

# International law- morality and more assignment

Law



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International Law- Morality and More... Kamakshi Jasra, Legal Student.

Baroda School of Legal Studies, M. S. University. Introduction: International law cannot be defined per se. The concept of International Law is not only complex but also dynamic. But, in a nutshell, we can say that International law is a body of rules that nations recognize as binding upon one another in their mutual relations. However, International Law is evolving from the Morality principle to a more enforceable norm.

In basic conception, International law consists of a common body of norms or principles which are used in the solution of diverse problems. It is essential that such norms or principles be applied consistently in order to promote the objectivity and uniformity associated with “ law” as opposed to ad hoc or unprincipled decision-making in which a different rule is developed for each problem. Upon the basis of this premise, International law may be accurately regarded as a set of uniform principles which require at least minimum standards of reasonable and humane conduct in the world community.

International Laws are normative in nature. They have a futuristic view and are especially inclined towards morality. They are not laws as per the precise sense of the term but they are followed by various Nation States as a part of the declaration of their Unity with other Nation States. International Law is the law that governs International relations and various aspects of governance. The incorporation of various treaties and protocols has, to a large extent, minimized the disregard for the rights of a Nation-State.

The principles of International Law are established by consent and agreement. Express agreement is usually termed treaty or conventional law,

and implicit agreement is usually termed customary law. Both are based primarily upon the consent of States as manifested by their governments, although other participants including International public bodies and individuals have a role to play. International law is the term commonly used for referring to the system of implicit and explicit agreements that bind together nation-states in adherence to recognized values and standards. It differs from other legal systems in that it concerns states rather than private citizens. However, the term “ International Law” can refer to three distinct legal disciplines: ??? Public international law, which involves for instance the United Nations, maritime law, international criminal law and the Geneva conventions. Private international law, or conflict of laws, which addresses the questions of (1) in which legal jurisdiction may a case be heard; and (2) the law concerning which jurisdiction(s) apply to the issues in the case. ??? Supranational law or the law of supranational organizations, which concerns at present regional agreements where the special distinguishing quality is that laws of nation states are held inapplicable when conflicting with a supranational legal system. The two traditional branches of the field are: ??? jus gentium ??? law of nations ??? jus inter gentes ??? agreements among nations

In its most general sense, International law “ consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical. “[1] Enforcement of International Laws: There are mainly two aspects that hamper the enforcement of International Law. They are: 1. Conflict between

International Law and National Sovereignty or Municipal Laws. 2. The Weakness in terms of Enforcement Agencies. 1. Conflicts between Public International law and National sovereignty

The conflict between International law and national sovereignty is subject to vigorous debate and dispute in academia, diplomacy, and politics. Certainly, there is a growing trend toward judging a State's domestic actions in the light of International law and standards. Numerous people now view the Nation-State as the primary unit of International affairs, and believe that only States may choose to voluntarily enter into commitments under International law, and that they have the right to follow their own counsel when it comes to interpretation of their commitments.

Certain scholars and political leaders feel that these modern developments endanger nation States by taking power away from State governments and ceding it to International bodies such as the U. N. and the World Bank, argue that International law has evolved to a point where it exists separately from the mere consent of States, and discern a legislative and judicial process to International law that parallels such processes within domestic law. This especially occurs when States violate or deviate from the expected standards of conduct adhered to by all civilized nations.

A number of States support very narrow interpretations of International law, including the People's Republic of China, the military junta currently holding power in Burma, and the Russian Federation. These States maintain that sovereignty, and thus what some view as the basis of sovereignty, the *ultima ratio regum*, or last argument of kings (mainly declaration of War), is the

only true International law; thus seeing States as having free rein over their own affairs and their affairs in the larger world.

Other States oppose this view. One group of opponents of this point of view, including many European nations, maintain that all civilized nations have certain norms of conduct expected of them, including the prohibition of genocide, slavery and the slave trade, wars of aggression, torture, and piracy, and that violation of these universal norms represents a crime, not only against the individual victims, but against humanity as a whole.

States and individuals who subscribe to this view opine that, in the case of the individual responsible for violation of International law, becomes like the pirate and the slave trader before him, *hostis humani generis* or an enemy of all mankind, and thus subject to prosecution in a fair trial before any fundamentally just tribunal, through the exercise of universal jurisdiction.

Another group believes that States only commit to International law with express consent, whether through treaty or customary law, and have the right to make their own interpretations of its meaning; and that International courts only function with the consent of States. Though the European democracies tend to support broad, universalistic interpretations of International law, many other democracies have differing views on International law. Several democracies, including Israel, India, the United States, take a flexible, eclectic approach, recognizing aspects of public International law as universal, regarding other aspects as arising from treaty or custom, and viewing certain aspects as not being subjects of public International law at all.

Democracies in the developing world, due to their past colonial histories, often insist on non-interference in their internal affairs, particularly regarding human rights standards or their peculiar institutions, but often strongly support International law at the bilateral and multilateral levels, such as in the United Nations, and especially regarding the use of force, disarmament obligations, and the terms of the UN Charter.

