



Demystifying the relevance of International laws in a globalized world

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INTRODUCTION

Law is permissive, submissive and coercive as it not only allows individuals to establish their own legal relations which consists of rights and duties but also at the same time punishes those who infringe the regulations and rules as laid down by the law. It may be believed that it is also submissive in nature because it adapts to its customary practices that may prevail from time to time in the globalizing present social scenario. In simple words law consists of rules and regulations governing the behavior of all the elements of the society as law touches all the aspects of life of all individuals living collectively and separately in a society at large.

On account of the ever growing and expanding technological and scientific advancements that man has been involved in the present globalizing era, today the world has become a smaller place to live in. We can now come to know of the developments taking place in any part of the world by just clicking a few buttons, and we can cross continents in just a couple of hours which was not the case earlier. Now in this globalizing era what has happened is that the activities that take place in one part of the world have an impact on mostly all other parts of the world. Let's take consider a practical example of the global financial crisis that happened in the United States of America sometime in the early 2000s. It had an impact in varying proportions on

developed and developing countries across the world, on their financial institutions and stock markets, this included countries like China and India.

In the absence of the prevailing customs, treaties and conventions it would be very difficult to maintain peace and security among nations in the world. No nation in the world would agree to compromise on its sovereignty and the traditional belief of 'might is right' would probably and most certainly prevail and thus as a result of the same the developing and under developed nations would be crushed by the global and nuclear superpowers, thereby resulting only in mass destruction and dictatorship type of ruling worldwide.

UNDERSTANDING THE CONFLICT BETWEEN INTERNATIONAL LAWS AND MUNICIPAL LAWS IN A GLOBALIZED WORLD

On a global level one may say that the law which operates within a particular nation is called a municipal law and its rules, regulations and norms affect only the persons residing within those territorial, peripheral and jurisdictional boundaries. However as against that the law which prevails and operates between two nation-states (or countries in simple words) is called as international law as it affects more than one particular nation and that it operates on an international level. On an international level countries are known as nation-states, because of the concept of one world from a globalized perspective, which explains that the world is one sovereign power and all the nations are its states. It means in other words that the world is one



and there is only one nation. This concept was initially propagated and promulgated several decades ago by an American person known as Wendell Willkie. However the same does not exist and there is a conflicting view point on this as per a theory of global justice commonly known as Realism.

There is of course the basic definition which defines international laws, which says that it is a law that governs the relations among nations. However there are a few limitations with defining international law because it is a dynamic and subjective concept. This is because it does not have a set of particular sources from which it can derive its existence. This happens on account of several reasons one of the primary reason being the changing social scenario prevalent in each nation individually and one another prevailing collectively on a global level. A famous professor from the University of Waterloo named David Welch once said during an interview that, “International law is itself handicapped by the fact that we don’t have a global legislature to pass international laws. It comes from the British common law scaled up to the Global level.” As a result in order to understand International law only treaties or conventions are not sufficient per se and thus even opinions of jurists and learned members of the society such as opinions of scholars help to understand international law in today’s globalizing era.

The two traditional branches of international law are *jus gentium* (law of the nations) and *jus inter gentes* (agreements between nations). International Law itself is divided into conflict of law (or private international law as it is sometimes called) and public

international law (usually just termed as international law).¹ The former deals with those cases, within particular legal systems, in which foreign elements obtrude and protrude their existence thereby raising questions as to the application of foreign law or the role of foreign courts.²

Let’s take another very practical example in order to understand this for instance two Indian men make a contract in the United States of America in order to sell and purchase goods which are situated in London, an Indian court would apply the American laws as regards the validity of such a contract. As against that public international law is not a supplement of legal order but a separate system all by itself.³

International Laws are a particular group of laws that are binding on nations and states on a global level. These are basically sourced from generally and commonly acceptable practises and norms. Thus one can very safely say that International laws help to regulate and maintain relations among various nations and states on a global level by virtue of certain treaties, conventions and customs and this is a deciding and unique point of difference as against domestic/ municipal laws of a country. International law differs from state-based legal systems as it is primarily

¹This term was first used by J.Bentham: see Introduction to the Principles of Morals and Legislation, London, 1780.

