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International Law as a Weak Law

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ABSTRACT

The following article is about international law and why it is called a weak law. In this article, the thoughts of various jurists such as Thomas Hobbes, John Austin, Thomas Holland, Bentham, Pollock, Lawrence, and Hall about the International laws are mentioned. It also elaborates United Nations Charter 1945 and its essential articles such as Articles 41, 42, 43, 51, articles 2(3), etc. Also, it elaborates on its organs, such as the General Assembly, Security Council, Trusteeship Council, International Court of Justice, and United Nations Secretariat. This article is majorly concerned with the State Jurisdiction dispute between the nation. It explains the State Jurisdiction in detail with important case law such as S.S. Lotus case 1927, Fisheries Jurisdiction case of 1973, etc. The following article also elaborates on the current Ukraine Russia is a dispute and the role of the International Court of Justice and the United Nations Charter in short part of International laws in that dispute. At last, the author also mentions the steps that could be taken to better the International laws as a conclusion of this article.

I. INTRODUCTION

International laws are sets of rules, norms, and standards generally recognized as binding between nations. It is a series of constant debates about whether International Law is natural law or is it only a morality. Various Jurist has different opinions on International Laws. Some regard it as law, but some do not.

International Law is not Real Law.

- Jurist like Thomas Hobbes, John Austin, Thomas Holland, and Jeremey Bentham treat International Law not as law but as morality because:-
- For Austin and Hobbes, the law is nothing, but it is just a Command of the Sovereign enforced by superior political authority.

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- For Bentham and Holland have four essential laws legislative machinery, administrative machinery, potential judiciary, and the sanction necessary for law enforcement.
- [International Law is the vanishing point of jurisprudence]- Thomas Holland[3]
- [International Law used for the first time by Bentham][4]
- John Austin [International Law is not just a posting International morality][5]

International Law is Real Law

- Certain jurists support International Law as fundamental law, such as Hall, Lawrence, and Pollock.
- For Hall and Lawrence - As Custom and Precedents deny International Law, it is a natural law.
- And for Pollock - For law existence, the only condition is that the political community recognizes it, and the political community recognizes international law.

DEFINITION

- Hugo Grotius is considered the father of International Law.
- Prof L. Oppenheim and Gray define International law as "law of a nation or international law is the name for the body of traditional role which is considered legally binding by the civilized states in their intercourse with each other.
- But it doesn't include international organizations within its ambit, and therefore Sir Robert Jennings and Watt gave a new modified definition:-
- And said that -"states are the not only subject matter of international law. International organization and some extent individual also may be subject to international law".
- Thus status of International law is controversial. Among jurists, some treat it as law but do not. But nowadays, international law is created as a treat and conventional, and agencies like the UN and the international court of justice protect it. Thus it is a law, but it is a weak law.

[3] Thomas Holland Holland, T.E. (2006) *The elements of jurisprudence.* New Jersie:The law book exchange..
Dr K.S kapoor International law and Human Rights.
Dr NV Paranjape – jurisprudence & legal theory
[4] Jeremy Bentham – principles of international law.
[5] John Austin in his imperative theory of law.

II. WHY INTERNATIONAL LAW IS A WEAK LAW

- Not as effective as multiple laws - international laws are not as effective as various laws as numerous regulations are continuously amended with the current scenario, and their effectiveness is maintainable. However, international laws are still based on old customs, and therefore their point is more minor than municipal regulations.
- International law is binding only if the state agrees to it. Unlike multiple law, which is binding to every citizen of the state, international law is not exact; it depends upon the state whether it is except international law.
- Not having proper executive machinery- the international organization does not have adequate machinery for international law enforcement. And it makes international law weak law.
    - As per positivism theory -international law is artificial law; therefore, it is a law:[6]
    - [International law is an agreement between sovereign and can be divided into two categories public and private, the former referring to the state and the latter to the individual- Bentham][7]
    - And as per consent theory- the state gave them consent in the method whereby the state identifies and acknowledges the rule they consider binding upon themselves.

Settlement of international disputes within international law

- " International dispute means disagreement on the point of law or fact a conflict of legal views or interest between the state."
- (Article 2(3) of UN Charter – a state member has to settle their international dispute by peaceful means.)[8]

Role of Security Council:-

- Security Council must determine the existence of a treaty of peace, breach of peace, or act of aggression and work to rest on vacation.
- Before making any recommendation on a matter, the Security Council will call upon the parties to comply. If they do not comply with them.

[6] Positivism theory of jurisprudence.
[7] Bentham principles of international law. United nations charter 1945 Rumki Basu – The United Nations (structure and function of international organization)
[8] Article 2(3) of UN charter 1945.

