
ANALYSIS OF PUBLIC INTERNATIONAL LAW IN INDIA

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ABSTRACT

The study aims to provide key details pertaining to Public International Law. The article introduces key topics which are essential for the understanding of the concept of Public International Law. It not only provides the various sources under which the public international law is established but also the views of various prominent jurists.

Furthermore, the article shed light on the development of the public international law over the times and how it has adapted with the changing times. Public international law is the interaction between the two states thereby making it essential for the study to further discuss the interaction of Public International Law in India and the manner in which it is enforced.

International Law

International law is the rules, norms and standards which have been laid down by the various sovereigns in regards to the performance of certain activities. The definition of International Law as defined by the prominent jurist Bentham is International law is a collection of rules governing relation between the states.¹The international law according to Prof. L Oppenheim is binding upon relation between civilized states based on customary practices.² Thus international law is the culmination of the various treaties, customary practices and conventions which are used to govern the interaction between the states.

International law serves as the means of maintaining peace and provides the state to bring forth a means of dispute resolution. It serves as a means to promote and protect the interest of the human race by bringing forth the various evolutions experienced by different states allowing to formulate the law to improve the standard of living. It deals with the crucial areas of law which are relevant to the interaction between state such as terrorism, climate change and nuclear weapons to quote a few.

Sources Of International Law

International law similar to domestic laws is derived from various sources. The international law being a wide concept deals with different states thus requiring different kinds of sources than the domestic laws. The international law is derived from sources stated under such as treaties, customs, conventions, judicial decisions and UN charter.

Treaties are the various agreements that are being entered into by different countries giving their consent to a certain issue raised in the convention. The signing of the treaty must be voluntary and must be made in a written format. These treaties are in regards to trade such as Asia-Pacific Trade Agreement which was entered into in 1975 or prominent issues for public interest such as climate changes in the form of Kyoto Protocol.

Judicial Decisions or Precedents are a means of interpretation of law. Precedents are also termed as Judge made laws. In the case of the International Law the precedents are derived from the international courts such as International Court of Justice. While the decisions of the

¹ Available at <https://www.britannica.com/topic/international-law> last accessed 10th February, 2022

² Available at <https://www.legalserviceindia.com/legal/article-4293-international-law-evolution-and-its-sources.html> last accessed 10th February, 2022

International Court of Justice and Arbitral tribunals are only applicable and restricted to the countries which are parties to the case, the judicial decision acts a precedent for the cases in the future. Prominent precedents are

Customs are recognised as a source for international law. Article 38(b) of the Statute of International Court of Justice recognises the practice of International customs as a valid source of international law. The customs are applicable to the countries until the country objects to the practice. The actual practice that is followed by the state relays the nature of the customs and also the particulars to the customs such as the manner of following a custom. The practice can be on the grounds established by the state and the opinion of the law.

The practices that have been seen to be adopted and enforced time and time when dealing with the different countries as a means to set standards or rule. These practices are termed as Principles of International Law. These must be made in good faith of the public.

Theories of International Laws

Monism theory is the theory which treats International law and Municipal law as a single legal system. Thus a country professing monism does not require the need of separately integrating the International Law into the Municipal Law. A state which functions on monism provides more emphasis on international law. Contrary to the Monism theory is the dualist theory where the international law is only applicable in the state if such a treaty or custom is integrated into the legal system of the state.

India and International Law

India is one of the major participants in international relations which concerns itself with a wide range of fields of human rights laws, environmental laws, arbitration law, and trade law. The laws that are established in the country are formed while considering the various international treaties which have been entered into by India. The Constitution of India while drafting the fundamental rights of its citizens was greatly impacted by the Universal Declaration of Human Rights established by the United Nations General Assembly.³

The Integration of international law in the Indian Legal system is a crucial area which establishes the treatment and the legal recognition that is given to the international laws. India

³ Available at <https://blog.iplers.in/constitution-of-india/> last accessed 10th February, 2022

maintains separation of power among the various divisions essential for the functioning of the country. The acceptance of the norms which have been laid down by the international law is subjected to the interpretations that each body has adopted while performing its functions. The three bodies of Indian legal system i.e. Legislature, Executive and Judiciary are governed by the rights and duties which are laid down by the Constitution of India.

