JURISPRUDENCE OF INTERNATIONAL LAW

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Abstract

The International Law has been made through many treaties to address the issues at the international level. But the international law lacks enforcement and has no sovereign authority to implement it. The United Nations (UN) General Assembly, which contains representatives from more than 190 nations, does not have the power to adopt laws that are leg ally enforceable. The United Nations has failed to bring the world peace and bring countries together to work for a common goal.

The International Law has been taken from treaties, customs and general principles. Every state has the ability to make a contribution to the development of a new or updated tradition, but the significance of big nations in the process of developing customs is much higher.

A country in order to be recognised as a state must have a permanent territory, a population, a government to run the country and ability to conduct international affairs. But recently many countries like Angola and Congo who had civil conflicts and Albania which has territorial conflicts were still recognised as the states. This shows how international law keeps on changing and is enforced in different ways.

Statement of Problem

International law is considered to have limited ability to restrict thepower of states in fact many theories deny the legality of international laws as they affect thesovereignty of the individual states. This project will deal with the issues and challenges infront of international laws and would discuss the growing importance of international laws intoday's world.

Research Questions

The following research questions would be addressed –

i. What is the scope and history of international law?

ii. What are the different sources of international law?

iii. Why is international law important in today's world?

Introduction

There are now over 45,000 international treaties that are in existence today. These treaties address a variety of topics pertaining to international problems. On the other hand, it is a widely held belief that the effectiveness of international law is severely limited when it lacks an element of enforcement. It is maintained that international law is not only pointless but also hazardous as long as there is no sovereign authority to implement it. This is because international law cannot be enforced without a sovereign state. In spite of this, those who practise international law have never stopped attempting to improve it and find new applications for it. Following the end of World War II, there was widespread support for the establishment of international institutions such as the United Nations (UN). However, after seven decades since its inception, the UN has been unable to successfully establish world peace, limit the power of hegemons, or bring countries together to work on common goals. In spite of the criticism, international law does, in fact, play a part in determining the behaviours of states. Compliance and commitment have a mutually reinforcing influence on one another. For instance, if compliance offers only a limited number of advantages or is very expensive, then the nations are not likely to join.[1].

Scope of International law

A distinct body of law that exists independently of the legal systems of individual nations is referred to as international law. Domestic legal systems are different from this one in a number of ways. Despite the fact that it gives the impression of being a legislative body, the United Nations (UN) General Assembly, which contains representatives from more than 190 nations, does not have the power to adopt laws that are legally enforceable. Rather, its

[1] "Jurisdiction." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., https://www.britannica.com/topic/international-law/Jurisdiction.

resolutions serve only as recommendations, with the exception of certain circumstances and for certain purposes within the United Nations system, such as determining the budget of the United Nations, admitting new members to the United Nations, and, with the involvement of the Security Council, electing new judges to the International Court of Justice, among other things (ICJ). The development of international law is a reflection of the establishment and subsequent modification of a global order that is almost completely predicated on the concept that the only participants in the international system who are significant are independent sovereign nations. The fundamental framework of international law was developed during the Renaissance in Europe, despite the fact that the origins of international law may be traced back to cooperative agreements between peoples in the ancient Middle East. Among the earliest of these treaties was a pact between the rulers of Lagash and Umma (in Mesopotamia) in the vicinity of 2100 BCE, as well as an agreement between the Egyptian pharaoh Ramses II and Hattusilis III, the king of the Hittites, in 1258 BCE. Both of these events took place in the same year. After then, a variety of Middle Eastern powers came to an agreement on a number of treaties. The lengthy and rich cultural traditions of China, the Indian subcontinent, and ancient Israel were all very important contributors to the development of international law. The so-called "Third World," a collection of nonaligned and often freshly decolonized governments whose collaboration was passionately sought by both the United States of America and the Soviet Union, emerged as a result of the Cold War. This occurred throughout the time period. The increasing prominence of the developing world has brought more attention to the issues that they face, in particular those pertaining to decolonization, racial discrimination, and financial assistance. A broader sense of universalism in international politics and law was fostered as a result of this as well. For instance, the legislation that established the International Court of Justice mandated that the court's structure take into account the many main legal systems and civilizations from across the globe. In a similar fashion, an informal agreement within the United Nations mandates that nonpermanent Security Council seats be apportioned in order to maintain balanced regional representation. Traditionally, five of the ten seats have been allocated to either Africa or Asia, two have been allocated to Latin America, and the remaining seats have been allocated to Europe or other states. Other United Nations organisations have a structure very much like this one.[2]

[2]Steinberg, Richard H., and Jonathan M. Zasloff. "Power and International Law." *The American Journal of International Law*, vol. 100, no. 1, American Society of International Law, 2006, pp. 64–87,

Sources of International Law

According to paragraph one of Article 38 of the legislation governing the ICJ, the three primary sources of international law are "treaties, custom, and general principles." Because of the horizontal and decentralised character of the international legal system, the production of international laws is intrinsically more complicated than the generation of laws in domestic legal systems. This is because domestic legal systems are centralised. Bilateral or multilateral accords are conceivable.