- ◦ (Article 41 of UN charter – there is some reason which will be taken.[9]
- Interpretation of economic relations.
- Interpretation of rail, sea, air, postal, radio and other communication means.
- Severance of diplomatic relations.
- (Article 42 – if the measure of article 41 does not comply, then the use of forces is adequate for maintaining international peace.)[10]
- (Article 43 – member countries assist UN in settling the dispute.)[11]
- (Article 51 – nothing is present charter shall impair the inherent power of an individual or collective self-defense if an armed attack against a united nation member until the Security Council has taken reason necessary to maintain international peace and security.)[12]

There are two methods of settlement of international disputes:-

1. Pacific means - (CH VI of UN Charter.)[13]

~ Negotiation, good officer, inquiry, mediation, conciliation, arbitration, judicial settlement, regional agencies, or other peaceful means.

2. Compulsion means - (CH VII of UN Charter)[14]

~ Complaint, restoration, revival, Hostile, blockade, intervention, and war.

UNITED NATIONS- International law

- After the failure league of the nation, a united nation was formed in 1945. (24.Oct.1945)
- Created for:-
    - Maintaining peace and harmony
    - Developing friendly relations among states
    - Protecting human rights
    - Developing Humanitarian aid.

UN charter Signed on -26th June 1945

It came into force – on 24 October 1945

[9] Article 41 of UN charter 1945.
[10] Article 42 of UN charter 1945.
[11] Article 43 of UN charter 1945.
[12] Article 51 of UN charter 1945.
[13] United nations charter 1945.
[14] United nations charter 1945.
Rumki basu – The United Nations (structure and function of international organization) .

Preamble and LACH - 111 Article

- Six Principal Organs- UN

1. General Assembly - CH IV
2. Security council - CH V
3. Economic and Social Council - CH X
4. Trusteeship Council - CH XIII
5. International Court of Justice- CH XIV
6. UN Secretariat- CH XV

International Court of Justice:- (CH XIV from Article 92-96)[15]

- Principal judicial organ.
- Function in accordance state of the permanent Court of international justice.
- A state which is not a member of the UN may become a party to the state of the international court of justice.
- Each member of the UN undertakes to comply with the international court of justice conditions.

STATE JURISDICTION

- One major conflict between two states that enforce international law is state jurisdiction.
- State jurisdiction can be defined as the capacity of a state under international law to prescribe the rule of law, enforcement of such power of law, and adjudicate the law, including –

1. Legislative jurisdiction (Prescribe role)
2. Executive jurisdiction (To enforce prescribed role)
3. Judicial jurisdiction (adjudicatory roles)

Limits of state jurisdiction –(principles of jurisdiction)

1. Territorial jurisdiction – a state shall have jurisdiction over everything falling under its territory(All citizens, aliens, movable and immovable property, etc.)
2. It can be subjective and objective:

a. Subject – the state will have jurisdiction if a crime is committed over its territory.

b. Objective – state will have objective jurisdiction if a crime committed affect its territory.

[15] CH XIV Article 92-96 of United Nations charter 1945.

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The West and Central gold mining company v. the king. (South African government versus Britain)[16]

FACTS -. The South African republic confiscated two parcels of gold belonging to the West Rand company. War broke out between South Africa and Britain. Britain to cover South Africa, the company claimed that Britain was responsible for confiscating gold.

Court held that the principle of international justice is not in existence for a conquered state to be liable for the gold. But as per the Principal jurisdiction of the state, have jurisdiction all over its movable and immovable property. As per this principle, the jurisdiction state has authority over the gold of the company. Again the decision of the international court of justice, in this case, is contrary.

3. Extraterritorial jurisdiction – jurisdiction over embassies abroad, state-owned properties abroad like Ships, planes, etc.

S.S. Lotus Case (France v. Turkey) 1927-PCIJ.[17]

- Facts of the case were such that – SS Lotus – a French steamer, collides with a Turkish vessel. SS Bozkourt, due to which A Turkish people died, and French Latin in Monsieur Demos on water duty became the main accused.
- issue whether Turkey has jurisdiction against the accused or not.
- International court in walls lotus principle says over, and state may act in any way they were so long as they do not contravene an explicit provision. They have jurisdiction, i.e., concurrent jurisdiction.

Fisheries jurisdiction (UK v. Iceland) 1973.[18]

- Iceland increased its fisheries jurisdiction from 12 miles to 50 miles violating the treaty, making excuses that violation is necessary for radical transportation of the extent of the obligations still to be performed.
- Change the circumflex stance Alish buy ice and cannot be said to have trance powered radically the extent of jurisdiction and obligation imposed in 1961 exchange of Note.

4. Nationality Principal – jurisdiction based on the nationality of criminal/victim.

NOTE: Based on this Principle, only the ‘laws of extradition' are made between nations.

[16] The West and Central gold mining company v. the king. (South African government versus Britain 1905.
[17] S.S. Lotus Case (France v. Turkey) 1927-PCIJ.
[18] Fisheries jurisdiction (UK v. Iceland) 1973.