² See e.g. Cheshire, North and Fawcett, Private International Law (ed. J. Fawcett and J.M. Carruthers), 14th edn, Oxford 2008

³See the Serbian loans case, PCIJ, Series A, No. 14, pp. 41-2



applicable to countries rather than to private citizens. National law may become international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions may require national law to conform to their respective parts.

Much of international law is consent-based governance. This means that a state member is not obliged to abide by this type of international law, unless it has expressly consented to a particular course of conduct.⁴

There is also something known as the Supranational Laws or the law of supra national organizations, which concerns regional agreements where the laws of nation states may be held inapplicable when conflicting with a supranational legal system when that nation has a treaty obligation to a supranational collective.⁵

The modern study of international law started in the early 19th century, but its origins go back at least to the 16th century. Alberico Gentili, Francisco de Vitoria and Hugo Grotius were popularly called as the "fathers of international law."⁶

⁴Slomanson, William (2011). *Fundamental Perspectives on International Law*. Boston, USA: Wadsworth. p. 4.

⁵Kolcak, Hakan. "The Sovereignty of the European Court of Justice and the EU's Supranational Legal System"

⁶Thomas Woods Jr. (18 September 2012). *How the Catholic Church Built Western Civilization*. Regnery Publishing, Incorporated, An Eagle Publishing Company. pp. 5, 141–142. ISBN 978-1-59698-328-1.

Several legal systems were developed in Europe, including the codified systems of continental European states and English common law, which were primarily based on decisions by judges and did not depend on written codes as such for its operational functionality. Different legal systems were developed in different areas of the world, the Chinese legal traditions and systems dated back to more than four thousand years, however even at the end of the 19th century it was observed that there were still no written codes for civil proceedings in China.⁷ Some doubted the effectiveness of international law, as they see the implementation of international law as a policy option among other issues in order to tackle global dilemmas.⁸ They say that international law must be evaluated with other, possibly more effective, international law options.⁹

Although because of international law it has been possible that each and every underdeveloped country in the world has been able to successfully enjoy the fruits of globalization and develop themselves on a continuous basis but no country will ever be willing to forego its own sovereignty for the betterment or benefit of any other country or nation or people situated in some other part of the world and that is why till today the concept of one world has not been a success.

⁷China and Her People, Charles Denby, L. C. Page, Boston 1906 page 203

⁸S.J. Hoffman, J-A. Røttingen, J. Frenk. 2012. "The Economics of New International Health Laws," *The Lancet* 380: S4. doi:10.1016/S0140-6736(13)60290-1

⁹S.J. Hoffman, J-A. Røttingen. 2011. "A Framework Convention on Obesity Control?" *The Lancet* 378(9809): 2068. doi:10.1016/S0140-6736(11)61894-1.



Each nation on a global level works with the realistic theory of global justice and that professes that states interact with one another only under a form of anarchy and with underlying motives of increasing their own power, security and glory. No state interacts with another with a selfless attitude i.e. to help and pull out backward nations from its state of helplessness of its economic evils and crises. Now one may argue on this issue by saying that you should not or cannot put out fire in another's house when your own house is on fire, but then there needs to be a line of difference between ones needs and greed's, in other words talking on a global level nations need to realize that when their internal needs such as peace, security, sovereignty etc are achieved successfully then they need to assist the other nation states in satisfying their similar needs, without compromising their own status or position on the international level.