The lawmaking body of the country drafts the provisions establishing the rights and duties for the individuals within its jurisdiction giving it sanction. The legislature of the country has the sole power to enact the international laws. The Constitution of India states the power of the Parliament to enforce any treaties or convention which has been entered into with other countries either to the whole of India or partially.⁴ The Constitution also not only laws down the duty of the state to protect and maintain the relationship between the nations but also the enact the agreements or settlements made with other countries.⁵

Judiciary is the body responsible for the interpretation of the laws. In the landmark case of *Kesavananda Bharati v State of Kerala* the court stated that it is the duty of the court to harmoniously construct the law of the land with the international agreements.⁶ The court established its position of harmonious construction of municipal law and international law in the case of *Shri Krishna Sharma vs The State Of West Bengal*.⁷

The Interaction between the various countries are governed by such treaties. The international law is a means by which the countries may request for certain conflicts which arise out of the conducts pertaining to trade or other fields to be resolved. One of the prominent examples of such a dispute resolution which has been requested by India in the recent time is that of issues pertaining to the Indo-Pacific region requesting for a free, open, inclusive and rules-based maritime order in the Indo-Pacific region.⁸ Another violation of International Law raised by India to the United Nation is in regards to the drone strikes in Abu Dhabi which lead to the death of two innocent Indians.⁹

⁴ INDIA CONST. Art. 253

⁵ INDIA CONST. Art. 51

⁶ (1973) 4 SCC 225

⁷ AIR 1954 Cal 591

⁸ Available at https://economictimes.indiatimes.com/news/defence/india-eu-calls-for-resolution-of-indo-pacific-disputes-based-on-international-law/articleshow/89303617.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst Last accessed 09th February, 2022

⁹ Available at <https://www.ndtv.com/india-news/uae-terror-attack-blatant-violation-of-international-law-UNSC-should-stand-united-in-sending-clear-signal-against-such-acts-india-2718753> Last accessed 09th February, 2022

Thus the role of International Law has greatly evolved in recent times where the country is moving towards globalization. The treaties signed by the government are within its powers under the Constitution. Such terms as entered into must be constructed in a manner that doesn't violate the fundamental legal system of the country and it is the duty of the country to interpret the same to ensure there is harmony between the two concepts. India as a country has also sought redressal on numerous occasions where it believed that the actions of the other countries to the treaties were in violation of the agreement.

Evolution of International Law

The establishment and subsequent amendment of a global system which was founded exclusively on the belief that 'independent sovereign states are the only relevant actors in the system of International Law' is reflected in International law. During the European Renaissance the essential structure of International Law was outlined, however, the origins of International law are deep rooted in history and can be tracked down to the agreement between people in the ancient Middle East. One of the earliest treaty was an agreement around 2100 BCE between the rulers of Lagash and Umma and an agreement around 1258 BCE between the Egyptian pharaoh Ramses II and Hattusilis III.¹⁰

A vital role in the international law's development was also played by certain cultural traditions of regions like the Indian subcontinent, China and Israel. Basic notions about political relations and governance were also inferred from the ancient Greek philosophies and the relations between the Greek city states constituted.

The rise of Nation states in the medieval era and their mutual respect and rules regarding trade and diplomatic agents set the foundation of international law as we know it today. From time immemorial it has been an established concept that messengers or diplomatic agents of states have been granted a certain immunity from harm and imprisonment even in the Medieval Era which is infamous for instances of barbarity. The principle of diplomatic immunity can be observed today as well, embassy officials and envoys enjoy certain immunities from various nations.

During the 17th century, several small independent states were established and they were increasingly finding it difficult to navigate and tolerate international lawlessness. Therefore

¹⁰ Available at <https://blog.iplayers.in/development-international-law/> last accessed 17th March, 2022

when Hugo Grotius presented the *De jure belli ac pacis*, which is called the first comprehensive thought of international law, it was widely acclaimed even though it was not formally accepted. Hugo stated a principle in his work about the notion of sovereignty of states and legal equity of all nations which is regarded as an extremely important principle of international law.

