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Introduction to Public International Law II

The international system

The key to the search lies within the unique attributes of the international system in the sense of the network of relationships existing primarily, if not exclusively, between states recognizing certain common principles and ways of doing things.

While the legal structure within all but the most **primitive societies** is hierarchical and authority is vertical, the **international system** is horizontal, consisting of over **190 independent states, all equal in legal theory** (in that they all possess the characteristics of sovereignty) and recognizing no one in authority over them.

The law is above **individuals in domestic systems**, but international law only exists as between the states. Individuals only have the choice as to whether to obey the law or not. They do not create the law. That is done by specific **institutions**.

In **international law**, on the other hand, it is the states them-selves that **create** the law and obey or disobey it. This, of course, has profound **repercussions** as regards the **sources of law** as well as the means for enforcing accepted legal rules.

International law, as will be **shown in succeeding chapters**, is primarily formulated by international agreements, which create rules binding upon the **signatories, and customary rules**, which are basically state practices recognized by the community at large as laying down patterns of conduct that have to be complied with.

However, it may be argued that since states themselves sign treaties and engage in action that they may or may not regard as legally obligatory, international law would appear to **consist of a series of rules from which states may pick and choose**.

Contrary to popular belief, states do observe international law, and violations are comparatively rare. However, such violations (like armed attacks and racial oppression) are well publicized and strike at the heart of the system, the creation and preservation of **international peace and justice**. But just as incidents of **murder, robbery and rape do occur within national legal orders without destroying the system as such**, so analogously assaults upon international legal rules point up the **weaknesses of the system** without denigrating/criticize unfairly their validity or their necessity. Thus, despite the occasional gross violation, **the vast majority of the provisions of international law are followed**.

In the daily routine of international life, **large numbers of agreements and customs are complied with.** However, the need is felt in the hectic interplay of world affairs for some kind of regulatory framework or rules network within which the game can be played, and international law fulfils that requirement. States feel this necessity because it imports an element of **stability and predictability into the situation.**

Where countries are involved in a **disagreement or a dispute, it is handy to have recourse to the rules of international law** even if there are conflicting interpretations since at least there is a common frame of reference and one state will be aware of how the other state will develop its argument.

- But what is to stop a state from simply ignoring international law when proceeding upon its chosen policy? Can a legal rule against aggression, for example, of itself prevail over political temptations? **There is no inter-national police force to prevent such an action**, but there are a series of other considerations closely bound up with the character of international law which might well cause a potential aggressor to forbear.
- Having come to the conclusion that states do observe international law and will usually only violate it **on an issue regarded as vital to their interests**, the question arises as to the basis of this sense of obligation.

THE FUNCTION OF POLITICS

- It is clear that there can never be a complete **separation between law and policy**. No matter what theory of law or political philosophy is professed, the inseparable bonds **linking law and politics must be recognized**.
- Within developed societies a distinction is made between the formulation of policy and the method of its enforcement. In the Federal Republic of Somalia, Parliament legislates while the courts adjudicate and a similar division is maintained into other countries in the world and the courts system.
- The purpose of such divisions, of course, is to prevent a **concentration of too much power within one branch of government**. Nevertheless, it is the **political branch which makes laws and in the first place creates the legal system**. Even within the hierarchy of courts, the judges have leeway in interpreting the law and in the last resort make decisions from amongst a number of alternatives.

- However, **when one looks at the international legal scene the situation changes.** The interplay of law and politics in world affairs is much more complex and difficult to separate, and signals a return to the earlier discussion as to why states comply with international rules.
- **Power politics stresses competition, conflict and supremacy and adopts as its core the struggle for survival and influence.** International law aims for harmony and the regulation of disputes. It attempts to create a framework, no matter how basic, which can act as a kind of **shock-absorber** clarifying and moderating claims **and endeavoring to balance interests.**

Scope of International Law

1. Interstate relations and their regulation

- The International Law has state subjects. When civilized states came into existence then interrelation was natural. **A mutual understanding and natural interrelation became necessary. They have framed their own rules, regulations, and treaties for further transactions.**
- The rules and regulations are laid down categorically in these relations because it facilitates the amicable working of the functions between the states. The rules and regulations broadly provide opportunities for different programs to be carried out by different states. The customs followed by the countries have culminated into laws. The same path of evolution is taken by the International Criminal Law that has been codified. The wide variety of subject matter has been covered under International Criminal Law such as extradition treaty, refugees, human rights, and sustainable development.