There have been several instances wherein there has been a conflict between the domestic or municipal laws of a country and the international laws prevailing worldwide. Let us take a practical case law prevailing in the globalized world for studying this present state of affairs. In **R vs. Jones** it was seen that the doctrine that customary international law formed part of the law of England as it was discussed by the House of Lords in **R. Vs Jones**,¹⁰ where the issue focused upon whether the customary international law rule prohibiting aggression had automatically entered into English criminal law. Lord Bingham, while noting that the general

principle was not at issue between the parties, commented that he 'would for my part hesitate, at any rate without much fuller argument, to accept this proposition in quite the unqualified terms in which it has often been stated.' Preference was expressed for the view maintained by briefly that international law was not a part, but rather one of the sources of English Law.¹¹

It was further accepted unanimously by the House of Lords after this case that the doctrine of incorporation did not apply to customary international law relating to the offences of aggression. While at the same time there was another accepted notion by them that if there is an offence that is recognized as a crime under the customary international law then the same may be added and assimilated into the domestic laws of crime without statutory provisions. Now the word used here is 'may' so what one needs to understand is that this notion and proposition may be applicable under the domestic laws subject to the circumstances and facts of each case individually and on its merits, and that there is no statutory obligation to accept the same under the domestic English laws.

A further explanation to the same can be that the English Courts do not have the power to create new crimes or criminal offences and that can be done only and only by way of legislation under the English laws and the same was sought to

¹⁰[2006] UKHL 16; 132 ILR, p. 668

¹¹Ibid. para 11; 132 ILR, p. 675 and J. Brierly, 'International Law in England' 51 LQR, 1935, 24,31



be done in the case mentioned above. Further a charge of aggression would involve a determination not only of the guilt of the accused but also of the state itself and possibly of other states should the state go to war with allies and this raised constitutional issues as to non-justiciability. This was once again observed by Lord Hoffman in the above case of **R vs. Jones**. Justiciable would mean that an issue can be tried according to law.

There was one more landmark case wherein it was laid by the Supreme Court of the United States of America in **Reid vs. Covert**¹² that a treaty cannot disturb the existence or functioning of the constitution i.e. in other words it cannot change the constitution or be held as valid in the event that it is in violation of the Constitution. The Court further went on to recognize that the Constitution is the most supreme in the nation over everything else and even over treaties signed by the country with other countries. It pointed out and elaborated that the language used in **Article VI** of the USA constitution does not suggest that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. The Court further said that it would be manifestly contrary to the objectives of those who created the Constitution, as well as who were responsible for the Bill of Rights to construe **Article VI** as

permitting the U.S. to exercise power under an international agreement without observing constitutional prohibitions.

HISTORY OF INTERNATIONAL LAWS AND THE PROBLEMS FACED BY INTERNATIONAL LAWS

The problem with International laws in simple words is that there is no body which can enforce these conventions, customs, treaties etc. although there is an international body called as the United Nations(which was preceded by the league of nations) but its powers are only persuasive and not coercive and thus what happens on a practical level is that in the event that a particular nation-state breaks a treaty or conventions or a custom it only faces shaming in front of the international community that also in certain cases and not always and no other detrimental consequences per se.

One may be able to very conveniently propose that international law began in the year 1648 with the peace of Westphalia which affirmed about the sovereign equality of states. Rules concerning the conduct of war were then laid down in the Geneva Conventions of the nineteenth and twentieth century's. Organizations started coming into existence after the World War II for the sake of resolving disputes among nations by understanding the reasons for the disputes and trying to provide solutions. The League of Nations was the first popular organization that came into existence for the purpose of preventing the outbreak of the next world war after the Second World War. However it failed miserably over the years and then came the United Nations. The League of

¹² 354 U.S.1, 77 S.Ct.1222 (1957) and shodhganga article on "The relationship between international law and municipal law with brief account of state practises (other than India) in this regard.



Nations failed on account of several reasons such as dictatorship coming into existence in countries like Italy, Germany and Japan, domination by European Union countries like England and France and so on. The United Nations has regulated the world peace and security successfully till date one can say because there hasn't been a third world war as yet till date. The UN charter defines, governs and lays down the conditions for the legal use of force and the UN has served as a primary and principally significant venue for the creation of the new and present international laws that are prevalent in today's date.

