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The Enforcement of International Law and It's Role in a Globalized World

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Abstract: International law, or the Law of Nations, is the body of rules and principles binding upon States in their relations with one another at the international level. According to this definition, the State is of primary importance as the main actor or subject of international law. In the development of international law, great importance has been attached to the consent of States. The concept of consent finds frequent application: obligations arising from agreements and from customary rules depend on consent; the jurisdiction of international tribunals requires consent; membership in international organizations is not compulsory; the powers of organs of international organizations to make and enforce decisions depend on the consent of member states. The international legal system is not like the domestic legal systems of States: There is no supreme law-making authority-legislature or parliament-which, on a continuous or regular basis, makes laws binding on states. Treaties are concluded on an ad-hoc basis. They must be signed and ratified by each state Party. They do not create obligations binding on those states, which do not consent to them. Generally, speaking, resolutions and declarations of the general assembly are without binding force. In general, the international judiciary is without compulsory jurisdiction. States may voluntarily accept the jurisdiction of the international court of justice. Many treaties also, provide for the resolution of disputes by arbitration. There is no real executive power for the enforcement of international legal rights, which can, on a systematic basis, override national sovereignty and impose sanctions. Similarly, there is no standing international police force. In some circumstances, the security council has particular powers.

Key words: International law, globalized, enforcement, united nations, compulsory rules, jurisdiction, law of nations

INTRODUCTION

Public international law is the body of law governing relations between states, international organizations and sometimes, individuals. At one time states were almost the only bodies that had rights and duties under international law, but during the 20th century international organizations (such as the League of Nations and then the United Nations), multinational companies and sometimes, individuals have also acquired rights and duties under international law.

Public international law covers such diverse subject areas as air law, space law, maritime law (both shipping law and the law of the sea), diplomatic relations and human rights law, law of armed conflict, international environmental law, international economic law and international trade law. This body of law is expanding and developing all the time.

This concept of public international law should be distinguished from private international law or conflicts of law, which is the body of conventions and model laws that regulate private relationships across national borders, e.g., divorce law or the law relating to the sale of goods.

This concept has been emphasized by Pritchard (2001). Unlike in national legal systems, on the international plane there is no supreme law-making authority. However, sources of international law do exist, even though they are less obvious than sources of national law. Article 38 of the statute of the International Court of Justice (ICJ) lists the main sources of international law. In deciding international disputes submitted to it (http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0). The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

MATERIALS AND METHODS

According to Bentham's classic definition, international law is a collection of rules governing relations between states. It is a mark, of how far international law has evolved that this original definition

omits individuals and international organizations two of the most dynamic and vital elements of modern international law. While, we can understand another definition came by professor (Jouannet, 2008). International law is organized to best enable it to attain its aims and objectives and it represents a compromise between the aims that different international actors seek to achieve through it. International law is also the result of the State practice that has developed in response to the various challenges confronted since 1945. This state practice's underlying welfare logic is particularly important to highlight. Further, many of the foundational objectives of 1945 do not resolve conflicts between the aims of the law, but rather conceive of conflicts as part of the rule of law.

Also by virtue of what had mentioned in the UN Guide for Minorities (2001). The founders of the UN saw the organization as having essentially three purposes-to ensure international peace and security, to promote social and economic development and to promote the observance of human rights. In pursuit of these goals, the UN has developed a large, complex network of organizations that have an impact on virtually every area of human activity. the use of force by individual States In the period since the establishment of the UN has become unlawful as a means of settling disputes. Members of the UN are enjoined to seek a peaceful settlement of inter-state disputes, in accordance with Chapter 6 of the (http://www.un.org/aboutun/charter/index.html). Article 33 of the charter lists various mechanisms for the peaceful settlement of disputes, including negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement (http://www.un.org/aboutun/charter/index.html). The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice 2. The security council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Exceptionally, in situations posing a threat to international peace and security or constituting aggression, the UN security council is empowered to authorize enforcement action in accordance with chapter 7 of the (http://www.un.org/aboutun/charter/index.html).

But, the alleged dichotomy between the mandates and capacity of international institutions and international needs or modern expectations appears to be one that is more apparent than real, provided that the situation is kept under the control of the Security Council endowed with the competence to deal with such a situation under chapter 7 of the charter. Here an important unresolved theoretical question could be discussed according to the (Report of the International Commission on Intervention and State Sovereignty, 2001), which says, an important unresolved theoretical question is whether the security council can in fact exceed its own authority by violating the constitutional restraints embedded in the charter, particularly the inhibition in Article 2.7. This issue has only been tangentially considered by the International Court of Justice (ICJ) in the lockerbie case, with the 1998 decision on preliminary objections affirming that the security council is bound by the charter. But the issue seems destined to remain a theoretical one, since there is no provision for judicial review of security council decisions and therefore, no way that a dispute over charter interpretation can be resolved. It appears that the council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security on this scenario the security council can, under certain conditions, determine a situation of genocidal acts or other atrocities such as large-scale violations of international humanitarian law as constituting a threat to the peace or even a breach of the peace under Article 39 of the charter, irrespective of whether, it is taking place within the national border of a state or whether, it is addressed to its own people. If the security council decides on enforcement measures to be applied in such a situation under chapter 7 based on its determination to that effect, then the prohibition of intervention under article 2, paragraph 7, will simply be irrelevant. This will be the case, as long as we stay within the framework of the power of the Security council for taking action in dealing with the situation, either directly through its own enforcement action under Article 42, or else, indirectly through its authorization for an enforcement action, whether by a regional organization (Article 53) or by a group of States acting collectively (arguably Article 42).

