International Law Essay, Research Paper

International law is the body of legal rules that apply between sovereign

states and such other entities as have been granted international

personality (status acknowledged by the international community). The

rules of international law are of a normative character, that is, they

prescribe towards conduct, and are potentially designed for authoritative

interpretation by an international judicial authority and by being capable

of enforcement by the application of external sanctions. The International

Court of Justice is the principal judicial organ of the United Nations,

which succeeded the Permanent Court of International Justice after World

War II. Article 92 of the charter of the United Nations states:

The International Court of justice shall be the principal judicial

organ of the United nations. It shall function in accordance with

the annexed Statute, which is based upon the Statute of the Permanent

court of International Justice and forms an integral part of the present

Charter.

The commands of international law must be those that the states

impose upon themselves, as states must give consent to the commands that

they will follow. It is a direct expression of raison d’etat, the

"interests of the state", and aims to serve the state, as well as protect

the state by giving its rights and duties. This is done through treaties

and other consensual engagements which are legally binding.

The case-law of the ICJ is an important aspect of the UN’s

contribution to the development of international law. It’s judgements and

advisory opinions permeates into the international legal community not only

through its decisions as such but through the wider implications of its

methodology and reasoning.

The successful resolution of the border dispute between Burkina

Faso and Mali in the 1986 Frontier Dispute case illustrates the utility of

judicial decision as a means of settlement in territorial disputes. The

case was submitted to a Chamber of the ICJ pursuant to a special agreement

concluded by the parties in 1983. In December 1985, while written

submissions were being prepared, hostilities broke out in the disputed

area. A cease-fire was agreed, and the Chamber directed the continued

observance of the cease-fire, the withdrawal of troops within twenty days,

and the avoidance of actions tending to aggravate the dispute or prejudice

its eventual resolution. Both Presidents publicly welcomed the judgement

and indicated their intention to comply with it.

In the Fisheries Jurisdiction case (United Kingdom v. Iceland ,

1974) the ICJ contributed to the firm establishment in law of the idea that

mankind needs to conserve the living resources of the sea and must respect

these resources. The Court observed:

It is one of the advances in maritime international law, resulting

from the intensification of fishing, that the former laissez-faire

treatment ofthe living resources of the sea in the high seas has been

replaced by a recognition of a duty to have due regard of the rights of

other States and the needs of conservation for the benefit of all.

Consequently, both parties have the obligation to keep inder review the

fishery resources in the disputed waters and to examine together, in the

light of scientific and other available information, the measures

required for the conservation and development, and equitable exploitation,

of these resources, taking into account any international agreement in

force between them, such as the North-East Atlantic Fisheries

Convention of 24 January 1959, as well as such other agreements as

may be reached in the matter in the course of further negotiation.

The Court also held that the concept of preferential rights in

fisheries is not static.

This is not to say that the preferential rights of a coastal State

in a special situation are a static concept, in the sense that the

degree of the coastal State’s preference is to be considered as for

ever at some given moment. On the contrary, the preferential rights are

a function of the exceptional dependence of such a coastal State on the

fisheries in adjacent waters and may, therefore, vary as the extent of

that dependence changes.

The Court’s judgement on this case contributes to the development of the

law of the sea by recognizing the concept of the preferential rights of a

coastal state in the fisheries of the adjacent waters, particularly if that

state is in a special situation with its population dependent on those

fisheries. Moreover, the Court proceeds further to recognise that the law

pertaining to fisheries must accept the primacy of the requirement of

conservation based on scientific data. The exercise of preferential rights

of the coastal state, as well as the hisoric rights of other states

dependent on the same fishing grounds, have to be subject to the overriding

consideration of proper conservation of the fishery resources for the

benefit of all concerned.

Some cases in which sanctions are threatened, however, see no

actual implementation. The United States, for example, did not impose

measures on those Latin American states that nationalized privately owned

American property, despite legislation that authorizes the President to

discontinue aid in the absence of adequate compensation.