I. THE PRESENT SCENARIO OF INTERNATIONAL LAWS IN THE GLOBALIZING WORLD

As far as the present context of international laws is concerned we can very safely and directly state that it has expanded to all the walks and interests of contemporary life such as regulations of space expeditions to the issue of division of the oceans, high seas and their respective beds and also further on to regulation of international financial capital markets to empowerment of human rights especially female empowerment from just the basic motto of maintaining global peace and security. Looking at the present state of affairs the changes that occur on an international level are nowadays quite momentous and reverberate throughout the system and thus it is extraordinarily difficult to have a standard and unitary system to control the global affairs effectively. For instance the invention of nuclear arms,

ammunitions and weapons created a status quo among developed countries of the world such as Europe, USA and USSR but however it led to the threat of global terrorism. Thus we can have one very evidently simple conclusion that modern developments demand a continuous retrospection of the structure and enforceability of the international laws worldwide.

The characteristics and nature of the international political system are the reason of existence of international laws in today's world. Every state is internally supreme and would also like to exhibit its supremacy externally but however what one needs to note is that there has to be reason to co-exist mutually because it is an interdependent world and nobody can live in isolation by claiming to be self sufficient and completely independent. Thus it is important for the same that all nation states must acknowledge the rights and obligations of other nation states.

It is also important to realize that states need law in order to seek and attain certain goals, whether these are economic well-being, survival and security or ideological advancement. The legal system therefore has to be certain enough and competent enough for such goals to be ascertainable, and flexible enough to permit change when this becomes necessary due to the confluence of forces demanding it.¹³

¹³S.Hoffman, 'International Systems and International Law', 14 World Politics, 1961-2, p.205



As and how the social scenario changes the ambit of the problems to be tackled by international laws also keeps changing. It has taken into its purview environmental protection problems by introducing the concept of climate change treaties among nation-states, human rights problems due to terrorism attacks worldwide and problem of shortage of resources on the ever growing population. Law and politics generally cannot be separated from one another because they go hand in hand on several levels of life but one surely cannot say that they are identical as their relationship is symbiotic and synergetic. International organizations have now been accepted as possessing rights and duties of their own and a distinctive legal personality. The International Court of Justice in 1949 delivered an advisory opinion¹⁴ in which it stated that the United States was a subject of International law and could enforce its rights by bringing international claims, in this case against Israel following the assassination of Count Bernadotte, a United Nations official.

It is believed that international law has started to become fragmented because of the increase in the specialized areas of international laws on a global level such as trade laws, environmental laws and human rights laws. However one may argue that the holistic system of international law may not be able to hold the law upright and it will dissolve into a

series of discrete localized or limited systems which may or may not be having an inter-relationship. In many ways one can say that this is because of the globalization of international laws in the world.¹⁵

Nevertheless on the other hand it is a good thing that international law has been fragmenting over the years because the fragmentation will help to tackle each and every global issue with a specialized and pragmatic approach and this will also in turn reduce the centralization of power with one particular international organization thereby reducing or eliminating in most cases a misuse or abuse of power in such centralized organization or authority enforcing implementation of international laws in a globalized and globalizing world.

There is a general and common belief that the power of the UNO (United Nations Organization) is always driven with the interests of the American's in mind first and then any other nation, and this is because of two reasons firstly that the United Nations organization was created by the United States of America and secondly that major funding of the UN is done by the USA. But still as per general trends seen by virtue of past precedents no country has been harmed adversely because the interests of the citizens of the United States have been given precedence. Also because there has been no revolt or outcry or outburst in the world by virtue of this state of affairs in the form of a

¹⁴Reparation for Injuries suffered in the service of the United Nations, ICJ Reports, 1949, p.174; 16 AD, p. 318

¹⁵P.S. Berman, The Globalisation of International law, Aldershot, 2005.



war or any kind of national/international disturbances. But one thing is thus clear that money has been a driving force for each and every element in the society on a global level and on a domestic level and thus underdeveloped and developing nations have been left behind in this game of power play.