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Nottebohm Case (Liechtenstein v. Guatemala)[19]

Nottebohm Principal – Nation must prove a meaningful connection to the state in question to prove its nationality.

5. Universality principle –a specific crime for which a state can take action over anyone anywhere, such as privacy, slavery, genocide, torture, etc.

6. Protective principle – if the sovereignty of the state is in danger, then the state can take action.

That ***airline case, 1873.[20]***

- ~ in this case, the court laid down the principle of anticipatory self-defense, Caroline test – presumption doctrine.
- ~ And held that law of nations, self-defense is a right, but the necessity of self-defense must be instant overwhelming and leave no choice of means no movement for deliberation.

The first case of human rights:

Lawless v. Ireland (1961)[21]

- ~ In this case, the court of justice allowed extraordinary power on indefinite detention without trial and held it is not a violation of human rights as above same allow in case of emergency.
- ~(Then again, international law failed to uphold its principle of human rights protection.)

Russia and Ukraine crisis – international law

The stand of international law on the Ukraine and Russia dispute can be understood by answering the following questions –

1. What does international law state on Ukraine's sovereignty?
2. Whether Russia violated UN charter provision?
3. Whether international law gives power to Russia to use lethal force?
4. Whether other states And even organizations and the international court of justice can enter fair on this situation?

[19] Nottebohm Case (Liechtenstein v. Guatemala) 1955
[20] lavoline case, 1873.
[21] Lawless v. Ireland (1961)

In answer to 1st question, the founding principle of the international system is that sovereignty, Territorial integrity, and non-interference in the internal affair of countries. After the collapse of the USSR, Ukraine becomes an independent nation, and as an independent nation, it has full power to access its sovereignty. The International Court of Justice points out that Ukraine begins an independent state with full force to exercise its authority. If Ukraine wants to join NATO, Russia has no means to interfere in it as Ukraine has the right to access its absolute sovereignty.

As an answer to the 2nd question, as per article 2 (4) of the UN, which states – all members should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or any other manner and inconsistent with the purpose of UN. And then Russia continuously uses its weapon and arms to threaten Ukraine not to join NATO, so it's a complete violation of UN charter article 2 (4).

Apart from article 2(4), Russia also violated the Budapest Pact of the UN, to which Russia agreed the pact.

That Ukraine is a fully independent country, and we respect its sovereignty and hence threat on its power and none of its weapon and ever threat on its independence used against Ukraine. Still, Russia failed to do the same as per the present situation.

As an answer to question number three, international law gives power to Russia to use force only in case of self-defense as per article 51 of the UN charter.

As per the case of ***NICARAGUA v. the USA***[22] – accused attack case (international court of justice). In this case, the international court of justice held that an attack that occurs on a significant scale by an accused group on behalf of the State is considered a charged attack. In this situation, a state can use charged force for self-defense.

NOTE:- (Peace and war convention called as Geneva convention)

And as an answer to question number four, agencies like the security council and the general assembly could use force to stop the war. Still, Russia became a permanent member of it using veto power.

The international court of justice can also not take a severe step in this crisis. For the international Court of Justice, both countries must approach it and have given consent to accept its judgment, which Russia is not willing to do.

And other countries can interfere in it as an ally. Still, there is a threat to world war III; the

[22] NICARAGUA v. USA 1986 I.C.J 14

UN's main motive is to stop World War III. Therefore, other countries are interfering by imposing sanctions on Russia and trying to resolve the matter through diplomatic means.

(Thus, it can be seen entirely that international law has failed to settle down the whole situation like other situations.)

Major cases pending on the International Court of Justice are (2005-2022):-

1. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia).
2. Dispute over the Status and Use of the Waters of the Silla (Chile v. Bolivia)
3. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)
4. Relocation of the United States Embassy to Jerusalem (Palestine v. the United States of America)
5. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)
6. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)

Steps for the betterment of international law –

The following steps can be taken for the betterment of international laws:

1. One of the main reasons for considering it as weak is its effectiveness; like municipal law and local laws, international laws are not continuously amended it's still Based on an old concept that makes their effectiveness weak. And therefore, to increase its efficacy like municipal law and local laws, amendment in international law is necessary.
2. And second primary reason for its considering international law as weak law is not having proper execution machinery for its enforcement. As Holland said, 'for a law, executive machinery plays an important role,' but in the case of international law, it has no proper executive machinery to enforce it appropriately. Therefore appropriate administrative machinery is required to uplift the status of international law.

III. CONCLUSION:

The status of international law is very controversial among jurists. This disagreement is based on the core, i.e., the law's definition. But in the present scenario, there is international

legislation created nowadays as treaties and conventions. This legislation has a binding force behind them. The state considered themselves bound by this legislation – the international community and the UN can act against violation of this legislation, so yes, international law is, in fact, natural law, but it is a weak law.

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