Although considerable differences exist amongst democracies as to their policies and practices regarding International law, most dictatorships have very low regard for any kind of International law, either in principle, or in practice, except when it comes to the International laws that protect their own thrones and sovereignties; indeed, most grave breaches of public International law are committed by dictatorships. 2. Enforcement Since International law exists in a legal environment without an overarching “sovereign” (i. e. an external power able and willing to compel compliance with International norms as per Austin), “enforcement” of International law is very different than in the domestic context. In many cases, enforcement takes on Coasian[2] characteristics, where the norm is self-enforcing. In other cases, defection from the norm can pose a real risk, particularly if the International environment is changing. When this happens, and if enough states continually ignore a particular aspect of International law, the norm may actually change according to concepts of customary International law.

For example, prior to World War I, unrestricted submarine warfare was considered violative of International law and ostensibly the *casus belli*[3] for the United States’ declaration of war against Germany. By World War II, however, the practice was so widespread that during the Nuremberg trials, <https://assignbuster.com/international-law-morality-and-more-assignment/>

the charges against German Admiral Karl Donitz for ordering unrestricted submarine warfare were dropped, notwithstanding that the activity constituted a clear violation of the Second London Naval Treaty of 1936.

The decentralization of sanctions remains one of the chief limitations of International law. Although International bodies sometimes pronounce in favor of the execution of sanctions, the member States falter in the implementation of the verdict. Furthermore, the UN is wholly dependent on its members on operating funds, so no matter what decisional authority its members give it, its ability to take action not only depends on its decision but also on means.

Without the support, the wealth and the material assistance of national governments, the UN is incapable of effective sanctions. The resistance of governments to a financially independent UN arises principally on their insistence on maintaining control over sanctioning processes in International politics. Despite the usage of all-encompassing language regarding “ threats to peace, breaches of the peace, and acts of aggression”, the character of the United Nations as far as the implementation of International law goes, is indeed limited.

Its is therefore obvious that the purpose of the UN is not to enforce International law, but to preserve, restore and ensure political peace and security while it is the responsibility of the Security Council to enforce the International law that is either created or encompassed by the Charter of the United Nations. In case of incidents of hostility, the members of the Council

may decide politically, and not legally, to embark upon combined action that has an enforceable outcome.

In instances of threats to or breaches of the peace short of war, they may decide politically to take anticipatory action short of force. Moreover, it is for the members of the Security Council to determine when a threat to peace, a breach of peace, or an act of aggression has transpired. Even this determination is made on political rather than legal criteria. The Security Council may have a legal basis for acting, but self-interest determines how each of its members would vote, irrespective of how close to aggression the incident at issue may be.

Hence by the virtue of both its constitutional limitations and the exercise of sovereign prerogatives by its members, the Security Council's role as a sanctioning instrument with regard to International law is stridently constrained. Enforcement by states Apart from a state's natural inclination to uphold certain norms, the force of International law has always come from the pressure that states put upon one another to behave consistently and to honor their obligations. As with any system of law, many violations of International law obligations are overlooked.

If addressed, it is almost always purely through diplomacy and the consequences upon an offending state's reputation. Though violations may be common in fact, states try to avoid the appearance of having disregarded International obligations. States may also unilaterally adopt sanctions against one another such as the severance of economic or diplomatic ties, or through reciprocal action. In some cases, domestic courts may render



judgment against a foreign state (the realm of private International law) for an injury, though this is a complicated area of law where International law intersects with domestic law.

It is implicit in the Westphalian system of nation-states, and explicitly recognized under Article 51 of the Charter of the United Nations, that all states have the inherent right to individual and collective self-defense if an armed attack occurs against them. Article 51 of the UN Charter guarantees the right of states to defend themselves until (and unless) the Security Council takes measures to keep the peace. Enforcement by International bodies Violations of the UN Charter by members of the United Nations may be raised by the aggrieved state in the General Assembly for debate.

The General Assembly cannot make binding resolutions, only ‘ recommendations’, but through its adoption of the “ Uniting for Peace”[4] the Assembly declared that it has the power to authorize the use of force, under the terms of the UN Charter, in cases of breaches of the peace or acts of aggression, provided that the Security Council, owing to the negative vote of a permanent member, fails to act to address the situation. The Assembly also declared, by its adoption of resolution 377 A, that it could call for other collective measures??? such as economic and diplomatic sanctions??? in situations constituting the milder “ threat to the Peace”.

The Uniting for Peace resolution was initiated by the United States in 1950, shortly after the outbreak of the Korean War, as a means of circumventing possible future Soviet vetoes in the Security Council. The legal significance of the resolution is unclear, given that the General Assembly cannot issue

binding resolutions. However, it was never argued by the “ Joint Seven-Powers” that put forward the draft resolution, during the corresponding discussions, that it in any way afforded the Assembly new powers.

