

PUBLIC INTERNATIONAL LAW

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ABSTRACT

Public international law hovers between cosmopolitan ethos and technical specialization. Neither of the principal legal responses to regime-formation - constitutionalism and pluralism - is adequate, however. The emergence of regimes resembles the rise of nation States in the late nineteenth century. But if nations are 'imagined communities', so are regimes. Reducing international law to a mechanism to advance functional objectives is vulnerable to the criticisms raised against thinking about it as an instrument for state policy: neither regimes nor states have a fixed nature or self-evident objectives. The task for international lawyers is not to learn new managerial vocabularies but to use the language of international law to articulate the politics of critical universalism.

INTRODUCTION

Public international law is the body of law concerned with the interaction of sovereign states, as well as entities such as multinational corporations and non-governmental bodies. public international law governs the way states interact with one another. International laws regulate trade, shipping, air travel, communications, the conduct of war, human rights, and other topics. This type of law is a complex and often-disputed field.

ORIGIN

The origin of modern public international law is usually dated to the Peace of Westphalia in 1648. This diplomatic congress ended the Thirty Years War, establishing the modern idea of the sovereign nation-state. The writings of legal thinkers such as Hugo Grotius (1583-1645)

influenced the origins of international law during this period. Grotius argued that nations should be governed by moral principles, and that the community of states ought to be regulated by treaties and agreements between nations. A model of public international law based on treaties between sovereign nation-states dominated international relations well into the 19th century. Treaties between nations were seen as the safest way of guaranteeing peace. As the European powers clashed over territory and authority, however, many became concerned that the international system of treaties was threatening peace between nations rather than upholding it. This concern came to a head following World War I. Many observers believed the intricate network of alliances in Europe had been a major cause of the war. After the war, the victorious nations attempted to create a multilateral framework for ensuring peace. The League of Nations was unable to enforce adherence to international law, though, and states such as Italy and Japan defied the organization's rules with impunity. Following World War II, the United Nations was formed to maintain peace and implement new conventions regulating international behaviour. The work of the UN and other intergovernmental organizations resulted in the post-World War II period seeing a greater degree of success in international law enforcement, although many contentious issues remain into the 21st century. Despite the problems of enforcement, public international law plays a vital role in the functioning of the world community. By providing a basis for cooperation between governments, international agreements and conventions permit governments to deal with problems beyond their individual ability. States or groups that go against the conventions of international law harm their reputations and face potentially serious consequencesⁱ.

HISTORICAL DEVELOPMENT

International law reflects the establishment and subsequent modification of a world system founded almost exclusively on the notion that independent sovereign states are the only relevant actors in the international system. The essential structure of international law was mapped out during the European Renaissance, though its origins lay deep in history and can be traced to cooperative agreements between peoples in the ancient Middle East. Among the earliest of these agreements were a treaty between the rulers of Lagash and Umma (in the area of Mesopotamia) in approximately 2100 BCE and an agreement between the Egyptian pharaoh

Ramses II and Hattusilis III, the king of the Hittites, concluded in 1258 BCE. A number of pacts were subsequently negotiated by various Middle Eastern empires. The long and rich cultural traditions of ancient Israel, the Indian subcontinent, and China were also vital in the development of international law. In addition, basic notions of governance, of political relations, and of the interaction of independent units provided by ancient Greek political philosophy and the relations between the Greek city-states constituted important sources for the evolution of the international legal system.

PUBLIC INTERNATIONAL LAW

Public international law is a combination of rules and customs governing relations between states in different fields, such as armed conflict, human rights, the sea, space, trade, territorial boundaries, and diplomatic relations. The United Nations Charter sets out the fundamental principles of modern public international law, notably:

Promotion of human rights;

The strict limitation on the right to use force against other states;

The strict prohibition on the acquisition of territory by force.

SOURCES OF PUBLIC INTERNATIONAL LAW

Article 38 (1) of the ICJ's statute identifies three sources of international law: treaties, custom, and general principles. Because the system of international law is horizontal and decentralized, the creation of international laws is inevitably more complicated than the creation of laws in domestic systems.

TREATIES-

Treaties are known by a variety of terms—conventions, agreements, pacts, general acts, charters, and covenants—all of which signify written instruments in which the participants

(usually but not always states) agree to be bound by the negotiated terms. Some agreements are governed by municipal law (e.g., commercial accords between states and international enterprises), in which case international law is inapplicable. It can be bi-lateral or multi-lateral. There is no prescribed form or procedure for making or concluding treaties. They may be drafted between heads of state or between government departments. The most crucial element in the conclusion of a treaty is the signalling of the state's consent, which may be done by signature, an exchange of instruments, ratification, or accession. A treaty may be terminated or suspended in accordance with one of its provisions (if any exist) or by the consent of the parties. If neither is the case, other provisions may become relevant. If a material breach of a bilateral treaty occurs, the innocent party may invoke that breach as a ground for terminating the treaty or suspending its operation. The termination of multilateral treaties is more complex.

CUSTOMS

The ICJ's statute refers to "international custom, as evidence of a general practice accepted as law," as a second source of international law. Custom, whose importance reflects the decentralized nature of the international system, involves two fundamental elements: the actual practice of states and the acceptance by states of that practice as law. The actual practice of states (termed the "material fact") covers various elements, including the duration, consistency, repetition, and generality of a particular kind of behaviour by states. Customs can develop from a generalizable treaty provision, and a binding customary rule and a multilateral treaty provision on the same subject matter may exist at the same time.