VIEWS AND SUGGESTIONS

Generally speaking there is a human tendency that if we get what we want along with what we need or either of the two in isolation we are going to be happy or at least satisfied and contented. There is hardly anybody or as a matter of fact more often than not nobody who is completely satisfied with their present state of affairs, primarily because of the need and desire to grow and develop and be better than the other on a continuous basis. If we apply this philosophy to nation-states then we can probably achieve the goal of effective implementation of International laws on a global level.

Apart from the above taking a utopian and conservative approach there can be amicable ways of mediation and dispute resolution among nations by giving them (quarrelling nations) what they both need (maybe not from each other but other nation-states), in other words resolving the subject of dispute without disturbing, depriving or harming the participants of the dispute in question and/or other neighboring nation-states. This utopian perspective may or may not work always but will definitely promote the idea of peace, love and security among nations.

In expressing an opinion about the issue of defining international laws then one can have a dynamic definition and a dynamic approach like that adopted by the United States of America in its constitution wherein they have given importance to the treaties governing international laws along with other laws. A dynamic definition is a must because of the changing social scenario of the world and the interactions of developed nations with the developing nations, thereby enabling accommodation of the present scenario by updating the international laws on a continuous basis as and when required. Although it is already doing the same over the years but a slightly more dynamic and enterprisingly rigorous approach might help more to eliminate and minimize the grey areas it has at present with respect to understanding what it is exactly on a global platform.

One might argue but I am in favor of the opinion that one organization or one body enforcing international laws on an international level might not be sufficient primarily due to the number of specializations that international laws have emerged into such as international investment laws, human rights and so on. As a result it is important to have a separate body for enforcement of international laws in each of its specializations and also a few branches of these bodies maybe situated on a jurisdictional basis across the entire globe in order to ensure that not only the disputes are resolved amicably but also the social scenario of each jurisdictional state can be studied separately and collectively in order to amend the international laws from time to time as it is a dynamic subject and also



because social scenario is subjective concept pertaining to each state.

The legal enforceability of international laws should be improved by improving the legal enforceability of the international bodies such as International Court of Justice so that international laws are taken seriously by nation-states of the world. The aggressive nation-states who cause a threat to peace and/or security of other nation states should be punished by the International Court of Justice in such a manner that their entire existence gets threatened, for instance boycotting of such aggressive nation states in such a way that they cannot exist in isolation thereby eliminating or reducing their aggression levels completely.

The international law going by the present state of affairs is not proactively responsive to the needs, aspirations, desires and requirements of its participants. Its participants include not just states but also international organizations, individual persons and various multinational and national organizations across the entire globe and in every possible peripheral jurisdiction and territory of all countries. Finally coming to the aspect of resolving disputes among the conflict of laws between the municipal laws and the international laws one may consider the thought after an argument that we can have the concept of a constitutionality of international laws which will test the constitutionality of every international law before it is passed and adopted in such a way that it generally doesn't disturb the domestic laws or municipal laws or the disturbance may be of a negligible nature to any country. Although

this may sound more difficult to practice than preach but it can be done maybe even on a case to case basis such as for instance the conflict with the domestic/municipal law needs to be checked only for the participating nation-states of a treaty or convention and the same treaty or convention will have enforceability only on those nation-states and not others. The same shall apply to all other sources of international laws. This mechanism of checking for conflicts by checking the municipal laws and comparing the same with the international laws shall be called the constitutionality of international laws. Just like every country has a constitution, even this constitution shall lay down principles which disallow conflicts with domestic laws of a country and the modus operandi for its correction if any are prevalent or happen to occur.

In other words it's just the same concept as constitutionality of laws on a domestic level of any country is tested by making sure it doesn't go ultra-vires the constitution and if it does it will have no enforceability whatsoever.