Instead, they argued that the resolution simply declared what the Assembly’s powers already were, according to the UN Charter, in the case of a dead-locked Security Council. The Soviet Union was the only permanent member of the Security Council to vote against the Charter interpretations that were made law by the Assembly’s adoption of resolution 377 A. Alleged violations of the Charter can also be raised by states in the Security Council. The Security Council could subsequently pass resolutions under Chapter VI of the UN Charter to recommend the “ Pacific Resolution of Disputes. Such resolutions are not binding under International law, though they usually are expressive of the Council’s convictions. In rare cases, the Security Council can adopt resolutions under Chapter VII of the UN Charter, related to “ threats to Peace, Breaches of the Peace and Acts of Aggression,” which are legally binding under International law, and can be followed up with economic sanctions, military action, and similar uses of force through the auspices of the United Nations.

It has been argued that resolutions passed outside of Chapter VII can also be binding; the legal basis for that is the Council’s broad powers under Article 24(2), which states that “ in discharging these duties (exercise of primary responsibility in International peace and security), it shall act in accordance with the Purposes and Principles of the United Nations”. The mandatory nature of such resolutions was upheld by the International Court of Justice (ICJ) in its advisory opinion on Namibia. The binding nature of such

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resolutions can be deduced from an interpretation of their language and intent.

States can also, upon mutual consent, submit disputes for arbitration by the International Court of Justice, located in The Hague, Netherlands. The judgments given by the Court in these cases are binding, although it possesses no means to enforce its rulings. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. Some of the advisory cases brought before the court have been controversial with respect to the court's competence and jurisdiction.

Often enormously complicated matters, ICJ cases (of which there have been less than 150 since the court was created from the Permanent Court of International Justice in 1945) can stretch on for years and generally involve thousands of pages of pleadings, evidence, and the world's leading specialist public International lawyers. As of 2005, there are twelve cases pending at the ICJ. Decisions made through other means of arbitration may be binding or non-binding depending on the nature of the arbitration agreement, whereas decisions resulting from contentious cases argued before the ICJ are always binding on the involved states.

In the Fisheries Jurisdiction case (United Kingdom v. Iceland, 1974) the ICJ contributed to the firm establishment in law of the idea that mankind needs to conserve the living resources of the sea and must respect these resources. The Court observed: It is one of the advances in maritime

International law, resulting from the intensification of fishing, that the former laissez-faire treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard of the rights of other States and the needs of conservation for the benefit of all.

Consequently, both parties have the obligation to keep under review the fishery resources in the disputed waters and to examine together, in the light of scientific and other available information, the measures required for the conservation and development, and equitable exploitation, of these resources, taking into account any International agreement in force between them, such as the North-East Atlantic Fisheries Convention of 24 January 1959, as well as such other agreements as may be reached in the matter in the course of further negotiation.

The Court also held that the concept of preferential rights in fisheries is not static. This is not to say that the preferential rights of a coastal State in a special situation are a static concept, in the sense that the degree of the coastal State's preference is to be considered as for ever at some given moment. On the contrary, the preferential rights are a function of the exceptional dependence of such a coastal State on the fisheries in adjacent waters and may, therefore, vary as the extent of that dependence changes. The Court's judgment on this case contributes to the development of the law of the sea by recognizing the concept of the preferential rights of a coastal State in the fisheries of the adjacent waters, particularly if that State is in a special situation with its population dependent on those fisheries.

Moreover, the Court proceeds further to recognize that the law pertaining to fisheries must accept the primacy of the requirement of conservation based on scientific data. The exercise of preferential rights of the coastal State, as well as the historic rights of other States dependent on the same fishing grounds, have to be subject to the overriding consideration of proper conservation of the fishery resources for the benefit of all concerned.

In 1967 the Security Council decided to isolate Southern Rhodesia (now Zimbabwe) for its policy of racial separation following its unilateral declaration of independence from Britain. As in other cases of economic sanctions, effectiveness in the Rhodesian situation was limited by the problems of achieving universal participation, and the resistance of national elites to external coercion. With respect to universal participation, even States usually sympathetic to Britain's policy demonstrated weak compliance.

Though states (or International organizations) are usually the only ones with standing to address a violation of International law, some treaties, such as the International Covenant on Civil and Political Rights have an optional protocol that allows individuals who have had their rights violated by member states to petition the International Human Rights Committee.

Conclusion The World of Today is not glory alone. The Evils and anxieties from varied segments form an integral part of our lives.

Globalization may be a boon but it gives rise to various curses with evolution. International arenas have increased while the laws governing them remain stagnant and ineffective legally. It is necessary that we create

agencies that make International Law mandatory. Being customary in nature, International Law has evolved as the cream and needs to be maintained in that manner. Sources: 1. Wikipedia. 2. Columbia Law School, McKeever, 2003 ??? Definition of International Law 3.

The role of International Law in Achieving Justice and Peace in Palestine-Israel by W. T. Mallison, Jr. , and S. V. Mallison. 4. Essay on Political Analysis of International Law. 5. International Law by S. K. Kapoor. 6. Article on International law's mixed heritage: a common/civil law jurisdiction by Picker, Colin B. 7. www. Google. co. in ————— [1] Columbia Law School, McKeever, 2003 ??? Definition of International Law [2] Ronald Harry Coase. [3] Justification for the acts of war. [4] Resolution (A/RES/377 A), of 3 November 1950