In fact, the most important means of judicial settlement is resorting to the International Court of Justice (ICJ), sometimes referred to as the World Court. This avenue is open only to States. According to Article 34 of the statute of the international court of justice, only States can be parties for cases presented before the ICJ.

Unlike domestic courts, which have compulsory jurisdiction, the ability of the ICJ to hear a case depends upon the consent of states to submit to its jurisdiction. In contentious matters, the jurisdiction of the court arises in 3 ways:

- Where a matter is referred to it by special agreement of both parties.

- Where, the referral of a matter is specially provided for in the (http://www.un.org/aboutun/charter/index.html) or in a particular treaty (http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0). Numerous treaties, both bilateral and multilateral, provide for the submission of disputes to the ICJ. In the field of human rights such treaties include the Slavery Convention 1926, the Convention on the Prevention and Punishment of the Crime of Genocide 1948, the International Convention on the Elimination of All Forms of Racial Discrimination 1965 and the Convention on the Elimination of All Forms of Discrimination against Women 1979.
- Where both parties have declared their express recognition of the Court's compulsory jurisdiction. These include treaty interpretation, questions of international law, existence of facts constituting a breach of an international obligation and questions of reparation (http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0). Acceptance of the Court's jurisdiction occurs by means of a unilateral declaration deposited with the UN Secretary-General (http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0). The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty; any question of international law; the existence of any fact, which, if established, would constitute a breach of an international obligation and the nature or extent of the reparation to be made for the breach of an international obligation.

In addition to its contentious jurisdiction in disputes referred to it by States, the court also possesses an advisory jurisdiction. When requested by General Assembly or Security Council, the ICJ may provide an advisory opinion on a legal question in accordance with Article 96 of the Charter. With the authorization of the General Assembly, other organs of the UN and its specialized agencies may also request advisory opinions.

International law and the United Nations provide its members with the means to establish a common policy, which constitutes universal values and rules. Despite all successes, they have proven countless times in the past to be ambiguous and incoherent. Deficiencies in the United Nations system have often hindered an effective and above all, timely response to a number of new challenges. Moreover, the classic threats and conflicts between states, which has always been the point of departure in international law, are decreasing in relevance. Currently, the most serious and acute dangers to world peace emanate from the existence and/or proliferation of weapons of mass destruction, with failing states, criminal and dictatorial regimes. Along with environmental disasters and pandemics, they currently represent the greatest political challenges to international law and the United Nations.

In this study, it is worth mentioning that the intellectual and political character of a state, aspects of its domestic affairs understood by international law, exercises an increasing influence on the type of dangers and risks for international security and may thus, no longer be ignored; further, there are indications of a derivative transformation of the factual and legal conditions of one of the major pillars of international law: namely, the states right of self-defense.

It is certainly, not in the interests of the community of states for the role of the United Nations in preserving world peace and international security to be weakened by the states again laying claim to the power of defining the legal justification for international force by pointing to their-natural right of self-defense. On the other hand, they will be able to successfully exercise their role of preserving peace only if they are able to adapt their legal order to the changes in the causes of international insecurity.

RESULTS AND DISCUSSION

As Koskenniemi (2007), one encounters difficulties today when trying to analyze the general objectives that emanate from the enthusiasm and consensus of 1945. How should we interpret them considering how general they are and how much the world has changed? Everyone agrees that international law should promote peace, justice, economic development and human rights and combat world poverty. But notwithstanding the validity of these very general postulates and the apparent suitability of international law as a means to pursue them, there is little consensus on how to use the law to this effect. The law needs to promote peace, but does this mean absence of war, or harmonious development of different human societies? Are human rights norms compatible with the laws of some countries values? Is justice achieved by reconciliatory pardoning of faults committed, or by punishing guilty individuals in international criminal courts? The legal objectives defined by the members of international society are so general and abstract that they leave room for endless conflicts.

Yet, it seems necessary to go further still and to realize that the law has become more contradictory by

reason of the substantial objectives defined by the charter. It is precisely, because the legal principles and objectives are substantive and not just formal that they create endless conflict. The communal aspect of post-war international law lies in the formal secondary rules of creation and of conflict-resolution, while the substantive primary rules are prone to conflict. The charter represents a further step in a development that originated in the league of nations and the interwar period, as a result, of which substantive law, not formal law, now forms the basis of the international legal system. This represents a switch in priorities. The inability of European nations to agree on a definition of common interest (in particular common religious interest) in the 16 and 17th centuries prompted these nations to favor a liberal, classical, voluntary law of nations, in which agreements were governed by a set of purely formal rules based on cooperation and respect for sovereignty (Ewald, 1986). These rules applied to all states without subjecting any of them to anything substantial; they merely prescribed equality and trade reciprocity and resolved disputes. The substantive objectives defined in the 1945 Charter and the legal values they convey work in the opposite manner. Their effect is to instill conflict in international law and not merely to enable conflict resolution.