Treaties

Although many of the most significant treaties (such as those that resulted from the Strategic Arms Limitation Talks) have been bilateral, those with numerous parties are more likely to have international impact. This is because more people are involved in the negotiation process. More than one hundred fifty countries have ratified a number of recent treaties, including the Geneva Conventions (1949) and the Law of the Sea Treaty (1982; formally known as the United Nations Convention on the Law of the Sea), illustrating both the significance of these conventions and the development of the treaty as a method of general legislation in international law. Other significant treaties include the Convention on the Prevention and Punishment of Genocide (1948), the Vienna Convention on Diplomatic Relations (1961), the Antarctic Treaty (1959), and the Rome Statute that established the International Criminal Court (1998). The United Nations Charter from 1945 is one example of a treaty that was created in order to form an international organisation and provide its constitution. Other treaties, on the other hand, address more everyday concerns (e.g., visa regulations, travel arrangements, and bilateral economic assistance).

Customs

The statute of the International Court of Justice (ICJ) cites "international custom, as evidence of a general practise accepted as law" as the second foundation of international law. State

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practise and state ratification of that practise as law are the two primary components that make up custom. The importance of custom is a direct reflection of the decentralised character of the international system. The actual practise of states, usually referred to as the "material reality," involves a variety of criteria, including the length, consistency, recurrence, and generality of the behaviour associated with a particular state. When determining whether a certain behaviour has the potential to become a legally binding international custom, each of these considerations plays a part. The International Court of Justice stipulates that in order for practises to be recognised legally obligatory, they must be "continuous and uniform" or "broad and substantially uniform." Even while every state has the ability to make a contribution to the development of a new or updated tradition, it does not mean that they all have the same weight in the decision-making process. In many cases, the significance of big nations in the process of developing customs is much higher. For instance, during the 1960s, the United Governments and the Soviet Union were much more important in the establishment of space law customs than states with little to no experience in the sector. This was the case for both the United States and the Soviet Union. Regardless of whether or not individual states have formally accepted a practise, once it has been established as a custom, all states that are a part of the international community are bound by it. The only exception to this rule is when a state has protested the practise from the very beginning of the custom, which is a difficult test to prove. If a practise is only prevalent in a small number of states (for instance, states in Latin America), or even just two states, the threshold for considering it a custom is often rather high. For example, Latin American states may be the only states to engage in a certain practise. It is possible for there to be both a binding customary norm and a multilateral treaty provision on the same subject area at the same time (for example, the right to self-defense). Additionally, a generalizable treaty article might give birth to a custom.[3]

General Principle of Law

The statute of the International Court of Justice (ICJ) identifies a third source of international law as "the broad principles of law recognised by civilised governments." These principles, in essence, provide a mechanism for dealing with international challenges that aren't presently

[3]Foster, John W. "The Evolution of International Law." *The Yale Law Journal*, vol. 18, no. 3, The Yale Law Journal Company, Inc., 1909, pp. 149–64, https://doi.org/10.2307/784774.

addressed by treaties or enforced customary norms. They do this by providing a framework for how to approach these problems. A significant number of these overarching ideas are principles of procedure or evidence or those that deal with the apparatus of the judicial process. One example of this is the principle that was established in the Chorzow Factory case (1927–1928), which states that a violation of an obligation results in an obligation to make reparation. It's possible to argue that the norm of good faith is the single most essential aspect of international law. It serves as the foundation of treaty law and directs how legal obligations are formulated as well as how they are carried out. The concept of equity is another essential component of the basic principles that guide how international law is interpreted and applied. This concept permits a degree of leeway. For instance, the Law of the Sea Treaty called for the delimitation of exclusive economic zones and continental shelves on the basis of equality between nations that had opposing or neighbouring shores.[4]

Statehood

Creation of State

The process of the development of new states includes a combination of fact and law, necessitating the establishment of particular factual circumstances in addition to the observance of relevant norms. "The Montevideo Convention of 1933 established the accepted requirements for statehood, which stated that a state must have a permanent population, a defined territory, a government, and the ability to conduct international relations." These requirements must be met in order for a country to be considered a state. In spite of the fact that it is self-evident that a state must have both a permanent population and a clearly delineated territory, the existence of territorial conflicts, such as those that developed in Albania after World War I and in Israel in 1948, does not preclude the formation of a state. The fact that several governments have been recognised by the international community (including by the United Nations) when they were in the middle of civil conflicts (for example, the Congo in 1960 and Angola in 1975) undermines the need that there be a functioning government in place. In 1992, a significant number of members of the