2. International organizations

- A major development in the **19th and 20th century in International Law** is the prominent position of the International Organizations. The operations of these organizations is on the **global, regional, and sub-regional level**. These organizations seek to achieve the **objective of the welfare of people**. These organizations are funded majorly by the developed countries and they are actively supporting the developing countries for the betterment of the lives of the people. These organizations have multi-dimensional areas of operations. These are the major International Organizations:
- **World Bank:** The World Bank is an international organization dedicated to providing financing, loans, advice, and research to developing nations to aid their economic. The World Bank also provides supports to the countries for different kinds of infrastructural development, and also the availability of basic facilities in the developing countries such as Somalia.
- **International Monetary Fund:** The International Monetary Fund (IMF) is an international organization under the United Nations which works to foster global monetary cooperation, secure financial stability, facilitate international trade and reduce poverty around the world.
- **World Trade Organization**— is an intergovernmental organization that regulates and facilitates international **free trade between nations**. It provides a framework for negotiation and dispute resolution to countries for resourceful trade among others.

THE ENFORCEMENT OF INTERNATIONAL LAW

- Nearly always, the first question asked about international law is how can it be law if it cannot be enforced? It is a rather **tiresome question**, not only because it is asked so often, but also because of the crucial assumption it contains. The assumption of course, is that **international law cannot be enforced**. Currently no standing body of international law enforcement, nor is there strong political support for creating such body.
- At one points it can be said that International law is not law, similarly because it is losing control on its member. For example the **US invasion of Iraq on 2003**, and more currently, the human rights abuses by the US in the Guantanamo bay detention facility. The US, a member of the United Nation Security Council, clearly violated the UN charter when it invaded Iraq without the approval of the UN.
- **International law cannot bind the most powerful and influential members in its system how can we claim that it is accepted law.**

There are some mechanisms of **indirect influence on the countries** in the case of violation of main principle of international law that are based on the observation of human right, breach of the peace.

➤ **The United Nations**

- **Under chapter VII of the UN Charter** provides that the security council shall determine the existence of **any threat to peace, breach of the peace or act of aggregation** are shall make recommendations or decide what **measures shall be taken** in accordance with Article 41 & 42 to maintain or restore international peace and security. Suffice it to say at this stage that the measures available to Security Council rang from the use of **economic sanctions etc.**
- Sanction in international law includes measures, procedures, and expedients for exerting pressure upon a state to comply with its international legal obligations.

➤ **Judicial Enforcement**

Reference has already been made to judgments of the **International Court of Justice**, which is the judicial organ of the United Nations. Its main role is to resolve legal disputes between states and its judgments are **binding on the parties to the dispute**. In addition to the ICJ there are a number of specialized international tribunals dealing with particular areas of the law and it is not uncommon for states to establish **ad hoc tribunals to resolve differences**. The whole issue of the peaceful settlement of disputes will be dealt with in more detail in the COMING Chapters .

➤ **Loss of legal rights and privileges**

A common enforcement method used by states is the withdrawal of legal rights and privileges. The best known example is the **severing/cutting of diplomatic relations**, but sanctions falling short of this may include trade embargoes, the freezing of assets, and suspension of treaty rights. The adoption of such measures, and indeed the mere threat of them, can very often prove effective in enforcing international obligations.

SUPREMACY OF INTERNATIONAL LAW

- **No doubt, if we talk about Somalia, the constitution is the supreme law of the land. Under Article 4 (1) of the Constitution states that After the *Shari'ah*, the Constitution of the Federal Republic of Somalia is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all sections of government.**
- Unlikely domestic law, the situation of international law is different. Totally can't say **that international law is supreme**. When we consider international law to supreme there an odd comes with the sovereignty of the state.
- Apart from all this international law is all about consent, consenting states come together to form law and once states assume a treaty commitment, they are bound by that commitment. It is also reflected in **Article 27 of the Vienna Convention on the Law of the treaties** that states state may not invoke the provisions of their internal law as justification for its failure to perform a treaty.



THANK YOU