"The United States Court of Claims, in the case of Galban and Company, a Corporation, v. The United States, stated:

"'International law is a system of rules founded upon long-established customs and acts of states and international agreements, not inconsistent with the principles of natural justice, which Christian and civilized states recognize as obligatory in their relations and dealings with each other, as well as with the citizens and subjects of each.

40 Ct. Cls. (1905) 495, 504.

"'International law has been defined 'as consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations: with such definitions and modifications as may be established by general consent'; . . . also, as 'a complex system, composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government or individuals in a state of natural equality and to the relations and conduct of nations; of a collection of usages, customs, and opinion, the growth of civilization and commerce, and of a code of conventional or positive law.' . . . "

"The medieval conception of a law of nature is open to certain criticisms. In the first place, when all allowances have been made for the aid afforded by Roman law, it has to be admitted that it implied a belief in the rationality of the universe which seems to us to be exaggerated. It is true that when medieval writers spoke of natural law as being discoverable by reason, they meant that the best human reasoning could discover it, and not, of course, that the results to which any and every individual's reasoning led him was natural law. . .

"In the second place, when medieval writers spoke of natural law as able to overrule positive law in a case of conflict, they were introducing an anarchical principle which we must reject . . .

"These are valid criticisms, but they do not affect the permanent truths in the conception of a law of nature, and those truths are in fact recognized and acted upon as fully to-day as they ever were. For one thing it stands for the existence of purpose in law, reminding us that law is not a meaningless set of arbitrary principles to be mechanically applied by courts, but that it exists for certain ends, though those ends have to be differently formulated in different times and places. Thus where we might say that we attempt to embody social justice in law, giving to that term whatever interpretation is current in the thought of our time, a medieval thinker might have said that positive law ought to conform to the higher law of nature . . . Even a slight acquaintance with the working of the English Common law shows it perpetually appealing to reason as the justification of its decisions, asking what is a reasonable time, or what is a reasonable price, or what a reasonable man would do in given circumstances. . .

"'The grandest function of the law of nature', Sir Henry Maine has written, 'was discharged in giving birth to modern international law.' But in the seventeenth and eighteenth centuries the medieval tradition began to be distorted by later writers, whose use of the old terminology in senses of their own went far to justify the obloquy which has been poured on the whole conception in modern times."

Brierly, The Law of Nations (1928) 9-18.

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"Dr. Friedrich Giese in his comment upon article 4 of the German Constitution states:

> "'3. The effect of Art. 4 is that international law, in so far and to the extent that it is universally recognized, is absolutely equal to German national law in validity, and forms in the same way a direct source of law for German executive and judicial officials, as well as nationals, so that, for example, a civil suit can be based directly on a principle of international law, for example, a claim of the violation of extra-territoriality. But international law is legislation. In case of a plain contradiction between a principle of German law and a principle of international law that is alleged to be universally accepted, the judge or administrative official has to apply, not international law but German law; in this case, in fact, the deviation of the German principle of law contradicts the 'universal' recognition of the principle of international law. On the other hand, preference is to be given international law in case of conflict, if the recognition of a rule of international law by the Reich can be proven. Thus the defect consists in the Reich, despite its recognition, not having yet changed the conflicting German rule of law and brought it into harmony with international law, to do that which is its duty under international law. Prot. V.A. 406. The universally recognized rules of international law are considered as part of the law of the Reich; hence according to Art. 13, take unqualified precedence over State laws that deviate therefrom."

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"On July 26, 1934 the Judicial Committee of the Privy Council concluded that actual robbery was not an essential element in the crime of piracy jure gentium and that a frustrated attempt to commit a piratical robbery was equally piracy jure gentium. In the course of its consideration of the question, the Judicial Committee had occasion to consider various definitions of piracy jure gentium. After considering numerous early views with respect to the law of piracy and in particular the case of R. v. Joseph Dawson (13 St. Tr., col. 451) which arose in 1696, Viscount Sankey, L. C., stated:

> "But over and above that we are not now in the year 1696, we are now in the year 1934. International law was not crystallized in the 17th century, but is a living and expanding code. In his treatise on international law, the English text-book writer Hall (1835-94) says at p. 25 of his preface to the third edition (1889) (1): 'Looking back over the last couple of centuries we see international law at the close of each fifty years in a more solid position than that which it occupied at the beginning of the period. Progressively it has taken firmer hold, it has extended its sphere of operation, it has ceased to trouble itself about trivial formalities, it has more and more dared to grapple in detail with the fundamental facts in the relations of States. The area within which it reigns beyond dispute has in that time been infinitely enlarged, and it has been greatly enlarged within the memory of living man.' Again another example may be given. A body of international law is growing up with regard to aerial warfare and aerial transport, of which Sir Charles Hedges in 1696 could have had no possible idea.

In re Piracy Jure Gentium, (1934) A.C. 586, 592-593.

others, while still sound theoretically, are no longer entirely suited to modern conditions, and lastly, that there are cases where the law presents loopholes which ought to be filled.

. . . .

"As a matter of fact, everybody does not view the question from the same angle. Some recommend that international law be readapted to the new circumstances. Others urge that it must be changed, by substituting new principles for the old. The general conviction is, however, that international law has already entered, or is about to enter, on a new phase of its evolution."