[4]Steinberg, Richard H., and Jonathan M. Zasloff. "Power and International Law." *The American Journal of International Law*, vol. 100, no. 1, American Society of International Law, 2006, pp. 64–87, https://doi.org/10.2307/3518831.

international community recognised Croatia and Bosnia and Herzegovina as new nations, despite the fact that neither country effectively controlled a significant section of its territory at the time of the recognition. Merger, absorption, dissolution, and "reestablishment as new and separate states (such as the formation of the Czech and Slovak republics from Czechoslovakia in 1993), or limited dismemberment with a territorially smaller state continuing the larger state's identity coupled with the emergence of a new state" are all possible ways for states to go extinct. Merger occurred between North and South Yemen in 1990.

Recognition

The act of recognising certain facts and assigning them a legal status, such as statehood, authority over newly acquired territory, or the international repercussions of a nationality award, is referred to as the recognition process and falls within the purview of the law. The procedure of recognising a new entity as a state that satisfies the requirements for statehood is a political one, and it is up to each nation to decide whether or not to give such recognition. After the executive power of a state officially recognises another state, normal sovereign and diplomatic immunity is often only granted at that point. The essential evidence that the factual prerequisites for statehood have been completed is international recognition. [Case in point:] Even if just some of the requirements for statehood have been satisfied, having a considerable number of recognitions from other countries might assist strengthen a claim to statehood (e.g., Bosnia and Herzegovina in 1992). The "declaratory" view of recognition, which is confirmed by international practise, holds that the act of recognition merely signals acknowledgment of a pre-existing factual situation, which in this case refers to conformity with statehood criteria. This view contends that international practise supports the "declaratory" view of recognition. On the other side, the "constitutive" concept contends that the act of recognising one another is what first builds the state. Before bestowing recognition, states often stipulate that extra requirements must first be satisfied. In 1991, "the European Community issued declarations on the new states that were forming in eastern Europe, the former Soviet Union, and Yugoslavia." These declarations required, among other things, respect for minority rights, inviolability of borders, and commitments to disarmament and nuclear nonproliferation. The European Union eventually replaced the European Community. The timing of any kind of identification is very important whenever a new state is formed in

part from an older one. Even while governments are not obligated to admit new claims to statehood, there are instances when circumstances make it a positive responsibility for such states not to do so. Henry Stimson, then the Secretary of State for the United States, was a proponent of the concept of nonrecognition of circumstances that were established as a consequence of aggression in the 1930s. This viewpoint has gained more support following the conclusion of World War II. In the 1960s, the United Nations Security Council "called upon" all governments to reject the proclamation of independence issued by the white minority administration in Rhodesia, and as a consequence, it imposed economic sanctions. In response to South Africa's construction of Bantustans, or homelands, which were territories recognised as "independent republics" by the white-minority government as part of its apartheid policy, similar international action was taken in the 1970s and 1980s. This action was taken in response to South Africa's policy of apartheid. The purported independence of Turkish-occupied Northern Cyprus was deemed "legally invalid" by the Security Council in 1983. Additionally, the Security Council ruled that Iraq's purchase of Kuwait was "null and void" (1990). Israel's extension of its authority over areas of Jerusalem that were once under Jordanian administration has also been deemed illegal by the United Nations, as has Israel's notional annexation of Syrian territory known as the Golan Heights, which it acquired in 1967.

Disputes between States

The field of international law provides a variety of methods for the peaceful resolution of legal disagreements, none of which are given priority over the others. Examples of procedures that are not legally binding include direct discussions between the parties, as well as participation from a third party in the form of good offices, mediation, inquiry, or conciliation. Since the end of World War II, there has been a significant expansion in the role that regional and global international organisations play. This is largely due to the fact that many of their charters contain explicit peaceful-settlement processes that are applicable to disputes that arise between member nations. Additionally, the United Nations may be used on a wide range of levels. For instance, the secretary-general may make use of his or her good offices in order to propose conditions or modalities for a settlement, and the General Assembly may push for certain solutions or methods in order to resolve disagreements. “In a similar manner, the Security Council has the ability to either recommend solutions (such as

its resolution from 1967 on the Arab-Israeli conflict) or issue binding decisions to impose economic sanctions or authorise the use of military force in the event that there is a threat to, breach of, or act of aggression against international peace and security (e.g., in Korea in 1950 and in Kuwait in 1990)." Other methods of legally-binding conflict resolution include the use of arbitration and judicial settlement. The process that is known as arbitration takes place when contending nations take their disputes before a tribunal that has legal authority. In certain situations, the tribunal will only have jurisdiction over one issue, while in others, it will be obliged to make several judgements involving many claimants (such as in the war between the United States and Iran that sprang from the Iranian revolution in 1979). During the course of a judicial settlement, a conflict is presented before an established and independent court. The International Court of Justice (ICJ), which was founded in 1920 as the successor of the Permanent Court of International Justice, is the most significant and all-encompassing of these several institutions. The International Court of Justice (ICJ) is the principal judicial instrument of the United Nations and was founded as such by Article 92 of the UN Charter. The ICJ is comprised of 15 judges who represent the major civilizations and legal systems of the globe. The General Assembly and the Security Council are responsible for their election, and their mandates last for nine years.