GENERAL PRINCIPLES OF LAW

A third source of international law identified by the ICJ's statute is "the general principles of law recognized by civilized nations." These principles essentially provide a mechanism to address international issues not already subject either to treaty provisions or to binding customary rules. Perhaps the most important principle of international law is that of good faith. It governs the creation and performance of legal obligations and is the foundation of treaty law. Another important general principle is that of equity, which permits international law to have

a degree of flexibility in its application and enforcement. The Law of the Sea treaty, for example, called for the delimitation on the basis of equity of exclusive economic zones and continental shelves between states with opposing or adjacent coasts.

OTHER SOURCES

Article 38 (1) of the ICJ's statute also recognizes judicial decisions and scholarly writings as subsidiary means for the determination of the law. Both municipal and international judicial decisions can serve to establish new principles and rules. In municipal cases, international legal rules can become clear through their consistent application by the courts of a number of states.

STATEHOOD

CREATION OF STATES

The process of creating new states is a mixture of fact and law, involving the establishment of particular factual conditions and compliance with relevant rules. A state must possess a permanent population, a defined territory, a government, and the capacity to conduct international relations. States may become extinct through merger, absorption, dissolution and reestablishment as new and separate states, limited dismemberment with a territorially smaller state continuing the identity of the larger state coupled with the emergence of new states from part of the territory of the latter, or, historically, annexation.

RECOGNITION

Recognition is a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality. The process of recognizing as a state a new entity that conforms with the criteria of statehood is a political one, each country deciding for itself whether to extend such acknowledgment. International recognition is important evidence that the factual criteria of statehood actually have been fulfilled. A large number of recognitions may buttress

a claim to statehood even in circumstances where the conditions for statehood have been fulfilled imperfectly. Before granting recognition, states may require the fulfilment of additional conditions.

RESPONSIBILITY OF STATES

The rights accorded to states under international law imply responsibilities. States are liable for breaches of their obligations, provided that the breach is attributable to the state itself. A state is responsible for direct violations of international law—e.g., the breach of a treaty or the violation of another state's territory. A state also is liable for breaches committed by its internal institutions, however they are defined by its domestic law; by entities and persons exercising governmental authority; and by persons acting under the direction or control of the state. A state must make full reparation for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of restitution of the original situation if possible, compensation where this is not possible, or satisfaction if neither is possible.

JURISDICTION

Jurisdiction refers to the power of a state to affect persons, property, and circumstances within its territory. It may be exercised through legislative, executive, or judicial actions. According to the territorial principle, states have exclusive authority to deal with criminal issues arising within their territories; this principle has been modified to permit officials from one state to act within another state in certain circumstances. Ships and aircraft have the nationality of the state whose flag they fly or in which they are registered and are subject to its jurisdiction. Jurisdictional immunity exists in certain contexts. Immunity is generally more extensive in criminal than in civil matters. A country's diplomatic mission and archives also are protected.

PUBLIC INTERNATIONAL LAW AND THE PROTECTION OF HUMAN DIGNITY

Several branches of public international law combine to protect universal values relating to human dignity. Each represents a tool of protection and all should be considered as complementary and must be applied comprehensively. These branches are: international humanitarian law, international refugee law, international criminal law and international human rights law.

DIFFERENCE BETWEEN PUBLIC LAW AND PRIVATE LAW:

Public international law comprises a body of rules which is concerned solely with the rights and obligations of sovereign states. For example the United Nations Charter is a central instrument of public international law.

Private international law, also referred to as ‘conflict of laws’, consists of rules which govern relations between private entities and decide which domestic law and/or courts can adjudicate issues with an “international” component. For example, if a Chinese company was to sign a contract with the United States, private international law would regulate the applicable law if that contract was violated.

RELATIONSHIP BETWEEN DOMESTIC LAW AND INTERNATIONAL LAW

The relationship between domestic and international law on a procedural level can be complex, particularly where a national court is applying international law directly. It is important to remember that domestic law cannot be used as a justification for a failure to meet an international responsibility.

As said by **Hersch Lauterpact**- The self-evident principle of international law that a State cannot invoke its municipal law as the reason for the non-fulfillment of its international obligations.ⁱⁱ

JUS COGENS

Jus cogens status is reserved for the most fundamental rules of international law, which are recognised and accepted by the international community as rules of which no exceptions are allowed (article 53 of the Vienna Convention on the Law of Treaties). All states are obliged to adhere to jus cogens rules at all times, regardless of the circumstances, and these rules cannot be superceded by international agreements or treaties. Examples of jus cogens norms include the right of all peoples to self-determination, the prohibition on the acquisition of territory by force and the prohibition on genocide, slavery and torture.

ERGA OMNES

The violation of a number of provisions under international law - usually those that are categorised as jus cogens rules - gives rise to "erga omnes" obligations. Erga omnes is a Latin concept that translates as "towards all". When fundamental principles of international law are violated, an erga omnes obligation arises, meaning that all states have the right to take action. Examples of acts that would give rise to erga omnes obligations include piracy, genocide, slavery, torture and racial discrimination.

CONCLUSION

Despite the problems of enforcement, public international law plays a vital role in the functioning of the world community. By providing a basis for cooperation between governments, international agreements and conventions permit governments to deal with problems beyond their individual ability. States or groups that go against the conventions of international law harm their reputations and face potentially serious consequencesⁱⁱⁱ.

REFERENCES

ⁱ <https://www.britannica.com/topic/international-law>

ⁱⁱ <https://unimelb.libguides.com/internationallaw>

ⁱⁱⁱ <https://definitions.uslegal.com/p/public-international-law/>

