases to be itself and is transmitted into the public law of a federal government.
- According to Holland, the true test of law lies in the fact that *it must be obeyed; if not obeyed, there is sanction (punishment).* But international law has neither any powerful machinery nor any sanction to punish its transgressors and the aggressor - States make frequent violations of it and they go unpunished. Hence international law cannot maintain its existence due to its frequent violations with impunity.

Lord Salisbury observes: "International can be enforced by no tribunal and therefore to apply to it the phrase 'Law' is to some extent misleading."

CRITICISM OF HOLLAND VIEW : Holland's view of **non-existence of sanctions** behind international law is not correct. It can be only said that sanctions behind international law are much weaker than their counterparts in the municipal law, but saying no sanctions at all behind international law cannot be true.

- **UNSC can take** Chapter VII – necessary action to maintain international peace & security.
- **Decisions of ICJ are** final and binding. [Article 59 of ICJ Statute]

It must be admitted that international law is weak law but it does not mean that it does not exist and has no future.

APPROACH 2 : INTERNATIONAL LAW IS LAW IN THE TRUE SENSE OF THE TERM

The writers who consider the International Law is law in the true sense of the term are Oppenheim, Lawrence, Starke, Salmond, Hall and other historical school jurists founded by Savigny and Maine, Prof.

Oppenheim regards International Law as true law on the following grounds:

- International Law is constantly recognized as law in practice, Governments of different States feel that they are morally bound to follow and observe International Law.
- Breaking of International Law by states, do not deny its legal existence rather than recognise its existence by justifying their conduct with proper interpretation.

Professor Starke :

- It has been established by modern historical jurisprudence that in many communities, a system of law existed and was being observed although those communities lacked formal legislative authority. **Such law did not differ in its binding operation from the law of any State with a true legislative authority to frame them**.
- Customary rules of International Law are diminishing and are being replaced by law making treaties and conventions. The rules laid down by these treaties are binding although they do not emanate from ***a sovereign political authority***.

OTHER POINTS INDICATING INTERNATIONAL LAW AS TRUE LAW :

- United Nations established and is based on the true legality of international law. The decision and resolutions of the General Assembly and Security Council Constitute Law binding on the members of the UNO.
- In US, IL is treated as a part of their own law having the same force as the ordinary law binding their citizens.
- **Sir Henry Maine** : in primitive societies, there were no sovereign political authorities, yet there were laws to bind the members of the societies in their conduct.
- International law does **not lack sanction** such as the vigilant world public opinion, the sanction of the UN by collective security measures, intervention, violent self-help, defence and finally by war. The Security Council of United Nations imposes sanction upon the erring States.
- Law is also observed by the consideration of justice and convenience and ***mere existence of police force does not compel obedience to law***.
- The **element of fear** is also not altogether absent in so far an international law is concerned.

CONCLUSION : No doubt International Law is less imperative and less explicit than the State law but nevertheless it is law.

SANCTIONS UNDER INTERNATIONAL LAW

If rules are violated or obligations contained therein are not observed by the subjects, enacted specific penalty or punishment which is imposed in order to enforce obedience to a law is called sanction.

TWO VIEWS IN INTERNATIONAL LAW :

- **1ST VIEW :** Even if there is no sanction, still it is a law because sanction is not an essential element of law.
- 2ND VIEW : International Law is not without sanction.

J.E.S. Fawcett says, "International order, far from perfect though it has its own sanctions, seldom imposed by force or command, but as it were, natural sanctions to mature and gradual in effect, but made compelling by the governing independence of the world"

According to **Kelsen, law is a coercive force.** The force may be either in the form of sanction or delinquency. In the International law, a sanction or delinquency is sanction.

Starke has pointed out following force behind the international law: (1) UNSC can take necessary action under Chapter VII (2) Decisions of ICJ is binding (3) UN Members undertaken to respect the territorial integrity and independence of each other and shall not use force against each other.

Prof. H.L.A. Hart states, "there exist among States rules imposing obligations upon them. **Thus, it cannot be denied that there is no sanction behind the international law.**

Classical International law : Sanctions were in form ***war and reprisals***	Modern international law : Aggrieved state can take action in conformity with UN Charter – such sanctions individually or collectively by international organisations.

SANCTIONS BY STATES

- Individually a State may apply sanction by means of self-help.
- Self-help is a right of State which is available to the victim of a wrong.
- Kelsen states, "In early law the execution of the sanction was decentralised, that is to say, it was left to the individual whose interest was violated by the behaviour of another individual which constituted the delict. The primitive legal technique is called the principle of self-help."
- At present, the action taken in self-help is required to be in strict compliance with the provisions of the Charter and within due limits of the powers vested in each of them. Armed attack is forbidden.

COLLECTIVE SANCTIONS The International organisations which States themselves have established have been empowered to take collective sanctions against a State which violates the rules. For example the UN Charter postulates economic, financial and military sanctions under Chapter VII.

- Economic & Financial Sanctions by UNSC. Examples : as *South Rhodesia, South Africa, Cambodia,Liberia, Haiti, Angola, Rwanda, Syria etc*.
- Military Sanctions use of air, sea or land forces. Example : Against K*orea, in Gulf Crisis (1990-91), Somalia, Rwanda, Haiti etc.*
- Political measures such suspension or expulsion of UN membership.
- Measures can be undertaken by other International organisation [ILO, ICAO, WHO, IPO and ITO] and specialised agencies in their field also.