International Courts

In the context of contentious proceedings, the International Court of Justice (ICJ) resolves legal matters that are brought before it by states in accordance with international law. This occurs in the context of the exercise of its jurisdiction. "An international legal dispute may be defined as a disagreement on a matter of law or fact, a conflict, or a collision of legal viewpoints or interests." These are all examples of potential conflict situations. The International Court of Justice may only consider applications submitted by states, and only states can appear before it. It is not possible for international organisations, foreign countries, or private individuals to bring cases before the Court. If both parties recognise the court's jurisdiction over the matter, then the court will proceed with the case. As a consequence of this, no state may be a party to proceedings before the Court unless it has consented to the proceedings in some kind. According to "paragraph 2 of Article 35 of the Statute," the Court is also available to those states that are not parties to the Statute. This provision may be found in the Statute. The relevant criteria will be "laid down by the Security Council, subject to the

particular provisions contained in the treaties that are now in force"; nevertheless, such restrictions may under no circumstances place the parties in an unequal position in front of the Court. The existing circumstances in such cases are spelled out in Security Council Resolution 9 (1946), which states that in order to obtain access to the Court, a State that is not a party to the Statute must first lodge a declaration in the Court's Registry by which it accepts "the Court's jurisdiction, in accordance with the United Nations Charter and subject to the Statute and Rules of Court, and undertakes to comply in good faith with the Court's decision or decisions," a. In order to obtain access to the In the following passage of Resolution 9, it is stated that such a proclamation may be either specific (meaning that it may refer to a particular conflict or collection of conflicts) or general (meaning that it may apply to any conflict or set of disputes) (and relate to all disputes or to one or several classes of disputes which have already arisen or which may arise in the future).

The consent of the nation-states to whom it is open is a necessary condition for the Court to exercise its jurisdiction in disputed cases1. It is important to note that the formulation of this authorization has an effect on the manner in which a matter may be brought before the court.

(a) A unique agreement

According to paragraph one of Article 36 of the Statute, the Court has jurisdiction over any and all matters that have been brought to its attention by the parties. The parties often inform the Registry of a special agreement that they have reached particularly for the purpose of bringing such matters before the Court. This agreement is tailored specifically for the purpose of bringing such cases before the Court. 2. It is necessary to specify both the nature of the disagreement and the parties engaged in it. (Statute, Art. 40, para. 1; Rules, Art. 39).

b) Issues covered by treaties and conventions

According to paragraph 1 of Article 36 of the Statute, the Court's jurisdiction extends to embrace all subjects that are explicitly provided for in the treaties and conventions that are now in effect. This is a unilateral document that must specify the subject of the dispute and the parties (Statute, Art. 40, para. 1), as well as, to the extent possible, the provision on which the applicant bases the Court's jurisdiction. Normally, such matters are brought before the Court through a written application instituting proceedings3. This is a document that is referred to as an application instituting proceedings (Rules, Art. 38).

c) In legal conflicts, mandatory jurisdiction

According to the Statute, a state may recognise the jurisdiction of the Court in cases of legal disputes as obligatory in regard to any other state that accepts the same duty. These types of matters are brought before the court via the use of written applications. The kinds of legal issues for which compulsory jurisdiction may be acknowledged are outlined in Article 36 of the Statute, paragraphs 2-5, and the relevant language may be found here:

"2. The States party to the present Statute may declare at any moment that, in reference to any other State accepting the same responsibility, they acknowledge the Court's jurisdiction as mandatory ipso facto and without particular agreement in any legal matters concerning:

(a) the nature or extent of the reparation to be made for a breach of an international obligation; (b) any question of international law; (c) the existence of any fact that, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for a breach of an international obligation

3. The above-mentioned declarations may be made unconditionally or subject to reciprocity on the part of several or certain States, or for a certain time.

4. Such declarations shall be submitted with the United Nations Secretary-General, who shall transmit copies to the Statute's parties and the Court's Registrar[5].

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice that are still in force are deemed to be acceptances of the International Court of Justice's compulsory jurisdiction for the period that they still have to run and in accordance with their terms, as between the parties to the present Statute."

[5] "Basis of the Court's Jurisdiction." *Basis of the Court's Jurisdiction | International Court of Justice*, https://www.icj-cij.org/en/basis-of-jurisdiction.