The establishment and growth of international law can be credited to the treaties between nations which first included the states of Western Europe and grew in popularity with the rest of the world. The United States played a major role in establishing the concepts of neutrality and freedom of the seas.¹¹

The Congress of Vienna was the most comprehensive treaty witnessed by the European Nations after the fall of Napoleon in 1814. The goals of this Congress were to deal with the aftermath of the fall of the French empire and division of territories by the four states responsible for the fall of Napoleon, that is Austria, Prussia, Russia and Great Britain. This was a one of its kind congregation of the heads of states or their delegates to establish classification and treatment of diplomatic agents and a political boundary for states which for the most part remained unchanged for 40 years.¹²

In the following years several treaties and declarations were established to regulate international relationships among states. The declaration of Paris of 1856 was related to trade. It established rules of contraband and blockade. The Geneva Convention of 1864 provided for the humane treatment of the wounded. 19th century saw a rise in international cooperation and demonstrated an intention of states to work together to establish a world order to sustain peace and trade.

However, this intention of peace did not last for very long as the breakout of World War 1 made international order increasingly unstable. There was use of barbaric force and no nations remained in the sidelines in order to be able to effectively back the international law. As a result multiple provisions of International Law were violated and the concept of third party arbitration was once again endangered.¹³

¹¹ Alina Kaczorowska, *Public International Law Textbook* (London[England], Fifth edition, 2015)

¹² Available at http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/UNIT_I.pdf last accessed 19th March, 2022

¹³ Alina Kaczorowska, *Public International Law Textbook* (London[England], Fifth edition, 2015)

Later, along with new modes of warfare came issues in laws dealing with war. The outbreak of World War 2 showed the attempts to put into effect disarmament and ban certain types of weapons become futile. There was a prominent advancement in the International laws and in punishments for war crimes after the World War 2.

Eventually, the idealistic relinquishment of war as the Kellogg-Briand Pact and the inadequacy of League of Nations resulted in the setting up of an organisation capable of implementing international law, keeping a check over its obedience and upholding peace. This organisation was the United Nations.

Conclusion

The development of International Law, which has been very important in facilitating and advancing social and monetary turn of events, security and global harmony, is one of the best accomplishments of the United Nations. Generally prominent consideration might not be given to the work done by the United Nations however the lives of individuals all around is preponderantly affected by it. Thus, even after not being a direct part of a person's life, International Law plays an extremely pertinent role in it.

An extensive number of issues in the field of International Law have always been in the limelight. As the United Nations stands alone to be a truly global organisation, varied issues have been dealt with which can be said to be beyond one's national boundaries and the individual countries which tend to act alone during the times of crisis cannot resolve it.

As recently seen in the situation of Russia and Ukraine, all attempts by nations to force Russia to stop its wrongful invasion of Ukraine have failed and the world leaders who claim to be fore-bearers of peace have been unable to do any material change other than asking Russia to stop and impose sanction on the state which have largely proved to be ineffective.

The current global system of enforcing any state to adhere to the global world order is established around the concept of sanction in hopes that hurting the economy of the nation will act as a deterrent for countries to stop the internationally condemned behaviour. The world cannot do anything but watch as the system established by the world leaders, including Russia, provides them immunity to do as they wish and leave the burden of war on smaller countries.

Russia and Ukraine provide for 30% of the world's export of wheat. With tensions rising and heavy sanctions on Russia, countries like Turkey are starting to feel the heat of these sanctions imposed on Russia more than Russia. It was already an established concept that countries that are isolated, independent and less democratic are impervious to the threat and effect of sanctions to a certain extent.

This inability of the entire might of the United Nations and all the participating states in their individual and joint efforts to stop the invasion of Ukraine is testament to the fact that the current system of international law needs to change and provide for greater efforts for enforceability and oversight that does not provide certain nations with immunity to wage an illegal war.

The way forward for International Law should contain more participation from the entire world, equitable hearing awarded to states with varied cultures and tradition and prevent atrocities by a method of governance that does not leave victims leaning on the mercy of invaders. Only with the cooperation of the entire world and a joint effort and will to hold each other accountable will we be able to establish a world order that is for the people, by the people and of the people.