The body of law known as international law or the law of nations was not rationalized until Hugo Grotius, in 1625, set down in orderly fashion the principles of international law as they were then recognized and the rationale upon which they were based. He proceeded on the theory that it was a fundamental or natural law which always existed and which was applied to situations as they arose. His concept was, basically, the approach adopted with respect to our own common law. The concept being that the fundamental law always existed and the courts and legislatures merely give it expression. The roots of fundamental law or law of nature are based on morality, humanity, justice and equity.

Following Grotius there were many jurists and international law writers who gave weight to the doctrine of natural law both in the explanation of rules of international law which developed and the interpretation and decision of international law cases. However, in view of the fact that nations acted oftentimes from motives other than the fulfillment of justice, equity or morality, particularly in matters relating to warfare, those who followed the teachings of Grotius were hard put to explain the ineffectuality of natural law.

As a result, following the lead of Austin, another school of international law textwriters developed what became known as the positivist school. These pointed out that there could be no law without sanction and that what Grotius referred to as natural law might better be described as morality or ethics and that the field of international law should be limited to those rules of morality and ethics which the nations were willing to enforce. This

school developed specific criteria for dealing with international law problems. They restricted what might be termed as international law to that body of principles which was expressed in a specific covenant or treaty or which was described by accepted or recognized textwriters or was to be found in the customs and usages of nations.

Although this latter approach is understandable and practical and desirable in connection with private international law or even public international law other than the rules of warfare, it was manifestly too narrow to be useful in meeting the novel and unexpected problems arising out of warfare. Rules governing commerce and boundaries are necessarily detailed and specific and must be known in advance in order to serve as a basis for conduct. On the other hand, rules governing the unforeseeable conduct of a nation at war must be set in a broader frame of reference in order to attain the flexibility necessary to deal effectively with those who violate all known concepts of civilized behavior without necessarily transgressing any specific, previously agreed upon and defined offense.