Enforcement measures are not the sole means of UN sanction.

Skeptics of the coercive theory of international law note that forceful

sanctions through the United Nations are limited to situations involving

threats to the peace, breaches of peace, and acts of aggressiion. In all

other instances of noncompliance of international law, the charter’s own

general provisions outlawing the threat or use of force actually prevent

forceful sanction. Those same skeptics regard this as an appropriate

paradox in a decentralized state system of international politics.

Nonetheless, other means of collective sanction through the UN involve

diplomatic intervention and economic sanctions.

In 1967 the Security Council decided to isolate Southern Rhodesia

(now Zimbabwe) for its policy of racial separation following its unilateral

declaration of independence from Britain. As in other cases of economic

sanctions, effectiveness in the Rhodesian situation was limited by the

problems of achieving universal participation, and the resistance of

national elites to external coercion. With respect to universal

participation, even states usually sympathetic to Britain’s policy

demonstrated weak compliance.

The decentralization of sanctions remains one of the major

weaknesses of international law. Although international bodies sometimes

make decisions in the implementation of sanctions, member states must

implement them. The states are the importers and exporters in the

international system. They command industrial economies and the passage of

goods across national boundaries.

Furthermore, the UN is wholly dependent on its members on operating

funds, so no matter what decisional authority its members give it, its

ability to take action not only depends on its decision but also on means.

Without the support, the wealth and the material assistance of national

governments, the UN is incapable of effective sanctions. The resistance of

governments to a financially independent UN arises principally on their

insistence on maintaining control over sanctioning processes in

international politics.

Despite sweeping language regarding "threats to peace, breaches of

the peace, and acts of aggression", the role of the United Nationsin the

enforcement of international law is quite limited. Indeed the purpose of

the UN is not to enforce international law, but to preserve, restore and

ensure political peace and security. The role of the Security Council is

to enforce that part of international law that is either created or

encompassed by the Charter of the United Nations. When aggression occurs,

the members of the Council may decide politically – but are not obliged

legally – to undertake collective action that will have sanctioning result.

In instances of threats to or breaches of the peace short of war, they may

decide politically to take anticipatory action short of force. Moreover,

it is for the members of the Security Council to determine when a threat to

peace, a breach of peace, or an act of aggression has occured. Even thi

determination is made on political rather than legal criteria. The

Security Council may have a legal basis for acting, but self-interst

determines how each of it members votes, irrespective of how close to

aggression the incident at issue may be. Hence by virtue of both its

constitutional limitations and the exercise of sovereign prerogatives by

its members, the security council’s role as a sanctioning device in

international law is sharply restricted.

As the subject matter of the law becomes more politicized, states

are less willing to enter into formal regulation, or do so only with

loopholes for escape from apparent constraints. In this area, called the

law of community, governments are generally less willing to sacrifice their

soverein liberties. In a revolutionary international system where change

is rapid and direction unclear, the integrity of the law of community is

weak, and compliance of its often flaccid norms is correspondingly

uncertain.

The law of the political framework resides above these other two

levels and consists of the legal norms governing the ultimate power

relations of states. This is the most politicized level of international

relations; hence pertinent law is extremely primitive. Those legal norms

that do exist suffer from all the political machinations of the states who

made them. States have taken care to see that their behaviour is only

minimally constrained; the few legal norms they have created always provide

avenues of escape such as the big-power veto in the UN Security Council.

Despite the many failures and restrictions of international law,

material interdpendence, especially among the states of equivalent power,

may foster the growth of positive legal principles. In addition, as

friendships and emnities change,, some bilateral law may cease to be

observed among new emnities, but new law may arise among new friends who

have newfound mutual interests. In the meantime, some multicultural law

may have been developed. Finally, research suggests that the social

effects of industrialization are universal and that they result in

intersocial tolerances that did not exist during periods of disparate

economic capability. On social, political, ane economic grounds,

therefore, international law is intrinsic to the transformation and

modernization of the international system, even though the "law of the

political context" has remained so far.