In addition, The United Nations was founded not only to save succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights, but also to establish conditions under, which justice and respect for the obligations arising from treaties and other sources of international law can be maintained (Preamble of the United Nations Charter), which create it's responsibility also in the globalized world, where people, commerce and ideas cross borders with ever-increasing frequency, countries have long recognized that international norms and standards are essential for modern society to function.

It appears that the United Nations is doing all kind of things, but not the most important ones, like: Uniting people, maintaining international peace and security, developing friendly relations between nations, among others. Since the formation of the UN in 1945, almost every Charter of the UN has been breached. There have been approximately 182 wars around the world since 1945, including most recent South Ossetia war. Currently, in contemporary days there are 32 ongoing wars, which are being fought, these include: Sri Lanka Civil war, Second Chechen war, war in Afghanistan, war in Darfur, Iraq War, war in Somalia, age-old Arab-Israel/Israel-Palestine (including al-Aqsa Intifada) conflict, among others.

In the face of these changes, an issue arises concerning the future role the United Nations may play for preserving international security. In this context four models of order are conceivable; but not without drawbacks as we can find that out by Laubach *et al.* (2004). The first is the legal model of the United Nations, a legal community of equal and equally sovereign states. This model suffers from internal contradictions within this legal community, Because of its claim to universality where the willingness of member states to fulfill the obligations of the organization's charter and contributes to realizing its goals, is highly questionable. As such, states that do not contribute their share to attaining the collective goods made available by the community of states, such as peace, international security and economic development, nonetheless benefit from them. At the same time, the system of the United Nations, which is based upon universal legitimacy, also serves as an incentive for strategically-acting governments of irresponsible states to, for example blackmail the community of states with the threat to produce, proliferate and even deploy weapons of mass destruction. The second model has a single hegemonic power like the United States act as a guarantor for the law of the international community. Initially this suffers from the problem that the remaining four members of the United Nations Security Council would be disempowered and thus, encouraged to use their formal veto power in the Security Council to hinder the single hegemonic power and strengthen their own power position rather than using it primarily for the benefit of the international community. Equally, damaging to international security would be the single hegemonic power's dual position implied in this model: As a legally equal member of the international community of states, it would be subject to its constitution; but as an-international sovereign-that guarantees the security of that community; it would always simultaneously stand above the law. At the very least, it would assume the right to interpret the law, which it has the responsibility to protect. The 3rd possible model of development, the imperial legal order of the single hegemonic power, cannot seriously be considered as a feasible concept of order for global international law. Not only are conflicts foreseeable with forces that are unwilling to subordinate themselves to the rule of the hegemonic power. Another, equally important argument against this option is the danger that the hegemonic power will shift the burdens of its task of maintaining order to its subordinates and in cases of doubt, place criteria of opportunism and self-interest above those of global justice. In such an order, conflicts already visible today over the just distribution of resources on the global level would dominate and would provoke the hegemonic power to continually undertake new endeavors to defend its dominant position in the

world. The fourth model, a cooperative and pluralistic cooperation among states, above all the permanent members of the security council on a global level, presupposes the prior development of universal forms of global solidarity in order to enable peaceful coexistence despite fundamental economic and cultural differences. If the existence of international law is to promote or even express this solidarity, the states must learn that they hold a common and mutual responsibility for the will being of its members. For small and mid-sized states, this means that they must not seek solutions of such problems of security and order, by resorting to single hegemonic power or to a few major powers. This means that they must learn to be a state among states To subject themselves to the plurality and heterogeneity and thus, the will of the other states and/or to tolerate this whenever possible; all indications thus, point to the necessity of simultaneously securing, increasingly the effectiveness and modifying the framework of order of the United Nations.

Still to say that the most interesting is that the public international law or Law of Nations, since it involves the United Nations (International Court of Justice and Security Council), International Criminal Law, Geneva Conventions, Vienna Conventions, world health organization, international labor organization, international monetary fund, among others. Public international law concerns the structure and conduct of states and intergovernmental organizations. In its most general sense, international public law consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations among themselves, as well as with some of their relations with persons, whether natural or juridical. Public international law establishes the framework and the criteria for identifying states as the principal actors in the international legal system. Which, means States should take advantage of the reform-mood at the UN to consider also some essential reforms of the ICJ. These include: Should the security council be enlarged, then UN member states should consider expanding the membership of the ICJ, too; intergovernmental organizations should have capacity to be a party in contentious proceedings; the new human rights council and certain international courts and tribunals should be given the power to request advisory opinions to have the real reforming for the current public international law to suit this Globalized world.

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