**University Djillali BOUNAMA**

**Public Law Department**

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**Lecture n°3:**

**International Law: The Law of International Community**

1. **Introduction :**

Nomenclature and opinions on international law differed, there are those who called it the law of peoples, and some others called it the law of nations. But the name that has gained consensus and is commonly used in the diplomatic language even today is international law, attributed to the English philosopher **Jeremy Bentham (1748-1832)**, who used it for the first time in his book entitled: Introduction to the principles of morality and legislation, published in 1780.

1. **Definition of public international law:**

Legal Studies and research have led to discussions about the legal definition of international law , and there are many opinions of ancient and modern jurists in the light of contemporary international law.

In this context, three trends have emerged:

**The first trend** It appeared at the stage before the International Organization and international organizations, whether global or regional, where states were the only subjects of international law, and thus the definition of international law was limited to regulating relations between states.

**The second trend** It appeared during the period of the emergence of international organizations and defined international law as a set of customary rules and Convention governing relations between subjects of international law.

**The third trend** he combined the two previous trends, which defined international law as a set of legal norms applied in the international community within the framework of relations between sovereign states and international organizations in their mutual relations.

**2-1- The classical definition of international law:**

The supporters of this trend define international law as a set of legal norms regulating relations between states, that is, it is the law that cares about the rights and duties of states, (The emergence of the international community began with the emergence of nation-states only in Europe).

* At the beginning of the twentieth century, the majority of jurists agreed that the state is the only subject of public international law, and in the same context, Oppenheim defined international law as the set of customary rules or convention that civilized countries consider legally binding on them.
* The Permanent Court of international justice also adopted the traditional definition in its ruling on the Lotus case of 1927, (the Lotus case was filed with the International Court because of the collision that occurred between the French ship Lotus and the Turkish ship **Boz Kort** in the high seas adjacent to Turkey, resulting in the sinking of the Turkish ship(.
* As for the Russian jurist **GI TONKIN**, he believes that international law is a set of legal rules established by agreement between states, as an expression of Common will during the struggle and cooperation for the maintenance of peaceful coexistence between the capitalist and socialist systems, which requires the obligation of states individually or collectively to ensure the survival of these rules.

**2-2- Modern definition of international law:**

After the development of the international community, the scope of international law has expanded to include, besides States, international organizations and individuals, to become an expression of binding legal norms governing relations between subjects of international law, states and international organizations.

We conclude that international law is a set of legal rules that find their source in international agreements, international custom and general principles of law, where these rules are applied to the subjects of international law in regulating their relations and determining rights and duties.

1. **The Sources of international law:**

Article 38 of the statute of the International Court of Justice defines the sources of international law and has divided them into original sources and backup sources:

1. **Original sources:**

**a-a- International treaty:**

International treaties are one of the most important original sources of international law.

The term international treaty is used to denote every international agreement that takes the form of an international document where, after ratification, the rules contained in it become binding on the parties that concluded it.

* All international treaties are considered a source of international law, regardless of the holistic or regional nature of the parties to these agreements, it is important that they meet the legal conditions for their conclusion and do not contradict a peremptory norm in international law.
* The preamble of the Vienna Convention of 1969 emphasized the important role of international treaties in the history of international relations as a source of international law and a means for the development of peaceful cooperation between states.
* The development of the law of international treaties will support the principles of the United Nations contained in its charter, namely the maintenance of international security and peace, the development of friendly relations and the achievement of international cooperation.
* An international agreement arises from the convergence of two or more wills of the subjects of international law through three conditions :

1. The agreement must be in writing, not verbally.
2. The agreement must be between the subjects of international law.
3. That this agreement has a legal effect.

**a-b- International custom:**

* International custom is another source of international law, which occupied a major position during the 19th century and gradually declined in comparison with international treaties as the best form of international cooperation.
* International custom is a set of unwritten legal provisions that arise as a result of states following them in certain behavior, proving the belief of the majority of civilized countries in the power of legal custom, where it becomes accepted by the international community.
* The peculiarity of the international community lies in the fact that it is not an official document, but consists of foreign policy documents and diplomatic correspondence between states in the context of the exercise of their functions by the international bodies in charge of Foreign Relations.
* There are three elements that characterize the international custom:

1. Continued formation of the customary norm.
2. The legally obligatory characteristic of international custom.
3. Recognition of international custom.

The elements of international custom are necessary to transform it into an international legal norm, where they do not contradict the international treaty, but interact with it integrally in the course of international relations.

1. **Backup sources:**
2. **Court rulings and opinions of Jurists:**

* Article 38 of the statute of the International Court of Justice considered the judgments of the courts and the opinions of Jurists as a reserve source of the norms of public international law.
* The arbitration courts include the permanent decisions of the International Court of justice and the decisions of the international arbitration courts formed in The Hague 1899-1907, where they represent different arbitral organs from international courts and contributed to the development of international law.
* It is possible to resort to the decisions of internal courts and apply their decisions to relations between subjects of international law.

1. **Judicial precedents:**

The cases that have been brought before international courts : the arbitration court or the International Court of Justice, When similar cases are presented, the same legal rules are applied, and the judgments and decisions of national courts containing a foreign element, such as disputes in which private international law is applied, are also used in order to:

1. Adaptation of the law to the circumstances of special cases.
2. Complementing the shortcomings of international law.
3. Refusal to apply an unfair law.
4. **Resolutions of international organizations:**

* The resolutions of international organizations are a modern source of international law; they represent the resolutions issued by international organizations such as the United Nations and its subsidiary bodies, the resolutions of the General Assembly and the advisory opinions of the International Court of Justice.
* The resolutions of international organizations remain only recommendations that acquire binding status only in specific cases of the Security Council and related to the provisions of Chapter VII of the Charter of the United Nations and the technical regulations of the specialized agencies.
* The International Court of Justice issued an advisory opinion on the legality of the use of nuclear weapons in 1996 and issued another opinion in 2004 on the apartheid wall in Palestine.
* When states vote several times in the UN General Assembly in favor of ending racial discrimination, they cannot later deny the existence of a customary rule condemning racial discrimination, but that customary rule will turn into a binding customary rule for those states.