

Over a period of some 300 years there has been an intense rivalry between two schools of international law publicists concerning the nature and foundation of the rules of international law. The followers of Grotius contend that the law of nations is a natural body of law which has always existed and merely finds expression in treaties, customs and usage of nations. These natural rules according to this school are based on general principles of justice, humanity and morality.

On the other hand is the Austinian school which expounds the ^{theory} school of positivism. These men refuse to recognize as law any principles which cannot be enforced because nations are unwilling to recognize them. They maintain, therefore, that only those rules which are accepted by ^{or nearly all,} all nations constitute the body of international law.

In essence the natural law theory appeals to the finer instincts of theorists and the ^{vi} positivists school appeals to those who approach legal problems from a strictly practical point of view. For our purpose it is sufficient to note that the ultimate rationalization of both theories will be quite ^{similar} simple. If justice, morality and humanity are the basis of the rules of international law then they must be interpreted with these principles in mind and must be applied in a manner which will carry them out. If, however, the rules of international law are only those accepted by the majority of nations, the interpretation and application of the rules will be the same since general acceptance can be achieved only by appeal to the masses and the ~~existence~~ events of this war have proved that the ~~existence~~ masses will only accept a course of conduct based on justice, morality and humanity.

The conclusion which we can draw from this brief historical analysis is that our application of existing principles of international law governing

the conduct of nations at war and our developments of those principles to fit new fact situations which must be guided by these principles: justice, humanity and morality. The importance of this conclusion will be clear from the discussion of the specific questions which it is my purpose to answer. They are questions which are not covered specifically by international agreements, by the usage of nations or by authoritative statements by the writers on international law. To answer them it will be necessary to apply old principles to new situations and perhaps even formulate new principles.